22-1026, Shaker Ullah v. Merrick Garland (BIA)	**IMMIGRATION: Whether the Board erred by placing the burden on the Petitioner to show that he could not safely relocate; related issues.**

Appellant's Summary of Argument

The BIA violated both federal regulations and its own precedent in finding that Petitioner could safely and reasonably relocate within Pakistan. Under federal regulations, DHS bears the burden of showing both that a victim of past persecution could avoid future persecution through internal relocation and that it would be reasonable under all the circumstances to expect the noncitizen to relocate. 8 C.F.R. 1208.13(b)(1)(ii), (b)(3)(ii) . Although the BIA stated that DHS carried its burden of showing that Petitioner could relocate, its actual analysis shows that it placed the burden on Petitioner to show that he could not relocate.

The BIA also violated *Matter of M-Z-M-R-*, 26 I&N Dec. 28 (BIA 2012), by failing to identify a "specific area" of Pakistan where Petitioner could relocate and by failing to explain why Petitioner's fear of persecution would fall below the well-founded level in the place of relocation. Although the BIA mentioned Islamabad in its decision, it did not specifically designate Islamabad as the place of relocation. Nor did the Board explain why Petitioner's fear of persecution in Islamabad (or another part of Pakistan) would not be objectively reasonable.

If the Court rejects Petitioner's prior arguments, it should reverse the BIA's determination that DHS demonstrated that Petitioner could safely and reasonably relocate within Pakistan. Although the Court has historically reviewed such determinations for substantial evidence, intervening precedent makes clear that it should apply *de novo* review to the ultimate determination of whether a noncitizen's fear of persecution is objectively reasonable and, if so, whether it would be reasonable to expect the noncitizen to relocate. *Guerrero-Lasprilla v. Barr*, 140 S. Ct. 1062 (2020); *Galvan v. Garland*, 6 F.4th 552 (4th Cir. 2021).

Even if the Court applies substantial evidence review, no reasonable adjudicator could find that DHS established that Petitioner could relocate to a part of Pakistan where he would not have a well-founded fear of persecution. Contrary to the BIA's apparent belief, any reasonable person in Petitioner's circumstances would fear persecution throughout Pakistan. The persons Petitioner fear belong to the Taliban, a designated terrorist organization that has killed tens of thousands of Pakistanis, including 16 in an attack on a fuel truck belonging to his family's business. Members of the Taliban not only threatened to kill Petitioner, but actually attempted to do so. The persons who attempted to kill Petitioner subsequently threatened to find him "wherever" he went. And even if the Taliban does not physically locate Petitioner, it could still persecute him merely by continuing to threaten him with death.

Finally, even if some part of Pakistan exists in which Petitioner would not have a well-founded fear of persecution, no reasonable adjudicator would have found that DHS established that it would be reasonable under all the circumstances to expect Petitioner to relocate to that area. The IJ herself acknowledged that even if Petitioner would not be specifically targeted by the Taliban in other parts of Pakistan, he would face the same general violence as other members of the population. Although Petitioner is presently unmarried, the specter of being found by the Taliban would make it difficult if not impossible for him to start a family. Petitioner's parents and most of his siblings live in Peshawar—a city in which the Taliban previously managed to find him—and DHS did not elicit any testimony regarding where his married sisters live or whether it would be culturally appropriate for Petitioner to live with them.

Appellee's Summary of Argument

The Court should deny this petition for review because substantial evidence supports the agency's determination that DHS met its burden to demonstrate by a preponderance of the evidence that Petitioner could

relocate within Pakistan to avoid future persecution and that it would be reasonable under all the circumstances for him to do so. In this regard, the Board and Immigration Judge appropriately concluded that Petitioner could relocate from the former FATA—a remote, mountainous region located in northwestern Pakistan—to Islamabad or other areas outside of the Taliban's control.

In reaching this finding, the Board and Immigration Judge appropriately assessed the evidence relating to Petitioner's circumstances and the possibility he could face other harm in Pakistan and sensibly determined that it would be reasonable for him to relocate. These assessments relied on the Immigration Judge's factual findings, which are reviewed by this Court for substantial evidence. Under this deferential standard, neither the record evidence nor Petitioner's present arguments compel a conclusion contrary to the agency's determination that Ullah could, like his parents and numerous siblings, avoid the persecution he fears by safely moving away from the outlying tribal region of the Khyber District to any of the more settled and urban areas of Pakistan. Accordingly, this Court should affirm the Board's holding that Petitioner failed to demonstrate his eligibility for asylum or withholding of removal.

22-4054, US v. Jacob Ross (Reidinger, WDNC)	**CRIMINAL: Whether court's instruction to defendant to remove mask so witness could identify him was either structural or plain error; whether sentence was excessive.**

Appellant's Summary of Argument

The judgment issued by the district court should be vacated because the *de facto* life sentence issued by the district court was not proportional to the offenses. In addition, the judgment should be vacated because the trial court committed structural error by identifying Ross during the testimony of a key government witness, who, prior to the court's identification, had been unable to identify Ross. In the alternative, if the district court's error does not amount to structural error, this court should hold that the error constitutes plain error and vacate the judgment on that basis.

Appellee's Summary of Argument

I. The district court did not plainly err by allowing Peters to identify Ross in court, without objection, after addressing him by name and asking him to remove his mask. First, the circumstances surrounding the identification were not impermissibly suggestive because they were not orchestrated by law enforcement and because they did not create a very substantial likelihood of irreparable misidentification. Second, the totality of the circumstances demonstrates that Peters' identification of Ross was reliable. She had an extensive opportunity to view Ross during their month-long, live-in, intimate relationship. The detail Peters recalled about Ross, his apartment, and the events, demonstrated that her degree of attention was high. And Peters identified Ross with certainty in a way that demonstrated she was not motivated by factors other than her own recollection of events. Finally, Ross cannot come close to meeting the requirements of the plain-error standard.

II. The district court did not violate the Eighth Amendment, plainly or otherwise, by sentencing Ross to 660 months' imprisonment. Ross sexually abused numerous children directly, including an eight-month-old infant and a five-year old girl he penetrated and forced to perform sex acts on another adult. He paid women to abuse infants and other children and exploited that abuse to produce child pornography. He raped and beat an adult. He struck, tied up, and threatened another. And he forced an adult victim to participate in the sexual abuse of a child at gunpoint. Ross's conduct well justifies the life-equivalent sentence he received. It is not close to the kind of extreme, grossly disproportionate sentence that violates the Eighth Amendment's prohibition of cruel and unusual punishment.

22-4084, US v. James Podbielski (Cogburn, WDNC)	CRIMINAL: Whether law enforcement had reasonable suspicion to prolong traffic stop while awaiting drug-sniffing dog.

Appellant's Summary of Argument

In *Rodriguez v. United States*, the Supreme Court held that a traffic stop may "last no longer than is necessary" to complete the purpose of a traffic stop, and "authority for the seizure" stemming from traffic violations "ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." 575 U.S. at 349. Porter violated Podbielksi's Fourth Amendment rights by unlawfully extending the stop without reasonable suspicion, in violation of *Rodriguez*, in order to conduct a drug investigation. He used three unlawful methods to extend the stop.

First, he slow-walked the traffic stop in order to give the K9 deputy time to conduct her investigation. In doing so, he completed a simple citation unreasonably slowly, took the time to alter a criminal summons without legal authority, and spent five minutes explaining documents that needed no explanation. Second, he prolonged the stop by conducting unrelated investigations into whether Podbielksi was the subject of any local child-support orders or civil actions, as well as taking two minutes to discuss the drug investigation with the K9 deputy. And third, he prevented Podbielksi from leaving at the end of the traffic stop in order to continue his drug investigation, waiting for the K9 officer to report back to him with the results of her investigation.

Any one of those three actions alone would have extended the stop beyond a traffic-related purpose. Together, they are compelling evidence that the stop lasted longer than permissible under *Rodriguez*. Consequently, the Fourth Amendment required Porter to have reasonable suspicion of criminal activity to detain Podbielksi "beyond completion of the traffic infraction investigation." 575 U.S. at 358. Porter did not have reasonable suspicion. Rather, the reasons he gave for suspecting criminal activity beyond a traffic violation are nothing more than a patchwork "of innocent, suspicion-free facts, which cannot rationally be relied on to establish reasonable suspicion" that Podbielksi was engaged in illegal drug activity. *United States v. Black*, 707 F.3d 531, 539 (4th Cir. 2013).

Appellee's Summary of Argument

The district court properly denied Podbielski's motion to suppress. The Fourth Amendment undisputedly authorized Deputy Porter to stop Podbielski's car. And it authorized him to extend the stop to investigate further with the assistance of a trained drug dog because, when he called for that assistance, he had reasonable suspicion that illegal drug crime may be afoot. The deputy saw Podbielski attempt to evade his effort to maneuver behind him to initiate the traffic stop, suggesting he may have been engaged in criminal activity he did not want the police to discover. After stopping the car on a route that he knew had a connection to a major source city for drugs, the deputy noticed that Podbielski's passenger, Parton, looked inside the vehicle as if making sure something was hidden, suggesting they may have been carrying contraband they did not want police to see. Parton's pants were unzipped, suggesting she may have concealed contraband in her underwear or body cavities, a practice with which the deputy was familiar. And although the nervousness Podbielski exhibited at the beginning of the stop was ordinary, Podbielski became increasingly and unusually nervous as the stop progressed, suggesting he was concerned that the deputy might discover more than just his traffic offenses.

The totality of the circumstances gave Deputy Porter good reason to harbor more than an inchoate suspicion or hunch that Podbielski had illegal drugs in his car, allowing him to extend the stop to investigate further with a drug dog's help. And the dog's alert justified the search that led to the evidence Podbielski challenges. Deputy Porter's conduct was reasonable under the Fourth Amendment. And the district court, therefore, properly denied his motion to suppress.