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Michelson v. INS, 897 F.2d 465
Author: Judge Baldock

Defendant, Michelson, petitioned for review a final order of the Board of Immigration Appeals, finding him to be deportable and denying him a voluntary departure under the Immigration and Nationality Act, 8 U.S.C. § 1254(e). On appeal, Michelson claimed that he was improperly denied counsel. Michelson also claimed the immigration judge failed to advise him of his right to pursue a waiver or suspension of deportation. Also, Michelson argued that the immigration judge erred in failing to consider a discretionary suspension of deportation.

The Tenth Circuit first stated that before a court may intervene based upon an alien's lack of representation, prejudice must be shown. The court ruled that Michelson failed to show prejudice which would cast doubt on the fundamental fairness of the proceeding. Thus, he was not improperly denied counsel. Second, the immigration judge did not err in failing to inform Michelson of his right to waive deportation. The court explained that the judge need only inform the alien of such relief when he is eligible for such relief. Finally, the immigration judge was not required to consider *sua sponte* alternatives for which Michelson would be eligible. The petition for review was, therefore, denied.

United States v. Quintana, 914 F.2d 1409
Author: Judge Seth

Defendant, Quintana, an alien, pleaded guilty to possession of a sawed-off shotgun in violation of 26 U.S.C. §§ 5861(d), 5871. Before being sentenced, Quintana filed a motion for judicial recommendation against deportation in reliance on 8 U.S.C. § 1251(b). The district court denied the motion, and Quintana appealed, alleging that the district court abused its discretion in not considering the motion on its merits.

The Tenth Circuit affirmed the district court's decision. The court stated that a motion for judicial recommendation against deportation was available only where an alien was convicted of a crime of moral turpitude. Thus, the applicable federal statute, 26 U.S.C. § 1251(4), does not allow this recommendation to an alien convicted of possessing a sawed-off shotgun. Thus, the crime to which Quintana pled guilty is one which specifically provides for deportation.

Saadi v. INS, 912 F.2d 428
Per Curiam

An immigration judge found defendant, Saadi, deportable under the Immigration and Nationality Act, 8 U.S.C. § 1251(a)(2). Saadi ap-

pealed the decision, but the Board of Immigration ("the Board") dismissed his action. He subsequently appealed the Board's decision.

The Tenth Circuit held it was without jurisdiction to review Saadi's deportation order. The court reasoned that pursuant to 8 U.S.C. § 1105a(c), once an alien is deported, a deportation order may not be reviewed by any court. To gain review of a deportation order, therefore, a stay must be obtained.

United States v. Valdez, 917 F.2d 466
Author: Judge Seth

Defendant, Valdez, was convicted under 8 U.S.C. § 1326 for re-entry of a deported alien. Valdez appealed, claiming that his due process rights were violated. In particular, he argued that the immigration law judges in both of Valdez's deportation hearings erred when they did not warn him of his right to remain silent during the proceedings. Valdez also argued that the failure to advise him of his right to remain silent was fundamentally unfair.

The Tenth Circuit rejected Valdez's arguments and affirmed the decision of the district court. The court stated that 8 C.F.R. § 242.1(c) does not require the immigration law judges to advise Valdez of his right to remain silent during the hearing. Second, the court stated than an alien can collaterally challenge deportation hearings if he can show that they were fundamentally unfair and deprived him of his right to judicial review. Valdez failed to show this, however. Instead, in his previous hearing, Valdez refused counsel, and at one point stated that he wanted to be deported.