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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 Capacity, And Her  
Successor; JAICY RONEY, USCIS  
Honolulu Filed Office Director All In  
The Official Capacity's  
SUPPLEMENTAL BRIEF RE:  
PETITIONER'S REQUEST FOR

USCIS Honolulu Filed Office  
Director all in the official capacity

Respondents.

STAY OF REMOVAL;  
DECLARATION OF JAMES DOLD;  
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 SUPPLEMENTAL BRIEF RE: PETITIONER'S REQUEST FOR STAY OF REMOVAL

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 and through their counsel, the United States Attorney for the District of Hawaii and Assistant United States Attorney Edric M. Ching, hereby submits the following supplemental brief regarding Petitioner VIKTOR MAZELIAH's ("Petitioner")

request for a stay of removal. As will be shown below, Petitioner's *in absentia* removal order is a "final" order of removal because he never filed a Motion to Re-open within 180 days of the date of the order of removal. Because the removal order is "final", this Court does not have jurisdiction over this matter and any challenge to the removal order must be made to the Ninth Circuit Court of Appeals.

**I. ARGUMENT**

An alien who, after written notice required under INA section 239(a)(1) or (2), has been provided to the alien or the alien's counsel of record, does not attend a proceeding under this section, shall be ordered removed if DHS establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable. INA § 240(b)(5)(A).

An order of removal entered *in absentia* may be rescinded only upon a motion to reopen filed within 180 days after the date of the order of removal if the alien demonstrates that the failure to appear was because of exceptional circumstances. INA § 240(b)(5)(C)(i); INA § 240(c)(7)(C)(iii); 8 C.F.R. § 1003.23(b)(4)(ii). The 180-day deadline is subject to equitable tolling. *Fajardo v. I.N.S.*, 300 F.3d 1018 (9th Cir. 2002).

Exceptional circumstances refer to circumstances beyond the control of the alien, such as battery or extreme cruelty to the alien or the child or parent of the alien, serious illness of the alien, or serious, but not including less compelling

circumstances. INA § 240(e)(1). Ineffective assistance of counsel also qualifies as an exceptional circumstance. *Reyes v. Ashcroft*, 358 F.3d 592, 596 (9th Cir. 2004). An order of removal entered *in absentia* may be rescinded upon a motion to reopen filed at any time upon the alien's demonstration of lack of notice in accordance with INA section 239(a)(1) or (2). INA § 240(b)(5)(C)(i); 8 C.F.R. § 1003.23(b)(4)(ii).

In contrast, a motion to reconsider must state the reasons for the motion by specifying the errors of law or fact in the previous order and must be filed within 30 days of the date of entry of the final administrative order of removal. INA § 240(c)(6)(B)–(C); 8 C.F.R. § 1003.23(b)(1), (2).

Here, the record is clear that Petitioner filed a motion to reconsider before the Immigration Judge<sup>1</sup>. Declaration of James Dold (Decl.) at ¶14, ECF No. 18 at Ex. C (which is a timeline attached to a filing by Petitioner). Petitioner did not file a motion to reopen and did not demonstrate that his failure to appear was caused by exceptional circumstances. Thus, Petitioner's removal order is "final" and this Court lacks jurisdiction over this matter pursuant to 8 U.S.C. § 1252(g). *See Rauda v. Jennings*, 55 F.4th 773, 777 (9th Cir. 2022); *Tazu v. Att'y Gen. United States*, 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*, No. 2:25-CV-11496-ODW (PVCX),

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<sup>1</sup> Petitioner needed to file a Motion to Reopen, not a Motion For Reconsideration, to initiate the process to rescind the *in absentia* removal order.

2025 WL 3485738, at \*2 (C.D. Cal. Dec. 4, 2025). Further, if Petitioner seeks to challenge the removal order, the proper forum is the Board of Immigration Appeals (“BIA”) and the Ninth Circuit Court of Appeals, not this Court. *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999); 8 U.S.C. §§ 1252(a)(5) and 1252 (b)(9).

Petitioner’s reliance on *Bonilla v. Hermosillo*, No. 2:25-CV-02196, 2025 WL 3237854 (W.D. Wash. Nov. 19, 2025), is also misplaced. In *Bonilla*, the immigration judge issued a removal order *in absentia*. *Id.* at \*1. The petitioner and his family then filed a Motion To Reopen 32 days later which the IJ denied. *Id.* at \*1–2. The petitioner appealed the matter to the BIA. *Id.* The petitioner claimed that he was subject to removal without a final removal order as his matter was pending before the BIA. *Id.* at 2. The district court noted that the *in absentia* removal order was not final because the matter was properly before the BIA. *Id.* at \*3. Thus, the district court noted that it possessed jurisdiction over the petitioner’s habeas claim. *Id.* at \*3–4.

This case is distinguishable from *Bonilla* as there is no final order of removal in this case. Petitioner did not file a motion to reopen within 180 days following the entry of the removal order and the BIA does not have jurisdiction over the challenge to the removal order. Thus, *Bonilla* does not apply to this case and this Court does

not have jurisdiction over this matter pursuant to 8 U.S.C. §§ 1252(g),1252(a)(5) and 1252 (b)(9).

**II. CONCLUSION**

Based on the foregoing, Respondents respectfully request that this Honorable Court deny Petitioner's request for a stay of removal.

DATED: February 23, 2026 at Honolulu, Hawaii.

KENNETH M. SORENSON  
United States Attorney  
District of Hawaii

By /s/ Edric M. Ching  
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:

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VIKTOR MAZELIAH

DATED: February 23, 2026, at Honolulu, Hawaii.

KENNETH M. SORENSON  
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