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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAVIER ANTONIO HERNANDEZ-SEGOVIA, Petitioner, v. WILLIAM P. BARR, Attorney General, Respondent.	No. 16-72659 Agency No. A206-756-946 MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted February 7, 2019
San Francisco, California

Before: PAEZ and BERZON, Circuit Judges, and FEINERMAN,** District Judge.

Javier Antonio Hernandez-Segovia petitions for review of the decision of the Board of Immigration Appeals ("BIA") dismissing his appeal. The BIA affirmed the decision of the immigration judge ("IJ") denying his motion to suppress the Form I-870 credible fear interview notes and to terminate proceedings. We have

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The Honorable Gary Feinerman, United States District Judge for the Northern District of Illinois, sitting by designation.

jurisdiction under 8 U.S.C. § 1252, and we review only the BIA decision because it conducted de novo review of the IJ's decision. *See Maldonado v. Lynch*, 786 F.3d 1155, 1160 (9th Cir. 2015) (en banc). We deny the petition.

1. Hernandez-Segovia was arrested in June 2014 at Hidalgo, Texas by a border patrol agent. Because he expressed fear of returning to El Salvador, Hernandez-Segovia underwent a credible fear interview in August 2014 after which an asylum officer determined that he had a credible fear of torture. The Department of Homeland Security ("DHS") initiated removal proceedings, relying on the Form I-870 as proof of Hernandez-Segovia's alienage. After the IJ denied his motion to suppress the Form I-870, Hernandez-Segovia accepted a removal order in lieu of applying for relief from removal.

2. In the context of civil immigration proceedings, the exclusionary rule applies where the petitioner can show "egregious violations of [the] Fourth Amendment or other liberties." *Gonzales-Rivera v. INS*, 22 F.3d 1441, 1448 (9th Cir. 1994). Hernandez-Segovia alleges that he was detained without first having been asked by the border patrol agent for his country of birth or citizenship. But we conclude on *de novo* review that this brief factual statement, without any additional information surrounding the circumstances of his arrest, is insufficient to meet his burden of establishing a prima facie case of a Fourth Amendment violation, let alone an egregious Fourth Amendment violation. *See id*. at 1449

(noting that "conduct that 'shocks the conscience' constitutes an egregious constitutional violation"); *see also Sanchez v. Sessions*, 904 F.3d 643, 649, 653 (9th Cir. 2018).

3. Hernandez-Segovia's due process challenge to the voluntariness of his admissions during the interview is also unavailing. Although Hernandez-Segovia was told that he had to answer the asylum officer's questions to stop his deportation, this advice does not, in of itself, suggest that he was "cajoled into giving the officer[] a statement against his will." *Gonzaga-Ortega v. Holder*, 736 F.3d 795, 800, 804 (9th Cir. 2013). Notably, Hernandez-Segovia was given the opportunity to reschedule his interview in order to obtain an attorney or consultant, but he insisted on proceeding with the interview without an attorney or consultant present. There is no indication in the record that his statements were the product of duress or coercion by the asylum officer. *See Cervantes-Cuevas v. INS*, 797 F.2d 707, 711 (9th Cir. 1985). We therefore affirm the BIA's conclusion that his admissions during the credible fear interview were voluntarily made.

Hernandez-Segovia's other due process challenge—that the Form I-870's record is unreliable because it contradicts averments in his declaration—fails because he has not shown "evidence of coercion or that the statements" recorded on the Form I-870 are not his. *Sanchez v. Holder*, 704 F.3d 1107, 1109 (9th Cir. 2012) (per curiam) (citation omitted). Accordingly, we conclude that admission of

the Form I-870 was "fundamentally fair" and within the IJ's discretion. *Id*.

4. Hernandez-Segovia also challenges the admissibility of his statements based on two alleged regulatory violations: (1) DHS's failure to inform him of the availability of free legal services prior to his credible fear interview, and (2) DHS's failure to provide him the legal basis for his two-month detention. A regulatory violation could render a removal order invalid if the regulation serves a purpose of benefit to the noncitizen and prejudice from the violation can be shown. *See United States v. Calderon-Medina*, 591 F.2d 529, 531–32 (9th Cir. 1979). As to the first alleged violation, while the regulations provide individuals like Hernandez-Segovia the opportunity to consult with any person, at no expense to the government, prior to the credible fear interview, *see* 8 C.F.R. §§ 208.30(d)(4), 235.3(b)(4)(ii), DHS has no duty to inform noncitizens about the availability of pro bono counsel until DHS has initiated formal proceedings and filed a notice to appear with the immigration court. *See* 8 C.F.R. § 287.3(c); *Samayoa-Martinez v. Holder*, 558 F.3d 897, 901–02 (9th Cir. 2009). As to the second alleged violation, even assuming that DHS violated 8 C.F.R. § 287.3(d) in detaining Hernandez-Segovia without issuing a detention order within 48 hours of arrest, he has not demonstrated any prejudice from the failure to issue the order. *See Calderon-Medina*, 591 F.2d at 532.

5. Finally, we find no merit to Hernandez-Segovia's remaining claims.

Neither the IJ nor BIA abused their discretion in ruling against him despite the government's failure to oppose his motion to suppress or his appeal. *See Zetino v. Holder*, 622 F.3d 1007, 1012 (9th Cir. 2010). The BIA also did not err by concluding that the IJ's erroneous reference to a non-existent Form I-213 in her removal decision was harmless; the IJ's oral decision explicitly relied on the "credible fear review documents," and there was sufficient evidence in the record to sustain the charge of removability.

Petition DENIED.