



**U.S. Department of Justice**

**Executive Office for Immigration Review**

*Board of Immigration Appeals  
Office of the Chief Clerk*

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**Name: ROJOP-HERNANDEZ, JUSTO**

**A205-147-894**

**Date of this Notice: 4/23/2014**

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

Sincerely,

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Guendelsberger, John  
Hoffman, Sharon  
Manuel, Elise

For more unpublished BIA decisions, visit [www.irac.net/unpublished](http://www.irac.net/unpublished)



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5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 20530

**Rojop-Hernandez, Justo**  
**A205-147-894**  
**1705 E. Hanna Rd**  
**Eloy, AZ 85131**

**DHS/ICE Office of Chief Counsel - PHO**  
**P.O. Box 25158**  
**Phoenix, AZ 85002**

**Name: Rojop-Hernandez, Justo**

**A205-147-894**

**Date of this Notice: 4/23/2014**

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  
Chief Clerk

**Enclosure**

**Panel Members:**  
**Guendelsberger, John**  
**Hoffman, Sharon**  
**Manuel, Elise**

Immigrant & Refugee Appellate Center | [www.irac.net](http://www.irac.net)

Falls Church, Virginia 20530

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File: A205 147 894 – Phoenix, AZ

Date: APR 23 2014

In re: JUSTO ROJOP-HERNANDEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Gabriel Sayavedra, Esquire

APPLICATION: Reopening

The respondent has appealed the Immigration Judge's August 28, 2012, decision that denied the respondent's motion to reopen proceedings in which he was ordered removed in absentia. The record will be remanded.

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

On appeal, the respondent alleges that he did not receive proper notice because he was a minor. The record reflects that on May 10, 2012, the respondent was personally served with a Notice to Appear (NTA), ordering him to appear before an Immigration Judge at a date and time to be set. Exh. 1. The respondent, who was 17 years old at the time, was released on his own recognizance. Exhs. 1, 3. Upon release from custody, he reported his address as "9431 N. Cave Creek Rd. Apt. 19, Phoenix, AZ 85020." *Id.* On May 18, 2012, the Phoenix Immigration Court sent a notice of hearing by regular mail to the address he provided. The respondent failed to appear for his hearing and he was ordered removed in absentia. The record does not contain any evidence that either the hearing notice, or the in absentia order of removal, was returned to the Immigration Court.

The United States Court of Appeals for the Ninth Circuit in *Flores-Chavez v. Ashcroft*, held that juveniles must be released by the former INS to a responsible adult. *See Flores-Chavez v. Ashcroft*, 362 F.3d 1150, 1156 (9th Cir. 2004) (holding that service of a charging document on a person under age 18 is not proper unless a qualified adult is served as well). This requirement makes clear that "juveniles are presumed unable to appear at immigration proceedings without the assistance of an adult." *Id.* at 1157. "Without an adult who is charged with ensuring the juvenile's well-being and compliance, the juvenile is at risk of failing to keep his obligations to the court. Therefore, a legally responsible adult must be charged with ensuring the juvenile's appearance at the hearing." *Id.*; *see also* 8 C.F.R. § 236.3(a) (defining juveniles as aliens under the age of 18 years). The court went on to find that the INS's service of the notice of hearing on Flores-Chavez, without also serving the adult who took custody of him, deprived him of the proper notice and that the Board acted "contrary to law" in failing to reopen proceedings. (quoting *Caruncho v. INS*, 68 F.3d 356, 360 (9th Cir. 1995)).

Here, it is not clear why the respondent was released on his own recognizance. The Form I-213 reflects that the respondent was 17 years old when the NTA was personally served. Exh. 3. Accordingly, additional notice provisions were required in this case. In light of *Flores-Chavez, supra*, we cannot find that the respondent received adequate notice in this case. Thus, we will vacate the Immigration Judge's orders denying reopening and also finding the respondent removable. We will remand in order to allow the Immigration Judge to adjudicate the respondent's case, including any relief for which he may be eligible. See *Matter of Ruiz*, 20 I&N Dec. 91 (BIA 1989) (stating that following the grant of a motion to reopen and rescind an in absentia order, an alien is not required to demonstrate prima facie eligibility for relief). Accordingly, the following orders will be entered.

ORDER: The respondent's appeal is sustained.

FURTHER ORDER: The Immigration Judge's decisions denying the respondent's motions to reopen as well as his order of removal are vacated.

FURTHER ORDER: The proceedings are remanded for further proceedings consistent with this order.

  
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FOR THE BOARD

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE IMMIGRATION JUDGE  
PHOENIX, ARIZONA**

**IN THE MATTER OF**

**Justo Rojop-Hernandez  
A 205 147 894  
IN REMOVAL PROCEEDINGS**

**On Behalf of the Respondent:**

Gabriel Sayavedra, Esq.  
3113 N. 3<sup>rd</sup> Street  
Phoenix, Arizona 85012

**On Behalf of the D.H.S.:**

District Counsel  
2035 N. Central Ave.  
Phoenix, Arizona 85004

**ORDER**


The Court is in receipt of the Respondent's Motion To Reopen and the Department's response thereto. The Respondent's Motion To Reopen is denied.

The Notice of Hearing was sent by the Court to the address provided by the Respondent. The Respondent submitted no affidavit with his motion attesting that he did not receive the Notice of Hearing. The third-party statement submitted by Sylvia Herrera, which is not in affidavit form, is insufficient to overcome the presumption of proper delivery of the Notice of Hearing in this matter (see 8 C.F.R.1003.23(b)(3) and *Matter of M-R-A*, 24 I&N Dec.665(BIA 2008).

Further, the Court declines to exercise its *sua sponte* authority to reopen this matter.

Based on the foregoing, it is ordered that the Respondent's Motion to Reopen Proceedings be denied.

Dated this 28th day of August, 2012

  
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LA MONTE S. FREERKS  
United States Immigration Judge