



**U.S. Department of Justice**

**Executive Office for Immigration Review**

*Board of Immigration Appeals  
Office of the Clerk*

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Falls Church, Virginia 22041*

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**DHS/ICE Office of Chief Counsel - SND  
880 Front St., Room 1234  
San Diego, CA 92101-8834**

**Name: PACHECO GARCIA, DOMINGO**

**A 205-062-933**

**Date of this notice: 8/29/2013**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Holmes, David B.

lucasd  
User team: Docket

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**U.S. Department of Justice**  
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

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File: A205 062 933 – San Diego, CA

Date:

AUG 29 2013

In re: DOMINGO PACHECO GARCIA

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Kevin A. Bove, Esquire

ON BEHALF OF DHS: Kori LaPoint  
Assistant Chief Counsel

APPLICATION: Reopening

**ORDER:**

The respondent has filed a motion to continue these immigration proceedings while he pursues an application for U nonimmigrant status. The Department of Homeland Security (DHS) has stated its non-opposition to the motion, which we construe as a motion to administratively close the proceedings. The motion is granted and the proceedings are administratively closed.

If either party to this case wishes to reinstate the proceedings, a written request to reinstate the proceedings may be made to the Board. The Board will take no further action in the case unless a request is received from one of the parties. The request must be submitted directly to the Clerk's Office, without fee, but with certification of service on the opposing party.



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FOR THE BOARD

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UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
SAN DIEGO, CALIFORNIA

File: A205-062-933

March 7, 2013

In the Matter of

DOMINGO PACHECO GARCIA

RESPONDENT

)  
)  
)  
)

IN REMOVAL PROCEEDINGS

CHARGES: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act.

APPLICATIONS: Voluntary departure at conclusion of proceedings.

ON BEHALF OF RESPONDENT: PETER JAMES MUSSER, Esquire  
110 South Citrus Avenue, Suite E  
Vista, California 92084

ON BEHALF OF DHS: KORI LAPOINT, Esquire  
Assistant Chief Counsel  
Department of Homeland Security  
San Diego, California

ORAL DECISION OF THE IMMIGRATION JUDGE

The Court has jurisdiction in this matter by the Government's filing of a Notice to Appear dated June 11, 2012, which was personally served on the respondent. Service of the Notice to Appear is not at issue.

At the hearing on September 18, 2012, respondent appeared with current counsel and, through counsel, denied all the allegations and charge. The case was

thereafter continued for the respondent to file his motion to terminate and to suppress Government Form I-213, which was at that time marked as Exhibit 2 for identification purposes.

On December 14, 2012, respondent filed a motion to terminate and within the motion sought to suppress the Government's document.

The Court finds that the respondent's motion failed to support termination or suppression of Government witnesses. Under the Anti-Drug Abuse Act of 1986 codified at INA Section 287(d), a Federal, state or local law enforcement official who arrested an alien for a violation of any law relating to controlled substances shall promptly notify the Service, which is now the Department of Homeland Security, to determine whether or not to issue an Immigration detainer. In this case, the respondent, through counsel, apparently misinterpreted that Section to mean that an Immigration detainer may be issued only if an alien was arrested for a controlled substance violation.

By issuing a detainer, the Department of Homeland Security requests that a law enforcement agency notify the Department of Homeland Security before releasing an alien and ~~detain~~ retain custody of the subject for a period not to exceed 48 hours, excluding Saturdays, Sundays and holidays, in order to allow the Department of Homeland Security to assume custody. This request, came from both ~~from~~ 8 C.F.R. Section 287.7, which arises from the Department of Homeland Security's Secretary Power under Section 103(a)(3) of the Immigration and Nationality Act to issue "regulations...necessary to carry out [her] authority" under the Act, and ~~from~~ the Department of Homeland Security's general authority to detain individuals who are subject to removal or removal proceedings. Section 287(d) of the Act merely requires law enforcement officials to notify the Department of Homeland Security to make a

determination on whether to issue an Immigration detainer. It does not limit the Department of Homeland Security's authority to issue such a detainer.

Based upon the foregoing, the Court finds that the motion failed to present any support to terminate or even to merely suppress the Government's documents, in this case, a Form I-213. Therefore, that document was admitted into the record for evidentiary purposes as Exhibit No. 2 in this case.

On March 7, 2013, respondent appeared with counsel and, through counsel, pled by admitting to all the allegations and conceding to the charge in the Notice to Appear. Counsel advised the Court that removability at this time is no longer at issue.

~~Initially~~ Thereafter, the respondent sought a continuance in order to obtain conviction records relating to respondent's two conviction for driving without a license. Government counsel advised the Court that the Government would not oppose the request for voluntary departure merely based on those convictions. Therefore, the Court ~~could~~ did not find good cause in continuing this case for that purpose and denied the motion for a continuance.

Respondent was the only witness to testify in ~~in~~ support of his request for voluntary departure, ~~respondent was the only witness to testify for that request.~~ Based upon the evidence of record, the Court finds that the respondent has established both statutory and discretionary eligibility for voluntary departure. Counsel advised the Court that he had discussed with the respondent for both voluntary departure prior to conclusion and at conclusion of proceedings. Respondent apparently decided to only seek voluntary departure at conclusion of proceedings. The Government has not raised any issue that would affect the Court's determination.

Based on the foregoing, the following orders shall, therefore, be entered:

ORDER

IT IS HEREBY ORDERED that the respondent be granted voluntary departure in lieu of an order of removal, such departure to take place without expense to the United States Government on or before May 6, 2013.

IT IS FURTHER ORDERED that the respondent shall pay a \$500 voluntary departure bond to the Immigration and Customs Enforcement Field Office Director within five business days of today's date.

IT IS FURTHER ORDERED that the respondent shall present to the Department of Homeland Security on or before April 8, 2013, all necessary travel documents for voluntary departure.

IT IS FURTHER ORDERED that should the respondent fail to abide by any of the foregoing orders or should he withdraw his request for voluntary departure, then these voluntary departure orders shall without further notice or proceedings vacate and the alternate order of removal shall become effective the following day: the respondent shall be removed from the United States to Mexico on the charge contained in the Notice to Appear.

THIS TRANSCRIPT OF THE ORAL DECISION WAS REVIEWED ON JUNE 4, 2013,  
WITHOUT THE BENEFIT OF THE RECORD OF PROCEEDINGS.

**Please see the next page for electronic**

**signature**

PHILIP S. LAW  
Immigration Judge

//s//

Immigration Judge PHILIP S. LAW

lawp on June 4, 2013 at 2:44 PM GMT