



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*

**DHS/ICE Office of Chief Counsel - ELC
1115 N. Imperial Ave.
El Centro, CA 92243**

Name: PENA-FLORES, WASHINGTON VICENTE

A091-546-852

Date of this notice: 3/19/2012

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:
Miller, Neil P.

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NY

Falls Church, Virginia 22041

File: A091 546 852 - El Centro, CA

Date: **MAR 19 2012**

In re: WASHINGTON VICENTE PENA-FLORES

IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: W.P. Hollerich
Assistant Chief Counsel

APPLICATION: Reopening; reconsideration

The Department of Homeland Security ("DHS") has filed an untimely motion to reopen and reconsider previously terminated removal proceedings against the respondent. 8 C.F.R. § 1003.2(b)(1), (c)(2). The respondent has not replied to this motion. The motion will be denied.

The respondent has been the subject of two separate removal proceedings. The first removal proceedings were initiated against the respondent on April 27, 2004, and terminated by action of this Board on December 28, 2006. The second removal proceedings were initiated by DHS on August 16, 2006, and administratively closed by the Immigration Judge on November 19, 2007. Both proceedings were based on the same underlying criminal conviction. DHS requests we exercise our sua sponte authority to reopen the proceedings terminated on December 28, 2006, and order the respondent removed from the United States.

We do not find an extraordinary situation which would warrant sua sponte reopening. 8 C.F.R. § 1003.2(a); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997). We consider, in part, that as the second removal proceedings against the respondent were not terminated but administratively closed, the respondent still remains subject to those removal proceedings. See *Matter of Avetisyan*, 25 I&N Dec. 688, 692 (BIA 2011) (noting that administrative closure "is used to temporarily remove a case from an Immigration Judge's active calendar"). Therefore, reopening of the prior proceedings would place the respondent in two separate removal proceedings at the same time. Moreover, in arguing the initial proceedings against the respondent should not have been terminated, DHS relies on a United States Supreme Court case issued approximately 4 years before the filing of this motion (Motion at 3-4). See *Matter of G-C-L-*, 23 I&N Dec. 359 (BIA 2002) (setting forth reasons for no longer sua sponte reopening cases where many years had passed from fundamental change in law).

ORDER: The DHS motion is denied.



FOR THE BOARD