

AUG 04 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

SYLVESTER OWINO, Sylvester Otieno-Owino,

Petitioner - Appellant,

v.

JANET NAPOLITANO,\* Secretary of the Department of Homeland Security; ERIC H. HOLDER Jr., Attorney General, Attorney General; ROBIN BAKER, Director of San Diego Field Office U.S. Immigration and Customs Enforcement; JOHN A. GARZON Officer-In-Charge,

Respondents - Appellees.

No. 08-56392

D.C. No. 3:07-cv-02267-WQH-POR

ORDER

Before: B. FLETCHER, FISHER and GOULD, Circuit Judges.

Appellant's request for publication, filed July 14, 2009, is GRANTED. The memorandum disposition, filed July 8, 2009, is withdrawn. A superseding per curiam opinion will be filed concurrently with this order. The mandate shall issue forthwith. *See* Fed. R. App. P. 41(b).

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\* Janet Napolitano is substituted for her predecessor, Michael Chertoff, as Secretary of the Department of Homeland Security, pursuant to Fed. R. App. P. 43(c)(2).