From: (b)(6).

To: OPLA HQ Personnel; OPLA Field Personnel

**Subject:** Broadcast Message: Implementing Barton v. Barr, 140 S. Ct. 1442 (2020)

**Date:** Friday, June 19, 2020 9:12:30 AM

## \*\*\*PRIVILEGED\*\*\*ATTORNEY WORK PRODUCT\*\*\*FOR OFFICIAL USE ONLY\*\*\*NOT FOR DISSEMINATION OUTSIDE OPLA\*\*\*

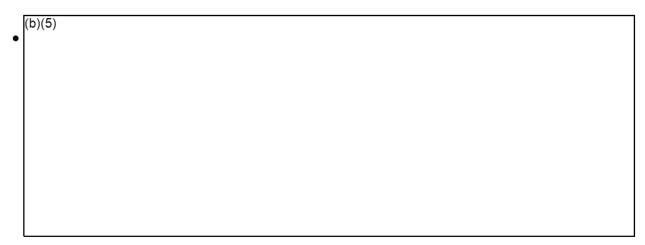
## Disseminated on behalf of Ken Padilla and Adam V. Loiacono. . .

On April 23, 2020, the Supreme Court issued *Barton v. Barr*, 140 S. Ct. 1442 (2020), holding that the stop-time rule of section 240A(d)(1) of the Immigration and Nationality Act (INA), which terminates an alien's continuous residence or physical presence for purposes of cancellation of removal and voluntary departure, is triggered by the commission of a criminal offense that renders an alien removable, regardless of whether the alien is charged in removal proceedings with the corresponding ground of removal. The Court premised its holding on, among other reasons, the language of the stop-time rule, which identifies offenses "referred to in section 212(a)(2)" of the INA and thus does not depend on the actual "offense of removal," *see* 140 S. Ct. at 1451, which the Court defined as "the offense that was the ground on which the immigration judge, at the removal proceeding, found the noncitizen removable," *id.* at 447 n.4.

The Court contrasted this aspect of the stop-time rule with the INA provisions governing mandatory pre-order detention, section 236(c)(1), and jurisdiction for judicial review of removal orders, section 242(a)(2)(C). See 140 S. Ct. at 1451. Specifically, the Court reasoned in apparent dicta that, unlike the stop-time rule, these "provisions make contextual sense only if the offense justifying detention or denying jurisdiction is one of the offenses of removal." Id. (emphasis added). In short, the Court read section 236(c)(1) as requiring that an alien be charged with removal based on the offense justifying mandatory detention (b)(5)

if the offense justifying detention or denying jurisdiction is one of the offenses of removal." Id.		
(emphasis added). In short, the Court read section 236(c)(1) as requiring that an alien be		
charged with removal based on the offense justifying mandatory detention. (b)(5)		
b)(5)		
(b)(5) In brigfing and at oral argument the Government argued consistent with		
in orientig and at oral argument, the Government argued – consistent with		
Kotliar - that an alien is subject to mandatory detention based on potential grounds for		
removal, see Brief for the Respondent at 30, Barton, 140 S. Ct. 1442 (No. 18-725), 2019 WL		
3987631, at *30, or removal charges that are capable of being lodged against the alien, see 140		
S. Ct. at 1459 (Sotomayor, J., dissenting).		
In light of this decision, (b)(5)		
b)(5) but should consider the		
following additional practice pointers:		
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Thank you,

Ken Padilla

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