

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CRISTIAN AGUILAR MERINO,

Petitioner,

v.

GARRETT RIPA, *et al.*,

Respondents.

Case No. 1:25-cv-23845

PETITIONER'S RESPONSE TO RESPONDENTS' "MOTION TO DISMISS"

The night before oral argument, Respondents have filed a procedurally improper "motion to dismiss"¹ in which they argue that Petitioner's habeas claims are moot because of a memorandum issued by the Immigration Judge (IJ) on September 12. Dkt. No. 18. The habeas petition is not moot, and this Court should hear argument on September 16 as scheduled.²

First, Petitioner remains detained despite an IJ finding a month and a half ago that he is neither a danger nor flight risk—a finding that not been disturbed. If it were not for ICE's invocation of an illegal automatic stay at the time of the IJ's bond grant, Petitioner would not be detained today. This remains a violation of his substantive due process rights. And that the IJ has now abruptly reversed course on the jurisdictional issue, without any order from the BIA on ICE's appeal in this case and without the opportunity for Petitioner to address the implications of the

¹ Respondents have already filed a responsive pleading, thus waiving the right to file a motion to dismiss under Rule 12, to the extent such motions are proper for habeas petitions in the first place. *See* Fed. R. Civ. P. 12(b) ("Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required.").

² Counsel Ian Austin Rose traveled to Miami in the evening of September 15 in order to argue before this Court as scheduled on September 16 at 1:30 pm.

recent BIA decision the IJ references, *exacerbates*, rather than eradicates, the procedural due process violation.

Second, it is far from clear that all of the following are moot, as Respondents claim: “the immigration court’s original order granting bond (dated August 1, 2025), along with the underlying bond memorandum (dated July 31, 2025); ICE’s appeal to the BIA of Petitioner’s original bond order and memorandum; and the automatic stay of the original bond.” Dkt. No. 18 at 1. According to the new briefing schedule issued by the Board of Immigration Appeals (BIA) on September 15, ICE’s appeal of the IJ’s original bond grant is still pending before the BIA, with the parties’ briefs due on October 6. Ex. 14, BIA Updated Briefing Schedule.

Finally, even if this Court agrees that Petitioner’s claims with respect to the automatic stay are moot, Count IV of his habeas petition—to which Respondents have failed to meaningfully respond—is an independent challenge to ICE’s authority to detain him irrespective of the stay. To the extent that Petitioner remains detained because of Respondents’ erroneous application of 8 U.S.C. § 1225(b) to his case, then Petitioner’s detention violates the Immigration and Nationality Act, which plainly entitles him to bond under 8 U.S.C. § 1226(a). In just the last week since the BIA’s *Hurtado* decision on September 5, multiple district courts have granted habeas petitions in rejection of that decision’s erroneous reasoning, including in a case involving the automatic stay. *See, e.g., Sampiao v. Hyde*, 1:25-cv-11981, Dkt. No. 27 (D. Mass. Sept. 9, 2025); *Hernandez Marcelo v. Trump*, 3:25-cv-94, Dkt. No. 36 (S.D. Iowa Sept. 10, 2025).

Petitioner therefore asks this Court to deny the “motion to dismiss” and hear argument on this petition on September 16 as scheduled.

Respectfully submitted,

Dated: September 15, 2025

/s/ Felix A. Montanez

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CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that I filed this Response to Motion to Dismiss and all attachments using the CM/ECF system, which will send a notice of this filing to all participants in this case.

Dated: September 15, 2025

Respectfully submitted,

/s/ Felix Montanez
Counsel for Petitioner