



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

**Wong, Margaret W
Margaret W. Wong
3150 Chester Avenue
Cleveland, OH 44114**

**DHS/ICE Office of Chief Counsel - HLG
1717 Zoy Street
Harlingen, TX 78552**

Name: RAMOS-MENJIVAR, JOSE

A 098-979-537

Date of this notice: 6/27/2016

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

Sincerely,

A handwritten signature in black ink that reads "Donna Carr".

Donna Carr
Chief Clerk

Enclosure

Panel Members:
O'Leary, Brian M.
Grant, Edward R.
Adkins-Blanch, Charles K.

Userteam: Docket

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A handwritten signature in black ink, possibly reading "Ramos" or similar.



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Falls Church, Virginia 22041

**RAMOS-MENJIVAR, JOSE
A098-979-537
c/o BUTLER CNTY CORRECTIONAL
COMPLEX
705 HANOVER ST
HAMILTON, OH 45011**

**DHS/ICE Office of Chief Counsel - HLG
1717 Zoy Street
Harlingen, TX 78552**

Name: RAMOS-MENJIVAR, JOSE

A 098-979-537

Date of this notice: 6/27/2016

Enclosed is a copy of the Board's decision in the above-referenced case. This copy is being provided to you as a courtesy. Your attorney or representative has been served with this decision pursuant to 8 C.F.R. § 1292.5(a). 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 the decision.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
O'Leary, Brian M.
Grant, Edward R.
Adkins-Blanch, Charles K.

by: [redacted]
User team: [redacted]

Falls Church, Virginia 22041

File: A098 979 537 – Harlingen, TX

Date: **JUN 27 2016**

In re: JOSE RAMOS-MENJIVAR

IN REMOVAL PROCEEDINGS

APPEAL AND MOTION

ON BEHALF OF RESPONDENT: Margaret W. Wong, Esquire

ON BEHALF OF DHS: Mark R. Whitworth
Assistant Chief Counsel

APPLICATION: Reopening; remand

The respondent, a native and citizen of El Salvador, appeals the decision of the Immigration Judge, dated April 5, 2016, denying his motion to reopen. He has also filed a motion to remand with this Board. The Department of Homeland Security is opposed to the respondent's appeal.

We review Immigration Judges' findings of fact for clear error. 8 C.F.R. § 1003.1(d)(3)(i). We review questions of law, discretion, and judgment, and all other issues in appeals de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

Considering the totality of the circumstances presented in this case, including the respondent's young age at the time of his ultimate removal hearing, we conclude that reopened removal proceedings are warranted in order to provide the respondent with a renewed opportunity to appear before an Immigration Judge to show why he should not be removed from the United States. *See* 8 C.F.R. § 1003.23(b)(1). However, at the present time, we express no opinion regarding the ultimate outcome of these proceedings. Accordingly, the following order is entered.

ORDER: The respondent's appeal is sustained, the order of removal, entered in absentia on September 19, 2005, is vacated, the proceedings are reopened, and the record is remanded to the Immigration Court for further proceedings and the entry of a new decision.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
HARLINGEN IMMIGRATION COURT
HARLINGEN, TEXAS

IN THE MATTER OF) April 5, 2016
)
RAMOS-MENJIVAR, JOSE) File Number: A 098-979-537
)
RESPONDENT) In Removal Proceedings

APPLICATIONS: Motion to Reopen

ON BEHALF OF THE RESPONDENT

Allison Chan
Margaret W. Wong & Associates LLC
3150 Chester Ave.
Cleveland, OH 44114

ON BEHALF OF THE GOVERNMENT

Mark R. Whitworth, ACC
U.S. Department of Homeland Security
1717 Zoy St.
Harlingen, TX 78552

DECISION OF THE IMMIGRATION JUDGE

On September 19, 2005, the Court ordered the respondent removed to El Salvador *in absentia* pursuant to section 240(b)(5)(A) of the Immigration and Nationality Act (INA or Act). The respondent, through counsel, argues that his removal proceedings should be reopened due to lack of notice and exceptional circumstances. The Department of Homeland Security has filed a response in opposition to the motion to reopen. The motion to reopen will be denied.

In general, an *in absentia* removal order entered after April 1, 1997 may be rescinded on two grounds: (1) upon a motion to reopen filed within 180 days after the date of the order of removal if the alien demonstrates that her failure to appear was because of "exceptional circumstances"; (2) upon a motion to reopen at any time if the alien demonstrates she did not receive notice in accordance with section 239(a) of the Act. INA § 240(b)(5)(C).

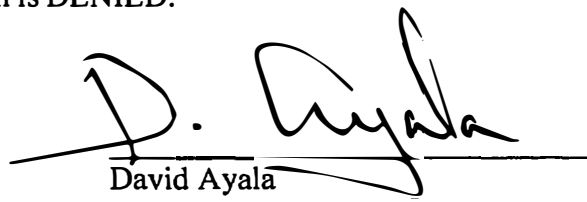
With respect to the challenge to notice, the Court finds that the motion to reopen is not accompanied by any evidence relating to the respondent's claim of lack of notice. It is well-established that statements by counsel in a motion, Notice of Appeal, or appellate brief, are not evidence. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). In any event, the record reveals that on April 23, 2005 the respondent was personally served with a Notice to Appear that included the date, time, and location of his September 19, 2005, hearing in Harlingen, Texas and advised the respondent of his rights and obligations under section 239(a)(1) of the Act. Exh. #1. Although not required, the certificate of service portion of the Notice to Appear indicates that the respondent was provided with oral notice in the Spanish language of the contents of the charging document. The Notice to Appear bears the respondent's signature and fingerprint. This constitutes proper written notice under section 239(a)(1) of the Act. Accordingly, the Court will not reopen these removal proceedings pursuant to section 240(b)(5)(C)(ii) of the Act.

The Court finds that the respondent's motion to reopen based on exceptional circumstances is untimely under section 240(b)(5)(C)(i), as the motion was not filed within 180 days of the entry of the final order of removal. Even if the motion had been timely filed the respondent has not presented an exceptional circumstance for failing to appear at his September 19, 2005 removal hearing under the definition in section 240(e)(1) of the Act.

Additionally, the Court concludes the circumstances of this case do not warrant the exercise of the Court's limited discretion to reopen sua sponte. *See Matter of J-J*, 21 I&N Dec. 976 (BIA 1997).

Accordingly, the following orders shall be entered:

ORDER: The respondent's motion to reopen is DENIED.


David Ayala
United States Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: () ALIEN () ALIEN C/O CUSTODIAN (M) ALIEN'S ATTY/REP (P) DHS

DATE: 4-6-16 BY: COURT STAFF D. Ayala

ATTACHMENTS: () EOIR-33 () EOIR-28 () LEGAL SERVICES LIST (X) OTHER

Appeal Form