

Immigration Limbo Prompts Some to Abandon Fight

By Sandra Hernandez
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LOS ANGELES - For much of the past three years, Angel Cerezo has felt like a man without a country. After living in the United States for 35 years as a legal permanent resident, Cerezo was deported to Spain in 2005.

His removal was triggered by conviction for leaving the scene of an injury accident, a crime that an immigration judge ruled was a deportable offense.



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But in early 2008, the 9th U.S. Circuit Court of Appeals overruled the immigration courts, saying leaving the scene of an accident was not a deportable crime, and Cerezo was allowed to return here.

"I feel like I don't belong anywhere," said Cerezo, 42, who had lived in the United States since he was 8. "So much has happened, so much time has gone by. I'm tired."

Like Cerezo, a growing number of green card holders now find themselves detained in federal immigration detention centers while battling complex deportation cases without legal help.

Unlike criminal defendants who are provided public defenders, immigration defendants are not entitled to free legal representation because their cases are considered civil proceedings, even though they are incarcerated.

Legal observers said Cerezo's case illuminates how detainees with strong legal cases are swayed to abandon their claims when faced with years of incarceration and no legal help.

"I hear about cases like this every day, someone in detention who has no attorney but has a strong legal claim," said Charles Kuck, president of the 10,000-member American Immigration Lawyers Association.

Immigration and Customs Enforcement "uses detention as a weapon to push people to agree to sign for their removal," he said.

"Let's not kid ourselves. Some of these people have no relief. But a large number of people, who are not even deportable, like this guy, end up agreeing to their deportation because they can't afford an attorney. It's like walking into a machine gun fight armed with a toothpick," he said.

A 2005 report on asylum seekers in the United States compared the system by which some foreign nationals win or lose their cases to a board game.

"Whether or not you are removed to the country you claim to be fleeing depends not only on the strength of your claim but also where in the United States you land. It also depends on whether or not you can find a lawyer and which official considers your application," wrote Mark Hetfield, immigration counsel to the U.S. Commission on International and Religious Freedom.

Cerezo found help in the 11th hour, while he was still locked up at a San Pedro federal immigration detention center.

A fellow detainee suggested Cerezo write to Ahilan Arulanantham, a lawyer with the ACLU of Southern California who had started working with a handful of detainees.

"When I read the immigration court's decision, it seemed clearly wrong to me," Arulanantham said. "The government claimed that a traffic violation, albeit a serious traffic violation, was a deportable offense."

Arulanantham agreed to take on the case, but Cerezo worried that he would remain locked up awaiting his appeal.

"I heard what was happening to people who fought their cases," Cerezo said. "They were being detained for years. I couldn't take it."

Cerezo's fear reflects a growing push by federal officials to keep immigrants locked up while they appeal their cases.

In early 2008, lawyers for the Bush administration argued before the 9th Circuit that federal law allows the attorney general to lock up immigrants when they appeal their cases and obtain stays.

"There is a choice here. The alien can litigate his petition from abroad." Thomas Dupree, a Justice Department lawyer said.

Cerezo made that choice, and in 2005 boarded a plane for Madrid, unsure if he would ever return to California, where he had gone to school, found work as a tile setter, and set down roots with his family.

Cerezo said, he felt lost in a country he had last seen as a boy of 8.

"The Spanish thought of me as a foreigner," Cerezo said. "They could tell my Spanish was different. And I just felt like I didn't belong. Everything was different."

After finding a room, he sought work at construction sites with little success. Three months later he was broke and homeless.

The Spanish government assigned him to a social worker, and gave him about \$550 U.S. dollars a month, enough to buy food and look for jobs.

On the advice of other immigrants, Cerezo moved to the Canary Islands, where he found odd jobs and soon was able to rent a room. He could afford food but little else. International telephone calls or computer time at Internet cafes were luxuries largely reserved for contacting his lawyer.

"I tried to call at least once a month, if not every week," Cerezo said, adding he wanted Arulanantham to know he hadn't lost interest and would be available.

Cerezo couldn't receive international calls, and e-mails were often exchanged hours apart because of the time difference.

In September 2007, Arulanantham filed a brief before the 9th Circuit, arguing that Cerezo's traffic conviction did not constitute a crime of "moral turpitude." He argued that leaving the scene act of an injury accident did not involve evil intent nor was it a base or depraved crime, as defined for immigration purposes.

Moreover, Arulanantham argued, Cerezo believed he never pleaded guilty to leaving the scene of an accident, and the government's attorneys had provided only a minute order indicating his client was convicted but no other records.

A three-member panel unanimously ruled that the government "has not met its burden of proving that Cerezo committed a crime involving moral turpitude," wrote Judge Sandra S. Ikuta.

The court concluded that it would need to "examine certain judicial records to determine whether a defendant was convicted of the federal generic crime," Ikuta wrote. "Here, however, the record contains only the abstract of judgment, which simply states that Cerezo pleaded guilty to a violation of [the statute]."

U.S. Immigration and Customs Enforcement, the agency that oversees detention and sought to prosecute Cerezo, maintains Cerezo's detention was triggered by a serious crime.

"This was not a case of a simple auto accident," said Virginia Kice, a spokeswoman for ICE. "Mr. Cerezo was sentenced to two years following his conviction."

Cerezo's accident occurred while he was driving with a license that was revoked days earlier, Kice said.

Since winning his case, Cerezo has fought to re-establish his life in the United States.

After arriving at Los Angeles International Airport in August, Customs and Border Patrol agents immediately detained Cerezo.

"They told me I had a deportation order, and I was no longer a legal resident," Cerezo said. He was finally paroled into the country after Arulanantham contacted airport officials.

ICE officials declined to discuss how agencies within the Department of Homeland Security share information to ensure immigrants who win their cases, such as Cerezo, are not mistakenly detained.

Kice wrote in an e-mail that Border and Customs Patrol "officers do have access to information on the individuals' immigration history," but provided no other comment.

Cerezo's case comes amid a backdrop of ramped-up enforcement of existing laws targeting both legal and illegal workers.

In 2008, federal immigration officials deported 350,000 immigrants.

For Arulanantham, those numbers along with stepped up raids and the prolonged detention of many immigrants, would have made it impossible to take on Cerezo's case.

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