

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Padilla-Ramirez v. Bible

882 F.3d 826 (9th Cir. 2018) · Decided July 6, 2017

SUMMARY

The Ninth Circuit held that an alien detained while pursuing withholding-only proceedings after reinstatement of a prior removal order is detained under 8 U.S.C. § 1231(a), rather than 8 U.S.C. § 1226(a). Because the reinstated removal order remained administratively final, the alien was not entitled to an initial bond hearing under 8 C.F.R. § 236.1. The court affirmed the denial of the habeas petition and acknowledged a circuit split with the Second Circuit.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
WRITING FOR THE COURT	Wallace
JURISDICTION	Federal
DECIDED	July 6, 2017
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the district court's denial of a federal habeas corpus petition challenging the denial of an initial bond hearing during withholding-only immigration proceedings.
STANDARD OF REVIEW	De novo review of the denial of a habeas petition and of questions of statutory construction.
PRECEDENTIAL VALUE	Published precedential Ninth Circuit opinion
PARTIES	Raul Padilla-Ramirez v. Bible

TOPICS

- immigration detention
- federal habeas corpus
- removal proceedings
- statutory interpretation
- administrative law

PRACTICE AREAS

- immigration law
- federal habeas corpus
- immigration detention
- statutory interpretation
- administrative law

QUESTIONS PRESENTED

1. Whether an alien subject to a reinstated removal order is detained under 8 U.S.C. § 1226(a) or 8 U.S.C. § 1231(a) while withholding-only proceedings are pending.
2. Whether the alien is entitled to an initial bond hearing under 8 C.F.R. § 236.1(d)(1) during those withholding-only proceedings.
3. Whether the Ninth Circuit's prior decisions concerning finality for judicial-review purposes required treating the reinstated removal order as nonfinal for detention purposes.

HOLDINGS

1. An alien subject to a reinstated removal order is detained pursuant to 8 U.S.C. § 1231(a), not § 1226(a), while withholding-only proceedings are pending.
2. Because Padilla-Ramirez was detained under § 1231(a), he was not entitled to the initial bond hearing authorized by 8 C.F.R. § 236.1(d)(1), which applies to detention under § 1226(a).
3. *Ortiz-Alfaro v. Holder* and *Ayala v. Sessions* do not require treating a reinstated removal order as nonfinal for detention purposes because those decisions addressed finality for judicial-review purposes and were principally driven by constitutional-avoidance concerns.

KEY QUOTATIONS

“Because Padilla-Ramirez's reinstated removal order remains administratively final, he is detained pursuant to section 1231(a).” (831)

“The decision to be made in those proceedings is not whether he is to be removed from the United States, but merely whether he may be removed to El Salvador.” (832)

“The judgment of the district court is affirmed.” (837)

FACTUAL BACKGROUND

Padilla-Ramirez entered the United States unlawfully in 1999 and was later placed in removal proceedings. After his applications for asylum, withholding of removal, and Convention Against Torture protection were denied, he received voluntary departure, failed to depart, and was removed to El Salvador in 2010. After illegally reentering the United States, he was detained and his prior removal order was reinstated under 8 U.S.C. § 1231(a)(5). An asylum officer found that he had a reasonable fear of persecution or torture, and withholding-only proceedings remained pending when he sought a bond hearing.

PROCEDURAL HISTORY

Padilla-Ramirez was detained by Immigration and Customs Enforcement after the agency reinstated his prior removal order following his illegal reentry. An asylum officer found that he had a reasonable fear of persecution or torture and referred him to withholding-only proceedings, but an immigration judge denied his request for a bond hearing for lack of jurisdiction. The district court denied his habeas petition on the ground that his detention was governed by 8 U.S.C. § 1231 rather than § 1226(a). The Ninth Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Singh v. Holder, 638 F.3d 1196, 1202 (9th Cir. 2011)
- Hing Sum v. Holder, 602 F.3d 1092, 1095 (9th Cir. 2010)
- Diouf v. Mukasey, 542 F.3d 1222, 1230 (9th Cir. 2008)
- Ortiz-Alfaro v. Holder, 694 F.3d 955, 957-958 (9th Cir. 2012)
- Andrade-Garcia v. Lynch, 828 F.3d 829, 831-833 (9th Cir. 2016)
- Villa-Anguiano v. Holder, 727 F.3d 873, 877-878 (9th Cir. 2013)
- Diouf v. Napolitano, 634 F.3d 1081, 1084 (9th Cir. 2011)
- Am. Tobacco Co. v. Patterson, 456 U.S. 63, 68 (1982)
- Luna-Garcia v. Holder, 777 F.3d 1182, 1183 (10th Cir. 2015)
- Lanza v. Ashcroft, 389 F.3d 917, 933 (9th Cir. 2004)
- Castellano-Chacon v. INS, 341 F.3d 533, 545 (6th Cir. 2003)
- Zadvydas v. Davis, 533 U.S. 678, 683-685, 696, 699 (2001)
- Sun v. Ashcroft, 370 F.3d 932, 939-940 (9th Cir. 2004)
- Guerra v. Shanahan, 831 F.3d 59, 62-64 (2d Cir. 2016)
- Kelton Arms Condo. Owners Ass'n, Inc. v. Homestead Ins. Co., 346 F.3d 1190, 1192 (9th Cir. 2003)
- Kanacevic v. INS, 448 F.3d 129, 134-135 (2d Cir. 2006)
- Chupina v. Holder, 570 F.3d 99, 103 (2d Cir. 2009)
- U.S. Army Corps of Eng'rs v. Hawkes Co., 136 S. Ct. 1807, 1813 (2016)
- Abdisalan v. Holder, 774 F.3d 517, 526 (9th Cir. 2014) (en banc), as amended (Jan. 6, 2015)
- Garcia de Rincon v. Dep't of Homeland Sec., 539 F.3d 1133, 1138 (9th Cir. 2008)