

No. 17-1916

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

**CARLTON BAPTISTE,
A030-338-600,**

Petitioner,

v.

**JEFFERSON B. SESSIONS III,
ATTORNEY GENERAL OF THE UNITED STATES,**

Respondent.

**RESPONDENT’S MOTION TO DISMISS AND TO TOLL THE TIME FOR
FILING OF THE ADMINISTRATIVE RECORD**

On April 21, 2017, Petitioner Carlton Baptiste (“Baptiste”) petitioned for review of a March 23, 2017 order of the Board of Immigration Appeals (“BIA”) dismissing Baptiste’s appeal from an immigration judge’s decision on Baptiste’s continued detention during his on-going removal proceedings. See Petition for review. On November 8, 2016, this Court previously vacated the BIA’s prior order of removal against Baptiste and remanded the case for further consideration of his eligibility for relief from removal; respondent filed a writ of certiorari with the Supreme Court on February 6, 2017, which remains pending. See Baptiste v. Atty

Gen. of the U.S., 841 F.3d 601 (3d Cir. 2016), cert. pet. filed No. 16-978 (Feb. 7, 2017).

The Court’s jurisdiction to entertain petitions for review from the BIA is confined to “final order(s) of removal.” 8 U.S.C. § 1252(a). The Court therefore lacks jurisdiction to consider Baptiste’s latest petition for review because the BIA’s March 23, 2017 order relates solely to Baptiste’s bond and custody, which is “separate and apart from . . . any deportation or removal hearing or proceeding.” 8 C.F.R. § 1003. 19(d); see 8 U.S.C. §§ 1252(a)(1), (b)(9) (providing for judicial review of “all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section”); Kumarasamy v. Atty Gen. of the U.S., 453 F.3d 169, 172 (3d Cir. 2006) (“we have jurisdiction only in those cases in which the petitioner seeks review of a final order of removal.”); Jah v. Attorney General of U.S., 258 Fed.Appx. 394, 395 (3d Cir. 2007) (unpublished) (“Federal district courts retain habeas jurisdiction to examine the statutory and constitutional basis for a detention unrelated to a final order of removal.”); see also Diop v. ICE/Homeland Security, 656 F.3d 221, 226 (3d Cir. 2011) (indicating that a district court has jurisdiction to consider a challenge to immigration detention pursuant to 28 U.S.C. § 2241).

Accordingly, the Court should dismiss the petition for review as Baptiste does not seek review of a final order of removal under 8 U.S.C. § 1252(a). In so doing, the Court should also toll the filing of the administrative record until it adjudicates the motion to dismiss.

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General
Civil Division

JESSE BLESS
Senior Litigation Counsel
Office of Immigration Litigation

/s/Anthony C. Payne
ANTHONY C. PAYNE
Assistant Director
Office of Immigration Litigation
Civil Div., Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044
(202) 616-3264

April 24, 2017

ATTORNEYS FOR RESPONDENT

MOTION FORMAT CERTIFICATION

Pursuant to the Federal Rules of Appellate Procedure 32(g)(1), I certify that
Respondent's Motion:

- (1) was prepared using 14-point Times New Roman font;
- (2) is proportionally spaced; and
- (3) contains 642 words.

/s/Anthony C. Payne
ANTHONY C. PAYNE
Trial Attorney
Office of Immigration Litigation
Civil Div., Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044
(202) 616-3264

CERTIFICATE OF SERVICE

On April 24, 2017, I electronically filed the foregoing Motion to Dismiss with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system. Such service constitutes sufficient service upon petitioner because petitioner's counsel is a registered user of the appellate CM/ECF system.

/s/Anthony C. Payne

ANTHONY C. PAYNE

Assistant Director

Office of Immigration Litigation

Civil Div., Department of Justice

P.O. Box 878, Ben Franklin Station

Washington, D.C. 20044

(202) 616-3264