



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 20530

**CASTILLO-OCAMPO, ARMANDO  
A205-489-036  
C/O USDHS  
1623 EAST J STREET, SUITE 5  
TACOMA, WA 98421**

**DHS/ICE Office of Chief Counsel - TAC  
1623 East J Street, Ste. 2  
Tacoma, WA 98421**

**Name: CASTILLO-OCAMPO, ARMANDO**

**A 205-489-036**

**Date of this notice: 2/7/2014**

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:  
Adkins-Blanch, Charles K.

TranC  
Userteam: Docket

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*SC*

Falls Church, Virginia 20530

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File: A205 489 036 – Tacoma, WA

Date: FEB - 7 2014


In re: ARMANDO CASTILLO-OCAMPO

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Pro se

ORDER: The Board affirms, without opinion, the result of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 1003.1(e)(4).

  
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FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
UNITED STATES IMMIGRATION COURT  
TACOMA, WASHINGTON

File: A205-489-036

October 15, 2013

In the Matter of

ARMANDO CASTILLO-OCAMPO  
RESPONDENT

)  
)  
)  
)

IN REMOVAL PROCEEDINGS

CHARGES: Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

APPLICATIONS: None.

ON BEHALF OF RESPONDENT: PRO SE

ON BEHALF OF DHS: JOSEPH C. SILVIO, II

ORAL DECISION OF THE IMMIGRATION JUDGE

FACTUAL AND PROCEDURAL HISTORY

The respondent is a native and citizen of Mexico. See Exhibit 1. He first entered the United States in approximately 2008. The Department of Homeland Security placed the respondent in removal proceedings on October 19, 2012, charging the respondent as being removable under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act. The respondent appeared before the undersigned Immigration Judge

and ultimately the case concluded in the Court granting the respondent the privilege of voluntary departure on or before February 13, 2013. During that proceeding the respondent claimed some medical challenges and the Court sent his case out for a review by the mental health professionals at the Northwest Detention Center. At that previous hearing the Court did, in fact, find the respondent competent based on the interaction with the Court over a period of five hearings, as well as the mental health assessment. Respondent accepted the grant of voluntary departure and departed the United States.

Respondent came back to the United States illegally in approximately March 2013, and was again arrested based on a warrant for driving under the influence, and was then brought back into Immigration custody, and placed in removal proceedings with the most recent charging document dated August 2, 2013. At his initial master calendar hearing on August 15, 2013, respondent appeared unrepresented and indicated once again that he has some bumps or masses on his head and he is taking pain killers, primarily Ibuprofen, for the pain associated with the masses on his head. Respondent stated that he came back to the United States for the purpose of getting surgery in the United States, at United States Government expense due to the fact that he could not afford to have the surgery in Mexico. The Court continued the case to give the respondent an opportunity to speak with an attorney, and for the Department to conduct a new mental health assessment if necessary.

Respondent appeared again on September 17, and there was no mental health assessment, and he has indicated at that time he was still taking Ibuprofen.

Respondent appeared on October 3, again, and there was still no new mental health assessment. At that time, respondent told the Court that he had the growths removed from his forehead, and had two surgeries here in the United States. At the hearing on

December 3, respondent stated that he had no fear of returning to Mexico. The Court continued the case until today, October 15, 2013 in an effort to determine if the Department planned to do another mental health assessment.

At the hearing on October 15, 2013, the Department submitted the prior mental health assessment conducted on January 9, 2013, please see Exhibit 4. The respondent submitted a series of medical records detailing the services that he has received at the Northwest Detention Center since his second arrival in August 2013. See Exhibit 3. Respondent also submitted some information regarding his most recent arrest, and the resolution to the warrant for driving under the influence.

At the initial master calendar on August 5, 2013, the Court explained respondent's rights in removal proceeding. As the Court notes, this is not the first time the respondent heard these rights since he was previously in removal proceedings earlier in the year. The Court continued the case three times to give respondent an opportunity to either find an attorney or submit applications for relief from removal. The Court asked the respondent no less than three times if he feared returning to Mexico. And each time the respondent indicated that he has no fear of returning to Mexico.

At the hearing on October 15, 2013, the Court conducted a competency hearing in accordance with the procedures established by Matter of M-A-M-, 25 I&N Dec. 474, 477 (BIA 2011). Both the Court and the Department of Homeland Security questioned the respondent.

#### EVIDENCE OF RECORD

The Court admitted the following evidence into the record: the Notice to Appear is Exhibit 1; Exhibit 2 is the Department of Homeland Security evidence filing, including the record of deportable alien; Exhibit 3 is respondent's medical records; Exhibit 4 is the mental health assessment; and, Exhibit 5 is information regarding

medication the respondent received at the Northwest Detention Center. The Court considered all of the evidence of record regardless of whether it is specifically mentioned in the text of the decision. The Court may also from time to time reference the prior order of voluntary departure granted January 30, 2013. See Exhibit 6.

## STATEMENT OF THE LAW

### Competency

Immigration Proceedings are not subject to the full range of constitutional protections. See Salgado Diaz v. Gonzales, 395 F.3d 1158, 1162 (9th Cir. 2005). However, immigration proceedings must conform to the Fifth Amendments requirement for due process. See Id.; see also Reno v. Flores, 507 U.S. 292, 306 (1993). An alien in deportation proceedings is entitled to due process in the form of a full and fair hearing. See Salgado Diaz, 395 F.3d, at 1162. See also Mendez-Mendez v. Mukasey, 525 F.3d 828, 835 (9th Cir. 2008). An alien must be given a reasonable opportunity to examine the evidence against him, to present evidence on his own behalf and to cross-examine witnesses presented by the Government. Hernandez Guadarrama v. Ashcroft, 394 F.3d 674, 681 (9th Cir. 2005). See also 8 C.F.R. Section 1240.10(a)(4).

Aliens are presumed to be competent to participate in removal proceedings. See Matter of M-A-M-, 25 I&N Dec. 474, 477 (BIA 2011). Immigration proceedings against incompetent aliens may still satisfy due process requirements. See Nee Hoa Wong v. INS, 550 F.2d 521, 523 (9th Cir. 1977) (the Immigration and Naturalization Act contemplates that deportation proceedings may be had against mental incompetence). Immigration proceedings can go forward “even when the alien is incompetent providing the proceeding is conducted fairly.” Matter of M-A-M-, 25 I&N Dec. 474, 477 (BIA 2011).

Incompetence does not have to be linked to a specific mental illness. The

test for determining whether an alien is competent to participate in Immigration proceedings is whether he or she has a rational and factual understanding of the nature and the object the proceedings, can consult with an attorney or representative if there is one, or has a reasonable opportunity to examine and present evidence, and cross-examine witnesses. See Matter of M-A-M-, 25 I&N Dec. 474, 479 (BIA 2011).

### Safeguards

Under INA Section 240(b)(3), if it is impracticable for an alien to be present at his immigration proceedings for reason of the alien's mental competency, the Attorney General shall prescribe safeguards to protect the rights and privileges of the alien. Examples of appropriate safeguards include refusal to accept ~~it~~, an admission of removability from an unrepresented respondent, identification and appearance of a family member or close friend who can assist the respondent and provide the Court with information, docketing or managing the case to facilitate the respondent's ability to obtain legal representation or medical treatment in an effort to restore competency, participation of a guardian in the proceedings, continuance of the case for good cause shown, closing the hearing to the public, waiving ~~in~~ respondent's appearance, actively aiding in the development to the record, including examination and cross-examination of witnesses, and reserving the alien's right to appeal. See Matter of M-A-M-, 25 I&N Dec. 474, 483 (BIA 2011). Immigration Judges have the discretion to determine which safeguards are appropriate given the particular circumstances in the cases before them. Id., at 481 to 482.

The Department of Homeland Security submitted the prior order referenced by the Immigration Judge dated January 30, 2013, granting the respondent the privilege of pre-conclusion voluntary departure, along with the previous Notice to Appear, which the Court also referenced, dated October 19, 2012. See Exhibit 6. That

former order actually does indicate the prior grant of voluntary departure ~~in~~ and the prior evidence of removal proceedings.

### ANALYSIS AND CONCLUSION

As previously noted, the Court had the experience of seeing the respondent in his prior removal proceedings in 2012, and the early part of 2013. When respondent came back to the United States illegally, he indicated that he was suffering from some of the same challenges that he had when he was in the United States before. In an abundance of caution, the Court requested a new mental health examination of the respondent, and instituted safeguards to protect his privacy and his right to due process. The Court closed the proceeding so that the respondent could speak freely. The Court conducted the proceedings at a much slower pace and afforded the respondent an opportunity to consult with attorneys. Respondent specifically indicated that he has spoken with the Northwest Immigrants' Rights Project, and that they are assisting him, and providing him information. The Court also continued the case to allow the respondent to receive medical treatment, and respondent indicated that he received two surgeries in the United States to remove the masses from his head. The Court will note that there is nothing in the medical records that the respondent submitted ~~and~~ that indicated that any of these masses are malignant or cancerous. In addition, the Court aided in the development of the record by questioning the respondent.

The Court conducted a competency hearing in accordance with Matter of M-A-M-, and questioned the respondent about the nature of these proceedings. The Court notes that at the hearing on October 15, the respondent appeared more reluctant to speak with the Court than he has at the prior three hearings. Due to his reluctance, the Court asked the respondent a little bit more pointed question, specifically asking him



if he was taking any medication. Why he was more reluctant today to speak with the Court. Respondent indicated that he is not taking any medication other than Ibuprofen. And that he is having some pain today. Respondent also indicated that he is very concerned because the medical staff found additional lumps on his head and possibly on his side. As a result, it appears the respondent is preoccupied with his health challenges and was a little less forthcoming in today's hearing than he was in the prior hearings. Nonetheless, the respondent was able to indicate that he knows he is in Immigration Court, and that the Immigration Judge is the one who makes the decision. He recognizes that deportation means that you have to leave the United States. He also recognized that the gentleman seated at the table opposite him works for the Government.

Respondent stated that he is not having any auditory or visual hallucinations. He stated that he takes Ibuprofen for the pain. At one point, he did take Tramadol. The Department introduced evidence that Tramadol is used to control mild to moderate release relief of your pain. Respondent indicated that he is not engaging in any sort of supportive therapy.

Respondent submitted detailed medical records of his history at the Northwest Detention Center. None of these medical records indicate that the respondent has a mental illness of any kind. In fact, the most recent evaluation indicates that there are no psychological challenges, and no neurological challenges. Respondent appeared normal. Nor is there anything in these medical records to indicate that the masses removed during the two surgeries here at the Northwest Detention Center are cancerous.

Respondent testified that he requested the medical records on his own through a Freedom of Information Act request. Respondent also stated that he is

consulting with the Northwest Immigrants' Rights Project, and they are assisting him in his case. Respondent stated that the Northwest Immigrants' Rights Project told him that they will not represent him in Immigration Court.

Based on the mental health assessment conducted in January 2013, the respondent's most recent medical history, as well as respondent's interaction with the Court and the Department of Homeland Security over the course of the proceedings, the Court finds that respondent is competent and that he understands the nature and the object of the proceedings against him. See Matter of M-A-M-, 25 I&N Dec. 474 (BIA 2011). As previously noted, the Court outlined a series of reasons why respondent is competent. Primarily, it is based on the interaction respondent has with not only the Court, but the Department of Homeland Security, and his ability to provide information to the Court, and answer the Court and the Department's questions. In addition, the medical records submitted by the respondent and the prior mental health assessment indicate that there is absolutely no mental health condition whatsoever. The prior mental health assessment indicates that respondent's thought process was logical and organized, although he tended to think in a simple manner. No history of hallucinations, cognition appeared unimpaired, judgment and insight unimpaired, and he reasoned in a logical manner. There is no diagnosis whatsoever for any mental health condition assessment, and he had a global assessment of functioning of 80. The global assessment of functioning scale of 80 indicates that if symptoms are present, they are transient and an expectable reaction to psychological stressors, indicating no more than a slight impairment in social occupation or school of functioning.

And the Court recognizes that the respondent has some significant concerns about his physical health. But it appears that he has been treated in the United States and had two surgeries. The Court recognizes that the respondent

certainly wants to remain in the United States and continue to get surgeries here in the United States since he may have some difficulty affording those same procedures in Mexico. However, the Court is at a loss to be able to provide that opportunity to the respondent, since there is no legal means for the Court to allow the respondent to remain in the United States. The Court asked respondent no less than three times if he feared a return to Mexico, and respondent indicated that he has no fear of returning to Mexico. As a result, asylum, withholding of removal and relief under the Convention Against Torture do not apply. Since the Court previously granted the respondent the privilege of voluntary departure, by law, he is ineligible to receive that benefit again. See INA Section 240(c). Respondent indicated that he wants to remain in the United States and continue to receive medical treatment. The Court repeatedly tried to explain that the Court has no authority to grant him that benefit.

As a result of the Court's finding respondent is competent, the Court went over the Notice to Appear with the respondent. Respondent admitted the allegations contained in the Notice to Appear and conceded that he is removable from the United States. Based on the totality of the evidence of record, including the respondent's admissions to the allegations and concession to the charge of removal, as well as the Government's evidence, the Court finds that respondent is removable as charged by clear and convincing evidence. See 8 C.F.R. Section 1240.8(a); 1240.10(c). Respondent designated Mexico as the country of removal, and indicated that he has no fear of return. Respondent submitted no applications for relief from removal, and as such, the only thing the Court can do is enter a removal order to Mexico.

#### ORDER

The Court determines that respondent is competent to proceed in Immigration Court, and understands the nature and the object of the proceedings

against him.

IT IS FURTHER ORDERED that respondent be deported from the United States to Mexico on the charge as contained in the Notice to Appear.

**Please see the next page for electronic**

**signature**

THERESA M. SCALA  
Immigration Judge

//s//

Immigration Judge THERESA SCALA

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