No. 12-2471

IN THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

F.H.-T.,

Petitioner,

v.

ERIC H. HOLDER, JR., Attorney General of the United States,

Respondent.

Petition for Review of an
Administrative Final Order of Removal

PETITIONER'S PETITION FOR REHEARING OR REHEARING EN BANC

Charles Roth
Lisa Koop
Ashley Huebner
NATIONAL IMMIGRANT JUSTICE CENTER
208 South LaSalle Street
Chicago, IL 60604
(312) 660-1613

Thomas J. Maas
KATTEN MUCHIN ROSENMAN LLP
525 W. Monroe Street
Chicago, IL 60661-3693
(312) 902-5258

Attorneys for Petitioner

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 12-2471

Short Caption: F. H.-T. v. Eric Holder, Jr.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P 26.1 by completing item #3):

F. H.-T.

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

Katten Muchin, LLP

The National Immigrant Justice Center

The Law Office of Alex Hernandez (San Antonio, TX)

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

N/A

ii) list any publicly held company that owns 10% or more of the party's or amicus' stock:

N/A

Attorney's Signature: s/ Charles Roth Date: 11/14/2012

Attorney's Printed Name: Charles Roth

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** X **No** ____

Address: 208 S. LaSalle St., Ste. 1818
Chicago, IL 60625

Phone Number: 312-660-1613 Fax Number: 312-660-1505

E-Mail Address: croth@heartlandalliance.org

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N/A

Attorney's Signature: s/ Lisa Koop Date: 11/14/2012

Attorney's Printed Name: Lisa Koop

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: 208 S. LaSalle St., Ste. 1818
Chicago, IL 60625

Phone Number: 312-446-5365 Fax Number: 312-660-1505

E-Mail Address: lkoop@heartlandalliance.org

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N/A

Attorney's Signature: s/ Thomas J. Maas Date: 11/14/2012

Attorney's Printed Name: Thomas J. Maas

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: 525 W. Monroe Street
Chicago, IL 60661-3693

Phone Number: (312) 902-5258 Fax Number: (312) 902-1061

E-Mail Address: thomas.maas@kattenlaw.com

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INTRODUCTION

Petitioner F.H.–T. respectfully petitions for rehearing *en banc* or panel rehearing. The Panel's decision on this matter permits an agency to nullify an applicant's opportunity to seek a congressionally-authorized "terrorism bar" exemption, codified at 8 U.S.C. § 1182(d)(3)(B)(i). It constitutes the first appellate validation of an unworkable scheme which leaves *bona fide* refugees unable to obtain protection due to unfair procedural traps. The Panel also acknowledges that its decision will preclude judicial review, in contravention of a clear statutory mandate for review.

The Panel's decision on this complicated matter merits *en banc* rehearing for two reasons. First, while the Panel acknowledged circuit precedent and purported to distinguish this case from existing authority, the Panel's distinctions cannot withstand scrutiny. The decision is irreconcilable with prior decisions of the court, and creates an intra-circuit conflict. Second, the Panel's decision is of extraordinary importance because it marks the first application nationwide of agency nullification principles to the terrorist bar exemption, giving it broad significance both within and beyond this Circuit.

PROCEDURAL BACKGROUND

In October 2009, an Immigration Judge ("IJ") denied F.H.–T.'s applications for asylum and withholding of removal under 8 U.S.C. §§ 1158 and 1231(b)(3).[1] The IJ found that F.H.–T. (Petitioner) had materially supported

[1] The IJ granted Petitioner deferral of removal under the Convention Against Torture, which was not appealed to the Board and was not before the Panel.

the Eritrean People's Liberation Front ("EPLF") – which the IJ deemed a "Tier III" terrorist organization, as defined in 8 U.S.C. § 1182(a)(3)(B)(vi)(III) – during its independence struggle; and further, that Petitioner could not demonstrate a "nexus" or connection between his past mistreatment and a protected ground.

The Board of Immigration Appeals ("Board") affirmed the IJ's removal order in May 2012, agreeing that Petitioner is barred from receiving asylum and withholding of removal for having provided material support to the EPLF. The Board did not consider the alternate reason given by the IJ for denying the claim, i.e., the "nexus" finding. This precludes Petitioner from seeking a terrorism bar exemption under current Department of Homeland Security ("DHS") policy.[2]

Petitioner challenged the Board's decision, arguing that the Agency's approach to these cases precluded him from obtaining an exemption, and from obtaining review over any exemption decisions.[3] The Panel denied F.H.–T.'s Petition for Review.

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[2] Congress empowered the Secretary of Homeland Security, in consultation with the Secretary of State and the Attorney General, to waive the application of the material support bar for individual aliens or for groups of aliens. 8 U.S.C. § 1182(d)(3)(B)(i). Under current DHS policy, the Secretary may only consider exempting an individual like Petitioner from the terrorism bar if the applicant has a final order that finds eligibility for asylum relief *but for* the material support bar. *See* Department of Homeland Security Implements Exemption Authority for Certain Terrorist-Related Inadmissibility Grounds for Cases with Administratively Final Orders of Removal at 4 (Oct. 23, 2008). Thus, in order to be considered for the exemption, the applicant's claim must have been adjudged on its merits.

[3] Petitioner also argued that the Board erred in not finding him eligible for the "knowledge exemption" to the material support for terrorism bar. The Panel found that Petitioner had not adequately exhausted those arguments before the

The Panel noted "textual distinctions" and "procedural disparities" between Petitioner's case and an analogous line of cases involving nullification of statutory rights. The Panel cited the rarity of terrorism bar exemptions as a factor arguing against a requirement that the Board adjudicate the merits of each applicant's asylum claim, suggesting that such a process would "prolong the resolution of cases in an already strained system." Slip Op. at 26. Thus, notwithstanding a "disconcerting lack of harmonization among executive agencies," the Panel refused to require the Board to reach the merits of F.H.–T.'s asylum claim. Slip Op. at 28.

The Panel recognized that Petitioner was "rightfully frustrated" by the agencies' inability or unwillingness to coordinate with one another, but refused to intervene because the terrorism bar exemption does not explicitly "promise" a "procedural interest." Slip Op. at 32. With no "procedural interest" promised F.H.–T., the Panel refused to require even a minimal level of interagency coordination to ensure that asylum applicants are not removed before having opportunity to seek an exemption that may very well be granted if considered by the agency. The Panel conceded that "current agency practices will in all likelihood frustrate the opportunity for review" but declined to intervene because doing so would "constitute an impermissible judicial encroachment upon agency authority." Slip Op. at 32–33. As the Panel acknowledged, its opinion "frustrate the opportunity for review," despite Congress's intent as

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Agency, and declined to decide the question. Slip Op. at 16. The Panel's exhaustion finding itself is not urged as meriting rehearing *en banc*.

expressed in § 1182(d)(3)(B)(i) that terrorist bar exemptions be reviewed for legal adequacy under 8 U.S.C. § 1252(a)(2)(D).

ARGUMENT

The Panel's decision merits reconsideration by the Court en banc. First, in conflict with multiple decisions of this Court, the Panel refused to require interagency coordination to ensure that rights granted by Congress not be eliminated by unfair agency procedures. Second, the Panel acknowledged that its holding would frustrate judicial review over exemptions, despite a statute mandating legal review over those decisions. The Panel's invited Congress to be more specific; but Congress specifically called for judicial review of exemptions, and the Panel concedes that its holding precludes such review. Moreover, the Panel's holding contravenes the presumption that judicial review over agency decisions.

This case presents a critical question to the federal courts, on an issue which impacts a substantial number of individuals within this circuit and beyond. Given the Panel's creation of intra-circuit conflict, the inappropriateness of divesting the federal courts of judicial review over the exemption process, the number of individuals affected by this decision, and the importance of the Panel's decision as the first court nationwide to apply agency nullification principles to this question, the Court should employ its *en banc* procedures to reexamine this matter.

I. This Court Should Reaffirm Its Case Law Requiring a Minimum Level of Interagency Coordination

A. The Panel's Decision is in Conflict with Established Seventh Circuit Precedent Precluding Agency Procedures from Eliminating Statutory Rights

The Panel attempts to reconcile its holding with the Court's precedent, but the Panel's decision is in fact in irreconcilable conflict with case law from this Court. This alone is sufficient to merit rehearing.

In various immigration contexts—adjustment of status,[4] legalization proceedings,[5] and evidentiary rulings in removal proceedings[6]—this Court has refused to allow agency procedures to eliminate or prevent access to statutory eligibility for relief from removal. Here, the Panel held to the contrary, forthrightly acknowledging that the agency procedures will bar relief and frustrate judicial review. Slip Op. at 30. The Panel declined to require that asylum seekers receive an opportunity to be heard and to obtain judicial review, because of its view of the impracticalities of the two options presented by Petitioner.

Assuming *arguendo* that Petitioner's involvement in the Eritrean independence struggle triggered the terrorism bar, Congress has granted Petitioner—and other asylum applicants subject to the "material support" bar—the opportunity to be considered for a terrorism bar exemption. §

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[4] *See Subhan v. Ashcroft*, 383 F.3d 591 (7th Cir. 2004); *Ceta v. Mukasey*, 535 F.3d 639 (7th Cir. 2008); *Benslimane v. Gonzales*, 430 F.3d 828 (7th Cir. 2005).

[5] *See Siddiqui v. Holder*, 670 F.3d 736 (7th Cir. 2012); *Potdar v. Keisler*, 505 F.3d 680, 684 (7th Cir. 2007).

[6] *See Boyanivskyy v. Gonzales*, 450 F.3d 286 (7th Cir. 2006).

1182(d)(3)(B)(i). The Panel acknowledged that the impetus for the exemption was that "Congress was concerned that the breadth of the definition of 'terrorism' as contained in the bars might sweep too broadly, effectively denying asylum to otherwise deserving applicants." Slip Op. at 23; *see*, "The 'Material Support' Bar: Denying Refuge to the Persecuted," S. Hrg. 110–753, 7 (Sept. 19, 2007). The Panel acknowledges that current agency procedures render the terrorism bar exemption effectively unavailable to Petitioner and those like him:

> Under current DHS procedures…[t]he DHS waiver process and the removal order review process are wholly independent; in the typical case … a petitioner will have no waiver determination upon which to seek review as part of his final removal order within the 30-day window….Thus, the parallel track scheme as it currently operates may frustrate Congress's conferral of exemption review authority upon the courts.

Slip Op. at 30.

In analogous cases, this Court has protected a noncitizen's opportunity to seek relief from removal provided by Congress, and it has refused to allow agency procedures or the desire for expeditious handling to impede that opportunity. *See, e.g.*, *Subhan v. Ashcroft*, 383 F.3d 591 (7th Cir. 2004); *Ceta v. Mukasey*, 535 F.3d 639 (7th Cir. 2008); *Boyanivskyy v. Gonzales*, 450 F.3d 286 (7th Cir. 2006); *Benslimane v. Gonzales*, 430 F.3d 828 (7th Cir. 2005)). Because of the division of adjudicative responsibility between various executive branch agencies, "unless … subagencies engage in some minimal coordination of their respective proceedings…the statutory opportunity … will prove to be a mere illusion." *Ceta*, 535 F.3d at 646–647.

The leading case is *Subhan v. Ashcroft*, 383 F.3d at 593. In that case, Subhan sought to adjust his status under 8 U.S.C. § 1255(i), and needed to obtain employment verification certificates from both the Illinois and federal departments of labor. While waiting for these certificates, removal proceedings were instituted. An Immigration Judge (IJ) denied his motion for a continuance, and ordered removal. The government argued that jurisdiction was barred by 8 U.S.C. § 1252(a)(2)(B).[7] The Court disagreed:

> [S]ection 1252(a)(2)(B)(ii) *generally* bars judicial review of a continuance granted by an immigration judge in a removal proceeding, [but] we nevertheless think it unlikely that Congress, intending, as it clearly did, to entitle illegal aliens to seek an adjustment of status upon the receipt of certificates from the state and federal labor departments, at the same time also intended section 1252(a)(2)(B)(ii) to place beyond judicial review decisions by the immigration authorities that nullified the statute. If that section is applicable to cases such as this—cases, that is, in which rulings on requests for adjustment of status are precluded by procedural rulings—immigration judges can with impunity refuse to grant one-week continuances to persons in Subhan's position. And that would sound the death knell for the request.

Subhan, 383 F.3d at 595 (emphasis in original). Refusing to permit the "wheels of bureaucracy," *id.* at 595, 593, to trump the statute, the Court reversed.

This Court has held similarly in a half-dozen cases, rejecting Board decisions which "operate[] to nullify some statutory right or lead[] inescapably to a substantive adverse decision on the merits of an immigration claim." *Ceta*, 535 F.3d at 646 (internal citations omitted). To hold otherwise would permit

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[7] Section 1252(a)(2)(B) provides, in relevant part, that "notwithstanding any other provision of law, no court shall have jurisdiction to review—(i) any judgment regarding the granting of relief under section…1255 of this title…" *Subhan*, 383 F.3d at 593.

the agency "to thwart the congressional design," in preference for agency adjudicative goals. *Benslimane*, 430 F.3d at 832. "An allegation that the agency has 'nullified' a statute … raises a legal question, cognizable under § 1252(a)(2)(D)." *Calma v. Holder*, 663 F.3d 868, 875 (7th Cir. 2011); *see also*, *Boyanivskyy v. Gonzales*, 450 F.3d 286 (7th Cir. 2006) (overturning denial of continuance which deprived noncitizen of his statutory right to present evidence essential to his persecution claim).

In sum, this Court's case law has prioritized fidelity to the statute over Agency's procedural incentive to dispose of cases quickly.

As the Panel acknowledged, Slip Op. at 23-24, n.8, Petitioner herein did everything he possibly could do to be considered for the terrorism bar exemption. Under DHS policy, Petitioner cannot be considered for the terrorism bar exemption unless the Board adjudicates the merits of his asylum claim and finds him eligible for asylum "but for" the terrorism bars. Petitioner therefore asked the Board to correct an erroneous IJ decision holding that he had not shown that persecution would be on account of his political opinion, arguing that adjudication of that issue would permit consideration of a terrorism bar exemption request. Quite literally, F.H.–T.'s statutorily-provided chance to receive asylum or withholding was "nullified" by Board inaction. The Board declined to adjudicate portions of his appeal which would have facilitated DHS consideration of a waiver application; instead, it entered a removal order. Not only does this "thwart" Congress's intent in that it renders § 1182(d)(3)(B)(i) a dead letter for many eligible individuals who happen to be in removal

proceedings, it allows the Board to act with impunity when deciding whether or not to reach the merits of an applicant's asylum claim. It allows the Board to effectively "sound the death knell" for the exemption. *See Subhan*, 383 F.3d at 595. This is in conflict with the reasoning and holdings of the Court's case law.

The Panel noted "textual distinctions" and "procedural disparities" between the text of § 1182(d)(3) and the statutes at issue in other cases. Slip Op. at 25. The "distinctions" and "disparities" the Court noted, however, are immaterial or nonexistent. For instance, the Panel found that "no part of [§ 1182(d)(3)(B)(i)] affords a petitioner the opportunity to 'apply' for an exemption." Slip Op. at 25. But the text of § 1182(d)(3)(B)(i) is no different from that of many other waiver provisions in the statute, which support relief applications. The seminal Supreme Court case of *INS v. St. Cyr*, 533 U.S. 289 (2001), address the purported retroactive elimination of 8 U.S.C. § 1182(c); that section read just as does § 1182(d)(3). *Cf.* 8 U.S.C. § 1182(c) (repealed) ("Aliens lawfully admitted for permanent residence … who are returning to a lawful unrelinquished domicile of seven consecutive years, *may be admitted in the discretion of the Attorney General*") (emphasis added). Congress has used the passive voice, authorizing government officials to waive inadmissibility, in numerous provisions. *See* 8 U.S.C. §§ 1182(a)(9)(B)(v), (a)(9)(C)(iii), (b)(2), (d)(4), (d)(11), (d)(12)(A), (d)(13)(B), (d)(14), (i), (k), (h) ("[t]he Attorney General may, in his discretion, waive…."). But the fact that a waiver statute does not expressly use the term "application" does not affect its availability for noncitizens claiming eligibility for those waivers, or affect the Court's ability to reject legal

misinterpretations of it. *Cf.*, *e.g.*, *Papazoglou v. Holder*, __ F.3d __, 2013 WL 3991878 (7th Cir. Aug. 6, 2013) (joining four circuits in reversing BIA interpretation of § 1182(h)). Given that former § 1182(c) read similarly, interpreting the passive tense grant of waiver authority as implying no right to seek it would be inconsistent with *St. Cyr* itself.

Moreover, even if the waiver provisions at § 1182(d)(3) didn't grant a right to apply for a waiver, Petitioner has a clear statutory right to apply for asylum, 8 U.S.C. § 1182(a), and if inadmissible on terrorism grounds, his opportunity to be considered for asylum turns on his ability to be considered for a § 1182(d)(3) waiver. The textual distinctions cited by the Panel are immaterial.

The only approach which would be consistent with the Court's case law would require some minimal level of interagency coordination to protect Petitioner's ability to seek and be considered for the statutory exemption.

A. The Panel's Holding Would Eviscerate Judicial Review, Contrary to Congress' Command and Contrary to Presumptions Favoring Review of Agency Actions

The Panel acknowledged that its decision would have the effect of foreclosing federal court review, notwithstanding the fact that "Congress expressly provided for federal judicial review over exemption determinations." Slip Op at 29. This not only runs contrary to Congressional intent, but is inconsistent with circuit and Supreme Court case law presumptively favoring judicial review over agency actions, particularly in the removal context.

"[T]here is a general presumption in favor of judicial review of administrative acts." *Iddir v. I.N.S.*, 301 F.3d 492, 496 (7th Cir. 2002). The

Supreme Court has repeatedly applied this presumption, both generally, *Bowen v. Michigan Academy of Family Physicians*, 476 U.S. 667, 670 (1986), and in the immigration context. *INS v. St. Cyr*, 533 U.S. 289, 289-90 (2001); *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479, 498 (1991).

Moreover, while Congress has authority to limit federal court jurisdiction, consistent with the Suspension Clause, *cf. St. Cyr*, 533 U.S. at 302-309, the Supreme Court has refused to allow "the Executive … a free hand to shelter its own decisions from … appellate court review." *Kucana v. Holder*, 558 U.S. 233, 252 (2009). Rather, the presumption of judicial review is overcome only when Congress acts clearly. Courts do not lightly impute an intent to bar review, but "find an intent to preclude [judicial] review only if presented with 'clear and convincing evidence.'" *Reno v. Catholic Social Services, Inc.*, 509 U.S. 43 (1993) (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 141 (1967)).

Here, far from intending to eliminate judicial review over the terrorist bar, Congress specifically legislated to *permit* such review. The very statute authorizing DHS to grant exemptions for terrorist inadmissibility permits judicial review, and requires that such review occur in the context of Petitions for Review filed in the Courts of Appeals. 8 U.S.C. § 1182(d)(3). The Panel was aware that its holding effectively *eliminated* judicial review for exemptions, Slip Op. at 29–33, notwithstanding congressional intent.

Petitioner submits that while Congress granted exemption authority to DHS, since removal orders turn in part on the grant or denial of exemptions, procedural fairness requires that the BIA not order removal as if exemption

authority does not exist. The goal of the exemption process is to protect legitimate refugees from removal. The current administrative scheme is not only inefficient, but could lead to individuals being deported to face death or persecution. Judicial review must be available to test the "legality" of a removal order, *St. Cyr*, 533 U.S. at 306; that is the point of such review. The Panel's decision renders that power toothless.

The Panel decision is inconsistent the presumption in favor of judicial review, and with § 1182(d)(3) itself. It should be revisited by the Court.

B. The Panel's Statements about the Frequency of Exemption Grants Were Incorrect, and Also Irrelevant

One reason given by the Panel for declining to reverse the agency was its statement that exemptions granted under § 1182(d)(3)(B)(i) are "exceedingly rare." Slip Op. at 26. The basis for this statement appears to be a letter submitted by Petitioner to the Court on April 17, 2013, which provided some statistics on exemptions. It was Petitioner's contention the agency's procedures effectively preclude persons like him, in removal proceedings, from seeking the exemption. But exemptions themselves are in fact quite common.

DHS granted over 1300 terrorism bar exemptions between May 2012 and May 2013.[8] This appears to make § 1182(d)(3) waivers one of the more

[8] Compare USCIS TRIG NGO Meeting, July 9, 2013, available at, http://www.rcusa.org/uploads/pdfs/TRIG%20Quarterly%20Stats,%207-9-13.pdf (last visited Sept. 5, 2013) ("TRIG Memo") (statistics as of May 2013) with USCIS TRIG NGO Meeting, June 5, 2012, available at http://www.rcusa.org/uploads/pdfs/TRIG%20stats%20(only),%206-5-12.pdf (last accessed Sept. 5, 2013) (statistics as of May 2012). These statistics combine all contexts of § 1182(d)(3) waivers.

common forms of immigration relief.[9] But while DHS has granted over 1000 terrorist exemptions each year, the Court was informed (without challenge) that DHS had only even *considered* 25 exemptions for individuals in removal proceedings. It is not that the exemptions are rare; rather, they are rare *in removal proceedings*. This does not illustrate the limited impact of exemptions; it illustrates the effect of the "disconcerting lack of harmonization among executive agencies" which the Panel noted. Slip Op. at 28.

But even assuming that the low numbers of exemptions in removal were relevant, the Court has never found that availability of a statutory entitlement turns on the frequency with which relief is granted. To the contrary, the Court has granted relief in other contexts where applications were far, far less common.

For instance, this Court reversed the Agency for failure to engage in adequate interagency coordination for legalization applicants under the Immigration Reform and Control Act of 1986 ("IRCA") in *Siddiqui*, 670 F.3d at 749, and *Potdar v. Keisler*, 505 F.3d 680 (7th Cir. 2007). Publicly available DHS statistics show that in fiscal year 2012, there were 45 grants of legalization for IRCA applicants in Mr. Siddiqui's circumstance, and 5 in Mr. Potdar's. DHS:

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[9] The most common forms of relief available to noncitizens within the United States are Adjustment of Status (547,559), Asylum (29,484), and Cancellation of Removal (6818). *See* Annual Flow Reports, U.S. Legal Permanent Residents: 2012, Randall Monger and James Yankay at 2, 3 (March 2013), available at http://www.dhs.gov/sites/default/files/publications/ois_lpr_fr_2012_2.pdf (last accessed Sept. 5, 2013); Annual Flow Reports, Refugees and Asylees: 2012, Daniel C. Martin and James E. Yankay at 6 (April 2013), available at http://www.dhs.gov/sites/default/files/publications/ois_rfa_fr_2012.pdf (last accessed Sept. 5, 2013).

Yearbook of Immigration Statistics: 2012: Table 7 *available online* at http://www.dhs.gov/yearbook-immigration-statistics-2012-legal-permanent-residents (last accessed September 2, 2013).

In Petitioner's view, the frequency with which waivers are sought or granted is less relevant than the legal principle involved. The Agency cannot be allowed to employ procedures which effectively allow it to overrule the statute, and – worse – to place its actions beyond judicial review.

II. The Panel Misunderstood and Overstated the Effect of the Automatic Stay Provision as to Legalization Proceedings.

The Panel found significant a comparison of the terrorism bar exemption with the procedures at issue in *Siddiqui* and *Potdar*, where Congress forbade immigration courts from adjudicating legalization waivers, but simultaneously granted applicants an automatic stay of removal. Slip Op. at 31. That issue is a red herring. Those automatic stay provisions prevent DHS from executing removal orders, but the immigration courts proceed with removal proceedings despite those stays. See *Matter of Singh*, 21 I. & N. Dec. 427, 430 (BIA 1996). This triggers the very same type of judicial review problem as in the instant case. For instance, in *Siddiqui*, the Board had ordered removal long before his legalization application was denied. 670 F.3d at 741. In that case, the parties avoided the dilemma which would otherwise have been presented by jointly asking the Board to reopen and reissue its removal order. *Id.* It was agency coordination, not the automatic stay provision, which permitted the judicial review called for by the statute. Thus, the absence of an automatic stay provision in the § 1182(d)(3) context cannot bear the weight the Panel would

assign it. If anything, it supports Petitioner's view that the exemption ought to be decided before a removal order is entered.

III. The Subject Matter of This Case Gives It Extraordinary Significance

This case presents a critical question in the Courts of Appeals which, until now, have never sanctioned such circumvention of the procedural rights of someone seeking an exemption of the terrorist bars. The Court's resolution of this appeal will thus have even greater than normal weight, nationwide. Congress, attempting to balance legitimate security concerns with humanitarian and treaty obligations, but concerned with agency handling of its broad power, called upon the federal courts to weigh the legality of agency decision-making in this specific context. The Panel forthrightly concedes that its approach will prevent the Court from playing the role accorded it by Congress. In addition to the grave consequences for Petitioner and those like him, and the intra-circuit disuniformity caused by that holding, the significance of this issue is a factor supporting rehearing in this case.

CONCLUSION

In order to maintain uniformity of its case law, and in light of the extraordinary importance of the issue, Petitioner respectfully implores the Court to grant panel or en banc rehearing in this case.

Respectfully Submitted:

/S/ Charles Roth

Dated: September 6, 2013

Thomas J. Maas
KATTEN MUCHIN ROSENMAN LLP
525 W. Monroe Street
Chicago, IL 60661-3693
(312) 902-5258

Charles Roth
Lisa Koop
Ashley Huebner
National Immigrant Justice Center
208 South LaSalle Street
Chicago, IL 60604
(312) 660-1613

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I, Charles Roth, counsel for Petitioner, certify that I electronically filed the foregoing **PETITION FOR REHEARING OR REHEARING EN BANC** with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system on September 6, 2013.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/S/ Charles Roth
Charles Roth