UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

Mohamoud Cumar Mohamed, Petitioner, v. Todd Blanche, Acting Attorney General, Markwayne Mullin, Secretary, U.S. Department of Homeland Security, David J. Venturella, Acting Director of Immigration and Customs Enforcement, and David Easterwood, Acting Director, St. Paul Field Office Immigration and Customs Enforcement. Respondents.	Civ. No. 26-cv-3507 (JMB/DTS) **REPLY TO FEDERAL RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS**

Petitioner, Mohamoud Cuman Mohamed, ("Mr. Mohamed"), by and through the undersigned attorney, respectfully submits this Reply in support of the Petition for a Writ of Habeas Corpus. Petitioner briefly addresses Respondents' contention that he is subject to a final removal order, notwithstanding that his removal order is currently pending on appeal. Respondents admit that they are not seeking to detain Mr. Mohamed under their novel interpretation of 8 U.S.C. § 1225(b)(2), Doc. 6, 5. Respondents invoke only § 1231 as their basis for detaining Mr. Mohamoud. Therefore, the dispositive question for this

Court is whether Mr. Mohamed's departure from the United States rendered his removal order final, notwithstanding that the order is now on appeal.

Respondents claim Mr. Mohamed's departure from the United States constitutes a waiver of his right to appeal his removal order. ECF 6, 1 (citing 8 C.F.R. §§ 1003.3(e), 1241.1(b), 241.1(b)). However, upon Mr. Mohamed's return, Mr. Mohamed *did* in fact appeal his removal order to the Board of Immigration Appeals (BIA), and this pending appeal renders it nonfinal. As Respondents note, finality can be triggered by a "waiver of appeal by the respondent," but these same regulations also provide that finality is triggered by the "dismissal of an appeal by the Board of Immigration Appeals." 8 C.F.R. § 1241.1 (a-b). In Mr. Mohamoud's situation, while his departure might under some circumstances constitute a waiver under 8 C.F.R. § 1003.3(e), the actual filing of his appeal with the BIA, and the BIA's acceptance of that appeal, indicates that the BIA is operating under the belief that a valid waiver did not exist in the first place. The new date of finality is the termination of this appeal.

Respondents cite two cases to argue that Mr. Mohamoud's departure from the United States constitutes a waiver of his appeal, but in both of these cases the appeal was already pending at the time of the voluntary departure, and it was the BIA in the first instance who found the departure to constitute a waiver. Doc. 6, 4 (citing *Aguilera-Ruiz v. Ashcroft*, 348 F.3d 835, 837 (9th Cir. 2003) and *Aleman-Fiero v. INS*, 481 F.2d 601, 602 (5th Cir. 1973)). Neither of these cases address a situation where, as here, a noncitizen files an appeal *after* departing and then returning to the United States, and most importantly where the BIA itself considers that appeal to be pending by setting a briefing

schedule. In fact, courts routinely find that when a noncitizen departs from the United States *before* appealing a removal order to the BIA, departure alone does not constitute a waiver. *See*, e.g., *Chavez-Garcia v. Sessions*, 871 F.3d 991, 996 (9th Cir. 2017) (noting that the federal constitutional requirements of a valid waiver must also be met for departure to constitute a waiver of a BIA appeal).

Agency regulations state that "a Notice of Appeal may not be filed by any party who has waived appeal." 8 C.F.R. §§ 1003.3, 1003.39. The BIA lacks jurisdiction over appeals where the right to appeal has been waived. *Id.* Waivers must be constitutionally valid, meaning "knowing, voluntary, and intelligent," to be constitutionally valid. *Chavez-Garcia*, 871 F.3d at 996. Here, the Notice of Appeal was accepted, because the appeal is pending with a briefing schedule set before the BIA, which pendency refutes the Respondents' position that appeal was validly waived. Should Respondents wish to argue that Mr. Mohamed validly waived his appeal, the appropriate forum would be to challenge the BIA's decision to accept Mr. Mohamed's Notice of Appeal and therefore to find that his appeal had not been waived.

Mr. Mohamed argues first and foremost that outright release is the appropriate remedy, since Respondents invoke only 8 U.S.C. § 1231 as the authority to detain him and he does not have a final removal order so as to support post-removal detention. Alternatively, Respondents should be held to their representations to Mr. Mohamed that he is being detained pursuant to 8 U.S.C. § 1226(a). Doc. 1, p 12-14. Respondents cite a case that in fact makes no mention at all of warrants or forms I-200 or I-205 to stand for the premise that "Nor does the mere fact that both a Form I-200 and Form I-205 issued,

[sic]." Doc. 6 at 5-6 (citing *Chay T. v. Mullin*, No. 26-cv-2908 (LMP/ECW), 2026 WL 1870619, at *2 (D. Minn. June 30, 2026)). Petitioner notes that this case does not contradict his argument, that providing him with an I-200 warrant constitutes a representation that his detention is premised on 8 U.S.C. § 1226(a). Doc. 1, p 12-14.

CONCLUSION

Wherefore, because Respondents invoke post removal detention authority but Mr. Mohamed does not have a final order of removal, Petitioner respectfully requests that this Court order him released.

Respectfully submitted,

Date: August 14, 2026

/s/ Kira A. Kelley

Kira A. Kelley, Esq.
P.O. Box 7040
Minneapolis, MN 55407
MN Bar ID: 402932
kira@climatedefenseproject.org
(802) 683-4086

Attorney for Petitioner