UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VERNON LAWSON, Petitioner, - v - UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES; ANDREA QUARANTILLO, District Director for New York City, United States Citizenship and Immigration Services, Respondents.	09 Civ. 10195 (DC) ECF Case

PETITIONER VERNON LAWSON'S PRE-HEARING BRIEF IN SUPPORT OF HIS PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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Petitioner Vernon Lawson ("Mr. Lawson") respectfully submits this trial brief in support of his petition for review from Respondents' denial of his application for naturalization under Section 329 of the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1440 ("Section 329").

PRELIMINARY STATEMENT

Mr. Lawson is a decorated Vietnam veteran who volunteered to serve this country in its military in a time of war—a choice that Congress has chosen to reward with expansive naturalization provisions. The sole contested element of Mr. Lawson's claim for naturalization here is whether Mr. Lawson has been, since August 2, 2005, a person of "good moral character" according to the standards of his community, the City of New York. Mr. Lawson was until he retired in October 2008 a professional substance-abuse counselor, devoting his professional life to combating drug and alcohol addiction and abuse. This valuable service to his community is ample evidence of his good moral character during the relevant time period. Respondents can point to no conduct within the relevant time period that tends to show that Mr. Lawson lacks good moral character. Rather, Respondents' case is premised on the assumption that Mr. Lawson's present character is irredeemably tainted by the demons of his distant past, specifically his conviction for manslaughter in 1986 for having killed his then-wife in 1985—more than 25 years ago.

Section 329 and its implementing regulations make clear that, to be entitled to naturalize, Mr. Lawson must establish that he has had good moral character only during the limited period beginning one year before he submitted his application. It is not permissible to find good moral character lacking solely on the basis of conduct that pre-dates that period. Yet Respondents denied Mr. Lawson's application in a decision replete with legal and procedural errors, including that Respondents' own officer by his own admission willfully failed to apply

binding policies and regulations concerning the impact of a pre-1990 conviction on the good moral character analysis.

The Court's review here is *de novo*, and Respondents' decisions below are entitled to no administrative deference. This case thus calls upon the Court to pass judgment on an inspiring story of redemption. Mr. Lawson—who arrived home from Vietnam addicted to drugs and suffering from undiagnosed severe post-traumatic stress disorder ("PTSD")—concededly went through a dark period during the 1970s and 1980s that included extensive drug abuse, institutionalization in a mental hospital, and, ultimately, the death of his wife. But since 1985, Mr. Lawson has turned his life around entirely by quitting drugs, participating in a non-violent conflict resolution program, participating in substance abuse treatment programs, obtaining mental-health services from the Harlem Vet Center and the Department of Veterans Affairs, pursuing and completing his high school and college education, and pursuing rewarding and valuable work as a substance-abuse counselor. In light of the clear evidence of Mr. Lawson's reform and rehabilitation since 1985 and his good moral character during the required time period, and the absence of substantial countervailing evidence within that time period, the Court should hold that Mr. Lawson has established that he possesses the good moral character required to naturalize and order Respondents to naturalize him.

STATEMENT OF FACTS

Mr. Lawson is 64 years old and has lived in the United States for 50 years, for most of that time in New York City. He attended junior high school and high school in Manhattan and the Bronx. In 1964, shortly after turning 18, Mr. Lawson voluntarily enlisted in the United States Marine Corps, where he became an Anti-Tank Assault Man. Around early July 1965, Mr. Lawson's unit landed in Vietnam. In Vietnam, Mr. Lawson participated in the significant battles of Operation Harvest Moon in December 1965 and Operation Prairie I in

October 1966, and also went on countless smaller operations in the villages and countryside of Vietnam to seek out and engage enemy forces.

In his capacity as an Anti-Tank Assault Man, carrying weapons including at various times a flamethrower and a 106mm recoilless rifle, Mr. Lawson was on the frontlines of combat. (*See* Exhibit 6, Form DD-214.) Flamethrower gunners, who carried two tanks of gasoline and napalm on their backs, were particularly vulnerable in combat both because of the high risk of explosion due to gunfire and because they were especially targeted by enemy forces due to their massive destructive capacity. During various periods of time, Mr. Lawson and his units were under constant sniper fire and bombarded by heavy artillery. Mr. Lawson witnessed numerous horrific acts of violence against both his fellow Marines and Vietnamese. He also witnessed the gruesome aftermath of such violence when required to collect and guard or bury the dead. These experiences were deeply traumatizing and it is extremely difficult for Mr. Lawson to discuss them even today. (*See* Exhibit 12 (hereinafter "Larson Report"), 2.)

Mr. Lawson returned to the United States in early November 1966. For his Vietnam service, he received the Vietnam Service Medal, Vietnam Campaign Medal with Device, National Defense Service Medal, Presidential Unit Citation, and Navy Commendation Medal. These commendations recognize the honorable and heroic nature of Mr. Lawson's service in Vietnam. For example, the Navy Commendation Medal recognizes the individual recipient's sustained acts of heroism or meritorious service in combat; the Presidential Unit Citation recognizes a unit's "extraordinary heroism in action against an armed enemy . . . under extremely difficult and hazardous conditions"; and the National Defense Service Medal recognizes honorable service during designated wartime periods. (*See* Exhibit 1, Resp. to RFAs, Nos. 21-22, 28-32.)

Since returning from Vietnam, Mr. Lawson has suffered from PTSD caused by the trauma he experienced there. (Larson Report 2, 3.) Mr. Lawson did not first receive treatment for his PTSD until approximately 2000. PTSD was not a recognized disorder at the time that Mr. Lawson returned from Vietnam and was not widely recognized until the late 1970s. (Larson Report 2.)

At least in part as a result of the stress of combat, Mr. Lawson began using drugs while in Vietnam. During the years before his PTSD was diagnosed and treated, Mr. Lawson continued to use drugs after returning from Vietnam. On one occasion in June 1983, Mr. Lawson's use of phencyclidine (PCP) resulted in his institutionalization in a mental hospital. It is well documented that returning Vietnam veterans with untreated PTSD suffered from an increased incidence of substance abuse. This is widely viewed among mental health experts as a form of self-medication to cope with the symptoms of untreated PTSD. (Larson Report 2.)

It was under these circumstances, after years of untreated PTSD resulting from his military service and use of drugs to try to cope with the symptoms of PTSD, that Mr. Lawson committed manslaughter. On April 30, 1985, Mr. Lawson stabbed his then-wife during an argument. Mr. Lawson immediately went to a nearby police station and told the desk sergeant what had happened. Mr. Lawson learned later that day that his wife had died. Mr. Lawson was charged with second degree murder and weapon possession. A trial was held in Bronx County Supreme Court in April 1986. The jury acquitted Mr. Lawson of murder and weapon possession, and instead convicted him of first degree manslaughter, finding that he had acted under "extreme emotional disturbance for which there was a reasonable explanation or excuse." (*See* Exhibit 1, Resp. to RFAs, Nos. 7-8.) *See* N.Y. Penal Law § 125.25(1)(a) (1986). Mr. Lawson was sentenced to 10 to 20 years' imprisonment, of which he served over 13 years before being

released on parole. To this day, Mr. Lawson is haunted by extreme remorse and grief as a result of his crime. (Larson Report 2, 5; Thompson Dep. 55-56.)

While he was incarcerated, Mr. Lawson made a sustained effort to turn his life around and make himself an asset to society. First, he completed his high school education while in pre-trial detention at Riker's Island, obtaining his GED in 1985. He later attended college courses offered by Sullivan County Community College, making the Dean's List for two semesters and the more selective President's List for two semesters. Mr. Lawson received his Associate's Degree with High Honors in 1988. He then attended college courses offered by SUNY-New Paltz, making the Dean's List for four semesters and obtaining his Bachelor of Arts degree in Sociology in 1991 *cum laude*. (Exhibit 8, US 0115.) During his studies, Mr. Lawson took courses in social work and counseling. Mr. Lawson also attended courses offered by prison officials to become a peer counselor, and served in that role within the prison system. And Mr. Lawson completed a nonviolent conflict resolution course offered by the Society of Friends (Quakers) in 1993. (*See* Exhibit 2 (materials relating to Mr. Lawson's education).)

Mr. Lawson was released on parole in August 1998. He then moved into his elderly mother's co-operative apartment in Manhattan, and cared for her until she died in 2003. While on parole, Mr. Lawson passed regular drug and alcohol tests and completed a substance abuse treatment program at North General Hospital. (*See* Exhibit 4, N.Y. State Division of Parole Discharge Summary, at 4.) Mr. Lawson has not used illegal drugs since his incarceration in 1985. Mr. Lawson also applied for disability benefits from the Department of Veterans Affairs, which ultimately found that he is 30% disabled due to PTSD and 40% disabled due to chronic back pain; both conditions were found to arise from his Vietnam service. (Exhibit 3, VA Benefits Decision; Exhibit 1, Resp. to RFAs, Nos. 33-36.) Mr. Lawson also obtained employment while on parole, first as a salesman with several car dealerships between August

1999 and October 2000. Then, in October 2000, Mr. Lawson obtained a job as a substance-abuse counselor at Martin Luther King, Jr. Chemical Dependence Outpatient Service of Bronx Lebanon Hospital ("MLK Health Center").

Substance-abuse counseling has been Mr. Lawson's passion. He has recognized from personal experience the extreme harm that drug abuse can cause, and he loves helping people to avoid or defeat such problems. Mr. Lawson worked full time for nearly eight years as a counselor at the MLK Health Center, helping hundreds of patients to overcome their substance-abuse problems. In October 2008, due to his numerous health issues, Mr. Lawson retired.

Today, Mr. Lawson spends the bulk of his time attending appointments to address his numerous medical problems, gardening, and playing chess with the St. Nicholas Chess Club near his apartment in the Sugar Hill neighborhood of uptown Manhattan. He lives today in the same co-operative apartment in which his mother raised him, and which he inherited when she died in 2003. Mr. Lawson has close relationships with his brother David Lawson and his sister Dorothy Crawford, both of whom are United States citizens, and who will testify on his behalf, as well as with his son Omarsan Lawson, who resides in Canada with his wife and children and is unable to attend this hearing. (*See* Exhibit 5 (Declaration of Omarsan Lawson).)

PROCEDURAL BACKGROUND

Respondent United States Citizenship and Immigration Services's ("USCIS") predecessor, the Immigration and Naturalization Service ("INS"), was aware of Mr. Lawson's manslaughter conviction almost immediately after it was entered—New York corrections authorities reported the conviction to INS on May 14, 1986. (Exhibit 15, US 0276.) Indeed, an INS officer interviewed Mr. Lawson in prison around 1989. INS apparently considered placing Mr. Lawson in removal proceedings upon his release from prison in 1998, as a Notice to Appear ("NTA") and other documents to commence such proceedings were prepared at that time, but

there is no indication that they were ever served or filed. (Exhibit 16, US 0058-63.) Because he is a U.S. military veteran, INS procedures required that any decision to decline prosecutorial discretion and commence removal proceedings against Mr. Lawson be approved by a regional director. (Exhibit 17, 6/21/04 ICE Memorandum, at 1.) It appears that no such approval was forthcoming at that time, as no record of such approval has been produced.

After his release from prison, Mr. Lawson wrote to the INS informing it that he had just been released from 13 years in prison and applying for a replacement green card. (Exhibit 18, US 0052-56.) Not only was Mr. Lawson not placed in removal proceedings at that time, but the application was approved and the replacement green card was issued in 2001. (*Id*.) When Immigration and Customs Enforcement ("ICE") ultimately commenced removal proceedings in 2004, the supervisory agent who approved the commencement of such proceedings mistakenly believed that Mr. Lawson had been convicted of murder—not manslaughter. (Exhibit 19, US 0181.) Significantly, a murder conviction, unlike a manslaughter conviction, would have rendered Mr. Lawson ineligible to naturalize pursuant to 8 C.F.R. § 316.10(b).

On August 2, 2006, Mr. Lawson submitted the instant application for naturalization pursuant to Section 329—which applies specifically to wartime veterans of the United States military. Mr. Lawson appeared for an interview concerning his application with USCIS Officer Jian Chen on September 4, 2007. Officer Chen first received Mr. Lawson's file that same day and estimates spending a total of at most 45 minutes (and likely far less) reviewing the file, interviewing Mr. Lawson, and administering Mr. Lawson's citizenship test. (Chen Dep. 41-42, 60-61.) After the interview, Officer Chen placed Mr. Lawson's application on hold pending the resolution of removal proceedings—notwithstanding that a military veteran

applicant like Mr. Lawson may be naturalized during the pendency of removal proceedings. (Chen Dep. 62-63.) *See* INA § 329(b)(1), 8 U.S.C. § 1440(b)(1); 8 C.F.R. § 318.1.

On October 15, 2008—a little more than one year after Mr. Lawson's naturalization interview—an Immigration Judge ("IJ") ordered Mr. Lawson removed to Jamaica. The IJ determined that Mr. Lawson was not eligible for any form of relief from removal (other than naturalization, over which the IJ had no jurisdiction). While many lawful permanent residents who have been convicted of a removable offense prior to 1996 are eligible for relief under former INA section 212(c), the IJ deemed Mr. Lawson ineligible for a 212(c) waiver because he went to trial, rather than pleading guilty. Therefore, the IJ never conducted a fact finding hearing in Mr. Lawson's case and never considered the question of his good moral character or other equities that might weigh in favor of his remaining in the United States. Mr. Lawson appealed the IJ's order to the Board of Immigration Appeals, which dismissed the appeal on October 2, 2009.

After the IJ entered the removal order, Mr. Lawson's naturalization application was assigned to USCIS Officer Eladio Torres. Officer Torres adjudicated Mr. Lawson's naturalization application solely on the basis of Mr. Lawson's file. He has never met nor spoken with Mr. Lawson. According to his deposition testimony, Officer Torres believes and routinely holds, in issuing naturalization denials, that an aggravated felony conviction dating from before November 29, 1990, *precludes* an applicant from demonstrating good moral character. Officer Torres testified that he was unaware that November 29, 1990, was the effective date of the amendment to INA § 101(f), 8 U.S.C. § 1101(f), that first rendered an aggravated felony preclusive of showing good moral character. Agency regulations were amended in 1993 to

clarify this point,[1] but Officer Torres testified that he disagreed with them. In any case, Officer Torres testified that he feels free to disregard the official policy guidance of USCIS, regulations promulgated by the Department of Homeland Security ("DHS"), and formal opinions issued by former INS General Counsel, all of which concur that such an aggravated felony conviction does *not* preclude an applicant from establishing good moral character. (Torres Dep. 62-64, 159-62.)

Acting under his idiosyncratic and patently erroneous view of the law, in violation of his duty to follow agency regulations and other official directives, Officer Torres denied Mr. Lawson's application in a written decision dated January 8, 2009. Officer Torres held in the alternative that even if his conviction did not preclude him from showing good moral character, Mr. Lawson failed to establish good moral character as a matter of fact based on a "balancing" of various positive and negative factors. Officer Torres gave equal weight in this balancing to evidence within and outside the one-year period during which Mr. Lawson was required to establish his good moral character. (Torres Dep. 93-95.) Officer Torres also relied on his "assumptions" that Mr. Lawson has no current relationship with his children—even though no such evidence was elicited at Mr. Lawson's interview or otherwise contained in the record; and that Mr. Lawson committed DWI in 2007—even though Mr. Lawson was only arrested for, but never convicted of, DWI. (Torres Dep. 159-60, 187-88; Torres Dep. Ex. 7, at US 0556.)

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[1] *Administrative Naturalization*, 58 Fed. Reg. 49,905, 49,907 (Sept. 24, 1993) ("[A] conviction for murder at any time is a bar [to a finding of good moral character], but a conviction for any other aggravated felony is a bar only if the conviction takes places on or after November 29, 1990. The specific date requirement had not been placed in the original regulation, as it has been anticipated that the technical amendments might alter the dates involved. However, this alteration did not take place. Instead, the conviction cut-off date provision was clarified in the technical amendments, and § 316.10(b)(1) has been amended to indicate that a conviction for an aggravated felony is only a permanent bar if the conviction, other than for murder, takes place on or after November 29, 1990.").

Mr. Lawson administratively appealed the initial denial of his application under Section 336 of the INA, 8 U.S.C. § 1447. Notwithstanding that such appeals are to be adjudicated by an officer of equal or greater rank than the officer who issued the initial decision, 8 C.F.R. § 336.2(b); (*see also* Chen Dep. 20-21), the appeal was adjudicated by Officer Stella Ferrario, who is of inferior rank to Officer Torres. (Exhibit 20 (1/09 USCIS organizational chart); Chen Dep. 24-26.)

In her improperly issued decision on Mr. Lawson's Section 336 appeal, Officer Ferrario not only affirmed the various errors committed by Officer Torres but also improperly failed to consider evidence submitted on appeal that Mr. Lawson suffered from Vietnam-related PTSD. (Torres Dep. 169.) And Officer Ferrario held that Mr. Lawson did not qualify to naturalize because he was not a legal permanent resident ("LPR"), which is not even a requirement to naturalize under Section 329—a holding that even Officer Torres testified was erroneous. (Torres Dep. 139-40.)

The Board of Immigration Appeals ("BIA") affirmed Mr. Lawson's removal order on October 2, 2009, rendering it final. Mr. Lawson timely filed a petition for review of the BIA's decision with the Second Circuit Court of Appeals. On December 14, 2009, Mr. Lawson filed the instant action invoking his right to *de novo* review of his application pursuant to Section 310(c) of the INA. Thereafter, the Second Circuit Court of Appeals dismissed Mr. Lawson's petition for review from the BIA's final removal order on April 8, 2010.

STANDARD OF REVIEW

This Court reviews Mr. Lawson's naturalization application *de novo* pursuant to Section 310(c) of the INA, 8 U.S.C. § 1429(c). Because the Court's review is *de novo*,

Respondents' decisions below are not entitled to any administrative deference.[2] Should the Court conclude that Mr. Lawson has satisfied the eligibility requirements of Section 329, then it must order Respondents to naturalize him, for as Justice Brandeis noted in *Tutun* v. *United States*, 270 U.S. 568, 578 (1926), an alien has a "statutory right . . . to submit his petition and evidence to a court, to have that tribunal pass upon them, and, if the requisite facts are established, to receive the certificate [of naturalization]."

ARGUMENT

I. MR. LAWSON IS ENTITLED TO BE NATURALIZED BECAUSE OF HIS LAUDABLE SERVICE TO THIS COUNTRY AND HIS COMMUNITY.

The only contested issue regarding Mr. Lawson's entitlement to naturalize is that of "good moral character." Mr. Lawson is required to establish, by a preponderance of the evidence, his good moral character during the period beginning one year before he submitted his naturalization application to Respondents, 8 C.F.R. § 329.2(d)—i.e., during the time period commencing on August 2, 2005. Good moral character is evaluated based on standards of the average person living in the community of Mr. Lawson's residence—i.e., New York City. 8 C.F.R. § 316.10(a)(2); *see Repouille* v. *United States*, 165 F.2d 152, 153 (2d Cir. 1947); *In re Suey Chin*, 173 F. Supp. 510, 514 (S.D.N.Y. 1959) ("The test applied, with its acknowledged shortcomings and variables, depending upon time and place, is the norm of conduct accepted by the community at large."); *Matter of De Lucia*, 11 I. & N. Dec. 565 (BIA 1966) ("[G]ood moral character does not mean moral excellence.").

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[2] *O'Sullivan* v. *USCIS*, 453 F.3d 809, 812 (7th Cir. 2006); *United States* v. *Hovsepian*, 359 F.3d 1144, 1162 (9th Cir. 2004) (en banc); *Hassan* v. *Dedvukaj*, No. 09-10716, 2010 WL 199931, at *4 (E.D. Mich. Jan 19, 2010); *Mobin* v. *Taylor*, 598 F. Supp. 2d 777, 781 (E.D. Va. 2009); *Golding* v. *DHS*, No. 05-21095-CIV, 2009 WL 2222779, at *4 (S.D. Fla. July 27, 2009).

The purpose of the good moral character requirement is not to punish bad behavior but, rather, to "admit as citizens those who are likely to prove law-abiding and useful." *Posusta* v. *United States*, 285 F.2d 533, 535 (2d Cir. 1961) (Hand, J.). By that standard, Mr. Lawson is plainly entitled to naturalize. That he is likely to prove law-abiding if admitted to citizenship is confirmed by the fact that he has not been convicted of any crime in the last 24 years, has given up drugs, and was gainfully employed from 1999 until his retirement in November 2008. That Mr. Lawson is useful to this country and its citizens is amply demonstrated by his choices, throughout his life, to provide voluntary, laudable service to his adopted country and his immediate community, first by literally putting his life on the line through his voluntary service in combat with this country's military—for which he has endured much suffering—and, more recently, through his work as a professional substance-abuse counselor. (*See* Thompson Dep. 56 (describing Mr. Lawson as an "asset" to this country, and opining that it would be a "grave mistake" to send him back to Jamaica).)

A. Congress Passed Section 329 to Reward Valiant Military Service Like That Provided by Mr. Lawson.

For more than 100 years, Congress has rewarded noncitizens who provide honorable wartime military service to the United States by making available to them expansive naturalization provisions.[3] In 1968, Congress explicitly extended the expansive provisions of Section 329 to Vietnam veterans, explaining that, by doing so, it intended to continue this tradition and "to provide for the expeditious naturalization of aliens who have served in an active-duty status in the Armed Forces of the United States during the Vietnam hostilities." S. Rep. No. 90-1292, at 2 (1968), *reprinted in* 1968 U.S.C.C.A.N. 4517, 4517.

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[3] *See generally* Craig R. Shagin, *Deporting Private Ryan: The Less Than Honorable Condition of the Noncitizen in the United States Armed Forces*, 17 WIDENER L.J. 245, 256-63 (2007).

As the Supreme Court explained in *Tak Shan Fong* v. *United States*, 359 U.S. 102, 107 (1959), the purpose of Section 329 and similar statutes is "to express the gratitude of the country toward aliens who render service in its armed forces in its defense." The undisputed evidence establishes that Mr. Lawson is worthy of such gratitude. Mr. Lawson volunteered to serve in the United States Marine Corps shortly after reaching 18 years of age. He served in Vietnam during 1965 and 1966. Mr. Lawson was on the front lines of combat; indeed, he experienced severe combat trauma and continues to suffer from PTSD stemming from that experience today, more than 40 years later. (Larson Report 2, 3.)[4] The valiant nature of Mr. Lawson's service is clear in light of the numerous commendations that he received, including the Navy Commendation Medal, which recognizes individual heroism or extended meritorious service in combat, and the Presidential Unit Citation, which recognizes a unit's "extraordinary heroism in action against an armed enemy . . . under extremely difficult and hazardous conditions." (*See* Exhibit 1, Resp. to RFAs, Nos. 28-32.)

B. Mr. Lawson Has Possessed Good Moral Character During the Required Time Period.

There is no serious dispute that Mr. Lawson has possessed good moral character during the required period commencing on August 2, 2005. Since well before that period, and until his retirement in November 2008, Mr. Lawson dedicated himself to his calling as a counselor at a substance-abuse treatment clinic affiliated with Bronx Lebanon Hospital in the

[4] It is not uncommon for Vietnam veterans with PTSD to suffer from symptoms even decades after the traumatic events occurred. *See* Michael Winerip, *Vietnam's Damage, Four Decades Later*, N.Y. TIMES, Sept. 4, 2009 ("While studies estimate as many as 20 percent of those now returning from Iraq and Afghanistan suffer from P.T.S.D., it is veterans . . . from a war nearly a half-century ago, who still dominate the administration's P.T.S.D. caseload. In 2008, of the 442,695 people seen at veterans hospitals for P.T.S.D., 59.2 percent were Vietnam-era veterans, while 21.5 percent served in the Iraq, Afghanistan or Gulf wars.").

Bronx. As Mr. Lawson and his long-time co-worker Deborah Thompson will testify, Mr. Lawson was a dedicated and effective addiction counselor who provided valuable service to his community through his nearly eight years of service in that position.

Mr. Lawson's laudable service to his community alone suffices to establish his good moral character. *See Yaqub* v. *Gonzales*, No. 1:05-cv-170, 2006 WL 1582440, at *1 (S.D. Ohio June 6, 2006) (applicant demonstrated good character by providing services to humanitarian organizations); *Gatcliffe* v. *Reno*, 23 F. Supp. 2d 581, 583-84 (D.V.I. 1998) (applicant demonstrated reform and good character by providing community members with fish and use of fishing boat). Furthermore, Mr. Lawson has not been convicted of any crimes during the required period or, for that matter, during the 24 years since 1986. He has not used illegal drugs during that period—indeed, he has waged a laudable campaign against the illegal drug trade and the abuse of illegal drugs. Mr. Lawson has resided for most of his life in the same co-operative apartment that he now owns in uptown Manhattan. He has paid his income taxes year after year. (*See* Exhibit 1, Resp. to RFAs, No. 19.) And he has maintained strong family relationships with two siblings who live in the United States (and will testify on his behalf) and his son who lives in Canada.[5] Absent strong countervailing evidence within the required period, courts routinely grant naturalization on the basis of this kind of evidence of an applicant's responsible and law-abiding conduct during that period. *See, e.g.*, *Saad* v. *Barrows*, No. Civ. A. 3:03-CV-1342G, 2004 WL 1359165, at *9 (N.D. Tex. June 16, 2004) (gainful employment plus

[5] Respondent USCIS's decision thus erred factually in stating that Mr. Lawson had no current relationships with his children. Indeed, Mr. Lawson's son, Omarsan Lawson, has submitted a declaration in support of his father's application. (Exhibit 5.) Further, without attempting to excuse Mr. Lawson's failure to maintain close contact with some of his children, that failure must be viewed in light of the significant obstacles to maintaining such contact, including geographical separation, the lack of desire for such contact on the part of the custodial parent in some instances, Mr. Lawson's decades-long struggle with drug addiction stemming from his military service, and the 13 years he spent in prison.

favorable recommendations of three character witnesses sufficed to prove good moral character); *Jalloh* v. *INS*, No. 02-CV-1254, 2003 WL 22145308, at *9 (D. Minn. Sept. 15, 2003) (gainful employment, education, family ties, payment of taxes, and home ownership sufficed to establish good moral character).

Mr. Lawson's pro bono testifying expert, Dr. Paul Larson—a Professor of Psychology with extensive experience diagnosing and treating military veterans for combat-induced trauma (*See* Exhibit 13 (Larson CV), 2-4)—offers further evidence of Mr. Lawson's qualifications for citizenship. Dr. Larson conducted a clinical interview and diagnosis, including a comprehensive, professionally recognized personality test, to determine whether Mr. Lawson's personality traits or other psychological conditions provide any cause for concern about his character. (Larson Report 3-4.) Dr. Larson's conclusion from that test and his other work was that, although Mr. Lawson continues to manifest symptoms of PTSD, his symptoms are—after years of medication and counseling—under control, and provide no reason for prospective concern. (Larson Report 3-4, 5-6.) And Dr. Larson found no indications of any personality disorder or any other psychopathology. (Larson Report 4-5.)

Respondents' decisions to deny Mr. Lawson's application were riddled with errors of both law and fact. (*See*, *e.g.*, *supra* note 5.) Among other things, the sole fact from within the relevant time period on which Respondents relied as evidence of a lack of good moral character was Mr. Lawson's single arrest for DWI in December 2007. But that arrest does not in any way detract from Mr. Lawson's proof of good moral character. As a threshold matter, Mr. Lawson was only arrested and charged with DWI, but was never convicted of any drunk driving offense—all charges were dismissed on the motion of the District Attorney. (Exhibit 11.) An arrest not resulting in a conviction is irrelevant, and not at all probative as to character. *See Jalloh*, 2003 WL 22145308, at *8 (dismissed arrest charges could not be used to preclude finding

of good moral character).[6]

Moreover, a single episode of driving under the influence would not in any event support a negative inference as to character. Courts uniformly hold that even a single DWI *conviction*, where no *pattern* of drunk driving exists, cannot, on its own, support a finding that an applicant lacks good moral character.[7] And courts have even found that a *pattern* of drunk driving conduct does not negate good moral character in the face of evidence of an applicant's "positive contributions to the community." *Yaqub*, 2006 WL 1582440, at *4.

II. MR. LAWSON'S 24-YEAR-OLD CONVICTION FOR MANSLAUGHTER CANNOT OVERCOME EVIDENCE OF HIS PRESENT GOOD MORAL CHARACTER.

Respondents' primary contention has always been that Mr. Lawson lacks good moral character because of his 1986 manslaughter conviction. Indeed, Respondents' decisions below relied explicitly on their willful disregard for the law on this point. As Officer Torres

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6 *See also Matter of Sotelo*, 23 I. & N. Dec. 201 (BIA 2001) ("[I]n the absence of a conviction, we find that the outstanding warrant should not be considered an adverse factor in this case."); *Matter of Grullon*, 20 I. & N. Dec. 12 (BIA 1989) (dropped arrest charges cannot preclude finding of good moral character); *Matter of Gutierrez*, 14 I. & N. Dec. 457 (BIA 1973) ("[W]e may not go behind the record of conviction."). BIA precedent decisions are binding on all USCIS officers. *See* 8 C.F.R. § 1003.1(g) ("[D]ecisions of the Board, and decisions of the Attorney General, shall be binding on all officers and employees of the Department of Homeland Security or immigration judges in the administration of the immigration laws of the United States.").

7 *Compare Rangel* v. *Barrows*, No. 4:07-cv-279, 2008 WL 4441974, at *3 (E.D. Tex. Sept. 25, 2008) ("Courts that have been confronted with this issue have uniformly agreed that a single DWI conviction is insufficient to preclude an applicant from establishing good moral character."), *and Ragoonanan* v. *USCIS*, Civ. No. 07-3461 (PAM/JSM), 2007 WL 4465208, at *3 (D. Minn. Dec. 18, 2007) ("[T]he Court finds no authority for CIS's position that a single DWI conviction that results in one year of probation operates as a statutory or regulatory bar to proving good moral character. . . . [T]he cases demonstrate that a single DWI conviction, standing alone, does not statutorily bar a naturalization applicant from establishing good moral character where he has been candid about the conviction."), *with Rico* v. *INS*, 262 F. Supp. 2d 6 (E.D.N.Y. 2003) (pattern of criminal conduct that included numerous drunk driving convictions supported finding of lack of good moral character).

testified, in denying Mr. Lawson's application, he ignored the binding policy of USCIS as well as DHS's own regulations and the guidance of former INS General Counsel, and held—contrary to all of that authority as well as to Second Circuit precedent and Congress's own instruction in Section 509(b) of the Immigration Act of 1990[8]—that Mr. Lawson's pre-November 29, 1990 conviction for an aggravated felony *precluded* him from showing good moral character.[9]

Even assuming that it would be permissible to "weigh" Mr. Lawson's conduct 25 years ago against his recent conduct that manifests good moral character, Respondents erred in failing to consider the mitigating circumstances surrounding Mr. Lawson's 1985 crime in assessing the proper weight to accord to it.[10] *See In re Balistrieri*, 59 F. Supp 181, 182 (N.D. Cal.

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[8] *See* Immigration Act of 1990, Pub. L. No. 101-649, § 509(b), 104 Stat. 4978, 5051 (providing effective date of amendment to INA § 101(f)(8), 8 U.S.C. § 1101(f)(8)); *Puello* v. *BCIS*, 511 F.3d 324, 328, 333 (2d Cir. 2007); *see also* 8 C.F.R. § 316.10(b); *Administrative Naturalization*, 58 Fed. Reg. 49,905, 49,907 (Sept. 24, 1993); INS General Counsel Opinion No. 96-16 (Dec. 3, 1996), *available at* 1996 WL 33166347; USCIS ADJUDICATOR'S FIELD MANUAL, Ch. 73.6(d)(3)(A), *available at* http://www.uscis.org (follow "Laws" hyperlink; then follow "Immigration Handbooks, Manuals and Guidance" hyperlink; then follow "Adjudicator's Field Manual" hyperlink). The Adjudicator's Field Manual sets forth official USCIS policy, and is binding on all USCIS officers. *See id.*, Ch. 3.4. (*Accord* Chen Dep. 28.) The Sixth Circuit Court of Appeals recently underscored the importance of agency adherence to regulations and guidance, even if not officially binding:

> "It is an elemental principle of administrative law that agencies are bound to follow their own regulations." Moreover, "[w]here a prescribed procedure is intended to protect the interests of a party before the agency, 'even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.'"

Gor v. *Holder*, 607 F.3d 180, 191 (6th Cir. 2010) (quoting *Wilson* v. *Comm'r of Soc. Sec.*, 378 F.3d 541, 545 (6th Cir. 2004), and *Vitarelli* v. *Seaton*, 359 U.S. 535, 547 (1959) (Frankfurter, J., concurring)).

[9] Of serious concern is that Officer Torres—a Senior Immigration Officer of USCIS—testified that he *routinely* applies this patent misreading of the law in issuing naturalization denials, and that his supervisors at USCIS routinely approve it. (Torres Dep. 72-73, 160-61.)

[10] The Supreme Court recently held in *Porter* v. *McCollum*, 130 S.Ct. 447 (2009) that a lawyer's failure to present evidence of his client's military experience and resulting PTSD at the sentencing phase in a capital case constituted ineffective assistance. Although this ruling pertains to criminal cases, it is highly instructive as to the importance of considering such

1945) (considering mitigating circumstances surrounding murder conviction, finding good moral character shown). Specifically, Mr. Lawson suffered from severe, chronic PTSD and related substance abuse, both stemming from his traumatic experiences while valiantly serving in combat with this country's military. (Larson Report 2, 5.)[11] In light of those circumstances, the weight properly accorded to Mr. Lawson's 1985 conduct should be limited in comparison to the more recent evidence of Mr. Lawson's good moral character. His 1985 conduct reflects his untreated PTSD. The evidence of his conduct after he received treatment for PTSD and substance abuse should be seen as better expressing his true character. As Dr. Larson notes in his report, extensive research documents the heightened incidence of substance abuse among veterans suffering from PTSD—which is generally viewed as a form of unconscious self-medication by the veteran seeking to cope with PTSD.[12] Research clearly demonstrates a link

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evidence in assessing moral culpability. The Court explained: "the relevance of Porter's extensive combat experience is not only that he served honorably under extreme hardship and gruesome conditions, but also that the jury might find mitigating the intense stress and mental and emotional toll that combat took on Porter. The evidence that he was AWOL is consistent with this theory of mitigation and does not impeach or diminish the evidence of his service. To conclude otherwise reflects a failure to engage with what Porter actually went through in Korea." *Id.* at 455. Similarly, in *Cone* v. *Bell*, 129 S. Ct. 1769 (2009), the Court found that the lower courts erred by failing to fully consider whether suppressed evidence of the petitioner's drug addiction and military service "might have persuaded one or more jurors that Cone's drug addiction—especially if attributable to honorable service of his country in Vietnam—was sufficiently serious to justify a decision to imprison him for life rather than sentence him to death." *Id.* at 1786.

[11] The characteristics of Mr. Lawson himself and of his service placed him in numerous heightened risk categories for developing PTSD. Research has demonstrated that PTSD was more common than average among Vietnam veterans who (a) are Black; (b) served with the Marines; (c) were under 20 years of age when they arrived in Vietnam; (d) served in junior pay grades; or (e) saw combat. *See* RICHARD A. KULKA ET AL., TRAUMA AND THE VIETNAM WAR GENERATION 65-67 (1990). Handling of dead bodies has also been revealed as a heightened risk factor for PTSD. James E. McCarroll et al., *Symptoms of PTSD Following Recovery of War Dead*, 152 AM. J. PSYCHIATRY 939 (1995).

[12] *See, e.g.*, Leslie K. Jacobsen et al., *Substance Use Disorders with Posttraumatic Stress Disorder*, 158 AM. J. PSYCHIATRY 1184, 1185 (2001); Paige Ouimette et al., *Modeling*

between PTSD resulting from combat exposure in Vietnam and subsequent violent acts,[13] particularly those committed against intimate partners.[14] Research also shows that, in the absence of treatment, the symptoms of PTSD do not lessen with time. (*See supra* note 4.) In fact, male Vietnam combat veterans sampled in the *late 1980s* by the congressionally mandated National Vietnam Veterans Readjustment Study averaged 13.31 violent acts in *the past year*.[15] Because of the characteristics of PTSD—which include a heightened tendency to react with aggression and hostility in stressful situations[16]—and given this documented greater incidence of violent interactions, Dr. Larson concludes that it is likely that Mr. Lawson's PTSD played a role in bringing about his 1985 crime. (Larson Report 5.)[17]

Associations between Posttraumatic Stress Symptoms and Substance Use, 35 ADDICTIVE BEHAVIORS 64 (2010).

[13] *See* KULKA ET AL., *supra* note 11, at 142 (reporting "higher levels of active hostility and actual violent behavior among *all* male theater veteran subgroups . . . and higher levels of arrests and incarceration" among those exposed to high war stress).

[14] Casey T. Taft et al., *Risk Factors for Partner Violence Among a National Sample of Combat Veterans*, 73 J. CONSULTING & CLINICAL PSYCHOL. 151, 155 (2005) (veterans with PTSD manifest numerous heightened risk factors for partner violence, with risk further heightened for veterans with greater combat exposure).

[15] *See* KULKA ET AL., *supra* note 11, at 186-87 (male veterans with PTSD were "especially prone to active forms of expressing their hostility (over 40% scoring in the highest category) and to violent behavior (averaging 13.31 violent acts in the past year compared with only 3.54 among those without PTSD). Almost half of these (45.7 percent) had been arrested or jailed more than once . . . .").

[16] Jean C. Bekham et al., *Interpersonal Violence and its Correlates in Vietnam Veterans with Chronic Posttraumatic Stress Disorder*, 53 J. CLINICAL PSYCHOL. 859, 860 (1997) ("[I]n a standardized, nonprovoking interpersonal interaction, combat veterans with PTSD react with significantly greater hostility than combat veterans without PTSD . . . ."). As might be expected, more severe PTSD is associated with greater interpersonal violence. *Id*. at 865.

[17] Further, the role of Mr. Lawson's PTSD in his manslaughter conviction is particularly significant due to its origin in Mr. Lawson's tremendous sacrifice and service on behalf of this country. *See* Anthony E. Giardino, *Combat Veterans, Mental Health Issues, and the Death Penalty*, 77 FORDHAM L. REV. 2955, 2963 (2009) ("[I]t is the combination of government-sponsored combat exposure and military training that sets these combat veterans apart as a unique and different class of offenders.").

Aside from being premised on patent legal and factual errors, Respondents' holding that Mr. Lawson lacks the required good moral character also rested on a more fundamentally flawed analysis that placed impermissible weight on conduct that occurred more than 25 years before the period during which Mr. Lawson was required to establish his good moral character. Of particular significance, Congress chose to limit the required period for combat veterans to only one-fifth the amount of time required for other applicants.[18] Here, the relevant period begins on August 2, 2005. By requiring good moral character to be established only during limited periods, and in this case for only one year prior to application, Congress "undoubtedly intended to make provision for the reformation and eventual naturalization of persons who were guilty of past misconduct"—and thus adopted what the former INS referred to as the "principle of reformation."[19]

As the Ninth Circuit explained in *Yuen Jung* v. *Barber*, 184 F.2d 491 (9th Cir. 1950), the naturalization statutes do not "sanction a denial of citizenship where the applicant's misconduct, and evident bad moral character, was many years in the past, and where a former bad record has been followed by many years of exemplary conduct with every evidence of reformation and subsequent good moral character." *Id*. at 495. Congress has thus chosen not to

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[18] *See Santamaria-Ames* v. *INS*, 104 F.3d 1127, 1132 (9th Cir. 1996) (distinction between consideration of acts before versus during relevant period particularly important when military veterans are concerned, because Congress specifically chose to lessen burden imposed on such veterans in obtaining naturalization); *compare* 8 C.F.R. § 316.2(a)(3), (7) (five years of good moral character required for applications under INA § 316), *with* 8 C.F.R. § 329.2(d) (one year of good moral character required for applications under INA § 329).

[19] INS Interpretation Letter No. 316.1(f), *available at* 2001 WL 1333876. Respondents continue to recognize such interpretations of the former INS officially as providing guidance for USCIS adjudicators, and to publish them on the USCIS website. *See* USCIS ADJUDICATOR'S FIELD MANUAL, *supra* note 8, Ch. 14.1 (actions of adjudicators "should be governed by . . . Interpretations"), 74.1(a) (naturalization adjudicators should be "familiar with . . . Interpretations"); *see also Interpretations*, http://www.uscis.gov (follow "Laws" hyperlink' then follow "Interpretations" hyperlink).

enact "a legislative doctrine of predestination and eternal damnation" but rather, consistent with "[a]ll modern legislation dealing with crime and punishment," its naturalization statutes "proceed[] upon the theory that aside from capital cases, no man is beyond redemption." *Id*. at 495. The Second Circuit has agreed, explaining that the naturalization statutes manifest a policy of forgiveness for acts committed before the required period for good moral character, and thus recognize the fundamental possibility of human reform. As Judge Learned Hand noted in *Posusta*, "circumstances may change us all." 285 F.2d at 535; *see also Petition of Zele*, 140 F.2d 773, 776 (2d Cir. 1944).

Contrary to the well-established "principle of reformation," Respondents essentially contend that one who committed manslaughter, no matter how long ago, is forever beyond redemption. That is fundamentally wrong. "[O]ccurrences outside the statutory period cannot be the basis for a finding of no good moral character." *Asamoah* v. *US INS*, No. 01 Civ. 10847 (CBM), 2004 WL 736911, at *5 (S.D.N.Y. Apr. 5, 2004). Thus, "[i]t is impermissible to rely solely on acts outside the statutory period in evaluating an applicant's good moral character." *Gizzo* v. *INS*, No. 02 Civ. 4879 (RCC), 2003 WL 22110278, at *3 (S.D.N.Y. Sept. 10, 2003).[20]

This analysis is not altered even if the prior act was particularly grave or serious. Indeed, the current regulation codifies prior case law that rejected the notion that a court could deny an application based solely on evidence showing a lack of good moral character prior to the prescribed period. *See, e.g*., *Marcantonio* v. *United States*, 185 F.2d 934, 936-37 (4th Cir. 1950).

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[20] *See also Tan* v. *US DOJ*, 931 F. Supp. 725, 731 (D. Haw. 1996) ("The regulations do not require the petitioner to have impeccable character throughout his life; the Congress deliberately narrowed the focus to the year preceding the application."); *In re Pruna*, 286 F. Supp. 861, 862 (D.P.R. 1968) ("A liberal construction has been given the statute so as to sanction forgiveness after the expiration of five years from the date of a disbarring misdeed.").

Thus, it is well established that although the court may receive and consider evidence predating that period, such consideration is permissible only for limited purposes to the extent the evidence is relevant to the applicant's *present* character.[21]

DHS in its regulations has clarified the limited purposes for which evidence predating the required period for good moral character may be considered, providing that such evidence may be considered (a) "[i]f the conduct of the applicant during the statutory period does not reflect that there has been reform of character"; or (b) "if the earlier conduct and acts appear relevant to a determination of the applicant's present moral character." 8 C.F.R. § 316.10(a)(2). The former INS provided further clarification, explaining that evidence of prior conduct may be relevant to shed light on "*similar* misconduct" during the relevant period.[22]

The Ninth Circuit provided an example of the appropriate analysis in *United States* v. *Hovsepian*, 422 F.3d 883 (9th Cir. 2005) (en banc). There, the court considered the effect of very serious terrorism-related crimes committed 10 years before the beginning of the required period for good moral character. *Id*. at 886. Specifically, the petitioners there had planned and begun to carry out a terrorist attack that, had the police not intervened, would have

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[21] *See Nyari* v. *Napolitano*, 562 F.3d 916, 920 (9th Cir. 2009) ("[A]n applicant's conduct prior to the statutory period is relevant only to the extent that it reflects on his or her moral character during the statutory period."); *Boatswain* v. *Ashcroft*, 267 F. Supp. 2d 377, 384 (E.D.N.Y. 2003) ("pre-regulatory conduct could not be the *sole* basis for denying naturalization, but . . . may be considered as circumstantial evidence of whether the petitioner was of good moral character during the one year period, provided the petitioner was afforded the opportunity to establish that he had reformed and rehabilitated from such prior conduct during that stated period").

[22] INS Interpretation Letter No. 316.1(f)(3), *supra* note 19 (emphasis added). Respondents' position in their initial decision below that the seriousness of Mr. Lawson's 1986 conviction alone renders it "otherwise relevant" to show his lack of good moral character is patently erroneous in light of the extensive authority cited above holding that such a finding may not be made solely on the basis of evidence predating the relevant period. Indeed, Respondents' position would denude Congress's "principle of reformation" and the "reform of character" prong of DHS's regulation of any significance.

taken thousands of innocent lives. 359 F.3d at 1147-48. Yet the court found that the petitioners established the required good moral character to naturalize in light of extensive evidence that, after serving their prison terms, they had "completely reformed" and lived "exemplary lives," including by providing valuable services to their community through serving as role models and speaking out against violence. 422 F.3d at 886-87.

Any negative character inference from Mr. Lawson's manslaughter conviction is certainly no stronger than that following from the attempted mass terrorist killing held not to preclude naturalization in *Hovsepian*. Indeed, numerous courts—including the Second Circuit—have held that a single manslaughter conviction prior to the required period does not on its own establish a lack of good moral character where subsequent conduct manifested rehabilitation. For example, in *Daddona* v. *United States*, 170 F.2d 964 (2d Cir. 1948), the Second Circuit found that an applicant for naturalization possessed good moral character notwithstanding a manslaughter conviction immediately before the required period, even though the applicant was actually incarcerated during part of that period. *See also In re Bespatow*, 100 F. Supp. 44 (W.D. Pa. 1951) (manslaughter conviction did not establish lack of good moral character).[23]

Thus, although manslaughter is concededly a grave offense, Mr. Lawson has more than demonstrated his reform during the intervening 25 years and his good moral character according to the standards of his community during the required period. Like the petitioners in

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[23] Although Congress chose in 1952 to create an absolute bar to showing good moral character for those convicted of murder at *any* time, Congress has never established such a bar for manslaughter convictions. Rather, Congress specifically chose *not* to make the conviction of an aggravated felony prior to November 29, 1990, a bar to showing good moral character, leaving in place the case-by-case adjudication of character in cases such as Mr. Lawson's. (*See supra* note 18.) *See Hovsepian*, 422 F.3d at 886 n.1; *Cacho* v. *Ashcroft*, 403 F. Supp. 2d 991, 997-98 (D. Haw. 2004) ("The fact that Congress has changed its designation of the crime committed by Petitioner has no bearing on the issue of whether or not Petitioner has shown he has good moral character in the year prior to filing his application.").

Hovsepian, Mr. Lawson has taken responsibility for his past actions (and in fact did so immediately following the crime by going directly to the nearest precinct to turn himself in); has expressed and continues to feel deep remorse; served a lengthy prison sentence; and successfully completed his parole. And like the petitioners in *Hovsepian*, Mr. Lawson has taken extraordinary steps to turn his life around and give back to his community. He has quit drugs, obtained treatment for his PTSD, completed his education with numerous academic honors, and gone on to provide valuable service to his community through his full-time employment for nearly eight years as a substance-abuse counselor. Indeed, as Mr. Lawson's character witnesses will testify, Mr. Lawson has been a noticeably different man after his release from prison than he was before he entered prison, and has not manifested violent or aggressive behavior since his release. (Thompson Dep. 49-53.) On the contrary, he is highly regarded and well liked by friends, family, and colleagues. (Thompson Dep. 51-52; David Lawson Dep. 60, 62.) And Mr. Lawson's rehabilitation is all the more commendable in light of the extraordinary trauma he had to overcome.

Respondents' position that Mr. Lawson's 1986 manslaughter conviction alone refutes his good moral character notwithstanding his years of subsequent laudable conduct is further belied by the treatment accorded such convictions by licensing authorities adjudicating the issue of good moral character in New York City—the community whose standards govern as to the determination of what constitutes good moral character in this case. Licensing authorities in New York City routinely hold that decades-old manslaughter convictions *do not* bar applicants from establishing the good moral character required to obtain licenses to do business or practice professions in the state of New York. *See, e.g.*, *Washington* v. *Div. of Licensing Servs.*, 676 DOS 04 (N.Y. Admin. L. Trib. July 29, 2004), *available at* http://www.dos.state.ny.us/

ooah/decisions/non_indexed/washington_joshua.htm (applicant established good moral character notwithstanding 1991 conviction for first degree manslaughter).[24]

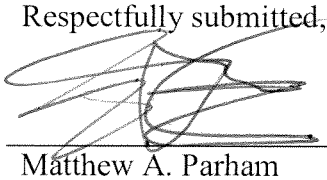
In short, Mr. Lawson's case presents an instance in which the criminal justice system has achieved its avowed purpose of "rehabilitation of those convicted, [and] their successful and productive reentry and reintegration into society . . . ." N.Y. Penal Law § 1.05(6). To accept Respondents' view that denies that even the extensive evidence Mr. Lawson has submitted could establish good moral character is simply to deny that rehabilitation is possible at all—an option that Congress has foreclosed. Respondents' view should be rejected.

CONCLUSION

For the foregoing reasons, the Court should grant Mr. Lawson's petition for review and order that Respondents grant Mr. Lawson naturalization and conduct a ceremony to administer the oath of citizenship to him forthwith.

Dated: August 13, 2010

Respectfully submitted,



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[24] *See also, e.g., In re Palombaro*, 181 DOS 06 (N.Y. Office of Admin. Hearings Mar. 24, 2006), *available at* http://www.dos.state.ny.us/ooah/decisions/Real_estate/Palombaro.htm; *In re Beckett*, 414 DOS 07 (N.Y. Office of Admin. Hearings Mar. 21, 2007), *available at* http://www.dos.state.ny.us/ooah/decisions/barber/Beckett_Harold.htm.