

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 15-50699
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

March 2, 2017

Lyle W. Cayce
Clerk

LEONARDO GUTIERREZ,

Petitioner-Appellant

v.

JOHN F. KELLY, SECRETARY, DEPARTMENT OF HOMELAND
SECURITY; JEFFERSON B. SESSIONS, III, U. S. ATTORNEY GENERAL,

Respondents-Appellees

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:15-CV-414

Before KING, DENNIS, and COSTA, Circuit Judges.

PER CURIAM:*

Leonardo Gutierrez appeals the district court’s dismissal for lack of jurisdiction of his petition for declaratory judgment wherein he sought a declaration that exceptional circumstances justified reopening his removal proceedings and an order directing the Board of Immigration Appeals (BIA) to reopen the proceedings and consider his application for relief from removal on

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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the merits. Gutierrez also moves for a stay of removal. The Government moves for summary affirmance or, in the alternative, an extension of time to file a brief.

Regardless of Gutierrez's characterization of his petition, it was an attempt to collaterally attack a final order of removal by attacking the BIA's refusal to exercise its sua sponte authority to reopen the proceedings. As such, the district court correctly determined that it lacked jurisdiction to consider the petition. *See Lopez-Dubon v. Holder*, 609 F.3d 642, 647 (5th Cir. 2010); *Rosales v. Bureau of Immigration & Customs Enforcement*, 426 F.3d 733, 735-36 (5th Cir. 2005).

The Government's motion for summary affirmance is DENIED, the alternative motion for an extension of time to file a brief is DENIED as unnecessary, and the judgment of the district court is AFFIRMED. Gutierrez's motion for a stay of removal is DENIED.

Gutierrez has made several previous attempts to collaterally attack the final order of removal. Accordingly, Gutierrez is WARNED that frivolous, repetitive, or otherwise abusive filings will invite the imposition of sanctions, including dismissal, monetary sanctions, and restrictions on his ability to file pleadings in this court and any court subject to this court's jurisdiction.