

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 25-cv-03236-NEB-JFD

Wuilmer Omar Ferrera Bejarano,

Petitioner,

v.

Pamela Bondi, Attorney General, et. al.,

Respondents.

**RESPONSE TO AMENDED
PETITION**

The Respondents Pamela Bondi, Attorney General, Kristi Noem, Secretary of the U.S. Department of Homeland Security, Department of Homeland Security, Todd Lyons, Acting Director of Immigrations and Customs Enforcement, Immigration and Customs Enforcement (“ICE”), Sirce Owen, Acting Director for Executive Office for Immigration Review, Fort Snelling Immigration Court, Executive Office for Immigration Review, Peter Berg, Director of the Fort Snelling Field Office of ICE hereby submit this Response to the Amended Petition (ECF No. 24). Respondents respectfully request that this Court deny Petitioner Wuilmer Omar Ferrera Bejarano’s (“Ferrera”) Petition as moot because he is no longer in custody, and the new relief he seeks is also moot. To the extent Ferrera seeks prospective relief on prospective claims that are not ripe, the new claims in his Amended Petition should also be denied.

RELEVANT BACKGROUND

I. Petitioner is No Longer in Custody.

On August 19, 2025, ICE set bond conditions for Ferrera and prepared for his release from ICE custody. (Declaration of William J. Robinson (“Robinson Decl.”) ¶ 4, Ex. A.) He was released from ICE custody on the next day, August 20, 2025, on bond in the amount

of \$20,000. (*Id.* ¶ 5, Ex. B.) Ferrera is currently still in removal proceedings. (*Id.* ¶ 6.) It is undisputed that Ferrera is out of custody. (*See* ECF No. 24 at ¶ 76.)

II. The Amended Petition

On September 22, 2025, Ferrera filed an Amended Petition removing references to Ferrera's detention. (*See, e.g.*, ECF No. 24-1 at ¶¶ 5, 9, 14, 17, 30.) Though Ferrera was released (ECF No. 24-1 at ¶¶ 75-78; Robinson Decl. ¶ 5), he nonetheless seeks prospective relief in the form of "permanent injunctive relief" (ECF No. 24-1 at ¶¶ 10, 39, 161) and "a declaratory judgment pursuant to 28 U.S.C. § 2201 that *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025) is invalid as it is inconsistent with the text and structure of the INA." (ECF No. 24-1 ¶ 191.) In addition to amending Counts I-IV to account for his release from custody, he asks that the Court find that, under the Administrative Procedure Act, the *Hurtado* BIA decision is "inconsistent with the text and structure of 8 U.S.C. §§ 1225(b)(2)(A); 1226(a), and the INA." (ECF No. 24-1 at ¶ 227; *see also id.* at Prayer for Relief ¶ 8.) He also asks that the preliminary injunction be made permanent. (ECF No. 24-1 at Prayer for Relief ¶ 9.)

III. Procedural History

Petitioner filed an emergency petition for a writ of habeas corpus on August 12, 2025 (ECF No. 1) and an emergency motion for a temporary restraining order the next day (ECF No. 5.) This Court ordered Respondents to file a response to the TRO motion on August 14, 2025 (ECF No. 11). The TRO motion was heard on August 18, 2025. (ECF Nos. 17-18.)

At the hearing on August 18, 2025, the Court converted the TRO motion into a motion for preliminary injunction and granted the preliminary injunction, enjoining Respondents from invoking the automatic stay provision of 8 C.F.R. § 1003.19(i)(2) and ordering Ferrera released from custody on \$20,000 bond. (ECF No. 17; ECF No. 23 at 36:2-11.)

In accordance with the order on the parties' consent motion for extension of time, Ferrera filed an Amended Petition on September 22, 2025 (ECF No. 24.) Respondents' response to the Amended Petition is timely. (*See* ECF No. 22.)

ARGUMENT

Because Ferrera was released and is no longer in custody, there is no present case in controversy and his claims related to detention should be denied as moot. Further, given Ferrera is no longer in custody, any basis he may have had to seek prospective relief in the form of a declaratory judgment that the *Hurtado* BIA decision was wrongfully decided is also moot. To the extent Ferrera seeks to use his amended petition as a shield against future detention, these claims should be denied as improper prospective relief. The Amended Petition should be denied in its entirety.

I. Petitioner's Amended Claims Related to Detention are Moot.

The Amended Petition should now be dismissed because the principal issue raised – the legality of Petitioner's continued detention – has been rendered moot by Ferrera's release from custody. (*See* Robinson Decl. ¶ 5, Ex. B.) In addressing this precise question, Chief Judge Patrick Schiltz held that release of a post-removal detainee mooted his habeas petition. *Kargbo v. Brott*, No. 15-cv-2713 (PJS/LIB), 2016 WL 3676162 * 2 (D. Minn.

July 6, 2016). Judge Schiltz reasoned that even if the Court were to retain jurisdiction and grant the petition, the Petitioner would find himself in exactly the same position he is in now. “Absolutely nothing would change. This is the very definition of mootness.” *Id.*

The Court evaluated each of the most common exceptions to the mootness doctrine: 1) whether collateral consequences pertain to supervised release; 2) whether the injury was capable of repetition yet evading review; 3) whether voluntary cessation of the offensive conduct was taken only to deprive the Court of jurisdiction; and 4) whether there is a certified class at issue. Judge Schiltz found that none of these exceptions applied to allow the Court to review the petition. *Id.* at *2-3. Exception four undoubtedly does not apply here.

Addressing exceptions two and three first, Judge Schiltz’s reasoning makes clear that these would not allow the Court to retain jurisdiction here. Like the Petitioner in *Kargbo*, Ferrara was released. (*See* Robinson Decl. ¶ 5, Ex. B; ECF No. 24 ¶ 76.) If there were a change and Ferrara ended up in custody again, it would be a new custody with new facts and circumstances for the Court to consider. Ferrara would be free to bring a new habeas petition addressing the alleged deficiencies in his renewed detention. *See id.* at *2. Neither exception applies because “[i]t is now impossible for the government to repeat the *same* unlawful conduct that [Petitioner] challenged.” *Id.* Nor can he use this instant habeas petition as a shield to avoid future detention on new grounds. (*Cf.* ECF No. 24-1 at ¶¶ 10, 39, 161.)

Likewise, the Eighth Circuit, addressing the same question, dismissed a habeas petition as moot. *Ali v. Cangemi*, 419 F.3d 722, 724 (8th Cir. 2005). In *Ali*, the Eighth Circuit discussed two variants of mootness: Article III mootness and prudential mootness. Noting the petitioner's release could, but did not automatically, moot the habeas petition in the Article III sense, *see Spencer v. Kemna*, 523 U.S. 1, 7 (1998), the court still found the case "prudentially moot." *Ali*, 419 F.3d at 724. This "cousin of the mootness doctrine" allows a court to treat the case as moot for practical purposes. The Eighth Circuit found the case prudentially moot resulting, in part, from its "inability to provide an effective remedy at this time." *Id.* The facts in *Ali* differed from the facts here, because the petitioner had been released accidentally by ICE, and ICE put forward evidence of an intent to re-detain Ali as soon as he was located. Even with that important factual distinction, the Eighth Circuit *still* found the case moot. *Ali*, 419 F.3d at 724.

Additionally, Ferrara attempts to use this habeas proceeding to obtain a finding that the *Hurtado* BIA decision constitutes an improper interpretation of 8 U.S.C. §§ 1225, 1226. (ECF No. 24-1 at ¶¶ 191, 227; *see also id.* at Prayer for Relief ¶ 8.) Given he is not in custody, any factual basis he would have had to challenge *Hurtado* is now moot. *See, e.g., Sirlef, v. Secretary*, No. 17-cv-4126, 2018 WL 3407697, at *1 (D. Minn. Jun. 19, 2018) (collecting cases on mootness), *report and recommendation adopted*, 2018 WL 3404154 (D. Minn. Jul. 12, 2018). The Amended Petition is subject to dismissal for want of ongoing jurisdiction.

II. Petitioner's Request for Prospective Relief Should Be Denied.

In his amended petition, Ferrera appears to seek an order prohibiting him from being detained if he is re-arrested by ICE. Federal courts can adjudicate only action, ongoing cases or controversies. *See* U.S. CONST. art. III, §2, cl. 1; *Am. United for Separation of Church and State v. Prison Fellowship Ministries*, 509 F.3d 406, 420-21 (8th Cir. 2007); *see also Pitts v. Terrible Herbst, Inc.*, 653 F.3d 1081, 1086 (9th Cir. 2011). A federal court may not render advisory opinions and may not “decide questions that cannot affect the rights of litigants in the case before them.” *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975). These principles apply here with full force. Given he is not in custody and his removal proceedings are ongoing (Robinson Decl. ¶ 6), this claim is not ripe. Nor is it justified given the absence of any factual basis for granting such relief. *See, e.g., Ali*, 419 F.3d at 724.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court dismiss the Amended Petition.

Dated: October 14, 2025

DANIEL N. ROSEN
United States Attorney
s/Erin M. Secord
BY: ERIN M. SECORD
Assistant U.S. Attorney
Attorney ID No. 0391789
Email: erin.secord@usdoj.gov
600 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
612-664-5600
Attorneys for Federal Respondents