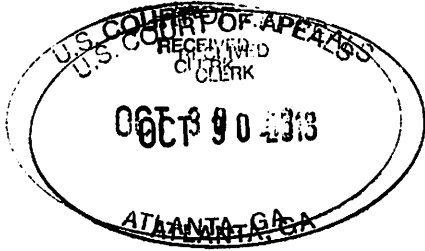


**THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**



CASE NO. _____

MANUEL LEONIDAS DURAN ORTEGA,
Petitioner,

v.

JEFFERSON B. SESSIONS III,
United States Attorney General,
Respondent.

On Appeal from the Executive Office of Immigration Review
Board of Immigration Appeals
File No. [REDACTED]

EMERGENCY PETITION FOR REVIEW

Michelle R. Lapointe
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[REDACTED]

Attorneys for Petitioner

EMERGENCY PETITION FOR REVIEW

Petitioner Manuel Duran Ortega (hereinafter “Duran-Ortega”) is currently detained at a Department of Homeland Security (“DHS”) detention center in Louisiana and upon information and belief, faces a substantial likelihood of imminent removal to El Salvador. Duran-Ortega hereby petitions for review by this Court of his *in absentia* removal order, and the Board of Immigration Appeals (“BIA”) order dismissing his appeal of the Atlanta Immigration Court’s denial of his Motion to Reopen. There is currently no stay of removal in place. A copy of the BIA order is attached to this Petition as Exhibit A. In support of this Petition, Duran-Ortega states as follows:

1. On October 17, 2018, the BIA dismissed Duran-Ortega’s appeal of an Atlanta immigration judge’s denial of his Motion to Reopen. Ex. A. On that same date, the BIA dissolved the stay of removal it had entered on May 29, 2018 and which had been in effect during the pendency of Duran-Ortega’s BIA appeal. *Id.* Duran-Ortega seeks to reopen his removal proceedings to apply for asylum and withholding of removal.

2. Duran-Ortega is a native of El Salvador who has worked as a journalist both in El Salvador and in the United States. He fears violent persecution if he is returned to El Salvador.

3. Duran-Ortega entered the United States in 2006 and was issued a

putative Notice to Appear (“NTA”) shortly thereafter. *See* Ex. B. The NTA did not contain a time or date of his initial hearing, but stated only that he should appear at a date and time “to be set.” *Id.* As such, the document Duran-Ortega received was not an NTA at all. *See Pereira v. Sessions*, 138 S. Ct. 2105, 2114–17 (2018) (putative NTAs that lack time and date information are insufficient under the statute and do not qualify as NTAs). Because the putative NTA lacked this crucial and statutorily-required information, Duran-Ortega did not receive notice of his hearing as required by 8 U.S.C. §1229(a). His removal order is subject to rescission under 8 U.S.C. § 1229a(b)(5)(C)(ii) (*in absentia* order may be rescinded “upon a motion to reopen filed at any time if the alien demonstrates that the alien did not receive notice in accordance with” Section 1229(a)(1)). *See also United States v. Virgen-Ponce*, 320 F. Supp. 3d 1164, 1166 (E.D. Wash. 2018) (interpreting *Pereira* to hold that jurisdiction does not vest with the immigration court where the NTA does not specify the time and date of a hearing).

4. The Immigration Court in Atlanta, Georgia, mailed a Notice of Hearing on August 18, 2006, which was returned to the court as undeliverable due to “insufficient address.” Ex. C. Such a document, even if properly served, does not cure the defect in the NTA. *See Virgen-Ponce*, 320 F.Supp. 3d at 1166; *Pereira*, 138 S. Ct. at 2116 (rejecting the government’s argument that Section 1229(a)(1)

relates only to whether an NTA is “complete,” and holding that the lack of time and date render the document something other than an NTA as defined by statute).

5. Duran-Ortega was ordered removed *in absentia* on January 31, 2007. A copy of Mr. Duran Ortega’s *in absentia* removal order is attached as Exhibit D.

6. Duran-Ortega has been an important and visible member of the Memphis, Tennessee community for a decade. Through the Spanish-language independent news outlet he founded, *Memphis Noticias*, he has reported on issues relevant to the Latino community in Memphis. Over the past year, Duran-Ortega has published stories critical of the Memphis Police Department’s (“MPD”) and Immigration and Customs Enforcement’s (“ICE”) treatment of the Latino community.

7. Since his 2007 *in absentia* removal order, conditions have significantly changed in El Salvador and violence against members of the media has increased. As such, he is eligible for asylum and withholding of removal. *See* 8 U.S.C. § 1229a(c)(7)(C)(ii).

8. While reporting on an April 3, 2018 demonstration in which the participants were peacefully protesting MPD collaboration with ICE, Duran-Ortega was arrested without a warrant or probable cause by MPD and charged with disorderly conduct and impeding a highway. Duran-Ortega was the only

journalist arrested at the demonstration.

9. While Duran-Ortega was detained by MPD, his girlfriend posted bond for him but he was still not allowed to leave jail. All charges against Duran-Ortega were dropped on April 5, 2018, but he was rapidly transferred by MPD to the custody of ICE. He has been detained at immigration detention centers in Louisiana since that time.

10. On April 9, 2018, Duran-Ortega filed a Motion to Reopen with the Atlanta Immigration Court, in which he raised three arguments: (1) circumstances had changed significantly in El Salvador since his 2007 removal order, resulting in an increase in violent persecution of journalists such that he should be permitted to apply for asylum before an Immigration Judge; (2) lack of proper notice of his 2007 hearing; and (3) *sua sponte* reopening was in the interest of justice because of his unconstitutional arrest and detention. In support of his first argument, Duran-Ortega cited to significant deterioration in the treatment of journalists in El Salvador, including well-documented torture and murder of those who are critical of the government, corruption, and the quasi-governmental transnational criminal organizations. The Immigration Judge denied the Motion to Reopen on April 24, 2018. A copy of this decision is attached as Exhibit E.

11. Through counsel, Duran-Ortega filed a Notice of Appeal with the BIA on April 30, 2018. On May 1, he filed a Motion for Emergency Stay of Removal.

The BIA granted the stay motion on May 29, 2018. *See* Ex. F. On October 17, 2018, the BIA issued an order dismissing Duran-Ortega's appeal, thereby dissolving the stay of removal. *See* Ex. A.

12. To date, no court has upheld the validity of the BIA order dismissing the appeal and vacating the stay.

13. Duran-Ortega is filing an Emergency Motion for a Stay of Removal with this Court concurrently with this Petition.

14. Jurisdiction is asserted pursuant to 8 U.S.C. § 1252(a)(1), (a)(2)(D), and (b)(6).

15. Venue is asserted pursuant to 8 U.S.C. § 1252(b)(2) because the Immigration Judge completed proceedings in Atlanta, Georgia, within the jurisdiction of this judicial circuit.

16. This petition is timely filed pursuant to 8 U.S.C. § 1252(b)(1), as it is filed within 30 days of the BIA's Order dismissing the appeal and lifting the stay of removal.

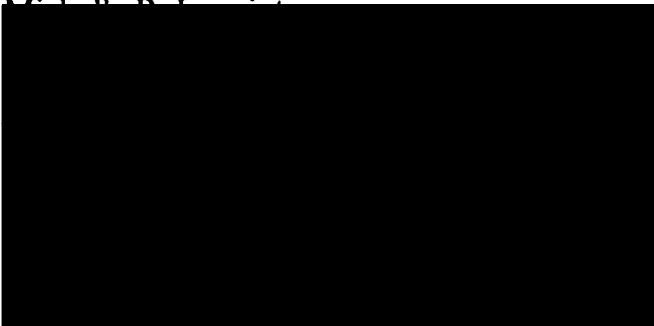
WHEREFORE, Petitioner Manuel Duran-Ortega respectfully requests that:

- a. This Court grant this Petition for Review of Duran-Ortega's 2007 removal order and the BIA order dismissing his appeal and vacating the stay of removal;

- b. This Court stay his removal during adjudication of this Petition and for the pendency of any subsequent and related immigration court and BIA proceedings;
- c. Petitioner be awarded attorneys' fees and costs insofar as authorized by the Equal Access to Justice Act and any other applicable laws; and
- d. The Court grant such other and further relief as may be appropriate.

Respectfully submitted this 30th day of October 2018,

s/ Michelle R. Lapointe



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 30, 2018, I caused this Petition for Review and accompanying exhibits to be served on all parties or their counsel of record by serving a true and correct copy by Federal Express at the addresses listed below:

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