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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

(HON. ROBERT S. HUIE)

SUNDARARAJU PERIYANNAN,

Petitioner,

v.

SIXTO MARRERO, Warden of Imperial County Detention Center, et al.,

Respondents.

Civil No.: 26-CV-3700-RSH

TRAVERSE IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

INTRODUCTION

Between the time Sundararaju Periyannan filed his Amended Petition and the government filed its return, the Board of Immigration Appeals (BIA) dismissed his appeal, apparently because the filing was received one day past the deadline. As a result, the government argues there is now a final removal order against Mr. Periyannan and he is therefore subject to at least the ninety-day period of detention required under 8 U.S.C. § 1231(a).

But the procedural posture of Mr. Periyannan's immigration proceedings has again changed since the government filed its return. On September 3, Mr. Periyannan filed a Petition for Review and Motion for Stay of Removal with the Ninth Circuit Court of Appeals.

[Ex. A (Ninth Circuit docket.).] The Ninth Circuit stayed his removal order "until further order of the court," [*Id.*] Under Ninth Circuit precedent, the court's stay means that while Mr. Periyannan's removal order may remain administratively final, it is not judicially final and § 1231(a) does not apply. *See Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008). Instead, Mr. Periyannan falls under § 1226(a) and should – at a minimum – receive a bond hearing given that he has now been detained for nearly eleven months.

STATEMENT OF FACTS

In his Amended Petition, Sundararaju Periyannan argued that he should either be ordered released from immigration custody or granted a bond hearing for four reasons:

(1) the immigration judge applied the wrong legal analysis when it revoked bond because Mr. Periyannan is not ineligible for bond as a D-2 visa crewman;

(2) the government either violated its own grant of parole (or parole-like liberty interest) or violated statutes and regulations pertaining to parole by arresting him;

(3) the government arrested Mr. Periyannan before obtaining a warrant, and

(4) Mr. Periyannan's unreasonably prolonged detention as an asylum seeker violates his Fifth Amendment right to due process.

At the time he filed his Amended Petition, Mr. Periyannan had a pending appeal with the BIA centered around the immigration judge's denial of his asylum claim, which had been filed on May 22. His case was therefore in a pre-final removal order status and his arguments were partly predicated on that status.

The government filed its return on August 21 and Mr. Periyannan discovered for the first time that the BIA had dismissed his appeal for being untimely. [ECF 14.] The government noted that the dismissal had occurred three days before its filing. It attached a copy of the BIA's order, which noted there was a May 21 deadline for the filing of the BIA appeal. The order revealed the BIA received Mr. Periyannan's appeal on May 12 but rejected it for "filing defects."[1] The rejection notice stated that the original deadline would not be extended. Ultimately the BIA apparently received the second appeal attempt on May 22 – one day late. The BIA therefore dismissed the appeal.

The government's return did not address any of the substantive arguments from Mr. Periyannan's Amended Petition and instead argued the petition was premature. The government argued that because the BIA had dismissed the appeal, rendering the removal order final shortly before the government filed its return, Mr. Periyannan fell under the initial ninety-day mandatory detention period under § 1231(a) and was ineligible for bond under § 1226(a). Relatedly, the government argued, "While Petitioner asserts that he has been in immigration custody for over nine months, almost all of that time was before his removal order became administratively final and would thus not count toward the 90-day removal period that governs his present custody."

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[1] It appears from speaking with Mr. Periyannan that the rejection notice stated he had mailed the appeal to an incorrect recipient and that he needed to send it to the Department of Homeland Security. It is not yet clear why the BIA would have received the appeal (which is clear from the fact that it sent the notice) but would not have been able to file it unless it was sent to a different address.

On August 28, the Court granted a joint motion to extend the traverse filing deadline so that counsel could research the impact of the BIA's decision. [ECF 16.]

On September 3, Mr. Periyannan filed a Petition for Review and Motion for Stay of Removal with the Ninth Circuit. [*See* Ex. A] That same day, the appeals court granted a temporary stay of removal under General Order 6.4 and stated that "a temporary stay of removal is in effect until further order of the court." [*Id.*] Mr. Periyannan's opening brief is currently due on November 23.

ARGUMENT

A. The Ninth Circuit's Stay of Removal Means that Mr. Periyannan Again Falls Under § 1226(a).

Although the government is correct that a final order of removal generally places an immigration detainee under § 1231(a), that is not the end of the story. While the BIA's decision rendered an administratively final removal order, it did not (and could not) render a judicially final removal order. And now that the Ninth Circuit has stayed the BIA's removal order, Mr. Periyannan is again in the same statutory posture that existed when he filed his Amended Petition

The Ninth Circuit discussed this type of situation in *Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008). There, the petitioner was ordered removed by an immigration judge and the BIA affirmed. *Id.* at 1056-57. The petitioner then filed a petition for review in the Ninth Circuit, which entered a stay of removal pending resolution. While review was pending, the petitioner filed a habeas petition challenging his continued immigration detention. *Id.*

In deciding which immigration detention statute applied, the Ninth Circuit held that although the petitioner's removal order was

administratively final, the judicial stay meant that his 90-day "removal period" under 8 U.S.C. § 1231(a) had not yet begun. *Id.* at 1060-61. The court noted that under 1231(a)(1)(B)(ii), "[W]hen a court of appeals issues a stay of removal pending its decision on an alien's petition for review of his removal order, the removal period begins only after the court denies the petition and withdraws the stay of removal." *Id.* at 1059-60. Accordingly, the Ninth Circuit held that § 1231 did not authorize the petitioner's detention while his petition for review and stay was pending and that detention was instead governed by § 1226(a). *Id.* at 1060-62. Subsequent Ninth Circuit decisions have cited this portion of *Prieto*-Romero's holding with approval. *See Avilez v. Garland*, 69 F.4th 525, 532 (9th Cir. 2022) (petitioner "could not have been detained under Section 1231 because his removal order remained judicially stayed pending judicial review."); *Rodriguez v. Robbins*, 804 F.3d 1060, 1086 (9th Circuit 2015).

Prieto-Romero applies with full force here. Although Mr. Periyannan was subject to an administratively final removal order when the government filed its return, that legal posture changed once the Ninth Circuit stayed his removal. The relevant question is not whether the removal order remains administratively final, but whether judicial review has concluded. It has not.

Moreover, the brief existence of a final order does not mean that Mr. Periyannan's immigration detention clock is somehow restarted. *In Prieto-Romero*, the Ninth Circuit treated the petitioner's detention as one continuous period, noting that "[a]pproximately two of Prieto-Romero's three years in federal custody" occurred while his petition for review was pending. 534 F.3d at 1058. The court did not measure detention only from the date the stay was entered. Instead, it

considered the full period of continuous immigration custody.

Mr. Periyannan has been in immigration detention for nearly eleven months and again requests the relief included in his Amended Petition.

CONCLUSION

For the reasons set forth in his Amended Petition and in this Traverse, Petitioner Sundararaju Periyannan respectfully requests the Court grant the relief outlined in the Amended Petition.

Respectfully submitted,

Dated: September 11, 2026 *s/ Adam F. Doyle*

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