

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GILDA ALTAGRACIA ABREU-REYES,
a.k.a. Gilda A. DeSmith,

Petitioner,

v.

IMMIGRATION AND
NATURALIZATION SERVICE,

Respondent.

No. 99-70542

I&NS No. A31-399-056

ORDER

Petition to Review a Decision of the
Board of Immigration Appeals

Filed November 21, 2003

Before: O'SCANNLAIN and PAEZ, Circuit Judges, and KING,* District Judge.

Good cause appearing, the mandate in this case is withdrawn. See Nevius v. Sumner, 105 F.3d 453, 460-61 (9th Cir. 1996) (reiterating that the authority of a Court of Appeals to recall its mandate exists as part of the court's power to protect the integrity of its own processes).

Petitioner's "Motion for Reinstatement of Petition for Review,

* The Honorable Samuel P. King, Senior United States District Judge for the District of Hawaii, sitting by designation.

Reconsideration and a Stay of Deportation Pending Resolution of Reconsideration," filed on October 29, 2003, is construed as a Petition for Rehearing and is GRANTED.

The prior opinion issued in this case, published at 292 F.3d 1029 (9th Cir. 2002), is inconsistent with United States v. Corona-Sanchez, 291 F.3d 1201, 1211-12 (9th Cir. 2002) (en banc) (discussing use of pre-sentence reports for determining whether an alien is removable for having committed an aggravated felony), which was issued four days before the prior opinion. Because the en banc court's opinion in Corona-Sanchez takes precedence, the prior opinion in this case published at 292 F.3d 1029 (9th Cir. 2002) is WITHDRAWN.

We GRANT the original petition for review for the reasons stated in Corona-Sanchez and Huerta-Guevara v. Ashcroft, 321 F.3d 883, 888 (9th Cir. 2003). The immigration judge was not authorized to use the pre-sentence report in determining whether petitioner was an aggravated felon for purposes of removal.

Petition GRANTED.