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VIKTOR MAZELIAH

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAIʻI

VIKTOR MAZELIAH, Petitioner, vs. MICHAEL J.D. SMITH, Warden, Federal Detention Center, Honolulu, Hawaiʻl 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. 1:26-CV-00063-JAO-WRP **MAZELIAH IS IN CUSTODY AT THE HONOLULU FEDERAL DETENTION CENTER** LEGAL MEMORANDUM RE: EMERGENCY PETITION FOR EX-PARTE TEMPORARY RESTRAINING ORDER TO STAY HIS REMOVAL PENDING HIS APPEAL AT THE BIA

As per the request of the Court at the hearing on February 11, 2026 at 3:15 p.m., Petitioner Viktor Mazeliah, by and through his undersigned counsel hereby submits the legal memoranda requested by the Court.

Dated: Honolulu, Hawaii, February 11, 2026.

Respectully submitted by:
s/Fernando L. Cosio
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Attorney for Viktor Mazeliah

Does this Court have jurisdiction to grant Mazeliah a TRO given the express exclusionary language of 8 U.S.C. § 1252(g) ?

Answer: **Yes.** 8 USC 1252 (g) only excludes the Attorney General's authority to 1) Commence an action; 2) Adjudicate a case; or 3) Execute removal orders against any alien.

Reason: Mazeliah is requesting a TRO while his appeal is pending before the BIA. A federal judge can issue a TRO if there is an immediate, irreparable harm and a likelihood of success on the merits, usually requiring a hearing or, in urgent cases, without one. (FRCP,Rule 65).

Analysis: The seminal case involving the USDC's jurisdiction over immigration matters under the exclusionary language of 8 U.S.C. § 1252(g) is Reno v. American-Arab Anti-Discrimination Committee,525 U.S. 471 (1999). In Reno respondents sued the petitioners (Government officials) for allegedly targeting them for deportation because of their affiliation with a politically unpopular group. The issue before the U.S. Supreme Cout was whether 8 U.S.C. § 1252(g) (1994 ed., Supp. III). deprived the federal courts of jurisdiction over respondents' suit against petitioners. Justice Scalia wrote the decision, and after making it clear that 8 U.S.C. § 1252(g) cannot possibly apply to all immigration proceedings or claims, decided that Respondents lawsuit, which primarily challenged the commencement of charges against them in violation of their first amendment right, was excluded under 8 U.S.C. § 1252(g) as follows verbatim:

> To resolve the present controversy, we need not rule out the possibility of a rare case in which the alleged basis of discrimination is so outrageous that the foregoing considerations can be overcome. Whether or not there be such exceptions, the general rule certainly applies here. When an alien's continuing presence in this country is in violation of the immigration laws, the Government does not offend the Constitution by deporting him for the additional reason that it believes him to be a member of an organization that supports terrorist activity.

In the instant case, Mazeliah is not challenging the commencement of the underlying action nor the IJ's statutory authority to hear immigration cases. He has, however, filed a timely appeal at the BIA of the IJ's removal order on the grounds that the IJ did not have juridiction over the revoked Joint I-751 once Mazeliah filed his I-751 waiver.

Unlike the respondents in the Reno v. American-Arab Anti-Discrimination Committee, *supra* , Mazeliah did not enter the US unlawfully and he is not a member or supporter of any terroristic group: On the contrary, he is a respected businessman without any criminal history whatsoever, dedicated to serving the community by building affordable housing and providing low cost building materials in partnership with the State of Hawaii and the City and County of Honolulu.

a) The Third, Sixth, Ninth, and Eleventh Circuits have held that § 1252(g) applies only to discretionary decisions.

These circuits tend to ground their reasoning in Reno v American-Arab Anti-Discrimination Committee, 525 U.S. 471 (1999) in which the Supreme Court stated that § 1252(g) applies only to actions that the Attorney General may take to "commence proceedings, adjudicate cases, or execute removal orders.'"

The Third Circuit was the first to hold that § 1252(g) does not apply to cases in which the Attorney General acts without discretion. According to the court, § 1252(g)'s jurisdictional bar does not apply when the petitioner "is not challenging the discretionary decision to commence proceedings, but is challenging the government's very authority to commence those proceedings." Garcia v Attorney General, 533 F3d 724, 729 (3d Cir 2009) This distinction is subtle, and the court did not elaborate on it. Essentially, the court reasoned that a noncitizen removed in violation of a stay is not challenging a "decision or action" to execute removal orders—rather, the noncitizen is arguing that the Attorney General did not even have the authority to execute the removal order. See *Id* at 728–29. The Ninth, Eleventh, and Sixth Circuits have since joined in that reasoning. The Ninth Circuit held in Catholic Social Services, Inc v Immigration and Naturalization Service, 232 F3d 1139, 1150 (9th Cir 2000) (en banc), that § 1252(g) "applies only to the three specific discretionary actions mentioned in its text, not to all claims. The Ninth Circuit held in Catholic Social Services, Inc v Immigration and Natu

ralization Service, 232 F3d 1139, 1150 (9th Cir 2000) (en banc), that § 1252(g) "applies only to the three specific discretionary actions mentioned in its text, not to all claims relating in any way to deportation proceedings." This was reaffirmed in Arce v. US, 899 F3d 796 (9th Cir. 2019) , in which the court held that § 1252(g) is limited "to actions challenging the Attorney General's discretionary decisions to initiate proceedings, adjudicate cases, and execute removal orders." Arce, 899 F3d at 800. In Madu v. US Attorney General, 470 F3d 1362, at 1363. , the Eleventh Circuit held that § 1252(g) does not strip the court of juris diction to hear a constitutional challenge to detention and impending removal. In Madu, the plaintiff had filed a habeas petition challenging his detention and removal on the grounds that he had left the United States by the deadline set forth in the immigration judge's voluntary departure order.

Is Mazeliah's request for a TRO precluded by 8 U.S.C. 1252(a)(i)?

Answer: No

Reason: Mazeliah is not seeking that this Court review a final order of removal. Mazeliah is only requesting a TRO. He is not asking that this Court review the decision of the IJ de novo.

a) **How does chapter 158 of title 28 affect Mazeliah's TRO request**?

Answer: It doesn't. Chapter 158 of title 28 deals with other agencies.

Reason: Chapter 158 of title 28 defines the applicable agencies:

(3)"agency" means—

(A)the Commission, when the order sought to be reviewed was entered by the Federal Communications Commission, the Federal Maritime Commission, or the Atomic Energy Commission, as the case may be;
(B)the Secretary, when the order was entered by the Secretary of Agriculture or the Secretary of Transportation;
(C)the Administration, when the order was entered by the Maritime Administration;
(D)the Secretary, when the order is under section 812 of the Fair Housing Act; and
(E)the Board, when the order was entered by the Surface Transportation Board.
, except as provided in subsection (b) and except that the court may not order the taking of additional evidence under section 2347(c) of such title.8 USC 158 order.

Does 8 USC 1252 (a)(5) preclude a federal judge from issuing a TRO?

Answer: No.

Reason: 8 USC 1252 (a) (5) reads:

(5)Exclusive means of review

Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a petition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e). For purposes of this chapter, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms "judicial review" and "jurisdiction to review" include habeas corpus review pursuant to section 2241 of title 28, or any other habeas corpus provision, sections 1361 and 1651 of such title, and review pursuant to any other provision of law (statutory or nonstatutory).

Analysis: Again, Mazeliah is not asking this Court to review "de novo" the the removal order of the IJ: Rather, he only seeks a TRO to preserve the status quo pending the decision of the BIA. The removal order will be reviewed by the BIA, including whether the IJ had authority to enter the removal order in the first place given the fact that he did not have subject matter jurisdiction over the revoked Joint I-751 nor the pending I-751 waiver, which had not been adjudicated by USCIS as of January 17, 2025, the date when the IJ entered his removal order.

Mazeliah is not restricted from filing a TRO with this Court as part of his Writ of Habeas Corpus

Beyond pursuing a stay of removal before the immigration court, the BIA, or a U.S. court of appeals (when the Respondent has appealed a denial from the BIA), noncitizens who have a cause of action to bring a case in a U.S. district court (such as Mazeliah's Writ of Mandamus filed in this Court) may also seek a stay of removal or temporary restraining order (TRO) from that court.

Motions for TROs or stays of removal are governed by a four-factor test: 1) the petitioner's likelihood of success on the merits, (2) the likelihood that the petitioner will suffer irreparable harm in the absence of such relief, (3) whether the balance of equities tips in the petitioner's favor, and (4) whether an injunction is in the public interest. See Winter v. Nat. Res. Def. Council, 555 U.S.

7, 20 (2008); Nken v. Holder, 556 U.S. 418, 434 (2009). Joshua M. v. Barr, 439 F. Supp. 3d 632 (E.D. Va. 2020) (applying the same four-factor analysis and granting a stay of removal pending resolution of the petitioner's habeas claims); Siahaan v. Madrigal, No. PWG-20-02618, 2020 WL 5893638 (D. Md. Oct. 5, 2020); Compere v. Nielsen, 358 F. Supp. 3d 170 (D.N.H. 2019).

Automatic Stays of Removal for Cases Pending with EOIR

Automatic stays apply only to certain situations where a case or motion is before the immigration court or the BIA. An individual's removal order will be stayed automatically in the following situations:

- If a direct appeal of an immigration court decision ordering removal is reserved, removal is automatically stayed during the 30-day period for filing the Notice of Appeal with the BIA.
- If an appeal of an immigration court decision ordering removal is timely filed, removal is stayed pending adjudication of the appeal by the BIA. 8 C.F.R. §1003.6(a).

Where a noncitizen is eligible for an automatic stay of removal from the immigration court or BIA, it is not necessary to file a separate motion for a stay of removal. In cases where a timely direct appeal is filed, the filing of the Notice of Appeal is generally sufficient to stay removal. However, if a legal representative is

filing a motion to reopen that includes an automatic stay, they should note on the cover page of the motion to reopen that the automatic stay provision applies. Legal representatives should also note the relevant statute or regulation under which they believe the automatic stay applies.

In the instant case, out of an abundance of precaution, Mazeliah filed two Emergency Stay of Removals, in order to have a record on file that the Emergency Stay of Removal were duly requested as part of his Motion to Reconsider and the Motion to Reopen, which was rejected by the Immigration Judge and forwarded to the Board of Immigration Appeals (BIA).

On February 12, 2026 at 5:50 a.m. the undersigned called the Board of Immigration Appeals Emergency Stay of Removal at (703) 306-0093 and spoke to Madeline Bucanan. Ms. Bucanan confirmed that there is a Motion to Stay Removal on file dated March 4, 2025, and that they have been in contact with the DHS outreach number and that they have been informed that the removal process has been initiated but that DHS does not have a date when it will actually remove Mazeliah. Ms. Bucanan further added that "they are closely monitoring the situation" and once there is a removal date that is certain, they will then immediately present Motion to Stay Removal to a panel judge at the BIA, and the panel judge will make a decision on the motion to stay. When asked if there

is an evening judge able to review and approve the stay of removal, she said that "there is no evening panel judge available to decide the motion to stay the removal." When asked what would happen if ICE removes Mazeliah after hours when a panel judge is not available, Ms. Bucanan responded again that they are closely following and monitoring the actual removal date, and once the date has been disclosed by the DHS outreach representative, it will immediately present Mazeliah's motion to stay his removal to of one of the the panel judges to expeditiously rule on Mazeliah's motion for an emergency stay. When asked if the motion to stay removal on file is automatic, she responded "No," that the motion has to be presented to a panel judge.

In another words, Ms. Bucanan made it clear that the BIA is treating Mazeliah's motion for a stay as "discretionary," If granted, a discretionary stay remains in effect until the immigration court or the BIA denies the underlying motion to reopen or reconsider or appeal.

Legal Standard

The BIA has not enunciated a standard of review or a list of factors for EOIR adjudicators (panel judges) to consider when adjudicating a discretionary motion for a stay. However, legal representatives have traditionally looked to the standard in Nken v. Holder, 56 U.S. 418 (2009) for guidance on establishing that

the client merits a stay of removal from the BIA panel judges. In Nken, the U.S. Supreme Court decided the standard that the U.S. courts of appeals should use when deciding a motion for a stay of removal. The Nken standard consists of a four-factor test: 1) whether the stay applicant has made a strong showing that [they are] likely to succeed on the merits; 2) whether the applicant will be irreparably injured absent a stay; 3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and 4). where the public interest lies.

In the instant case, Mazeliah filed his emergency motions for a stay and has complied with the standards enunciated in Nken v. Holder, supra.

Mazeliah believes that the reason that ICE has initiated the expedited removal process is because ICE has mistakenly determined that the IJ decided the motion to reopen and that once the IJ decided the motion to reopen that it lifted the automatic stay. However, as explained at the hearing on February 11, 2026, the IJ never made a decision on the motion to reopen because he rejected the motion to reopen because by then Mazeliah had already filed his motion at the BIA to reconsider the IJ's removal order which he entered on January 17, 2025.

In its January 23, 2026 Decision (attached hereto and marked as "Exhibit A,") USCIS denied the I-751 waiver on the following grounds: "On February

10, 2025, the Immigration Judge denied *the motion to reopen*. As a result, the automatic stay lifted that date, which was before the Form I-751 was denied on February 26, 2025. Because the Immigration Judge has entered the order of removal against you and that order is now final, USCIS is denying your I-751".

USCIS' denial of Mazeliah's I-751 waiver is dead wrong. The Immigration Judge **never** denied the motion to reopen. The IJ **rejected** the motion to reopen on February 18, 2025 and in the transmittal letter to the BIA, the IJ checked off the box which reads: "Appeal of the Immigration Judge Decision on a motion to reopen." (See transmittal letter attached hereto and marked as "Exhibit B."
See also Viktor Mazeliah's Timeline, attached hereto and marked as "Exhibi C." The timeline provides all the relevant filing dates in the different forums to assist the Court.

Conclusion

This Court has jurisdiction to enter a TRO to preserve the status quo while the BIA decides the two motions: Motion to Reconsider and the Motion to Reopen which was referred to the BIA for adjudication. No one will be prejudiced by the issuance of a TRO given the impending imminent removal of Mazeliah to Israel while his BIA appeals are pending.

Dated: Honolulu, Hawaii, February 12, 2026.

Respecfully submitted by:

s/Fernando L. Cosio
Fernando L. Cosio
Attorney for Petitioner
Viktor Mazeliah

Certificate of Service

THE UNDERSIGNED certifies that a copy of the attached legal memorandum and exhibits will be served upon the Defendants herein, including the below party, counsel for Defendants through the electronic filing system of this Court via the ECF platform, and that all registered parties will receive notice of the instant filing and will be able to download said legal memorandum.

Edric Ching, Esq.
Assistant U.S. Attorney General
Prince Kuhio Federal Building
Ala Moana Blvd. , Suite 6-100
Honolulu, HI 96850

Dated: Honolulu, Hawaii, February 12, 2026.

Respecfully submitted by:
s/Fernando L. Cosio
Fernando L. Cosio
Attorney for Petitioner
Viktor Mazeliah

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

Feb 18, 2025

A
MAZELIAH, VIKTOR

TO: Board of Immigration Appeals
Office of the Clerk
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

This Record of Proceeding (ROP) is forwarded to the Board of Immigration Appeals for consideration of the following:

[ ] Appeal of the Immigration Judge decision.
[X] Appeal of Immigration Judge decision on a motion to reopen.

Please note:

[ ] The respondent / applicant is DETAINED.
[ ] Other ____________________

[ ] This ROP is for an appeal on a decision entered prior to July 1, 1996.
This ROP is being submitted to APU at the following stage:

[ ] Notice of Appeal filed. Tapes need to be transcribed.
[ ] IJ has signed decision. Briefing schedule needs to be set.
[ ] Motion for Extension of Time to Extend Briefing Schedule has been submitted.
[ ] Briefing Schedule is complete / expired.

PZ

EXHIBIT B

Viktor Mazeliah's Timeline

The Joint I-751

September 1, 2013-Viktor gets married Valerie Morales

August 25, 2014-Viktor gets his conditional permanent resident status.

June 22, 2016-Viktor and Morales filed their Joint I-751.

May 22, 2018- Viktor is divorced from Morales

April 1, 2021-the Joint I-751 is denied by USCIS-No show

Immigration Court

May 5, 2021-DHS files the NTA with the Immigration Court

February 17, 2022-Geoffrey Ling, DHS Assistant Chief Counsel files DHS position statement and informs the IJ that he has no jurisdiction over the revoked Joint I-751

March 2, 2022-Viktor files his I-751 Waiver because he divorced Morales on May 22, 2018

January 17, 2025- IJ enters an in absentia order

February 6,2025-Viktor files his Motion to Reconsider w/IJ based on lack of jurisdiction

February 9, 2025-Viktor files a stay with the IJ

February 10, 2025 -the IJ denies the stay

EXHIBIT C

February 10, 2025-IJ denies the MTR on the grounds of his absentia order

Board of Immigration Appeals

February 11, 2025-	Respondent files an appeal at the BIA of the IJ's denial of his Motion to Reconsider
February 11, 2025-	Respondent files a stay at the BIA of the IJ's denial of his Motion to Reconsider-PENDING
March 4, 2025-	Viktor files his stay of removal-PENDING
January 23, 2026-	USCIS denies the I-751 Waiver on the grounds that there is a final order of removal.
February 6, 2026-	Viktor files his motion to remand at the BIA.