

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

HUGO E. VALLE VARGAS,

Petitioner,

v.

No. 1:25-cv-00834-JB-GBW

MARY DE ANDA-YBARRA, Field Office Director of Albuquerque Office of Detention and Removal, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security; TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, U.S. Department of Homeland Security; KRISTI NOEM, in her official capacity, Secretary, U.S. Department of Homeland Security; PAM BONDI, in her official capacity, Attorney General of the United States; and RYAN ELLISON, in his official capacity, U.S. Attorney of New Mexico,

Respondents.

**RESPONDENTS' MOTION TO DIMSIS  
PETITIONER'S WRIT OF HABEAS CORPUS (DOC. 1)**

**INTRODUCTION**

Respondents, Immigration and Customs Enforcement ("ICE"), the Department of Homeland Security ("DHS"), the Attorney General of the United States, and the United States Attorney for the District of New Mexico (collectively "Respondents"), hereby submit this Response to the Petition for Writ of Habeas Corpus (Doc. 1).

Petitioner argues his detention violates the Fifth Amendment because his denial of bond was based upon speculation, Respondent's failed to meet their burden of proof and detention continued absent evidence of flight risk or danger to the community. *See* Doc. 1 at ¶ 61. Petitioner contends these alleged violations demand either immediate release or a new custody bond hearing.

*Id.* at ¶ 62. Petitioner misunderstands the applicable immigration laws, misrepresents aspects of the procedural history and raises issues which have become moot.

Therefore, Respondents respectfully request dismissal of the Petition for Writ of Habeas Corpus (Doc. 1) for the following reasons:

**1) Petitioner’s Detention Does Not Violate Fifth Amendment**

Petitioner was unlawfully present in the United States, detained by Respondent’s pursuant to valid authority and placed in removal proceedings. Petitioner’s immigration case was litigated before the immigration court and Board of Immigration Appeals (“BIA”) concluding in a final order of removal to Mexico. Petitioner currently is lawfully detained pending removal.

**2) Petitioner Misstates the Burden of Proof in Immigration Bond Proceedings**

It is the petitioner’s burden to show he is eligible for release or bond. *See e.g.* 8 C.F.R. § 236.1(c)(8). Petitioner’s assertions to the contrary are at odds with well-established immigration law.

**3) Petitioner Raises Issues Which Are Now Moot and Lack Redressability**

Petitioner challenges the legality of his bond determination pending removal proceedings. However, Petitioner’s removal proceedings are no longer pending as he is now subject to a final order of removal. Petitioner’s current detention to effectuate removal is presumptively constitutional. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). Any challenges to the bond review proceedings are moot as a matter of law and Petitioner fails to raise a claim upon which the Court may grant relief.

**FACTUAL BACKGROUND**

On February 14, 2017, Petitioner applied for admission as a temporary visitor on a B2 visa. *See* Exhibit A, Declaration of Assistant Field Office Director (AFOD) Jose P. Ortez, Case No. 25-cv-00834, D.N.M., October 4, 2025, at ¶4. Petitioner was issued a B2 visa with an expiration date

of August 13, 2017. *Id.* Petitioner overstayed his visa and remained in the United States illegally. On March 11, 2025, Petitioner was detained, and removal proceedings were initiated. *Id.* at ¶ 5-6. On April 29, 2025, Petitioner applied for asylum and requested a custody redetermination (bond) hearing. *Id.* at ¶ 10.

On May 5, 2025, an Immigration Judge (“IJ”) denied bond finding that Petitioner was a danger to the community. *Id.* at ¶ 11. On May 20, 2025, Petitioner appealed the IJ’s bond determination to the Board of Immigration Appeals (“BIA”). *Id.* at ¶ 12. On August 8, 2025, the BIA dismissed Petitioner’s appeal. *Id.*; *See also* Exhibit B, Board of Immigration Appeals decision August 8, 2025. On September 5, 2025, an IJ denied Petitioner’s application for asylum and ordered Petitioner removed to Mexico. *Id.* at ¶ 13; *See also* Exhibit C, Order of Removal September 5, 2025. On October 6, 2025, as Petitioner did not file an appeal to the BIA, that order of removal became final following the lapse of the appeal period.<sup>1</sup>

Petitioner remains detained pursuant to Immigration and Nationality Act (“INA”) § 241 and is pending removal. *See* 8 U.S.C. § 1231; *See also* Exhibit A at ¶ 17. Respondents do not anticipate impediments to Petitioner’s prompt removal to Mexico. *Id.* at ¶ 16.

## **LEGAL BACKGROUND**

### **I. Immigration Detention**

It is well established that detention pending removal proceedings is a constitutionally valid aspect of the deportation process. *See generally Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 583 U.S. 281 (2018). Respondents have a clear, substantial and legitimate interest in detention to effectuate removal. That interest is even more pronounced following a final order of removal. The seminal case on detention following orders of removal is *Zadvydas v. Davis*, 533

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<sup>1</sup> Respondents make this assertion upon information and belief, as the appeal period has recently passed, and they have received no notice of appeal.

U.S. 678 (2001). In *Zadvydas* the Supreme Court reviewed cases where “resident aliens” had been ordered removed yet remained detained for more than ninety days following their removal orders. The question presented was whether potentially indefinite detention was constitutionally permissible. *See Zadvydas*, 533 at 693; *See also Demore*, 538 at 511. The Supreme Court held that following an order of removal, detention of up to six months was presumptively valid and did not implicate constitutional violations. *Zadvydas*, 533 at 701. After this six-month detention period, continued detention may still be constitutionally permissible depending upon the significant likelihood of removal in the reasonably foreseeable future. *Id.*

## **II. Burden of Proof in Immigration Bond Proceedings**

It is the petitioner’s burden to show they are eligible for release or bond. *See e.g.* 8 C.F.R. § 236.1(c)(8) (“Any officer authorized to issue a warrant of arrest may, in the officer’s discretion, release an alien...provided that the alien must demonstrate to the satisfaction of the officer that such release would not pose a danger to property or persons, and that the alien is likely to appear for any future proceeding.”). This principle is well established in immigration law, even in cases where additional due process and individualized procedures are applicable. *See e.g. Demore v. Kim*, 538 U.S. 510, 532, (2003) (Justice Kennedy, concurring and citing *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) “the permissibility of continued detention pending deportation proceedings turns solely upon the *alien’s ability to satisfy the ordinary bond procedures* – namely, whether if released the alien would pose a risk of flight or danger to the community) (emphasis added); *See also Matter of Adeniji*, 22 I. & N. Dec. 1102, 1102 (BIA 1999).

Similarly, it is also the petitioner’s burden to show that they are entitled to relief from removal on the merits. *See e.g.* 8 U.S.C. § 1229a (c)(2) (outlining the burden of proof in removal proceedings: “the alien has the burden of establishing...that the alien is clearly and beyond doubt

entitled to be admitted and is not inadmissible...or by clear and convincing evidence that the alien is lawfully present); *See also* 8 U.S.C. § 1229a (c)(4)(B) (in considering applications for relief from removal “the immigration judge will determine whether or not...the applicant has satisfied the applicant’s burden of proof.”); *Matter of Gabriel Almanza-Arenas*, 24 I. & N. Dec. 771, 774-776 (BIA 2009) (in determination of whether the IJ improperly applied the REAL ID Act to petitioner’s case, the BIA found that “respondent is seeking discretionary relief from removal, so *he* bears the burden of proof”).

### **III. Subject Matter Jurisdiction**

Federal courts are courts of limited jurisdiction, they are empowered to hear only those cases authorized and defined in the Constitution which have been entrusted to them under a jurisdictional grant by Congress. *Henry v. Off. of Thrift Supervision*, 43 F.3d 507, 511 (10th Cir. 1994). The party invoking federal jurisdiction, generally the plaintiff, bears the burden of establishing its existence. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 104 (1998). Rule 12(b)(1) allows defendants to raise the defense of lack of subject matter jurisdiction by motion. *See* Fed. R. Civ. P. 12(b)(1). Whether a claim is moot bears on a court’s subject matter jurisdiction. *Valenzuela v. Silversmith*, 699 F.3d 1199,1205 (10th Cir 2012).

## **ARGUMENT**

### **I. Petitioner’s Denial of Bond Did not Violate Fifth Amendment**

Foundationally, all of Petitioner’s claims in the Petition for Writ of Habeas Corpus (Doc. 1) rely upon allegations that the IJ who denied bond relied upon impermissible speculation or that Respondent’s failed to meet their burden to justify detention. *See generally* Doc. 1 at 9-10.

#### **A. IJ and BIA Opinions**

Petitioner appealed the IJ decision to the BIA on these very grounds and that appeal was dismissed. *See* Exhibit B. Petitioner argues the BIA found the IJ’s commentary on cartel affiliation “speculative”, while ignoring that the BIA upheld the IJ’s rationale and denial of bond overall. *Id.* at 2, n.3 (“Nevertheless, the Immigration Judge properly balanced the remaining record evidence...and properly held that the respondent did not meet his burden of proving that his release would not pose a danger to the community.”). Petitioner has cited no legal authority to support its allegations that the IJ’s decision (and now by association the BIA’s decision) was improper or entitle Petitioner to any of the requested relief.

Additionally, if Petitioner wished to challenge the BIA decision on the merits the appropriate forum would have been an appeal to the Tenth Circuit.

#### **B. Burden of Proof**

Petitioner cites a single case out of the Ninth Circuit to support the argument that the government bears the burden of proof in bond proceedings. *See* Doc. 1 at 9; *See also Sing v. Holder*, 638 F.3d 1196 (9th Cir. 2011). Petitioner’s reliance on *Singh* is misplaced. *Singh* does not support the position that the government always carries the burden of proof at bond hearings. Rather, it is one of several cases which has found that the burden *may be shifted to the government* following prolonged detention pending removal proceedings.<sup>2</sup> It is well established that, since 1999, petitioners have generally carried the burden of proof in immigration custody hearings. *Matter of Adeniji*, 22 I. & N. Dec. 1102, 1102 (BIA 1999). Petitioner misstates the law, and Petitioner’s

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<sup>2</sup> There is conflict between District and Circuit Courts regarding how prolonged a detention pending removal proceedings must be to shift the standard of proof from the petitioner to the government; however, there is no dispute over who bears the burden in the first instance. *See e.g. L.G. v. Choate*, 744 F. Supp. 3d 1172 (D. Colo. 2024); *Basri v. Barr*, 469 F. Supp. 3d 1063, 1065-66 (D. Colo. 2020) (court found that for petitioner detained over 2 months the Constitution did not require the government to prove detention is necessary); *Diaz-Ceja v. McAleenan*, 2019 WL 2774211, at \*10, \*12 (D. Colo. 2019) (court found that for petitioner detained over 27 months, burden shifted to government to prove continued detention justified); *Molina v. Choate*, 2019 WL 13214049, at \*2-3 (D. Colo. 2019) (court found burden remained on petitioner *despite detention of 11 months*) (emphasis added).

position was rejected by both the IJ and BIA (whose decision Petitioner chose not to appeal to the Tenth Circuit).

## **II. Petitioner is Now Subject to Final Removal Order**

Petitioner did not file an appeal of the IJ order denying asylum and ordering removal. As the appeal period has now passed, Petitioner's order of removal became final on October 6, 2025. The Supreme Court has held that following an order of removal, detention of up to six months is presumptively valid to effectuate removal and does not implicate constitutional due process concerns. *Zadvydas*, 533 US. at 701.

Petitioner does not challenge that he is unlawfully present in the United States or that he is subject to a valid order of removal. *See generally* Doc. 1. Petitioner's only challenge is a constitutional one to the sufficiency of his initial bond review hearing pending removal proceedings. Even assuming the truth of all Petitioner's allegations, Petitioner's immigration proceedings are no longer pending, and any release or bond Petitioner may have been granted would now be inapplicable following the final order of removal.<sup>3</sup> Petitioner is now lawfully detained to effectuate that final order of removal, which is presumptively constitutional for at least six months. *See generally Zadvydas*.

For these reasons, Petitioner's challenge is moot and does not state a claim upon which relief may be granted. The Court therefore does not have subject matter jurisdiction and dismissal is appropriate for both Count One and Count Two.

## **CONCLUSION**

The Court should dismiss Petitioner's Writ for Habeas Corpus (Doc. 1) for the following

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<sup>3</sup> In fact, following the final order of removal any release or bond Petitioner would have been entitled to, would then be revoked for the ninety-day mandatory post-removal order detention period. *See generally* 8 U.S.C. § 1231.

separate and independent reasons: 1) There has been no Fifth Amendment due process violation as a matter of law, 2) Petitioner's current detention pending removal is permissible pursuant to *Zadvydas*, 3) Petitioner's claims have become moot, removing subject matter jurisdiction from the Court and 4) Petitioner has failed to state a claim upon which the Court may grant relief.

For these reasons, individually or collectively, dismissal is appropriate.

Respectfully submitted,

RYAN ELLISON  
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#### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on October 14, 2025, I filed the foregoing pleading electronically through the CM/ECF system, which caused all parties and counsel of record to be served, as more fully reflected on the Notice of Electronic Filing.

/s/ Ryan M. Posey 10/14/2025  
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