

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Kavya Morganna Soares Pinheiro,

Petitioner,

v.

Todd Blanche, Attorney General,

Respondent.

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Case No.26-3853

**MOTION TO HOLD PETITION FOR REVIEW IN ABEYANCE PENDING
CONCLUSION OF THE AGENCY’S REVIEW OF PETITIONER’S
PROTECTION CLAIMS AND TO VACATE ALL PENDING DEADLINES**

INTRODUCTION

Pursuant to Federal Rule of Appellate Procedure 27 and Ninth Circuit Rule 27-1, Petitioner Kavya Morganna Soares Pinheiro respectfully requests that this Court: (1) hold the instant petition for review in abeyance pending the conclusion of the agency’s review of her protection claims; and (2) vacate all currently pending deadlines in this matter, including the September 3, 2026 due date for Petitioner’s opening brief.

On June 16, 2026, Petitioner petitioned for review of an order reinstating a prior removal order, dated May 18, 2026, issued by U.S. Immigration and Customs Enforcement (ICE), a component agency of the Department of Homeland Security, pursuant to 8 U.S.C. § 1231(a)(5). The petition was timely filed within the 30-day period prescribed by 8 U.S.C. § 1252(b)(1). On July 29, 2026, counsel for Petitioner contacted counsel for Respondent, Christopher W. Dextre, regarding this motion; on July 30, 2026, Respondent indicated that it opposes the requested relief.

**THE COURT SHOULD HOLD THE INSTANT PETITION IN ABEYANCE
PENDING THE AGENCY’S CONCLUSION OF FEAR-BASED
PROCEEDINGS**

At present, Petitioner is pursuing protection claims in reasonable fear proceedings before the San Francisco Asylum Office (within U.S. Citizenship & Immigration Services). *See generally* 8 C.F.R. § 208.31.¹ On May 18, 2026, ICE

¹ Individuals who express a fear of return during § 1231(a)(5) proceedings are referred to an asylum officer (AO) for a “reasonable fear” interview. 8 C.F.R. § 208.31. If the AO determines that the person has a “reasonable fear of persecution or torture,” the person is referred to withholding-only proceedings before an IJ in which they can apply for withholding of removal and/or protection under the United Nations Convention Against Torture (CAT). Any denied application can be appealed to the Board of Immigration Appeals (BIA). 8 C.F.R. §§ 208.31(e), 1208.31(e), 208.2(c)(2), 1208.2(c)(2). If the AO finds the person did *not* establish a reasonable fear, the person may seek review in a hearing before an IJ. 8 C.F.R. §§

reinstated Petitioner's prior removal order, enrolled her in the Alternatives to Detention (ISAP) program, and formally notified her of the reasonable fear interview process; Petitioner signed an acknowledgment of receipt that same day. Her reasonable fear interview has not yet been scheduled.

However, Petitioner files the petition now, as opposed to at the conclusion of the agency's review of her protection claims, as required by the Supreme Court's decision in *Riley v. Bondi*, 606 U.S. 259 (2025), which held that the removal order issued prior to reasonable fear proceedings is the final order for purposes of judicial review, and that the 30-day filing deadline of 8 U.S.C. § 1252(b)(1) runs from the date of that order.

This Court has the inherent authority to stay proceedings and hold matters in abeyance as an incident of its power to control the disposition of the causes on its docket. *See Landis v. North American Co.*, 299 U.S. 248, 254 (1936). Holding this petition in abeyance until the conclusion of the agency's review of Petitioner's protection claims is warranted to conserve judicial resources and to allow for a complete administrative record on which the Court can review the petition. *Cf. Riley*, 606 U.S. at 272 (noting that, in cases like this one, the Government can alert

208.31(f), (g), 1208.31(f), (g). If the IJ disagrees with the AO's conclusion, the person is referred to withholding-only proceedings. 8 C.F.R. §§ 208.31(g)(2), 1208.31(g)(2). If the IJ affirms the AO's conclusion, the person is subject to imminent removal and cannot appeal to the BIA. 8 C.F.R. §§ 208.31(g)(1), 1208.31(g)(1).

the court of appeals to the pendency of a withholding-only proceeding so that review there can wait until that issue is decided). If the agency denies Petitioner's protection claims, Petitioner may wish to seek judicial review of the agency's decision as well as ICE's removability determination under 8 U.S.C. § 1231(a)(5).

Because reasonable fear proceedings are ongoing at this time, whether Petitioner will pursue judicial review of her protection claims is not certain. If Petitioner's claims are successful, Petitioner will be granted withholding of removal pursuant to 8 U.S.C. § 1231(b)(3) and/or protection under the United Nations Convention Against Torture (CAT). If this happens, Petitioner may elect to forgo judicial review of ICE's removability determination, obviating the need for judicial review.

If Petitioner's claims are not successful, Petitioner may elect to pursue judicial review of the agency's denial of her fear-based claims as well as ICE's removability determination. For the Court to conduct that review, the agency needs to file the administrative record. *See* 8 U.S.C. § 1252(b)(4)(A) (“[T]he court of appeals shall decide the petition only on the administrative record on which the order of removal is based.”). Should Petitioner be referred to withholding-only proceedings following her reasonable fear interview, the resulting proceedings before the immigration judge and, if necessary, the Board of Immigration Appeals will generate an additional administrative record and a decision on Petitioner's

protection claims that Petitioner may seek to have reviewed together with ICE's reinstatement determination. Because the reasonable fear interview has not yet occurred, the scope of the record and the issues ultimately presented for this Court's review cannot be known at this time.

Moreover, Petitioner is obligated to exhaust all administrative remedies available as of right, *see* 8 U.S.C. § 1252(d)(1), which, in turn, requires Petitioner to seek review of any negative reasonable-fear determination by the asylum officer before an immigration judge and, if referred to withholding-only proceedings, to appeal any negative immigration-judge determination to the Board of Immigration Appeals. *See supra* n.1.

Because the agency has not completed its review of Petitioner's fear-based claims, Petitioner is unable to state definitively whether judicial review will be necessary. For that reason, and to conserve the Court's resources, Petitioner respectfully requests that the Court hold the instant petition in abeyance pending the conclusion of the agency's review of Petitioner's protection claims, and that the Court vacate all currently pending deadlines, including the September 3, 2026 deadline for Petitioner's opening brief.

When reasonable fear proceedings (and any resulting withholding-only proceedings) have concluded, Petitioner will promptly inform the Court and file a copy of the resulting decision of the immigration judge or the Board of

Immigration Appeals. Until such time, Petitioner proposes filing a status update with the Court every 90 days from the date the Court adjudicates the instant motion.

CONCLUSION

For the foregoing reasons, this Court should grant the motion, hold the instant petition in abeyance pending the resolution of Petitioner's fear-based proceedings, and vacate all currently pending deadlines, with briefing to be reset, if necessary, after the conclusion of those proceedings.

Respectfully submitted,



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CERTIFICATE OF COMPLIANCE

This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 1,113 words, excluding the portions exempted by Fed. R. App. P. 32(f). This motion complies with the typeface and type-style requirements of Fed. R. App. P. 27(d)(1)(E), 32(a)(5), and 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 12-point Times New Roman font.

s/ Otavio Haverroth Silva

CERTIFICATE OF SERVICE

I, Otavio Haverroth Silva, hereby certify that on August 11, 2026, I filed the foregoing motion electronically with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit using the Court's electronic filing system, the Appellate Case Management System (ACMS). Respondent's counsel are registered ACMS users and will be served via the Notice of Docket Activity through the ACMS system.

s/ Otavio Haverroth Silva

Dated: August 11, 2026.