No.

IN THE

SUPREME COURT OF THE UNITED STATES

Pierre GENEVIER (Pro se) — PETITIONER

vs.

Mr. Brian DeMore

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO

Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Pierre GENEVIER

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Petitioner (pro per) and Appellant/plaintiff

QUESTION (S) PRESENTED

1) Whether **8 USC 1252 (e)** gives the District Court jurisdiction over habeas corpus review of expedited removal order under 8 USC 1225 (b) (1), and requires the Court to allow a hearing under 8 USC 1229 a when it determines that the order is not an expedited removal order under 8 USC 1225 (b) (1)?

2) Whether **28 USC 1631** allows the Court to transfer a timely filed petition to review an expedited removal order to the proper Court when the petitioner is of good faith and confused about where to file his petition?

3) Whether Mr. DeMore's 'expedited' removal order (and the lower courts' decisions) violates petitioner's constitutional right to due process in his application to adjust to permanent resident status and in his various related lawsuits against the administrations and their civil servants?

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Internet links for petition and appendices:
This petition is also on the Internet at
http://pgenevier.110mb.com/npdf/petsupdeportation12-15-09.pdf;
App. A: Ca9 order affirming the DC order dated 7-22-09,
http://pgenevier.110mb.com/npdf/dec08-55492-7-22-09.pdf;
App. B: Ca9 order denying petition for rehearing dated 11-2-09,
App. C: Order dismissing the habeas petition dated 2-15-08,
http://pgenevier.110mb.com/npdf/dechabeas08-881-2-15-08.pdf;
App. D: Removal order (D1), http://pgenevier.110mb.com/htm/deportorder1-11-08.pdf;
Acknowledgment of receipt of asylum application (D.2),
http://pgenevier.110mb.com/htm/asylumappliackreci5-14-2.pdf;
Refugee Verification of Status dated 9-5-02 (D.3),
http://pgenevier.110mb.com/npdf/verifstat9-5-02s.pdf;
ALJ Tolenino's decision dated 2-5-03 (D.4),
http://pgenevier.110mb.com/htm/aljtolentinodec2-5-03-2.pdf;
Letter from Mr. Christian, USCIS Director (D.5),
http://pgenevier.110mb.com/pdf/INSEADrequest.pdf;
Letter response to Mr. Christian, USCIS Director, dated 11-4-04 (D.6),
http://pgenevier.110mb.com/npdf/letchristian11-4-04.pdf;
A03 refugee EA card 12-10-04 (D.7 p1),
http://pgenevier.110mb.com/pdf/eacard12-10-04+explanation.pdf,
and A3 EA card 12-04-08 with explanation (D.7 p. 2-4),
http://pgenevier.110mb.com/htm/refeacard12-3-08-2.pdf;
G 845 form verifying the validity of the 12-10-04 refugee A3 EA card on 10-5-05 (D. 8),
http://pgenevier.110mb.com/htm/g845-10-5-05.pdf;
Petition for writ of habeas corpus (D.9),
http://pgenevier.110mb.com/npdf/habeascorpus2-7-08.pdf;
Ca9 order staying the deportation dated 4-17-08 (D.10),
http://pgenevier.110mb.com/pdf/order4-17-08in08-55492.pdf;
Denial of I-485 application to adjust to permanent resident status (from refugee status) (D.11),
http://pgenevier.110mb.com/npdf/i-485denialdec12-19-08.pdf;
In absentia decision denying asylum dated 1-23-03 (D.12),
http://pgenevier.110mb.com/npdf/immjudgedec1-23-03.pdf;
Altered verification of status issued by INS (D. 13),
http://pgenevier.110mb.com/htm/alteredverifstatus.pdf.

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APPENDIX D: Removal order issued on 1-11-08 (2 p., **D.1**); Acknowledgment of receipt of asylum application (1 p., **D.2**); Verification of status listing appellant as a refugee (2 p. **D.3**); ALJ Tolenino' s decision dated 2-5-03 (6 p., **D.4**); Letter from Mr. Christian, USCIS Director (2 p., **D.5**), Letter to Mr. Christian USCIS Director dated 11-4-04 (4p.,**D.6**), A03 Refugee Employment Authorization Card dated 12-10-04 and A3 card dated 12-04-08 with explanation letter (4 p. **D.7**); G 845 form verifying the validity of the 12-10-04 refugee A3 EA card on 10-5-05 (2p., **D. 8**); first pages of the petition for writ of habeas corpus (1 p., **D.9**); Ca9 order dated 4-17-08 staying deportation order (3 p., **D.10**); Denial of application to adjust to permanent resident status (from refugee status) (3 p., **D.11**), In absentia decision denying asylum (2p., **D.12**); Altered Verification of Status issued by INS (3p., **D. 13**).

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Kendal v. Visa USA inc. 518 F. 3d 1022 (9 circ. 2008)	23
Iasu v. Smith 511 F.3d 881, 889 *(9 Circ. 2007*)	13, 19
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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States Court of Appeals appears at **Appendix A** to the petition and is the Order affirming the District Court order. **[X] is unpublished**.

The opinion of the United States District Court appears at **Appendix C** to the petition and is the District Court order dismissing petitioner's habeas corpus petition without prejudice. **[X] is unpublished.**

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case **was 7-22-09.** **[X] A timely petition for rehearing** was denied by the United States Court of Appeals on the following date: **11-2-09**, and a copy of the order denying rehearing appears at **Appendix B**.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

14th Amendment, Right to a due process.

8 USC 1252 a (5) Exclusive means of review
Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e) of this section. For purposes of this chapter, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms "judicial review" and "jurisdiction to review" include habeas corpus review pursuant to section 2241 of title 28, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).

8 USC 1252 (e) Judicial review of orders under section 1225 (b)(1)
…(2) Habeas corpus proceedings
Judicial review of any determination made under section 1225 (b)(1) of this title is available in habeas corpus proceedings, but shall be limited to determinations of—
(A) whether the petitioner is an alien,
(B) whether the petitioner was ordered removed under such section, and
(C) whether the petitioner can prove by a preponderance of the evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title, such status not having been terminated, and is entitled to such further inquiry as prescribed by the Attorney General pursuant to section 1225 (b)(1)(C) of this title.
… (4) Decision
In any case where the court determines that the petitioner—
(A) is an alien who was not ordered removed under section 1225 (b)(1) of this title, or
(B) has demonstrated by a preponderance of the evidence that the alien is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title, the court may order no remedy or relief other than to require that the petitioner be provided a hearing in accordance with section 1229a of this title. Any alien who is provided a hearing under section 1229a of this title pursuant to this paragraph may thereafter obtain judicial review of any resulting final order of removal pursuant to subsection (a)(1) of this section.
(5) Scope of inquiry
In determining whether an alien has been ordered removed under section 1225 (b)(1) of this title, the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner. …

28 USC 1631 Transfer to cure want of jurisdiction
Whenever a civil action is filed in a court as defined in section 610 of this title or an appeal, including a petition for review of administrative action, is noticed for or filed with such a court and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed in or noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

<u>STATEMENT OF THE CASE</u>

<u>A The Facts</u>

On 1-11-08, Mr. Brian DeMore issued an '*expedited*' removal order (App. D.1) arguing (1) that petitioner had **stayed beyond** (the) **7-15-02** (Visa waiver deadline) **without authorization from the ICE office** and (2) that **he had never requested asylum**, but this is not true so the removal order is manifestly illegal according to INA 240 as seen below. Unfortunately, the District Court pretended that the (New) Real ID Act deprived it of jurisdiction to review petitioner's habeas petition under **8 USC 1252 (e)** and that it could not transfer the case to the Appeals Court (this is not true either, but the Appeals Court still affirmed), so petitioner must ask the Supreme Court to correct this grave injustice and to explain the lower courts that the Real Id Act did not deprive them and the immigration court of the right **and obligation** to review full of lies deportation order, but first petitioner presents a short description of the pertinent facts.

1) The asylum application and grant of refugee status.

Petitioner is a native citizen of France who entered the United States on April 16, 2002, on the visa waiver program, <u>and then applied for political asylum **on 5-14-02** (App. D.2)</u>. On 7-16-02, his application was referred to the Immigration Court (IC) by the Santa Ana INS asylum office, and on 8-27-02 the immigration Judge set the hearing date for 1-23-03. **On 9-5-02,** petitioner applied for Los Angeles County General Relief benefits, and as part

of the application was directed to the INS office to obtain a verification of his immigration status. The 'INS' status verifier, Mr. Mahoney, identified petitioner **as a 'refugee'** (App. D.3), and 2 weeks later petitioner's application for **Refugee** Cash Assistance (RCA) benefits was approved, but: (1) certain refugee benefits were denied, and (2) the LAC DPSS eventually pretended that petitioner was not a refugee anymore on 12/02/02!

From 9-25-02 to 11-13-02 petitioner contacted two INS attorneys, the Director of the asylum office, and a deportation officer to obtain another document stating that he is a refugee and **also to have his case closed at the Immigration Court** as he was told to do by the IC's clerk supervisor. These 4 INS employees told him [directly or indirectly, in writing or verbally] that the status verifier (Mr. Mahoney) had done an error in reading the record and that they could **not** see on their computer that petitioner was listed as a refugee (!), but these statements were contradicted **on 11-13-02** by several status verifiers who confirmed to petitioner that they had made no error and that they even had the date at which the asylum was granted (!).

So on 11-14-02, petitioner contested the denial and early termination of benefits, and the incorrect allegations on his refugee status in a request for hearing at the DSS administrative court, and **obtained an administrative law judge decision on 2-5-03 mostly in his favor** confirming his refugee status and asking the DPSS to pay 8 additional months of RCA (App. D.4), but the DPSS refused to comply fully with ALJ Tolentino's decision and to

formally appeal it during the one year period for the appeal although it used an **altered** verification issued by INS (App. D. 13) to continue to deny the benefits and argue that petitioner was not a refugee anymore. **The ALJ decision then became final for collateral estoppels' purpose** on this issue of the confirmation of petitioner refugee status on 2-5-04.

2) The in absentia decision denying asylum, various complaints and lawsuits, and the denial of I-485 application.

'Almost concurrently', o**n 1-23-03** the Immigration Court ignored petitioner motion to close his asylum case and entered an in absentia decision (App. D.12) although petitioner had informed the Court that he would not attend the hearing because he was sick. Petitioner complained at the INS Audit Office from 1-14-03 to 4-20-03, about the lies of the 4 INS employees he contacted concerning his refugee status and presented the 2 contradictory decisions (ALJ Tolentino and IC in absentia decisions) he received, but the INS management did not respond to the complaint or oppose the confirmation of petitioner's refugee status by ALJ Tolentino, **on the contrary** the Director of the USCIS National Refugee Center, Mr. Christian, **confirmed also** the refugee status **on 12-10-04** when he issued a A3 refugee EA card (App D.7) based on the verification of status listing petitioner as a refugee, ALJ Tolentino's decision and (**most certainly**) the collateral estoppels principle (see his request App. D.5 and the response in App. D.6).

Petitioner filed several lawsuits to denounce the negligence, the misrepresentations on his status, the violation of civil rights, and the

conspiracy to hurt him,, by civil servants,, and to obtain a compensation for the grave damage he suffered [he was sent more than 16 times in the street in 2002-03, he could not resettle and later even became very sick over a 7 years period]. And **on 1-11-08** the LA ICE office issued the unfair and full of lies expedited removal order (App. D.1) although the various administrations could have easily (**<u>and should have</u>**) addressed much earlier petitioner's refugee status issue in court in the related cases; then Mr. DeMore did not respond to petitioner's motion to reconsider the removal. Later on **12-8-08** the USCIS office denied petitioner's I-485 application to adjust to permanent resident status from refugee on the ground that he is not a refugee (see App. D.11), and petitioner's A3 refugee EA card was also **terminated <u>on 1-6-09</u>** based on the full-of-lies-removal-order (!).

<u>B Procedural History after the removal order.</u>

Less than 30 days after the removal order was issued, petitioner filed **on 2-8-08** a petition for writ of Habeas Corpus (App. D.6) to obtain a hearing on the evidences that **(a)** he applied for asylum and **(b)** <u>was granted refugee status</u> (asylum) [pursuant to 8 USC 1252 (e)], **but on 2-15-08**, Judge Andrew Guilford's dismissed the petition **without prejudice** on the ground that he did not have jurisdiction, that the petition for review should be filed at the Ca9 Appeals Court directly pursuant to 8 USC 1252 a5, and that the order was '***apparently***' **<u>not</u>** an order under 8 USC 1225 (b) (1) (App. C).

Following petitioner's request for leave to appeal on 3-27-08 to try to clarify the issue of the removal order nature [8 USC 1225 (b) (1) or not] and respondent's opposition and motion for summary affirmance, the Ca9 Appeals Court, on 4-17-08 (see App. D.10), **(1)** granted petitioner's stay of deportation, **(2)** ordered the appointment of a pro bono counsel, and **(3)** requested the parties to brief at least two issues [whether appellant applied for and/or was granted refugee status (asylum)? and, what process, if any, is available to appellant to review the January 11 2008 Notice of Alien Determination of Deportation?]. Counsel was appointed on 7-8-08, but unfortunately, the pro bono lawyer, **a former AUSA**, 'overlooked' a conflict of interest, had an unethical behavior to help his former colleague AUSA party in the related case 05-7517, and later withdrew. The Ca9 refused to appoint another pro bono lawyer, and o**n 7-22-09,** after the case was fully briefed**,** the Ca9 affirmed the District Court order on the ground that the DC did not have jurisdiction to review the removal order (App. A); it also forgot to address the transfer issue and the 2 issues it had asked the parties to brief and **later denied a rehearing on 11-2-09** (App. B). Four related lawsuits are still pending [AP no 07-56730 a deprivation of civil right, conspiracy and a negligence causes of action against the US, the LA County and several civil servants; 2 cases AP no 08-55236 for negligence and DC no 08-5681 for the unfair denial of SSI benefits against the SSA, and the Superior Court case no BC 364 736 for negligence against the LA County]. An application to stay the removal order addressed to Justice Kennedy is filed concurrently.

REASONS FOR GRANTING THE PETITION

A Introduction.

The petition for writ of certiorari should be granted **for 2 reasons**: **first**, because the Real Id Act has brought a lot of confusion in some judges mind as the Ca9 judges admitted it themselves [in Iasu, the 9 Circ. Appeals Court writes '*the maze of immigration statutes and* ***amendments is notoriously complicated*** *and… the* ***recent amendments under real ID act do not make our task any easier***']; and the petition gives the US Supreme Court a chance to clarify (the Real Id Act on) the issues of review of expedited removal order under **8 USC 1252** e and of transfer of timely petition under 28 USC 1631 for everyone 's benefits, in addition to correct a grave injustice. As the Court will see below, both the District Court and the Appeals Court ignored **(1)** that 8 USC 1252 e is an **exception** to the Appeals Court's exclusive jurisdiction to review removal order, and **(2)** that 8 USC 1252 e required the Court to allow a review under 8 USC 1229 a if the removal order was found **not** to be an expedited removal order under 8 USC 1225 b 1. RFAP states in section 12:207. '*After newly –enacted federal statutory provision have worked their way through the Courts, the Supreme Court may grant certiorari to* ***explain, clarify, approve or disapprove lower court interpretations*** *[see Hazen Paper Co. v. Biggins, 507 US 604, 608 (1993)…]*', so the petition meets the criteria of the Court to select a case.

Second, certiorari should be granted because **the full-of-lies-**

removal-order and illegal according to INA 240 **(**and the 2 lower courts decisions) **(1) violate** petitioner constitutional right to a due process in his application to adjust to permanent resident status (as ***in Freeman)*** because it (they) ignores petitioner's refugee status and prevents the honest review of his refugee documents, and in his related lawsuits because the removal prevents petitioner from defending his cases**. The removal also (2) covers up** the grave administrations' wrongdoings that took place over 7 years on petitioner 's case, including the various judicial misconducts at the USDOJ and Ninth Circuit Appeals Court (and other courts) and the negligence, deprivation of right and a conspiracy to hurt petitioner [as explained in the related previous petition (09-6525), the initial lies at the INS on petitioner refugee status were followed by a deluge of grave wrongdoings, even criminal ones – see altered verification of status (App. D.13)], and **(3) leads to a gross miscarriage of justice**. Again the US Supreme Court may review constitutional issues, and sometimes review cases to avoid gross miscarriage of justice, so the case fits the Court's standard on these grounds too.

B The Real ID Act and the confusion on the review of expedited removal order under 8 USC 1252 (e) and on the transfer under 28 USC 1631.

The District Court order and the inappropriately motivated Appeals Court decision prove that the review of expedited removal order is not well understood as the Court will see below.

1) 8 USC 1252 (e) is an exception to Appeals Court's exclusive jurisdiction to review removal order, and 1252 (e) (4) required the District Court to allow a hearing pursuant to 8 USC 1229 a [Quest. 1].

In its 2-15-08 order (App. C), the District Court ruled **(1)** that it did **not have jurisdiction** to review the removal order (a) because of the Real ID Act [see order on page 2 '*Real ID act of 2005 stripped district courts of habeas jurisdiction*'], and **(**b) because it thought that appellant's **assertion** that the removal order (App. D.1) was an order under 8 USC 1225 (b) (1) **was incorrect** [see page 3: '*Petitioner contends that he was ordered removed under 8 USC 1225 (b) (1)…**Petitioner's contention is incorrect**, as …. Given these circumstances, the provisions of 8 USC 1225 (b) (1) have **no apparent** bearing on petitioner's claim.*']; and **(2)** that it could **not** transfer the case to the Appeals Court because of the Real ID Act [see page 4 '*Absent jurisdiction, the Court next addresses the issues of whether the action **should be** dismissed **or transferred** to the Ninth Circuit…*'], and therefore that it had to dismiss the petition **without prejudice** to petitioner '*seeking relief from the Ca9*' [see page 4], but **first** 8 USC 1252 e is an exception to the exclusive means of review mentioned in 8 USC 1252 a 5, and **second** under 8 USC 1252 (e) (4) the District Court did (does) **not** have the possibility to dismiss **without prejudice** the petition, it had at least to allow a hearing under 8 USC 1229 a as seen below.

a) 8 USC 1252 a 5 exception to the exclusive means of review by appeals court.

8 USC 1252 (a) (5) states: **(5) Exclusive means of review** Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an

appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, **except as provided in subsection (e) of this section**.

It is obvious that part 5 of 8 USC 1252 a states that **section 1252 e is an exception to the exclusive means of review (by appeals court);** and it makes perfect sense in the context of 1252 e that allows **only** a review of genuine issues of facts [whether the petitioner is an alien, removed under an expedited removal order and whether he was granted refugee status or permanent resident status,]. As the Court knows, the District Courts have jurisdiction over genuine issues of facts under 28 USC 2201, so it would be absurd to ask the Appeals Court to receive the petitions under 8 USC 1252 e and then to transfer them to District Courts to review the issues of fact as it does under 8 USC 1252 (c) (5) (B) to review citizenship's issues of fact, and later to re-transfer the case to immigration courts to allow a hearing under 1229 a. Both the district court and the appeals court ignored this exception of the 1252 a 5 provision, and of course the appeals court did not address the 2 issues it required the parties to brief and/or the transfer issue, so their incorrect decisions should be reversed.

b) 8 USC 1252 (e) (4) requires the Court to allow at least a hearing under 8 USC 1229 a.

8 USC 1252 (e) (4) states: '*In any case where the court* ***determines that the petitioner—***
(A) *is* ***an alien who was not ordered removed under section 1225 (b)(1) of this title, or***
(B) *has demonstrated by a preponderance of the evidence that the alien is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under*

section 1158 of this title, ***the court may*** ***order no remedy or relief other than to require that the petitioner be provided a hearing in accordance with section 1229a of this title****. Any alien who is provided a hearing under section 1229a of this title pursuant to this paragraph* ***may thereafter obtain judicial review of any resulting final order of removal pursuant to subsection (a)(1) of this section****.'.*

Moreover, after the District Court had determined that petitioner was **not** removed under 8 USC 1225 (b) (1) (see order App. C page 3), it could order, according to 1252 (e) (4), '**no other remedy or relief'** than to require that petitioner be provided a hearing in accordance with section 1229 a [the section even stipulates that the petitioner may obtain **thereafter** judicial review pursuant to subsection (a) (1) as seen above]; so the District Court incorrectly dismissed the petition without prejudice and incorrectly concluded that it did **not** have jurisdiction under Real ID Act – it had **at least** jurisdiction to order that petitioner be provided a hearing in accordance with section 1229 a after it concluded that the deportation order was not a removal under 8 USC 1225 (b) (1) (and the Appeals Court incorrectly affirmed the decision). The front page of the habeas petition clearly requested a review pursuant to 8 USC 1252 (e) (see App. D.9).

2) The case was transferable pursuant to 28 USC 1631[Quest. 2].

If the Supreme Court still concludes that 1252 a5 has a different meaning and that the Appeals Court had/has jurisdiction to review habeas petitions under 8 USC 1252 e, **it has to conclude** that the District Court still should have transferred the case **pursuant to 28 USC 1631** because

appellant's request for review under 1252 e was filed **within the required 30 days** and it is in the interest of justice **in the context of** a pro se petitioner who was confused about the jurisdiction and in good faith when filing his petition at the District Court, and of a full-of-lies-removal-order.

a) The Case Puri v. Gonzales 464 F. 3d 1038.

The case was transferable pursuant to 28 USC 1631 [even if it was not transferable pursuant to Real ID Act section 106 (c)] **because** petitioner's case fits perfectly the 3 necessary conditions to transfer a case to the Appeals Court: see the Ca9 decision in *Puri v. Gonzales 464 F. 3d 1038*

- '*An immigration case is "transferable" when the following three conditions are met: (1) the transferee court would have been able to exercise its jurisdiction* ***on the date the action was misfiled****; (2) the transferor court lacks jurisdiction; and (3)* ***the transfer serves the interest of justice****. Chaves Baeta v. Sonchik, 273 F.3d 1261, 1264 (9th Cir.2001); Rodriguez-Roman v. INS, 98 F.3d 416, 424 (9th Cir.1996). … Thus, this case is unlike the usual case in which we have found a transfer to be in the interest of justice because* ***the litigant was unaware of or confused about the proper forum in which to file his action.*** *See, e.g., Kolek, 869 F.2d at 1284 (holding that transfer of improperly filed petition to court of appeals was "in the interests of justice" because petitioner's "errant filing was caused in part by his pro se status, lack of fluency in English, and inability to access legal research materials in prison"); Paul v. INS, 348 F.3d 43, 47 (2d Cir.2003)* ***(concluding that transfer of petition to court of appeals was in the interest of justice because § 1631 was intended to aid litigants who were confused as to the proper forum for review and "there [was] no evidence in this case that [petitioner] filed with the district court in bad faith****").*

As the Court knows, petitioner, a pro se, filed his petition on 2-8-08 (App. D.9) within **the 30 days limit after the removal order was issued on 1-11-08**, and he was confused **(1)** by the lies in the removal order, **(2)** by

the fact that the removal order had all the characteristics of an expedited removal order under 8 USC 1225 (b) (1) and **(3)** by the fact that 8 USC 1252 (a) (5) clearly states that a review pursuant to 8 USC 1252 (e) **is an exception to the general rule stripping District Courts from Habeas review jurisdiction**, as seen above in 8 USC 1252 (a) (5).

Petitioner even explained his confusion to the Appeals Court in March and April 2008 when he asked the Court to either allow the appeal or transform the appeal into a petition for review, so the 3 conditions mentioned in Puri were met: ***(1) the transferee court would have been able to exercise its jurisdiction*** *on the date the action was misfiled* [if the US Supreme Court decides that the Ca9 has jurisdiction to review under 8 USC 1252 e]*;* ***(2) the transferor court lacks jurisdiction*** [again if the Ca9 had jurisdiction]*; and (3)* ***the transfer serves the interest of justice*** *(*according to Puri's case conclusions seen above). In *Iasu v. Smith* 511 F.3d 881, 889 *(9 Circ. 2007*), the Ca9 referred to two recent cases law from other circuits [*Wang v. Depart. of Homeland Security, 484 F. 3d. 615, 617 (2nd Circ. 2007)* and *Chen, 435 F. 3d. at 790*] to stress '*that it is improper to allow a habeas petition that was not pending on or before May 11, 2005 to be treated as a petition for review*', **but a careful review** of these two cases shows that (unlike in petitioner's case) the two appellants-aliens had **not** filed their habeas petitions within the 30 days limit after the removal order was issued and therefore that their cases were not transferable pursuant to 28 USC 1631.

The District Court's conclusion (*'because transfer of the matter to the Ninth Circuit is not appropriate, the petition is dismissed'*) **is/was therefore wrong**, and so is the panel's opinion (App. A) that does not rule on the nature of the deportation order or **the correctness of the District Court's ruling on the transfer issue**, especially in the context of the 4-17-08 order.

b) The Ca9 order dated 4-17-08.

The 4-17-09 Ca9 order (App. D.10) [requesting the parties to brief at least 2 issues after petitioner had requested the Appeals Court to either allow him to appeal the decision or to transform it into a petition for review] **implicitly accepted jurisdiction** to review the order **as if the appeal was a petition for review** (or transformed the appeal into a petition for review) and was meaningful and reasonable because the District Court was obviously 'confused' about what to do on this case as seen above, and because it gave a chance to the Ca9 to review the various possibilities available, and to choose which one it thought was the most appropriate one [to teach the District Courts and other potential plaintiffs what to do in various cases, **there seems to be no recent Ca9 cases** (apart form this one) addressing the review pursuant to 8 USC 1252 e, and the prior to 2005 cases clearly let district courts review those orders, moreover in the context of this case there seem to be 3 possibilities to review the order: (a) review under 8 USC 1252 e, (b) 1252 a5, and (c) motion to reopen at the Immigration Court because of the

frauds that took place on the case and of petitioner' s diligence over 7 years to discover them. '*CA9, selected topics, immigration outline*' p. 259 states:

'***The ninety-day****/one-motion limitations are not jurisdictional, and* ***are amenable to equitable tolling.*** *See Socop-Gonzalez v. INS, 272 F.3d 1176, 1188 (9th Cir. 2001) (en banc). Equitable tolling is available "when a petitioner is prevented from filing because of* ***deception, fraud, or error****, as long as* ***the petitioner acts with due diligence in discovering the deception, fraud, or error****." Iturribarria v. INS, 321 F.3d 889, 897 (9th Cir. 2003).*'.
Here petitioner could not ask the immigration judge to reopen the case (in February 2003) until he discovers what had happened on his refugee status (why the record was altered, by whom, when the refugee status was granted by whom…), and he has been diligent in trying to discover the fraud (what happened) since he filed a complaint of employees misconduct, lawsuits, and even wrote to politicians and administration managers..., so the limitation should be tolled.

c) The conflict with an existing Ca9 decision – Freeman.

Finally, the (7-22-09) panel's decision also conflicts on the transfer issue with an earlier Ca9 opinion (*in Freeman*) in which it transformed an appeal from an habeas corpus petition into a petition for review **when it found that the habeas corpus petition was transferable to the Appeals Court** (see Freeman note 10). The transfers pursuant to 28 USC 1631 and pursuant to Real ID Act section 106 **are 'equivalent'**; and since this case fits the 3 requirements necessary for 28 USC 1631 to apply and was transferable, the Ca9 court should have accepted to transform the appeal into a petition for review (according to and **as in Freeman**, again it implicitly did at first in the 4-17-08 order). The Court will note that the 7-22-09 decision was badly motivated since it used the transfer provision of the real ID act to justify the lack of jurisdiction (!).

<u>C The evidences of refugee status, the violations of right to a due process, and the refugee status is justified on the merits [Quest. 3].</u>

The jurisdiction (or transfer) error is even more unfair **(1)** in the context of a full of lies and illegal according to INA 240 removal order, **(2)** in the context of violations of petitioner's right to a due process in his various lawsuits against the administrations and their civil servants, and of the cover up of grave wrongdoings, and **(3)** in the context of a refugee status that is/was justified on the merits. **And it leads to a gross miscarriage of justice, and an unduly harsh result.**

1) The refugee status evidences, the collateral estoppels principle, and the right to adjustment of status.

The evidences in the record [acknowledgment of receipt of asylum application (App. D.2), verification of status listing petitioner as a refugee (App. D. 3), ALJ Tolentino's decision (App. D.4), A3 refugee EA card dated 12-10-04 (App. D. 7),] **leave no doubt** that the **removal order** (App. D.1) **is illegal according** to INA 240 (c) (3) (A) because it is not '*based upon reasonable, substantial, and probative evidence*', and that appellant was granted the refugee status (asylum) by the INS in 2002 <u>**before** the immigration court rendered its in absentia decision </u>(App. D.12). Mr. DeMore did <u>**not**</u> present any written and/or acceptable evidence that any of appellant's refugee documents were granted by mistake and/or any proof that appellant was not granted refugee status by the INS in 2002 [Mr. Laske in

his brief argued that **petitioner** had written that the status verifier had made a 'clerical error' when he wrote refugee on the verification of status **which is not true**, of course, since petitioner **repeatedly** explained that several status verifiers confirmed on 11-13-02 that they made no error in issuing the document and that they even had the date the asylum was granted as explained in the letter to Mr. Christian (App. D.7), and above p. 9, and in all his pleadings].

Mr. DeMore only presented the in absentia decision of the immigration judge entered in 1-23-03 (App. D.12) to justify his removal order in Court (but obviously not in his order), but this decision does **not** contradict the grant (or even the merits) of refugee status since it does not address the merits of petitioner's asylum application (and does not rule on the motion to close), and **the INS had/has the authority to grant the refugee status (asylum) before the immigration judge reviews the case** [again if an error had been made on petitioner's refugee status, the INS **could have easily** terminated it pursuant to 8 CFR 207.9, it did not, on the contrary, it confirmed it on 12-10-04 (see App. D.5, 6, 7)]. Moreover, in this case the collateral estoppels doctrine applies to the issue of the confirmation of appellant's refugee status in ALJ Tolentino on 2-5-03 (App. D. 4) [the decision ruled that the verification of status listing petitioner as refugee (App. D.3) was a proof of refugee status (grant of asylum) sufficient to grant the RCA benefits] because the 3 conditions mentioned in *Kendal v. Visa USA inc. 518*

F. 3d 1022 (9 circ. 2008) necessary for the collateral estoppels to apply are met [in particular the fact that ICE, USCIS and DPSS **are in privity with each other** when it comes to verifying the status of an alien for eligibility to government benefits purpose]. So petitioner is **a refugee** entitled to adjustment of status to permanent resident status, and the removal and incorrect evaluation of petitioner's refugee documents to deny him his I-485 application clearly violate appellant's right to the due process in his I-485 application (see denial of I -485 in App. D.11) to adjust to permanent resident status **guaranteed by 8 CFR 245.2 as *in Freeman.***

2) The violation of due process in the related lawsuits and the gross miscarriage of justice.

The removal (to France) would prevent petitioner from defending his related lawsuits against the administrations and their civil servants in their individual capacities because he is so poor that he cannot (could not) pay a lawyer to defend his interest here in the US, and he could not send his pleadings by post from France or do the legal research he can do here in Los Angeles. Moreover, in the particular context of the case, the removal is even more unfair because the various administrations involved in the case have also repeatedly and unfairly delayed the honest review of petitioner's refugee documents during the past 7 years to prevent the resolution of the problems earlier, to harass petitioner by forcing him to complain over and over, and to hurt him by stealing him basic social benefits and keeping him under difficult

living conditions [for example: the DPSS should have presented its objection to ALJ Tolentino's decision (App. D.4) with the altered verification of status (App. D.13) in **a formal 'appeal'** at the Superior Court, but it did not, of course, because it knew there was little chance that the Superior Court would use an altered document to reverse an ALJ decision (!); later in the case 08-5681 against the SSA to obtain the SSI benefits, the SSA ALJ pretended that petitioner did not present the 2 pages of his verification of status (App. D.3), and incorrectly addressed the issue of the validity of petitioner's refugee documents according to 20 CFR 416.1618 to deny the SSI, and now the District Judges do the same again although petitioner had 3 valid refugee documents establishing his eligibility for SSI as a refugee in 2005 (see G845 form confirming the validity of A3 EA card in 10-5-05 (app. D. 8); the INS audit office also could have resolved the problem in 2003; etc.].

The evidences in the record also shows that grave wrongdoings took place in the case [for example the INS issued an **altered** verification of status (App. D. 13) in 2003, and the DPSS and DSS used it to influence various proceedings, which is criminal (violation of 18 USC 1546, 1512,); ASU Laske and Robinson have also repeatedly lied on critical issues of fact and law in their briefs and other pleadings to cover up the wrongdoings which is criminal also (violation of 18 USC 1512,) even if their colleagues do not prosecute them,], and of course since several ICE and AUSA offices employees are parties in their individual capacities in the case DC no 05-

7517, AP no 07-56730, the removal would cover up their grave wrongdoings and would even be criminal, and it leads to a gross miscarriage of justice.

3) The refugee status is justified on the merits, and the 'result reached below unduly harsh in its impact'.

Even though it is very rare to see a refugee from France, the refugee status is/was justified on the merits for several reasons that petitioner summarized in his appeal brief and that Mr. DeMore did **not** even contradict. Petitioner was victim of a (very) advertised corruption scandal in France that led to the Senator President of the administration he worked for **being sent to jail in 2001** [it is very rare in France to see a Senator sent to jail, and the scandal that involved several other high level politicians was in the press and media almost every day for years; moreover petitioner testified against the Senator in the criminal proceeding (and the first civil judgment in petitioner's favor had an impact in the criminal case), so the case was/is very unusual and the persecutions plausible, especially in the context of petitioner's computer project proposal to the international community that was supported by many national and international experts]. As the result of the various persecutions including severe economic deprivations, and threat of grave problems for the rest of his life, petitioner suffered a very grave prejudice since as explained in the related petition he lost his job and everything else he had and **was even made owe the administration an important amount of money**.

Finally, petitioner had applied for asylum in Switzerland and Belgium

before coming in the US (to try to resolve the problems 'locally'), and they both violated his fundamental right. For example, Belgium denied asylum with a decision that had been found to violate the European Convention of Human Rights **just 2 weeks before petitioner applied**, so just on this ground alone, petitioner's refugee status was deserved because if Belgium had not violated his fundamental right, he would have been found to be a refugee in Belgium (!). Petitioner has lived a nightmare for more than 16 years because of a very dishonest administration and of very dishonest politicians, and because he developed (too fast) a computer application that would have prevented one of the main frauds, so the removal is extremely unfair, and '***the result reached below is unduly harsh in its impact***'.

D Arguments' conclusion.

The petition presents clear errors and incorrect interpretations of a **newly enacted** legislation (Real ID act), which justifies the grant of certiorari. Moreover, in the context of the case [the pending application for adjustment of status and the related lawsuits against the administrations and their civil servants], the full-of-lies-removal-order (and incorrect lower courts decision) violates petitioner due process right in various legal proceedings which also justifies the grant of certiorari. Finally, it is obvious that **petitioner has shown is goof faith several times** and made many efforts over the (7) years to try to resolve the contradiction problems on his refugee status and that the various administrations could have (and should

have) addressed the issues many times before 1-11-08 during the various proceedings and that they opted to hurt petitioner with lies, treacheries, and crimes even sometimes, and this behavior is unacceptable in an advanced justice system, so the removal (lower court decisions) leads to a '**gross miscarriage of justice**', and '***the result reached below is unduly harsh in its impact***', and it is in the nation interest to point it out.

As explained in the related petition 09-6525, **the Court sometimes grants certiorari to denounce a gross miscarriage of justice** or to **correct unduly harsh decision** as seen in SCP p. 277

['*Despite the Court's general reluctance to grant certiorari solely to correct an erroneous decision below, the Court does sometimes grant review simply to correct an error committed by a lower court. And it does so even though there seems to be no conflicting decision, no novel or important principle of law, and no elements of great public interest at stake…. The Justices may also be motivated by a feeling that* ***the decision represents a gross miscarriage of justice****, or a subtle erosion of statutory of legal principle, or that the result reached below* ***is unduly harsh in its impact****.*'].

For all these reasons, and perhaps the fact that even if the Court does not want to review the entire case in detail, it can only address the jurisdiction and transfer issues in a short order asking the lower courts to grant a hearing on the validity of the refugee documents and on the application of the collateral estoppels principle to his case, **certiorari should be granted**.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: December , 2009 Pierre Genevier

No.

IN THE

SUPREME COURT OF THE UNITED STATES

Pierre GENEVIER (Pro se) — PETITIONER

vs.
Mr. Brian DeMore

Respondent

“As required by Supreme Court Rule 33.1(h), I certify that the document contains ___**7856**__ words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).
“I declare under penalty of perjury that the foregoing is true and correct.

Executed on December , 2009.

____

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PROOF OF SERVICE

I, Pierre Genevier, do swear or declare that on this date, December 14, 2009, as required by Supreme Court Rule 29, I have served the enclosed **MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS, PETITION FOR A WRIT OF CERTIORARI** on each party to the above proceeding or that party's counsel, and on every other person required to be served, by hand delivering or faxing or emailing or mailing the above documents.

The names and addresses of those served are as follows:

Mr. Tim Laske, Special Assistant US Attorney, Attorney for Mr. DeMORE**, at** Room 7516 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012, Fax: (213) 894-7819**.**

The Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December , 2009

Pierre Genevier