



**U.S. Department of Justice**

United States Attorney  
District of New Jersey  
*Civil Division*

ALINA HABBA  
ACTING UNITED STATES ATTORNEY

*Frances C. Bajada*  
Assistant United States Attorney

970 Broad Street, Suite 700  
Newark, New Jersey 07102  
*frances.bajada@usdoj.gov*

*main: (973) 645-2700*  
*direct: (973) 297-2038*

November 14, 2025

**Via ECF**

Honorable Brian R. Martinotti  
United States District Judge  
Martin Luther King Jr. United States Courthouse  
50 Walnut Street  
Newark, New Jersey 07102

**Re: *Calderon v. Bondi, et al.*, Civil No. 25-14827 (BRM)  
Respondents' Reply Regarding Mootness**

Dear Judge Martinotti:

This Office represents Respondents in the above immigration habeas matter filed by Petitioner. At the Court's direction, ECF 16, we respectfully file this reply in further support of dismissal on mootness grounds.

Petitioner filed this action on September 5, 2025, asserting that his detention was unlawful because his "removal from the United States cannot be effectuated in the reasonably foreseeable future." Pet. ¶ 13, ECF 3. However, U.S. Customs and Immigration Enforcement ("ICE") removed Petitioner to Mexico pursuant to a final order of removal on September 26, 2025. ECF 14. Respondents accordingly requested that the Court dismiss the petition as moot. *Id.*

Petitioner filed an opposition, asserting that the matter is not moot because Respondents continue to detain Petitioner "actually or constructively," and Petitioner should be returned to the United States. *See* ECF 15, Opp'n at 13. Specifically, Petitioner argues "that this case is not moot and that the Court continues to possess jurisdiction to consider [his] habeas petition because he is still under the constructive detention of the Respondents and that there are remaining collateral consequences that would require adjudication of his habeas complaint by this Court." Opp'n at 5. Neither argument has merit.

First, Petitioner is not in ICE custody or in constructive detention. Petitioner concedes that ICE removed Petitioner to Mexico in September. He thus is not in ICE custody. But he is not in ICE's constructive custody either. Petitioner argues that ICE has "farmed out Petitioner's detention to Mexican authorities[.]" Opp'n at 5. That is incorrect.

The main case Petitioner relies on, *Abu Ali v. Ashcroft*, 350 F. Supp. 2d 28 (D.D.C. 2004), describes the doctrine of constructive detention, and its description makes clear why the doctrine cannot apply here. The Court held that constructive detention occurred when the FBI directed Saudi law enforcement to arrest a U.S. citizen in Saudi Arabia, the FBI directed Saudi officials to detain him, and the FBI had the power to release or continue the detention in Saudi Arabia. *Id.* at 38. He was held indefinitely in a foreign prison "without charge, explanation for his detention, or access to counsel since the time of his arrest" a year prior. *Id.* The Court held that physical custody—i.e., "in physical control of the respondent"—is not required for habeas jurisdiction: "It is enough that the imprisoning sovereign is the respondent's agent; that his liberty is restrained by the respondent's parole conditions; or that he can point to some continuing collateral disability which is the result of the respondent's action." *Id.* at 47 (quoting *Steinberg v. Police Court of Albany, N.Y.*, 610 F.2d 449, 453 (6th Cir. 1979)). The Court collected cases illustrating that principle, such as imprisonment in one state while subject to detention in another state, parole on supervised release, and release pending sentencing. *Id.* at 47-48 (collecting cases).

None of those exist here. Petitioner is not imprisoned by a foreign sovereign, is not subject to detention in Mexico, is not awaiting sentencing by Mexican officials, and is not subject to terms or supervision of release into Mexico. Accordingly, Petitioner is not in the constructive custody of ICE. *See Howard v. Warden*, 776 F.3d 772, 775 (11th Cir. 2015) ("Although the word 'custody' is elastic, all definitions of it incorporate some concept of ongoing control, restraint, or responsibility by the custodian."); *see also Peralta v. U.S. Immigr. & Customs Enft.*, No. 10-0669, 2011 WL 282430, at \*1 (N.D. Okla. Jan. 25, 2011) ("In this case, as a result of petitioner's removal to Mexico, he is no longer in ICE custody and it is impossible for the Court to grant the requested relief: release from ICE custody.")

Second, Petitioner argues that he is facing collateral consequences from his removal to Mexico. That is also incorrect. Petitioner must establish a secondary or collateral injury that survives after resolution of the primary injury. *Barrios v. Bondi, et al.*, No. 25-15122 (EP), ECF 14, Opinion at 6 (holding petition moot after removal) (quoting *Chong v. Dist. Dir., I.N.S.*, 264 F.3d 378, 384 (3d Cir. 2001)). Here, Petitioner's primary injury was release from immigration detention because his removal was not likely to occur. *See* Pet. ¶ 13. That primary injury became moot upon his release in Mexico. As for collateral injuries, he points to his lack of travel documents and identification and to country conditions in Mexico. However, these are not valid "collateral consequences," because they are alleged harms related to

removal not to his detention. *See Rios-Bamac v. Lynch*, No. 19-01939, 2019 WL 13214051, at \*5 (D. Colo. Nov. 20, 2019) (rejecting collateral consequence argument based on removal to Mexico “jeopardize[ing] her safety” because “the lens through which the court must consider any secondary or collateral injury must be the alleged illegal detention, and the secondary and collateral injuries Petitioner complains of result not from Ms. Rios-Bamac’s detention but her removal”; original emphasis); *see also Rodriguez-Olalde v. United States*, No. 20-1102, 2021 WL 1169712, at \*3 (D.N.M. Mar. 26, 2021) (rejecting collateral consequence argument based on dangers in Mexico because court could not modify petitioner’s detention or other fashion a habeas remedy).

Moreover, Petitioner argues often that his lawful removal was somehow an impermissible effort to skirt review. *See Opp’n* at 9-10. But Petitioner participated in a lengthy removal proceeding before an immigration judge, where he was entitled to various forms of process and constitutional protection. The court ordered him removed and his order of removal became final after he exhausted appellate review. When ICE removed Petitioner, he was not subject to a stay of removal by this Court, the immigration court, the Board of Immigration Appeals, or the Third Circuit. Nor was he granted relief from removal to Mexico based on fear of persecution or torture. Accordingly, ICE removed Petitioner lawfully to Mexico.

Lastly, Petitioner’s claimed relief—return to the United States without detention—fails because courts lack the power to order it. Doing so would invalidate a final order of removal. *See Yearwood v. Barr*, 391 F. Supp. 3d 255, 263 (S.D.N.Y. 2019) (“The ultimate relief that the petitioner seeks—an order returning him to the United States and preventing the respondents from detaining him or removing him during the pendency of any appeals—is a direct challenge to the order of removal, regardless of the fact that the petitioner frames his claim as a challenge to the process through which he was removed . . . And by its plain terms, 8 U.S.C. § 1252(g) strips district courts of jurisdiction over claims attacking the Government’s decisions or actions to execute removal orders.”) (citing *Vasquez v. Aviles*, No. 15-2341, 2015 WL 1914728, at \*2 (D.N.J. Apr. 24, 2015), *aff’d*, 639 F. App’x 898 (3d Cir. 2016)); *H.T. v. Warden, Stewart Det. Ctr.*, No. 20-146, 2020 WL 12656230, at \*4 M.D. Ga. Dec. 29, 2020) (rejecting habeas relief via return to United States because “Petitioner’s proposed remedy—that he be declared in Respondents custody and returned to the United States—is the opposite of release from custody.”).

Accordingly, Respondents respectfully request that the Court dismiss the Amended Habeas Petition for lack of subject matter jurisdiction. We thank the Court for its consideration of this matter.

Respectfully submitted,

TODD BLANCHE  
U.S. Deputy Attorney General

ALINA HABBA  
Acting United States Attorney  
Special Attorney

By: *s/Frances C. Bajada*  
FRANCES C. BAJADA  
Assistant United States Attorney  
*Attorneys for Respondents*

cc: Counsel of record (ECF)