

LAW OFFICE OF FERNANDO L. COSIO

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Attorney for Petitioner  
VIKTOR MAZELIAH

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

VIKTOR MAZELIAH,	)	CIVIL NO. 1:26-cv-00053 JAO WRP
Petitioner,	)	
vs.	)	PETITIONER IS IN CUSTODY
	)	AT THE HONOLULU FEDERAL
	)	DETENTION CENTER
MICHAEL J.D. SMITH, Warden,	)	
Federal Detention Center, Honolulu,	)	
Hawai'i and his successor;	)	
POLLY KAISER, Acting Field	)	PETITIONER'S REPLY LEGAL
Office Director, San Francisco Field	)	MEMORANDUM AS PER ORDER
Office, Immigration and Customs	)	ECF DOCKET NO. 32;
Enforcement, and her successor;	)	DECLARATION OF COUNSEL;
PAM BONDI, Attorney General	)	EXHIBITS "A THROUGH E";
of the United States; and her	)	CERTIFICATE OF SERVICE.
successor; KRISTI NOEM,	)	
Secretary of DHS, and her successor,	)	
JAYCI RONEY, USCIS Honolulu	)	
Field Office Director;	)	
In Their Official Capacities,	)	
	)	
Respondents.	)	

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**Prefatory Statement**

Respondents did not address the main question posed by the Court:

That Respondents should address “with particular emphasis on the precise nature of Petitioner’s challenges to the immigration judge’s in absentia removal order...”

Respondents did not counter Petitioner’s position that the immigration judge lacked subject matter jurisdiction and that the Notice to Appear was defective since it corresponded only to the revoked Joint I-751.

Respondents arguments totally disregard that the immigration judge’s *in absentia* order of removal was an *ultra vires* wrongful decision since the immigration judge no longer had the statuthority authority to preside over the legally revoked Joint I- 751, much less impose the *in absentia* order.

**There Is No Final Order of Removal at this Time Because There Is a Motion to Reopen Pending at the Board of Immigration Appeals.**

The attached Decision and filing from the Board of Immigration Appeals (herein referred to as “BIA”) expressly and unequivocally confirms that there is a motion to reopen pending. See BIA Decision, marked as “Exhibit A.”

In addition, Counsel for Petitioner contacted the Board of Immigration Appeals and talked to one of the BIA file clerks to confirm how many motions are currently pending at the present time. See attached Declaration of Counsel. The above-referenced phone call was placed on February 5, 2026. Counsel called at

9:33 a.m. and was the 15<sup>th</sup> person in line. After waiting for approximately a half hour, Counsel was connected to the file clerk at 10:05 a.m. (Hawaii time).

Counsel called the BIA to track the Motion to Reopen which Counsel for Petitioner had filed with the Honolulu Immigration Court on February 16, 2025, and which the Immigration Court transmitted to the BIA on February 18, 2025 for consideration. Attached hereto and marked as "Exhibit B" is the immigration court's letter of transmittal which reads in relevant part:

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

Appeal of Immigration Judge decision on a motion to reopen.

The file clerk who assisted Counsel was Amaliana (phonetic spelling). She did not want to disclose her last name. The question that Counsel posed to the above-referenced file clerk was:

"I am calling to track the Motion to Reopen which was forwarded to the BIA by the Honolulu Immigration Court on February 18, 2025 in which the letter of transmittal reads that the Appeal of the Immigration Judge decision on motion to reopen was forwarded to the Board of Immigration of Appeals for Consideration".

The file clerk responded: I will have to transfer your call to another person who can answer your question.

Before she transferred the call, I inquired how many motions are pending before the BIA as of the present date. The file clerk verified that the following

motions are currently pending:

- Appeal of IJ's Motion to Reconsider filed on February 11, 2025;
- Motion to Remand which was filed at the BIA on February 11, 2026; and,
- Motion to Rescind which was filed at the BIA on February 16, 2026.

It should be noted that all of the above motions focus on the *in absentia* order of removal entered by the Immigration Judge on January 17, 2025, and whether the judge had the requisite subject matter jurisdiction since the Joint I-751 had been legally revoked, and as such the IJ's *in absentia* order is not final in light of all of the above pending motions on appeal at the BIA.

I was then transferred by Amaliana to Tyrell Gant, at the Board of Immigration Appeals, and Ms. Gant said that the motion to reopen which was transmitted by the Immigration Court on November 18, 2025 is part of the record on appeal at the BIA corresponding to Viktor Mazeliah.

Out of abundance of precaution and to make sure, I asked Ms. Gant to repeat that the motion to reopen is part of the record on appeal at the BIA Appeals. Ms. Gant complied and repeated that the motion is part of the record on appeal.

**Petitioner Also Timely Appealed the USCIS January 23, 2026 Decision in Which it Denied Mazeliah's I-751 Waiver on the Grounds That the Immigration Judge's *in Absentia* Order Is Final**

Petitioner timely appealed the flawed USCIS finding that the immigration judge's *in absentia* order of removal is final. See attached January 23, 2026, USCIS Decision, attached hereto and marked as "Exhibit C,"

The attached USCIS Form I-797C Notice of Action confirms that the appeal

of the USCIS January 23, 2026 Decision is also currently pending administrative review at the USCIS level. (“Exhibit D”).

**The USCIS January 23, 2026 Decision Is Factually Wrong**

The decision is factually wrong because it claims that the IJ denied the motion to reopen on February 10, 2025. However, the record shows that the IJ rejected the motion to reopen and forwarded the motion to reopen to the BIA for adjudication, where it is currently pending. (“Exhibit B”).

Clearly, the USCIS denial of Petitioner’s waiver is wrong because the IJ did not decide the motion to reopen: Instead he transmitted the motion to reopen to the BIA and therefore there is no final order of removal as represented by USCIS in its flawed Decision dated January 23, 2026.

The January 23, 2026 USCIS Decision is the reason that ICE detained Petitioner and took him into custody at the FDC on January 27, 2026, where he has been held without bond since that date.

Respondents argue that ICE is entitled to keep Petitioner in custody as part of their usual custodial practices. However, Respondents fail to see and recognize the bigger picture that the *in absentia* order of removal was void *ab initio* due to lack of subject matter jurisdiction, and that 1252(g) does not strip this Court of jurisdiction to determine whether the immigration judge’s *in absentia* order of

removal was an *ultra vires* wrongful decision which legally invalidates and nullifies the immigration judge's order.

Petitioner is being detained, as per Respondents, under Section 241 of the Immigration and Nationality Act. However, 241 only applies if there is a final order of removal. Also, 241 does not apply when the *in absentia* order of removal is void for lack of subject matter jurisdiction, as in the instant case where the judge did not have jurisdiction to preside over a null and void Joint I-751 application when he admitted on the record that Petitioner's I-751 Waiver was still pending.

**The Motion to Reopen Was Properly Filed at the Immigration Court**

Respondents argue that Petitioner failed to file his motion to reopen with the immigration court. However, in the same breath, Respondents acknowledge that the immigration judge rejected the motion to reopen and transmitted it to the BIA for consideration. Respondents unreasonably argue that after the immigration judge rejected the motion to reopen— that Petitioner should have refiled it with the immigration judge but totally disregard that the immigration judge had rejected the motion to reopen because Petitioner had already appealed to the BIA the immigration judge's decision. In this regard, there is no known regulation which precludes the immigration judge from transmitting the motion to reopen to the BIA for adjudication.

Respondents also incorrectly argue that the motion to reopen was not filed on a timely basis. This argument is wrong because Petitioner filed his motion to reopen with the immigration court on February 18, 2025, just one month and a day after *in absentia* order was entered by the IJ on January 17, 2025.

**Respondents Also Failed to Address Whether the Immigration Judge Had Any Jurisdiction to Preside over the Case When the Joint I-751 Became Null and Void Due to Petitioner's Divorce**

When the Joint I-751 is void by operation of the law, the immigration judge no longer has any jurisdiction to review the merits of the petition, much less to enter an *in absentia* order. In the instant case, the DHS/ICE attorney, who represented the government before the Immigration Judge, filed a statement and also informed the Immigration Judge at a hearing that the Joint I-751 which was before the Court was null and void by operation of the law, since Petitioner had terminated the marriage. To the extent that the immigration judge's authority is limited to reviewing the denial of the Joint I-751 petition, and once the petition is void, it cannot be reviewed further.

Given the gravity of imposing an *in absentia* order of removal when the immigration did not have any jurisdiction, Petitioner filed a motion to vacate the decision on March 9, 2026 under Federal Rules of Civil Procedure, Rule 60 (b)(4) to vacate the flawed decision of the Immigration Judge when he entered the *in*

*absentia* order of removal.

A.

**Grounds for Relief under FRCP, Rule 60(b)**

Rule 60 (b)(4) reads in relevant part applicable to the instant case;

Rule 60. Relief from a Judgment or Order

(b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On

motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (4) the judgment is void;
- (6) any other reason that justifies relief.

Rule 60(b)(4) serves as a critical tool in the legal system, allowing parties to challenge judgments that are fundamentally flawed.

**1252(g) Does Not Strip Nor Restrict the Jurisdiction of this Court when the Immigration Judge's In Absentia Order was Ultra Vires**

Respondents take the position that the federal district courts do not have any authority to review any final orders of removal, without analysing or considering whether there are circumstances where the USDC is the proper forum to provide relief, including questions related to subject matter jurisdiction.

Respondents further assert that all removal orders have to be addressed to the Ninth Circuit Court of Appeals for review. This position is simply wrong

because there has to be a final administrative order of removal before a Petition for Review can be filed at the Ninth Circuit.

In support of their argument that this Court lacks jurisdiction, Respondents cite Tazu v. Att'y Gen. United States, 975 F.3d 292 (3rd Cir. 2020), which upon a careful and thorough reading, does not apply to the challenges presented by Petitioner, including lack of subject matter jurisdiction and the issuance of an *in absentia* order of removal which was void *ab initio*.

In Tazu, the petitioner challenged the timing of the removal and that the government had detained him without notice or a hearing. Unlike the instant case, Tazu never alleged or challenged subject matter jurisdiction. However, the Tazu case noted that challenges to subject matter jurisdiction are reviewable by the District Court. The relevant holding in Tazu was: "Whether or not the District Court had jurisdiction, we have jurisdiction under 28 U.S.C. § 1291 to review its decision" about subject-matter jurisdiction. Citing, E.O.H.C. v. Sec'y U.S. Dep't of Homeland Sec., 950 F.3d 177, 182 (3d Cir. 2020). We review de novo. Id. at 182–83.

### **Conclusion**

U.S. Federal Courts have jurisdiction over *ultra vires* decisions because discretionary decisions of the immigration judges, do not as a matter of law

include unauthorized *ultra vires* orders. Otherwise, 1252(g) would be impervious to the remedial provisions of Federal Rules of Civil Procedure, Rule 60 (b)(4) and its agency counter part, 5 U.S.C. 706, and would eviscerate and render meaningless any protected rights under the Constitution and other applicable statutes.

Dated: Honolulu, Hawaii, March 10, 2026

Respectfully submitted by:

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

**DECLARATION OF COUNSEL**

Declarant Fernando L. Cosio, hereby declares to his best knowledge and upon information and belief as follows:

1. Declarant represents Petitioner Viktor Mazeliah in the instant action.
2. Declarant is an attorney in good standing duly licensed to practice in the State of Hawaii.
3. "Exhibist A-E" are true and accurate copies of the originals.
4. Counsel for Petitioner contacted the Board of Immigration Appeals and talked to one of the BIA file clerks to confirm how many motions are currently pending at the present time.
5. The above referenced phone call was placed on February 5, 2026. Counsel for Petitioner called the Board of Immigration Appeals and spoke to a file clerk. Counsel called at 9:33 a.m. and was the 15<sup>th</sup> person in line. After waiting for approximately a half hour, Counsel was connected to the file clerk at 10:05 a.m. (Hawaii time).
6. Counsel called the BIA to track the Motion to Reopen which Counsel for Petitioner had filed with the Honolulu Immigration Court on February 16, 2025, and which the Immigration Court transmitted to the BIA on February 18, 2025 for consideration which reads in relevant part:

A 

Mazeliah, Viktor

February 18, 2026

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

Appeal of Immigration Judge decision on a motion to reopen.

7. The file clerk, who assisted Counsel was Amaliana (phonetic spelling). She did not want to disclose her last name.
8. The question that Counsel posed to the above file clerk was:

“I am calling to track the Motion to Reopen which was forwarded to the BIA by the Honolulu Immigration Court on February 18, 2025 in which the letter of transmittal reads that the “Appeal of the Immigration Judge decision on motion to reopen was “...forwarded to the Board of Immigration of Appeals for Consideration”.

9. The file clerk responded: I will have to transfer your call to another person who can answer your question. Before she transferred the call, Counsel inquired how many motions are pending before the BIA as of the present date. The file clerk verified that the following motions are currently pending:

- Appeal of IJ’s Motion to Reconsider filed on February 11, 2026;
- Motion to Remand which was filed at the BIA on February 11, 2026; and,
- Motion to Rescind which was filed at the BIA on February 16, 2026.

It should be noted that all of the above motions focus on the *in absentia* order of removal entered by the Immigration Judge on January 17, 2025. and whether the IJ had the requisite subject matter jurisdiction since the Joint I-751 had been legally revoked, and as such the IJ’s *in absentia* order is not final in light of all of the above pending motions on appeal at the BIA.

10. I was then transferred by Amaliana to Tyrell Gant, Non Detained Cases, at the Board of Immigration Appeals and Ms. Gant said that the motion to reopen which was transmitted by the Immigration Court on November 18, 2025 is part of the record of appeals at the BIA corresponding to Viktor Mazeliah. Out of abundance of precaution, I asked Ms. Gant to repeat that the motion is part of the record on appeal at the Board of Immigration Appeals. Ms. Gant repeated that the motion is part of the record on appeal.
11. Petitioner never received written notice from the Immigration Court that the individual hearing was scheduled for January 17, 2025 as evidenced on the proof of electronic notice on the second page of the notice, which is attached hereto as “Exhibit E.”

Dated: Honolulu, Hawaii, March 10, 2026

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

U.S. Department of Justice  
Executive Office for Immigration Review  
Board of Immigration Appeals

MATTER OF:

Viktor MAZELIAH, A



Respondent

**FILED**

Feb 17, 2026

ON BEHALF OF RESPONDENT: Fernando L Cosio, Esquire

IN REMOVAL PROCEEDINGS

On Motion for Stay of Removal before the Board of Immigration Appeals

Before: Gemoets, Appellate Immigration Judge

GEMOETS, Appellate Immigration Judge

STAY ORDER

The respondent has filed a request for a stay of removal while an appeal of the Immigration Judge's denial of the motion to reopen is pending with the Board of Immigration Appeals. After consideration of the information, the Board has concluded that a stay of removal is not warranted.

Accordingly, the following order shall be entered.

ORDER: The request for stay of removal is denied.

**EXHIBIT**

**A**

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.
- 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**

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

LEAD FILE: [REDACTED]  
IN REMOVAL PROCEEDINGS  
DATE: Jul 26, 2023

TO: Law Office of Fernando L. Cosio  
Cosio, Fernando Luis  
1050 Bishop Street # 244  
Honolulu, HI 96813

RE: [REDACTED] MAZELIAH, VIKTOR

**Notice of In-Person Hearing**

Your case has been scheduled for a INDIVIDUAL hearing before the immigration court on:

Date: Jan 17, 2025  
Time: 08:30 A.M.  
Court Address: 300 ALA MOANA BLVD., RM 8-112  
CTRM 1, HONOLULU, HI 96850

**Representation:** You may be represented in these proceedings, at no expense to the Government, by an attorney or other representative of your choice who is authorized and qualified to represent persons before an immigration court. If you are represented, your attorney or representative must also appear at your hearing and be ready to proceed with your case. Enclosed and online at <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers> is a list of free legal service providers who may be able to assist you.

**Failure to Appear:** If you fail to appear at your hearing and the Department of Homeland Security establishes by clear, unequivocal, and convincing evidence that written notice of your hearing was provided and that you are removable, you will be ordered removed from the United States. Exceptions to these rules are only for exceptional circumstances.

**Change of Address:** The court will send all correspondence, including hearing notices, to you based on the most recent contact information you have provided, and your immigration proceedings can go forward in your absence if you do not appear before the court. If your contact information is missing or is incorrect on the Notice to Appear, you must provide the immigration court with your updated contact information within five days of receipt of that notice so you do not miss important information. Each time your address, telephone number, or email address changes, you must inform the immigration court within five days. To update your contact information with the immigration court, you must complete a Form EOIR-33 either online at <https://respondentaccess.eoir.justice.gov/en/> or by completing the enclosed paper form and mailing it to the immigration court listed above.

EXHIBIT E

**Internet-Based Hearings:** If you are scheduled to have an internet-based hearing, you will appear by video or telephone. If you prefer to appear in person at the immigration court named above, you must file a motion for an in-person hearing with the immigration court at least fifteen days before the hearing date provided above. Additional information about internet-based hearings for each immigration court is available on EOIR's website at <https://www.justice.gov/eoir/eoir-immigration-court-listing>.

**In-Person Hearings:** If you are scheduled to have an in-person hearing, you will appear in person at the immigration court named above. If you prefer to appear remotely, you must file a motion for an internet-based hearing with the immigration court at least fifteen days before the hearing date provided above.

For information about your case, please call 1-800-898-7180 (toll-free) or 304-625-2050.

The Certificate of Service on this document allows the immigration court to record delivery of this notice to you and to the Department of Homeland Security.

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL  [M] PERSONAL SERVICE  [P] ELECTRONIC SERVICE  [E]  
TO:  [ ] Noncitizen |  [ ] Noncitizen c/o Custodial Officer |  
 [ e ] Noncitizen ATT/REP |  [ e ] DHS  
DATE: 7/26/23 BY: COURT STAFF ck  
Attachments:  [ ] EOIR-33  [ ] Appeal Packet  [ ] Legal Services List  [ ] Other NH

Use a smartphone's camera to scan the code on this page to read the notice online.

Usa la cámara de un teléfono inteligente para escanear el código de esta página y leer el aviso en línea.

Use a câmara do smartphone para digitalizar o código nesta página e ler o manual de instruções online.

使用智能手机摄像头扫描本页面的代码，即可在线阅读该通知。

ନିମ୍ନ ଉଲ୍ଲେଖିତ ପଦ୍ମ ଉପରେ ଥିବା କୋଡ୍ ସ୍କାନ କରିବାକୁ ଅନୁରୋଧ କରାଯାଇଛି ଏବଂ ଏହାକୁ ଉପରେ ଉଲ୍ଲେଖ କରାଯାଇଛି।

ଅନଲାଇନରେ ନୋଟିସ ପଢ଼ାର ଜନ୍ମ ଏହି ପୃଷ୍ଠାରେ କୋଡ୍ ସ୍କାନ କରିବାକୁ ଅନୁରୋଧ କରାଯାଇଛି ଏବଂ ଏହାକୁ ଉପରେ ଉଲ୍ଲେଖ କରାଯାଇଛି।

सूचना अनलाइनमा पढ्न यस पृष्ठमा कोड स्क्यान गर्न स्मार्टफोनको क्यामेरा प्रयोग गर्नुहोस्।

Sèvi ak kamera yon telefòn entèlijjan pou eskane kòd ki nan paj sa a pou li avè a sou entènèt.

استخدم كاميرا الهاتف الذكي لمسح الرمز الموجود في هذه الصفحة لقراءة الإشعار على الإنترنت

Чтобы прочитать уведомление онлайн, отсканируйте код на этой странице с помощью камеры вашего смартфона.

Utilisez l'appareil photo d'un téléphone intelligent pour scanner le code sur cette page afin de lire l'avis en ligne.



**Certificate of Service**

The undersigned certifies that the attached pleading was electronically filed via this Court's electronic filing portal on the below date, and all registered parties, including Respondents and their counsel, will receive notice of this filing and will be able to view and download the pleading, and therefore personal service is not necessary or warranted.

Dated: Honolulu, Hawaii, March 10, 2026

Respectfully submitted by:

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