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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

In the Matter of:

Detail

WILLIVER CHEA, Respondent

[REDACTED] A [REDACTED]

Stewart detention center

146 CCA Rd

Lumpkin GA 31815

RESPONDENT'S MEMORANDUM IN SUPPORT OF MOTION TO TERMINATE REMOVAL BASED ON
CHANGE OF CIRCUMSTANCES

I. INTRODUCTION

This is not a run-of-the-mill immigration case — this is a blatant attempt by DHS/ICE to enforce a stale, unlawful removal order from 2009 based on a criminal conviction that no longer exists. Respondent Williver Chea was convicted in 2003 of what was then deemed a crime of moral turpitude and placed on nine years' probation. He was detained by ICE in 2009 and ordered removed. Later that year, he was released on an ICE stay of removal. In 2013, the conviction was dismissed under the First Offender Act, leaving Respondent with no conviction, no record, and no valid basis for removal. Despite this, ICE now seeks to deport Respondent to Liberia on a 2009 order that has lost all legal force.

This attempt to deport a man on a basis that has been legally nullified is not only unjust — it is unlawful.

II. STATEMENT OF FACTS

In 2003, Respondent was convicted in [STATE COURT] for an offense then classified as a crime involving moral turpitude. He received a nine-year probationary sentence.

In 2009, Respondent was detained by U.S. Immigration and Customs Enforcement ("ICE") and an order of removal was issued against him. Later in 2009, Respondent was released on a stay of removal.

In 2013, the underlying conviction from 2003 was dismissed pursuant to the First Offender Act, which by statute results in the conviction being treated as if it never occurred. As a result, Respondent has no record or conviction on his record and cannot be legally classified as having been convicted of a crime for immigration purposes.

(1)

Despite this substantive change, ICE seeks to enforce the 2009 removal order and remove Respondent to Liberia — a removal predicated on a conviction that no longer exists.

Respondent is currently housed at Stewart Detention Center, 146 CCA Rd, Lumpkin, GA 31815.

III. ARGUMENT

A. The Dismissal of the Conviction Constitutes a Material Change of Circumstances That Invalidates the 2009 Removal Order

The Board of Immigration Appeals (“BIA”) and federal courts recognize that a removal order may become legally invalid when the factual or legal basis underlying the order has fundamentally changed.

In *INS v. St. Cyr*, 533 U.S. 289 (2001), the Supreme Court held that where a conviction has been vacated or is no longer valid for immigration purposes, that conviction cannot serve as a basis for deportation. A conviction that has been dismissed under a rehabilitative statute such as a First Offender Act is, for all immigration purposes, legally nonexistent. See *id.*

Further, the BIA has recognized that intervening events that “strike at the very heart of the removal proceedings” — such as a conviction being vacated — justify reopening or terminating removal. *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003). In *Pickering*, the Board held that changed circumstances may warrant reopening where the new evidence would likely change the outcome of the original proceedings: Here, with the underlying conviction eliminated, the original ground for removal disappears entirely.

Because the conviction that supported the removal order has been dismissed, enforcing the 2009 removal order would be fundamentally unfair and legally baseless.

B. A Dismissed Conviction Cannot Support Deportability

Under immigration law, a conviction that is vacated, expunged, or otherwise dismissed such that the alien is not considered convicted cannot be used as a basis for removal. See *St. Cyr*, 533 U.S. at 321 (holding that a conviction later vacated cannot support mandatory detention provisions of 8 U.S.C. § 1226(c)). Similarly, in *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 326 (BIA 1996), the BIA held that expungements under state law which render a conviction as a matter of law never to have occurred must be given effect in immigration proceedings.

Here, the First Offender Act dismissal did exactly that — it wiped the conviction off the record and renders Respondent not convicted as a matter of law. To attempt deportation on the basis of a conviction that was legally erased defies both statutory intent and settled precedent.

C. Due Process and Fundamental Fairness

The Fifth Amendment guarantees that no person shall be deprived of liberty without due process of law. Deportation is a drastic measure — it should not be predicated on invalid, nullified grounds.

In *Nguyen v. INS*, 533 U.S. 53, 69 (2001), the Supreme Court recognized that deportation proceedings must be fundamentally fair and based on valid legal grounds. Here, continuing to enforce a removal order that rests on a conviction that no longer exists is an affront to due process.

IV. CONCLUSION

The Department of Homeland Security's attempt to deport Respondent to Liberia based on a 2009 removal order grounded in a conviction that was dismissed in 2013 is legally baseless, unjust, and in violation of settled immigration law.

For the foregoing reasons, Respondent respectfully requests that the Immigration Judge or the Board of Immigration Appeals:

Terminate the 2009 removal order in its entirety;

Recognize that Respondent's 2013 First Offender Act dismissal eliminates the only basis for his prior removability; and

Grant any further relief the Court deems proper and equitable.

Respectfully submitted,



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Certificate Of Service

I Here By Williver Chea submitting this motion by mail to the court and also the the Department of Homeland Security by regular mail

Williver Chea

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Stewart Detention Center

Lumpkin ga 31815