

THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA



EMERGENCY PETITION FOR REVIEW

Petitioner Manuel Duran Ortega (hereinafter “Duran-Ortega”) is currently

detained at a Department of Homeland Security (“DHS”) detention center in Louisiana and upon information and belief, faces a substantial likelihood of imminent removal to El Salvador. Duran-Ortega hereby petitions for review by this Court of his *in absentia* removal order, and the Board of Immigration Appeals (“BIA”) order dismissing his appeal of the Atlanta Immigration Court’s denial of his Motion to Reopen. There is currently no stay of removal in place. A copy of the BIA order is attached to this Petition as Exhibit A. In support of this Petition, Duran-Ortega states as follows:

1. On October 17, 2018, the BIA dismissed Duran-Ortega’s appeal of an Atlanta immigration judge’s denial of his Motion to Reopen. Ex. A. On that same date, the BIA dissolved the stay of removal it had entered on May 29, 2018 and which had been in effect during the pendency of Duran-Ortega’s BIA appeal. *Id.* Duran-Ortega seeks to reopen his removal proceedings to apply for asylum and withholding of removal.

2. Duran-Ortega is a native of El Salvador who has worked as a journalist both in El Salvador and in the United States. He fears violent ~~persecution if he is returned to El Salvador~~

3. Duran-Ortega entered the United States in 2006 and was issued a

putative Notice to Appear (“NTA”) shortly thereafter. *See* Ex. B. The NTA did not contain a time or date of his initial hearing, but stated only that he should appear at a date and time “to be set.” *Id.* As such, the document Duran-Ortega received was not an NTA at all. *See Pereira v. Sessions*, 138 S. Ct. 2105, 2114–17 (2018) (putative NTAs that lack time and date information are insufficient under the statute and do not qualify as NTAs). Because the putative NTA lacked this crucial and statutorily-required information, Duran-Ortega did not receive notice of his hearing as required by 8 U.S.C. §1229(a). His removal order is subject to rescission under 8 U.S.C. § 1229a(b)(5)(C)(i) (“A removal order may be rescinded . . . if the alien did not receive notice in accordance with” Section 1229(a)(1)). *See*

be rescinded “upon a motion to reopen filed at any time if the alien demonstrates

that the alien did not receive notice in accordance with” Section 1229(a)(1)). *See*

relates only to whether an NTA is "complete" and holding that the lack of time

and date render the document something other than an NTA as defined by statute).

5. Duran-Ortega was ordered removed *in absentia* on January 31, 2007. A copy of Mr. Duran Ortega's *in absentia* removal order is attached as Exhibit D.

6. Duran Ortega has been an important and visible member of the

Memphis, Tennessee community for a decade. Through the Spanish-language

journalist arrested at the demonstration.

While ~~Director Ortega~~ was detained by MPD, his official contacted ~~her~~

[REDACTED]

The BIA granted the stay motion on May 29, 2018. *See* Ex. F. On October 17,

2018 the BIA issued an order dismissing Duran-Ortega's appeal, thereby

dismissing the entire appeal. *See* Ex. A

12. To date, no court has upheld the validity of the BIA order dismissing the appeal and vacating the stay.

13. Duran-Ortega is filing an Emergency Motion for a Stay of Removal with this Court concurrently with this Petition.

14. Jurisdiction is asserted pursuant to 8 U.S.C. § 1252(a)(1), (a)(2)(D), and (b)(6).

15. Jurisdiction is asserted pursuant to 8 U.S.C. § 1252(b)(2) because the

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 30, 2018, I caused this Petition for Review and accompanying exhibits to be served on all parties or their counsel of record by serving a true and correct copy by Federal Express at the addresses listed below:

Jefferson B. Sessions III
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

David McConnell
Director, Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044

Sean Gallagher
Field Office Director
Atlanta Field Office
U.S. Immigration and Customs Enforcement
180 Ted Turner Drive, SW Suite 522
Atlanta, GA 30303

s/ Michelle R. Lapointe
Michelle R. Lapointe