

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Guerra v. Shanahan

831 F.3d 59 (2d Cir. 2016) · Decided July 29, 2016

SUMMARY

The Second Circuit affirmed an order granting Deyli Noe Guerra's habeas petition and requiring an individual bond hearing before an immigration judge. The court held that an alien subject to a reinstated removal order remains detained under 8 U.S.C. § 1226(a), rather than § 1231(a), while withholding-only proceedings are pending. The court concluded that Guerra's removal order was not administratively final during those proceedings and that he was therefore entitled to a bond hearing.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	K. Hall, Circuit Judge; Droney, Circuit Judge; Hall, Circuit Judge; Winter, Circuit Judge
JURISDICTION	Federal
DECIDED	July 29, 2016
DISPOSITION	affirmed
PROCEDURAL POSTURE	Respondents appealed from the Southern District of New York's judgment granting Guerra's petition for a writ of habeas corpus and ordering an individual bond hearing before an immigration judge.
STANDARD OF REVIEW	De novo review of the district court's grant of habeas relief.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Respondents-Appellants v. Deyli Noe Guerra

TOPICS

immigration detention removal proceedings statutory interpretation administrative law
judicial review of agency action

PRACTICE AREAS

immigration law immigration detention administrative law habeas corpus

QUESTIONS PRESENTED

1. Whether a reinstated removal order is administratively final, for purposes of detention under 8 U.S.C. § 1231(a), while withholding-only proceedings remain pending.
2. Whether Guerra's detention during the pendency of withholding-only proceedings was governed by 8 U.S.C. § 1226(a), thereby entitling him to an individual bond hearing before an immigration judge.
3. Whether the regulations cited by the government warranted Chevron or Auer deference concerning the statutory authority for Guerra's detention.

HOLDINGS

1. A reinstated removal order is not administratively final during the pendency of withholding-only proceedings because those proceedings determine whether the alien will actually be removed.
2. Because Guerra's detention was authorized by 8 U.S.C. § 1226(a), he was entitled to an individual bond hearing before an immigration judge.
3. Chevron and Auer deference did not apply because the regulations cited by the government did not resolve which statutory provision authorized detention during withholding-only proceedings.

KEY QUOTATIONS

“The former provision is the more logical source of authorization for the detention of aliens currently in withholding-only proceedings.” (63)

“An agency may not convert an issue of statutory interpretation into one of deference to an agency's interpretation of its own regulations simply by pointing to the existence of regulations whose relevance is tenuous at best.” (64)

“Accordingly, the language and structure of the statutes dictate the conclusion that Guerra's detention during the pendency of his withholding-only proceedings is detention pursuant to 8 U.S.C. § 1226(a).” (64)

FACTUAL BACKGROUND

Guerra, a native and citizen of Guatemala, entered the United States without inspection in 1998, was placed in removal proceedings, and was ordered removed. After removal in 2009, he reentered twice more and was detained by ICE on January 6, 2014, following the third reentry; his prior removal order was reinstated. An asylum officer determined that Guerra had a reasonable fear of returning to Guatemala and referred him for withholding-only proceedings, which remained pending when the Second Circuit decided the appeal.

PROCEDURAL HISTORY

Guerra was detained by ICE after reentering the United States and after his prior removal order was reinstated. When an asylum officer found that he had a reasonable fear of persecution or torture, his case was referred to an immigration judge for withholding-only proceedings. Guerra filed a habeas petition in the Southern District of New York, which held that his detention was governed by 8 U.S.C. § 1226(a) and ordered a bond hearing. The district court's decision was affirmed on appeal.

DISPOSITION

affirmed

CASES CITED

- Theodoropoulos v. INS, 358 F.3d 162, 167 (2d Cir. 2004)
- Zadvydas v. Davis, 533 U.S. 678, 699 (2001)
- Park 'N Fly, Inc. v. Dollar Park & Fly, Inc., 469 U.S. 189, 194 (1985)
- Kanacevic v. INS, 448 F.3d 129, 133-35 (2d Cir. 2006)
- Chupina v. Holder, 570 F.3d 99, 103 (2d Cir. 2009)
- U.S. Army Corps of Engineers v. Hawkes Co., 136 S. Ct. 1807, 1813 (2016)
- Bennett v. Spear, 520 U.S. 154, 178 (1997)
- Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843 (1984)
- Auer v. Robbins, 519 U.S. 452 (1997)
- Gonzales v. Oregon, 546 U.S. 243, 257 (2006)
- Ortiz-Alfaro v. Holder, 694 F.3d 955, 958 (9th Cir. 2012)
- Luna-Garcia v. Holder, 777 F.3d 1182, 1184 (10th Cir. 2015)
- Jean-Baptiste v. Reno, 144 F.3d 212, 216-17 (2d Cir. 1998)