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September 21, 2011

SAMPLE

Board of Immigration Appeals
Clerk's Office
5107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041

RE: John Doe (A# 123-456-789) - DETAINED
Filing of Notice of Appeal, Fee Waiver Request, and Notice of Entry of Appearance before the Board of Immigration Appeals

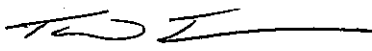
Dear Clerk:

Enclosed please find for filing an original Form EOIR-26 Notice of Appeal with two accompanying attachments, a copy of the Immigration Judge's decision, a Form EOIR-26A Fee Waiver Request, and Form EOIR-27 Notice of Entry of Appearance as Attorney before the Board of Immigration Appeals on behalf of John Doe.

I am also enclosing a conforming copy of this appeal packet. Please return the conforming copy to me in the enclosed self-addressed and stamped envelope. If you have any questions regarding this filing, please contact me at (213) 385-2977, ext. 235.

Thank you for your assistance.

Sincerely,


Talia Inlender
Staff Attorney
Immigrants' Rights Project

Enclosures

SAMPLE

OMB#1125-0005

Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals

Print double-sided

I hereby enter my appearance as attorney or representative for, and at the request of, the following named person: NAME: <u>John C. Doe</u> (First) (Middle Initial) (Last) ADDRESS: <u>1234 S. Main Street</u> <u>202</u> (Number and Street) (Apt. No.) <u>Los Angeles</u> <u>CA</u> <u>90000</u> (City) (State) (Zip Code)	DATE (mm/dd/yy): <u>09/21/11</u> ALIEN NUMBER(S) and NAME(S) (List lead alien number and all family member alien numbers and names, if applicable. Continue on next page as needed.) <u>123-456-789</u> For a disciplinary case, check box <input type="checkbox"/> and write in case number in space above.
---	---

Please check one of the following:

1. I am a member in good standing of the bar of the highest court(s) of the following state(s), possession(s), territory(ies), commonwealth(s), or the District of Columbia:

Full Name of Court	State Bar No. (if applicable)
<u>California Supreme Court</u>	<u>000000</u>

(Please use space on reverse side to list additional jurisdictions.)

I am not (or am - explain fully on reverse side) subject to any order of any court or administrative agency disbaring, suspending, enjoining, restraining, or otherwise restricting me in the practice of law and the courts listed above comprise all of the jurisdictions (other than federal courts) where I am licensed to practice law.

2. I am an accredited representative of the following qualified non-profit religious, charitable, social service, or similar organization established in the United States, so recognized by the Executive Office for Immigration Review pursuant to 8 C.F.R. § 1292.2 (provide name of organization and expiration date of accreditation):

3. I am a law student or law graduate, reputable individual, accredited official, or other person authorized to represent individuals pursuant to 8 C.F.R. § 1292.1 (explain fully on reverse side).


I have read and understand the statements provided on the reverse side of this form that set forth the regulations and conditions governing appearances and representation before the Board of Immigration Appeals. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

SIGNATURE OF ATTORNEY OR REPRESENTATIVE	EOIR ID#	DATE (mm/dd/yy)
X <u>Talia Inlender</u>	None	09/21/11
NAME OF ATTORNEY OR REPRESENTATIVE (type or print)	ADDRESS <input type="checkbox"/> Check here if new address	
Talial Inlender	Public Counsel 610 S. Ardmore Ave Los Angeles, CA 90005	
PHONE NUMBER (with area code)	FAX NUMBER (with area code)	
213 385-2977 ext. 235	213 385-9089	

Proof of Service

I Talia Infender mailed or delivered a copy of the foregoing Form EOIR-27 on 09/21/11
(Name) (Date-mm/dd/yy)

to the DHS (U.S. Immigration and Customs Enforcement - ICE) at 606 S. Olive St., 8th Fl., Los Angeles, CA 90014
(Number and Street, City, State, Zip Code)

X 
Signature of Attorney or Representative

APPEARANCES - An appearance shall be filed on a Form EOIR-27 by the attorney or representative appearing in each appeal or motion to reopen or motion to reconsider before the Board of Immigration Appeals (see 8 C.F.R. § 1003.38(g)), even though the attorney or representative may have appeared in the case before the Immigration Judge or the U.S. Citizenship and Immigration Services. When an appearance is made by a person acting in a representative capacity, his/her personal appearance or signature constitutes a representation that, under the provisions of 8 C.F.R. part 1003, he/she is authorized and qualified to represent individuals. Thereafter, substitution or withdrawal may be permitted upon the approval of the Board of a request by the attorney or representative of record in accordance with *Matter of Rosales*, 19 I&N Dec. 655 (1988). Please note that appearances for limited purposes are not permitted. See *Matter of Velasquez*, 19 I&N Dec. 377, 384 (BIA 1986). Further proof of authority to act in a representative capacity may be required.

Check this box if you are entering your appearance pro bono.

REPRESENTATION - A person entitled to representation may be represented by any of the following:

- (1) Attorneys in the United States as defined in 8 C.F.R. § 1001.1(f).
- (2) Law students and law graduates not yet admitted to the bar as defined in 8 C.F.R. § 1292.1(a)(2).
- (3) Reputable individuals as defined in 8 C.F.R. § 1292.1(a)(3).
- (4) Accredited representatives as defined in 8 C.F.R. § 1292.1(a)(4).
- (5) Accredited officials as defined in 8 C.F.R. § 1292.1(a)(5).

All representatives must comply with the specific requirements to represent aliens before the Board of Immigration Appeals. For more information on the requirements, see 8 C.F.R. § 1292.1 and the particular subsections referenced above as applicable. Note that law students and law graduates must submit additional materials pursuant to 8 C.F.R. § 1292.1(a)(2).

FREEDOM OF INFORMATION ACT - This form may not be used to request records under the Freedom of Information Act or the Privacy Act. The manner of requesting such records is contained in 28 C.F.R. §§ 16.1 - 16.11 and appendices. For further information about requesting records from the EOIR under the Freedom of Information Act, see *How to File a Freedom of Information Act (FOIA) Request With the Executive Office for Immigration Review*, available through the EOIR's website at <http://www.usdoj.gov/coir>.

CASES BEFORE THE EOIR - Automated information about cases before the EOIR is available by calling 1-800-898-7180.

ADDITIONAL INFORMATION:

(Please attach additional sheets of paper if necessary.)

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time to complete this form is six (6) minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Executive Office for Immigration Review, Office of General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.

SAMPLE

Staple Check or Money Order Here. Include Name(s) and "A" Number(s) on the face of the check or money order.

1. List Name(s) and "A" Number(s) of all Respondent(s)/Applicant(s):
John Carlos Doe 123-456-789

For Official Use Only

! WARNING: Names and "A" Numbers of everyone appealing the Immigration Judge's decision must be written in item #1. The names and "A" numbers listed will be the only ones considered to be the subjects of the appeal.

2. I am the Respondent/Applicant DHS-ICE (Mark only one box.)
3. I am DETAINED NOT DETAINED (Mark only one box.)
4. My last hearing was at 300 N. Los Angeles Street, Room 8547, Los Angeles, California (Location, City, State)

5. **What decision are you appealing?**

Mark only one box below. If you want to appeal more than one decision, you must use more than one Notice of Appeal (Form EOIR-26).

I am filing an appeal from the Immigration Judge's decision in **merits proceedings** (example: removal, deportation, exclusion, asylum, etc.) dated 09/16/2011.

I am filing an appeal from the Immigration Judge's decision in **bond proceedings** dated _____ . (For DHS use only: Did DHS invoke the automatic stay provision before the Immigration Court? Yes. No.)

I am filing an appeal from the Immigration Judge's decision **denying a motion to reopen or a motion to reconsider** dated _____ .

(Please attach a copy of the Immigration Judge's decision that you are appealing.)

6. State in detail the reason(s) for this appeal. Please refer to the General Instructions at item F for further guidance. You are not limited to the space provided below; use more sheets of paper if necessary. Write your name(s) and "A" number(s) on every sheet.

Please see Attachment One to Form EOIR-26, setting forth the factual and legal basis for this appeal.

Please see Attachment Two to Form EOIR-26, explaining why this appeal is inappropriate for summary affirmance and merits three-member panel review with the benefit of oral argument.

(Attach additional sheets if necessary)

! WARNING: You must clearly explain the specific facts and law on which you base your appeal of the Immigration Judge's decision. The Board may summarily dismiss your appeal if it cannot tell from this Notice of Appeal, or any statements attached to this Notice of Appeal, why you are appealing.

7. Do you desire oral argument before the Board of Immigration Appeals? Yes No

8. Do you intend to file a separate written brief or statement after filing this Notice of Appeal? Yes No

! WARNING: If you mark "Yes" in item #8, you will be expected to file a written brief or statement after you receive a briefing schedule from the Board. The Board may summarily dismiss your appeal if you do not file a brief or statement within the time set in the briefing schedule.

9.



X

Signature of Person Appealing
(or attorney or representative)

09/21/2011

Date

10.

Mailing Address of Respondent(s)/Applicant(s)

John Carlos Doe
(Name)

Santa Ana City Jail, 62 Civic Center Plaza, PO Box 22003
(Street Address)

(Apartment or Room Number)

Santa Ana, California 92701
(City, State, Zip Code)

(Telephone Number)

11.

Mailing Address of Attorney or Representative for the Respondent(s)/Applicant(s)

Talia Inlender
(Name)

610 S. Ardmore Ave.
(Street Address)

(Suite or Room Number)

Los Angeles, California 90005
(City, State, Zip Code)

(213) 385-2977, ext. 235
(Telephone Number)

NOTE: You must notify the Board within five (5) working days if you move to a new address. You must use an alien's Change of Address Form (Form EOIR-33/BIA).

NOTE: If an attorney or representative signs this appeal for you, he or she must file *with this appeal*, a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27).

12.

PROOF OF SERVICE (You Must Complete This)

I Talia Inlender mailed or delivered a copy of this Notice of Appeal
(Name)

on September 21, 2011 to Assistant Chief Counsel of DHS-ICE
(Date) (Opposing Party)

at 606 S. Olive Street, 8th Floor, Los Angeles, California 90014
(Number and Street, City, State, Zip Code)



X

Talia Inlender
Signature

NOTE: If you are the Respondent or Applicant, the "Opposing Party" is the Assistant Chief Counsel of DHS - ICE.

WARNING: If you do not complete this section properly, your appeal will be rejected or dismissed.

WARNING: If you do not attach the fee or a completed Fee Waiver Request (Form EOIR-26A) to this appeal, your appeal may be rejected or dismissed.

HAVE YOU?

- Read all of the General Instructions
- Provided all of the requested information
- Completed this form in English
- Provided a certified English translation for all non-English attachments
- Signed the form
- Served a copy of this form and all attachments on the opposing party
- Completed and signed the Proof of Service
- Attached the required fee or Fee Waiver Request
- If represented by attorney or representative, attach a completed and signed EOIR-27

1 Respondent, John Doe, through *pro bono* counsel, appeals the decision of the
2 Immigration Judge denying withholding of removal and relief under the Convention Against
3 Torture for the reasons set forth below:
4

5 **1. The Immigration Judge committed legal error by failing to consider Respondent's**
6 **claim for withholding of removal under the Immigration and Nationality Act.** The
7 Immigration Judge, relying on the Supreme Court's decision in *Fernandez-Vargas v.*
8 *Gonzales*, 548 U.S. 30 (2006), found that Mr. Doe is ineligible for *any* form of relief
9 under the Immigration and Nationality Act ("INA") because he is subject to reinstatement
10 under INA § 241(a)(5). She therefore failed to consider Mr. Doe's claim for withholding
11 of removal under INA § 241(b)(3). This was plain legal error. *Fernandez-Vargas*
12 specifically holds that "[n]otwithstanding the absolute terms in which the bar on relief is
13 stated, even an alien subject to § 241(a)(5) may seek withholding of removal under 8
14 U.S.C. § 1231(b)(3)(A)." 548 U.S. at 35 n.4. *See also* 8 C.F.R. § 1208.31(e) (conferring
15 jurisdiction on immigration judges to review withholding of removal claims in
16 reinstatement proceedings). It is more likely than not that Mr. Doe will be persecuted on
17 account of his former membership in the Armed Forces, among other protected grounds,
18 if he is returned to Mexico. The Board should therefore reverse the Immigration Judge's
19 erroneous decision and remand for full consideration of Mr. Doe's withholding of
20 removal claim or, in the alternative, grant Mr. Doe that relief in the first instance.
21

22 **2. The Immigration Judge committed factual and legal errors in determining that**
23 **Respondent's past treatment by police and gangs in Mexico does not rise to the level**
24 **of torture.** The Immigration Judge grossly mischaracterized the extent and severity of
25 the harm that Mr. Doe suffered at the hands of the police in Mexico, and failed altogether

1 to consider whether the gravity of harm inflicted by the gangs rises to the level of torture.
2 In his declaration and testimony, Mr. Doe recounted approximately ten arrests by the
3 police in which he was detained for up to one week and subjected to severe beatings,
4 threats, and deplorable conditions. In the worst of these beatings, Mr. Doe was struck all
5 over his body, sexually threatened, and hit in the head with a gun. This beating was so
6 severe that Mr. Doe's nose broke and the right side of his face became paralyzed. The
7 Immigration Judge focused solely on this last incident in her decision, and improperly
8 minimized its severity and lasting impact. Mr. Doe was also the subject of repeated and
9 severe beatings by the gangs in Mexico, in which he was beaten by groups of gang
10 members until he was bruised and bloody, and was stabbed in the chest with a knife. The
11 Immigration Judge failed to consider whether these incidents rise to the level of torture.
12

13 The Immigration Judge committed legal error in concluding that the brutal treatment to
14 which Mr. Doe was subject does not constitute torture within the meaning of the law. *See*
15 8 C.F.R. § 1208.18(a)(1) (defining torture as “any act by which severe pain or suffering,
16 whether physical or mental, is intentionally inflicted on a person for such purposes as . . .
17 punishing him or her for an act he or she or a third person has committed or is suspected
18 of having committed, or intimidating or coercing him or a third person, or for any reason
19 based on discrimination of any kind, when such pain or suffering is inflicted by or at the
20 instigation of or with the consent or acquiescence of a public official or other person
21 acting in an official capacity”); *see also Bromfield v. Mukasey*, 543 F.3d 1071, 1079 (9th
22 Cir. 2008) (“Acts constituting torture are varied, and include beatings and killings.”). The
23 Board should reverse the Immigration Judge's factually and legally erroneous conclusion
24 with respect to past torture.
25

1 **3. The Immigration Judge committed factual and legal errors in determining that**
2 **the Mexican government did not acquiesce in Respondent's torture by gang**
3 **members.** In his declaration and testimony, Mr. Doe recounted being publicly beaten by
4 a group of gang members while two police officers stood idly by for a significant period
5 of time. The Immigration Judge improperly speculated as to the reason for the police
6 officers' delay in responding to the scene unfolding in front of them and committed legal
7 error in concluding that the police's actual knowledge of Mr. Doe's torture by gangs and
8 willful blindness to the acts being perpetrated on him did not constitute acquiescence
9 within the meaning of the law. *See* 8 C.F.R. 1208.18(a)(1); *Zheng v. Ashcroft*, 332 F.3d
10 1186, 1194 (9th Cir. 2003) (holding that acquiescence requires public officials'
11 awareness of the torture inflicted by a third party, and explaining "[t]hat awareness
12 includes 'both actual knowledge and 'willful blindness.'"). The Board should therefore
13 reverse the Immigration Judge's factually and legally erroneous determination that the
14 Mexican government did not acquiesce in Mr. Doe's torture by gang members.

15
16 **4. The Immigration Judge failed to properly consider and weigh all of the**
17 **overwhelming country conditions evidence – provided through direct testimony,**
18 **expert testimony, and material documentation -- demonstrating the clear**
19 **probability that Respondent will be tortured if returned to Mexico.** In considering
20 the likelihood of future torture, the law mandates that "*all* evidence relevant to the
21 possibility of future torture be considered." 8 C.F.R. § 1208.16(c)(3) (emphasis added).
22 This includes, but is not limited to: evidence of past torture, evidence regarding the
23 possibility of internal relocation, evidence of mass human rights violations in the country
24 of removal, and other relevant information regarding country conditions. *Id.* The
25 Immigration Judge failed to consider and afford proper weight to each of these forms of

1 evidence. With respect to past torture, as explained *supra*, the Immigration Judge failed
2 to recognize Mr. Doe's past treatment as torture and therefore improperly failed to
3 consider it in assessing the likelihood that he will be tortured in the future. *See Nuru v.*
4 *Gonzales*, 404 F.3d 1207, 1217-18 (9th Cir. 2005) (explaining the presumption that "if an
5 individual has been tortured and has escaped to another country, it is likely that he will be
6 tortured again if returned to the site of his prior suffering, unless circumstances or
7 conditions have changed significantly, not just in general, but with respect to the
8 particular individual."). With respect to internal relocation, the Immigration Judge
9 acknowledged that Mr. Doe attempted to relocate to the city of XXX, but incorrectly
10 found that he suffered no attacks there. To the contrary, Mr. Doe testified to physical
11 abuse by both police and gangs in XXX. With respect to evidence of mass human rights
12 violations, the Immigration Judge improperly minimized the weight of expert testimony
13 related to the gross human rights violations engaged in by the Mexican police and gangs
14 with the acquiescence of the police, and she considered none of the overwhelming
15 country conditions evidence conclusively demonstrating that the Mexican police engage
16 in torture and acquiesce in torture perpetrated by gang members. Rather, despite clear
17 evidence of continuing rampant police abuse, the Immigration Judge erroneously relied
18 on the laudable but very limited actions of the Mexican courts in ordering Mr. Doe's
19 release and in ruling unconstitutional that country's anti-gang laws to find that the
20 government does not practice or acquiesce in torture. The Board should therefore reverse
21 the Immigration Judge's erroneous analysis with respect to the likelihood of future torture
22 and remand for proper consideration of Mr. Doe's claim under the Convention Against
23 Torture or, in the alternative, grant Mr. Doe that relief in the first instance.
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In addition to the specific grounds of appeal outlined above, Mr. Doe reserves the right – as required by due process – to present additional legal arguments in his brief based on a thorough review of the transcript of proceedings and the decision below.

1 Respondent, John Doe, through *pro bono* counsel, submits that this case is inappropriate
2 for summary affirmance because it does not fall within the parameters set forth in 8 C.F.R. §
3 1003.1(e)(4). Rather, because this appeal meets the criteria of 8 C.F.R. § 1003.1(e)(6)-(7), a
4 three-member panel of the Board should review this case with the benefit of oral argument.

5
6 1. In order for a decision to be summarily affirmed, it must meet three distinct regulatory
7 requirements. *See* 8 C.F.R. § 1003.1(e)(4). This case is inappropriate for affirmance without
8 opinion because it fails to meet these three demands.

9 a. First, a decision meriting summary affirmance must have arrived at the correct result.

10 8 C.F.R. § 1003.1(e)(4)(i). In this case, the result was clearly wrong: Mr. Doe was
11 plainly eligible to pursue, and was entitled to a grant of, withholding of removal and
12 relief under the Convention Against Torture. As detailed in Attachment One, and
13 contrary to the Immigration Judge's decision, withholding of removal is available to
14 individuals against whom a removal order is reinstated. Mr. Doe is eligible for that
15 relief because it is more likely than not that he will be persecuted if returned to
16 Mexico. Mr. Doe also is entitled to protection under the Convention Against Torture
17 because, applying the law to all the relevant evidence, there is a clear probability that
18 he will be tortured if returned to Mexico. The Immigration Judge's decision to the
19 contrary cannot stand.

20 b. Second, a decision cannot be summarily affirmed unless "any errors in the decision . .
21 . were harmless or nonmaterial." 8 C.F.R. § 1003.1(e)(4)(i). Far from being harmless
22 and nonmaterial, the Immigration Judge's errors impact Mr. Doe's very eligibility for
23 mandatory relief from persecution and deprive him of protection from torture.
24 Absent these errors, Mr. Doe would have been entitled to a mandatory grant of
25

1 withholding of removal or, in the alternative, relief under the Convention Against
2 Torture.

3 c. Third, a decision can be summarily affirmed only if “[t]he issues on appeal are
4 squarely controlled by existing Board or federal court precedent and do not involve
5 the application of precedent to a novel fact situation” or “[t]he factual and legal
6 questions raised on appeal are not so substantial that the case warrants the issuance of
7 a written opinion in the case.” 8 C.F.R. § 1003.1(e)(4)(i)(A)-(B). Although Mr. Doe
8 believes that his assertions of factual and legal error are squarely controlled by
9 existing Board and judicial precedent, that precedent mandates *reversal* of the
10 Immigration Judge’s decision. Affirmance without opinion is therefore inappropriate.
11 Moreover, the factual and legal issues raised on appeal are substantial and warrant the
12 issuance of a written opinion: they impact an individual’s ability to seek protection
13 from persecution regardless of reentry to the United States and are the determining
14 factor in whether a man will be removed to a country where he faces persecution,
15 torture, and possible death.

16
17 2. This appeal merits three-member panel review because it falls squarely within several of the
18 circumstances set forth in 8 C.F.R. § 1003.1(e)(6). As set forth in Attachment One, the
19 Immigration Judge’s decision “is not in conformity with the law or with applicable precedents”
20 relating to withholding of removal and relief under the Convention Against Torture and contains
21 “clearly erroneous factual determination[s].” 8 C.F.R. §§ 1003.1(e)(6)(iii), (v). The legal and
22 factual errors committed by the Immigration Judge require reversal of the decision below. 8
23 C.F.R. § 1003.1(e)(6)(vi). Although Mr. Doe contends that such reversal is plainly consistent
24 with and required by intervening Board and judicial precedent, *see* 8 C.F.R. § 1003.1(e)(5), this
25 case nevertheless merits three-member panel review because it presents an opportunity to

1 improve consistency among immigration judges and establish precedent in an area of major
2 national import: the definition of torture. 8 C.F.R. § 1003.1(e)(6)(i), (ii), (iv).

3 Respondent reserves the right – protected by due process – to present additional legal
4 arguments in Respondent’s brief after a thorough review of the transcript and the IJ’s decision to
5 further demonstrate why this case: (1) is inappropriate for summary affirmance; and (2) merits
6 review by a three-member panel aided by oral argument.

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SAMPLE

John Carlos Doe
Name: _____

If more than one alien is included in your appeal or motion, only the lead alien need file this form.

123-456-789
Alien Number ("A" Number:) _____

I, John Carlos Doe, declare under penalty of perjury, pursuant to 28 U.S.C. section 1746, that I am the person above and that I am unable to pay the fee. I believe that my appeal/motion is valid, and I declare that the following information is true and correct to the best of my knowledge:

Assets

Wages, Salary	\$ <u>1,000.00/month</u>
Other Income (business, profession, self-employed, rent payments, interest, etc.)	<u>0.00/month</u>
Cash	<u>50.00</u>
Checking or Savings Account	<u>250.00</u>
Property (real estate, automobile, stocks, bonds, etc.)	<u>0.00</u>
Other Financial Support (public assistance, alimony, child support, gift, parent, spouse, other family members, etc.)	<u>0.00/month</u>

Expenses (including dependents)

Housing (rent, mortgage, etc.)	\$ <u>650.00/month</u>
Food	<u>200.00/month</u>
Clothing	<u>0.00/month</u>
Utilities (phone, electric, gas, water, etc.)	<u>50.00/month</u>
Transportation	<u>100.00/month</u>
Debts, Liabilities	<u>0.00/month</u>
Other <u>None</u> (specify)	\$ <u>0.00/month</u>

Under the Paperwork Reduction Act, a person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. The estimated average time to complete this form is one (1) hour. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.

J. C. Doe

Signature

09/21/2011

Date