



**U.S. Department of Justice**

Executive Office for Immigration Review

*Board of Immigration Appeals  
Office of the Clerk*

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**P. O. Box 230217**  
**Hartford, CT 06123-0217**

**Name: ISLAS GONZALEZ, JOSE MARIA**

**A 205-497-397**

**Date of this notice: 10/11/2013**

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:  
Malphrus, Garry D.

TranC  
Userteam: Docket

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*SG*



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Falls Church, Virginia 20530

**ISLAS GONZALEZ, JOSE MARIA  
A205-497-397  
BRISTOL COUNTY  
400 FAUNCE CORNER ROAD  
N. DARTMOUTH, MA 02747**

**DHS/ICE Office of Chief Counsel - HAR  
P. O. Box 230217  
Hartford, CT 06123-0217**

**Name: ISLAS GONZALEZ, JOSE MARIA      A 205-497-397**

**Date of this notice: 10/11/2013**

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:  
Malphrus, Garry D.

TranC  
Userteam: Docket

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

Falls Church, Virginia 20530

File: A205 497 397 – Hartford, CT

Date: OCT 11 2013

In re: JOSE MARIA ISLAS-GONZALEZ

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Danielle Briand Robinson, Esquire

ON BEHALF OF DHS: Leigh Mapplebeck  
Senior Attorney

APPLICATION: Reopening

The respondent, a native and citizen of Mexico, appeals from an Immigration Judge's June 5, 2013, decision, denying his motion to reopen proceedings. The appeal will be dismissed

We review for clear error the findings of fact, including the determination of credibility, made by the Immigration Judge. 8 C.F.R. § 1003.1(d)(3)(i). We review de novo all other issues, including whether the parties have met the relevant burden of proof, and issues of discretion. 8 C.F.R. § 1003.1(d)(3)(ii).

We adopt and affirm the decision of the Immigration Judge. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994).

Of note, the respondent presents no arguments on appeal addressing the Immigration Judge's determination that the respondent did not present any authority under which the Immigration Judge could review his removal under the Fifth and Eighth Amendments of the Constitution (I.J. at 3-4). "[N]either the Immigration Judge nor this Board may rule on the constitutionality of the statutes that we administer." *Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031, 1035 (BIA 1999). Further, the respondent's removal is not considered a "criminal punishment" for purposes of applying the constitutional rights and principles raised by the respondent. *See Oliver v. United States Dep't of Justice*, INS, 517 F.2d 426, 428 (2d Cir. 1975) (affirming as being well-settled law that deportation is a civil proceeding and is not considered a criminal punishment, regardless of its harsh consequences) (citing, inter alia, *Harisiades v. Shaughnessy*, 342 U.S. 580, 594-95 & n. 22 (1952)); *see also Zamora-Mallari v. Mukasey*, 514 F.3d 679, 695 (7th Cir. 2008); *Sukwanputra v. Gonzales*, 434 F.3d 627, 632 (3d Cir. 2006); *Elia v. Gonzales*, 431 F.3d 268, 276 (6th Cir. 2005); *Cadet v. Bulger*, 377 F.3d 1173, 1196 (11th Cir. 2004). Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.



FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
450 MAIN ST., ROOM 628  
HARTFORD, CT 06103

LAW OFFICES OF BRIAND & PRUSLOW  
ROBINSON BRIAND, Danielle L.  
647 CLINTON AVENUE  
BRIDGEPORT, CT 06605

IN THE MATTER OF  
ISLAS GONZALEZ, JOSE MARIA

FILE A 205-497-397

DATE: Jun 5, 2013

\_\_\_ UNABLE TO FORWARD - NO ADDRESS PROVIDED

\_\_\_ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE. THIS DECISION IS FINAL UNLESS AN APPEAL IS FILED WITH THE BOARD OF IMMIGRATION APPEALS WITHIN 30 CALENDAR DAYS OF THE DATE OF THE MAILING OF THIS WRITTEN DECISION. SEE THE ENCLOSED FORMS AND INSTRUCTIONS FOR PROPERLY PREPARING YOUR APPEAL. YOUR NOTICE OF APPEAL, ATTACHED DOCUMENTS, AND FEE OR FEE WAIVER REQUEST MUST BE MAILED TO: BOARD OF IMMIGRATION APPEALS  
OFFICE OF THE CLERK  
P.O. BOX 8530  
FALLS CHURCH, VA 22041

\_\_\_ ATTACHED IS A COPY OF THE DECISION OF THE IMMIGRATION JUDGE AS THE RESULT OF YOUR FAILURE TO APPEAR AT YOUR SCHEDULED DEPORTATION OR REMOVAL HEARING. THIS DECISION IS FINAL UNLESS A MOTION TO REOPEN IS FILED IN ACCORDANCE WITH SECTION 242B(c)(3) OF THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. SECTION 1252B(c)(3) IN DEPORTATION PROCEEDINGS OR SECTION 240(c)(6), 8 U.S.C. SECTION 1229a(c)(6) IN REMOVAL PROCEEDINGS. IF YOU FILE A MOTION TO REOPEN, YOUR MOTION MUST BE FILED WITH THIS COURT:

IMMIGRATION COURT  
450 MAIN ST., ROOM 628  
HARTFORD, CT 06103

\_\_x OTHER: IMMIGRATION JUDGE DECISION. \_\_\_\_\_

SD  
\_\_\_\_\_  
COURT CLERK  
IMMIGRATION COURT

FF

CC: MARLEY, JOHN P.  
450 MAIN STREET # 483  
HARTFORD, CT, 061030000

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
HARTFORD, CONNECTICUT**

**IN THE MATTER OF:**

**Islas-Gonzalez, Jose  
Segundo Manuel**

**A 205-497-397**

**RESPONDENT**

**In Removal Proceedings**

**CHARGES:** Immigration and Nationality Act ("INA") §§ 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I)

**APPLICATION:** Motion to Reopen and Terminate proceedings

**On Behalf of Respondent**

Danielle L. Robinson Briand, Esq.  
647 Clinton Ave.  
Bridgeport, CT 06605

**On Behalf of the Department**

John P. Marley  
Senior Attorney  
Office of the Chief Counsel  
450 Main Street, Room 483  
Hartford, CT 06103

**DECISION OF THE IMMIGRATION JUDGE**

**I. PROCEDURAL HISTORY**

Jose Maria Islas Gonzalez ("the respondent") is a native and citizen of Mexico who was alleged by the Department of Homeland Security ("DHS") to have entered the United States at or near an unknown place, on or about an unknown date and who was not admitted or paroled after inspection by an Immigration Officer. See Exhibit 1. In addition, DHS also alleged that the respondent did not have the proper documentation to be in the United States under the Immigration

and Nationality Act. See Exhibit 1. At a master calendar hearing on January 3, 2013, the respondent submitted written pleadings through his prior counsel. See Exhibit 2. In his pleadings, the respondent conceded all allegations except allegation number three. The Court was informed that respondent had entered the United States in 2005. In his pleadings, the respondent conceded both charges of removability against him. The Court was also advised that the respondent's request for prosecutorial discretion was denied by DHS. In addition, respondent's prior counsel advised the Court that the sole form of relief being sought by respondent was voluntary departure. The Court granted a request by respondent for a continuance to allow completion of an Accelerated Rehabilitation program related to a pending criminal matter. The respondent's case was then scheduled for a master calendar hearing on February 21, 2013, to allow the respondent to pursue his request for voluntary departure from the United States.

At the master calendar hearing on February 21, 2013, respondent's prior counsel indicated to the Court that respondent had decided to withdraw his application for voluntary departure. In addition, the Court was advised that no other forms of relief were available to the respondent. On the basis of the record at the February 21, 2013 master calendar hearing, the Court found that DHS had established the respondent's removability by clear and convincing evidence. In addition, since no other forms of relief from removal were being sought, the Court ordered the respondent's removal from the United States to Mexico. The respondent reserved his right under the law to appeal the Court's decision to the Board of Immigration Appeals.

## **II. MOTION TO REOPEN AND TERMINATE REMOVAL PROCEEDINGS**

The respondent, through new counsel, filed a Motion to Reopen and Terminate Removal Proceedings with the Immigration Court on May 23, 2013. In the motion, respondent argues that his case should be reopened because the Court is required under INA § 240(c)(1)(A) and 8 USC 1229a(c)(1)(A) to conduct a constitutionally mandated-proportionality review in his removal proceedings. Among other things, the respondent argues that proportionality is a bedrock constitutional principal originating from the 5<sup>th</sup> and 8<sup>th</sup> amendments. Respondent asserts that the failure by the Court to conduct a proportionality review is a legitimate basis for reopening his removal proceedings otherwise he would suffer a violation of his 5<sup>th</sup> and 8<sup>th</sup> amendment rights. The respondent further requests termination of his proceedings because his removal from the United States is disproportionate to the underlying immigration status offense of entering the without lawful admission.

The Department of Homeland Security filed an opposition to the respondent's Motion to Reopen on May 24, 2013. The Department states that Immigration Courts are not the proper forum for constitutional analysis of statutory provisions and that respondent fails to provide any authority which allows the Court to conduct a proportionality review in his removal proceedings. The Department also argues that his motion is unsupported by any "new facts" or "new evidence", and that statements of counsel are not evidence.

### III. STANDARD OF LAW

A motion to reopen proceedings shall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits and other evidentiary materials. 8 C.F.R. § 1003.23(b)(3). In addition, any motion to reopen for the purpose of acting on an application for relief must be accompanied by the appropriate application for relief and all supporting documents. *Id.*

### IV. ANALYSIS

The respondent has not established *prima facie* eligibility for any relief in his motion to reopen. The Court would note that no applications for relief have been submitted with the respondent's Motion to Reopen. Other than seeking termination of proceedings on proportionality grounds, there is no indication of any intended relief that is sought by the respondent. To prevail on a motion to reopen, the movant must establish *prima facie* eligibility for the relief requested. Poradisova v. Gonzales, 420 F.3d 70, 78 (2nd Cir. 2005). The movant may meet his or her burden by demonstrating "a realistic chance" that he or she will be able to establish eligibility for relief. *Id.* The respondent's motion does not state new facts or provide any material evidence, previously unavailable, that will be proven at a hearing. *See* 8 C.F.R. § 1003.23(b)(3).

Respondent requests termination of proceedings if reopened, premised on an application of proportionality review. Respondent asserts that proportionality review should be incorporated into the Court's removability decision pursuant to INA § 240(c)(1)(A) and 8 USC 1229a(c)(1)(A). Generally, an Immigration Judge may terminate proceedings if removability or inadmissibility has not been established, or in other specific situations. *See generally* INA §§ 240(c)(2), (3); 8 C.F.R. §§ 1240.12, 1003.10(b); *see also* Matter of Sanchez-Herbert, 26 I&N Dec. 43, 45 (BIA 2012); Matter of W-C-B-, 24 I. & N. Dec. 118, 122 (BIA 2007) (discussing termination to permit reinstatement of a prior order of deportation); Matter of Hidalgo, 24 I&N Dec. 103 (BIA 2007) (discussing when termination is appropriate based on a pending naturalization application); Matter of Rodriguez-Ruiz, 22 I&N Dec. 1378 (BIA 2000); Matter of Quintero, 18 I&N Dec. 348 (BIA 1983) (noting that termination is not a proper means to delay an alien's deportation). In this case, Respondent conceded removability on the basis of his immigration charges under INA §§ 212 (a)(6)(A)(i) and (a)(7)(A)(i)(I).

The Respondent's request for termination is premised on the Court applying a Constitutional mandated proportionality analysis through INA § 240(c)(1)(A). Respondent does not cite to any authority which allows for proportionality review in Immigration Courts. Whether an alien is removable is based on charges under INA §§ 212(a) and 237(a). *See* § 240(a). Pursuant to INA § 240(c)(1)(A), an Immigration Judge is required at the conclusion of a proceeding to decide whether a Respondent in removal proceedings is removable from the United States. Also, INA § 240(c)(1)(A) indicates that the determination of the Immigration Judge shall be based only on the evidence produced at the hearing. There is no basis within the INA to conclude that INA § 240(c)(1)(A) requires anything more and the Court fails to see any basis in the statute for proportionality review. The Court notes generally that Congress has broad powers to regulate

immigration, and Congress has set forth specific forms of relief from removal. See Demore v. Kim, 538 U.S. 510, 521 (2003); Kleindienst v. Mandel, 408 U.S. 753, 766 (1972).

Immigration Courts are not the proper forums for constitutional analysis of statutory provisions. See Matter of Zamora-Molina, 25 I. & N. Dec. 606, 615 (BIA 2011); Matter of Yanez, 23 I&N Dec. 390, 401 (BIA 2002) (noting that even the BIA “lacks authority to pass judgment on the constitutionality of the Immigration and Nationality Act or any provision thereof”) (citing Matter of Rodriguez-Carrillo, 22 I&N Dec. 1031 (BIA 1999); Fuentes-Campos, 21 I&N Dec. at 912; Matter of C-, 20 I&N Dec. 529, 532 (BIA 1992)). Respondent has not presented a cognizable basis for termination of proceedings and has not presented any issues which the Court can address. Accordingly, the Court must deny Respondent’s motion for reopening and termination of removal proceedings.

## V. ORDERS

For the foregoing reasons, the following **ORDERS** are **HEREBY ENTERED**:

It is **ORDERED** that Respondent’s Motion to Reopen and Terminate Removal Proceedings be **DENIED**.

It is further ordered that the Stay of Removal which was previously granted by this Court on May 23, 2013 is hereby **VACATED**.

June 5, 2013  
Date

  
\_\_\_\_\_  
PHILIP VERRILLO  
United States Immigration Judge