UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

FRANCISCO BRITO MATOM,

Petitioner,

v. Case No. 2:25-cv-648-JES-NPM

GARRETT RIPA, Miami Field Office Director, U.S. Immigration and Customs Enforcement ("ICE"), et al.,

Respondents.
_____/

Supplemental Brief

The Federal Respondents Garrett Ripa, Kristi Noem, and Pam Bondi (together, "ICE") contend events since Petitioner Franscisco Brito Matom's Habeas Petition (Doc. 1) render the action moot or otherwise eliminate the Court's jurisdiction to provide any meaningful relief.[1]

Since the briefing, two developments occurred—Brito Matom's (1) transfer from Alligator Alcatraz ("AA") and (2) identification as a class representative in *C.M. v. Noem*, 2:25-cv-747-SPC-KCD (M.D. Fla.). Each event eliminated any jurisdiction the Court had over allegations related to AA seeking injunctive or declaratory relief.

If nothing else changed, the correct answer would be to deny relief or dismiss to the extent that the allegations concern AA and continue to the merits of Brito Matom's

[1] Matthew Mordant is not a federal official. Perhaps he is a state official. Regardless, the United States Attorney's Office cannot respond on his behalf.

individual habeas claim on the lawfulness of detention.

Since ICE requested a supplement though, other developments occurred—namely, Brito Matom received his Notice to Appear ("NTA"). (Doc. 12-1). ICE also received documentation of his Warrant of Arrest ("WA") and bond hearing. (Exs. 1; 2). These changes eliminate any remaining jurisdiction the Court could have had over individual habeas relief for release. It also confirmed detention is lawful on the merits.

With no relief possible in this action, the Court must deny the Writ and dismiss.

A. Transfer

Courts unanimously hold a petitioner's habeas claim related to conditions of confinement at a specific facility become moot upon transfer. *E.g.*, *McKinnon v. Talladega Cnty., Ala.*, 745 F.2d 1360, 1363 (11th Cir. 1984) ("The general rule is that a prisoner's transfer or release from a jail moots his individual claim for declaratory and injunctive relief."). As one court put it:

> Normally, a prisoner's transfer or release from a prison moots any claim he might have for equitable relief arising out of the conditions of his confinement in that prison.

Scott v. District of Columbia, 139 F.3d 940, 941 & n.1 (D.C. Cir. 1998) (collecting cases).

Nor does any exception to that black-letter rule apply. *See Robbins v. Robertson*, 782 F. App'x 794, 799 (11th Cir. 2019).

At this point, there is no reason to believe Brito Matom would ever be transferred back to AA. Along with the fact that it is currently under an injunction pending appeal to shut down the facility, AA does not have an immigration court nor was ICE removing people directly from that facility. So any hypothetical return to AA

cannot provide an exception to mootness. *E.g.*, *Robbins*, 782 F. App'x at 799 (holding habeas claim moot after transfer "even when there is no assurance that he will not be returned to the jail" (cleaned up)).

Likewise, there is no possibility of applying the doctrine of capable of repetition, yet evading review. *United States v. Sanchez-Gomez*, 584 U.S. 381, 391 (2018). That circumscribed exception only applies "if (1) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subjected to the same action again." *Id.* (citation omitted). Brito Matom cannot satisfy either prong. There is an entire separate class action to litigate any issues related to conditions at AA. And no reasonable expectation exists for Brito Matom to be detained at AA again.

In short, this case is moot to the extent that Brito Matom seeks injunctive or declaratory relief related to anything occurring at AA—including access to counsel. Separately, he now lacks standing to pursue that relief on an individual basis.

"A party has standing to seek injunctive relief only if the party alleges, and ultimately proves, a real and immediate—as opposed to a merely conjectural or hypothetical—threat of future injury." *JW by and through Williams v. Birmingham Bd. Of Educ.*, 904 F.3d 1248, 1264 (11th Cir. 2018) (citation omitted). "Past wrongs serve as evidence of whether there is a real and immediate threat of future injury, but past exposure to illegal conduct does not demonstrate a present case or controversy if unaccompanied by any continuing, present adverse effects." *Id.* (cleaned up). "In assessing whether a future injury is likely to occur, we consider whether the plaintiff is

likely to have another encounter with a government officer due to the same conduct that caused the past injury." *Id.*

To receive prospective relief, there must be a threat of future injury from the same conduct. Yet for Brito Matom, it would be speculative to believe he would be in AA—from which he was transferred before the injunction even took effect. Nor is there any indication El Paso and AA have any similar conditions to one another.

Brito Matom misunderstands ICE's argument. It does not posit transfer moots individual habeas relief related to release from confinement; that is not the law in this Circuit. *Goodman v. Keohane*, 663 F.2d 1044, 1047 (11th Cir. 1981). Rather, ICE contends Brito Matom's transfer moots any habeas relief related to conditions of confinement or treatment at AA; that is the law in this Circuit (and basically every other). *McKinnon*, 745 F.2d at 1363.

At bottom, Brito Matom's transfer from AA leaves the Court without jurisdiction to award him individual equitable relief related to conditions or treatment at that facility. To the extent that the Habeas Petition raises such issues, there is no jurisdictional basis to grant the Writ for such relief.

B. Class Membership

Next, it is now also clear Brito Matom is a named class representative in *C.M.* That case specifically seeks declaratory and injunctive relief for access to counsel on a class-wide basis. To the extent that there is any overlap between the Habeas Petition and *C.M.*, the Court must deny and dismiss.

Rule 23(b)(2) class members have no right to opt out and prosecute an entirely

separate case for injunctive or declaratory relief. *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1554 (11th Cir. 1986); *see also Berry v. Schulman*, 807 F.3d 600, 609 (4th Cir. 2015) ("Rule 23(b)(2) classes are mandatory, in that opt-out rights for class members are deemed unnecessary and are not provided under the Rule." (cleaned up)). It goes without saying named class representatives certainly cannot file separate suits individually seeking any duplicative relief. Class actions would be a pointless endeavor if class reps could individually seek the same relief elsewhere with impunity—which is why such cases have specific, detailed rules for membership and opting out.

Again, Brito Matom misunderstands ICE's position. ICE argued he cannot seek any relief here that would duplicate class injunctive or declaratory relief. *C.M.* is not a habeas case seeking class-wide release of everyone. Brito Matom was free to file a habeas seeking individual review of his detention. Although it disagrees on things like jurisdiction and the merits of the Habeas Petition, ICE never disputed Brito Matom could file that Petition outside *C.M.* ICE merely argues he cannot seek any duplicative relief on an individual basis—which has always been the rule for declaratory and injunctive class actions. Fed. R. Civ. P. 23(c)(2) advisory committee's note to 2003 amendment ("There is no right to request exclusion from a (b)(1) or (b)(2) class.").

The Court cannot exercise jurisdiction over any portion of the Petition that might relate to the *C.M.* class action—where Brito Matom is a class representative.

C. NTA Filing

Finally, ICE filed an NTA with the immigration court and served it on Brito Matom. (Doc. 12-1). An NTA is the formal charging document that begins removal

proceedings under 8 U.S.C. § 1229a. *Perez-Sanchez v. U.S. Attorney General*, 935 F.3d 1148, 1152-53 (11th Cir. 2019). The filing and service of an NTA vests jurisdiction over removal proceedings with the receiving immigration court. *Id.* at 1156; 8 C.F.R. § 1003.14(a); 8 U.S.C. § 1229(a)(1). For Britọ Matom, that immigration court is in Texas. (Doc. 12-1).

As previously argued, ICE must detain aliens pending removal proceedings. (Doc. 9 at 5-7); 8 U.S.C. § 1225(b)(2)(A); *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2016) ("In sum, §§ 1225(b)(1) and (b)(2) mandate detention of aliens throughout the completion of applicable proceedings."); *Pena v. Hyde*, No. 25-11983-NMG, 2025 WL 2108913, at *1-3 (D. Mass. July 28, 2025). Detention is, therefore, lawful and required.

Some courts recently held detention under § 1226(a) would be more appropriate for aliens who have been in the country for some time. *Romero v. Hyde*, No. 25-11631-BEM, 2025 WL 2403827, at *1, 8 (D. Mass. Aug. 19, 2025). There are differences between detention under §§ 1225 and 1226. For one, detention under § 1226 is purely within the DHS Secretary's discretion. *Nielsen v. Preap*, 586 U.S. 392, 397-98 (2019). Another distinction is that DHS regulations (not the statute) allow aliens to seek release pending their removal proceedings at a bond hearing. *Id.*

Here, even if Brito Matom were held under § 1226—which none of his paperwork indicates—ICE can detain him pending removal proceedings. 8 U.S.C. § 1226(a)(1) ("On a warrant issued by the Attorney General, an alien may be arrested and detained pending a decision on whether the alien is to be removed."). Employing its discretion, ICE issued at least one WA. (Ex. 1). The Court specifically lacks

jurisdiction to review that discretionary decision. 8 U.S.C. § 1226(e) ("The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review."). ICE provided Brito Matom with a bond hearing—at which his counsel appeared. (Ex. 2). Then, it filed and served an NTA. (Doc. 12-1). This detention is lawful, and the INA divests the Court of jurisdiction to review custody even if it were discretionary. *E.g.*, *Mayorga v. Meade*, No. 24-cv-22131-BLOOM/Elfenbein, 2024 WL 4298815, at *4-5 (S.D. Fla. Sept. 26, 2024).

With the NTA filed and removal proceedings now underway, Brito Matom's detention is obviously lawful as mandatory under § 1225(b)(2) or at least discretionary under § 1226(a). The only way to grant meaningful relief would be to review and reverse the detention decision—which is beyond the Court's jurisdiction. 8 U.S.C. § 1226(e). Any challenge to detention before removal proceedings finish is premature.

As explained, there is nothing left for the Court to review. It must deny the Writ and dismiss.

Date: August 29, 2025

Respectfully submitted,

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