



U.S. Department of Justice

Executive Office for Immigration Review

***Board of Immigration Appeals
Office of the Clerk***

*3107 Leesburg Pike, Suite 2000
Falls Church, Virginia 22041*

**Lewis, Sean
Law Offices of Sean Lewis
144 Second Avenue N., Suite 150
Nashville, TN 37201-0000**

**DHS/ICE Office of Chief Counsel - MEM
167 N. Main St., Room 1036
Memphis, TN 38103**

Name: QUINTEROS, JOSE ZACARIA

A088-239-850

Date of this notice: 3/31/2011

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:

**Greer, Anne J.
Pauley, Roger
Wendtland, Linda S.**

For more unpublished BIA decisions, visit www.irac.net/unpublished

Falls Church, Virginia 22041

File: A088 239 850 - Memphis, TN

Date: **MAR 31 2011**

In re: JOSE ZACARIA QUINTEROS

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Sean Lewis, Esquire

ON BEHALF OF DHS: Rook Moore
Assistant Chief Counsel

CHARGE:

Notice: Sec. 212(a)(6)(A)(i), I&N Act [8 U.S.C. § 1182(a)(6)(A)(i)] -
Present without being admitted or paroled

APPLICATION: Suppression, termination, voluntary departure

The respondent, a native and citizen of Honduras, appeals from the Immigration Judge's December 10, 2008, decision which incorporated a November 20, 2008, decision denying the respondent's motion to suppress evidence and to terminate removal proceedings. We review the Immigration Judge's factual findings for clear error and all other issues *de novo*. See 8 C.F.R. § 1003.1(d)(3). The case will be remanded.¹

On April 25, 2007, the respondent's car was stopped by a Metro Nashville police officer and the respondent was taken into custody and charged with driving without a license (I.J. at 1). On April 26, 2007, the respondent was questioned by an officer who was cross-designated as a Davidson County Sheriff Office-Department of Homeland Security (DHS) officer under section 287(g) of the Immigration and Nationality Act (I.J. at 1). This officer issued a Form I-213 containing statements made by the respondent (I.J. at 1).² On April 27, 2007, the respondent was served with a Notice to Appear and placed in removal proceedings (I.J. at 1). The respondent claims that at no point during his detention was he advised of his rights under 8 C.F.R. § 287.3(c).

¹ On December 10, 2008, the Immigration Judge issued a decision granting the respondent's request for voluntary departure. All references to the Immigration Judge's decision herein refer to the November 20, 2008, decision. See Exh. 7.

² Pursuant to section 287(g)(1) of the Act, the Attorney General may enter into agreements by which state officers who meet certain qualifications may perform "a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States." See 8 U.S.C. § 1357(g)(1).

Before the Immigration Judge, the respondent argued that his I-213 should be suppressed because, *inter alia*, the respondent's statements were obtained in violation of the Fourth Amendment exclusionary rule (I.J. at 2). The Immigration Judge found that there was insufficient evidence of egregious conduct by the Davidson County Sheriff's officer (I.J. at 6). The Immigration Judge also "passe[d] on finding whether the actions of the Metro Nashville Police officer who initially stopped and questioned Respondent were in violation of the Fourth Amendment" because the officer's actions were unrelated to the immigration proceedings (I.J. at 6).

On appeal, the respondent argues that the Immigration Judge erred by admitting the Form I-213 into evidence and denying the respondent's motion to terminate proceedings. According to the respondent, his arrest and questioning violated 8 C.F.R. § 287.3(c) and the Fourth Amendment search and seizure protections. *See* Respondent's Brief at 4-17. Further, the respondent argues that he should have been granted an evidentiary hearing or discovery to prove that the evidence against him was obtained illegally. *See* Respondent's Brief at 17-19.

The Immigration Judge found that there was conflicting evidence concerning the reason for the initial traffic stop of the respondent in this case. The Metro Nashville officer indicated that he stopped the respondent because an electronic database indicated that the respondent's car registration had expired (I.J. at 4 n.1). *See* Exh. 3, Tab 1. The respondent submitted photo and documentary evidence, however, to show that his license plate and registration were not expired on the day of his arrest (I.J. at 4).³ The respondent alleges that he was stopped based solely on his race and, therefore, the I-213 and the respondent's statements therein should be suppressed due to the egregious nature of the actions of the police. *See INS v. Lopez-Mendoza*, 468 U.S. 1032, 1050 (1984) (exclusionary rule applies in removal proceedings only if the respondent can demonstrate egregious conduct); Respondent's Brief at 11-12, 14-15.

Despite the conflicting evidence, the Immigration Judge declined to assess the validity of the traffic stop by the Metro Nashville police officer because the Immigration Judge found that this stop was unrelated to the subsequent immigration questioning of the respondent (I.J. at 6). The subsequent immigration questioning by the Davidson County Sheriff's officer, however, flowed directly from the respondent's initial stop and arrest. Therefore, the validity of the traffic stop made by the Metro Nashville Police must be assessed. Given the Board's limited fact-finding function, it is "increasingly important for the Immigration Judge to make clear and complete findings of fact that are supported by the record and in compliance with controlling law." *See Matter of S-H*, 23 I&N Dec. 462, 465 (BIA 2002).

Therefore, we will remand this case to the Immigration Judge to make the necessary factual findings in the first instance. *See Matter of Exilus*, 18 I&N Dec. 276, 278 (BIA 1982) (no due process right to discovery in immigration proceedings.). Also, on remand, the Immigration Judge should determine whether the agreement entered between the DHS and the Davidson County Sheriff's office allows for routine immigration questioning of all apprehended criminal suspects even without a felony conviction. *See* Respondent's Brief at 14.

³ The respondent also provided evidence that his criminal charge for driving without a license has been reopened due to procedural violations (I.J. at 4).

Finally, the respondent also argues that the statements contained in the I-213 should be suppressed because he was not informed of his rights under 8 C.F.R. § 287.3(c) upon his arrest. See Respondent's Brief at 7. The United States Court of Appeals for the Ninth Circuit has held the "obligation to notify the alien of his rights does not attach until the alien has been arrested and placed in proceedings...." See *Samayoa-Martinez v. Holder*, 558 F.3d 897, 902 (9th Cir. 2009). Although *Samayoa* is not controlling precedent in this case, we find it to be persuasive. See 8 C.F.R. § 287.3(c) ("an alien arrested without warrant *and placed in formal proceedings* under section 238 or 240 of the Act will be advised of the reasons for his or her arrest and the right to be represented at no expense to the Government") (emphasis added). For these reasons, we conclude that the required advisals must only be provided after the respondent is given a Notice to Appear and placed in removal proceedings. Accordingly, the following order will be entered.

ORDER: The record is remanded to the Immigration Judge for further proceedings consistent with this opinion and the entry of a new decision.



FOR THE BOARD

Falls Church, Virginia 22041

File: A088 239 850

In re: JOSE ZACARIA QUINTEROS

MAR 31 2011

DISSENTING OPINION: Roger A. Pauley

I respectfully dissent. The Immigration Judge found the “police officer was enforcing the criminal law and vehicle safety laws, i.e., car title and registration requirements as well as licensing requirements, and did not stop Respondent for a perceived immigration violation.” IJ at 6 (Nov. 20, 2010). In so finding, the Immigration Judge credited the Metro Nashville police reports, and there is no contention, nor could there be, that this finding was clearly erroneous. It appears, if the respondent’s evidence is also credited, that the information in the police data bank was erroneous. But that hardly makes the stop an egregious violation of the Fourth Amendment, if a violation at all, as it is well settled that a reasonable good faith belief in the legality of a search or seizure based on a data base error will defeat an application of the exclusionary rule even in the criminal context. See *Herring v. United States*, 555 U.S. 135 (2009), and cases cited.

I am thus at a loss to explain for what reason this case needs to be remanded for further fact finding, and would affirm the ruling of the Immigration Judge.


BOARD MEMBER

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
Memphis, Tennessee

File No.: A 088 239 850

December 10, 2008

In the Matter of)
JOSE ZACARIA QUINTEROS) IN REMOVAL PROCEEDINGS
Respondent)

CHARGE: Section 212(a)(6)(A)(i).

APPLICATIONS: A suppression; voluntary departure; termination.

ON BEHALF OF RESPONDENT:

ON BEHALF OF DHS:

Sean Lewis

Rook Moore

ORAL DECISION AND ORDER OF THE IMMIGRATION JUDGE

Respondent is an unmarried male, aged 28, native and citizen of Honduras. That respondent denied the charges in the Notice to Appear found at Exhibit 1, dated April 27, 2007. Respondent filed a motion to suppress at Exhibit 3, and the Government responded at Exhibit 4. Respondent also filed a motion to suppress and an application to terminate and supplemented that with Exhibit 6.

By order dated November 20, 2008, the Immigration Judge denied the motion to suppress and the motion to terminate. The Immigration Judge also denied respondent's motion for discovery.

The order of November 20, 2008 is marked as Exhibit 7 and is incorporated herein as though set forth at length. The Immigration Judge relies on Exhibit 7, his order of November 20, 2008, for the reasoning behind his decision to deny the motion to terminate and the motion to suppress.

Respondent appears before the Immigration Judge today and requests voluntary departure which the Department of Homeland Security does not oppose. The Immigration Judge will grant voluntary departure according to the terms and conditions set forth below.

Taken together, the Court enters this order:

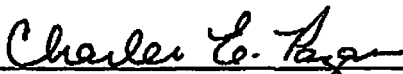
ORDER

Respondent is granted voluntary departure up to and including February 9, 2009. Respondent shall post a bond of \$500 with the Department of Homeland Security by December 17, 2008. If respondent does not post the bond, this order of voluntary departure automatically converts to an order of removal against him to Honduras. This will make respondent ineligible for voluntary departure, adjustment of status, and cancellation of removal for a period of ten years and also subject him to civil penalties of not less than \$1,000 nor more than \$5,000.

The motion to terminate is denied;

The motion to suppress is denied;

The motion for discovery is denied.



CHARLES E. PAZAR
Immigration Judge

CERTIFICATE PAGE

I hereby certify that the attached proceeding before
JUDGE CHARLES E. PAZAR, in the matter of:

JOSE ZACARIA QUINTEROS

A 088 239 850

Memphis, Tennessee

is an accurate, verbatim transcript of the recording as provided by
the Executive Office for Immigration Review and that this is the
original transcript thereof for the file of the Executive Office
for Immigration Review.


Wanda Bergman, Transcriber
Free State Reporting, Inc.

February 5, 2009
(completion date)

By submission of this CERTIFICATE PAGE, the Contractor certifies
that a Sony BEC/T-147, 4-channel transcriber or equivalent, and/or
CD, as described in Section C, paragraph C.3.3.2 of the contract,
was used to transcribe the Record of Proceeding shown in the above
paragraph.

RECEIVED
DEPT. OF JUSTICE
09 MAR 10 AM 9:12
OFFICE OF THE ATTORNEY GENERAL
U.S. DEPARTMENT OF JUSTICE