

FILED

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DENYS ERNESTO CERRITOS
MARTINEZ,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

No. 12-72100

Agency No. A044-025-138

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted June 7, 2016
Pasadena, California

Before: REINHARDT and WARDLAW, Circuit Judges and KORMAN,** Senior
District Judge.

Denys Ernesto Cerritos Martinez appeals the Department of Homeland
Security's ("DHS") order reinstating removal, and the Immigration Judge's ("IJ")

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Edward R. Korman, Senior District Judge for the U.S.
District Court for the Eastern District of New York, sitting by designation.

order affirming the negative reasonable fear determination made by an asylum officer. We have jurisdiction pursuant to 8 U.S.C. § 1252. We grant the petition for review, vacate both orders, and remand for new proceedings.

1. The record presented on appeal does not contain evidence sufficient to sustain the order reinstating removal. Before reinstating an order of removal, “[t]he immigration officer must obtain the prior order of exclusion, deportation, or removal.” 8 C.F.R. § 241.8(a)(1). The document the government identifies as Martinez’s prior order of removal is largely illegible, and the date on that document does not match the date listed on the “notice of intent/decision to reinstate prior order.” Because the government has not satisfied the applicable requirements, Martinez is not removable under the current reinstatement order. *See Lin v. Gonzalez*, 473 F.3d 979, 983 (9th Cir. 2007).

2. As to the reasonable fear determination, the parties agree that the IJ’s one-page, checkbox order does not allow for adequate judicial review. *See Ghaly v. INS*, 58 F.3d 1425, 1430 (9th Cir. 1995). Moreover, in the nearly four years that this appeal has been pending, the government has not been able to obtain the record of the reasonable fear proceedings. Martinez is therefore entitled to a new hearing before the IJ. *See Jiang v. Holder*, 754 F.3d 733, 741 (9th Cir. 2014).

PETITION GRANTED; REMANDED with instructions.