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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.	)	MAZELIAH IS IN CUSTODY
	)	AT THE HONOLULU FEDERAL
	)	DETENTION CENTER
)	
,	)	PETITIONER'S STATUS REPORT
MICHAEL J.D. SMITH, Warden,	)	IN COMPLIANCE WITH EO
Federal Detention Center, Honolulu	)	DOCKET NO. 38 ORDER; FOR
Hawai'i and his successor;	)	EMERGENCY PETITION FOR
POLLY KAISER, Acting Field	)	EX-PARTE TEMPORARY
Office Director, San Francisco Field	)	RESTRAINING ORDER TO
Office, Immigration and Customs	)	STAY HIS REMOVAL PENDING
Enforcement, and her successor;	)	HIS APPEAL AT THE BIA
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 Honolulu Field Officer)	
Director and her successor; All in)	
their official capacity.)	
)	
Respondents)	
_____)	

As per the request of the Court pursuant to EO Docket No. 38, Petitioner Viktor Mazeliah, by and through his undersigned counsel hereby submits his Status Report as requested by the Court.

Dated: Honolulu, Hawaii, March 20, 2026

Respectfully submitted by:
s/Fernando L. Cosio
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Attorney for Petitioner
VIKTOR MAZELIAH

Petitioner's position has not changed— **there is no final order of removal.**

Our position is based on the fact that Petitioner did file his Motion to Reopen with the Immigration Court on February 16, 2026 and that it was duly transmitted to the Board of Immigration Appeals for a decision. Petitioner also bases his position on the Board of Immigration Appeals' order which clearly and expressly reads that there is a motion to reopen pending at the Board of Immigration Appeals. (See attached Order dated February 17, 2026, marked as "Exhibit A").

The Letter of Transmittal of the Motion to Reopen by the Immigration Court to the Board of Immigration Appeals is attached and marked as "Exhibit B."

To the extent that the Order from the Board of Immigration Appeals constitutes an official decree from U.S. Department of Justice's highest appellate administrative body interpreting and applying immigration laws, this Court should take judicial notice that the order is trustworthy and "can be readily determined from sources whose accuracy cannot be reasonably be questioned" under Federal Rules of Evidence, Rule 201.

It should be noted that such orders by the Board are recognized by the Ninth Circuit Court of Appeals and other circuits, and have to be attached as part of the the Notice of the Appeal.

Respondents' main argument in its brief, Docket No.34 at 15 is that

Petitioner did not file the Motion to Reopen with the Immigration Court. It reads:

Petitioner needed to file a Motion to Reopen, not a Motion To Reconsider, to initiate the process to rescind the in absentia removal order. Curiously, on February 16, 2026, Petitioner filed a motion to rescind the in absentia removal order with the BIA. Dold Dec. at ¶40. Although certain documents reference that the BIA is considering a Motion To Reopen on appeal, it is undisputed that Petitioner only made one attempt to file a Motion To Reopen before the Immigration Court and this attempt was rejected. Id. at ¶32.

However, Respondents fail to acknowledge or accept that Petitioner had to literally file his motions and pleadings with the Immigration Court electronically through the ECAS electronic court's system, including his motion to reopen.

Also, Respondents have misconstrued the term "Rejection" as it applies to Petitioner's filing of his motion to reopen. In the instant case the word "Rejection" does not mean that the motion to reopen was rejected because it failed to comply with the filing requirements such as an inappropriate caption, lack table of contents or some other technical form related deficiency: Rather it simply means that the Immigration Judge determined that he lacked jurisdiction and duly transmitted the motion to reopen to the Board of Immigration Appeals for a definitive ruling.

The fact that the Immigration Judge forwarded Petitioner's Motion to Reopen to the Board of Immigration Appeals confirms that he did not "reject"

the motion in the traditional sense. The record in this case is clear that the Immigration Court forwarded the record as opposed to returning the motion to the petitioner.

When a motion to reopen is transmitted to the Board of Immigration Appeals, there is no final order of removal while the Board is considering the motion to reopen.

It is easy to understand why the Court wrote in its EO, Docket No. 38, that it was confused by Respondents' representations that the motion to reopen was never filed at the Immigration Court because it had been rejected (Docket No. 34 at 15), and at the same time represented that it had been forwarded to the Board of Immigration Appeals for consideration. EO, Docket No. 38 reads in part:

Respondents argue that there is no evidence that the Immigration Judge ever accepted a motion to reopen for filing. See ECF No. 34 at 10, 1314. But in support of that contention, they cite the Declaration of James Dold ¶ 33, which states that the Immigration Court forwarded the Record of Proceeding to the BIA for "consideration of the appeal of the Immigration Judge decision on a motion to reopen." ECF No. 34-1 ¶ 33 (citing ECF No. 34-4). The Court is confused as to why Respondents haven't simply provided the Court with the docket of what is pending before the BIA, and instead have relied on vague contentions and evidence that could be read to support Petitioner's position that his in absentia order of removal is not final.

In Respondents' response to Docket No. 38, Mr. Ching represented in his submittal that: "Exhibit "L" is a transmittal dated February 18, 2025 that is not

referenced in the BIA docket.” See Docket No. 40 at page 3.

Mr. Ching attached “Exhibit C1” to show that the letter of transmittal is not referenced in the BIA docket. However, “Exhibit C1” only shows the BIA docket. Mr. Ching should have submitted the combined docket of the BIA and the Immigration Court.

Petitioner hereby provides a screenshot of how the combined docket looks like as it appears on the EOIR (Executive Office for Immigration Review) Courts & Appeals System ECAS- Online Filing. The ECAS filing system is mandatory as of February 11, 2022. Attorneys have to use the ECAS electronic filing system to file any and all immigration court and appeal documents, including the filing of Petitioner’s Motion to Reopen with the Immigration Court.

Unlike the USDC docket, the docket at the BIA and the Immigration Court (which is merged in one docket once an appeal has been filed at the BIA), the documents are not identified with a numerical docket number and title.

For example, the transmittal letter of Petitioner’s Motion to Reopen by the Immigration Court is labeled and appears on the docket as the “Case Notice” entered on February 18, 2025, which is the date when the Motion to Reopen was received and “Accepted,” by the Board of Immigration Appeals.

**SCREENSHOT OF THE ACTUAL
COMBINED DOCKET**

eROP Documents

Document Filters

View All Filter at the Court Filter at the BIA

Actions	Document Type	Filed Date ▼	Filed At	Filed By	Document Status
	Supplemental Filing	02/28/2025	BIA	Respondent Rep	Accepted
	Supplemental Filing	02/28/2025	BIA	Respondent Rep	Accepted
	Order- Motion for Stay of Removal (MSR)	02/20/2025	Court	OCIJ	Accepted
	CASE Notice	02/18/2025	Court	OCIJ	Accepted
	Rejection Notice	02/18/2025	Court	OCIJ	Accepted
	Rejection Notice	02/18/2025	Court	OCIJ	Accepted
	Briefing Schedule Notice	02/11/2025	BIA	BIA	Accepted
	Motion for Stay of Removal / Extension to Stay	02/11/2025	Court	Respondent Rep	Accepted
	Form EOIR-27, Enter Appearance and / or UPDATE Attorney Address	02/11/2025	BIA	Respondent Rep	Accepted
	Appeal of IJ MTR	02/11/2025	BIA	Respondent Rep	Accepted

Total Count: 76

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The Letter of Transmittal (“Exhibit B”) can be viewed and downloaded by clicking on the “Notice of Action” dated 2/18/2025 entry referenced above is the fourth entry from the top. The last column on the docket sheet under the category of “Accepted” means that the BIA accepted the letter of transmittal.

The two Rejection Notices entered on 2/18/2025 were contemporaneous filings by the Immigration Court in which it listed that the Motion to Reopen was being rejected not because it was flawed or deficient: Rather, the Immigration Court noted on both documents (which are the same) that the Motion to Reopen was filed in the “Incorrect Filing Location (case at BIA)”. See attached notice marked as “Exhibit B-1”. The explanation by the Immigration Court that it was filed in an incorrect location further proves that the Motion to Reopen was filed at the Immigration Court—and was transmitted to the Board of Immigration Appeals as is certified by the Immigration Court in its letter of transmittal. (See “Exhibit B,” Letter of Transmittal dated 2/18/2025).

an incorrect filing

The representation of the government in its filing with this Court, Docket No. 40 at 3, page ID # 288, that “...the transmittal dated February 18, 2025 that is not referenced in the BIA docket,” is erroneous because Mr. Ching was not looking at the correct entire combined docket.

The copies attached by Mr. Ching (Exhibit C-1) to Respondents’ brief ,

Docket No 40-1, at 2 and 3, page ID 291 and 292 do not depict the combined Immigration Court and Board of Immigration Appeals docket, and as such is not a complete and true copy of the official docket, as is configured in the official ECAS filing portal, as is seen on the above pasted real time BIA/Immigration Court docket. The attached screenshot is what is seen by Counsel for Petitioner once he logs on the ECAS portal.

Also, with the approval of Mr. Ching, Counsel for Petitioner hereby duly certifies that he called the Immigration Court on March 12, 2026, and spoke with the clerk at the Immigration Court who transmitted the Motion to Reopen, and the clerk confirmed that the Immigration Court had transmitted the Motion to Reopen to the Board of Immigration Appeals since the Immigration Court no longer had jurisdiction over the case. The clerk said that she could not memorialize her statement in writing because the Immigration Court no longer had jurisdiction over the case.

Mr. Ching then suggested that we write a joint letter of inquiry to a contact that he was able to locate at the Board of Immigration Appeals to find out which motions were pending before the Board. However, the parties were not able to agree on the actual wording of the request. Mr. Ching was adamant that the letter should be written in very broad terms: Counsel for Petitioner thought that the parties should get to the point and inquire if the Motion to Reopen was pending

at the Board as referenced in the Order Denying the Stay of Removal, dated February 17, 2026. See attached letter to Mr. Ching's contact person, marked as "Exhibit C".

Counsel was never informed beforehand that the proposed contact person, Mr. Alexander Payne, would not respond at all to Petitioner's inquiry. Indeed, Mr. Payne wrote in his email: "Our office has a practice of not communicating directly with opposing counsel, so I took opposing counsel off this chain and will not respond to the separate communication sent earlier this morning. (See attached Payne email, attached hereto as "Exhibit D")

Had Counsel known that Mr. Payne was only going to serve in the capacity of the government's contact only, I would not have agreed to any such one sided arrangement.

Mr. Payne's emails lack proper foundation since the emails are not sworn statements, and he does not explain what records he reviewed in order to come to his personal opinions. Also, his statements appear to be purposely constructed to favor the government. In his first email Mr. Payne confirms that Petitioner filed his motion to reopen with the Board. ("Exhibit D"). Then in his second email, Mr. Payne sent another email to Mr. Ching to let him know that he mispoke and wrote:

I mispoke, I can personally say that, from my review of our agency's system, the Respondent has filed an appeal of the

immigration judge's denial of the **motion to reconsider**, as well as two motions directly to the Board requesting a motion to remand and a "motion to rescind the [in absentia order.]" As of this morning, the Board has not ruled on any of them.

(Payne second email, attached and marked as "Exhibit E").

Petitioner respectfully submits that Mr. Payne's representations do not address the question posed to him by Counsel: "To confirm that there is a motion to reopen pending at the Board of Immigration Appeals as is represented in the Board of Immigration Appeals Order dated February 17, 2026 in which a stay of removal was denied. See attached letter to Mr. Ching's contact person, marked as "Exhibit C".

Mr. Payne also omitted any reference to the letter of transmittal ("Exhibit B") and that the ECAS filing system makes reference to the transmittal of the motion to reopen to the BIA and that the BIA "accepted" the transmittal. A very subtle omission which can be misleading if not read in context. Mr. Payne's characterization of Petitioner's request as being "strange" was also not helpful and unnecessary given the urgent circumstances.

Petitioner also respectfully attaches hereto letters from Viktor Mazeliah's wife and business partner to provide a status on the condition of his business and financial losses caused by his incarceration at the FDC without bond, as well as the severe hardship and tremendous stress that his family is suffering due to his detention and possible removal to Israel, presently a country at war which is

subject to daily and fatal missile and drone strikes and bombings at Tel Aviv and other key areas in Israel. (See attached letters, marked in unison as “Exhibit F”).

Conclusion

Petitioner respectfully reaffirms that there is no is no final order of removal since the Motion to Reopen is currently pending before the Board of Immigration Appeals, and to the extent that a stay of removal is necessary and warranted since the moment that the Court rules otherwise, ICE will deport Viktor Mazeliah back to Israel, despite his on going appeals to the Board of Immigration Appeals, as well as his pending Writ of Habeas Corpus with this Court and the pending appeal of the USCIS denial on January 23, 2026 of Petitioner’s I-751 Waiver,

Petitioner and his family and his associates pray that this Court will be merciful and grant his Emergency Motion for a Stay of Removal while his claims are being considered at the Board of Immigration Appeals.

Dated: Honolulu, Hawaii, March 20, 2026.

Respectfully submitted by;

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

DECLARATION OF COUNSEL

Declarant Fernando L. Cosio hereby declares based upon information and belief and to the best of his knowledge as to the following:

1. The attached screenshot is a true and accurate copy of the combined Immigration Court and Board of Immigration electronic docket which officially corresponds to Viktor Mazeliah in relevant part.

2. The entry labeled as “Notice of Action” dated February 18, 2025, is the docket entry in which the Immigration Court’s Letter of Transmittal is filed, which is attached hereto as “Exhibit B.”

3. The Letter of Transmittal shows that Petitioner’s Motion to Reopen was filed at the Immigration Court and then was officially transmitted to the Board of Immigration Appeals for “consideration.”

4. With the permission of Edric Ching, on March 12, 2026, Counsel for Petitioner called the Immigration Court and spoke with the clerk who transmitted Petitioner’s Motion to Reopen to the Board of Immigration Appeals. The clerk confirmed that Petitioner’s Motion to Reopen was transmitted to the Board of Immigration Appeals for consideration, and that the Board of Immigration Appeals would be deciding the Motion to Reopen. The clerk said that she was not in a position to write a letter to memorialize her statement because the case was no longer within the jurisdiction of the Immigration Court.

5. Mr. Ching suggested that we write a joint letter of inquiry to his contact person at the Board of Immigration Appeals to find out which motions were pending at the Board of Immigration Appeals.

6. All exhibits attached to Petitioner's Status Report are true and accurate copies of the corresponding originals.

7. The rejection notices which appear on the combined Immigration Court and Board of Immigration Appeals docket prove that the Motion to Reopen was not rejected because the Motion to Reopen was flawed or procedurally deficient. The notices clearly state that the Motion to Reopen was filed in the incorrect location and that the case was at the BIA. The Immigration Court's reasons for the rejection prove that the Motion to Reopen was filed with the Immigration Court and then duly transmitted to the Board of Immigration Appeals for consideration.

8. The representation of the government in its filing with this Court, ECF, Docket No. 40 at 3, that the Motion to Reopen is not seen on the docket is erroneous. Respondents' Exhibit C-1 is not an accurate and true representation of the entire combined docket.

9. To the extent that the Order from the Board of Immigration Appeals ("Exhibit A") constitutes an official decree from U.S. Department of Justice's highest appellate administrative body interpreting and applying immigration laws,

this Court should take judicial notice that the order is trustworthy and “can be readily determined from sources whose accuracy cannot be reasonably be questioned” under the Federal Rule Rules of Evidence, Rule 201.

10. It should be noted that such orders by the Board are recognized by the Ninth Circuit of appeals, and are required as attachments as part of the Notice of Appeal.

Dated: Honolulu, Hawaii, March 20, 2026.

Respectfully submitted by:

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

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Certificate of Service

The undersigned certifies that the attached pleading was filed with the Court's Electronic Filing System, and as such all registered parties will be notified of said filing and will be able to download the instant pleading, and therefore personal service is not necessary or required.

Dated: Honolulu, Hawaii, March 20, 2026.

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