

David Ant3n Armend3riz
De Mott, McChesney, Curtright & Armend3riz, LLP
800 Dolorosa, Suite 100
San Antonio, Texas 78207-4559
(210) 354-1844
(210) 212-2116 Fax

NON-DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

IN THE MATTER OF

[REDACTED]

Respondent

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§
§

RE:

[REDACTED]

In Removal Proceedings

RESPONDENT'S MOTION TO RECONSIDER
AND TO BE ALLOWED THE OPPORTUNITY
TO RAISE AND BRIEF ALL ISSUES ON APPEAL

Respondent, [REDACTED], through undersigned counsel, requests that undersigned counsel be designated as counsel of record and he further requests that Board's recent denial order be reconsidered so that his new counsel may have the opportunity to raise and brief all available issues on appeal, an opportunity which was denied him on account of the misconduct of his prior counsel.

Mr. [REDACTED] was previously represented by attorney [REDACTED] [REDACTED] has been suspended multiple times and is currently under probated suspension for violations of governing ethical rules.¹ On April 7, 2015, this Board issued a decision dismissing Mr. [REDACTED] appeal because [REDACTED] failed to file any written brief despite his indication on the Notice of Appeal, Form EOIR 26, of his intent to do so. See Tab A (Board decision). [REDACTED] failure to file any brief or argument is clear ineffective assistance of counsel and malpractice.

Mr. [REDACTED] has complied with Matter of Lozada, 19 I & N Dec. 637 (BIA 1988). He has completed a bar complaint and given notice to [REDACTED] of the same. See Tab B, pgs. 5 – 7. Where ineffective assistance of counsel has been raised, the Board does not require the production of new evidence

¹ See Tab C. (State Bar of Texas website printout).

under 8 C.F.R. §1003.2(c)(1) to reopen the proceedings. See Matter of N-K- & V-S-, 21 I&N Dec. 879, 880 (BIA 1977); Lozada, 19 I&N Dec. at 639.

An alien alleging ineffective assistance of counsel must generally show that he or she was prejudiced by the actions or inactions of counsel. Lozada, at 640. However, the extent of the "right" to counsel for persons in immigration proceedings is grounded in the Fifth Amendment guarantee of due process, and ineffective assistance of counsel is a denial of due process where the proceedings were fundamentally unfair such that the alien was prevented from reasonably presenting his or her case. Lozada at 638 (citing Magallanes-Damian v. INS, 783 F.2d 931 (9th Cir. 1986); Paul v. United States INS, 521 F.2d 194 (5th Cir. 1975)); Goonsuwan v. Ashcroft, 252 F.3d 383, 385 n.2 (5th Cir. 2001).

██████████ failure to file a brief on Mr. ██████████ behalf clearly constituted deficient representation. See Rojas-Garcia v. Ashcroft, 339 F.3d 814, 825 (9th Cir. 2003); Singh v. Ashcroft, 367 F.3d 1182, 1185 (9th Cir. 2004). Furthermore, he was obviously prejudiced because the Board declined to even consider any of the legal or factual issues that might have been raised. On account of ██████████ self-evident ineffective assistance of counsel, the Board has simply not had an opportunity to decide the case on the merits and this warrants reopening. See Ray v. Gonzales, 439 F.3d 582

(9th Cir. 2006) (“[T]he BIA's cursory decision on the merits is not valid if it was the product of ineffective assistance of counsel. In other words, if [the attorney] did in fact fail to file a brief on Ray's behalf, then the BIA's cursory review of the merits of Ray's appeal is insufficient because it deprived Ray of the adversarial proceeding to which he was entitled.”).

In the interest of justice and fairness and to safeguard Respondent’s right to competent representation, Respondent requests that this motion be granted, that the Board’s denial order be reconsidered and that his new counsel be allowed the opportunity to brief all issues on appeal.

April 3, 2017

David Antón Armendáriz
De Mott, McChesney, Curtright &
Armendáriz, LLP
800 Dolorosa, Suite 100
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CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2017, a copy of RESPONDENT'S MOTION TO RECONSIDER AND TO BE ALLOWED THE OPPORTUNITY TO RAISE AND BRIEF ALL ISSUES ON APPEAL:

X was sent by first class regular mail to:

U.S. Immigration & Customs Enforcement
Office of the Chief Counsel
8940 Fourwinds Drive, 5th Floor
San Antonio, Texas 78239

David Ant3n Armend3riz
De Mott, McChesney, Curtright &
Armend3riz, LLP
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