



**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 - SFR  
P.O. Box 26449  
San Francisco, CA 94126-6449**

**Name: RUIZ CLEMENTE, WILFRIDO BA... A 070-863-891**

**Date of this notice: 4/9/2019**

Enclosed is a copy of the Board's decision in the above-referenced case. If the attached decision orders that you be removed from the United States or affirms an Immigration Judge's decision ordering that you be removed, any petition for review of the attached decision must be filed with and received by the appropriate court of appeals within 30 days of the date of this decision.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Adkins-Blanch, Charles K.  
Morris, Daniel  
Liebmann, Beth S.

User team: Docket

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Falls Church, Virginia 22041

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File: A070-863-891 – San Francisco, CA

Date: APR - 9 2019

In re: Wilfrido Baldomero RUIZ CLEMENTE

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

APPLICATION: Reopening

The United States Court of Appeals for the Ninth Circuit has remanded this matter to the Board for further consideration of the respondent's appeal of the decision of the Immigration Judge, dated July 11, 2017, denying his motion to reopen. *Ruiz Clemente v. Whitaker*, 743 F. App'x 891 (9th Cir. 2018). The respondent's appeal will be sustained. These proceedings will be reopened.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

The respondent is a native and citizen of Guatemala who was ordered deported from the United States in absentia on February 8, 1996. Having reviewed the record of proceedings, the respondent has presented a signed declaration disavowing receipt of the Order to Show Cause ("OSC"), which was mailed to his reported address on August 24, 1995, by the former Immigration and Naturalization Service ("INS"). "For OSCs, service was proper only if the INS established that the return receipt was signed by the alien or a responsible person at the alien's address." *Chaidez v. Gonzales*, 486 F.3d 1079, 1085 (9th Cir. 2007).


The Domestic Return Receipt, which is attached to the OSC, does not contain any signature for the "Addressee." Instead, it contains a signature which confirms that the OSC was received by an "Agent," bearing in illegible signature, at the respondent's reported address on August 26, 1995. It is reasonable to assume that the unidentified Agent was not simply a random passerby. However, the Domestic Return Receipt does not establish that the signee was a responsible person at the respondent's address. *Id.* at 1086. The record does not otherwise contain evidence that the Agent was a responsible person at the respondent's address.

For the reasons set forth above, we conclude that the record does not establish, by clear, unequivocal, and convincing evidence that the respondent or a responsible person at his address signed the certified mail return receipt for his OSC. *Id.* at 1087. Accordingly, we conclude that these proceedings should be reopened based upon a lack of showing that the respondent was properly served with the OSC.

Upon remand, the Immigration Judge should take further action as she deems proper.

For the reasons set forth above, the following order will be entered.

ORDER: The respondent's appeal is sustained, the in absentia order of deportation, entered on February 8, 1996, is vacated, these deportation proceedings are reopened, and the record is remanded to the Immigration Court for further proceedings consistent with the foregoing opinion and the entry of a new decision.



FOR THE BOARD