

**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' REPLY IN SUPPORT OF MOTION TO DISMISS (DOC. 23)

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 Reply in Support of Respondents’ Motion to Dismiss (Doc. 23).

Petitioner’s Response in Opposition to Respondents’ Motion to Dismiss (Doc. 25) argues against dismissal and raises a new constitutional claim that Petitioner was unlawfully removed from the United States. *See generally* Doc. 25. Respondents agree that Petitioner was removed based upon a final order of removal, which would have been stayed pursuant to 8 C.F.R. § 1003.6(a) but for an administrative delay by the Board of Immigration Appeals (“BIA”).

However, Respondents contend that dismissal of the Petition for Writ of Habeas Corpus (Doc. 1) remains appropriate as the core 5th Amendment arguments remain unchanged, Petitioner has failed to file any amended pleadings and the case lacks redressability by the Court.

FACTUAL UPDATE

On September 5, 2025, an Immigration Judge (“IJ”) denied Petitioner’s application for relief and ordered Petitioner removed to Mexico. *See* Exhibit A, Declaration of Assistant Field Office Director (AFOD) Jose P. Ortez, Case No. 25-cv-00834, D.N.M., November 12, 2025, ¶ 12. Any appeal of this decision was due by October 6, 2025. *Id.* at ¶ 13. As of October 14, 2025, there was no Notice of Appeal visible in the Executive Office for Immigration Review (“EOIR”) Courts and Appeals System (“ECAS”). *Id.* at 14-15. Similarly, neither the Office of the Principal Legal Advisor (“OPLA”) nor Enforcement and Removal Operations (“ERO”) had been served any notice of appeal by Petitioner or Petitioner’s legal counsel. *Id.* Believing Petitioner had not appealed the IJ order of removal, ERO transferred Petitioner for removal on October 14, 2025. *Id.* at ¶ 15. On October 16, 2025, Petitioner was physically removed to Mexico. *Id.* at ¶ 16.

On October 24, 2025, OPLA learned that Petitioner had submitted an appeal of the IJ order to the BIA on October 3, 2025. *Id.* at 17. However, the BIA did not docket the appeal until at least October 15, 2025. *Id.* OPLA/ERO had no knowledge of Petitioner’s appeal prior to removal on October 16, 2025. *Id.* at 18.

Presently, the BIA retains jurisdiction over Petitioner’s appeal despite the physical removal to Mexico. *Id.* at 19; *see also Matter of DIAZ-GARCIA*, 25 I&N Dec. 794 (BIA 2012). Pending the outcome of the BIA appeal on the merits, ERO would review whether facilitation of Petitioner back to the United States is necessary. *Id.* at 20.

LEGAL ARGUMENT

Petitioner's Writ of Habeas Corpus (Doc. 1) raised 5th Amendment challenges over his denial of bond. *See* Doc. 1 at ¶ 61. Petitioner argued this entitled him to either immediate release or a new bond hearing. *Id.* at ¶ 62. Petitioner's Opposition to Respondents' Motion to Dismiss (Doc. 25) reiterated those arguments and raised a new constitutional claim related to wrongful removal.

I. Respondents' 5th Amendment Arguments Remain Unchanged

Petitioner's allegations that the initial denial of bond by the IJ violated the 5th Amendment are unsupported by the factual and procedural record. Petitioner alleges that because the IJ, in part, relied upon speculation, Petitioner's subsequent detention violated the 5th Amendment. *See* Doc. 25 at 4-5. However, Petitioner simultaneously concedes that his appeal was dismissed because the IJ had "properly balanced the remaining record evidence". *Id.* at 4. Indeed, the BIA agreed with the IJ and found that "respondent did not meet his burden of proving that his release would not pose a danger to the community." *See* Doc. 23 Exhibit B. Petitioner did not appeal the BIA's affirmation of the IJ's no bond decision to the 10th Circuit, nor does Petitioner explain his failure to do so in his Opposition to Respondents' Motion to Dismiss (Doc. 25).

There was no 5th Amendment violation in Petitioner's denial of bond, which was reviewed by both the IJ and BIA. Further, the appropriate forum for contesting the BIA's decision on this issue would have been a direct appeal to the 10th Circuit. Petitioner, having failed to appeal to the 10th Circuit, should not be allowed to circumvent that process and proceed under habeas relief before this Court. Finally, Petitioner is no longer in Respondents' custody and the constitutionality of the initial bond proceedings is moot.

II. Petitioner Has Not Filed Any Amended Pleadings

The alleged bond related 5th Amendment violations are the only claims raised in Petitioner's Writ of Habeas Corpus (Doc. 1). Upon information and belief, Petitioner has not filed any amended pleadings to incorporate additional claims or causes of action to the above-captioned proceedings. The additional alleged constitutional violation of unlawful removal raised by Petitioner's Opposition to Respondents' Motion to Dismiss (Doc. 25) is thus not properly raised nor before the Court at this time.

III. Petitioner's Deportation and Impact on Proceedings

Petitioner argues that habeas jurisdiction persists, despite Petitioner's removal from the United States, and equitable relief is available. *See* Doc. 25 at 9. Petitioner cites several cases, purportedly in support of this assertion, that are unavailing.

For example, Petitioner argues "the law is clear: unlawful removal does not oust the jurisdiction of the federal court nor render the petition moot" citing *Rosales v. Bureau of Immigration and Customs Enforcement*, 426 F.3d 733, 736 (5th Cir. 2005) and *Singh v. Reno*, 87 F.3d 317, 349-50 (7th Cir. 1996)¹ in support. *See* Doc. 25 at 9-10). Neither *Rosales* nor *Singh* is an unlawful removal case nor does either support this assertion. Similarly, Petitioner argues that the Court may order a petitioner's return to restore the lawful posture of the case, citing *Kumarasamy v. Taylor*, 453 F.3d 169, 174 (3rd Cir. 2006)² in support. *Id.* at 10. *Kumarasamy* does not support this assertion, and to the contrary found habeas unavailable to a petitioner removed from the United States. *See Kumarasamy*, 453 F.3d at 173 ("a petitioner who has been removed from the country is 'not subject to restraints not shared by the public generally...he is subject to no greater restraint than any other non-citizen living outside American borders'").

¹ *Singh v. Reno*, 87 F.3d 317, 349-50 (7th Cir. 1996) appears to be a miscite. Respondents assume Petitioner is referencing *Singh v. Reno*, 182 F.3d 504 (7th Cir. 1999).

² Petitioner pincites "174", which appears to be a miscite as the case text ends at pincite 173. Respondents cannot determine the intended pincite.

The BIA retains jurisdiction over Petitioner's appeal of his removal order. *See Matter of DIAZ-GARCIA*, 25 I&N Dec. 794 (BIA 2012) (unlawful removal of alien during pendency of direct appeal does not deprive BIA of jurisdiction to review appeal). As Petitioner's appeal of the removal order remains pending before the BIA, relief remains available should Petitioner prevail on the merits.

For these reasons Petitioner's challenge, as articulated in the Petition for Writ of Habeas Corpus (Doc. 1) remains moot and does not state a claim upon which relief may be granted. Petitioner has not filed amended pleadings and thus the unlawful removal issue is not properly before the Court. Further, Petitioner is no longer detained, and the BIA retains jurisdiction to adjudicate Petitioner's appeal and provide relief if warranted.

CONCLUSION

The Court should dismiss Petitioner's Writ for Habeas Corpus (Doc. 1) for the following separate and independent reasons: 1) There has been no Fifth Amendment due process violation as a matter of law, 2) Petitioner's claims have become moot, removing subject matter jurisdiction from the Court and 3) Petitioner has not properly amended the petition to raise additional constitutional claims.

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

Respectfully submitted,

RYAN ELLISON
Acting United States Attorney

/s/ Ryan M. Posey
RYAN M. POSEY
Assistant United States Attorney
201 Third Street NW, Suite 900
Albuquerque, New Mexico 87102
(505) 224-1417; Fax (505) 346-7205
Ryan.Posey@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 12, 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 11/12/2025

RYAN M. POSEY

Assistant United States Attorney