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**Non-Detained**

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
880 Front Street, Suite 4240  
San Diego, CA 92101**

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**In the Matter of**

**Marcio dos Reis**

**In Removal Proceedings**

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**File No. A. 235-858-005**

**Immigration Judge: N/A**

**Next Hearing Date: N/A**

**RESPONDENT'S MOTION TO TERMINATE**

**UNITED STATES DEPARTMENT OF JUSTICE  
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**RESPONDENT'S MOTION TO TERMINATE**

COME NOW, Otavio Haverroth Silva, counsel for the above-referenced Respondent, and respectfully moves this Honorable Court to terminate the present removal proceedings due to the failure of the Department of Homeland Security (DHS) to present evidence sufficient to support the allegations of removability, under 8 CFR § 1003.18(d)(i)(A) and established precedents.

Through written pleadings, Respondents **denied all charges of removability**.

Consequently, the burden of establishing such charges rests entirely with DHS.

Accordingly, the initial scheduling order of this Court set a deadline (60 days) for DHS to present evidence sufficient to support the allegations of removability. **However, DHS did not present any evidence to support the charges within the fixed deadline.** This constitutes failure in fulfilling the burden of proof and complying with the Court's order.

The absence of evidence or the presentation of insufficient evidence prevents the establishment of a legal basis to maintain the proceedings. Without a

demonstration of removability by clear and convincing evidence, there is no valid reason for the continuation of the action.

Pursuant to **8 CFR § 1003.18(d)(i)(A)**, termination of proceedings is mandatory when no charge of removability can be sustained. Therefore, this matter is one in which the regulations expressly compel termination, qualifying as a case of mandatory termination under federal law.

Conversely, precedents recognize that, when DHS fails to demonstrate removability, the Immigration Judge must terminate the proceedings, as there is no legitimate matter to be adjudicated.

As endorsed in *Woodby v. Immigration & Naturalization Service*, 385 U.S. 276, 286 (1966), it is the sole responsibility of DHS to demonstrate the respondent's removability by "clear and convincing evidence."

Matter of *Coronado Acevedo*, 28 I. & N. Dec. 648 (A.G. 2022), confirms that Immigration Judges retain the authority to terminate removal proceedings in the circumstances expressly authorized or mandated by regulation, including when DHS fails to meet its burden to establish removability. While *Coronado Acevedo* primarily addresses the restoration and expansion of the Immigration Judge's discretionary authority to terminate in additional contexts, it expressly reaffirms the long-standing principle that mandatory termination remains required where the regulations provide for it. Thus, even under the most recent Attorney General guidance, this case falls squarely within the category of mandatory termination, as DHS has failed to present evidence sufficient to sustain the charges of removability.

These judicial understandings intertwine with federal regulations and EOIR guidance, which clearly state that if DHS does not meet the regulatory burden, a motion to terminate cannot be denied on discretionary grounds, but instead must be granted.

That is, it becomes inadmissible for this Court to formally maintain allegations without evidentiary basis merely for administrative convenience or to await new deadlines, as such posture would affront the principles of due process of law and procedural integrity.

In view of the foregoing, and since it is clear that DHS did not present the required evidence within the defined and legal deadline and, thus, did not meet its burden of proof sufficient to sustain the charges of removability, this Court must grant the motion to terminate the proceedings.

Furthermore, termination **with prejudice** is legally permissible when DHS fails to meet its burden of proof in removal proceedings. This approach ensures that DHS cannot repeatedly attempt to remove an individual under the same grounds after failing to sustain its charges, thereby upholding the integrity of the immigration process and protecting the rights of respondents.

As it is an appropriate and effective means to ensure due process of law, this motion deserves full granting.

WHEREFORE, we respectfully request that the Court **grant this motion to terminate the Respondents' proceedings with prejudice**. Alternatively, we move the Court to grant termination of these proceedings without prejudice.

Respectfully,



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**Otavio Haverroth Silva (Bar N. 343486)**  
**Attorney at Law**  
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*Counsel for Respondent*

**Proof of Service**

On this day, I, Otavio Haverroth Silva, served a copy of the following documents:

**RESPONDENT'S MOTION TO TERMINATE**

To the following:

<b>Office Location:</b>  Office of the Principal Legal Advisor, San Diego 880 Front Street, Suite 2246 San Diego, CA 92101	<b>Mailing Address:</b>  US Immigration and Customs Enforcement US Department of Homeland Security 880 Front Street, Suite 2246 San Diego, CA 92101
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by:

- Through the EOIR Courts and Appeals System (ECAS), which will automatically send service notification to both parties that a new document has been filed.



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