

United States District Court
Western District of Texas
El Paso Division

Enzzo Enmanuel de Jesus Lopez-Arevelo,
Petitioner,

v.

No. 3:25-CV-00337-KC

Kristi Noem, in her official capacity as
Secretary, U.S. Department of Homeland
Security *et al*,
Respondents.

**Federal Respondents' Response to
Petitioner's Writ of Habeas Corpus**

Statement of Issues

- 1.) Does the Petitioner name the correct custodian in this matter?**
- 2.) Is the Petitioner's Claim Premature Given His Lack of Exhaustion of all Administrative Remedies?**
- 3.) Does the Court Lack Jurisdiction to Review Custody Determination?**
- 4.) Did the Respondent violate Petitioner's Due Process?**

I. Introduction

Federal Respondents timely submit this response per this Court’s Order, directing service and ordering a response no later than September 2, 2025. *See* ECF No. 11. Petitioner, who remains in removal proceedings before the Board of Immigration Appeals (BIA), filed this petition after only two weeks in detention. *Id.*

Petitioner claims that his pre-removal-order detention is unlawful because he is being deprived of his right to apply for asylum. ECF No. 1 ¶¶ 64–69. Petitioner alleges two principal violations: (1) a procedural due process violation, because the government is depriving him of his right to apply for asylum; and (2) a violation of the Suspension Clause, because Petitioner cannot seek habeas review if he is summarily removed without an opportunity to be heard. *Id.* at 13–16. In his Prayer for Relief, Petitioner seeks an order for Respondents to, *inter alia*, (1) “provide all documents relevant to efforts made to deport [Petitioner] to Venezuela, Mexico, or any other country”; and (2) immediately release Petitioner from their custody. *Id.* at 16. This petition should be denied. Petitioner is lawfully detained in removal proceedings as an alien present in the United States without inspection or parole while his appeal is pending before the BIA. *See* ECF No. 1 ¶¶ 3, 27; 8 U.S.C. § 1229a; Ex. B (Order of Dismissal); Ex. C (BIA Filing Receipt).¹ ICE denies any allegation that Petitioner is currently subject to a final order of removal.

II. Facts and Procedural History

Petitioner is a native and citizen of Venezuela. ECF No. 1 ¶ 10; Ex. A (NTA). He entered the United States unlawfully in California on August 8, 2022, and was neither admitted nor

¹ Petitioner remains in removal proceedings under INA § 240, 8 U.S.C. § 1229a until the BIA rules on the pending appeal of the order terminating removal proceedings. *See* 8 U.S.C. §§ 1182(d)(5); 1225(b)(2)(A); 1229a.

paroled² after inspection. *Id.* U.S. Border Patrol issued a Notice to Appear (NTA) on or about August 10, 2022, and served it on Petitioner in person the same day. *Id.* The NTA notified Petitioner of the allegations and charge against him and ordered his appearance before an immigration judge on January 30, 2023, in Miami, Florida. *Id.* The NTA provided oral notice in Spanish of the time and place of the hearing and of consequences of failure to appear. *Id.* The NTA was filed with the immigration court on the same day it was issued and served, commencing³ removal proceedings under INA § 1229a on August 10, 2022. *Id.* (showing EOIR time/date stamp).

On August 8, 2025, Petitioner appeared in person for his first removal hearing in Miami, Florida. *See* Ex. B (Order of Dismissal). At the hearing, counsel for Immigration and Customs Enforcement (ICE) moved the court to dismiss the removal proceedings, arguing that such proceedings were no longer in the best interest of the government. *Id.* Petitioner objected to ICE's motion, arguing that he wanted to pursue various forms of relief in removal proceedings. *Id.* The Court granted the motion to dismiss over objection. *Id.* Petitioner, through counsel, filed a notice of appeal with the BIA on or about August 15, 2025. Ex. C (BIA Filing Receipt).

Petitioner claims he was taken into custody at the immigration court on the day of the hearing and detained for five days in South Florida. ECF No. 1 ¶¶ 1, 54–56. Petitioner was then transferred to El Paso, Texas, where he remains detained in ICE custody. *Id.* On or about August 26, 2025, Petitioner, through counsel, filed the instant petition for writ of habeas corpus. ECF Nos. 1, 2. The petition did not include a motion for temporary restraining order (TRO), but Petitioner

² Petitioner alleges he was “paroled,” but he does not support this allegation with a citation or any supporting evidence. *See* ECF No. 1 at ¶ 1.

³ Petitioner argues erroneously that his removal proceedings did not commence until years later. *See* ECF No. 1 at ¶ 1.

did request a TRO in his prayer for relief. *See* ECF No. 1 at 16.

In his petition, Petitioner argues broadly that he is being prevented from applying for asylum, contrary to his due process rights. *See e.g.*, ECF No. 1 ¶¶ 25–26, 29. Petitioner claims that ICE’s decision to dismiss his removal proceedings in favor of pursuing an expedited removal order deprives him of this protected due process right. *Id.* ¶¶ 30–43. Nonetheless, Petitioner acknowledges that claims to asylum can be made defensively before the immigration court where his proceedings remain ongoing, affirmatively through U.S. Citizenship and Immigration Services, and even through a limited review process in expedited removal proceedings. *See, e.g.*, ECF No. 1 ¶¶ 21–26, 29, 32, 35–36, 64–69. He claims, but does not provide any supporting documentation to prove, that he has an asylum application pending. *Id.* ¶¶ 1–4, 10, 46. Petitioner, through counsel, further alleges “on information and belief” that Petitioner was coerced into signing “deportation papers” on August 21, 2025. ECF No. 1 ¶ 57. Petitioner does not elaborate on the basis for that belief. *Id.*

The Court granted a TRO on the date of filing, enjoining Petitioner’s removal from the Western District of Texas and/or the United States through 11:59pm on September 8, 2025. ECF No. 11. The Court scheduled an evidentiary hearing for the same day and ordered a response to the show cause order no later than today, September 2, 2025. *Id.*

III. Petitioner Names the Wrong Custodian.

Petitioner fails to name his immediate custodian in this habeas petition. ICE has authority over custody decisions for aliens detained in civil immigration custody under Title 8 of the U.S. Code, but the immediate custodian must be named as a respondent to the petition. *See, e.g., Rumsfeld v. Padilla*, 542 U.S. 426, 439–40 (2004); *Aguilar v. Johnson*, No. 3:25–CV–1904–K–BN, 2025 WL 2099201 at *1–2 (N.D. Tex. July 25, 2025) (collecting cases and citing *M.A.P.S. v.*

Garite, --- F.R.D. ---, EP-25-00171-DB, 2025 WL 1479504 *6 (W.D. Tex. May 22, 2025)).

Petitioner concedes he is detained in Texas, but he names the ICE Field Office Director (FOD) for the Miami Field Office. ECF No. 1 ¶¶ 10–11. Petitioner acknowledges that the area of responsibility for the Miami Office covers Florida, Puerto Rico, and the U.S. Virgin Islands. *Id.* Petitioner does not explain how the Miami FOD is the proper legal custodian of Petitioner when Petitioner has been detained in El Paso, Texas, since at least the date he filed this petition. *Id.* Petitioner does not name any local custodian in El Paso, Texas. *Id.*

IV. This Claim is Premature Because Petitioner Has Not Exhausted Administrative Remedies.

Petitioner’s appeal of the order dismissing his removal proceedings is only recently pending before the BIA. See Ex. C (Filing Receipt dated August 8, 2025). In pursuing his administrative appeal, Petitioner is using the process afforded to him under the INA. Indeed, the BIA could overturn the immigration judge’s order and moot this claim altogether. As such, Petitioner has not been deprived of any due process rights, as his removal proceedings remain pending. Relatedly, Petitioner does not explain how his asylum application that has been allegedly pending for years is no longer reviewable. Finally, Petitioner’s “information and belief” that he has signed “deportation paperwork” is rebutted by the active BIA appeal of the order terminating his removal proceedings. Petitioner is not subject to a final order of removal.

In any event, Petitioner must exhaust administrative remedies prior to raising this issue in district court. *Hinojosa v. Horn*, 896 F. 3d 305, 314 (5th Cir. 2018). Appealing to the BIA is not futile in this case, because the issue on appeal is whether, as a factual matter, the Court was within its discretion to grant the government’s motion to dismiss. If the BIA disagrees with the immigration judge, the removal proceedings will be remanded to the immigration judge for further review. In other words, the BIA can provide Petitioner the remedy he seeks, such that exhaustion

of remedies is not futile in this case. *See Petgrave v. Aleman*, 529 F.Supp.3d 665, 672 n. 14 (S.D. Tex. 2021) (finding futility where the BIA could not remedy the constitutional claim and where the detention had already become prolonged). This habeas petition is speculative and, at best, premature. The Court should deny the petition.

V. This Court Lacks Jurisdiction to Review This Custody Decision.

The government's detention decisions are not subject to review. 8 U.S.C. § 1226(e). No court, even in habeas review, may set aside any decision regarding the detention or release of an alien or the grant, revocation, or denial of bond or parole. *Id.* § 1252(a)(5). Additionally, "no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." 8 U.S.C. § 1252(g). Section 1252(g) applies "to three discrete actions that the Attorney General may take: [the] 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999) (emphasis in original). ICE's decision to dismiss "full" removal proceedings against Petitioner and arrest him pending an appeal of that decision is intertwined with the decision to commence (expedited) removal proceedings against him. As such, Petitioner's attack on ICE's custody decision should be denied for lack of subject matter jurisdiction.

While "the Fifth Amendment entitles aliens to due process of law in deportation proceedings, ... this Court has recognized detention during deportation proceedings as a constitutionally valid aspect of the deportation process." *Demore v. Kim*, 538 U.S. 510, 523 (2003). While as-applied constitutional challenges to immigration detention may be brought under certain circumstances, there is no colorable claim articulated in this habeas petition that Petitioner's pre-

removal-order detention is unconstitutional. *See, e.g., Jennings v. Rodriguez*, 583 U.S. 281, 312 (2018). His pre-removal-order detention is not prolonged; he has been detained as an applicant for admission for less than 30 days.

Still, Petitioner argues without authority that ICE's actions here violate procedural due process because he claims entitlement to seek asylum in "full" removal proceedings. But an "expectation of receiving process is not, without more, a liberty interest protected by the Due Process Clause." *Olim v. Wakinekona*, 461 U.S. 238, 250 n. 12 (1983). The Supreme Court has held that applicants for admission such as Petitioner are entitled only to the protections set forth by statute and that "the Due Process Clause provides nothing more." *Department of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 140 (2020).

As the law provides, the immigration judge gave Petitioner an opportunity to respond to the government's motion to dismiss, and Petitioner made his opposition clear. *See* Ex. C (Order). The immigration court noted in the dismissal order that aliens do not have "a due process right to be in, and remain in, removal proceedings." *Id.* (collecting administrative appellate decisions). Still, the immigration judge reviewed the record and noted Petitioner's objections to the motion, but ultimately found that (1) although Petitioner wanted to pursue certain relief options, he did not appear *prima facie* eligible for certain relief; (2) there were no relief applications pending before the court; (3) there were no denied benefit petitions pending review before the court; and (4) to the extent any relief application was pending before USCIS, the court did not have jurisdiction over it. *Id.* In other words, Petitioner received robust procedural due process protections in his immigration court hearing, including the right to seek appellate review of the court's order. The BIA will necessarily decide whether the dismissal order was proper. Even if the BIA upholds the dismissal order, this Court's scope of review, if any, is limited under *Thuraissigiam* to whether

Petitioner, as an applicant for admission on the threshold of entry to the United States, received due process of law as defined in the INA. Until that appeal is decided, the claim is not ripe for review in this Court.⁴

VI. No Due Process Violation

Even if it were ripe, Petitioner has no colorable claim to a due process violation. Petitioner would need to show that he was deprived of liberty without adequate safeguards. *See, e.g., Mathews v. Eldridge*, 424 U.S. 319, 332 (1976); *Daniels v. Williams*, 474 U.S. 327, 331 (1986). The Fifth Circuit finds no procedural due process violation where the constitutional minima of due process is otherwise met. *Murphy v. Collins*, 26 F.3d 541, 543 (5th Cir. 1994). In any event, a remedy for a procedural due process violation is substitute process. *Mohammad v. Lynch*, No. EP-16-CV-28-PRM, 2016 WL 8674354, at *6 n.6 (W.D. Tex. May 24, 2016) (finding no merit to petitioner's procedural due process claim where the evidence demonstrated that the review had already occurred, thereby redressing any delay in the provision of the 90-day and 180-day custody reviews). Even in the criminal context, failure to comply with statutory or regulatory time limits does not mandate release of a person who should otherwise be detained. *U.S. v. Montalvo-Murillo*, 495 U.S. 711, 722 (1990).

ICE denies that Petitioner has been deprived of any due process rights. Even if he had, the remedy for such a violation would be a redo of the process, not release from custody. This claim should be denied.

VII. Conclusion

⁴ To the extent this Court rejects Respondents' exhaustion argument, Federal Respondents respectfully request additional time to prepare and file a supplemental brief on the merits.

Petitioner is lawfully detained pending removal proceedings, and he does not claim any immigration status that would entitle him to release from custody. The immigration court already gave Petitioner an opportunity to respond to the government's motion to dismiss the removal proceedings, and the court found that the government's bases for dismissal outweighed Petitioner's objections. Petitioner was provided an opportunity to seek appellate review of that decision, and the appeal is pending. Accordingly, the Court should deny this petition for failure to exhaust administrative remedies, or alternatively, because the due process claim fails on the merits. Additionally, ICE denies that there is any final order of removal in effect, so Petitioner's claim under the Suspension Clause fails as a matter of law.

Respectfully submitted,

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DEPARTMENT OF HOMELAND SECURITY
NOTICE TO APPEAR

In removal proceedings under section 240 of the Immigration and Nationality Act:

Subject ID: [REDACTED] FINS #: [REDACTED] File No: [REDACTED] 661
In the Matter of: [REDACTED] DOB: [REDACTED] 7/1986 Event NO: [REDACTED]
Respondent: ENMANUEL DE JES LOPEZ-AREVALO currently residing at:

(Number, street, city, state and ZIP code)

(Area code and phone number)

- ☐ You are an arriving alien.
- ☒ You are an alien present in the United States who has not been admitted or paroled.
- ☐ You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:

1. You are not a citizen or national of the United States;
2. You are a native of VENEZUELA and a citizen of VENEZUELA ;
3. You arrived in the United States at or near CALEXICO, CA , on or about August 8, 2022 ;
4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

212(a) (6) (A) (i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

- ☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.
- ☐ Section 235(b)(1) order was vacated pursuant to: ☐ 8CFR 208.30 ☐ 8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:

333 SOUTH MIAMI AVE., STE. 700 MIAMI, FL 33130

(Complete Address of Immigration Court, including Room Number, if any)

on January 30, 2023 at 01:00 PM to show why you should not be removed from the United States based on the
(Date) (Time)

charge(s) set forth above.

WILLIAM LE VIER

ACTING/WAT

(Signature and Title of Issuing Officer) (Sign in ink)

Date: August 10, 2022

Indio, California

(City and State)

WILLIAM LE VIER
Date: 2022.08.10 09:27 -07:00
U.S. DEPARTMENT OF HOMELAND SECURITY
ICE/CBP

Notice to Respondent

Warning: Any statement you make may be used against you in removal proceedings.

Alien Registration: This copy of the Notice to Appear served upon you is evidence of your alien registration while you are in removal proceedings. You are required to carry it with you at all times.

Representation: If you so choose, you may be represented in this proceeding, at no expense to the Government, by an attorney or other individual authorized and qualified to represent persons before the Executive Office for Immigration Review, pursuant to 8 CFR 1003.16. Unless you so request, no hearing will be scheduled earlier than ten days from the date of this notice, to allow you sufficient time to secure counsel. A list of qualified attorneys and organizations who may be available to represent you at no cost will be provided with this notice.

Conduct of the hearing: At the time of your hearing, you should bring with you any affidavits or other documents that you desire to have considered in connection with your case. If you wish to have the testimony of any witnesses considered, you should arrange to have such witnesses present at the hearing. At your hearing you will be given the opportunity to admit or deny any or all of the allegations in the Notice to Appear, including that you are inadmissible or removable. You will have an opportunity to present evidence on your own behalf, to examine any evidence presented by the Government, to object, on proper legal grounds, to the receipt of evidence and to cross examine any witnesses presented by the Government. At the conclusion of your hearing, you have a right to appeal an adverse decision by the immigration judge. You will be advised by the immigration judge before whom you appear of any relief from removal for which you may appear eligible including the privilege of voluntary departure. You will be given a reasonable opportunity to make any such application to the immigration judge.

One-Year Asylum Application Deadline: If you believe you may be eligible for asylum, you must file a Form I-589, Application for Asylum and for Withholding of Removal. The Form I-589, Instructions, and information on where to file the Form can be found at www.uscis.gov/i-589. Failure to file the Form I-589 within one year of arrival may bar you from eligibility to apply for asylum pursuant to section 208(a)(2)(B) of the Immigration and Nationality Act.

Failure to appear: You are required to provide the Department of Homeland Security (DHS), in writing, with your full mailing address and telephone number. You must notify the Immigration Court and the DHS immediately by using Form EOIR-33 whenever you change your address or telephone number during the course of this proceeding. You will be provided with a copy of this form. Notices of hearing will be mailed to this address. If you do not submit Form EOIR-33 and do not otherwise provide an address at which you may be reached during proceedings, then the Government shall not be required to provide you with written notice of your hearing. If you fail to attend the hearing at the time and place designated on this notice, or any date and time later directed by the Immigration Court, a removal order may be made by the immigration judge in your absence, and you may be arrested and detained by the DHS.

Mandatory Duty to Surrender for Removal: If you become subject to a final order of removal, you must surrender for removal to your local DHS office, listed on the internet at <http://www.ice.gov/contact/ero>, as directed by the DHS and required by statute and regulation. Immigration regulations at 8 CFR 1241.1 define when the removal order becomes administratively final. If you are granted voluntary departure and fail to depart the United States as required, fail to post a bond in connection with voluntary departure, or fail to comply with any other condition or term in connection with voluntary departure, you must surrender for removal on the next business day thereafter. If you do not surrender for removal as required, you will be ineligible for all forms of discretionary relief for as long as you remain in the United States and for ten years after your departure or removal. This means you will be ineligible for asylum, cancellation of removal, voluntary departure, adjustment of status, change of nonimmigrant status, registry, and related waivers for this period. If you do not surrender for removal as required, you may also be criminally prosecuted under section 243 of the Immigration and Nationality Act.

U.S. Citizenship Claims: If you believe you are a United States citizen, please advise the DHS by calling the ICE Law Enforcement Support Center toll free at (855) 448-6903.

Sensitive locations: To the extent that an enforcement action leading to a removal proceeding was taken against Respondent at a location described in 8 U.S.C. § 1229(e)(1), such action complied with 8 U.S.C. § 1367.

Request for Prompt Hearing

To expedite a determination in my case, I request this Notice to Appear be filed with the Executive Office for Immigration Review as soon as possible. I waive my right to a 10-day period prior to appearing before an immigration judge and request my hearing be scheduled.

Before:

Enrique Lopez

(Signature of Respondent) (Sign in ink)

RODOLFO AVITIA

Date: 2022.08.10 08:04:20 -0700

(803702768.CBP)

BORDER PATROL AGENT

Date: 08/10/2022

(Signature and Title of Immigration Officer) (Sign in ink)

Certificate of Service

This Notice To Appear was served on the respondent by me on August 10, 2022, in the following manner and in compliance with section 239(a)(1) of the Act.

- ☒ in person ☐ by certified mail, returned receipt # _____ requested ☐ by regular mail
- ☐ Attached is a credible fear worksheet.
- ☒ Attached is a list of organization and attorneys which provide free legal services.

The alien was provided oral notice in the SPANISH language of the time and place of his or her hearing and of the consequences of failure to appear as provided in section 240(b)(7) of the Act.

Enrique Lopez

(Signature of Respondent if Personally Served) (Sign in ink)

RODOLFO AVITIA

Date: 2022.08.10 08:04:22 -0700

RODOLFO AVITIA, BORDER PATROL AGENT

(803702768.CBP)

(Signature and Title of officer) (Sign in ink)

Authority:

The Department of Homeland Security through U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and U.S. Citizenship and Immigration Services (USCIS) are authorized to collect the information requested on this form pursuant to Sections 103, 237, 239, 240, and 290 of the Immigration and Nationality Act (INA), as amended (8 U.S.C. 1103, 1229, 1229a, and 1360), and the regulations issued pursuant thereto.

Purpose:

You are being asked to sign and date this Notice to Appear (NTA) as an acknowledgement of personal receipt of this notice. This notice, when filed with the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), initiates removal proceedings. The NTA contains information regarding the nature of the proceedings against you, the legal authority under which proceedings are conducted, the acts or conduct alleged against you to be in violation of law, the charges against you, and the statutory provisions alleged to have been violated. The NTA also includes information about the conduct of the removal hearing, your right to representation at no expense to the government, the requirement to inform EOIR of any change in address, the consequences for failing to appear, and that generally, if you wish to apply for asylum, you must do so within one year of your arrival in the United States. If you choose to sign and date the NTA, that information will be used to confirm that you received it, and for recordkeeping.

Routine Uses:

For United States Citizens, Lawful Permanent Residents, or individuals whose records are covered by the Judicial Redress Act of 2015 (5 U.S.C. § 552a note), your information may be disclosed in accordance with the Privacy Act of 1974, 5 U.S.C. § 552a(b), including pursuant to the routine uses published in the following DHS systems of records notices (SORN): DHS/USCIS/ICE/CBP-001 Alien File, Index, and National File Tracking System of Records, DHS/USCIS-007 Benefit Information System, DHS/ICE-011 Criminal Arrest Records and Immigration Enforcement Records (CARIER), and DHS/ICE-003 General Counsel Electronic Management System (GEMS), and DHS/CBP-023 Border Patrol Enforcement Records (BPER). These SORNs can be viewed at <https://www.dhs.gov/system-records-notices-sorn>. When disclosed to the DOJ's EOIR for immigration proceedings, this information that is maintained and used by DOJ is covered by the following DOJ SORN: EOIR-001, Records and Management Information System, or any updated or successor SORN, which can be viewed at <https://www.justice.gov/opcl/doj-systems-records>. Further, your information may be disclosed pursuant to routine uses described in the abovementioned DHS SORNs or DOJ EOIR SORN to federal, state, local, tribal, territorial, and foreign law enforcement agencies for enforcement, investigatory, litigation, or other similar purposes.

For all others, as appropriate under United States law and DHS policy, the information you provide may be shared internally within DHS, as well as with federal, state, local, tribal, territorial, and foreign law enforcement; other government agencies; and other parties for enforcement, investigatory, litigation, or other similar purposes.

Disclosure:

Providing your signature and the date of your signature is voluntary. There are no effects on you for not providing your signature and date; however, removal proceedings may continue notwithstanding the failure or refusal to provide this information.



**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
MIAMI IMMIGRATION COURT**

Respondent Name:

LOPEZ AREVALO, ENNZO ENMANUEL

To:

LOPEZ AREVALO, ENNZO ENMANUEL



A-Number:



Riders:

In Removal Proceedings

Initiated by the Department of Homeland Security

Date:

08/08/2025

ORDER ON MOTION TO DISMISS

☐ The Respondent ☒ the Department of Homeland Security ☐ the parties jointly has/have filed a motion to dismiss these proceedings under 8 CFR 1239.2(c). The moving party has given notice of the motion to the non-moving party and the court has provided the non-moving party with an opportunity to respond. The motion is ☒ opposed ☐ unopposed.

After considering the facts and circumstances, the immigration court orders that the motion to dismiss is:

- ☒ Granted without prejudice
☐ Denied

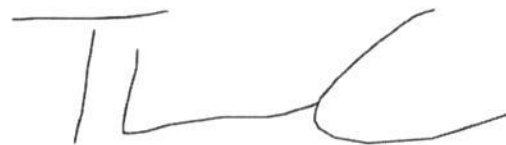
Further explanation:

1. At today's master calendar hearing, the Department of Homeland Security (DHS/ICE) has moved to dismiss these removal proceedings. DHS has the authority to move to dismiss a case where "[c]ircumstances in the case have changed after the notice to appear was issued to such an extent that continuation is no longer in the best interest of the government." See INA § 239.2(a)(7); 8 C.F.R. § 239.2(a)(7); and 8 C.F.R. §§ 239.2(c), and 1239.2(c). DHS, however, does not have unilateral authority to cancel a Notice to Appear once removal proceedings have commenced. See *Matter of Ferreira*, 28 I&N Dec. 765, 767 (BIA 2023). The Immigration Judge must consider the respondent's interest in securing review of a denial of a petition for relief. See *id.* at 769.

2. The Board of Immigration Appeals (Board) has consistently held that a Respondent does not have a due process right to be in, and remain in, removal proceedings. *Matter of Andrade*, 27 I&N Dec. 557, 559 (BIA 2019); *Matter of H.N. Ferreria*, 28 I&N Dec. 765, 768 n.2 (BIA 2023). The judge should consider the imminency of the respondent's removal and whether the respondent can seek relief from the United States Citizenship and Immigration Services (USCIS). See *Matter of Santos*, 19 I&N Dec. 105, 107 (BIA 1984).

3. In the instant case, this is the first master calendar hearing before the court. Here, the Respondent objects because he wishes to pursue [REDACTED]. [REDACTED]. He does not have 10 years physical presence He is not seeking the Court review a denied petition for relief. He has not applied for any other relief before the court. He states he recently filed an application for a [REDACTED] but he did not have the USCIS receipt or the [REDACTED] package with him. Respondent can seek USCIS [REDACTED]. The court does not have jurisdiction over the [REDACTED]. IT IS ORDERED that DHS's Motion to Dismiss is GRANTED. IT IS ORDERED that these removal proceedings be DISMISSED without prejudice.

IT IS SO ORDERED.



Immigration Judge: Ayze, Thomas 08/08/2025

Certificate of Service

This document was served:

Via: ☐ M] Mail | ☐ P] Personal Service | ☐ E] Electronic Service | ☐ U] Address Unavailable

To: ☐ P] Noncitizen | ☐ Noncitizen c/o custodial officer | ☐ Noncitizen's atty/rep. | ☐ E] DHS

Respondent Name : LOPEZ AREVALO, ENNZO ENMANUEL | A-Number : 241-706-661

Riders:

Date: 08/08/2025 By: Ayze, Thomas, Immigration Judge



**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS**

Lee, Paul Stanger
Step toe & Johnson LLP
[REDACTED]

DHS/ICE Office of Chief Counsel - MIA
333 SOUTH MIAMI AVE., SUITE 200
Miami, FL 33130

Name:
LOPEZ AREVALO, ENNZO ENMANUEL



Riders:

Date of Notice: 08/20/2025

FILING RECEIPT FOR APPEAL OR MOTION

The Board of Immigration Appeals (Board or BIA) acknowledges receipt of the appeal or motion and fee or fee waiver request (where applicable) on 08/15/2025, in the above-referenced case, filed by the Respondent

Additional Comments
N/A

WARNING FOR APPEALS:

Departure. If you leave the United States after filing this appeal but before the Board issues a decision, your appeal may be considered withdrawn and the Immigration Judge's decision will become final as if no appeal had been taken (unless you are an "arriving alien" as defined in the regulations under 8 C.F.R. § 1001.1(q)).

Proof of posting voluntary departure bond. If you have been granted voluntary departure by the Immigration Judge, you must submit proof of having posted the voluntary departure bond set by the Immigration Judge to the Board. Your submission of proof must be provided to the Board within 30 days of filing this appeal. If you do not timely submit proof to the Board that the voluntary departure bond has been posted, the Board cannot reinstate the period of voluntary departure. 8 C.F.R. § 1240.2(c)(3)(ii).

Autostay Bond Appeals. Please note that the automatic stay will expire 90 days from the date of receipt of the DHS' appeal. 8 C.F.R. § 1003.6(c)(3). If the Board grants the respondent's request for additional briefing time, then the 90-day automatic stay period will be tolled for the same number of days. 8 C.F.R. § 1003.6(c)(4).

Form EOIR-27. If the appeal was filed by DHS and the respondent/applicant wishes to be represented by an attorney or accredited representative in these new proceedings, counsel must complete a new Form EOIR-27 (Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals). Unless a Form EOIR-27 is received from counsel, the respondent/applicant will be considered pro se before the Board and all future notices, including the Board's decision, will be sent directly to the respondent/applicant and not to counsel.

WARNING FOR MOTIONS:

Stay of removal. Filing a motion with the Board does not automatically stop the DHS from executing an order of removal. If the respondent/applicant is in DHS detention and is about to be removed, you may request the Board to stay the removal on an emergency basis. For more information, call the Clerk's Office at (703) 605-1007.

Form EOIR-27. If the motion was filed by DHS and the respondent/applicant wishes to be represented by an attorney or accredited representative in these new proceedings, counsel must complete a new Form EOIR-27 (Notice of Entry of Appearance as Attorney or Representative before the Board of Immigration Appeals). Unless a Form EOIR-27 is received from counsel, the respondent/applicant will be considered pro se before the Board and all future notices, including the Board's decision, will be sent directly to the respondent/applicant and not to counsel.

FILING INSTRUCTIONS:

If you have any questions about how to file something at the Board, please review the Board's Practice Manual which is available on EOIR's website at www.justice.gov/eoir.

Accepted by: AguilarVe

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