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9
10 UNITED STATES DISTRICT COURT
11
12 FOR THE DISTRICT OF NEW MEXICO
13

14 Hugo E. VALLE VARGAS,

15 Petitioner-Plaintiff,

16 v.

17 Mary De ANDA-YBARRA, Field Office Director of
18 Albuquerque Office of Detention and Removal, U.S.
19 Immigrations and Customs Enforcement; U.S.
20 Department of Homeland Security;

21 Todd M. LYONS, Acting Director, Immigration and
22 Customs Enforcement, U.S. Department of Homeland
23 Security;

24 Kristi NOEM, in her Official Capacity, Secretary,
25 U.S. Department of Homeland Security;

26 Pam BONDI, in her Official Capacity, Attorney
27 General of the United States; and

28 Ryan ELISON, in his Official Capacity, U.S.
Attorney of New Mexico.

Respondents-Defendants.

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

Agency No. A 

**PETITIONER'S RESPONSE
IN OPPOSITION TO
RESPONDENTS' MOTION
TO DISMISS**

1 Petitioner, Hugo E. Valle Vargas, through undersigned counsel, Karen S. Monrreal, Esq.,
2 The Law Office of Karen S. Monrreal, respectfully submits this Response in Opposition to the
3 Government’s Motion to Dismiss.

4 Respondents argue that (1) Petitioner’s detention did not violate the Fifth Amendment, (2)
5 Petitioner misstated the burden of proof in immigration bond proceedings, and (3) the Petition is
6 now moot and non-redressable.
7

8 Each argument fails both legally and factually.

9 Moreover, critical new facts have emerged since the filing of Respondents’ motion: On the
10 same date that the government filed its Motion to Dismiss, October 14, 2025, Immigration and
11 Customs Enforcement (“ICE”) removed Petitioner to Mexico — despite the existence of a
12 pending, timely Board of Immigration Appeals (“BIA”) appeal that automatically stayed removal
13 under 8 C.F.R. § 1003.6(a).
14

15 This unlawful removal — executed during an active stay and without judicial authorization
16 — violated federal regulations, deprived Petitioner of due process, and does not moot this case.
17 To the contrary, it reinforces this Court’s jurisdiction and the need for judicial intervention.
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19 **I. RELEVANT FACTUAL BACKGROUND**

20 Petitioner is a citizen of Mexico who entered the United States in 2016 on a valid B-2 visa
21 and has resided here since that time. He has strong family and community ties in the United
22 States and is pursuing relief under the Trafficking Victims Protection Act through a pending
23 Form I-914 (T-Visa) filed with USCIS.
24

25 **a. Detention and Removal Proceedings**

26 Petitioner was detained by ICE on March 12, 2025, and held at the Otero County Processing
27 Center in Chaparral, New Mexico. He appeared before the Immigration Court and pursued relief
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1 from removal, asserting eligibility for protection based on victimization and fear of return to
2 Mexico.

3 On September 16, 2025, the Immigration Judge denied relief and ordered removal to Mexico.

4 On October 3, 2025, undersigned counsel timely filed a Notice of Appeal with the Board of
5 Immigration Appeals. The filing deadline was October 6, 2025. Under 8 C.F.R. § 1003.6(a),
6 “[t]he decision in any proceeding under this chapter shall be stayed pending an appeal to the
7 Board.” Thus, the removal order was automatically stayed by operation of law.
8

9 **b. ICE’s Unlawful Removal Despite an Operative Stay**

10 Despite the automatic stay and the pending appeal, ICE removed Petitioner to Mexico on
11 October 14, 2025, one day before the BIA formally accepted and docketed the appeal (on
12 October 15, 2025, nunc pro tunc to October 3, 2025). The government filed its Motion to
13 Dismiss on that same date, unaware that ICE had unlawfully deported the Petitioner.
14

15 ICE’s conduct violated 8 C.F.R. § 1003.6(a), deprived Petitioner of due process, and does not
16 moot this action. Because this Court retains jurisdiction under 28 U.S.C. § 2241 and equitable
17 authority to remedy unlawful removal, the Motion to Dismiss must be denied.
18

19 **II. LEGAL STANDARD**

20 Dismissal under Fed. R. Civ. P. 12(b)(1) or (6) is warranted only if “it appears beyond doubt
21 that the petitioner can prove no set of facts entitling him to relief.” *Scheuer v. Rhodes*, 416 U.S.
22 232, 236 (1974). The habeas writ “is the fundamental instrument for safeguarding individual
23 freedom against arbitrary and lawless state action.” *Harris v. Nelson*, 394 U.S. 286, 290–91
24 (1969).
25

26 Federal district courts have jurisdiction to review habeas petitions filed by noncitizens in
27 immigration detention. *Thuraissigiam*, 591 U.S. at 111-12 (habeas petition sought by noncitizen
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1 in expedited removal); *see also Trump v. J.G.G.*, 604 U.S. 670, 672, 145 S. Ct. 1003, 221 L. Ed.
2 2d 529 (2025) (explaining that noncitizen detainees challenging their removal under the Alien
3 Enemies Act must do so in habeas). Habeas jurisdiction is limited to violations of core
4 constitutional rights, such as unlawful detention or denial of due process. *See J.G.G.*, 604 U.S. at
5 672. Challenges to removal under immigration statutes that "largely preclude[] judicial review"
6 must be brought in habeas for the court to have jurisdiction. *Id.* (citing *Ludecke v. Watkins*, 335
7 U.S. 160, 163-64, 68 S. Ct. 1429, 92 L. Ed. 1881 (1948), and *Heikkila v. Barber*, 345 U.S. 229,
8 234-35, 73 S. Ct. 603, 97 L. Ed. 972 (1953)) (citation modified). When the relief sought
9 necessarily implies the noncitizen's confinement and removal is unlawful, the claim falls within
10 the "core of the writ of habeas corpus" and "must be brought in habeas." *Id.* Courts may construe
11 petitions seeking other relief as a habeas petition based on the relief sought. *See, e.g., id.* at
12 672 (construing claims arising under the APA to seek habeas relief).

15 Under Article III of the U.S. Constitution, federal courts may adjudicate only actual, ongoing
16 cases or controversies. *Deakins v. Monaghan*, 484 U.S. 193, 199, 108 S. Ct. 523, 98 L. Ed. 2d
17 529 (1988). "For a habeas petition to continue to present a live controversy after the petitioner's
18 release or deportation . . . there must be some remaining 'collateral consequence' that may be
19 redressed by success on the petition." *Abdala v. I.N.S.*, 488 F.3d 1061, 1064 (9th Cir. 2007).

21 **III. ARGUMENT**

22 **a. The Petition States a Valid Fifth Amendment Claim**

23 Respondents argue that Petitioner's detention did not violate the Fifth Amendment. That
24 argument is inconsistent with controlling law and the factual record. The Fifth Amendment
25 protects against arbitrary or punitive civil detention and ensures procedural fairness. *Zadvydas v.*
26 *Davis*, 533 U.S. 678, 690-91 (2001); *Demore v. Kim*, 538 U.S. 510, 523 (2003).

1
2 i. Procedural Due Process: The Bond Determination Was Arbitrary and
3 Lacked Fundamental Fairness.

4 Even brief deprivations of liberty must be conducted in a fundamentally fair manner.
5 *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). The Immigration Judge denied Petitioner’s bond
6 request based on a speculative inference—that Petitioner’s *fear* of cartel violence equated to
7 *cartel involvement*. The record contained no evidence supporting that conclusion.

8 While the BIA later affirmed the denial, noting that the IJ had “properly balanced the
9 remaining record evidence,” the BIA did not dispute that the IJ’s reasoning relied on conjecture.
10 A decision affecting liberty that rests on assumptions rather than evidence violates procedural
11 due process. *Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (immigration proceedings must be
12 “meticulous[ly] fair”).
13

14 Respondents’ motion misstates Petitioner’s argument. He does not claim a mere regulatory
15 error; he asserts a constitutional one. Under *Jennings v. Rodriguez*, 138 S. Ct. 830, 852 (2018),
16 due process requires that the deprivation of liberty rest on factual findings supported by the
17 record—not conjecture. The IJ’s speculative reasoning failed that standard.
18

19 ii. Substantive Due Process: Detention Based on Speculation Is Arbitrary
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21 Substantive due process forbids government action that is arbitrary, capricious, or
22 conscience-shocking. *County of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998). Even short-
23 term civil detention may violate substantive due process if it lacks a rational relationship to a
24 legitimate government purpose.

25 Here, detention was premised not on danger or flight risk, but on unsubstantiated conjecture.
26 No evidence showed that Petitioner posed a threat to public safety or risk of absconding. As in
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1 *Zadvydas*, 533 U.S. at 690–91, such arbitrary detention is unconstitutional. This subjected the
2 Petitioner to prolonged detention that was not justified.

3 **b. Petitioner Accurately Articulated the Burden of Proof in Bond Proceedings.**

4 Respondents next argue that dismissal is warranted because Petitioner “misstates the burden
5 of proof.” This mischaracterizes the petition.

6
7 Petitioner acknowledges that under 8 C.F.R. § 236.1(c)(8), the noncitizen bears the initial
8 burden to show that release is warranted. However, this regulation cannot displace the
9 Constitution’s requirement that liberty may not be restricted absent reasoned, evidence-based
10 decision-making.

11
12 Courts have repeatedly held that the allocation of the initial burden does not immunize
13 detention decisions from constitutional scrutiny. *Singh v. Holder*, 638 F.3d 1196, 1203–05 (9th
14 Cir. 2011); *Matter of D-R-*, 25 I&N Dec. 445, 454 (BIA 2011). The constitutional question is not
15 *who* bears the burden, but whether the proceeding met the minimal standards of fairness required
16 by due process.

17
18 Even if the IJ correctly applied the regulatory framework, the decision was constitutionally
19 defective because it rested on speculation rather than evidence. Respondents’ argument therefore
20 fails to warrant dismissal.

21 **c. The Petition Is Not Moot and Remains Fully Redressable**

22 Respondents’ mootness argument rests on a fundamental factual error and a
23 misapplication of law. The government asserts that this action should be dismissed as moot
24 because Petitioner was removed and because, according to its filing, “no administrative appeal
25 was pending.” That premise was false when stated and is now affirmatively disproven by the
26 administrative record.
27
28

1 Petitioner timely filed a Notice of Appeal with the Board of Immigration Appeals
2 (“BIA”) on October 3, 2025, challenging the Immigration Judge’s removal order on the merits.
3 The statutory deadline for filing was October 6, 2025, and thus the appeal was timely. Under 8
4 C.F.R. § 1003.6(a), that filing automatically stayed execution of the removal order.

5
6 However, on October 14, 2025, the very day Respondents filed their Motion to Dismiss,
7 ICE executed Petitioner’s removal—apparently unaware of the pending appeal. The following
8 day, October 15, 2025, the BIA docketed the appeal and expressly confirmed that the appeal was
9 filed and received on October 3, 2025. The delay in its acceptance was entirely attributable to the
10 Board of Immigration Appeals, not to Petitioner; Petitioner diligently pursued his appeal, and the
11 BIA’s failure to timely process it cannot lawfully be used to justify his premature removal. As
12 further evidence, the Board’s acceptance of the appeal confirms that the filing was proper and
13 that any ensuing delay was purely administrative and not attributable to Petitioner.
14

15 Accordingly, at the time the Motion to Dismiss was filed, Respondents’ representation
16 that no appeal was pending was factually inaccurate. In truth, a valid BIA appeal—and the
17 corresponding automatic stay—were in full effect when Petitioner was removed.
18

19 Because ICE’s unlawful removal created the very condition on which Respondents now
20 claim mootness, the government cannot invoke its own constitutional violation as a basis to
21 evade judicial review. *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950) (mootness
22 doctrine not available where controversy was mooted by unilateral action of the party seeking
23 dismissal).
24

25 **d. The Case Presents a Live Controversy and Collateral Consequences Persist**

26 Even apart from ICE’s unlawful conduct, this case remains live. Petitioner continues to
27 suffer concrete collateral consequences: separation from his U.S.-citizen family, loss of ability to
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1 pursue his pending T-Visa application, and deprivation of access to counsel and administrative
2 review. Mootness is “the doctrine of standing set in a time frame.” *Friends of the Earth, Inc. v.*
3 *Laidlaw Envtl. Servs.*, 528 U.S. 167, 189 (2000). Because Article III limits the judicial power to
4 actual, ongoing cases or controversies, *see Deakins v. Monaghan*, 484 U.S. 193, 199 (1988), a
5 case is moot only “where no actual or live controversy exists.” *Cook Inlet Treaty Tribes v.*
6 *Shalala*, 166 F.3d 986, 989 (9th Cir. 1999).

8 The Ninth Circuit has held that a case is not moot when “the parties continue to have a
9 personal stake in the outcome of the lawsuit.” *Zegarra-Gomez v. I.N.S.*, 314 F.3d 1124, 1126
10 (9th Cir. 2003) (citing *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 478 (1990)). In the
11 context of immigration habeas proceedings, a petition is not rendered moot merely because the
12 petitioner is released or removed. So long as the petitioner “was in custody when the habeas
13 petition was filed and continues to suffer actual collateral consequences of his removal [or
14 detention],” the case remains live. *Id.* at 1127; *Spencer v. Kemna*, 523 U.S. 1, 7 (1998); *Abdala v.*
15 *I.N.S.*, 488 F.3d 1061, 1064 (9th Cir. 2007).

18 The continuing legal disability of being unlawfully removed while his appeal remains
19 pending constitutes a live controversy that this Court may redress.

21 This Court possesses ample authority to grant effective relief notwithstanding removal.
22 Federal courts routinely order the government to facilitate the return of individuals unlawfully
23 removed while their cases were pending. *Singh v. Waters*, 87 F.3d 346, 349–50 (9th Cir. 1996);
24 *Kumarasamy v. Att’y Gen.*, 453 F.3d 169, 174 (3d Cir. 2006); *Rosales v. ICE*, 426 F.3d 733, 736
25 (5th Cir. 2005).

27 Ordering Petitioner’s return would not disturb the underlying removal order but would
28 merely restore the lawful status quo and permit completion of administrative and judicial review

1 that ICE’s unlawful removal disrupted. *Nken v. Holder*, 556 U.S. 418, 435 (2009) (recognizing
2 courts’ equitable authority to preserve the status quo during review).

3 **e. ICE’s Unlawful Removal Confirms, Rather Than Cures, the Need for**
4 **Judicial Review**

5 The government’s violation of § 1003.6(a) and the Due Process Clause did not render the
6 case moot—it created an additional constitutional controversy requiring this Court’s
7 intervention. ICE’s disregard of a valid regulatory stay is the type of arbitrary, lawless executive
8 action that habeas corpus exists to prevent.
9

10 Accordingly, because the Motion to Dismiss was predicated on inaccurate facts and
11 because effective relief remains available, this petition is not moot and must proceed to
12 adjudication on the merits.
13

14 **IV. THE GOVERNMENT’S UNLAWFUL REMOVAL DURING A PENDING**
15 **APPEAL VIOLATED DUE PROCESS AND DEFEATS DISMISSAL**

16 Even if Respondents’ motion were otherwise meritorious (it is not), it must fail because
17 ICE’s conduct following the filing of the motion independently violated federal law and the
18 Constitution.
19

20 On October 3, 2025, Petitioner timely filed a Notice of Appeal with the BIA. Under 8 C.F.R.
21 § 1003.6(a), that filing automatically stayed execution of his removal order. Nevertheless, ICE
22 deported Petitioner to Mexico on October 14, 2025—one day before the BIA docketed the
23 appeal (which was later recognized as timely filed).
24

25 Section 1003.6(a) states plainly: “*Except as otherwise provided, the decision in any*
26 *proceeding under this chapter shall be stayed pending an appeal to the Board.*” The regulation’s
27 language is mandatory and admits no discretion. ICE’s removal during an operative stay was
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1 ultra vires—an act beyond statutory and regulatory authority.

2 The unlawful removal deprived Petitioner of his right to pursue administrative review and
3 communicate with counsel. "The fundamental requisite of due process of law is the opportunity
4 to be heard." *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). The hearing must be "at a
5 meaningful time and in a meaningful manner." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).
6

7 By deporting Petitioner while his appeal remained pending, ICE denied him that opportunity
8 entirely. Courts have consistently held that removal in violation of a stay constitutes a procedural
9 due process violation. *Singh v. Waters*, 87 F.3d 346 (9th Cir. 1996); *Rosales v. ICE*, 426 F.3d
10 733 (5th Cir. 2005); *Kumarasamy v. Att'y Gen.*, 453 F.3d 169 (3d Cir. 2006).
11

12 The Fifth Amendment also protects against arbitrary government action that "shocks the
13 conscience." *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). ICE's knowing
14 disregard of an automatic stay meets that standard.

15 Such action undermines the rule of law and judicial authority, and violates the substantive
16 guarantees of the Fifth Amendment. Courts have repeatedly invalidated removals executed under
17 these circumstances. *Rosales*, 426 F.3d at 736; *Singh*, 87 F.3d at 349–50.
18

19 **a. Jurisdiction Persists and Equitable Relief Is Available**

20 Respondents' argument that removal divests this Court of jurisdiction must fail because
21 the removal itself was unlawful. The government's claim of mootness is doubly flawed. First, it
22 incorrectly represented to this Court that no appeal was pending, a factual error that Petitioner
23 promptly corrected. Second, the subsequent, unlawful removal—which occurred while the
24 habeas petition was pending and an appeal was active—does not oust the jurisdiction of the
25 federal court nor render the petition moot. The law is clear: unlawful removal does not oust the
26 jurisdiction of the federal court nor render the petition moot. *See Rosales v. Bureau of*
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1 *Immigration and Customs Enforcement*, 426 F.3d 733, 736 (5th Cir. 2005) (en banc); *Singh v.*
2 *Reno*, 87 F.3d 317, 349–50 (7th Cir. 1996). When an agency, by its own procedural violation and
3 factual misrepresentation, attempts to eliminate the legal issue before the Court, jurisdiction
4 persists to remedy that violation.

5
6 Furthermore, this Court possesses the inherent equitable authority to remedy the
7 government’s wrongful action. Pursuant to the All Writs Act, 28 U.S.C. § 1651(a), and its
8 inherent power to maintain the status quo, the Court may order a petitioner’s return to restore the
9 lawful posture of the case. *See Kumarasamy v. Taylor*, 453 F.3d 169, 174 Ordering Petitioner’s
10 return is not a collateral attack on the final removal order itself, but rather a necessary remedy for
11 the government’s independent violation of its own regulations and the Fifth Amendment’s
12 guarantee of due process. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (distinguishing an attack
13 on the merits of a removal order from the procedures surrounding its enforcement). Because the
14 government’s pattern of procedural non-compliance—culminating in the unlawful removal—
15 fundamentally tainted the entire judicial and administrative process, the petition is not moot and
16 the Motion to Dismiss must be denied.

17
18
19 Even if the respondents now argue that the case is moot based on Petitioner’s removal,
20 Plaintiff’s claims fall squarely within this Court’s jurisdiction under 28 U.S.C. § 1331 and the
21 APA. The government’s mischaracterizes this case as a collateral attack on a removal order. In
22 reality, Petitioner challenges only the *illegal execution* of that order—an action taken while his
23 BIA appeal remained pending and thus outside the agency’s statutory authority. Such ultra vires
24 conduct is reviewable under 5 U.S.C. § 706(2)(C).

25
26 **V. CONCLUSION**

27 For the foregoing reasons, the Court should DENY Respondents’ Motion to Dismiss,
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DECLARE that ICE's removal of Petitioner was unlawful and void, and ORDER his immediate return to the United States to restore the status quo ante and ensure meaningful judicial review.

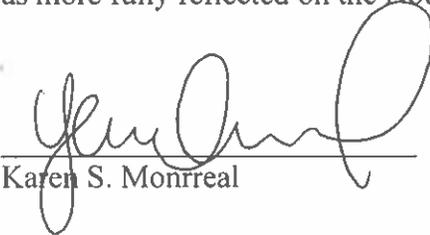
Executed this 23^m day of October, 2025.



Karen S. Monrreal, Esq.
Attorney for the Petitioner

CERTIFICATE OF SERVICE

I, Karen S. Monrreal, HEREBY CERTIFY that on October 28, 2025, I filed the foregoing
Opposition to Respondent’s Motion to Dismiss, 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.



Karen S. Monrreal

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