

FILEDUNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MAY 25 2016

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ESTEBAN HERNANDEZ,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

Nos. 15-72945, 15-73559, 16-
71207

Agency No. A092-330-324

CAED Case No. 2:16-cv-1192 TLN EFB

ORDER

Before: REINHARDT, MURGUIA, and OWENS, Circuit Judges.

The court's May 24, 2016 order is vacated.

The motions to consolidate petition Nos. 15-72945, 15-73559, and 16-71207 are granted. *See* 8 U.S.C. § 1252(b)(6).

Petitioner's motions to proceed in forma pauperis in petition Nos. 15-72945, 15-73559, and 16-71207 are granted. The Clerk shall amend the dockets to reflect this status.

We find that a genuine issue of material fact exists as to petitioner's claim of United States citizenship. Accordingly, we transfer the proceedings to the United States District Court for the Eastern District of California for a de novo review of

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petitioner's citizenship claim. *See* 8 U.S.C. § 1252(b)(5)(B); *Agosto v. INS*, 436 U.S. 748, 761 (1978); *Chau v. INS*, 247 F.3d 1026, 1032 (9th Cir. 2001).

We also determine that the appointment of pro bono counsel would benefit the court's review. The court by this order expresses no opinion as to the merits of this petition or petitioner's claim(s). The Clerk shall enter an order to appoint counsel for the purpose of representing petitioner in district court proceedings. If petitioner objects to the court's appointment of counsel, petitioner shall file a written objection within 14 days after the filing date of this order.

We hold the petitions for review and all pending motions in abeyance pending the district court's determination.

General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 15-72945
 Esteban Hernandez v. Loretta Lynch
Appeal From: Board of Immigration Appeals
Fee Status: IFP

Case Type Information:
 1) agency
 2) review
 3) Los Angeles Central California

Originating Court Information:
District: BIA-1 : A092-330-324
Date Rec'd COA:
 09/25/2015

Prior Cases:
 None

Current Cases:	Lead	Member	Start	End
Companion	15-73559	16-71207	04/27/2016	
Consolidated	15-72945	15-73559	05/24/2016	
	15-72945	16-71207	05/24/2016	

ESTEBAN HERNANDEZ (-: #148855)
 Petitioner,

Esteban Hernandez
 [NTC Pro Se]
 CDC - CALIFORNIA DEPARTMENT C
 Yuba County Jail
 P.O. Box 1031
 Marysville, CA 95901

v.

LORETTA E. LYNCH, Attorney General
 Respondent,

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ESTEBAN HERNANDEZ,

Petitioner,

v.

LORETTA E. LYNCH, Attorney General,

Respondent.

09/25/2015	1 40 pg, 862.37 KB	FILED PRO SE BIA PETITION FOR REVIEW AND MOTION FOR STAY. DO ENTERED APPEARANCE OF COUNSEL. Pursuant to G.O. 6.4 (c)(1)(3) A T REMOVAL IS IN EFFECT pending further order. Petitioner detained: Yes. The Certified Administrative Record due 11/20/2015. Response to motion for stay E. Lynch, Attorney General. (Motion for IFP within petition) [9696418][COURT Attached, resent NDA,- 09/28/2015 by BY] (IV) [Entered: 09/25/2015 11:21 AM]
09/25/2015	2	Filed Petitioner Esteban Hernandez motion to proceed In Forma Pauperis. De 09/21/2015. [9696434] (IV) [Entered: 09/25/2015 11:23 AM]
10/01/2015	3 2 pg, 13.44 KB	Filed (ECF) notice of appearance of Anthony, C., Payne for Respondent Lore 10/01/2015. [9703947] [15-72945] (Payne, Anthony) [Entered: 10/01/2015 01:00 AM]
10/01/2015	4 2 pg, 13.45 KB	Filed (ECF) notice of appearance of Colette, Winston for Respondent Loretta 10/01/2015. [9703973] [15-72945] (Winston, Colette) [Entered: 10/01/2015 01:00 AM]
10/01/2015	5	Added attorney Anthony Cardozo Payne, Colette Jabes Winston for Loretta E [9704653] (RR) [Entered: 10/01/2015 05:06 PM]
10/06/2015	6 1578 pg, 26.54 MB	Filed (ECF) Certified Administrative Record by Executive Office of Immigration 72945] (Executive Office Of Immigration Review, DOJ) [Entered: 10/06/2015 09:00 AM]
10/13/2015	7 94 pg, 6.89 MB	Received original and 0 copies of Petitioner Esteban Hernandez brief (Inform: 10/07/2015. Major deficiencies: motions pending, brief is oversized. Notified p [Entered: 10/13/2015 03:03 PM]
10/23/2015	8 4 pg, 143.27 KB	Filed Petitioner Esteban Hernandez motion requesting leave to file an oversoi None. Served on 10/15/2015. [9732285] (RR) [Entered: 10/26/2015 11:37 AM]
12/07/2015	9 9 pg, 32.95 KB	Filed (ECF) Respondent Loretta E. Lynch response opposing motion ([1] For removal). Date of service: 12/07/2015. [9781797] [15-72945] (Winston, Colett 11:35 AM]
12/11/2015	11 2 pg, 33.63 KB	Received notice of change of address dated 12/08/2015 from Esteban Herna Yuba County Jail, Booking ID #148855, A092-330-324, P.O. Box 1031, Marys (RR) [Entered: 12/22/2015 03:32 PM]
12/15/2015	10 4 pg, 18.78 KB	Filed (ECF) Respondent Loretta E. Lynch Motion to consolidate cases 15-729 service: 12/15/2015. [9793009] [15-72945] (Winston, Colette) [Entered: 12/15 09:00 AM]
12/28/2015	12 2 pg, 35.92 KB	Received Petitioner Esteban Hernandez in 15-72945, 15-73559 notice regard (address has already been add) requesting case numbers. (Docket sheet sen 73559] (RR) [Entered: 12/29/2015 04:41 PM]
01/14/2016	13 3 pg, 98.72 KB	Filed Petitioner Esteban Hernandez letter dated 01/10/2016 re: Requesting co Paper filing deficiency: None. [9828643] (RL) [Entered: 01/15/2016 08:25 AM]
01/15/2016	14	Sent copy of 12/15/2015 Motion to Petitioner as a one time courtesy in respor 01/14/2016. [9829440] (JR) [Entered: 01/15/2016 02:16 PM]
01/15/2016	15 4 pg, 176.22 KB	Received Petitioner Esteban Hernandez notice requesting copy of Responder motion for stay of removal. [9835249] (RR) [Entered: 01/21/2016 11:50 AM]
01/19/2016	16 30 pg, 1.26 MB	Filed Petitioner Esteban Hernandez reply to response to Respondent's respo a stay of removal. [9835823] (RR) [Entered: 01/21/2016 02:44 PM]
01/22/2016	17	Sent Appellant copy of Respondent's Opposition to Petitioner's Motion for Sta numbers 15-72945 & 15-73559 as a one time courtesy in response to letter o he did not receive them due to address change. [9836669] (JR) [Entered: 01/22/2016 09:00 AM]

03/10/2016

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10 pg, 434.01 KB

Filed Petitioner Esteban Hernandez motion to consolidate case number 15-73 certificate of service. [9898847] (RR) [Entered: 03/11/2016 12:50 PM]

05/24/2016

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2 pg, 43.35 KB

Filed order (STEPHEN REINHARDT, MARY H. MURGUIA and JOHN B. OWEN). Consolidate petition Nos. 15-72945, 15-73559, and 16-71207 are granted. See Petitioner's motions to proceed in forma pauperis in petition Nos. 15-72945, 15-73559, and 16-71207 are granted. The Clerk shall amend the dockets to reflect this status. We find that a genuine issue of material fact exists as to petitioner's claim of United States citizenship. Accordingly, we transfer the proceedings to the United States District Court for the Central District of California for a de novo review of petitioner's citizenship claim. See 8 U.S.C. § 1252(b)(5)(B); Agosto v. INS, 436 U.S. 748, 247 F.3d 1026, 1032 (9th Cir. 2001). We hold the petitions for review and all pending motions in abeyance pending the district court's determination. [9988365] [15-72945, 15-73559, 16-71207] (OW) [Entered: 05/24/2016 09:46 AM]

05/25/2016

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2 pg, 44.49 KB

Filed order (STEPHEN REINHARDT, MARY H. MURGUIA and JOHN B. OWEN). The 2016 order is vacated. The motions to consolidate petition Nos. 15-72945, 15-73559, and 16-71207 are granted. See 8 U.S.C. § 1252(b)(6). Petitioner's motions to proceed in forma pauperis in petition Nos. 15-72945, 15-73559, and 16-71207 are granted. The Clerk shall amend the dockets to reflect this status. We find that a genuine issue of material fact exists as to petitioner's claim of United States citizenship. Accordingly, we transfer the proceedings to the United States District Court for the Central District of California for a de novo review of petitioner's citizenship claim. See 8 U.S.C. § 1252(b)(6); Agosto v. INS, 436 U.S. 748, 761 (1978); Chau v. INS, 247 F.3d 1026, 1032 (9th Cir. 2001). We hold that the appointment of pro bono counsel would benefit the court's review. The court's opinion as to the merits of this petition or petitioner's claim(s). The Clerk shall appoint counsel for the purpose of representing petitioner in district court proceedings. If the court's appointment of counsel, petitioner shall file a written objection within 14 days of this order. We hold the petitions for review and all pending motions in abeyance pending the court's determination. [9990993] [15-72945, 15-73559, 16-71207] (KD) [Entered: 05/25/2016 09:46 AM]

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