IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 26-cv-00897-CNS-CYC

EDDY DESIRE RUKUNDO,

Petitioner,

v.

JUAN BALTAZAR, Warden of Aurora Contract Detention Facility;
GEORGE VALDEZ, Acting Director for the Denver Field Office of Immigration and Customs Enforcement;
TODD M. LYONS, Acting Director, Immigration and Customs Enforcement;
MARKWAYNE MULLIN, Secretary of the Department of Homeland Security; and
TODD BLANCHE, Attorney General,

Respondents.

PETITIONER'S REPLY TO RESPONDENT'S RESPONSE

Petitioner replies herein that he is not subject to a final order of removal, that the agency's year-old dangerousness determination is subject to review, and that the factors under *Singh* apply.

I. Petitioner does not have a final order of removal and is not detained under 8 U.S.C. § 1231

Respondents' argument that Petitioner's removal proceedings have already culminated in a final order of removal is without actual basis in fact, the statute, the regulations or the case law. On these basic facts, the parties agree: Petitioner was initially denied all relief by the Immigration Judge ("IJ") and he appealed that decision to

the Board of Immigration Appeals ("BIA"); in February of this year, the BIA remanded the matter to the IJ, finding it could not uphold her denial of Withholding of Removal because her analysis of the potential for future persecution was "not sustainable."

Respondent posits that Petitioner is currently subject to detention under 8 U.S.C. § 1231 because he is in the "removal period" contemplated by 8 U.S.C. § 1231(a)(1)(B). Dkt. 10 at 5. This argument is belied by the statute itself:

> (B) Beginning of period. The removal period begins on the *latest* of the following:
> (i) The date the order of removal becomes administratively final.
> (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.
> (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B)(emphasis added). Yet here, Petitioner's proceedings are back before the IJ. In order to seek judicial review, the IJ's *next* decision would need to be reviewed by the BIA, and then potentially by the First Circuit, before the "removal period" would begin.

The regulatory language further undermines petitioner's reading. Petitioner oddly removes the very first words in the regulation in order to twist its meaning. *See* Dkt 10 at 5, n. 8 (emphasizing dismissal by the BIA without contemplation of ongoing proceedings). A "final order of removal" is defined clearly:

> Final order of removal. An order of removal made by the immigration judge *at the conclusion of proceedings* under section 240 of the Act shall become final:
> (a) Upon dismissal of an appeal by the Board of Immigration Appeals;
> (b) Upon waiver of appeal by the respondent;
> (c) Upon expiration of the time allotted for an appeal if the respondent does not file an appeal within that time…

8 C.F.R. § 1241.1 (emphasis added). Here, proceedings under Section 240 of the Act (8 U.S.C. § 1229a) are ongoing – the matter is back before the IJ and she will need to issue a new decision. That decision may be appealed to the BIA once more, and if the BIA were to dismiss that appeal, the decision would be administratively final. The regulation could have defined finality when certain issues are disposed of, but it does not. Insofar as proceedings are ongoing, tautologically they cannot be concluded.

Respondents' case law citations do not save them. Once again missing the forest for the trees, Respondents neglect to mention that the Supreme Court's decision in *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021) related to a noncitizen whose prior final removal order had been reinstated; Mr. Guzman was not in proceedings under 8 U.S.C. § 1229 ("section 240 of the Act"). Here, Petitioner has no pre-existing order of removal; he is in proceedings under 8 U.S.C. § 1229 and those proceedings are ongoing.

There should be no need to look beyond the statute or the regulation to determine whether Petitioner's removal proceedings have ended in a final order of removal, given that those proceedings are ongoing. Nevertheless, it bears noting that Courts of Appeals have concluded a removal order is not final for the purposes of judicial review where a substantive issue has been remanded to the IJ for consideration. *Go v. Holder,* 640 F.3d 1047, 1051–52 (9th Cir.2011) (involving "remand of [petitioner's] CAT claim"); *Chupina v. Holder,* 570 F.3d 99, 103–04 & n. 3 (2d Cir.2009) (involving remand "for further proceedings on ... CAT protection and withholding of removal"); *Mahecha–Granados v. Holder,* 324 Fed.Appx. 735, 736, 738 (10th Cir.2009) (involving

remand "to consider any other applications for relief or protection"). Relatedly, the Supreme Court has specified that administrative orders are final when they mark the "consummation" of the agency's decision-making process, and when "rights or obligations have been determined" or when "legal consequences will flow" from the decision. *Bennett v. Spear,* 520 U.S. 154, 177–78 (1997).

Petitioner's BIA's decision falls clearly within the rubric of non-final determinations – as in *Go*, Petitioner's case has been remanded for further consideration of issues related to relief which may ultimately entail the issuance of a simultaneous order of removal, but the case has not been resolved.[1] The First Circuit, under whose jurisdiction the removal proceedings reside, would not have accepted jurisdiction to review the BIA's February decision where substantive issues like whether Petitioner has a well-founded fear of future persecution remain at play. *See Cano-Saldarriaga v. Holder*, 729 F.3d 25, 27–28 (1st Cir. 2013).

Petitioner is not detained under 8 U.S.C. § 1231, which applies only to those noncitizens with final orders of removal, because he does not have a final order of removal. Respondents' efforts to argue otherwise are unfounded.

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[1] To the extent that Respondents argue that Withholding of Removal would not guarantee Petitioner's right to remain in the United States, Petitioner points out that no other country of removal was named in his proceedings. See *D.V.D. et al v. U.S. Dep't of Homeland Security, et al.*, Case No. 1:25-cv-1067-BEM at *24-25 (D. Mass. February 25, 2026)(contemplating the "legal impossibility of raising hypothetical claims as to undesignated countries of removal," finding that "a noncitizen cannot bear his burden as to a proposed country of removal that has not been proposed as a country of removal.")

II. This Court has jurisdiction to review the bond hearing Petitioner received

Respondent does not meaningfully reply to Petitioner's invocation of *Martinez v. Clark*, 144 S. Ct. 1339 (2024). In that case, the Supreme Court remanded the Ninth Circuit's decision that it could not review an IJ's dangerousness determination in light of *Wilkinson v. Garland*, 601 U.S. 209 (2024), signaling that the IJ's "discretionary" bond determination was in fact a mixed question of law and fact requiring the application of legal standard to an established set of facts. *See Martinez v. Clark*, 124 F.4th 775, 779 (9th Cir. 2024). On remand, the Ninth Circuit determined that the district court had the authority to review the agency's dangerous determination for abuse of discretion. *Id.* at 779-80. While the Ninth Circuit's decision is obviously not binding in this circuit, the reasoning deriving from *Wilkinson* is, and certainly calls into question Respondent's reliance on *Mwangi v. Terry*, 465 F. App'x 784 (10th Cir. 2012), an unpublished decision that pre-dates *Wilkinson* by more than a decade. *Mwangi*'s determination that the agency's bond determination is discretionary and thus unreviewable cannot be squared with the mixed question analysis required in the wake of *Wilkinson*. That this review may not be de novo is of no moment; review is available. *See* Dkt. 10 at 11.

To the extent that Respondent argues that Petitioner has not averred that he entered any evidence at his bond hearing, Respondent replies that he did in fact enter evidence at his bond hearing. The extensive letters of support from his community that were before the IJ are attached herein. *See* Exhibit A, Letters of Support from Evidentiary Submission on Bond.

III. In the last year, Petitioner has had no bond hearing and has been held in punitive conditions

Respondent argues in a cursory manner that *Singh* does not mandate release and may not apply. Dkt. 10 at 9. To the extent that Respondent suggests that *Singh* does not apply because Petitioner was given a bond hearing, Petitioner notes that it has been over a year since that hearing was held, that the entirety of the 'dangerousness' finding was based on alcohol-related charges, that Petitioner has had had over 19 months of sobriety in detention to reflect upon his prior actions, and that he should be granted the opportunity to demonstrate his commitment to maintaining that sobriety moving forward.

Arguing that the Singh factors do not apply is simply the corner into which Respondents have painted themselves, because application of the factors all swing in Petitioner's favor. Respondent does not argue that the total length of detention is reasonable at this point, they do not argue that there is not an extended detention left for Petitioner. But perhaps most importantly, Respondent's silence on the quality of life at the facility where Petitioner is held is deafening. They argue only that such conditions do not, on their own, warrant release. Dkt. 10 at 12-13.

Petitioner's criminal history exists and of course warrants consideration, but at no time did the State of Maine order him to serve a prison sentence. That he now sits in punitive conditions, and has done so for so long, is violative of his rights.

[signature block to follow]

Respectfully Submitted
Eddy Rukundo, Petitioner
By and through:

s/ Annelise M. Jatoba de Araujo

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Dated: April 10, 2026

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants via first-class mail on April 10, 2026.

s/ Annelise M. Jatoba de Araujo

Annelise M. Jatoba de Araujo