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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

VIKTOR MAZELIAH,

Petitioner,

vs.

MICHAEL J.D. SMITH, Warden, Federal Detention Center, Honolulu, Hawaii, in his official capacity, and his successor; POLLY KAISER, Acting Field Office Director, San Francisco Field Office, Immigration and Customs Enforcement, in her official capacity, and her successor; PAM BONDI, Attorney General of the United States, in her official capacity, and her successor; KRISTI NOEM, Secretary of Homeland Security, in her official capacity, and her successor, JAICY RONEY,

CASE NO. CV26-00053 JAO-WRP

RESPONDENTS MICHAEL J.D. SMITH, WARDEN, FEDERAL DETENTION CENTER, HONOLULU, HAWAII, IN HIS OFFICIAL CAPACITY, AND HIS SUCCESSOR; POLLY KAISER, ACTING FIELD OFFICE DIRECTOR, SAN FRANCISCO FIELD OFFICE, IMMIGRATION AND CUSTOMS ENFORCEMENT, IN HER OFFICIAL CAPACITY, AND HER SUCCESSOR; PAM BONDI, ATTORNEY GENERAL OF THE UNITED STATES, IN HER OFFICIAL CAPACITY, AND HER SUCCESSOR; KRISTI NOEM, SECRETARY OF HOMELAND SECURITY, IN HER OFFICIAL

USCIS Honolulu Filed Office
Director all in the official capacity

Respondents.

CAPACITY, AND HER
SUCCESSOR, JAICY RONEY,
USCIS HONOLULU FILED OFFICE
DIRECTOR ALL IN THE OFFICIAL
CAPACITY'S BRIEF RE;
JURISDICTIONAL ISSUES AND
QUESTIONS POSED BY THE
COURT; CERTIFICATE OF
SERVICE

RESPONDENTS MICHAEL J.D. SMITH, WARDEN, FEDERAL DETENTION CENTER, HONOLULU, HAWAII, IN HIS OFFICIAL CAPACITY, AND HIS SUCCESSOR; POLLY KAISER, ACTING FIELD OFFICE DIRECTOR, SAN FRANCISCO FIELD OFFICE, IMMIGRATION AND CUSTOMS ENFORCEMENT, IN HER OFFICIAL CAPACITY, AND HER SUCCESSOR; PAM BONDI, ATTORNEY GENERAL OF THE UNITED STATES, IN HER OFFICIAL CAPACITY, AND HER SUCCESSOR; KRISTI NOEM, SECRETARY OF HOMELAND SECURITY, IN HER OFFICIAL CAPACITY, AND HER SUCCESSOR, JAICY RONEY, USCIS HONOLULU FILED OFFICE DIRECTOR ALL IN THE OFFICIAL CAPACITY'S BRIEF RE;
JURISDICTIONAL ISSUES AND QUESTIONS POSED BY THE COURT

Respondents MICHAEL J.D. SMITH, Warden, Federal Detention Center, Honolulu, Hawaii, in his official capacity, and his successor; POLLY KAISER, Acting Field Office Director, San Francisco Field Office, Immigration and Customs Enforcement, in her official capacity, and her successor; PAM BONDI, Attorney General of the United States, in her official capacity, and her successor; KRISTI NOEM, Secretary of Homeland Security, in her official capacity, and her successor, JAICY RONEY, USCIS Honolulu Filed Office Director all in the

official capacity, by through their attorneys, the United States Attorney for the District of Hawaii and Assistant United States Attorney Edric M. Ching, hereby provides the Court with a Brief regarding jurisdiction and responses to the Court's questions posed on February 10, 2026.

I. THIS COURT LACKS JURISDICTION OVER THIS MATTER

A. 8 U.S.C. § 1252(g) bars review of Petitioner's Claims

Section 1252(g) categorically bars jurisdiction over “*any* cause or claim by or on behalf of any alien arising from the decision or action by the [Secretary of Homeland Security] to commence proceedings, adjudicate cases, or *execute removal orders* against any alien.” 8 U.S.C. § 1252(g) (emphasis added). The Secretary of Homeland Security's decision to execute a removal order, including the decision to remove an alien, squarely falls within this jurisdictional bar. In other words, removing an alien clearly arises from the execution of a removal order, notwithstanding pending applications for relief. *See Rauda v. Jennings*, 554 F.3d 773, 777 (9th Cir. 2022); *Tazu v. Att'y Gen. U.S.*, 975 F.3d 292, 297 (3d Cir. 2020); *Xiaoyuan Ma v. Holder*, 860 F.Supp.2d 1048, 1059 (N.D. Cal. 2012); *Ramirez Ayala v. Santacruz*, Case No. 2:25-cv-11496-ODW (PCVx), 2025 WL 3485748, at *2 (C.D. Cal. December 4, 2025). As such, judicial review of the Petitioner's request to stay his remove in this matter 8 U.S.C. § 1252(b)(9) bars review of Petitioner's claim[s].

Under § 1252(b)(9), “judicial review of all questions of law . . . including interpretation and application of statutory provisions . . . arising from any action taken . . . to remove an alien from the United States” is only proper before the appropriate court of appeals in the form of a petition for review of a final removal order. *See* 8 U.S.C. § 1252(b)(9); *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (“*AADC*”). Section 1252(b)(9) is an “unmistakable ‘zipper’ clause” that “channels judicial review of all [claims arising from deportation proceedings]” to a court of appeals in the first instance. *Id.*; *see Lopez v. Barr*, No. CV 20-1330 (JRT/BRT), 2021 WL 195523, at *2 (D. Minn. Jan. 20, 2021) (citing *Nasrallah v. Barr*, 590 U.S. 573, 579–80 (2020)). Moreover, § 1252(a)(5) provides that a petition for review is the exclusive means for judicial review of immigration proceedings.

“Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition-for-review] process.” *J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (emphasis in original); *Ji Chen v. U.S. Dep’t of Justice*, 434 F.3d 144, 151 n.3 (2d Cir. 2006).

Critically, “[§] 1252(b)(9) is a judicial channeling provision, not a claim-barring one.” *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that “[n]othing . . . in any other provision of this chapter . .

. shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section.” *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) The petition-for-review process before the court of appeals ensures that aliens have a proper forum for claims arising from their immigration proceedings and “receive their day in court.” *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted);

In evaluating the reach of subsections (a)(5) and (b)(9), the Second Circuit explained that jurisdiction turns on the substance of the relief sought. *Delgado v. Quarantillo*, 643 F.3d 52, 55 (2d Cir. 2011). Those provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders. *See Jennings*, 583 U.S. at 294–9. Here, Petitioner challenges the decision of the Immigration Judge to issue an abstentia order of removal. *See* Petitioner’s Verified Emergency Petition For Ex Parte Temporary Restraining Order To Stay His Removal Pending His Appeal At The BIA (“Motion”) at page 11.

As such this Court should dismiss the Motion for a lack of jurisdiction under § 1252(b)(9). Petitioner must present his claims before the appropriate court of appeals because he challenges the government’s decision to issue an abstentia order of removal and to execute the removal order issued by the Immigration Judge.

II. RESPONSES TO THE COURT'S QUESTIONS POSED ON FEBRUARY 10, 2026

A. Does the petitioner have a pending appeal before the Bureau of Immigration Appeals?

Response: Petitioner has a pending appeal with the Board of Immigration Appeals based on the Immigration Judge's denial of the Petitioner's Motion For Reconsideration.

B. If the answer to question #1 is yes, would an automatic stay apply?

Response: Petitioner does not have an automatic stay. An Immigration Judge's removal order is stayed during the period between the filing of a motion to reopen removal proceedings conducted in absentia and the Immigration Judge's ruling on that motion. 8 C.F.R. § 1003.23(b)(4)(ii). An Immigration Judge's removal order is automatically stayed during the Board's adjudication of an appeal of the Immigration Judge's ruling in certain motions to reopen filed by battered spouses, children, and parents. INA § 240(c)(7)(C)(iv). An Immigration Judge's order is not automatically stayed in appeals to the Board from an Immigration Judge's denial of a motion to reopen removal proceedings conducted in absentia, and motions to reopen or reconsider a prior Board decision are not automatically stayed. EOIR Policy Manual, Part III, Chapter 5.2 Board Practice Manual Automatic Stays.

C. If the answer to question #1 is no, is petitioner's notice of removal final?

Response: Petitioner has a final order of removal based on the Immigration Judge's in absentia order and the Immigration Judge's denial of the Motion for Reconsideration. Pursuant to 8 C.F.R. § 1241.1(e), an order of removal made by the immigration judge at the conclusion of proceedings under section 240 of the Act shall become final if an immigration judge orders an alien removed in the alien's absence, immediately upon entry of such order.

D. Would the United States stipulate to a temporary stay of removal to maintain the status quo in order to discern the procedural and legal posture of this case?

Response: Respondents do not oppose staying Petitioner's removal order until the U.S. District Court, District of Hawaii rules on the pending Motion or makes a determination on whether it has jurisdiction over this matter.

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III. CONCLUSION

Based on the foregoing, Respondents respectfully request that this Honorable Court determine that it does not have jurisdiction over this matter and dismiss the Motion.

DATED: February 12, 2026 at Honolulu, Hawaii.

KENNETH M. SORENSON
United States Attorney
District of Hawaii

/s/ Edric M. Ching

By _____

EDRIC M. CHING
Assistant U.S. Attorney

Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that, on this date and by the method of service noted below, a true and correct copy of the foregoing was served on the following at their last known address:

Served Via CM/ECF:

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Attorney for Petitioner
VIKTOR MAZELIAH

DATED: February 12, 2026, at Honolulu, Hawaii.

KENNETH M. SORENSON
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/s/ Edric M. Ching
By _____
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Assistant U.S. Attorney

Attorneys for Respondents