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DETAINED

UNITED STATE DISTRICT COURT

FOR THE

EASTERN DISTRICT OF CALIFORNIA

LEOBARDO CHAVEZ BARRIENTOS *Petitioner, Pro se* v. U.S. ATTORNEY GENERAL, *et al.*, *Respondent.*	§ § § § § § §	**No. 1:25-CV-00258-SKO (HC)** **OBJECTIONS TO MAGISTRATE JUDGE'S FINDINGS AND RECOMMENDATIONS**

Petitioner continues to be in the custody of the Bureau of Immigration and Customs Enforcement ("ICE") and is proceeding *pro se*, has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner is challenging his prolong detention without due process.

DISPUTED OBJECTIONS

A federal court may grant a petition for writ of habeas corpus if the petitioner can show that " he is in custody in violation of the Constitution...." 28 U.S.C. § 2241(c)(3). Petitioner allege violation is that Petitioner is not provided with the adequate due process of law. Petitioner is detain without placement in removal proceedings. A clear violation of regulations and laws of the Constitution.

This country was born with a declaration of universal human rights, proclaiming that: "all men are created equal, that they are endowed by their Creator with certain unalienable rights," and that "among these" is "Liberty." U.S.C.A. Declaration of Independence (1776). This concept was codified in the Fifth Amendment to the United States Constitution, which states in part that "no person shall be...deprived of...liberty...without due process of the law." U.S. Const. Amend. V. As the Supreme Court has written, "[f]reedom from imprisonment-from government custody, detention, or other forms of physical restraint-lies at the heart of the liberty that Clause protects." Zadvydas v. Davis, 533 U.S. 678, 690, 121 S. Ct. 2491, 150 L. Ed. 2D 653 (2001). As the words "no person" indicate, and as the Supreme Court has confirmed, "the Due Process Clause applies to all 'persons' within the United States whether their presence here is lawful, unlawful, temporary, or permanent." Id. at 693.

Federal law also creates a process for determining whether aliens like petitioner, who have been ordered removed, should be detained while the government attempts to effectuate their removal. A federal statute, 8 U.S.C. § 1231(a)(2), requires that an alien ordered removed from the United States be detained for up to 90 days, ordinarily starting on the date the order becomes final. These 90 days are defined by the statute as the "removal period." Id. § 1231(a)(1). ICE must give an alien notice and an opportunity to be heard before detaining him or her for longer than 90 days. See 8 C.F.R. § 241.4. At the time of the Bond hearing March 31,2025, in this cases, ICE had detained for more than 90 days without following the process prescribed by its regulations.

The Fifth Amendment guarantee of due process has two components. The substantive component prohibits restrictions on liberty that are not narrowly tailored to serve a compelling state interest, no matter what process is employed in deciding to impose them. In addition, a person who is detained has a right to procedural due process, meaning a right to a fair process for challenging the reasons for detention. Fundamental features of procedural due process are fair notice of the reasons for the possible loss of liberty and a meaningful opportunity to address them. Zadvydas addressed the substantive due process component of the Fifth Amendment. The Supreme Court held,

in effect, that an alien's right to substantive due process could be violated by prolonged detention even if the alien's right to procedural due process had been satisfied. See 533 U.S. at 697. Implicitly assuming that the alien had been afforded procedural due process, the Court found that detention of an alien for up to six months is presumptively reasonable for the purpose of the substantive due process analysis. Id. at 701.

Justice Anthony Kennedy wrote in his dissent in Zadvydas, without dispute from the majority, "[w]ere the [DHS], in an arbitrary or categorical manner, to deny an alien access to the administrative processes in place to review continued detention, habeas jurisdiction would lie to redress the due process violation caused by the denial of the mandated procedures..." Id. at 724-25. Justice Kennedy's position was a particular application of a long line of Supreme Court and other decisions holding that regulations are laws that the government must obey.

It's undisputed that Petitioner is not being provided the process required under ICE's interpretation of the regulations 8 C.F.R. § 241.4(c) and, by the Fifth Amendment and long with the Fourteenth Amendment. Indeed, ICE made no effort to follow the process prescribed by its regulations until alerted by the filings raised in this petition, ICE and the Executive Office for Immigration Review (EOIR) only determine risk of flight and dangerousness, but no determination of alien-age was made in the provided Bond Hearing. Petitioner is not being place in removal proceeding up till this day. Petitioner has been in custody for over one year.

Petitioner's Judicial review of his N-600, Application, in the Ninth Circuit Court of Appeals is a separate matter from Petitioner being place in removal Proceedings. The requirements of I.N.A § 241(a)(5) or 8 C.F.R. § 241.8(c) have not been satisfied, so that the prior order of removal can be reinstated. An agency has the duty to follow its own federal regulations, even when those regulations provide greater protection than is constitutionally required. See Accardi v. Shaughnessy, 347 U.S. 260, 265-68, 98 L. Ed. 681, 74 S. Ct. 499 (1954).

REMOVAL PERIOD

The removal period begins when, the removal order becomes administratively final, if the removal order is judicially reviewed and the court mandates the order, (Doc. 6-1 at p.5 lines 5-10) or the date the alien is released from detention or confinement. INA § 241(a)(1)(B), 8 U.S.C. § 1231(a).

Petitioner removal became administratively final on April 10, 1998 see (Doc 6-1 Exh. 5). That removal order is not being reviewed by the Ninth Circuit Court of Appeal (Doc. 6-1 at p.5 lines 5-18). Petitioner was released from federal prison on August 9, 2024, (Doc. 6-1 at p.5 line 19). Petitioner's removal period began on the date of release from federal prison and taken into the custody of DHS.

Petitioner has been in custody over a year, DHS claims that the removal period has not began for reasons of the stay of removal. Petitioner can have an appeal in the Ninth Circuit that doesn't entail a judicial review of a removal order, see Diouf v. Mukasey 542 F.3d 1222, 1230 (9th Cir. 2008).

Petitioner's removal in the "reasonably foreseeable future" depends on the outcome of the N-600 review in the "Ninth Circuit" the government has ask for multiple continuances, the appeals court has denied the Government Motion to Dismiss and the court has granted petitioner's Motion for Stay, the court has determine that full briefing is warranted. The government last continuance was for ninety days. That current petition to review the N-600 is increasing with ever day now, over 525 days if the foreseeable future is when the Ninth Circuit transfer the case to this District Court, (see INA § 242(b)(5)(B) or 8 U.S.C. 1252(b)(5)(B)), the time period is not shrinking. The bond hearing provided by respondent didn't make a determination of any significant likelihood of removal in the reasonably foreseeable future or did it determine if petitioner is a citizen of the U.S..

The Magistrate recommendation seem to disregard Petitioner's substantive due process right to be place in regular removal proceeding to have a determination of the likelihood of removal in the foreseeable future, and contest such administrative decisions.

REINSTATEMENT OF PRIOR REMOVAL ORDER

Congress has created an expedited process for aliens who reenter the United States without authorization after having already been re-moved. The relevant statutory provision states that if the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this chapter, and the alien shall be removed under the prior order at any time after the reentry; 8 U.S.C.S. § 1231(a)(5). The Department of Homeland Security's regulations set out the process for reinstating an order of removal. In short, the agency obtains the alien's prior order of removal; confirms the alien's identity, determines whether the alien's reentry was unauthorized, provides the alien with written notice of its determination, allows the alien to contest that determination, and then reinstates the order. 8 C.F.R. § 241.8(a)-(c), 1241.8(a)-(c).

Although the phrase ``administratively final" is not defined in 8 U.S.C.S. § 1231, its meaning is clear. By using the word ``administratively," Congress focused attention on the agency's review proceedings, separate and apart from any judicial review proceedings that may occur in a court. Context confirms this interpretation. Under § 1231(a)(1)(B), the removal period begins on the latest of three events: (1) the date the order of removal becomes administratively final; (2) if the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order; and (3) if the alien is detained or confined outside the immigration process, the date of the alien's release. Reading the first two provisions together, it is clear that the Department of Homeland Security (DHS) need not wait for the alien to seek, and a court to complete, judicial review of the removal order before executing it. Rather, once the Board of Immigration Appeals (BIA) has reviewed the order (or the time for seeking the BIA's review has expired), DHS is free to remove the alien unless a court issues a stay. That reinforces why Congress included ``administratively" before the word ``final" in the first provision.

The reinstatement procedures are well establish, in the Code of Federal Regulations ("CFR"), 8 C.F.R. § 241.8 (a)(3). This regulation requires that an alien needs to enter the U.S., unlawfully. In this particular case Petitioner was release from custody on September 04, 2015; see (Doc 6-1 Exh 15). There could not be an unlawfully entry, preventing the reinstatement of the prior original removal order that was issue on April 10, 1998; see (Doc 6-1 Exh 5). Respondent claims to have obtain a valid removal order preventing, Petitioner from being place in removal proceedings.

Ninth Circuit precedent has order that when the requirements are not met Petitioner should be place in regular removal proceedings before an IJ under INA1229a; see Tomczyk v. Wilkinson, 987 F.3d 815, at 826, (9th Cir. Feb 3, 2021), also see Mariscal-Sandoal v Ashcroft 370 F.3d 851, at 855 (9th Cir 2004).

In Tomczyk, the court held that an illegal reentry under § 1231(a)(5) requires some form of misconduct by the noncitizen, such as "entering without inspection, entering in violation of a requirement to obtain advance consent from the Attorney General, or procuring admission by fraud."

Section INA § 101 (a)(13)(A) of the Act, as amended by section 301 of the IIRIRA provides that the terms "admission" and "admitted" means the lawful entry of an alien into the U.S. after inspection and authorization by immigration officer.

Petitioner was inspected and had authorization to enter the U.S. by an immigration officer when release on September 04, 2015; see (Doc 6-1 Exh 15). Petitioner was instructed to bring proof of filling for a naturalization Certificate, the Ninth Circuit has plainly stated that "because citizenship is transmitted automatically upon the parent naturalization, it does not depend on the filing of an application, an administrative decision, a court order, an oath of allegiance, or any other procedure; see " Minasyan v. Gonzales, 401 F.3d 1069, 1075 N°10 (9th Cir. 2005) see also Flores-Torres v. Holder, 680 F. Supp.2d 1099, 1107, (N.D. Cal., Dec 2009); see (Doc 6-1 page 4 line 14-18).

Petitioner is a Citizen of the U.S. upon the naturalization of his custodian parent prior to petitioner turning eighteen years of age, this is precisely why the United States District Court, for the Southern District of California (San Diego) drop charges of

Deported Alien, 8 U.S.C. § 1326 and Illegal Entry 8 U.S.C. § 1325; see (Doc 6-1 page 86, Exh 14).

"Jurisdiction in the executive to order deportation exists only if the person arrested is an alien." see 259 US 276, 284 Ng Fung Ho v. White.

SUBSTANTIVE & PROCEDURAL DUE PROCESS

The Due Process Clause of the Fourteenth Amendment to the United States Constitution confers both substantive and procedural rights. Substantive due process prohibits the government from infringing fundamental liberty interests, unless the infringement is narrowly tailored to serve a compelling government interest. Procedural due process minimizes substantively unfair or mistaken deprivations of life, liberty, or property by guaranteeing all persons fair procedures by which they may contest the basis upon which government proposes to deprive individuals of protected interests. Put simply, when government action depriving a person of life, liberty, or property survives substantive due process scrutiny, procedural due process requires that it must still be implemented in a fair manner; See. Mathews v. Eldridge, 424 U.S. 319, 335, 96 S. Ct. 893, 47 L. Ed. 2D 18 (1976).

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. Id. at 335 (citing Goldberg v. Kelly, 397 U.S. 254, 263-71, 90 S. Ct. 1011, 25 L. Ed. 2D 287 (1970)).

FIRST

If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under the INA, and the alien shall be removed under the prior order at any time after the reentry. Id. (emphasis added). This Circuit Court, sitting en banc, has examined the scope of § 1231(a)(5) in Morales-Izquierdo v. Gonzales, 486 F.3d 484, 495-97 (9th Cir. 2007) (en

banc). Morales-Izquierdo held that the regulations implementing § 1231(a)(5), which allow an immigration officer to reinstate removal orders without a full hearing before an immigration judge, satisfied due process. The court assumed jurisdiction to review such orders, but limited its review to the three discrete inquiries an immigration officer must make in order to reinstate a removal order: (1) whether the petitioner is an alien; (2) whether the petitioner was subject to a prior removal order, and (3) whether the petitioner re-entered illegally. Id at 495 (citing reinstatement regulations at 8 C.F.R. § 241.8). Although Morales-Izquierdo left open the possibility that "individual petitioners may raise procedural defects in their particular cases," it held that the regulations survived a facial due process challenge. Id. at 496. The court further stated: "Reinstatement of a prior removal order--regardless of the process afforded in the underlying order--does not offend due process because reinstatement of a prior order does not change the alien's rights or remedies." Id. at 497. Thus, under Morales-Izquierdo, a petitioner cannot raise a due process challenge to an underlying removal order and review of the reinstatement itself is limited to confirming the agency's compliance with the reinstatement regulations 8 C.F.R. § 241.8.

The only courts to have reached this issue are in agreement. See Lorenzo, 508 F.3d at 1284; Tilley, 144 Fed. Appx. 536, 2005 WL 1950796, at *4 ("We also hold that the reinstatement procedure offers adequate due process. . . . The reinstatement order asks only three factual questions. A judge is not needed to decide whether the alien was subject to a prior order of removal, nor whether the alien deported is the same alien as the one subject to reinstatement, not whether the alien re-entered the country illegally. And if the alien asserts that any of these decisions was incorrect, he may appeal the immigration officer's findings directly to the circuit court. To plead for additional process in this procedure is to forget how limited is its scope.").See, e.g., Arevalo v. Ashcroft, 344 F.3d 1, 9 (1st Cir. 2003) ("While we cannot revisit the validity of the original deportation order, we do have the authority to determine the appropriateness of its resurrection."), See (Doc 6-1 Exh 15).

"Only if the requirements of § 241.8 (a) and (b) have been satisfied is the alien removable under the previous order" § 241.8 (c) Lin v. Gonzales 473 F.3d 979, (9th Cir. 2006) see also Alcala v. Holder 563 F.3d 1009,1013 (9th Cir.2007)

SECOND

Petitioner's removal without being provided the adequate procedure, of the determination of citizenship would be a deprivation of a personal interest to petitioner life or liberty without due process of law and the denial of the equal protection of the law.

Deportation proceedings involve the potential deprivation of a significant liberty interest and must be conducted according to the principles of fundamental fairness and substantial justice. See Landon v. Plasencia, 459 U.S. 21, 34-35 (1982); Goldberg v. Kelly, 397 U.S. 254 (1970); Bridges v. Wixon, 326 U.S. 135, 154 (1945) (stating that deportation ``visits a great hardship on the individual.... Meticulous care must be exercised lest the procedure by which he is deprived of that liberty not meet the essential standards of fairness."); see also INS v. Cardoza-Fonseca, 480 U.S. 421, 449 (1987); Harisiades v. Shaughnessy, 342 U.S. 580 (1952); Ng Fung Ho v. White, 259 U.S. 276, 284 (1922).

THIRD

It's the Government's interest not to remove an alien with a non frivolous claim to U.S. citizenship without the adequate due process. Any government official presented with the predicament of removing a citizen should without question provide the adequate procedures under the constitution. The financial burner on the government is not, any different that what it's now. Petitioner has been in custody for the last year without any form of procedure to prove alienage or any determination of the foreseeable future of being remove.

In Zadvydas v. Davis, the Supreme Court considered a due process challenge brought by non-citizens detained under INA § 241, a statute that governs the detention of non-citizens following a final order of removal. 533 U.S. 678, 121 S. Ct. 2491, 150

L.Ed. 2d 653. The Supreme Court noted that detention violates the Due Process Clause "unless the detention is ordered in a criminal proceeding with adequate procedural protections or, in certain special and narrow nonpunitive circumstances, where a special justification . . . outweighs the individual's constitutionally protected interest in avoiding physical restraint." Id. at 690 (emphasis and quotations omitted) (citing Kansas v. Hendricks, 521 U.S. 346, 356, 117 S. Ct. 2072, 138 L. Ed. 2d 501 (1997); Foucha v. Louisiana, 504 U.S. 71, 80, 112 S. Ct. 1780, 118 L. Ed. 2d 437 (1992); United States v. Salerno, 481 U.S. 739, 746, 107 S. Ct. 2095, 95 L. Ed. 2d 697 (1987)). Because the statute authorized the seemingly "indefinite" and "potentially permanent" detention of individuals whose removal was not foreseeable or attainable, the Court invoked the cannon of constitutional avoidance to conclude that the statute contains "an implicit 'reasonable time' limitation." Id. at 682, 691-92. "Recognizing the potential administrative problems associated with a case-by-case determination of whether detention was reasonably necessary, the Supreme Court further held - 'for the sake of uniform administration in the federal courts,' - that detention pursuant to [Section 241] for up to six months after a removal order was presumptively reasonable." Araujo-Cortes, 2014 U.S. Dist. LEXIS 107624, 2014 WL 3843862, at *10 (quoting Zadvydas, 533 U.S. at 680).

Petitioner has been held in custody of the DHS for twice as long as the "presumptively reasonable" time frame and till this day has not been place in regular removal proceedings. Ninth Circuit precedent has order that when the requirements are not met for reinstatement of prior orders detainees, should be place in regular removal proceedings before an IJ under INA § 1229a; see Tomczyk v. Wilkinson, 987 F.3d 815, at 826, (9th Cir. Feb 3, 2021), also see Mariscal-Sandoal v Ashcroft 370 F.3d 851, at 855 (9th Cir 2004).

CONCLUSION

Petitioner habeas petition should be granted, petitioner has demonstrated that he is being held in violation of regulations and the constitution. Respondent should order the placement of petitioner in regular removal proceedings, or release in supervision till the Ninth Circuit establish his citizenship claim.

Respectfully Submitted

Dated August 18, 2025

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CERTIFICTE OF SERVICE

I here certify that a true copy of this Certificate of Service and Petitioners Opposition to Magistrate Recommendation, was place in a prepaid postage envelope and deposited at the Mesa Verde ICE Processing Center, mailing system authorize by the detainees on August 18, 2025 in Bakersfield, CA address to the following

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

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