

ERIC GRANT
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Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOSE GARCIA CERON,

Petitioner,

v.

WARDEN, CALIFORNIA CITY DETENTION
FACILITY,

Respondents.

CASE NO. 1:26-CV-05189-TLN-AC

RESPONDENTS' MOTION TO RECONSIDER

Respondents respectfully request the Court reconsider its order, ECF No. 10, deciding
Petitioner's removal order is not administratively final.

8 C.F.R. § 1241.1 lists six circumstances under which a removal order becomes final: (a) the Board of Immigration Appeals (BIA) dismisses an appeal; (b) the alien waives appeal; (c) the appeal period expires; (d) the BIA or Attorney General orders removal; (e) an immigration judge orders removal in absentia; or (f) overstaying a voluntary departure period. Subsection (b)—the relevant regulation here—has not been curtailed by the cases cited in the Court's order, and subsection (f) has been curtailed only in a limited circumstance that does not apply here.

I. Petitioner is now detained pursuant to an administratively final removal order.

The U.S. Court of Appeals for the Ninth Circuit, in *Ocampo v. Holder*, held subsection (f) to be inconsistent with the statutory provision on finality, but only did so with respect to deciding the narrow issue of "whether a motion to reopen was timely." 629 F.3d 923, 928 (9th Cir. 2010). *Ocampo* did not

1 overturn its own precedent *Diouf v. Mukasey*, 542 F.3d 1222 (9th Cir. 2008). *Diouf* held that the
2 removal order “became administratively final upon overstay of the voluntary departure period” for
3 purposes of deciding detention authority. 542 F.3d at 1229 (citation modified). Because the voluntary
4 departure period in *Diouf* ended on June 24, 2003, the removal period began the next day, and the alien
5 was detained under 8 U.S.C. § 1231, not § 1226. *Id.* While neither *Ocampo* nor *Diouf* address the
6 regulatory provision at issue here—8 C.F.R. 1241.1(b)—*Diouf* is more akin to the present case since
7 *Ocampo* addresses timeliness of a motion to reopen (there is no motion to reopen here) and *Diouf*
8 addresses detention authority (which is an issue here).
9

10 More importantly, *Ocampo* did not deal with waiver of appeal. On the other hand, *Biwot v.*
11 *Gonzales*, 403 F.3d 1094 (9th Cir. 2005), did address waiver of appeal, and the Ninth Circuit recognized
12 that the removal order was final. 403 F.3d at 1097 (“Although we may not review a *final order of*
13 *removal* unless an alien has exhausted all administrative remedies, *Biwot* raised the claim of denial of
14 counsel during the administrative process.” (emphasis added) (citations omitted)).
15

16 Just as *Diouf* upheld the regulation and found the removal order became administratively final
17 immediately upon overstay of the voluntary departure period, and just as *Biwot* recognized the waiver to
18 result in a final order, the Court here should uphold the regulation and find the removal order became
19 administratively final immediately upon waiver of appeal.
20

21 **II. The Court should vacate its no-transfer order.**

22 *Matter of Rodriguez-Diaz* not only upholds the administrative finality of such removal orders but
23 also notes the importance of recognizing their finality:

24 We do not have jurisdiction over the decision of an Immigration Judge once the parties
25 waive their right to appeal. Whenever the right to appeal is waived, the decision of the
26 Immigration Judge becomes final and may be implemented immediately. Achieving
27 immediate finality of an Immigration Judge’s decision is important, especially for a
28 detained alien who has no interest in appeal and wishes only to depart. Waiver of appeal
permits the execution of a removal order prior to expiration of the 30-day appeal period,
thereby sparing the alien additional time in custody and taxpayers the expense of needless
detention.

22 I&N 1320, 1322 (BIA 2000) (citations omitted).

The Court is correct that there remains jurisdiction at the BIA and at the U.S. Court of Appeals for the Ninth Circuit to review whether a waiver was knowing and intelligent. However, that jurisdiction does not destroy the finality of a removal order, particularly where no such claim to the BIA or the Ninth Circuit has been made, and the finality of the removal order does not destroy that jurisdiction. Here, the Court's order presupposes that Petitioner's waiver was not knowing and intelligent, when there has been no allegation—whether in this Court, the BIA, or the Ninth Circuit—that such is the case. Further, the jurisdiction to conduct such a review lies with the BIA and the Ninth Circuit, not here. It very well may be the case that Petitioner knowingly and intelligently waived his right to appeal and prefers to return to his country, but the no-transfer order is the only thing keeping that from happening. Petitioner's interest in returning to his country, the interests of judicial economy, and the interests of the public in the expense of tax dollars and enforcement of the law favor vacating the no-transfer order.

Finally, 8 U.S.C. § 1252(f)(2) prohibits courts from “enjoin[ing] the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law.” Because Petitioner is subject to a final order of removal, and because he has not shown that its entry or execution is prohibited by law, the Court's order prohibiting transfer effectively enjoins his removal without a sufficient basis.

Accordingly, Respondents ask that the Court reconsider its decision on Respondents' Motion to Vacate.

1 Dated: July 29, 2026

ERIC GRANT
United States Attorney

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3 By: /s/ Sean Davis
4 SEAN DAVIS
Special Assistant United States Attorney
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