IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

DAVONE VON PRADITH,

Petitioner,

v.

JOHN ASHCROFT, Attorney General, and TOM RIDGE, Secretary, Department of Homeland Security,

Respondents.

CV 03-1304-BR

OPINION AND ORDER

BAOLIN CHEN
520 S.W. Sixth Ave.
Suite 1050
Portland, OR 97204
(503) 222-3384

Attorney for Petitioner

KARIN J. IMMERGUT
United States Attorney
KENNETH C. BAUMAN
Assistant United States Attorney
1000 S.W. Third Ave., Suite 600
Portland, OR 97204
(503)727-1025

Attorneys for Respondents

BROWN, Judge

This matter comes before the Court on Petitioner's Motion for an Order to Show Cause (#3) why his Petition for Writ of Habeas Corpus (#1) should not be granted. Petitioner is a legal permanent resident presently in the custody of the Bureau of Immigration and Customs Enforcement (ICE) pending his deportation pursuant to a Removal Order issued by an Immigration Judge (IJ) on September 16, 2003. Petitioner seeks release from custody and the right to apply for cancellation of the Removal Order. The Court held a show cause hearing on November 25, 2003.

For the following reasons, the Court **GRANTS** Petitioner's Writ of Habeas Corpus and orders Petitioner's immediate release from custody subject to the conditions set forth herein.

BACKGROUND

Unless noted otherwise, the following facts are undisputed.

Plaintiff is a Laotian national who came to this country as a legal permanent resident in 1971. He has two children, ages 12 years and two months, who were born in the United States. His parents are United States citizens.

In November 1997, Petitioner participated in a substantial sale of heroin to an undercover agent of the Drug Enforcement Agency. In return for payment of $200, Petitioner acted as

"protection" for a friend who initiated the drug sale.

In June 1999, Petitioner was indicted with others in Multnomah County Circuit Court for violations of Oregon law alleging one count of delivery and one count of conspiracy to deliver a controlled substance (heroin) in excess of five ounces arising from the November 1997 transaction. In February 2000, after the Petitioner filed a Waiver of Indictment pursuant to a Plea Agreement, the Multnomah County District Attorney's Office filed an Information arising from the same transaction charging Petitioner with possession of "substantial quantities, to wit: 5 or more grams of . . . heroin" in violation of Oregon law.

In February 2000, Petitioner pleaded "no contest" to the Class B Felony of Possession of a Controlled Substance as charged in the Information. The two-count Indictment against him was dismissed as part of the Plea Agreement.

Petitioner entered his plea only after receiving and relying on advice from an attorney with expertise in immigration law. Based on 8 U.S.C. § 1229b (a)(3), the attorney advised Petitioner that an alien convicted of a crime that is not an aggravated felony under federal law may petition the Attorney General to cancel a removal order based on such a conviction. The attorney correctly advised Petitioner that "simple possession of a controlled substance" was not classified as an aggravated felony

under the immigration laws then in effect. Thus, the attorney advised Petitioner that a no contest plea to the possession charge would not prevent him from seeking cancellation of any removal order that might follow his conviction for that charge.

The attorney's advice was correct because it was consistent with decisions of the Board of Immigration Appeals (BIA) as of 2000. Although the crime of possession of a controlled substance was a felony under state law, it was a misdemeanor under federal law. For immigration purposes, therefore, the BIA held as of 2000 that possession of a controlled substance was not an "aggravated felony" within the meaning of § 101(a)(43)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1101(a)(43)(B). *See In re K-V-D-,* No. _____, 1999 WL 1186808, at *7 (BIA Dec. 10, 1999), and *In Re L-G-*, No. A26-025-339, 1995 WL 582051, at *11-12 (BIA Sept. 27, 1995). In 2002, however, the BIA withdrew its prior decisions in *In re K-V-D-* and *In Re L-G-* and held possession of a controlled substance was an aggravated felony for immigration law purposes. *See In re Yanez-Garcia*, No. A91 334 0422002, 2002 WL 993589, at *2 (BIA May 13, 2002).

In June 2003, Petitioner applied for a replacement permanent resident identification card. A routine check of his criminal record disclosed the 1999 felony conviction.

In July 2003, Petitioner appeared at an ICE office to

replace his identification card. He was immediately taken into custody because of his prior conviction.

On July 21, 2003, Petitioner appeared before an IJ who advised Petitioner that he was ineligible for cancellation of a removal order because his prior conviction was based on an aggravated felony in light of the BIA's recent decision in *In re Yanez-Garcia*.

On September 10, 2003, ICE held a removal hearing and issued a Removal Order for deporting Petitioner.

Petitioner has been in the custody of ICE at the Columbia County Jail since July 16, 2003. Although ICE has requested travel documents from the Laotian embassy in Washington, D.C., the Laos People's Democratic Republic is not granting travel documents unless the United States pays for officials to travel from Laos to conduct personal interviews with Laotian nationals who are subject to deportation. To date, the United States has been unwilling to pay those expenses.

On September 23, 2003, Petitioner filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. On October 23, 2003, Petitioner filed a Motion for Order to Show Cause why his Petition for Writ of Habeas Corpus should not be granted. The Court held a show cause hearing on November 25, 2003.

RELEVANT STATUTORY PROVISIONS

Removal of Aliens - 8 U.S.C. § 1227:

(a). Classes of deportable aliens.

> Any alien . . . in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within
>
> one or more of the following classes of deportable aliens:
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> * * *
>
> (2). Criminal offenses.
>
> (A). General crimes
>
> * * *
>
> (iii). Aggravated felony
>
> Any alien who is convicted of an aggravated felony at any time after admission is deportable.
>
> (B) Controlled substances
>
> (i) Conviction
>
> Any alien who at any time after admission has been convicted of a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21), other than a single offense involving possession for one's own use of 30 grams or less of marijuana, is deportable.

Cancellation of Removal - 8 U.S.C. § 1229b:

(a). Cancellation of removal for certain permanent residents.

> The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien-
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> * * *
>
> (3) has not been convicted of any aggravated felony.

Accordingly, before the BIA issued its decision in *In re Yanez Garcia,* Petitioner had the right to petition the Attorney General for cancellation of the Removal Order pursuant to §§ 1227 and 1229b because the crime for which Petitioner was convicted was not considered an aggravated felony at the time.

DISCUSSION

Petitioner asserts he is being held in custody by ICE pending deportation to Laos in violation of his due process and equal protection rights under the Fourteenth Amendment. In particular, Petitioner argues it is unconstitutional for Respondents to apply the *Yanez-Garcia* decision to him retroactively.

In its Answer to the Petition, the government asserts the following defenses: (1) this Court lacks subject matter jurisdiction, (2) Petitioner failed to exhaust administrative

remedies, (3) Petitioner failed to join the proper party defendant, (4) Petitioner failed to verify the Petition or to use the form Petition provided by the Court in violation of 28 U.S.C. § 2242 and LR 81.1(a), (5) Petitioner's conduct resulting in his state court conviction for possession of a controlled substance would be charged as a felony under federal law, and (6) Petitioner had no reasonable expectation that his state court conviction would not be considered an aggravated felony for immigration purposes.

1. Jurisdiction.

Petitioner alleges jurisdiction based on 28 U.S.C. § 2241, the general habeas corpus jurisdiction statute. The government, however, asserts this Court lacks subject matter jurisdiction because (1) Petitioner is not entitled to challenge a final order of removal based on his conviction for an aggravated felony and (2) Petitioner failed to exhaust his administrative remedies.

8 U.S.C. § 1252(a)(2)(C) provides:

> Notwithstanding any other provision of law, no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed [an aggravated felony].

Petitioner asserts § 1252(a)(2)(C) does not preclude this Court from reviewing his Petition for Writ of Habeas Corpus in which he challenges the constitutionality of the Removal Order to the

extent it denies him the right to seek cancellation of the Order.

In *INS v. St. Cyr,* the Supreme Court held the same jurisdictional statute relied on by the government in this case "does not bar jurisdiction of the [district court] pursuant to the general habeas statute" to review a constitutional challenge to a removal order. 533 U.S. 289, 312-13 (2001). *See also Cedano-Viera,* 324 F.2d 1062, 1064 (9th Cir. 2003) (constitutional claims by aliens who are subject to removal as aggravated felons must be raised in the district court through habeas corpus proceedings). Accordingly, this Court concludes it has jurisdiction under 28 U.S.C. § 2241 to review Petitioner's constitutional challenges to the Removal Order.

2. Failure to Exhaust Administrative Remedies.

a. Technical Violation.

Petitioner did not appeal the Removal Order to the BIA. The government contends if Petitioner's due process claim "is based on insufficient documentation of his conviction or any other technical violation in the record or proceedings before [the IJ,] he is barred from raising that issue because he did not appeal [the] deportation (removal) order to the BIA." Resp't Answer at 9.

The Court, however, finds Petitioner's due process claim is not based on a technical violation or insufficient

documentation of his conviction, but on a substantial constitutional issue of due process relating to the fundamental fairness of applying the BIA's decision in *Yanez-Garcia* retroactively.

b. Futility of Appeal.

At oral argument, the government asserted the BIA should be allowed the opportunity to develop a record on appeal regarding the retroactivity of its ruling in *Yanez-Garcia.*

In *Ali v. Ashcroft*, the court addressed the possible requirement of prudential, nonstatutory exhaustion when it reviewed the authority of ICE to issue a removal order requiring the deportation of Somalian nationals even though Somalia would not accept them. 346 F.3d 873 (9th Cir. 2003). The court found:

> *A prudential exhaustion requirement may also be applied where agency expertise requires the agency to develop a proper record,* relaxation of the exhaustion requirement would encourage deliberate bypass of the administrative scheme, and administrative review would allow the agency to correct its own mistakes.

Id. at 878 (emphasis added). The court held none of those factors were present because the petitioners had raised a "purely legal question [and] the INS' position--that it was statutorily authorized to remove the petitioners to a country that would not accept them--is set, making it likely recourse to administrative remedies would be futile." *Id.*

In *Bagues-Valles v. INS,* the court held the BIA did not have jurisdiction to adjudicate constitutional issues. 779 F.2d 483, 484 (9th Cir. 1985). *But see Liu v. Waters,* 55 F.3d 421, 425 (9th Cir. 1995)(the BIA lacks jurisdiction to decide the constitutionality of governing statutes and regulations, but it may review procedural errors even if the errors allegedly violate due process).

This Court finds further development of the record in an appeal to the BIA would not have assisted in the resolution of the discreet constitutional issues presented in this matter.

In summary, the Court finds Petitioner was not required to exhaust administrative remedies by seeking BIA review of the Removal Order because Petitioner has alleged substantive constitutional due process and equal protection violations. In any event, the BIA determined *Yanez-Garcia* was applicable to convictions of persons entering no contest pleas both before and after *Yanez-Garcia* was decided. *See* 2002 WL 993589, at *10.

Accordingly, the Court finds it would have been futile for Petitioner to have appealed his Removal Order to the BIA in light of the BIA's settled position on the issues before this Court. The Court, therefore, concludes Petitioner was not required to exhaust his administrative remedies.

3. <u>Proper Party Respondents</u>.

Petitioner brought this action against the District Director, Detention and Removal, Bureau of ICE, who is Petitioner's immediate custodian. The government asserts, however, the proper party Respondent is Tom Ridge, Secretary of the Department of Homeland Security.

In *Armentero v. INS*, the court recently concluded the appropriate respondents to immigration detainees' petitions for writ of habeas corpus are the Attorney General and the Secretary of the Department of Homeland Security rather than the immediate local custodian of the Petitioner. 340 F.3d 1048, 1074 (9th Cir. 2003). Petitioner, therefore, requests leave to amend his Petition to name the proper parties. The government does not object to the amendment.

The Court grants Petitioner's request to amend his Petition to name the Attorney General and the Secretary of the Department of Homeland Security as Respondents, and captions this Opinion & Order accordingly.

4. <u>Verification of Petition</u>.

28 U.S.C. § 2242 provides a petition for writ of habeas corpus "shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf." The government asserts the Petition filed on Petitioner's behalf is not verified. This Court, however, has the discretion to

disregard the lack of verification. *See Hendricks v. Vasquez,* 908 F.2d 490, 491 (9th Cir. 1990). *See also Lewis v. Connett,* 291 F. Supp. 583 (D.C. Ark. 1968)(failure to verify the petition does not deprive the district court of jurisdiction).

The Petition before the Court was prepared and signed on Petitioner's behalf by Petitioner's attorney. The Court, in the exercise of its discretion, disregards the defect in this case.

5. Constitutionality of Removal Order.

Petitioner asserts the Removal Order violates his rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

a. Due Process.

Petitioner contends he is subject to a Removal Order without possibility of cancellation based on the retroactive application of BIA case law. Petitioner contends such retroactive application, without notice to him, violates his constitutional right to due process.

Petitioner asserts he decided to plead no contest to "simple possession of a controlled substance" specifically to avoid the immigration consequences that have now befallen him. Petitioner has presented the Affidavits of Brian Jefferson, his criminal defense attorney, and Brent Renison, an attorney with experience in immigration law. Both Jefferson and Renison

testify they discussed with Petitioner the immigration consequences of his proposed plea of no contest to the charge of possession of a controlled substance before Petitioner entered his plea. Renison testified he had previous conversations on the subject with Tim Day, the INS District Counsel at the time. Based on Renison's knowledge and experience, he advised Petitioner that "the [possession of a controlled substance] charge would render Petitioner deportable [but] Petitioner would be eligible for Cancellation of Removal [based on several factors]." Renison based his advice on his understanding that possession of a controlled substance would not be considered an aggravated felony for immigration purposes in light of the BIA's decision in *Matter of K-V-D-.* Pet'r Reply Mem., Ex. B. ¶¶ 5, 6. At oral argument, Gary Meabe, the Deputy District Attorney who prosecuted Petitioner and negotiated the Plea Agreement with Petitioner's counsel, confirmed that Petitioner's attorney expressed concern at the time regarding the effect of a plea on Petitioner's immigration status. Petitioner contends, therefore, he relied on the state of the law relative to cancellation of removal orders based on advice of counsel.

The government now asserts Petitioner's state conviction was for delivery of a controlled substance, which is a felony under 21 U.S.C. § 841. Thus, the government contends the

Court need not address whether the retroactive application of the BIA's decision in *Yanez-Garcia* is constitutional because Petitioner was convicted of an aggravated felony. Deputy District Attorney Meabe represented at oral argument, however, that a reference to the word "delivery" in the text of the Information, which charged the crime of "Possession of a Controlled Substance I," was an inadvertent scrivener's error. Contrary to the government's assertion, therefore, the state conviction was not for delivery of a controlled substance.

In addition, the government also asserts the conduct giving rise to Petitioner's conviction would have subjected him in federal court to a charge of intent to distribute a controlled substance in violation of 21 U.S.C. § 841, which is a felony, rather than a charge of possession of a controlled substance, which is a misdemeanor. In support of its position, the government relies on the investigation file in the underlying criminal proceedings involving Petitioner.

According to the government, the substantial nature of the drug activity involved in the crime is reflected in the files and justifies the government's opinion that the criminal conduct would have resulted in a felony charge of intent to distribute under federal law. The government also asserts the investigation established Petitioner never actually possessed the controlled

substance involved and, therefore, could not have been charged with or entered a plea of no contest to a possession charge under federal law.

Although the facts in the investigation file submitted by the government may establish Petitioner was involved in the delivery of heroin, Petitioner's no contest plea, nonetheless, was to the charge of Possession of a Controlled Substance in violation of Or. Rev. Stat. § 475.992(1) as charged in an Information filed by the District Attorney. Deputy District Attorney Meabe represented the charge of possession of a controlled substance in the Information was warranted because of Petitioner's role in aiding and abetting others to possess a controlled substance. As noted, Petitioner originally was indicted on two charges: Delivery of a Controlled Substance under Or. Rev. Stat. § 475.992(1) and Conspiracy to Commit Delivery of a Controlled Substance under Or. Rev. Stat. §§ 161.450 and 475.992(2). Those charges, however, were dismissed as part of the Plea Agreement.

The Court disagrees with the government that Petitioner could not have been charged with the crime of aiding and abetting others to possess a controlled substance under federal law. *See United States v. Teffera,* 985 F.2d 1082 (D.C. Cir. 1993) (to prove the defendant aided and abetted others to possess illegal

narcotics, the government need not show the defendant ever possessed the narcotics). Delivery or intent to deliver a controlled substance is not an element of the charge of aiding and abetting others to possess a controlled substance.

The Court, therefore, finds Petitioner pleaded no contest to possession of a controlled substance, which, although a felony under Oregon law, was only a misdemeanor under federal law. Accordingly, the Court finds Petitioner would have had the right to apply for cancellation of the Removal Order if the BIA had not withdrawn its prior decisions in *In re K-V-D-* and *In re L-G-.*

The government, however, also contends Petitioner could not reasonably rely on BIA decisions before *In re Yanez-Garcia* because they did not represent settled law. The government points to a recent case, *Panton v. BIA,* No. C2-02-822, ___WL___ (E.D. Ohio Sept. 15, 2003), in which the court held the retroactive application of *Yanez-Garcia* did not violate the petitioner's due process right because petitioner had no "reasonable expectation under the law that his conviction for possession of 5,000-20,000 grams of marijuana in 1998 would not render him an aggravated felon for purposes of the immigration laws." *Id.,* *8. In reaching this finding, the court apparently concluded the BIA's previous decisions in *In re K-V-D- and In re*

L-G- did not constitute settled law because, as the BIA noted in those opinions, its interpretation that the crime of possession of a controlled substance was not an aggravated felony under federal law for immigration purposes was contrary to rulings of some circuit courts that addressed the same crime for purposes of sentence enhancement. Because the BIA's decisions before *Yanez-Garcia* did not constitute sufficiently settled law, the court found the retroactive application of a change in that law was not prohibited. In effect, the court concluded the petitioner had fair warning and should have anticipated that his plea of guilty to possession of a controlled substance might not protect him from a future change in the BIA's definition of "aggravated felony" for purposes of cancellation of removal. *Id.* ("Petitioner must demonstrate that BIA's application of its decision in *Yanez-Garcia* was 'unexpected and indefensible by reference to the law which had been expressed prior to the conduct at issue.'"). The *Panton* court noted, however, the district court in *Gonzalez-Gonzalez v. Weber,* No. 03-RB-068, _____WL_____ (D. Col. May 22, 2003), reached a different result. The *Panton* court distinguished *Gonzales-Gonzales* by pointing out the petitioner in that case "was able to demonstrate actual reliance at the time of his plea agreement on the established BIA precedent and therefore suffered a due process violation." *Id.,*

at *3 n.4.[1]

After a thorough review of the record, this Court finds Petitioner reasonably relied on advice of counsel that his plea of no contest to the charge of possession of a controlled substance would not bar him from seeking cancellation of the Removal Order entered against him based on his conviction. The Court also finds the legal advice given to Petitioner was reasonable in light of the state of the law at the time.

The government next contends the statutes applicable to Petitioner were enacted before Petitioner engaged in criminal conduct and entered a no contest plea and, therefore, the retroactive application of the law is not an issue.[2] Petitioner, however, does not allege the government applied the immigration statutes retroactively in this matter. Petitioner only asserts the government applied the BIA's interpretation of those statutes retroactively.

Although the constitutional analysis for the retroactive application of statutes and case law is similar, it is not identical. Before 1996, the INA gave the Attorney General broad discretion to waive deportation of resident aliens. In the

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[1] The respondent in *Gonzales-Gonzales* now has a Motion for Reconsideration pending.

[2] The government also notes the issue of retroactive application of the same statutes is now before this Court in *Ledezma-Galicia v. Crawford,* CV 03-1316-JO (Jones, J.).

Illegal Immigrant Reform and Immigrant Responsibility Act of 1996 (IIRIRA), however, Congress, *inter alia,* eliminated the discretion of the Attorney General to waive deportation for resident aliens convicted of aggravated felonies. In *INS v. St. Cyr*, the Supreme Court addressed the retroactive application of immigration statutes. The facts in *St. Cyr* are similar to the facts in this case.

Before the enactment of IIRIRA, St. Cyr pleaded no contest to possession of a controlled substance. Although St. Cyr was subject to deportation under the applicable INA statute, he was eligible for waiver of deportation. 533 U.S. at 293. After the enactment of IIRIRA, cancellation of removal was no longer available to St. Cyr because the crime he pleaded guilty to was classified as an aggravated felony. *Id.* at 298. Although the Court recognized the presumption against retroactive

legislation, it noted "Congress has the power to enact laws with retrospective effect. A statute may not be applied retroactively, however, absent a clear indication from Congress that it intended such a result." *Id.* at 316. The Court found:

> Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the "principle that the legal effect

> of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal human appeal.".

Id. (citation omitted). The Court held IIRIRA did not apply retroactively to aliens such as St. Cyr because Congress did not unmistakably intend it to do so. *Id.* at 326.

Here the issue is the retroactive application of a BIA decision that changed the definition of an "aggravated felony" and, therefore, affected an individual's eligibility to seek cancellation of a removal order. In *SEC v. Chenery,* the Supreme Court held retroactive application of an administrative rule is not necessarily fatal to the validity of an agency decision. 332 U.S. 194, 203 (1947). The Court found:

> Every case of first impression has a retroactive effect, whether the new principle is announced by a court or by an administrative agency. But such retroactivity must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal and equitable principles. If that mischief is greater than the ill effect of the retroactive application of a new standard, it is not the type of retroactivity which is condemned by law.

In *Retail, Wholesale and Department Store Union v. NLRB*, the court set forth factors to be considered when a court determines whether newly-adopted administrative rules should be given retroactive effect:

> Among the considerations that enter into a resolution of the problem are (1) whether the particular case is one of first impression, (2) whether the new rule represents an abrupt departure from well established practice or merely attempts to fill a void in an unsettled area of law, (3) the extent to which the party against whom the new rule is applied relied on the former rule, (4) the degree of the burden which a retroactive order imposes on a party, and (5) the statutory interest in applying a new rule despite the reliance of a party on the old standard.

466 F.2d 380, 390 (D.C. Cir. 1972).

In *Puerto Rico Aqueduct and Sewer Authority v. EPA,* the court found: "As a general matter, when an adjudicating agency retroactively applies a new legal standard that significantly alters the rules of the game, the agency is obliged to give litigants proper notice and a meaningful opportunity to adjust." 35 F.3d 600, 607 (1994),

Applying the above standards, this Court agrees with the court in *Gonzales-Gonzales* that it is fundamentally unfair for an alien such as Petitioner to be subject to a changed definition of aggravated felony that results in his inability to seek cancellation of his removal from the United States. The BIA's decision to withdraw its precedents in *In re K-V-D- and In re L-G-* was first announced in *Yanez-Garcia* more than two years after Petitioner entered his no contest plea. Petitioner relied on those precedents when he entered his plea. *Yanez-Garcia* is an

abrupt departure from those precedents. By not having the ability to request cancellation of the Removal Order, the burden placed on Petitioner is substantial. He will be deported from the United States if and when the Laotian embassy issues travel documents. The continuing uncertainty of whether the Laotian embassy will issue travel documents is a sufficient burden in and of itself to justify a decision not to apply the BIA's new interpretation of the crime of "aggravated felony" retroactively in this case. In addition, the government does not assert Petitioner had any notice or reason to believe the BIA would change or withdraw its previous precedents and apply a new interpretation of aggravated felony retroactively. Finally, the government has not argued it has a particular statutory interest in applying the new definition of "aggravated felony" to Petitioner retroactively.

Based on the above, the Court concludes the government violated Petitioner's due process rights under the Fourteenth Amendment when it applied its decision in *In re Yanez-Garcia* retroactively, which effectively bars Petitioner from seeking cancellation of the Removal Order against him.

b. Equal Protection.

Petitioner contends he would not have been subject to a

removal order if he had been prosecuted in federal court because "first time simple possession of a controlled substance is a misdemeanor under federal law." He then would have had the right to apply for cancellation of the Removal Order.

Petitioner also contends the crime to which he pleaded no contest is considered a misdemeanor in other states such as Maryland. Accordingly, if he had been charged and pleaded no contest in Maryland, he would not have been subject to removal proceedings.

In light of the Court's findings and conclusion on Petitioner's due process claim, it is unnecessary for the Court to address Petitioner's equal protection claim.

CONCLUSION

For these reasons, the Court **GRANTS** Petitioner's Writ of Habeas Corpus (#1). The Court **ORDERS** Respondents to release Petitioner from custody immediately on such conditions as Respondents may impose to ensure community safety and Petitioner's appearance at further hearings. Respondents may show cause no later than 4:00 p.m., November 26, 2003 as to why Petitioner should not be released.

IT IS SO ORDERED.

DATED this day of November, 2003.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge

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