

Ninth Circuit Assumes Jurisdiction in a Reinstatement of Removal Case

In 1999, the Immigration Judge (IJ) ordered Client's removal. INS deported Client to Mexico. Afterwards, he returned to the U.S. In 2010, Client came to us for help in reopening his 1999 removal order. We filed a motion to reopen with the IJ. We also requested a stay of removal. The IJ denied our request for stay of removal but the motion to reopen is still pending.

Later, Immigration and Customs Enforcement (ICE) apprehended Client and tried to deport him by reinstating the 1999 removal order. We filed an interlocutory appeal with the Board of Immigration Appeals (BIA). The BIA denied our appeal. We filed a petition for review with the Ninth Circuit Court of Appeals. The Ninth Circuit ordered us to explain why the Court has jurisdiction over the case. The Court of Appeals only reviews final orders of removal. Our appeal to the BIA pertained only to the IJ's denial of the stay of removal.

However, we explained to the Ninth Circuit that it has jurisdiction over our petition for review because ICE had reinstated Client's 1999 removal order. The Ninth Circuit agreed and is currently reviewing the case.

Please see the attachment(s) in the next page(s).

Disclaimer: This material is not intended to provide legal advice on any specific concern that the reader may have. The successful outcome of the case described above does not in any way guarantee a similar outcome in any specific legal matter concerning the reader. The reader should seek the advice of any counsel if he or she has a specific immigration problem.
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FILED

UNITED STATES COURT OF APPEALS

JAN 11 2011

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

[REDACTED],

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. [REDACTED]

Agency No. A [REDACTED]

ORDER

Before: REINHARDT and N.R. SMITH, Circuit Judges.

The motion to proceed in forma pauperis is granted. The Clerk shall amend the docket to reflect this status.

This is a petition for review of Board of Immigration Appeals' denial of petitioner's motion to stay removal during the pendency of his motion to reopen removal proceedings. On September 9, 2010, the court issued an order to show cause why this petition for review should not be dismissed for lack of jurisdiction because the order over which petitioner seeks review is not a final order of removal.

On September 23, 2010, petitioner responded to the order to show cause asserting that his prior removal order has been reinstated and, thus, his petition

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seeks review over that order, which this court does maintain jurisdiction to review. *See Garcia de Rincon v. Dep't of Homeland Security*, 539 F.3d 1133, 1137 (9th Cir. 2008). Petitioner's response was within 30 days after the September 2, 2010 reinstatement and therefore effects a timely cure of the jurisdictional issues of his initial petition for review.

Accordingly, the order to show cause is discharged.

The motion for a stay of removal pending review is denied. *See Nken v. Holder*, 129 S. Ct. 1749 (2009).

The certified administrative record has been filed. The opening brief is due April 14, 2011; the answering brief is due June 13, 2011; and the optional reply brief is due within 14 days after service of the answering brief.