



U.S. Department of Justice

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December 15, 2025

The Honorable Meredith A. Vacca
United States District Judge
Kenneth B. Keating Federal Building
100 State Street
Rochester, New York 14614

Re: Zhishpon v. Kurzdorfer
25-CV-06678-MAV

Dear Judge Vacca:

After this Court issued its order requiring a bond hearing, but before the bond hearing could be held, Petitioner requested and was granted voluntary departure.¹ As a result, the immigration judge who was to hold his bond hearing instead held that based on the requirements of the voluntary departure order, Petitioner agreed to remain in custody and thus the immigration court lacked jurisdiction to hold a bond hearing.

Orders of voluntary departure create a nebulous authority for detention in the immigration context. There is no clear regulation as to when an order of voluntary departure becomes "final", but, as in this case, a date is given upon which the voluntary departure order will transform into an order of removal if the alien fails to depart. Thus, it is not entirely clear if Petitioner remains detained as a pre-final order of detention alien or a post-final order of detention alien. In any event, in exchange for being granted voluntary

¹ "Voluntary departure [pursuant to 8 U.S.C. § 1229c] is a discretionary form of relief that allows certain favored aliens—either before the conclusion of removal proceedings or after being found deportable—to leave the country willingly. . . . Voluntary departure, under the current structure, allows the Government and the alien to agree upon a *quid pro quo*. From the Government's standpoint, the alien's agreement to leave voluntarily expedites the departure process and avoids the expense of deportation—including procuring necessary documents and detaining the alien pending deportation. The Government also eliminates some of the costs and burdens associated with litigation over the departure. . . . Benefits to the alien from voluntary departure are evident as well. He or she avoids extended detention pending completion of travel arrangements; is allowed to choose when to depart (subject to certain constraints); and can select the country of destination. And, of great importance, by departing voluntarily the alien facilitates the possibility of readmission." *Dada v. Mukasey*, 554 U.S. 1, 8, 11 (2008).

departure, Petitioner has agreed to remain in ICE custody until his departure date, which will be before January 12, 2026.

Based on these new developments, the government seeks this Court's guidance as to whether this Court's prior order can be lifted, and whether the government should file a formal motion for relief from the order given these new facts.

Respectfully submitted,

MICHAEL DIGIACOMO
Acting United States Attorney
Western District of New York

BY: /s/ ADAM A. KHALIL
Assistant United States Attorney

Encl. – Order granting voluntary departure (3 pages); Order re: bond (2 pages)



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BATAVIA IMMIGRATION COURT

Respondent Name:

PASATO ZHISHPON, WILSON
FERNANDO

To:

PASATO ZHISHPON, WILSON
FERNANDO
BUFFALO FEDERAL DET FACILITY
4250 FEDERAL DRIVE
BATAVIA, NY 14020

A-Number:



Riders:

In Removal Proceedings

Initiated by the Department of Homeland Security

Date:

12/11/2025

ORDER OF THE IMMIGRATION JUDGE

Based on Respondent's admissions, the court has determined that the Respondent is removable from the United States based on the charge(s) set forth in the Notice to Appear. The Respondent has made an application solely for voluntary departure in lieu of removal and has waived appeal of all issues.

ORDER: Accordingly, it is **HEREBY ORDERED** that the respondent be **GRANTED** pre-conclusion voluntary departure under Immigration and Nationality Act (INA) § 240B(a), in lieu of removal, without expense to the Government, on or before 01/12/2026, or any extensions as may be granted by the Department of Homeland Security (DHS), and under any other conditions DHS may direct.

It is **FURTHER ORDERED**:

- that the Respondent post a voluntary departure bond in the amount of \$ USD with DHS on or before .
- that the Respondent provide DHS with the Respondent's passport or other travel documentation sufficient to assure lawful entry into the country to which Respondent is departing within 60 days of this order, or within any time extensions that DHS may grant and/or

Other:

1. UNDER SAFEGUARDS.

2. By filing this Motion, Respondent has withdrawn his previously filed Form I-589, without prejudice, as no other application for relief from removal may be advanced if pre-completion voluntary departure is requested.

It is **FURTHER ORDERED** that if any of the above-ordered conditions are not met as required or if the Respondent fails to depart as required, the above grant of pre-conclusion voluntary departure shall be withdrawn without further notice or proceedings and the following order, entered pursuant to 8 C.F.R. § 1240.26(d), shall become immediately effective:
the Respondent shall be removed to ECUADOR on the charge(s) set forth in the Notice to Appear.

It is FURTHER ORDERED that if the above country advises DHS that it is unwilling to accept the Respondent into its territory, or fails to advise DHS within three months following original inquiry whether it will accept Respondent into its territory, the Respondent shall be removed to

The Respondent is HEREBY ADVISED that if the Respondent fails to voluntarily depart the United States within the time specified, or within any extensions that DHS may grant, the Respondent will be subject to the following penalties:

The Respondent will be subject to a civil monetary penalty as listed in 8 C.F.R. § 280.53(b). *See* INA § 240B(d). The court has set the presumptive civil monetary penalty amount of \$3,000.00 USD (or \$ USD instead of the presumptive amount).

The Respondent will be ineligible, for a period of 10 years, to receive cancellation of removal, adjustment of status, registry, voluntary departure, or a change in nonimmigrant status. *See* INA § 240B(d).

The Respondent is FURTHER ADVISED that if Respondent files a motion to reopen or reconsider during the voluntary departure period, the period allowed for voluntary departure will not be stayed, tolled, or extended, the grant of voluntary departure will be terminated automatically, the alternate order of removal will take effect immediately, and the above penalties for failure to depart voluntarily under INA § 240B(d) will not apply. 8 C.F.R. §§ 1240.26(b)(3)(iii), (e)(1).

Failure to Depart: If Respondent is subject to a final order of removal and willfully fails or refuses (1) to depart from the United States pursuant to the immigration court's order, (2) to make timely application in good faith for travel or other documents necessary to depart the United States, (3) to present themselves at the time and place required for removal by the DHS, or (4) conspires to or takes any action designed to prevent or hamper their departure pursuant to the order of removal, Respondent shall be subject to a civil monetary penalty for each day Respondent is in violation, pursuant to INA § 274D and 8 C.F.R. § 280.53(b)(14). If Respondent is removable pursuant to INA § 237(a), then Respondent shall be further fined and/or imprisoned for up to 10 years. *See* INA § 243(a)(1). Further, any Respondent that has been denied admission to, removed from, or has departed the United States while an order of exclusion, deportation, or removal is outstanding and thereafter enters, attempts to enter, or is at any time found in the United States shall be fined or imprisoned not more than two years, or both. 8 U.S.C. § 1326(a).



Immigration Judge: SCHULTZ, ERIC 12/11/2025

Appeal: Department of Homeland Security: waived reserved
Respondent: waived reserved

Appeal Due:

Certificate of Service

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To: [] Alien | [P] Alien c/o custodial officer | [] Alien atty/rep. | [P] DHS

Respondent Name : PASATO ZHISHPON, WILSON FERNANDO | A-Number :



Riders:

Date: 12/11/2025 By: Cavar, Sandi, Court Staff



UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BATAVIA IMMIGRATION COURT

Respondent Name:

PASATO ZHISHPON, WILSON
FERNANDO

To:

Curillo, Celina Beatriz
64 North Street, 2nd Floor
Danbury, CT 06810

A-Number:



Riders:

In Custody Redetermination Proceedings

Date:

12/11/2025

ORDER OF THE IMMIGRATION JUDGE

The respondent requested a custody redetermination pursuant to 8 C.F.R. § 1236. After full consideration of the evidence presented, the respondent's request for a change in custody status is hereby ordered:

- Denied, because
Respondent's bond remains no bond.

Prior to the scheduled U.S. District Court ordered habeas bond hearing this afternoon, Respondent, this morning in removal proceedings, withdrew his asylum and other protection applications and asked for and accepted a final order granting him voluntary departure under safeguards. Respondent has agreed to remain in custody until he arranges his voluntary departure within the next 30 days.

As such, the Court no longer has jurisdiction to set bond. The U.S. District Court ordered a bond hearing pursuant to Immigration and Nationality Act § 236(a), however, since then, upon initiation of Respondent, the posture of his case has changed as noted above. The Court will not hold the scheduled U.S. District Court ordered bond hearing because to get the benefit of the discretionary relief Respondent sought, Respondent has agreed to remain in custody until his departure. It is Respondent's own decision as to the relief he sought in removal proceedings that causes this Court to make this decision, which is in violation of the U.S. District Court's order but in keeping the circumstances as they now present.

- Granted. It is ordered that Respondent be:
 - released from custody on his own recognizance.
 - released from custody under bond of \$
 - other:

- Other:



Immigration Judge: COUNIHAN, BRIAN J 12/11/2025

Appeal: Department of Homeland Security: waived reserved
Respondent: waived reserved

Appeal Due: 01/12/2026

Certificate of Service

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Respondent Name : PASATO ZHISHPON, WILSON FERNANDO | A-Number :



Riders:

Date: 12/11/2025 By: PHAIR, DEANNA, Court Staff