

Camarena v. Slade, No. 03-55108

SEP 07 2004

PREGERSON, Circuit Judge, Dissenting in part:

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

This a disturbing case. On the one hand, the government offers Hector Camarena a year reduction in his sentence as an incentive for him to participate in drug treatment. On the other, the same government takes away that incentive based on what may be an invalid INS detainer. As Mr. Camarena points out, a prisoner deprived of a liberty interest in good time credit because of misconduct is entitled to (1) advanced written notice of the full extent of the charges; (2) an opportunity to present witnesses and documentary evidence; (3) a written statement by a fact finder providing the reasons for its decision; and (4) support by evidence in the record. *See Superintendent v. Hill*, 472 U.S. 445, 454 (1985). Here, Mr. Camarena was not charged with *any* misconduct but was nonetheless accorded less process. Had he been provided with such process, he would have at least had the opportunity to challenge the validity of the INS detainer. Ensuring such process would provide protection against what can only be described as a Kafkaesque scenario of a prisoner having no Bureau of Prisons remedy even when a detainer is issued in plain error, which could happen to a United States citizen. Nevertheless, Mr. Camarena is left with no mechanism to challenge the validity of a detainer until after he serves an additional year in prison. It is this year that the government offered him as an incentive to participate in drug treatment, which he

did. It is manifestly unjust and unfair for the government to offer such an incentive with one hand, only to take it away with the other without first providing him with a timely and meaningful opportunity to challenge the validity of the detainer.

Accordingly, I respectfully dissent.