

5-2022

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Recommended Citation

DiBella, Bianca N. and Couch, Hannah (2022) "Immigration Law," *Mercer Law Review*. Vol. 73: No. 4, Article 14.

Available at: https://digitalcommons.law.mercer.edu/jour_mlr/vol73/iss4/14

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Immigration Law

Bianca N. DiBella*

Hannah Couch**

This Article surveys cases from the United States Court of Appeals for the Eleventh Circuit from January 1, 2021, through December 31, 2021, in which immigration law was a central focus of the case.¹ The Article begins with a discussion of asylum relief, followed by summaries of cases disposed on procedural or jurisdictional grounds. It then discusses the standard of review the Eleventh Circuit applies to cases decided by the Board of Immigration Appeals (BIA) and the Immigration Court. It then describes the Eleventh Circuit's recent jurisprudence around issues of habeas corpus law.

I. ASYLUM

A. Well-Founded Fear of Future Persecution

The Eleventh Circuit issued several opinions this past year regarding whether a petitioner established past persecution or an individualized well-founded fear of future persecution supporting asylum or withholding of removal.²

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1. For an analysis of immigration law during the prior Survey period, see Bianca N. DiBella & Andrew J. Mueller, *Immigration Law*, 72 MERCER L. REV. 1203 (2021).

2. The Eleventh Circuit's unpublished opinions held, at least in part, that substantial evidence supported the immigration judges' (IJ) decisions to deny asylum, withholding of removal, or Convention Against Torture relief. See *Garcia-Garcia v. U.S. Att'y Gen.*, 861 F. App'x 413 (11th Cir. 2021) (denying asylum and withholding of removal to a Guatemalan citizen and her minor child because not being offered a job in a restaurant and fearing that she would not be able to find another job upon return was insufficient to establish past persecution or fear of future persecution); *Zacarias-Lopez v.*

In *Jathursan v. U.S. Attorney General*,³ Jathursan applied for asylum, withholding of his removal, and Convention Against Torture (CAT) protection, arguing that he previously suffered persecution and had a well-founded fear of future persecution on the statutorily protected grounds of race or ethnicity, political opinion as a supporter of the Liberation Tigers of Tamil Eelam (LTTE),⁴ imputed LTTE membership through his brother, and status as a Tamil-failed asylum seeker.⁵ At his removal hearing, he testified that he endured several beatings, including his limbs being tied together and having an iron rod forced through his rectum by the Eelam People's Democratic Party (EPDP), which operates with the tacit consent of the Sri Lankan government. Jathursan claimed he reported this to the police, who did nothing. Jathursan feared persecution from the Sri Lankan army, as Sri Lankan army soldiers once approached him at his car repair shop, demanded his services or merchandise, and refused to pay. He claimed the EPDP and Sri Lankan army work together to persecute Tamils and feared they will persecute him again based on his status as a Tamil-failed asylum seeker, who are presumed to support the LTTE. He presented news articles outlining the torture Tamil-failed asylum seekers face upon their return to Sri Lanka.⁶

U.S. Att'y Gen., 860 F. App'x 620 (11th Cir. 2021) (holding that substantial evidence supported IJ's finding that Guatemalan citizen had not experienced past persecution and had no well-founded fear of future persecution); *Davila v. U.S. Att'y Gen.*, 860 F. App'x 151 (11th Cir. 2021) (holding that substantial evidence supported denial of Nicaraguan citizen's application for withholding of removal); *Diego-Francisco v. U.S. Att'y Gen.*, 857 F. App'x 483 (11th Cir. 2021) (holding that substantial evidence supported IJ's finding that government rebutted presumption that Guatemalan citizen had well-founded fear of persecution upon return); *Jian Lin Pan v. U.S. Att'y Gen.*, 848 F. App'x 382 (11th Cir. 2021) (*per curiam*) (holding that substantial evidence supported BIA's opinion affirming IJ's finding that noncitizen's testimony was not credible); *Zapata-Rivero v. U.S. Att'y Gen.*, 847 F. App'x 671 (11th Cir. 2021) (*per curiam*) (holding that substantial evidence supported IJ's adverse credibility finding); *Pablo-Atz v. U.S. Att'y Gen.*, 846 F. App'x 822 (11th Cir. 2021) (*per curiam*) (holding that substantial evidence supported determination in denying asylum based on failure to show that persecution was based on protected ground); *Gautam v. U.S. Att'y Gen.*, 844 F. App'x 119 (11th Cir. 2021) (holding that applicant failed to establish asylum or withholding-of-removal eligibility and that substantial evidence supported finding that petitioner was ineligible for CAT deferral).

3. 17 F.4th 1365 (11th Cir. 2021).

4. *Id.* at 1370. The LTTE was a Tamil separatist group in Sri Lanka that fought against the Sinhalese-dominated government during a decades-long civil war. Even after the LTTE lost the war in 2009, those suspected of having LTTE ties have been beaten, tortured, and raped. Such violence is largely carried out by the Eelam People's Democratic Party, which operates with the tacit consent of the Sri Lankan government. *Id.*

5. *Id.*

6. *Id.* at 1370–71.

Although the Immigration Judge (IJ) found Jathursan credible, he denied relief based on past persecution and a well-founded fear of future persecution because Jathursan had not shown a sufficient nexus between the past persecution and a protected ground.⁷ The IJ found that the Sri Lankan army and EPDP were motivated by pecuniary gain and that Jathursan's proposed group of "returned asylum seekers" was not a cognizable social group because it "lacked particularity and social distinction."⁸ The IJ also denied Jathursan's withholding-of-removal claim because it "naturally followed" from the denial of asylum that Jathursan "could not meet the higher burden of proof for withholding of removal."⁹ Finally, the judge denied Jathursan's CAT claim due to insufficient evidence to show that he would "more likely than not" be tortured in the future, despite Jathursan's presentation of "ample evidence that the Sri Lankan government has committed human rights violations against Tamils in the past."¹⁰

Jathursan appealed, and the BIA affirmed.¹¹ The BIA stated it "agreed with the [IJ] that the record evidence does not establish an objectively reasonable fear of persecution . . . based on Tamil ethnicity, having sought asylum, *or both*," despite the IJ making no such finding.¹² Because the BIA found Jathursan could not meet the standard for his asylum claim based on past persecution or a well-founded fear of future persecution, it assumed Jathursan could not meet the heightened standard for his withholding-of-removal claim.¹³

The Eleventh Circuit agreed with the BIA that Jathursan failed to show past persecution in connection with a protected ground, but held that the BIA failed to give reasoned consideration to Jathursan's evidence showing a well-founded fear of future persecution due to its misstatements of the record, remanding to the BIA to determine whether Jathursan met the asylum standard.¹⁴ The court also remanded to the BIA the issue of whether Jathursan met the heightened standard for his withholding-of-removal claim based on his well-founded fear of future persecution.¹⁵

7. *Id.* at 1371.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* (emphasis in original).

13. *Id.* at 1372.

14. *Id.* at 1373.

15. *Id.* at 1375.

The court also held that the BIA “flatly ignore[d] the grounds presented” by Jathursan for CAT relief.¹⁶ The court held that the BIA (1) relied only on Jathursan’s documentary evidence involving Tamil detainees and ignored Jathursan’s testimony regarding his detainment and torture by the EPDP; (2) failed to address that the EPDP works with the Sri Lankan government; and (3) stated that “the [I]mmigration [J]udge did not make adequate findings on whether that mistreatment was inflicted with the consent or acquiescence of a public official[,]” thereby admitting it was unable to consider whether Jathursan would face future torture.¹⁷ Accordingly, the court vacated and remanded Jathursan’s CAT claim.¹⁸

In *Murugan v. U.S. Attorney General*,¹⁹ Murugan applied for asylum, withholding of removal, and CAT relief.²⁰ Murugan claimed that he suffered past persecution in Sri Lanka when he was arrested by the Sri Lankan army three times: once while returning home from work, after which he was jailed overnight; once while distributing humanitarian aid to refugees who had come from a village controlled by the LTTE, after which he was tied up, tortured, and interrogated for four days; and once for continuing to help refugees, after which he was threatened with going to the “fourth floor,” otherwise known as the army torture camp for LTTE affiliates, but instead was released after six hours.²¹ Murugan claims he was arrested on account of an imputed political opinion and membership in the particular social group of Tamils and that he would suffer future persecution and torture if he returned to Sri Lanka.²²

After his removal hearing, where he conceded removability, the IJ denied Murugan’s application for asylum, withholding of removal, and CAT relief.²³ “The IJ found that the harms Murugan suffered did not rise to the level of past persecution,” and that Murugan failed to demonstrate a well-founded fear of future persecution because (1) he failed to offer evidence, other than his testimony, that anyone had indicated that they would harm him upon his return; (2) his family remains unharmed; and (3) Murugan could “safely relocate within Sri

16. *Id.*

17. *Id.* at 1376.

18. *Id.* at 1377.

19. 10 F.4th 1185 (11th Cir. 2021).

20. *Id.* at 1189.

21. *Id.* at 1189–90.

22. *Id.* at 1191.

23. *Id.*

Lanka and that it is reasonable to expect him to do so.”²⁴ Finally, the IJ found that Murugan “failed to demonstrate a nexus between the alleged persecution and an imputed political opinion . . . [or] his Tamil ethnicity,” or “that the proposed group of returned asylum seekers was ‘overbroad and not socially distinct.’”²⁵ The BIA adopted the IJ’s decision on appeal, concluding that, because Murugan “failed to establish his eligibility for asylum, . . . he failed to establish eligibility for withholding of removal or CAT relief.”²⁶

On appeal, Murugan argued that the BIA and the IJ “committed various legal and factual errors in analyzing his claims.”²⁷ The court held that the harms Murugan suffered—both physical and mental—“do not rise to the extreme level of persecution.”²⁸ Because he did not show past persecution, Murugan was required to show that he had a “subjectively genuine and objectively reasonable” fear of future persecution if he returned to Sri Lanka, even if he relocated within Sri Lanka, which he failed to do.²⁹ Specifically, the court noted that while “some” materials Murugan submitted to the IJ and BIA were considered outdated and others were not, the IJ and BIA considered all materials and found no pattern or practice of persecution of Tamils in Sri Lanka.³⁰ “Under the highly deferential substantial evidence standard, [the court] review[ed] the evidence in the light most favorable to the agency’s decision and dr[ew] all reasonable inferences in favor of that decision.”³¹ Because the record did not compel a reversal, the court upheld the BIA’s and IJ’s findings.³²

Furthermore, the court held that Murugan failed to show a nexus between the persecution and his imputed political opinion as favoring the LTTE by aiding refugees.³³ “But when Murugan’s counsel asked Murugan . . . whether the army questioned Murugan about whether he was involved in the LTTE, Murugan responded: ‘No, no, no, they were just suspecting and that they were saying that I had contact with these people during war time.’”³⁴ The court found that this “undercut his prior

24. *Id.* at 1191–92.

25. *Id.* at 1192.

26. *Id.*

27. *Id.* at 1189.

28. *Id.* at 1192.

29. *Id.* at 1193.

30. *Id.* at 1194.

31. *Id.* (citing *Silva v. U.S. Att’y Gen.*, 448 F.3d 1229, 1236 (11th Cir. 2006)).

32. *Id.* (citing *Silva*, 448 F.3d at 1236).

33. *Id.* at 1195.

34. *Id.* at 1196.

assertions” and held that the BIA did not lack a “substantial basis for its conclusion that Murugan’s fear of persecution on account of the allegedly imputed political opinion was not well-founded.”³⁵ Because Murugan did not succeed on his asylum claim, he “necessarily failed to establish eligibility for withholding of removal or protection under CAT.”³⁶

Judge Beverly Martin³⁷ dissented³⁸ on the majority’s analysis and conclusion that Murugan failed to establish a “subjectively genuine and objectively reasonable” fear of future persecution if he returned to Sri Lanka.³⁹ She stated that the BIA and the majority failed to consider evidence “that in October 2018, the Sri Lankan government changed drastically when the former president, who had been accused of authorizing war crimes and other human rights abuses against Tamils ‘blindsided’ political observers and ‘suddenly’ returned as prime minister[.]” whereas she saw it “as substantial and highly probative evidence of a pattern or practice of government persecution of Tamils.”⁴⁰ Additionally, Judge Martin believed Murugan sufficiently established a pattern or practice of persecution, and stated the IJ’s and BIA’s findings that Murugan failed to produce evidence showing that conditions persisted beyond 2016 were not supported by the record.⁴¹

35. *Id.*

36. *Id.*

37. Judge Martin retired from the Eleventh Circuit on September 30, 2021. *See Judge Beverly Martin to Join Center on Civil Justice as Executive Director*, NYU LAW NEWS (Oct. 4, 2021), <https://www.law.nyu.edu/news/judge-beverly-martin-joins-center-civil-justice>.

38. Judge Martin’s critiques of immigration policy and argument for shifts in rhetoric around non-citizens in an effort to humanize them and their circumstances was made evident in this case. *See Jennifer Doherty, Circuit Judges Spar Over the Term ‘Alien’ in Opinions*, LAW 360 (July 8, 2021), <https://www.law360.com/articles/1401539/circuit-judgesspar-over-the-term-alien-in-opinions>.

39. *Marugan*, 10 F.4th at 1197.

40. *Id.* at 1196–97 (alterations in original).

41. *Id.* at 1200. Such evidence included a 2015 Human Rights Report wherein the United States Department of State “observed that people reported ‘harassment of . . . persons viewed as sympathizers of the banned terrorist group the LTTE as well as arbitrary arrest and detention, torture, rape, and other forms of sexual and gender-based violence committed by police and security forces[.]’” a 2017 Human Rights Report finding that “government discrimination toward and security forces harassment of Tamils . . . persisted,” as well as a 2016 Huffington Post article describing a “‘troubling’ string of arrests of Tamils by the Sri Lankan government, made ‘under the guise of national security.’” *Id.* at 1198, 1200 (alterations in original).

B. Particular Social Group

The Eleventh Circuit issued five unpublished opinions in 2021 regarding whether a petitioner sufficiently defined a particular protected social group of which he or she claimed to be a member.

In *Funez-Turcios v. U.S. Attorney General*,⁴² the Eleventh Circuit held Funez-Turcios's proposed social group of "former public-school students who refused gang recruitment" that returned "to Honduras as a member of an American family," spouse of an American citizen, and stepfather to three American children, was not cognizable under the Immigration and Nationality Act (INA).⁴³ Because this proposed group was impermissibly circular and not socially distinct, it failed the particular social group and particularity requirements under the INA, as the BIA concluded.⁴⁴ The Eleventh Circuit denied his petition.⁴⁵

Similarly, in *Lazaro-Ruano v. U.S. Attorney General*,⁴⁶ Lazaro-Ruano, a Guatemalan citizen, was denied asylum and withholding of removal because her proposed particular social group of "young Guatemalan women forced into prostitution" was circularly defined since the members of the group did not "share an immutable 'narrowing characteristic' other than the alleged persecution."⁴⁷

In *Menocal-Vargas v. U.S. Attorney General*,⁴⁸ Menocal-Vargas, a citizen of Honduras, failed to state a sufficiently specific particular social group and to establish that he was persecuted or would face future persecution.⁴⁹ In his applications for asylum, withholding of removal, and CAT relief, he stated that he "faced persecution by the gang Maras Salvatrucha ("MS") because he told young men and [women] not to join gangs, because MS believed he worked for the army to fight gangs, and because MS threatened to kill his family unless his son joined MS."⁵⁰ Menocal-Vargas expounded on this at his hearing in front of the IJ, after which the IJ found there had been no past persecution and that Menocal-Vargas "failed to show he has been or will be persecuted based on membership in a protected particular social

42. 853 F. App'x 395 (11th Cir. 2021) (*per curiam*).

43. *Id.* at 396.

44. *Id.* at 398.

45. *Id.* at 399.

46. 861 F. App'x 396 (11th Cir. 2021).

47. *Id.* at 401 (citing *Amezcu-Preciado v. United States AG*, 943 F.3d 1337 (11th Cir. 2019)).

48. 853 F. App'x 323 (11th Cir. 2021) (*per curiam*).

49. *Id.* at 325.

50. *Id.* at 324–25.

group or political opinion.”⁵¹ He was denied asylum, withholding of removal, and CAT relief, and the BIA dismissed his appeal.⁵²

The Eleventh Circuit held that a group of people “actively speaking against gang affiliation” is not sufficiently specific to constitute a particular social group or political opinion and that past persecution was not because of that political opinion; thus, the Eleventh Circuit dismissed the appeal.⁵³

The Eleventh Circuit reached similar holdings in *Alvarado v. U.S. Attorney General*⁵⁴ and *Marroquin-Gutierrez v. U.S. Attorney General*.⁵⁵ In *Alvarado*, the Eleventh Circuit held that Lopez Alvarado’s proposed social group consisting of young male Guatemalans who were opposed to gang violence lacked the requisite particularity and social distinction.⁵⁶ In *Gutierrez*, the Eleventh Circuit held that another Guatemalan citizen failed to establish that his status as a self-employed vehicle owner who was viewed by his community as a driver who refused to cooperate with gangs constituted membership in a particular social group.⁵⁷

C. Nexus

The Eleventh Circuit issued multiple opinions this past year regarding whether a petitioner established a nexus between his or her membership in a particular social group and the harm he or she claimed he or she would experience upon return, largely affirming the BIA’s and IJ’s decision.

In *Angel-Lopez v. U.S. Attorney General*,⁵⁸ Angel-Lopez, who failed to appear at his first removal hearing, was found mentally incompetent to represent himself and was assigned counsel.⁵⁹ Counsel, on his behalf, then applied for asylum, withholding of removal, and CAT relief. In support, counsel submitted Angel-Lopez’s psychiatric medical records revealing that he suffers from schizophrenia, as well as two declarations by Dr. Samuel Nickels, who described the underfunded state of mental healthcare in El Salvador and that electroshock therapy—often delivered without anesthesia or patient consent—was a

51. *Id.* at 325.

52. *Id.*

53. *Id.* at 326.

54. 851 F. App’x 919 (11th Cir. 2021) (*per curiam*).

55. 847 F. App’x 686 (11th Cir. 2021) (*per curiam*).

56. *Alvarado*, 851 F. App’x at 922–23.

57. *Marroquin-Gutierrez*, 847 F. App’x at 687–88.

58. 853 F. App’x 440 (11th Cir. 2021) (*per curiam*).

59. *Id.* at 441–42.

common treatment at the only public psychiatric hospital. Dr. Nickels also stated that those with psychosocial disabilities “faced strong stigmatization,” that the police “dealt harshly” with everyone and those with such disabilities were at an “extreme risk of harm or abuse,” and that gangs also abused those with such disabilities.⁶⁰ The IJ found that Angel-Lopez failed to show his fear of future persecution on account of his proposed social groups and failed to provide specific facts establishing his membership in a particular social group and the harm he would experience and the BIA affirmed.⁶¹

The Eleventh Circuit held that the BIA and IJ had considered all the evidence and “gave adequate and reasonable explanations for [their] decisions.”⁶² And because “any stigmatization and incidents of abuse, if they were to occur,” could be the result of “underfunded treatment and insufficient training programs,” rather than “a desire to harm the mentally ill,” the Eleventh Circuit was unpersuaded by Angel-Lopez’s challenge to the BIA’s determination that he did not establish a nexus between his membership in a particular social group and the harm he claimed he would experience upon return.⁶³ Accordingly, the Eleventh Circuit denied his petition.⁶⁴

In *Martinez v. U.S. Attorney General*,⁶⁵ the BIA and IJ, focusing only on Martinez’s lack of showing of past persecution, failed to give reasoned consideration of his well-founded fear of future persecution claim, resulting in the Eleventh Circuit remanding the case to the BIA.⁶⁶ Martinez alleged Cuban officials arrested him and threatened him with mistreatment because he wrote for a magazine critical of Cuban tax policies, even after relocating to a different city.⁶⁷ The IJ found Martinez credible but concluded the officials’ actions did not rise to the level of past persecution.⁶⁸ The IJ also “rejected as objectively unreasonable Martinez’s fear of future persecution because the evidence did not suggest he ‘would be singled out for persecution’” because officials were not searching for him, a warrant was not out for his arrest, the officials released him without injury and charges when he

60. *Id.* at 442.

61. *Id.*

62. *Id.* at 444.

63. *Id.* at 444–45.

64. *Id.* at 445.

65. 992 F.3d 1283 (11th Cir. 2021).

66. *Id.* at 1294–95.

67. *Id.* at 1287.

68. *Id.* at 1289.

was arrested, and his family remained unharmed.⁶⁹ The BIA affirmed and further found that the evidence of “general political conditions” in Cuban reports was an insufficient showing that Martinez would be persecuted upon return.⁷⁰

The Eleventh Circuit affirmed the BIA’s and IJ’s finding that the officials’ actions did not rise to the level of past persecution.⁷¹ But because the IJ’s decision, which the BIA adopted, misstated the record evidence crucial to his well-founded fear of future persecution argument, it resulted in the BIA’s and IJ’s failure to provide reasoned consideration.⁷² Specifically, the IJ acknowledged that Martinez submitted reports detailing a pattern or practice “of severe political oppression . . . by the Cuban government . . . aimed at opposition party . . . journalists.”⁷³ The IJ then stated that Martinez “provided no evidence that the Cuban government recognizes him as an opposition party journalist,” overlooking Martinez’s testimony regarding officials considering him a writer of a magazine critical of Cuban tax policies.⁷⁴ Accordingly, the Eleventh Circuit remanded to the BIA.⁷⁵

In *Sanchez-Castro v. U.S. Attorney General*,⁷⁶ Sanchez-Castro, a citizen of El Salvador, applied for asylum, withholding of removal, and CAT relief.⁷⁷ During her removal hearing, she testified that a gang targeted her family by extortion and threatened to rape and kill them because it assumed her father’s work in the United States made them wealthy. The IJ, despite finding her credible, found that Sanchez-Castro’s experience did not rise to the level of past persecution and that she did not have a well-founded fear of future persecution because her fears were based on general gang violence, not a statutorily protected ground for relief.⁷⁸

Accordingly, she did not qualify for asylum, withholding of removal, or CAT relief.⁷⁹ The BIA dismissed her appeal, affirming the IJ’s decision but also distinguishing between when “a persecutor targets a family member as a means to an end,” versus when the gang is

69. *Id.*

70. *Id.* at 1290.

71. *Id.* at 1293. Judge Martin dissented as to this point only. *Id.* at 1295.

72. *Id.* at 1294.

73. *Id.*

74. *Id.*

75. *Id.* at 1295.

76. 998 F.3d 1281 (11th Cir. 2021).

77. *Id.* at 1283.

78. *Id.* at 1284–85.

79. *Id.* at 1285.

motivated by “animus against the family per se,” with only the latter being enough to obtain relief.⁸⁰

The Attorney General then issued his decision in *Matter of L-E-A*,⁸¹ concluding a nuclear family will not qualify as a particular social group but left undisturbed the BIA’s “analysis of the circumstances in which membership in a family constitutes a central reason for persecution.”⁸² The BIA then, again, dismissed Sanchez-Castro’s appeal on remand.⁸³

Based on the Attorney General’s decision, the Eleventh Circuit concluded that “[t]he record does not compel a finding that any persecution that Sanchez-Castro suffered or fears occurred ‘because of the status of her nuclear family.’”⁸⁴ Rather, the record showed that the gang engaged in the type of extortion and threatening behavior Sanchez-Castro claimed indiscriminately.⁸⁵ The court held that substantial evidence supported the IJ’s finding that Sanchez-Castro failed to satisfy the nexus requirement for asylum and withholding of removal and that she was not eligible for asylum or withholding of removal.⁸⁶ It also held that she failed to establish any likelihood that she will suffer harm inflicted by or with the consent of a government official, thus denying CAT relief.⁸⁷

II. PROCEDURE AND JURISDICTION

The Eleventh Circuit resolved multiple procedural and jurisdictional issues this past year, including an issue of first impression.

In *Rios-Hernandez v. U.S. Attorney General*,⁸⁸ the Eleventh Circuit had a similar holding to that of *Sanchez-Castro*. It held that Rios-Hernandez, a citizen of El Salvador, failed to adequately challenge all elements upon which the IJ based her conclusions regarding Rios-Hernandez’s proposed family groups, and substantial evidence supported a finding that the government of El Salvador would not acquiesce the torture he endured.⁸⁹ During his merits hearing, Rios-Hernandez argued that he suffered a (1) fear of gang persecution due to his family membership and “neglected and abandoned young males

80. *Id.*

81. 27 I. & N. Dec. 581 (A.G. 2019).

82. *Sanchez-Castro*, 998 F.3d at 1285.

83. *Id.*

84. *Id.* at 1286.

85. *Id.* at 1287.

86. *Id.* at 1288.

87. *Id.*

88. 859 F. App’x 865 (11th Cir. 2021).

89. *Id.* at 869.

from Anamorós,” and (2) fear of being tortured by gangs if returned.⁹⁰ The IJ found him credible but concluded that the proposed groups did not qualify as particular social groups under the INA and that, even if they qualified, his persecution was based on his membership in those social groups. The IJ also denied him CAT relief because he failed to establish that the government of El Salvador instigates or acquiesces to gang torture and the previous harm did not amount to torture. The BIA affirmed.⁹¹

Rios-Hernandez appealed, arguing as to asylum that the IJ erred in her conclusion that his family did not qualify as a particular social group, that he was not a member of the neglected and abandoned young males from Anamorós, and that he had not established his persecution was based on his proposed social groups.⁹² The Eleventh Circuit affirmed and further held that because Rios-Hernandez challenged only the IJ’s conclusion about his group membership and not that the group lacked all three elements necessary to qualify as a particular social group, his argument failed in regard to his second proposed social group.⁹³ The Eleventh Circuit also held that Rios-Hernandez’s challenge as to the denial of CAT relief failed because there was “substantial evidence in the record” supporting the BIA’s and IJ’s decisions.⁹⁴

In *Thamotar v. U.S. Attorney General*,⁹⁵ Thamotar appealed the BIA’s order affirming the IJ’s discretionary denial of his asylum application, arguing that because his removal was withheld by the IJ, 8 C.F.R. § 1208.16(e)⁹⁶ required reconsideration of his asylum claim.⁹⁷ The Eleventh Circuit granted Thamotar’s petition, vacated the BIA’s

90. *Id.* at 866.

91. *Id.*

92. *Id.* at 866–67.

93. *Id.* at 868.

94. *Id.* at 869.

95. 1 F.4th 958 (11th Cir. 2021) (*per curiam*).

96. *Id.* at 971.

In the event that an applicant is denied asylum solely in the exercise of discretion, and the applicant is subsequently granted withholding of deportation or removal under this section, thereby effectively precluding admission of the applicant’s spouse or minor children following to join him or her, the denial of asylum shall be reconsidered. Factors to be considered will include the reasons for the denial and reasonable alternatives available to the applicant such as reunification with his or her spouse or minor children in a third country.

Id. (citing 8 C.F.R. § 1208.16(e) (removed and reserved by 85 F.R. 67202–01) (effective Dec. 31, 2022)).

97. *Thamotar*, 1 F.4th at 962–63.

order, and remanded the case to the BIA with instructions to remand to the IJ for reconsideration of the discretionary denial of asylum.⁹⁸

During his credible fear interview, Thamotar stated he was driving customers in his taxi when he was stopped at a military checkpoint.⁹⁹ After discovering he was Tamil and accusing him of being part of the LTTE, the Sri Lankan army officials arrested him and took him to a camp where they interrogated and tortured him. During his fourteen-day imprisonment, Thamotar “was hung upside down, beaten, and given urine to drink instead of water.”¹⁰⁰ Just three days after his release, army officials came to his home, beat him, attacked his wife and son, and threatened to kill his daughter.¹⁰¹

After admitting the allegations in his notice to appear and conceding removability, Thamotar applied for asylum, withholding of removal, and CAT relief based on his race, political opinion, nationality, and membership in a particular social group.¹⁰² Due to discrepancies in his credible fear interview, application, and accompanying materials, the IJ found Thamotar not credible and denied his application for asylum, withholding of removal, and CAT relief, and the BIA affirmed.¹⁰³ The Eleventh Circuit remanded the case to the BIA for further factfinding on Thamotar’s fear of future persecution based on “his Tamil ethnicity alone or in conjunction with his status as a failed asylum seeker,” and the BIA remanded to the IJ.¹⁰⁴

At his second removal hearing, Thamotar submitted additional evidence, including news articles showing that “Tamils faced persecution in Sri Lanka based on their ethnicity and status as failed asylum seekers,” an updated affidavit from his father, and his marriage certificate to clear up past discrepancies in his evidence and testimony.¹⁰⁵ He argued that the IJ should reconsider all the issues because the BIA did not expressly retain jurisdiction or limit the IJ’s inquiry on remand.¹⁰⁶ The IJ, based on his previous findings and new evidence submitted, granted him withholding of removal because he was “more likely than not to face persecution” if he returned to Sri Lanka because he was a Tamil-failed asylum seeker and there was a

98. *Id.* at 963.

99. *Id.* at 963–64.

100. *Id.* at 964.

101. *Id.*

102. *Id.*

103. *Id.* at 965.

104. *Id.*

105. *Id.*

106. *Id.*

pattern or practice of persecution against Tamils.¹⁰⁷ Because the Sri Lankan government is responsible for the persecution, relocation within Sri Lanka was not feasible.¹⁰⁸ The IJ, however, denied Thamotar asylum as a matter of discretion because he was granted withholding of removal and thus would not face future persecution, he was not found to be credible, and he did not seek asylum in other countries to which he traveled before coming to the United States.¹⁰⁹ The BIA affirmed and concluded the IJ's failure to reconsider its denial of asylum under 8 C.F.R. § 1208.16(e) did not warrant remand because family unification alone was insufficient to overcome the negative factors outlined in the IJ's decision.¹¹⁰

On appeal, the Eleventh Circuit questioned whether it had jurisdiction to review an order denying asylum and held that granting withholding of removal was a matter of first impression for the court.¹¹¹ The INA limits the court's jurisdiction to orders of removal, which are defined as "a determination that a noncitizen is removable from the United States or an order directing the noncitizen's removal from the United States."¹¹² Because an IJ must issue an order of removal before granting a withholding of removal, the court held it had jurisdiction to review.¹¹³ The court further held that the issue was not moot based on the withholding of removal being granted because asylum status affords more benefits than withholding of removal, such as allowing his wife and children to join him in the United States as derivative asylees.¹¹⁴

The court next turned to whether the agency, as required by section 1208.16(e), properly reconsidered the IJ's discretionary denial of asylum despite granting a withholding of removal.¹¹⁵ Interpreting and applying section 1208.16(e) for the first time, the court adopted other courts' reasoning that "reconsideration of asylum is mandatory for a petitioner" is "both logical and reasonable" when the petitioner has also been granted a withholding of removal.¹¹⁶

107. *Id.* at 965–66.

108. *Id.* at 966.

109. *Id.*

110. *Id.*

111. *Id.* at 967.

112. *Id.*

113. *Id.* at 967–68.

114. *Id.* at 968–69.

115. The court noted that the Department of Justice and Department of Homeland Security issued a final rule eliminating this regulation after Thamotar filed his appeal. "Because the Rule does not provide for retroactive application, it applies only prospectively and thus does not impact Mr. Thamotar's appeal." *Id.* at 971 n.10.

116. *Id.* at 971–72.

Although the court found section 1208.16(e)'s mandate of reconsideration to be clear, it noted that the scope of the reconsideration was not.¹¹⁷ Specifically, the court questioned whether the agency must reweigh the “totality of the circumstances” or “address . . . only the factor of reasonably available alternatives for family reunification.”¹¹⁸ Ultimately, the court held it is the IJ who must “assess the impact of the asylum denial on [the petitioner’s] ability to be reunited with his family,” determine whether there are reasonable alternatives available for the petitioner’s family to reunify, and then conduct the reconsideration by reevaluating the totality of the circumstances and reweighing the positive and negative factors, “paying particular attention to the reasonable alternatives for family reunification.”¹¹⁹ Because the IJ failed to do this in Thamotar’s case, the court vacated the BIA’s decision and remanded to the IJ for reconsideration of the discretionary denial of asylum.¹²⁰

In a case with a much less complicated procedural history, the Eleventh Circuit in *Luna-Flores v. U.S. Attorney General*¹²¹ held that it did not have jurisdiction to hear the appeal.¹²² The BIA had not allowed Luna-Flores to reinstate his appeal “given his perceived need to return to Mexico rather than stay at an immigration detention facility while his appeal was pending.”¹²³ As such, the court reasoned, the BIA’s discretionary decision was not a final order, and the court lacked jurisdiction over the matter.¹²⁴

In *Cherubin v. U.S. Attorney General*,¹²⁵ Cherubin failed to exhaust her administrative remedies.¹²⁶ Cherubin, a Haitian citizen, and her minor daughter applied for asylum and withholding of removal with the assistance of counsel. Counsel withdrew before her removal hearing, and she proceeded *pro se*. The IJ denied Cherubin’s claims, concluding that her asylum application was untimely, her testimony was not credible, and she failed to provide any corroborating evidence.¹²⁷

117. *Id.* at 972.

118. *Id.* at 973.

119. *Id.* at 973, 976.

120. *Id.* at 976.

121. 859 F. App’x 869 (11th Cir. 2021).

122. *Id.* at 872.

123. *Id.* at 871.

124. *Id.* at 872.

125. 849 F. App’x 896 (11th Cir. 2021).

126. *Id.* at 897.

127. *Id.*

In her notice of appeal to the BIA, Cherubin described her reasons for appeal as “having the time to file a written brief,” “to review all the facts which sustain my case,” “to restate more carefully the subject of my request for asylum,” and “to provide also as needed reliable documentation to support my claim,” and indicated she would file a written brief.¹²⁸ Cherubin then failed to submit a brief, and the BIA affirmed the IJ’s decision.¹²⁹

On appeal, Cherubin argued that the BIA and IJ failed to properly analyze her credibility and to give her an opportunity to provide corroborating testimony.¹³⁰ Because she did not raise these issues to the BIA or file a written brief, the Eleventh Circuit held that she failed to exhaust her administrative remedies, and therefore, the court lacked jurisdiction to hear her case.¹³¹

In *Ingrý v. U.S. Attorney General*,¹³² Colombian sisters also failed to exhaust administrative remedies, leading the Eleventh Circuit to hold that it lacked jurisdiction.¹³³ The sisters, Angie and Ingrý, were threatened and harassed via social media by the man dating Angie’s ex-boyfriend and estranged father to her child, who was a police officer named Jhon Ruiz. At one point, the officer came to Angie’s house with two other officers and destroyed her personal property while looking for Angie’s ex-boyfriend. After going to a police station where Ruiz did not work, Angie’s ex-boyfriend was arrested, but Ruiz was not.¹³⁴

The sisters went to the United States during the investigation and applied for asylum, which the IJ denied because (1) they did not provide corroborating evidence, (2) Ruiz’s threats did not amount to past persecution, (3) they did not establish a nexus between the threats and their proposed social group, and (4) they did not establish a well-founded fear that the Colombian government would not protect them from Ruiz.¹³⁵ The BIA affirmed.¹³⁶

Because the sisters failed to raise the argument of sufficiency of corroborating evidence in their appeal to the BIA, the Eleventh Circuit held that it did not have jurisdiction to consider the argument.¹³⁷ It

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* at 898.

132. 854 F. App’x 321 (11th Cir. 2021) (*per curiam*).

133. *Id.* at 325.

134. *Id.* at 323.

135. *Id.* at 323–24.

136. *Id.* at 324.

137. *Id.*

further held that Ruiz's actions did not amount to past persecution, and substantial evidence supported (1) the IJ's finding that there was no nexus between the threats and the proposed social group, and (2) the IJ's finding that the sisters did not establish "that they were unable to avail themselves of Colombia's judicial system."¹³⁸

In *Hernandez-Trochez v. U.S. Attorney General*,¹³⁹ the Eleventh Circuit again held that Hernandez-Trochez failed to exhaust her administrative remedies.¹⁴⁰ At her hearing, she presented affidavits with conflicting testimony regarding their origination. The BIA remanded her initial appeal to the IJ "after concluding that it was clearly erroneous to find Hernandez-Trochez[']s testimony not credible merely because of the discrepancies concerning the affidavits."¹⁴¹ After her second hearing, the IJ again did not find Hernandez-Trochez credible. She appealed to the BIA, arguing that the BIA had already determined she was credible and that the case should be remanded "to give her the opportunity to define her [particular social group] according to decisions released after her case was submitted."¹⁴² The BIA dismissed her appeal.¹⁴³

At the Eleventh Circuit, Hernandez-Trochez argued that in light of the Attorney General's recent decision in *Matter of A-B*,¹⁴⁴ the BIA erred in not remanding the matter so she could restate her particular social group claim.¹⁴⁵ Because her reference to "decisions released after" her case submitted to the IJ was vague and did not specifically reference *Matter of A-B*, the Eleventh Circuit held that the BIA was not afforded an opportunity to consider the argument, which failed to satisfy the exhaustion requirement and grant the court jurisdiction.¹⁴⁶ Hernandez-Trochez also argued that the IJ deprived her of due process because he was determined to reach the same credibility finding in the second hearing as he did in the first.¹⁴⁷ Because her brief to the BIA did not raise a due process claim, the court held that Hernandez-Trochez

138. *Id.* at 325.

139. 853 F. App'x 331 (11th Cir. 2021) (*per curiam*).

140. *Id.* at 336.

141. *Id.* at 333.

142. *Id.* at 334.

143. *Id.*

144. 27 I. & N. Dec. 316 (B.I.A. June 11, 2018)

145. *Hernandez-Trochez*, 853 F. App'x at 336.

146. *Id.* at 334, 336.

147. *Id.* at 336.

also failed to exhaust her remedies as to this claim, and thus, the court lacked jurisdiction.¹⁴⁸

The petitioner in *Giron-Garcia v. U.S. Attorney General*¹⁴⁹ also failed to exhaust her administrative remedies.¹⁵⁰ Giron-Garcia challenged the merits of the BIA's and IJ's denial of asylum based on her failure to establish a well-founded fear of future persecution.¹⁵¹ The Eleventh Circuit reasoned that because Giron-Garcia did not challenge the IJ's conclusion that she failed to demonstrate any nexus between her fear of future persecution based on her being a member of a protected particular social group, she failed to exhaust her administrative remedies.¹⁵²

In *Vikulin v. U.S. Attorney General*,¹⁵³ the Eleventh Circuit held that it lacked jurisdiction to consider Vikulin's challenge of the BIA's denial of his application for adjustment of status.¹⁵⁴ In December 2004, Vikulin was ordered to depart to Kazakhstan for failure to maintain his student status for his student visa, but he failed to depart. In 2010, Vikulin was arrested for a DUI and successfully moved to reopen his removal proceedings to seek asylum, withholding of removal, and CAT relief. After multiple continuances, his hearing was held in 2017. The IJ found him credible but denied his application, finding that he was targeted because of his family's wealth and ability to pay bribes, rather than membership in a particular social group, and that he could reasonably relocate upon his return.¹⁵⁵

While his BIA appeal was pending, Vikulin moved to remand so that the IJ could consider an application for adjustment of status based on an approved immigrant visa petition that his mother had filed for him.¹⁵⁶ The BIA affirmed the IJ's decision, dismissed the appeal, and granted his motion. After his second hearing, the IJ denied Vikulin's application for adjustment of status because he "failed to demonstrate good moral character" due to his DUIs, revocation of probation based on a positive drug test, and possession of cocaine charge.¹⁵⁷ Vikulin appealed to the BIA, and, again, moved to remand for his application

148. *Id.*

149. 845 F. App'x 822 (11th Cir. 2021) (*per curiam*).

150. *Id.* at 825.

151. *Id.*

152. *Id.* at 826.

153. 846 F. App'x 806 (11th Cir. 2021) (*per curiam*).

154. *Id.* at 807.

155. *Id.* at 808–10.

156. *Id.*

157. *Id.* at 810–11.

for adjustment of status, this time asserting that his cocaine charge had been dismissed. The BIA denied his application for adjustment of status, dismissed his appeal, and denied his motion for remand.¹⁵⁸ The Eleventh Circuit affirmed the BIA's decision regarding Vikulin's asylum, withholding of removal, and CAT relief claims.¹⁵⁹ But it held that it lacked jurisdiction to review the BIA's discretionary decision regarding adjustment of status because "this type of claim, although couched in due process terms, does not state a colorable constitutional claim and instead is a challenge to the BIA's exercise of its discretion."¹⁶⁰

In *Camarena v. Director, Immigration and Customs Enforcement*,¹⁶¹ the consolidated appeals of two immigrants who admitted they were subject to valid removal orders were denied by the Eleventh Circuit for lack of jurisdiction.¹⁶² Yet, when the government moved to execute the orders, they sued. Both had applied for provisional unlawful presence waivers, which, if granted, would make it easier to return to the United States in the future. They argued that the government cannot remove them yet because removal would interfere with their "regulatory rights" to remain in the United States while they apply for the waivers.¹⁶³ The Eleventh Circuit held that it lacked jurisdiction because 8 U.S.C. § 1252(g)¹⁶⁴ "bars federal courts from hearing 'any cause or claim' by an alien 'arising from the decision or action by the Attorney General to . . . execute removal orders.'"¹⁶⁵

III. STANDARD OF REVIEW

The only Eleventh Circuit opinion issued this past year regarding standard of review involved a dissenting opinion by now-retired Judge Martin.

In *Lie Ye Xiao v. U.S. Attorney General*,¹⁶⁶ the Eleventh Circuit held that the BIA did not abuse its discretion in denying the petitioner's second motion to reopen his removal proceedings.¹⁶⁷ After the IJ denied

158. *Id.* at 811.

159. *Id.* at 814.

160. *Id.* at 815.

161. 988 F.3d 1268 (11th Cir. 2021).

162. *Id.* at 1270.

163. *Id.*

164. 8 U.S.C. § 1252(g) (2005).

165. *Camarena*, 988 F.3d at 1272 (citing *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471 (1999)).

166. 846 F. App'x 745 (11th Cir. 2021) (*per curiam*).

167. *Id.* at 745.

the petitioner's applications, the BIA affirmed, and the petitioner did not appeal.¹⁶⁸ The following year, the petitioner filed his first motion to reopen the removal proceedings, arguing that, based on the Supreme Court's decision in *Pereira v. Sessions*,¹⁶⁹ his notice to appear was defective.¹⁷⁰ The BIA denied the motion, and the petitioner did not appeal. Two months later, the petitioner filed his second motion to reopen based on changed conditions in his home country of China, which the BIA denied. His appeal to the Eleventh Circuit followed.¹⁷¹ Reviewing the BIA's fact findings under the "highly deferential substantial evidence test," the Eleventh Circuit held that the BIA did not abuse its discretion in denying the petitioner's second motion, and furthermore, the second motion was successive and time-barred.¹⁷²

Judge Martin dissented, stating that although motions to reopen are subject to time and number limits, those limits do not apply if the motion is based on changed circumstances in his home country.¹⁷³ Because the petitioner "submitted hundreds of pages of evidence about how conditions in China have changed since his initial application for asylum was denied," she stated the BIA should have considered the evidence.¹⁷⁴

IV. OTHER COMMON ISSUES

Due to the multifaceted nature of immigration law, issues not fitting quite as neatly into the aforementioned categories exist, such as naturalization and habeas corpus. Illustrations of such cases are summarized below.

A. Naturalization

In *United States v. Osorto*,¹⁷⁵ the Eleventh Circuit affirmed the defendant's sentence, thereby rejecting Osorto's procedural due process and equal protection challenges to the U.S. Sentencing Guidelines Manual Sections 2L1.2(b)(2)¹⁷⁶ and (3)¹⁷⁷ because those subsections

168. *Id.* at 746.

169. 138 S. Ct. 2105 (2018).

170. *Lie Ye Xiao*, 846 F. App'x at 746.

171. *Id.*

172. *Id.* at 746, 748.

173. *Id.* at 748 (Martin, J., dissenting).

174. *Id.* at 748–49 (Martin, J., dissenting).

175. 995 F.3d 801 (11th Cir. 2021).

176. 18 U.S.C. App'x § 2L1.2(b)(2) (2018).

177. 18 U.S.C. App'x § 2L1.2(b)(3) (2018).

unlawfully discriminate against noncitizens.¹⁷⁸ Because Osorto had been convicted of a felony with a sentence of at least five years while in the United States illegally, ordered to be deported, reentered illegally, and then ordered to be deported upon his second illegal reentry, the pre-sentence investigation report recommended a four-level increase pursuant to section 2L1.2(b)(3)(D)¹⁷⁹ at his sentencing hearing, which the district court adopted.¹⁸⁰ The court held that: (1) defendant's challenge to section 2L1.2(b)(2) was foreclosed by circuit precedent; (2) Osorto's argument "consider[ed] the wrong universe of individuals" for an equal protection challenge because section 2L1.2(b)(2) and (3) "do not apply to *all* noncitizens convicted of any crime[;]" but rather to "noncitizens who both have illegally reentered the United States and have been convicted of other crimes[;]" (3) through 8 U.S.C. § 1326(b)¹⁸¹, Congress "determined that illegally reentering the United States after being deported following conviction on another crime is a more serious offense than simply illegally reentering the United States, and that conduct should be deterred[;]" (4) Congress vested the United States Sentencing Commission with "responsibility for fostering and protecting the interests of, among other things, sentencing policy that promotes deterrence and appropriately punishes culpability and risk of recidivism[;]" and (5) "subsections 2L1.2(b)(2) and (3) are rationally related to the Commission's stated interests in issuing them."¹⁸²

In *United States v. Izquierdo*,¹⁸³ in violation of 18 U.S.C. § 1425(a),¹⁸⁴ Izquierdo pleaded guilty to unlawful procurement of naturalization and citizenship.¹⁸⁵ Specifically, he committed perjury when indicating on his Immigration Form N-400 Application for Naturalization that he had never committed a crime for which he was not arrested.¹⁸⁶ A year later, he pleaded guilty to conspiring to commit fraud for the past three years. Then, after pleading guilty to violating section 1425(a), he appealed, contending, among other things, that the application terms "crime" and "offense" are so broad that the question was unconstitutionally vague and required him to incriminate himself.¹⁸⁷ The Eleventh Circuit

178. *Osorto*, 995 F.3d at 808.

179. 18 U.S.C. App'x § 2L1.2(b)(2)(D) (2018).

180. *Osorto*, 995 F.3d at 809.

181. 8 U.S.C. § 1326(b) (1996).

182. *Osorto*, 995 F.3d at 808.

183. 853 F. App'x 361 (11th Cir. 2021) (*per curiam*).

184. 18 U.S.C. § 1425(a) (2002).

185. *Izquierdo*, 853 F. App'x at 362.

186. *Id.*

187. *Id.* at 362, 364–65.

disagreed, holding that the void-for-vagueness doctrine¹⁸⁸ did not apply to an immigration naturalization form—only criminal offenses.¹⁸⁹

In *Hylton v. U.S. Attorney General*,¹⁹⁰ the Eleventh Circuit held that 8 U.S.C. § 1227(a)(2)(A)(iii),¹⁹¹ which provides for the removal of an alien convicted of an aggravated felony after admission, did not apply to an alien who was an American citizen at the time he was convicted of the felony.¹⁹² It further held that denaturalization of the alien who obtained his citizenship by fraud did not have retroactive effect to render the alien removable based on his conviction.¹⁹³ The day of Hylton's naturalization ceremony, he falsely affirmed that since his naturalization interview, he had not knowingly committed a crime or offense not resulting in an arrest.¹⁹⁴ "Six days before the ceremony, Hylton had robbed a bank," for which he pleaded guilty the next year.¹⁹⁵ Because he was an American citizen by the time he pleaded guilty, he could not be removed according to the plain language of section 1227(a)(2)(A)(iii).¹⁹⁶ Furthermore, because Hylton was not an alien at the time of his conviction, the court held that he thus could not be denaturalized.¹⁹⁷

B. Habeas Corpus

In *Sebastian-Soler v. Noble ex rel. Clerk of the Court*,¹⁹⁸ the Eleventh Circuit held that under 28 U.S.C. §§ 1734¹⁹⁹ and 1735,²⁰⁰ a noncitizen was not entitled to relief.²⁰¹ In 1969, Sebastian-Soler emigrated to the United States and obtained permanent resident status before applying for naturalization, which was denied for lack of prosecution. Four years later, he was convicted of seven felony counts. After being released from

188. The due process void-for-vagueness doctrine "bars enforcement of a [criminal] statute which either forbids or requires the doing of an act in terms so vague that [individuals] of common intelligence must necessarily guess at its meaning and differ as to its application." *United States v. Lanier*, 520 U.S. 259, 266 (1997).

189. *Izquierdo*, 853 F. App'x at 365.

190. 992 F.3d 1154 (11th Cir. 2021).

191. 8 U.S.C. § 1227(a)(2)(A)(iii) (2008).

192. *Hylton*, 992 F.3d at 1161.

193. *Id.*

194. *Id.* at 1156.

195. *Id.*

196. *Id.* at 1161.

197. *Id.*

198. 845 F. App'x 812 (11th Cir. 2021) (*per curiam*).

199. 28 U.S.C. § 1734 (1948).

200. 28 U.S.C. § 1735 (2021).

201. *Sebastian-Soler*, 845 F. App'x at 815.

prison, removal proceedings were initiated. The IJ issued a removal order to his home country of Cuba, and the BIA affirmed. The Eleventh Circuit dismissed his initial appeal in 2005, and then moved the BIA to reopen his removal proceedings twelve years later, which it denied. Sebastian-Soler then filed his second motion to reopen, arguing that he had new evidence—specifically, Administrative Order (AO) 84-11—indicating he had become a naturalized citizen, which the BIA denied.²⁰² The Eleventh Circuit subsequently dismissed his appeal.²⁰³

“The appellees now have moved for summary affirmance of the district court’s dismissal of Sebastian-Soler’s complaint seeking certified copies of AO 84-11, arguing that 28 U.S.C. §§ 1734 and 1735 do not permit Sebastian-Soler to obtain the relief that he seeks.”²⁰⁴ Section 1734 allows for certain substitutes of certified records.²⁰⁵ Section 1735, however, states: “Whenever the United States is interested in any lost or destroyed records or files of a court . . . , the clerk . . . and the United States attorney for the district shall take the steps necessary to restore such records or files . . .”²⁰⁶ In other words, section 1735 applies only when the United States is a party to a pending or contemplated legal proceeding where a certified copy of the record is requested and available or when the United States is the party seeking to establish the record.²⁰⁷ Neither of those circumstances applied here, and the Eleventh Circuit granted the motion for summary affirmance.²⁰⁸

V. CONCLUSION

The cases discussed herein are those that announce important issues, add flourishes to the existing standards and rules, offer important reminders of precedent and practice points, or otherwise illuminate the boundaries of the Eleventh Circuit’s immigration jurisprudence. During this Survey period, the Biden Administration began implementing new policies for individuals entering the United States that took a different direction from the previous administration.²⁰⁹ The next Survey period will likely determine how the Eleventh Circuit will interpret those.

202. *Id.* at 813–14.

203. *Id.*

204. *Id.*

205. 28 U.S.C. § 1734.

206. 28 U.S.C. § 1735(b) (1948); *Sebastian-Soler*, 845 F. App’x at 814.

207. *Sebastian-Soler*, 845 F. App’x at 815.

208. *Id.*

209. See *FACT SHEET: The Biden Administration Blueprint for a Fair, Orderly, and Humane Immigration System*, WHITE HOUSE BRIEFING ROOM (July 27, 2021),

<https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/27/fact-sheet-the-biden-administration-blueprint-for-a-fair-orderly-and-humane-immigration-system/>.