



**U.S. Department of Justice**

**Executive Office for Immigration Review**

*Board of Immigration Appeals  
Office of the Clerk*

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*5107 Leesburg Pike, Suite 2000  
Falls Church, Virginia 22041*

**BAILEY, TERRANCE DANIEL  
827 FORREST AVENUE, ROOM 851  
A#089-010-106  
GADSDEN, AL 35901**

**DHS/ICE Office of Chief Counsel - BTV  
130 Delaware Avenue, Room 203  
Buffalo, NY 14202**

**Name: BAILEY, TERRANCE DANIEL**

**A089-010-106**

**Date of this notice: 6/13/2012**

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

*Donna Carr*

Donna Carr  
Chief Clerk

Enclosure

Panel Members:  
Holmes, David B.

For more unpublished BIA decisions, visit [www.irac.net/unpublished](http://www.irac.net/unpublished)

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Falls Church, Virginia 22041

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File: A089 010 106 - Batavia, NY

Date: JUN 13 2012

In re: TERRANCE DANIEL BAILEY a.k.a. Terrence Daniel Bailey a.k.a. Terrence Daniel  
IN REMOVAL PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Robert P. Levy  
Assistant Chief Counsel

In an interim order entered on March 30, 2012, this Board reopened these removal proceedings, vacated the Board's earlier September 14, 2011, decision that dismissed the respondent's appeal from the Immigration Judge's decision, and directed that a new briefing schedule be set. That interim order was entered when it became clear subsequent to the entry of the Board's September 14, 2011, decision that the then-detained respondent, who was under the custody of the Department of Homeland Security (DHS), had been transferred to a detention facility in Georgia at some unspecified date while his case was pending appeal before the Board. The Board was not advised of the transfer. As a result, the respondent was never effectively served with a copy of the Immigration Judge's July 14, 2011, decision, the Board's July 27, 2011, briefing schedule, or the Board's September 14, 2011, decision dismissing his appeal, all of which were unsuccessfully mailed to the respondent at the detention facility in Batavia, New York, where he had been previously detained.

In response to the current briefing schedule, the DHS has filed a "Motion for Termination of Appeal." The DHS now advises the Board that the respondent was removed from the United States on November 29, 2011. The DHS argues that the Board lacked jurisdiction to enter the March 30, 2012, interim order, and moves that the Board "terminate the appeal . . . and summarily affirm the decision of the Immigration Judge." The DHS "served" this filing on the respondent at the Georgia detention facility from which he was removed in November 2011. The DHS motion is denied.

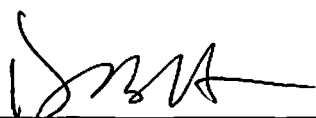
Given the unusual procedural history of this case, we are not persuaded that we lacked jurisdiction to enter the March 30, 2012, interim order. It appears uncontested that the then-detained respondent filed a timely appeal from the Immigration Judge's decision ordering his removal, but was never effectively served a copy of the ultimate decision of the Immigration Judge, the appellate briefing schedule, or the Board's decision in his case because of his transfer by the DHS from one detention facility to another. Under these circumstances, reinstating the proceedings on appeal was appropriate and, as such, the respondent's removal did not deprive the Board of jurisdiction over these proceedings. *See Matter of Diaz-Garcia*, 25 I&N Dec. 794 (BIA 2012). Thus, we are left with

a pending appeal involving an unrepresented respondent who was removed to an apparently unknown address and who can not longer effectively pursue his appeal.

Consequently, we find it necessary to administratively close these proceedings until the respondent is able to pursue his appeal. At that time a written request to reinstate the proceedings may be made to the Board. The Board will take no further action in the case unless a request is received from one of the parties. The request must be submitted directly to the Board at the above address, without fee, but with certification of service on the opposing party. If the request establishes that the respondent is in a position to be served with the pertinent documents and pursue his appeal, the Board shall reinstate these proceedings.

Accordingly, the following order will be entered.

ORDER: Proceedings before the Board in this case are administratively closed.



FOR THE BOARD