

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

ERWIN TOBAR-BARRERA,

\*

Plaintiff,

\*

v.

\*

Civil No. RDB 09-3064

Civil No. RDB 10-0176

JANET NAPOLITANO,

\*

ERIC H. HOLDER, Jr.,

\*

IRA SHOCKLEY,

\*

CALVIN McCORMICK,

GEORGE W. MAUGANS, III,

Defendants.

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**ORDER**

For the reasons stated in the foregoing Memorandum Opinion, IT IS this 12th day of March, 2010, HEREBY ORDERED that:

1. Tobar-Barrera's Petition for Writ of Habeas Corpus (Civil No. RDB 09-3064) is DENIED, and the Clerk shall Close that case;
2. Tobar-Barrera's Complaint for Declaratory and Injunctive Relief (Civil No. RDB 10-0176) is GRANTED IN PART and DENIED IN PART, as follows:
  - a. It is GRANTED as to Tobar-Barrera's claim for declaratory relief, and accordingly a declaratory judgment is entered in favor of Tobar-Barrera and against Defendants;

- b. It is DENIED as to Tobar-Barrera's claim for injunctive relief, and accordingly this Court will not enjoin his removal proceedings pending in the Baltimore Immigration Court on April 14, 2010;
3. Pursuant to the Declaratory Judgment Act, 28 U.S.C. 2201 *et seq.*, and paragraph 35 of the consent decree set forth in *American Baptist Churches v. Thornburgh*, 760 F. Supp. 797 (N.D. Cal. 1991) ("ABC agreement"), this Court hereby DECLARES that the U.S. Citizenship and Immigration Services ("USCIS") failed to comply with the ABC agreement when it determined that Tobar-Barrera was ineligible for a de novo asylum adjudication. Because Tobar-Barrera does not have an "aggravated felony," as defined under paragraph 2 of the ABC agreement, he is eligible for, and entitled to, a de novo asylum adjudication before an asylum officer.
4. Defendants are hereby ORDERED to provide Tobar-Barrera with a de novo asylum adjudication in accordance with the terms of the ABC agreement. This adjudication must be initiated within thirty days of the date of this Order;
5. Copies of this Order and the foregoing Memorandum Opinion shall be transmitted to counsel of record.

/s/  
Richard D. Bennett  
United States District Judge