UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

LUIS MANUEL RODRIGUEZ-RODRIGUEZ, Petitioner, v. KEVIN RAYCRAFT, *et al.*, Respondents.	CASE NO. 3:26-CV-667 JUDGE BENITA Y. PEARSON NOTICE OF SIGNIFICANT DEVELOPMENTS IN PETITIONER'S ADMINISTRATIVE PROCEEDINGS, WHICH IMPACT THE PETITION

Respondents hereby submit this Notice to inform the Court about significant developments that have occurred at the administrative level, which impact the arguments made in the Petition, as well as Respondents' Motion to Dismiss and Reply in Support of the same.

I. Petitioner Accepted Voluntary Departure Under Safeguards, Which Moots His Claims Under §§ 1225/1226.

On April 28, 2026,[1] Petitioner accepted pre-hearing voluntary departure under safeguards. (*See* Ex. A, Voluntary Departure Order.) Voluntary departure is governed by 8 U.S.C. § 1229(c) and 8 C.F.R. § 1240.26, which "empower[s] Immigration Judges to grant voluntary departure with the condition that the alien remain in custody." *Matter of M-A-S*, 24 I&N Dec. 762, 763 (BIA 2009), citing *Al-Siddiqui v. Achim*, 531 F.3d 490, 495 (7th Cir. 2008). Indeed, it is understood that an IJ's "use of the term 'under safeguards' solely to mean continued detention, because the Immigration Judge did not reference or impose any other limitations on the respondent's voluntary departure." *Id.* at 765-66. Further, the use of the "term 'voluntary

[1] This is the same day that Respondents filed their Reply in Support of Motion to Dismiss. (ECF No. 6.) However, undersigned counsel did not become aware of the IJ's 4/28/26 Voluntary Departure Order until the morning of April 30, 2025, and filed this Notice that same day.

departure with safeguards' is commonly used to characterize that an alien remain in custody until he or she departs from the United States." *Id.* at 766 (citations omitted).

In the seminal case *Al-Siddiqi*, the Seventh Circuit Court of Appeals addressed the issue of continued custody once an alien has accepted voluntary departure. There, the IJ granted the alien "the privilege of voluntarily departing the United States" but also ordered that the alien "remain in custody until his departure." *Id.* at 494. On appeal, the Seventh Circuit explained that "the regulations governing voluntary departure empower the IJ to impose 'such conditions as he or she deems necessary to ensure the alien's timely departure from the United States.'" *Id.* at 495 (citing § 8 C.F.R. § 1240.26(c)(3)). The Seventh Circuit ruled that the authority provided in § 1240.26(c)(3) includes continuing detention as part of the "right to impose conditions" when issuing a voluntary departure order. *Id.* Thus, the Seventh Circuit denied the alien's habeas petition and affirmed his continued dentition. *Id.*

Other courts, including the Northern District of Ohio, have reached the same conclusion. *See Boutinkhar v. Lyons, et al.*, No. 4:25-CV-2802, at ECF Nos. 12 and 17 (dismissing habeas petition because both 8 U.S.C. § 1229c and 8 C.F.R. § 1240.26 give IJ discretion to impose conditions pending departure, which mooted the petition); *El-Badrawi v. United States*, 787 F. Supp. 2d 204, 230-32 (D. Conn. 2011) (finding that 8 C.F.R. §§ 240.25(b) and 1240.26(b)(3)(i) authorized continued detention after granting voluntary departure); *Akinruntan v. Holder*, No. 4:13-cv-0010, 2013 WL 5999982, at * 6 (N.D. Ala. Sept. 30, 2013) (stating that 8 C.F. R § 1240.26(b)(3)(i) authorizes an IJ who grants voluntary departure to impose conditions including continued detention); *Hernandez v. Warden*, No. 6:26-cv-0053, 2026 WL 593532, at * 4 (N.D.TX Mar. 3 2026) (upholding the continued detention of an alien after the granting of voluntary departure "with safeguards").

The BIA has likewise reached the same conclusion. In *Matter of M-A-S*, the issue before the BIA was "whether an Immigration Judge may order an alien detained until departure as a condition of a grant of voluntary departure." 24 I&N Dec. 762, 763 (BIA 2009). There, the IJ granted the alien's request for voluntary departure under safeguards but held that "the [alien] is not to be released pending departure." *Id.* at 765. The alien challenged his continued detention and argued that § 1240.26(c)(3) does not contain the express authority to detain an alien without bond during the voluntary departure period. The BIA rejected this argument, noting that § 1240.26(c)(3) authorizes an IJ to set "such conditions as he or she deems necessary to ensure the alien's timely departure from the United States." *Id.* at 766. The BIA followed *Al-Siddiqi* and ruled that "§ 1240.26(c)(3) gives Immigration Judges broad discretion to set conditions for voluntary departure, including the continued detention of the alien until his or her departure." *Id.*

Because § 1229(c) and § 1240.26 now definitively apply, and because these provisions give the IJ broad discretion to impose conditions pending departure—including continued detention during the voluntary departure period—Petitioner's arguments challenging his detention are now moot, and the habeas petition should be denied.

II. Petitioner Waived His Right to Appeal, Which Moots the Exhaustion Argument.

In addition, Petitioner waived his right to appeal the IJ's order. (*See* Ex. A, Voluntary Departure Order.) Accordingly, Petitioner has now fully exhausted his claims, and the administrative proceedings are final. 8 C.F.R. § 1003.39 (IJ decision becomes final upon waiver of appeal). This development moots Respondents' argument that Petitioner should be required to exhaust his administrative remedies before filing suit in federal court, since he has already done so. However, this should not change the outcome here—the Petition should still be dismissed on the grounds that Petitioner's detention is lawful. (*See* Section I, *supra*.)

Respectfully Submitted,

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