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VIKTOR MAZELIAH

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

VIKTOR MAZELIAH, Petitioner, vs. MICHAEL J.D. SMITH, Warden, Federal Detention Center, Honolulu, Hawai'I and his successor; POLLY KAISER, Acting Field Office Director, San Francisco Field Office, Immigration and Customs Enforcement, and her successor; PAMELA BONDI, Attorney General of the United; States and her successor; KRISTI NOEEM, Secretary of the Department of Homeland Security and her successor; JAYCI RONEY, USCIS HonoluluField Officer Director and her successor; All in their official capacity. Respondents	CIVIL NO. _____ **MAZELIAH IS IN CUSTODY AT THE HONOLULU FEDERAL DETENTION CENTER** PETITIONER'S VERIFIED EMERGENCY PETITION FOR EX-PARTE TEMPORARY RESTRAINING ORDER TO STAY HIS REMOVAL PENDING HIS APPEAL AT THE BIA

Emergency Relief Requested

Mazeliah VIKTOR MAZELIAH, currently in custody and held without bond at the Honolulu Federal Detention Center, and **whose removal to Israel is now imminent**. respectfully requests the following emergency relief:

- Issue an ex-parte TRO to stay the removal of Mazeliah by Respondents pending his appeal which he filed at the Board of Immigration Appeals; and,

- Order Respondents that they are prohibited from transferring Mazeliah to another out of state or foreign custody detention center while his appeal is pending before the Board of Immigration Appeals.

FRCP, Rule 65. Injunctions and Restraining Orders, subsection (b) governs the issuance of a Temporary Restraining Order, reads in relevant part:

> (1) Issuing Without Notice. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:
>
> (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
>
> (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Biographical Background

VIKTOR MAZELIAH (hereinafter referred to as "Mazeliah") is an Israeli National and citizen born on [redacted] who entered the United

States **lawfully** with a B2 Visa (tourist visa) on March 16, 2010.

Department of Homeland Security (DHS) and ICE does not dispute that Mazeliah entered the US lawfully. Upon information and belief, Mazeliah does not have any criminal arrests or convictions.

It is also undisputed by DHS and ICE that on August 25, 2014 USCIS granted Mazeliah his conditional legal resident status, and that on June 22, 2016, Mazeliah and his spouse, Valerie Josephine Morales, jointly filed with USCIS a I-751 petition to remove his conditional legal residence status. The Joint I-751 was denied because Mazeliah did not appear for the interview. Mazeliah did not appear at the hearing because the notice for the interview to remove his conditional status was mailed to his prior address.

On May 21, 2018, the Hawaii Family Court granted Respondent's divorce from his spouse, Valerie Josephine Morales, the joint filer of the I-751. The divorce, as will be explained in greater detail below, made Mazeliah ineligible for the Joint I-751.

Further there is no dispute that on May 5, 2021, Respondent was placed in removal proceedings with the filing of a Notice to Appear. See attached NTA, marked as "Exhibit A."

At a master calendar hearing on July 28, 2021, Respondent sought review

de novo of the denial and reserved the right to file Adjustment of Status, to the extent that he was lawfully married to his current wife, Iris Freitas, a US citizen. Respondent also challenged the NTA on the grounds that it was defective because the joint I-751 was not decided on the merits: Rather, USCIS denied the petition because Mazeliah did not appear for the interview.

a). Underlying Immigration Court Proceedings

On May 5, 2021, DHS/ICE filed the Notice to Appear (NTA) with the Immigration Court, an agency of the Department of Justice, known as the Executive Office of Immigration Review. The Immigration Judge (hereinafter referred to as the "IJ" then noticed the first hearing, known as the Master Calendar hearing to set the filing deadlines and the Individual Hearing date.

Thereafter, on February 17, 2022 DHS/ICE counsel filed a poition statement with the IJ, in which it stated that according to the Immigration and Nationality Act, the IJ did not have jurisdiction over the I-751 Joint Application because Mazeliah and his joint filing spouse had divorced. The statement was filed by Geoffrey Ling, DHS Assistant Chief Counsel. The position statement was entitled "Department of Homeland Security's Position Statement of the Respondent's Eligibility for Relief Through a Joint I-751 Petition Under Section 216 (c) (1) of the Immigration and Nationality Act," which reads in part:

> The respondent is statutorily ineligible for relief through a joint I-751 petition under Section 216(c) (1) of the Immigration and Nationality Act (INA). The INA "requires a present demonstration that the marriage has not been annulled or terminated, [and] it is clear that the qualifying marriage must be ongoing in order for a joint petition to be approved." INASection 216(d) (1) (A)(II) , Matter of Tee, 20 I & N Dec. 949, 950-951 (BIA 1995). Having divorced from the petitioning spouse in 2018, the respondent is statutorily ineligible for approval of the joint petition by the Immigration Judge. As such, a review of the merits of such a petition by the court would not be necessary or appropriate.

The DHS position statement provided pivotal authoritative governmental legal notice to the IJ that he no longer had any jurisdiction over the Joint I-751, which was the only matter pending with the IJ as per the NTA. DHS never filed a superceding NTA to this date.

Thereafter, Respondent filed a non-opposed motion to continue the individual hearing or in the alternative for administrative closure to allow Respondent to file a I-751 waiver since Respondent was no longer eligible for the Joint I-751 because the marriage had been terminated by the divorce while the joint I-751 was pending with USCIS.

After the Immigration Judge granted Respondent's motion, the Court sua sponte scheduled a hearing for March 28, 2023, at which time counsel for Respondent made the following statement:

MR. COSIO: This is Fernando Cosio on behalf of the Respondent asking permission from the Court to speak.

THE COURT: Please proceed.

MR. COSIO: Thank you, your Honor. Last year almost to the date, on March 7th, the Court granted a motion to continue, and pursuant to the Government's motion (Erratum: It was Respondent's motion), the case was administratively closed, as I understand it, pending the review of the 751, which was refiled by the Respondent by himself since there had been a divorce while the original I-751 had been adjudicated by USCIS.

MR. LING: DHS's understanding is that a joint I-751 had previously been denied by USCIS, and there had been an issue as to whether the Court could review that denied joint I-751 given that the Respondent had divorced the Respondent subsequently filed an I-751 waiver with USCIS, and as stated earlier by DHS, it appears that that I-751 waiver remains pending at USCIS….

THE COURT: The Court will set this matter to July 26, 2023 at 8:30 a.m. for a master calendar hearing for the status of the pending I-751. If there is a desire for the Court to rule on or evaluate the Respondent's previously submitted and denied I-751, then the parties are going to have to be clear to me because I don't understand that that is the position at this time. The second I-751 is the I-751 that I reset this matter to have to allow U.S. Citizenship and Immigration Services to review the I-751 because that is the I-751 that I do not have jurisdiction to review. Anything further from either parties?

MR. COSIO: Just a point of clarification, your Honor. Was that the 25th or the 26th?

THE COURT: 26th, Wednesday.

MR. COSIO: And just to clarify because there -- there are two 751s at play and -- and just so it's clear to me, your Honor, is the Court's position that it has jurisdiction over one and not the other? And if so, which one does the Court believe that it has jurisdiction?

THE COURT: The I-751 that the Department of Homeland Security has previously ruled on, the Court would have jurisdiction over that **I-751. The I-751 that U.S. Citizenship has not reviewed, the Court would not have jurisdiction over that I-751.** (Emphasis added).

It should be noted that Mazeliah's I-751 Waiver was just recently decided by USCIS on January 23, 2026, based on the IJ's January 17, 2025 removal order (which is attached hereto and marked as "Exhibit B.") In its January 23, 2026 Decision , USCIS did not address at all the IJ's lack of jurisdiction in its decision. See Decision, attached hereto and marked as "Exhibit C."

On July 26, 2023 the IJ then set the individual hearing for January 17, 2025. Due to clerical inadvertence the verbal notice provided by the IJ at the last master calendar hearing was not inputed into Counsel's case management program. Also, Mazeliah never received a written notice by mail of the individual hearing. See Declaration of Mazeliah, attached hereto and marked as "Exhibit D". As a result both Counsel and Mazeliah did not appear at the January 17, 2025 hearing, and the IJ then entered an in absentia order of removal, even though the IJ was provided prior notice by the government that he had no jurisdiction over the Joint I- 751 and that the I-751 Waiver had not been decided by USCIS because it was still pending at the USCIS level as of January 17, 2025.

After receiving notice of the in absentia order , Mazeliah timely filed his appeals with the Board of Immigration Appeals. The appeals are currently pending before the BIA.

Factual Basis for Emergency Stay of Removal

Mazeliah respectfully requests that this Court issue an ex-parte TRO to stay his removal to Israel. Mazeliah was taken into custody on or about January 28, 2026 by ICE, even though his appeal is still pending before the Board of Immigration Appeals (hereinafter referred to as the "BIA").

a. Mazeliah's removal is now imminent

ICE is presently in the final phase of the removal process of Mazeliah. ICE will deport Mazeliah once it receives the required travel documents from the General Counsel of Israel in California.

Mazeliah was informed by an ICE agent, Issac (last name unknown), who went to see him at the FDC last week, that he will be deported to Israel once ICE receives the travel documents any day now.

Counsel for Mazeliah was also informed by ICE agent Leo Ho this past week that he will be put on a plane once the travel documents are received from the General Counsel of Israel and his flight plan has been coordinated. In this regard Mazeliah has cooperated with ICE by filling out and signing an ICE form to get the necessary travel documents.

The travel documents are expected to arrive any day now. The travel documents can easily be sent to ICE via email. Upon receipt of the travel documents, ICE will coordinate and schedule the first available flight back to

Israel. The scheduling of the flight can occur as early as the same day when the travel documents are received, which we expect will happen this week.

Once Mazeliah is picked up by ICE from the Honolulu Federal Detention Center to board the plane, it will be extremely difficult for Counsel to stop ICE from removing Mazeliah, without an Order from a Federal U.S. District Court Judge.

An ex-parte TRO is warranted under the circumstances

Traditional notice to Respondents would take too long since Respondents have to be served by US Certified Mail and would normally have 21 days (or 60 days in certain situations) to respond to Mazeliah's allegations set forth in a petition for relief. By then Mazeliah will already have been removed since all that ICE needs now to put Mazeliah on a plane back to Israel are the travel documents to allow Mazeliah reentry into Israel. Respectfully, time is of the essence in this particular situation.

Moreover, Counsel for Mazeliah has already attempted without any success to stop the imminent removal by offering that Mazeliah is willing to post a bond with ICE so that he may be released with the appropriate conditions, including electronic monitoring, check in with ICE on a periodic basis pending his appeal to the BIA. The request to stay Mazeliah's imminent removal was also requested to requests were made to the ICE local director and various ICE agnnts to no avail.

agents to no avail. Counsel also requested a stay of removal from the DHS attorney, which was never answered to Counsel's knowledge. (See attached letter to Counsel for DHS, marked as "Exhibit F").

Mazeliah will suffer irreperable harm if he is removed to Israel

Mazeliah is the owner of various businesses which provide low cost affordable housing and building materials to needy Hawaii residents. Mazeliah is the day to day operator of his businesses.

If deported his businesses will collapse. Not only will Mazeliah suffer irreperable harm, his USC wife and stepdaughter will also suffer extreme hardship if he is removed back to Israel. His wife also runs a successful business, and if Mazeliah is deported, she will be unable to shut down her business to accompany Mazeliah to Israel. See attached Declaration of Iris Freitas, attached hereto and marked as "Exhibit E."

Upon information and belief, one of Mazeliah's companies , Tal Builders, has successfully completed over 100 residential projects in the past years, and runs a donation program that provides salvaged building materials and appliances to families in need, benefitting over 22 families. Additionally, his construction company has about 60 active projects across Hawaii. These projects provide jobs and stability to many workers, subcontractors, and families who rely on them. If Mazeliah is removed from the country, it would severely impact these projects,

forcing their termination and leaving over a hundred people without work or financial security. Many families who have hired Mazeliah to build or renovate their homes would be left in unlivable conditions, with unfinished projects and no clear path forward. This situation would not only cause extreme and devasting financial hardship to Mazeliah, but would also force his companies to shut down all operations, creating a ripple effect of financial and personal distress across the community.

Mazeliah will likely prevail in his appeals

Mazeliah filed an appeal of the IJ's order of removal on the grounds that the IJ did not have jurisdiction to enter the order because Mazeliah had a pending waiver before USCIS which had not been decided as of January 17, 2025 when the Immigration Judge, Clarence M. Wagner, entered the in absentia order of removal.

In his attached declaration, Mazeliah declares that he "never got a letter or written notice of the January 17, 2025 hearing" (See attached Declaration of Viktor Mazeliah, marked as "Exhibit D"). Mazeliah had prepared a four page written declaration in his own handwriting, however the FDC guard who oversees the visiting area said that Counsel is not allowed to give or take anything from an inmate during a legal visit, even though Counsel informed the guard that his

declaration is necessary to support his emergency stay of removal request.

In his declaration which Mazeliah had prepared, he explained in very poorly written English that his ability to speak and understand English was not as good as it is today compared to the July 26, 2023 master calendar hearing when the IJ said that he would be removed in absentia if he did not appear for the Individual Hearing.

The following is an excerpt from the transcript of the July 28, 2021 hearing regarding Respondent's argument that the NTA was defective:

MR. COSIO : ....And if I can, with the Court's permission, address allegation number 4 as to our position?

THE COURT: Please proceed.

MR. COSIO: Thank you, your Honor for allowing me this opportunity to clarify allegation number 4.Your Honor, it's -- it's our position that allegation number 4, as written, is vague and ambiguous for the following reason: The 751 was never adjudicated. What happened -- and this is coming directly from the records submitted by the DHS -- is that the -- when notice of the appointment was sent to an address that was no longer a valid address for the Respondent, so there was never really an adjudication on the merits of the 751 other than on the reasoning that he failed to appear. So in essence, it was an absentia decision and so I -- I don't think that number 4, as written, accurately reflects what occurred in fact.

THE COURT: Understand. So just for clarification, your position here is that the allegations should be more detailed on actually how the Department derived its conclusion in - in -- in the allegation?

MR. COSIO: Yes, your Honor, not only for the purpose of clarity, but in order to preserve the record as far as what the administrative record actually reflects, which is not necessarily what has been predicated on allegation number 4 on the notice to

appear.

THE COURT: This document will be so marked and entered. The Court, when it evaluates the evidence that has been submitted in support of factual allegation number 4, would sustain factual allegation number 4 in this matter. The Court understands the objection by Respondent's counsel, but the Court will find that the Department of Homeland Security's met their burden of establishing that the allegation is factually correct, although the Court would agree that it does not contain specific information relating to how the decision was derived, the conclusion of the allegation is correct. The Court would sustain factual allegation number 4.

At the July 26, 2023, DHS counsel informed the Court that the I-751 waiver was still pending at USCIS and that it would be adjudicated within 60 days. The Immigration Judge then set the Individual Hearing for January 17, 2025 at 8:30 a.m.

A review of the Immigration Court record shows that Respondent, through counsel, submitted over a hundred separate exhibits in support of his case and appeared for all prior hearings. Other than the unintended scheduling occurrence, counsel for Respondent would have no reason not to appear for the individual hearing, particularly after putting in so much effort and time into the instant matter. Among other key submittals of evidence, Respondent filed a statement from his Rabbi which explains that according to the tenets of the Jewish religion, the core and principal directives of a marriage is to have children.. Respondent also filed with the court, a statement from his ex-spouse which states that she had

been diagnosed with a medical condition which prevented her from having children.. Respondent also filed a personal statement with the court that explains that the marriage ultimately ended due to his ex-spouse's inability to get pregnant despite their many attempts. All these exhibits constitute objective and compelling evidence that neither Respondent nor counsel had any intention to abandon the instant case.

On February 6, 2025, Respondent timely filed with the Immigration Court a Motion to Reconsider, in which Respondent's position was that the IJ did not have subject matter jurisdiction over the defunct I-751 and requested that the IJ rescind the order and reopen the case. Thereafter, on February 9, 2025 Respondent filed a motion to stay removal on the grounds that there was imminent detention by ICE since the local media in Honolulu, Hawaii as well as the national news media was reporting on a daily basis that ICE was detaining persons with outstanding removal orders.

On February 10, 2025 the IJ denied the MTR on the same grounds that he had issued the in absentia order of removal: That Respondent and counsel had failed to appear for the individual hearing and had abandoned the case. The IJ did not discuss nor analyze whether he had jurisdiction over the defunct joint I-751, and expressly limited his reasoning for his entry of the in absentia order to the

non-appearance of Respondent and abandonment. (Exhibit "B").

On February 18, 2025 the IJ rejected Respondent's motion to reopen. Instead of ruling on the motion to reopen, the Immigration Court forwarded the motion to reopen to the BIA with a transmittal notice which read that the Immigration Court no longer had jurisdiction over the motion to reopen since Respondent had appealed the MTR to the BIA.

Respondent also respectfully submits that the Immigration Judge erroneously issued the order in violation of 8 U.S.C.A. § 1229a which expressly mandates that in absentia hearings should be conducted in order to confirm appropriate notice and that the individual was in fact removable. Respondent Mazeliah was not in fact or legally removable on January 17, 2025 because he still had a pending conferred right to have his pending I-751 waiver adjudicated by USCIS. Under said circumstances, the IJ should have continued the matter. See Matter of Stowers, 22 I&N Dec. 605 (BIA 1999).

Further, in addition to the above legal improprieties, the IJ also failed to provide sufficient findings of fact and conclusions of law in his in absentia order of removal and in his order in which he denied Respondent's Motion to Reconsider.

The BIA has found that the conditional permanent resident (CPR) must file

the Form I-751 with USCIS, even if the CPR is in removal proceedings. If a CPR is in removal proceedings and has filed the Form I-751, USCIS must adjudicate the petition first before an immigration judge (IJ) can review it. See Matter of Anderson, 20 I. & N . Dec. 888 (BIA 1994).

Further, case precedence has found that original jurisdiction to rule on the merits of an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (I-751 waiver) rests only with the appropriate regional service center director, and not the immigration judge. See Matter of Lemhammad, 20 I. & N. Dec. 316 (BIA 1991).

In the instant matter as of the individual hearing date, January 17, 2025, the original I-751 had been terminated due to the divorce, and the I-751 waiver was still pending with USCIS, therefore pursuant to Matter of Lemhammad, the Court lacked jurisdiction to issue a ruling which would disallow the relief sought under the pending I-751 waiver before USCIS.

The IJ Exceeded His Delegated Congressional Authority When He Issued the In-Absentia Order When He Knew That The I-751 Waiver Was Still Pending and Knew or Should Have Known That He Had No Jurisdiction Over the Joint I-751 Because It Had Been Legally Revoked By The Filing Of The I-751 Waiver

In the instant case the IJ knowingly disregarded that Respondent had the conferred right to have his I-751 decided by USCIS and the possibility

that USCIS could have decided in favor of Respondent's I-751 waiver. Therefore, the IJ's order of removal was premature as an act that exceeded the IJ's authority and which lacked subject matter jurisdiction over the "revoked" Joint I-751 because it was superseded by the I-751 waiver.

In this regard, 8 C.F.R. § 1003.14 (a) defines whether a particular case is properly before an immigration court. Without the required subject matter jurisdiction the IJ lacks authority to render any decisions regarding the issues raised therein. IJs who take action without a recognition of proper subject matter jurisdiction results in an extrajudicial act considered as ultra vires. When an IJ performs an action that is "ultra vires," it means that the IJ acted beyond the scope of the delegated and vested legal authority which is defined by the regulations, policy manuals, and other applicable law. In the instant case, the ultra vires act was the inappropriate assumed jurisdiction by the IJ over the revoked Joint I-751, and therefore such an ultra vires act legally nullifies the subsequent issuance of the in absentia order because the IJ lacked the necessary jurisidiction to do so.

In United States of America v. John Miguel Leon Gonzales, 351 F.Supp. 306 (USDC,W.D. Texas, El Paso Division 1908) the Court held that the Immigration Judge lacked subject matter jurisdiction to issue a removal

order where the NTA was defective. The analysis of the court in the Leon Gonzales case is highly relevant to Respondent's position that the IJ lacked subject matter jurisdiction. Leon Gonzalez involved a prosecution for illegal reentry into the United States after an IJ had issued a removal order. Leon Gonzalez argued that the underlying removal order was a legal nullity that could not serve as the predicate for the charge of illegal.

In Leon Gonzalez the USDC held that "When reviewing agency's construction of statute it administers, if intent of Congress is clear, that is end of matter; for the court, as well as agency, must give effect to unambiguously expressed intent of Congress." In the instant case, the IJ failed to adhere to the plain language of 8 U.S.C.A.Section 1229a when the IJ knowingly disregarded that Respondent had a valid conferred legal right to have his I-751 waiver adjudicated first by USCIS.

The Leon Gonzales holding clarified that the Court (herein the IJ) has to follow the Congressional intended mandates which include at a minimum several mandates: 1) The NTA charging document must not be defective; 2) The IJ has the duty to determine whether the Respondent is removable as charged; 3) The NTA has to specifically list the nature of the offense and the legal authority which provides that the Respondent is removable; and 4)

That the lack of subject matter cannot form the basis for removal; 5) That the challenge to such a defective NTA and lack of subject matter jurisdiction cannot be the basis for an in absentia order of removal.

The Leon Gonzalez holding also made reference to Pereira v. Sessions, 585 U.S. 198 (2018), which involved an in absentia order of removal, based on an invalid Notice to Appear which cannot be a valid charging document. "And, without a valid charging document, jurisdiction never vests in the immigration court. 8 C.F.R. § 1003.14(a) (2018)." Id. At 1033.

Again, in the instant case, the NTA was deficient because it only made reference to the Joint I-751 petition which had been legally revoked, and therefore it was an invalid charging document because it did not reference the subsequent I-751 waiver. Accordingly, the IJ did not have any valid charging NTA document to go forward on January 17, 2025, and the IJ should have continued the case until such time that USCIS had reached a decision on the waiver, or dismissed the case altogether.

The IJ's precipitous in absentia order directly conflicts with the statutory requirement that the IJ has to first find Respondent removable by clear and convincing evidence presented by DHS. To the extent that the I-751 waiver was

still pending at the USCIS level, the IJ could not factually nor legally reach any determination on removability because the IJ acknowledged on the record that he did not have jurisdiction to decide the I-751 waiver. Under the circumstances, the IJ should have continued the matter since an in absentia hearing is a hearing on the merits of record before the administrative court. See Wellington v. I.N.S., 108 F.3d 631 (5th Cir. 1997). The regulations also demand that removability be proved by clear, unequivocal, and convincing evidence prior to issuing any removal order. See 8 CFR § 1003.26. In this case, the record is devoid of any indication that a proper in absentia hearing was even entertained, much less conducted. Rather, the IJ erroneously concluded that he had the right and jurisdiction to subsume the pending I-751 waiver in his in absentia order.

The Immigration Judge's Authority to Dismiss or Terminate Proceedings Does Not Include Dismissing Pending Conferred Rights

The Attorney General has statutory authority to promulgate regulations governing Immigration Court proceedings. INA § 103(g)(2), 8 U.S.C. § 1103(g)(2) (2018), and the Attorney General has, by regulation, given Immigration Judges significant latitude in controlling the cases before them. See, e.g., 8 C.F.R. §§ 1240.1(a)(1)(iv), (c), 1240.7(a), (c), 1240.46(b), (d) (2023); 8 C.F.R. § 1240.6 (2020). Immigration Judges also have substantial authority to independently adjudicate cases. See, e.g., 8 C.F.R. §§ 1240.1(a)(1)(i)–(iii), 1240.12; 1240.41,

1240.50 (2023). This includes authority to dismiss or terminate proceedings. See 8 C.F.R. § 1239.2(c) (2023); see also Matter of Coronado Acevedo, 28 I&N Dec. 648, 651–52 (A.G. 2022).

However, the above broad latitude of the Immigration Judges is not absolute. Decisions to terminate proceedings, including the issuance of removal orders in absentia, nevertheless, have to comply with the implemented code of federal regulations and case precedence safeguards and procedure, and should not subsume a legal conferred right such as a pending I-751 waiver.

JURISDICTION

1. This Court has jurisdiction to issue a TRO pursuant to FRCP, Rule 65, Subsection (b); 28 U.S.C. § 1331 (federal question); and Article I, section 9, clause 2 of the United States Constitution (the Suspension Clause) since Mazeliah's overarching rights to due process under the circumstances.

2. This Court has jurisdiction over the Honolulu Federal Detention Center and its warden.

VENUE

3. Venue is proper in this Court pursuant to 28 USC § 1391 (c) inasmuch as this action is against officers and agencies of the United States in their official capacities, duly brought in the District where Mazeliah resides and where a

substantial portion of the events or omissions giving rise to Plaintiff's claims occurred.

4. Venue is proper in the District of Hawai'i under 28 U.S.C. § 1391 to the extent Mazeliah Mazeliah is detained in an immigration detention facility in the immediate custody of Respondent Michael J.D. Smith, the Warden of the FDC in Honolulu.

PARTIES

5. Mazeliah is a resident of the City and County of Honolulu.

6. Respondent Michael J.D. Smith is the Warden of FDC Honolulu and is Mazeliah's immediate custodian while he is in immigration detention. He is named in his official capacity.

7. Respondent Polly Kaiser is the Acting Field Office Director of the San Francisco ICE Field Office, which oversees immigration enforcement operations in Honolulu, Hawai'i. is responsible for his detention and removal.

8. Respondent Kristi Noem is the Secretary of DHS. She is responsible for the implementation and enforcement of the INA and oversees ICE, which is the agency responsible for Mazeliah being detained at the FDC. Ms. Noem has ultimate custodial authority over Mazeliah and is sued in her official capacity.

9. Respondent Pamela Bondi is the Attorney General of the United

States. She is responsible for the Department of Justice, of which the Executive Office for Immigration Review and the immigration court system it operates are component agencies. She is sued in her official capacity.

10. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. She is ultimately responsible for the acts or omissions of DHS, ICE and USCIS.

11. Respondent Jayci Roney is the Honolulu Local Director of USCIS. She signed the January 23, 2026 decision in which Mazeliah was denied his I-751 Waiver based on the IJ's in absentia order of removal.

CLAIMS FOR RELIEF

12. Mazeliah's incarceration at the FDC is in violation of the US. Constitution to the extent that his freedom of liberty and his concomitant legal rights have been unlawfully infringed.

13. Moreover, Mazeliah's due process has been violated by Respondents to the extent that his conferred right to a statutory review has been unduly precluded by the USCIS' January 23, 2026 denial of Mazeliah's I-751 waiver.

14. The US Constitution is the supreme law of the United States, and for good cause can trump any agency law.

15. Mazeliah respectfully requests that this Court grant his request for an

Emergency TRO to stay his imminent removal by Respondents pending his appeal which he filed at the Board of Immigration Appeals;

16. That this Court order the Respondents not to transfer Mazeliah to another out of state or foreign detention/custodial facility while his appeal is pending.

17. Mazeliah will suffer extreme hardship and irreversible catastrophic financial devistation if he is removed.

PRAYER

WHEREFORE, in view of the circumstances and legal authorities noted herein, Mazeliah respectfully requests the Court to grant relief as listed above, and

a) Accept jurisdiction;

b) Provide the emergency relief as requested herein, including a TRO to stay his removal;

c) That the Court award EAJA fees and costs as provided by statute;

d) Grant any and all other relief, both legally and in equity that is necessary and appropriate under the circumstances.

Dated: Honolulu, Hawaii, February 9, 2026.

Respectully submitted by:
s/Fernando L. Cosio
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1050 Bishop Street # 244
Honolulu, HI 96813
Tel.: (808) 533-6007
Attorney for Viktor Mazeliah

VERIFICATION PURSUANT TO FRCP, RULE 65

1. I, FERNANDO L. COSIO, declare:

2. I represent Petitioner VIKTOR MAZELIAH, in the above captioned matter.

3. Pursuant to FRCP, Rule 65, I hereby submit this verification on Petitioner's behalf who is presently in custody at the Honolulu Federal Detention Center.

4. I have reviewed the attached Petition for an emergency ex-parte TRO and hereby declare that the factual statements contained in said petition are true and correct to the best of my knowledge, based upon information received from Viktor Mazeliah, belief, and based on my personal knowledge secondary to converstations with ICE agents, and the records on file at the Immigration Court, Board of Immigration Appeals. including references to the transcripts of the Immigration Court, declaration of Mazeliah and his USC wife, relevant dates and Decisions from USCIS, and Order of the Immigration Judge, among others.

5. I declare under penalty of perjury that the foregoing is true and correct.

Dated: Honolulu, Hawaii, February 9, 2026.

/s/ Fernando L. Cosio
FERNANDO L. COSIO
Attorney for Petitioner
VIKTOR MAZELIAH

Department of Homeland Security

Notice to Appear

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: 000000

File N [redacted]

DOB: [redacted] Event No:

In the Matter of:

Respondent: VIKTOR MAZELIAH currently residing at:

[redacted]

(Number, street, city and ZIP code) (Area code and phone number)

[ ] 1. You are an arriving alien.
[ ] 2. You are an alien present in the United States who has not been admitted or paroled.
[x] 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of Israel and a citizen of Israel;
3. Your status was adjusted to permanent residence on a conditional basis on August 25, 2014, under section 216 of the Act;
4. Your status was terminated on April 1, 2021, because your Form I-751 Petition to Remove Conditions on Residence was denied.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

Section 237(a)(1)(D)(i) of the Immigration and Nationality Act (Act), as amended, in that after admission or adjustment as an alien lawfully admitted for permanent residence on a conditional basis under Section 216 or 216A of the Act your status was terminated under such respective section.

[ ] This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
[ ] Section 235(b)(1) order was vacated pursuant to: [ ] 8CFR 208.30 [ ] 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

300 ALA MOANA BLVD., RM 8-112
HONOLULU, HI 96850

(Complete Address of Immigration Court, including Room Number, if any)

on May 19, 2021 *(Date)* at 08:30 AM *(Time)* to show why you should not be removed from the United States based on the charge(s) set forth above.

SISA 5/5/21
(Signature and Title of Issuing Officer) (Sign in ink)

Date: May 5, 2021

Honolulu Hawaii
(City and State)

EOIR-1 1 of 3

DHS Form I-862 (2/20)

Exh. 1 - Adm.

EXHIBIT A

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at **www.uscis.gov/i-589**. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at **http://www.ice.gov/contact/ero**, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office of Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before: _____

(Signature of Respondent) (Sign in ink)

Date: _____

_____

(Signature and Title of Immigration Officer) (Sign in ink)

Certificate of Service

This Notice To Appear was served on the respondent by me on May 5, 2021, in the following manner and in compliance with section 239(a)(1) of the Act.

[ ] In person [ ] by certified mail, returned receipt # requested [x] by regular mail

[ ] Attached is a credible fear worksheet.

[X] Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the English language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

_____ _____

(Signature of Respondent if Personally Served) (Sign in ink) *(Signature and Title of Officer) (Sign in ink)*

EOIR - 2 of 3

Exh. 1 - Adm.

Privacy Act Statement

Authority:
The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:
You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:
For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at **https://www.dhs.gov/system-records-notices-sorns.** When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at **https://www.justice.gov/opcl/doj-systems-records.** Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure: Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.

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

Respondent Name:
MAZELIAH, VIKTOR

To:
Cosio, Fernando Luis
1050 Bishop Street # 244
Honolulu, HI 96813

A-Number:
[redacted]

Riders:
In Removal Proceedings
Initiated by the Department of Homeland Security
Date:
01/17/2025

ORDER OF THE IMMIGRATION JUDGE

Respondent was provided written notification of the time, date, and location of Respondent's removal hearing. INA §§ 239(a)(1), (2). Respondent was also provided a written warning of the consequences under INA § 240(b)(5) that failing to appear at such hearing, other than for exceptional circumstances as defined in INA § 240(e)(1), may result in a hearing held in Respondent's absence and the issuance of an order of removal, provided the Department of Homeland Security (DHS) establishes by clear, unequivocal, and convincing evidence that Respondent is removable and that Respondent or Respondent's representative was provided written notification of the hearing as required under INA § 239(a)(1)-(2). *See* INA § 240(b)(5)(A); 8 C.F.R. § 1003.26.

Despite the written notification provided, Respondent failed to appear at the hearing, and no exceptional circumstances were shown for the failure to appear. INA § 240(e)(1). Therefore, the immigration court conducted the hearing *in absentia* pursuant to INA § 240(b)(5)(A). At this hearing, the immigration court determined that:

- ☐ At a prior hearing, Respondent admitted the factual allegations in the Notice to Appear and conceded removability. The immigration court finds removability established as charged.
- ☑ The DHS submitted documentary evidence relating to Respondent that established the truth of the factual allegations contained in the Notice to Appear. The immigration court finds removability established as charged.
- ☐ The Respondent, in written pleadings, admitted the factual allegations in the Notice to Appear and conceded removability. The immigration court finds removability established as charged.
- ☐ Other/Additional Information

The immigration court further finds that Respondent's failure to appear and proceed with any applications for relief constitutes an abandonment of any pending applications for relief or protection from removal and of any applications the respondent may have been eligible to file. Those applications are deemed abandoned and denied for lack of prosecution. *See* 8 C.F.R. § 1003.31(h); *Matter of Perez*, 19 I&N Dec. 433 (BIA 1987); *Matter of R-R*, 20 I&N Dec. 547 (BIA 1992).

EXHIBIT B

ORDER: Respondent shall be removed to ISRAEL or in the alternative to N/A on the charge(s) contained in the Notice to Appear.

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).

C m. Wg. J.

Immigration Judge: WAGNER, CLARENCE 01/17/2025

Certificate of Service

This document was served:

Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable

To: [ ] Noncitizen | [ ] Noncitizen c/o custodial officer | [E] Noncitizen's atty/rep. | [E] DHS

Respondent Name : MAZELIAH, VIKTOR | A-Number : [redacted]

Riders:

Date: 01/17/2025 By: MOSS, LYNNE, Court Staff

I, VIKTOR MAZELIAH declare that I never got a letter or WRITTEN notice of the JANUARY 17, 2025 HEARING

AT THAT TIME, MY ENGLISH WAS POOR AND DIDN'T UNDERSTAND WHAT JUDGE WAGNER WAS SAYING, AND I WAS WAITING FOR THE NOTICE TO FOLLOW UP.

JUDGE WAGNER NEVER SAID THAT MY I-751 WAIVER WOULD BE IN JEPORDY OR THAT IT WOULD BE DENIAL.

EXHIBIT D

I believed that he did not have jurisdiction over my I-751 waiver that was still pending on January 17, 2025.

I DID NOT HAVE AN INTERPRETER AT THE HEARING TO TRANSLATE what was said in Hebrew. I DON'T HAVE ANY EXPERIENCE OF HOW TO SPEAK IN FRONT of the Judge AS OF 1-17-2025.

DATED: Honolulu, HI 96812
1/7/2026 Signed at the Federal Detention Center

VIKTOR MAZELIZH

DECLARATION OF IRIS FREITAS

IN SUPPORT OF EMERGENCY STAY OF REMOVAL

I, **Iris Freitas**, hereby declare as follows:

1. I am a United States citizen and the lawful spouse of **Viktor Mazeliah**, to whom I have been legally married since **2021**. I make this declaration in support of an emergency stay of removal and based on my personal knowledge.

2. I am a business owner. Individually, I own and operate a digital marketing agency based entirely in the United States. Together with my husband, we own and manage multiple businesses, including a local construction company in Hawai'i. Through these businesses, we employ many families in Hawai'i and in other parts of the United States. These are active, growing businesses that require our physical presence, leadership, and daily involvement.

3. We are currently in the process of opening a new warehouse and showroom scheduled for next month, focused on kitchen cabinetry and stone materials. Our businesses are deeply rooted in the United States, and there is no realistic way for me to relocate or continue these operations from another country.

4. Relocating to Israel would cause extreme hardship to me and my family. I do not speak Hebrew, and my daughter does not speak Hebrew. I have no professional network, employment opportunities, or support system in Israel. My entire professional career—including years of work with national brands as a model and content creator—has been built in the United States. I do not consider Israel my home. My home, my country, and my life are in the United States.

5. I make this declaration not only as a wife, but as a mother whose deepest wish is for her daughter's life to continue as it is now—stable, secure, and full of opportunity.

6. My daughter has lived in Hawai'i since early childhood. She is deeply connected to her community, school, friends, and environment. She is currently enrolled at [redacted] and is an exceptional student, consistently earning honor roll recognition and ranking at the top of her class. We have already begun the process of registering her for [redacted] with plans in place for ninth grade and high school.

EXHIBIT E

7. In addition to her academic success, my daughter's life is structured around stability and personal development, including piano, guitar, drums, and Olympic gymnastics. Removing her from this environment would fundamentally disrupt the trajectory of her life.

8. My daughter's biological father abandoned her when she was three years old. Since that time, my husband, Viktor Mazeliah, has been her father in every meaningful sense. He has raised her, supported her, and provided the emotional stability and guidance that every child deserves. He is the only consistent father figure she has known.

9. My husband and I are currently undergoing fertility treatment at a clinic in Honolulu, a process we have been committed to for nearly six months. We have also recently purchased our family home, achieving a long-standing goal through years of dedication and hard work. We had hoped to enjoy the stability we have built together while continuing to grow our family and businesses.

10. Our commitment to our community extends beyond our household. Through our businesses, we contribute to the local economy, provide employment, sponsor local youth sports, support community initiatives, and participate in government-related projects such as affordable housing. Our presence in Hawai'i is active, tangible, and meaningful.

11. The immediate removal of my husband would cause devastating financial instability, severe emotional harm, and an irreparable rupture to our family life. These consequences would deeply affect not only us, but also our employees, our community, and especially my daughter, whose well-being depends on the family structure we have built together.

12. For these reasons, I respectfully request that the Court grant an emergency stay of removal and allow our family to remain intact while this matter is properly reviewed.

I declare **under penalty of perjury** that the foregoing is true and correct.

Executed on this 07 day of February , 2026,
at [redacted]

Iris Freitas
U.S. Citizen

February 5, 2026

VIA EMAIL TO: OPLA-Honolulu-DutyAttorney@ice.dhs.gov
Office of the Principal Legal Advisor
300 Ala Moana Boulevard
Suite 7-220
Honolulu, Hawaii 96850

Re: EMERGENCY REQUEST TO STAY REMOVAL; AND FOR NON-OPPOSITION TO REMAND
Viktor MAZELIAH, A [redacted]

Dear DCC Ganzorig,

The undersigned represented Viktor Mazeliah ("**Viktor**") in removal proceedings before the Immigration Court in Honolulu, Hawaii. On or about January 28, 2026, U.S. Immigration and Customs Enforcement ("**ICE**") arrested Viktor, based on an *in absentia* removal order issued by the Immigration Court on January 17, 2025 (the "**removal order**"). For the reasons stated below, we believe the removal order issued in error. As a result, we respectfully request that the U.S. Department of Homeland Security (the "**Department**") (i) temporarily defer Viktor's removal; and (ii) consider agreeing *not* to oppose the motion to remand that we recently filed with the Board of Immigration Appeals (the "**Board**").

We are also attaching a copy of the Notice of Appeal which was filed

As a preliminary matter, we acknowledge the significance of failing to appear for an Immigration Court hearing. As explained in undersigned counsel's motion to reconsider the *in absentia* order, undersigned counsel experienced a clerical error with his case management software. In addition, Viktor was not aware that his I-751 waiver would be denied even though it was still pending on January 23, 2026.

1. **Viktor should not have been ordered removed *in absentia* in 2025, because his Form I-751 waiver application (filed in March 2022) remained pending with U.S. Citizenship and Immigration Services ("USCIS").**

Notwithstanding the above, long-standing Board precedent states: "[W]here an alien cannot meet the joint petition requirements of section 216(c) of the Act, such alien should be given the opportunity to apply for a discretionary waiver under section 216(c)(4) of the Act." *Matter of Stowers*, 22 I&N Dec. 605, 612 (BIA 1999). In the instant case, Viktor could not meet the requirements of a joint petition under Section 216, so in March 2022, he filed a Form I-751 waiver application. *This was nearly three (3) years*

prior to his in absentia removal order. The regulations state that "a conditional resident who is in … removal proceedings may apply for the waiver only until such time as there is a final order of … removal," 8 C.F.R. § 216.5(a)(2). As stated above, there can be no doubt that Viktor timely filed his Form I-751 waiver application. As a result, under a plain reading of the regulations, the Immigration Judge was duty-bound to continue the respondent's removal proceedings until such time as USCIS could decide the waiver application. "No appeal shall lie from the decision of the director; *however the alien may seek review of such decision in removal proceedings.*" 8 C.F.R. § 216.5(f).

While we acknowledge that it was a mistake to inadvertently miss the scheduled January 17, 2025 hearing, we respectfully submit that the regulations compelled the Immigration Judge to continue Viktor's removal hearing rather than order him removed.

2. On its face, the Notice to Appear was deficient on January 17, 2025.

At the time the Immigration Judge ordered Viktor removed *in absentia*, the Notice to Appear only alleged that Viktor's conditional residency status had been terminated under Section 216 of the Immigration and Nationality Act, as amended. But even though Viktor's first (joint) Form I-751 had been denied (due to his divorce from his first wife and hence, ineligibility to pursue such a joint petition), Viktor's waiver application was still pending nearly three (3) years after it had been filed. Inasmuch as a conditional resident "should be give the opportunity," *see Stowers*, *supra*, to pursue a waiver application, the sole charge of removability should not have been sustained. *See also* 8 C.F.R. § 1240.8(a) (Service bears the burden of proving removability by clear and convincing evidence).

3. Viktor's case merits a positive exercise of discretion.

As more fully set forth in our motion to reconsider the *in absentia* removal order, Viktor's case presents significant equities. He has devoted his career in Hawaii to constructing affordable homes; provided assistance to families in need; and has been recognized by local leaders for his efforts. He has no criminal history. Finally, he has a U.S. citizen wife and daughter at home who would suffer irreversible hardship if Viktor is removed.

We seek only a temporary deferral of Viktor's removal, and a non-opposition to remanding these proceedings to the Immigration Court so that the above arguments (and others set forth in the motion to reconsider the *in absentia* removal order, which the Immigration Judge expressly declined to decide) can be heard and ruled upon before Viktor's business, employees, and family suffers irreversible harm. This would also ensure that Viktor's removal would not contravene existing procedures under the Section 216 regulations.

Respectfully,

Fernando L. Cosio

EXHIBIT F