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<sup>2</sup>At the time of the court's prior Memorandum, Welch was



Id. "Because some of the[se] examples could be squeezed into one of the three listed actions if the actions were to be read expansively, the examples reinforce the Court's express statement that § 1252(g) 'applies only to three discrete actions' and its description of its reading of § 1252(g) as a 'narrow' one."

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<sup>4</sup>In reaching this conclusion, the Fourth Circuit relied on the AADC Court's narrow reading of Section 242(g). Bowrin, 194 F.3d at 488.

statute, requiring administrative exhaustion would be futile.

See 06/06/2000 Mem. Op. at 9-10 (citing cas 2d support this(7) Tj 682.0

discretionary cancellation of removal under the post-IIRIRA law. See Pet. Suppl. Mem., Ex. 2 at 39 ("it appears that the bar to cancellation of removal would not apply to the petitioner and indeed he may be able to apply for cancellation of removal." ).<sup>6</sup>

Welch's July 22, 1994 convictions have been vacated. Therefore, the April 1999 guilty plea is the only remaining conviction for which Welch may be deported. Nonetheless, INS maintains that pre-IIRIRA law applies to Welch because, based on his 1994 conviction, he was "in deportation proceedings" prior to the effective date of the IIRIRA amendments. See Resps. Suppl. Mem. at 8-9.

INS's position is contrary to both the Attorney General's regulations and the INS's position in other cases. 8 C.F.R. § 240.40 states that a deportation proceeding is commenced by

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<sup>6</sup>INS has not contested Welch's ability to apply for cancellation of removal under post-IIRIRA laws.







