



U.S. Department of Justice

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December 5, 2025

The Honorable Lawrence J. Vilaro
United States District Judge
Robert H. Jackson United States Courthouse
2 Niagara Square
Buffalo, New York 14202

Re: Velasco v. Marich, et al.
25-CV-01236-LJV

Dear Judge Vilaro:

ICE has just provided me with a copy of the Board of Immigration Appeals' ("BIA") decision dated December 1, 2025, denying Petitioner's motion to reopen his immigration proceedings. His automatic stay of removal pending the motion to reopen the removal order has terminated.

Respectfully submitted,

MICHAEL DIGIACOMO
Acting United States Attorney
Western District of New York

BY: /s/ ADAM A. KHALIL
Assistant United States Attorney

Encl. – BIA Decision (3 pages)



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
CLEVELAND IMMIGRATION COURT

Respondent Name:

HERRERA DELLANOS, ERRIK

To:

HERRERA DELLANOS, ERRIK

A-Number:



Riders:

In Removal Proceedings

Initiated by the Department of Homeland Security

Date:

12/01/2025

ORDER OF THE IMMIGRATION JUDGE



Respondent was ordered removed from the United States *in absentia* on 08/02/2007.

Respondent the Department of Homeland Security has now filed a motion to reopen these proceedings.

Upon reading and considering the motion, and any opposition from the non-moving party, the motion is granted denied for the following reason(s):

- Failure to demonstrate that Respondent's failure to appear was the result of exceptional circumstances. *See* INA § 240(b)(5)(C)(i), (e)(1).
- Failure to demonstrate that the Respondent did not receive notice under INA § 239(a)(1)-(2). *See* INA § 240(b)(5)(C)(ii).
- Other:

The Respondent moves to reopen proceedings, arguing that his failure to appear was the result of exceptional circumstances. Motions to reopen predicated on exceptional circumstances must be filed within 180 days of the *in absentia* order. INA § 240(b)(5)(C)(i). The Respondent was ordered removed in *absentia* on August 2, 2007. He did not file his motion to reopen until November 17, 2025 - well over the 180 day deadline. Accordingly, his motion to reopen predicated on exceptional circumstances must be denied.

The Respondent articulates that his exceptional circumstances are that he did not receive written notice of his hearing. Accordingly, the Court will also address whether reopening is warranted under the lack of notice prong. A respondent may be ordered removed in *absentia* if they fail to appear for a hearing "after written notice required under paragraph (1) or (2) of section 239(a) has been provided to the alien..." INA §240(b)(5)(A). "The written notice... shall be considered sufficient... if provided at the most recent address provided under section 239(a)(1)(F)." *Id.* The Respondent was mailed notice of his hearing on March 16, 2007, addressed to  , which is the address reported by the Respondent on a form I-830 upon his release from ICE custody. As the Respondent was provided notice of their hearing at their most recently reported address, they were provided sufficient notice for purposes of

the in absentia removal order. The Respondent argues in their motion though that they did not receive notice of their hearing. However, they also report that they had moved to New York. The Respondent does not present evidence establishing the timing of their move. The Court finds on this record that the Respondent has not established that reopening is warranted. Individuals in removal proceedings are required to "provide... a written record of the address... at which the alien may be contacted respecting proceedings... [and] written record of any change of the alien's address..." INA §239(a)(1)(F). The Respondent was provided notice of this requirement on the Notice to Appear, which was personally served on the Respondent. EXH 1. "No written notice shall be required... if the alien has failed to provide the address required under section 239(a)(1)(F)" INA §240(b)(5)(B). The Respondent had relocated to New York without providing timely notice to this Court of his change of address. The Respondent has not established on this record that their failure to appear was not due to their failure to comply with their obligation to notify the Court of this change in address. Accordingly, the Court finds that the Respondent has not established that reopening is warranted under the lack of notice prong.

Finally, the Court declines to reopen proceedings in an exercise of its sua sponte authority. The Board of Immigration Appeals has held that sua sponte authority is "not meant to be used as a general cure for filing defects or to otherwise circumvent the regulations, when enforcing them might result in hardship." Matter of J-J-, 21 I&N Dec. 976, 984 (BIA 1997). It is "an extraordinary remedy reserved for truly exceptional situations." Matter of G-D-, 22 I&N Dec. 1132, 1134 (BIA 1999). Given the delayed pursuit of this motion and the lack of evidence relating to their unreported move to New York, the Court finds that sua sponte reopening is not proper here. Further, the Respondent has requested reopening for the purpose of pursuing applications for relief, which have not been provided to the Court.

Accordingly, the Respondent's motion to reopen is DENIED.

Michael Tripi

Immigration Judge: Tripi, Michael 12/01/2025

Appeal: Department of Homeland Security: waived reserved
Respondent: waived reserved


Appeal Due:

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Date: 12/01/2025 By: Novinc, Lori, Court Staff