005895

ORIGINAL

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
AUG 24 2000
CLERK

RICARDO AVILA-TORRES - PETITIONER,

VS.

IMMIGRATION AND
NATURALIZATION SERVICE - RESPONDENT.

ON PETITION FOR EXTRAORDINARY WRIT OF
HABEAS CORPUS

THE LAST COURT TO RULE ON THE MERITS OF THIS CASE WAS

U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

RICHARD AVILA/D39502

PVSP-A3-230/PO Box 8500

Coalinga, Caif. 93210

RECEIVED
AUG 24 2000
OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED

I

There are no set guidelines for deportation proceedings with respects to the different types of cases and their circumstances, i.e. undocumented aliens entered the U.S. illegally to begin with, and the lifetime resident alien has never lived any where else but the United States.

II

The due process guarantee of a full and fair hearing can not be satisfied if proceedings are abruptly terminated and judgement is rendered after only part of the evidence has been heard.

III

Can the Government deport lifetime residents of the United States and expect them to survive in a violent and corrupt country, totally foreign to them, without violating their right to life, liberty, and security of person?

IV

Failing to appear in court one (1) day, should not be allowed to deem good cause for deportation of a lifetime resident alien, who was addmitted as an infant, and has lived in the United States for over forty five (45) years.

STATEMENT OF THE CASE

Petitioner files this belated petition in good faith and with good cause. The petition filed with the Ninth Circuit Court of Appeals to appeal from the decision of the Central Distric Court of California was filed on April 2, 1998, the petition was dismissed on April 27,1998, (as more fully set forth in appendix **"C"**). Petitioner being in custody of the U.S. Marshal at the time, was subject to random transfers and changes in housing locations, (as more fully set forth in appendix **"D"**). Because of said movements, petitioner unfortunately never recieved any notice of the dismissal until after his inquiry on May 12,1999, and the court's notification on May 24,1999, (as more fully set forth in appendixs **"E"** and **"F"**).

The laws used to proceed against petitioner were very old and never designed with consideration as to what kind of impact a deportation would have on the life of a resident alien who was only born outside of the United States but has never actualy lived anywhere else. These laws apply very well with respects to illegal aliens, fist time applicants for entry, and in some cases recently addimtted resident aliens. But in petitioner's case the court's actions were nothing more than a blatant disregard for due process guaranteed under the Fifth Amendment.

After being detained by USINS petitioner was notified of the deportation proceedings initiated against him and he posted bail. For over two years and several court appearances, petitioner had complied with all of the court'sorders to produce and present evidence in his behalf. Because of petitioner's efforts and evidence, the court was very satisfied and had indicated that the 212(c) waiver would be granted if all prerequisits were met. On Aug. 3,1992, and again after two years of court appearances, petitioner missed court for the very fist time. Pet-

itioner was never given opportunity to justify the failure to appear, and in fact the court acted to proceed in absentia and order the deportation. This was done before the court had heard all of the evidence in the case. The courts have time and again ruled tha a full and fair hearing is absolutely necessary in deportation proceedings. A fair and just decision can only be made after hearing all of the evidence, and that can only be accomplished by way of a full and fair hearing. Any denial of such a hearing is the denial of due process guaranteed under the Fifth Amendment...

> "The due process clause of this amendment is available as protection for alien and citizen alike, and resident alien, subject to expulsion and deportation under conditions which congress may prescribe, may not be deprived of his constitutional right to procedural due process, including right to fair hearing before tribunal which meets at least currently prevailing standards of impartiality". Marcelo v Aherns, C.A. La. 1954, 212 F.2d. 830.

> "In a deportation hearing, an alien is entitled to the guarantee of due process, which is satisfied only by a full and fair hearing". Garcia-Jaramillo v Immigration and Naturalization Sevice, C.A. 9, 1979, 604 F.2d. 1236, certiorari denied 101 S.Ct. 94, 449 U.S. 828, 66 L.Ed. 32, rehearing denied 101 S.Ct. 594, 449 U.S. 1026, 66 L.Ed. 2d. 847.

Technically the court must assume that by failing to appear, the respondent in a case has abandoned that case and has given up the desire to remain in the United States after a lifetime here. In petitioner's case, as well as many others, this is absolutely not true. For any court to assume that by failing to appear, someone has completely and undoubtedly abandoned their case case is ludicrous and make a mockery of the court's inherant powers of discretion.

During the course of the proceedings in case no. A10793229, petitioner

submitted several documents in support of the application for waiver under 212(c), showing a lifetime of continueous residence in the U.S. Said documents included but were not limited to; high school diploma, sunday school certificates, and records of military service. Because of evidence and the overall circumstances of the case, as aforementioned, the court was indicating very positive views towards the application and the granting thereof, again after all prerequisites were satisfied. Because of the evidence, the circumstances of the case, and the court's favorable attitude prior to the failure to appear, it is so obvious that court did in fact base it's decision to terminate the hearing and order the deportation solely on the failure to appear. This would have transgressed petitioner's right to a full and fair hearing in such a way so as to change the outcome of the decision and prejudice the case...

> "Immigration judge has the duty to develope record fully and fairly in manner understandable to alien and to ensure that favorable facts are presented". Norma Antonia Jacinto v Immigration and Naturalization Service. (2000) Daily Journal D.A.R. 2747.

On the day of the failure to appear, petitioner's mother was having routine medical difficulties related to her diabetic condition. These complications, although routine, can become life threatening if left unattended. Being the only person available to perform the duties of caregiver, and while doing so, petitioner unfortunately lost track of his court commitment. Estella Ramirez and Teresa Avila, petitioner's sister and mother, have both signed letters stating that petitioner has always helped as caregiver for his mother, (as more fully set fortth in appendixs **"G"** and **"H"**). Even with all of the major issues or possible pecedence setings put aside, the one single most important issue is a

failure to appear. The issue of failure to appear should be a fairly simple one, but the court has unfairly and unconstitutionally allowed it to have a devestating impact upon petitioner's life. Fairness and due process rights are the real issues here , and forwhich remedy can be sought through habeas corpus, as petitioner now addresses this court, to correct the gross miscarraige of justice left by ignoring evidence and proceeding in absetia...

> "Deportation without a fair hearing or on charges unsupported by any evidence is a denial of due process, which may be corrected by habeas corpus". U.S. v Commissioner of Education, N.Y. 1927, 47 S.Ct. 302, 71 L.Ed. 560. See also Bufalino v Irving, C.C.C. Kan. 1939, 103 F.2d. 830: Ex parte Jurjans, D.C. Minn. 1927, 17 F.2d. 507.

Deporting lifetime U,S. resident aliens to a violent and corrupt country to live in fear of persecution or death violates the very basic human rights we are all born with. The United States has always been a staunch defender of those rights and is quick to condem violations whenever and wherver they are exposed. Unfortunately, and only for political reasons, the U.S. Government choses to turn a blind eye at the human rights violation that plauge mexico today and continues to deport U.S. resident aliens there...

> "Everyone has the right to life, liberty and security of person". Universal Declaration of Human Rights, Article 3.

With cartels all but running the country, Mexico has been forced to accept violence and corruption as a way of life. It has transgressed from a viable world power to nothing more than a safe haven for ruthless

drug runners and can no longer be considered our friendly neighbor who once welcomed Americans with open arms. There is growing anti-american sentiment in Mexico today which leads to many dangerously tense and hostile situations between Mexicans and Americans. However it was that the animosity towards America started, the cartels continue to add fuel to the fire making it easier to recruit normally good, law abiding people, with the lure of lots of easy mony, to fight America and it's war on drugs. The influece over the people and their animosity is clearly heard and expressed in the steady stream of mexican ballads, coming out of Mexico, which today are nothing more than songs of praise to the mafias, and threats of death to anyone challenging them.

The anti-american sentiment is a very real danger for any American in Mexico, but for Mexican-Americans or lifetime U.S. Resident Aliens, the danger is much greater. These individuals have become totally alienated with Mexican language, customs, and culture. They are seen as anglos and traitors to Mexico, banded "plasticos" or plastic Americans, hated, unwanted,and persecuted in Mexico.

APPENDIX "A"

FILED

APR 27 1998

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICARDO AVILA-TORRES, Petitioner, vs. LINDA CLARKE, Respondent.	)	No. 98-80265 ORDER

Before: BRUNETTI, RYMER, and T.G. NELSON, Circuit Judges

The petition for writ of habeas corpus is denied.

No motions for reconsideration, modification, or clarification of this order shall be filed or entertained.

mocal/4.20.98/ka