

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 20 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JULIO CESAR BAZURTO-ROMO,

Petitioner,

v.

TODD BLANCHE, Acting Attorney
General,

Respondent.

No. 25-1953

Agency No.
A200-704-320

MEMORANDUM*

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

Submitted April 16, 2026**
Phoenix, Arizona

Before: GRABER, HURWITZ, and DESAI, Circuit Judges.

Julio Cesar Bazarro-Romo petitions for review of a decision of the Board of Immigration Appeals (“BIA”) dismissing an appeal from an order of an Immigration Judge that declined to reopen removal proceedings to address Bazarro’s claim of

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

United States citizenship. Because Bazarro presents a genuine issue of material fact about his nationality, we transfer this matter to the United States District Court for the District of Arizona pursuant to 8 U.S.C. § 1252(b)(5)(B).

1. Ordinarily, the agency’s “decision of whether or not to reopen a removal proceeding *sua sponte* is a purely discretionary decision that we lack jurisdiction to review.” *Magana-Magana v. Bondi*, 129 F.4th 557, 575 (9th Cir. 2025). But “the plain language of § 1252(b)(5) not only permits but *requires* us to evaluate a claim to United States nationality upon a petition for review, even where our jurisdiction would otherwise be limited.” *Anderson v. Holder*, 673 F.3d 1089, 1096 (9th Cir. 2012).¹

2. The agency declined to reopen Bazarro’s removal proceedings because it found that he failed to present “substantial credible evidence in support of his claim to citizenship.” *See Mondaca-Vega v. Lynch*, 808 F.3d 413, 419 (9th Cir. 2015). Although the agency may properly consider whether Bazarro carried his burden to

¹ Because the government does not argue that Bazarro forfeited the right to judicial review of his derivative citizenship claim, we do not consider the issue. *Compare Rivera v. Ashcroft*, 394 F.3d 1129, 1136 (9th Cir. 2005) (holding that petitioner’s waiver of appeal from final order of deportation did not forfeit right to judicial review of citizenship claim because “[t]he Constitution does not permit American citizenship to be so easily shed”), *superseded by statute on other grounds*, REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302, *with Clement v. U.S. Att’y Gen.*, 75 F.4th 1193, 1204 (11th Cir. 2023) (“We hold that [petitioner] forfeited any right to judicial review of his [citizenship claim] by withdrawing his appeal to the Board of Immigration Appeals and asking to be deported.”).

present substantial credible evidence of citizenship, we must undertake a different inquiry—whether there is a “genuine issue of material fact” as to Bazarto’s nationality. *Chau v. INS*, 247 F.3d 1026, 1029 (9th Cir. 2001). If there is, we “must transfer the proceeding to a district court for a de novo determination.” *Id.* (summarizing 8 U.S.C. § 1252(b)(5)(B)). “In determining whether a genuine issue of material fact exists, traditional summary judgment principles apply.” *Id.*

3. “The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child’s birth.” *Runnett v. Shultz*, 901 F.2d 782, 783 (9th Cir. 1990). The statute in effect when Bazarto was born in 1979 conferred citizenship on:

a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than ten years, at least five of which were after attaining the age of fourteen years

8 U.S.C. § 1401(g) (1979).

It is undisputed that Bazarto’s father is a United States citizen, born in 1954, and that Bazarto was born in Mexico in 1979. The parties therefore agree that Bazarto’s citizenship claim turns on whether his father was physically present in the United States for ten years between 1954 and 1979, at least five of which were after the father turned fourteen in 1968.

In support of his citizenship claim, Bazarro offered affidavits from his father, his paternal aunt and uncle, and his father’s former coworker. He also submitted an independent investigative report and a polygraph examination of his father. As Bazarro candidly admits, this evidence may contain some contradictions. But the evidence, taken in the light most favorable to Bazarro, is nonetheless sufficient to establish a genuine issue of material fact about whether Bazarro’s father was physically present in the United States during the period required by § 1401(g). *See Ayala-Villanueva v. Holder*, 572 F.3d 736, 740 (9th Cir. 2009) (“This court . . . need not weigh the evidence or determine whether the BIA applied the appropriate burden. Instead, we need only determine whether a genuine issue of material fact exists as to [the petitioner’s] nationality.”); *Cheairs v. City of Seattle*, 145 F.4th 1233, 1239 (9th Cir. 2025) (“At the summary judgment stage, we view disputed facts in the light most favorable to the nonmoving party.”).

4. Because there is a genuine issue of material fact as to Bazarro’s father’s physical presence in the United States, we are required to transfer the action to the United States District Court for the District of Arizona for a de novo citizenship determination.² 8 U.S.C. § 1252(b)(5)(B). Bazarro’s petition for review will be held

² Section 1252(b)(5)(B) provides that citizenship claims should be transferred to “the judicial district in which the petitioner resides.” It is unclear where Bazarro resides and whether he is detained. Because Bazarro requests transfer to the District of Arizona, and the government does not suggest that he resides elsewhere, we assume he resides there.

in abeyance pending the district court's decision on Bazarro's citizenship claim.

Chau, 247 F.3d at 1032.

**TRANSFERRED TO THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF ARIZONA; PETITION FOR REVIEW HELD IN
ABEYANCE.**