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September 25, 2025

BY ECF

The Honorable Evelyn Padin, U.S.D.J.
U.S. District Court for the District of New Jersey
50 Walnut Street
Newark, New Jersey 07102

Re: *Jorge Barrios v. Pam Bondi, et al.*, No. 25-15122
Letter Answer to Petitioner's Writ of Habeas Corpus

Dear Judge Padin:

This Office represents Respondents Pam Bondi, Kristi Noem, Todd Lyons, and Luis Soto ("Respondents") in this habeas matter filed by Petitioner Jorge Barrios, a noncitizen previously in the custody of U.S. Immigration and Customs Enforcement ("ICE"). Respondents respectfully submit this letter in lieu of a more formal answer to the Verified Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, ECF No. 1, because this matter is now moot in light of Petitioner's recent removal from the United States.

I. Background

Petitioner is a native and citizen of Guatemala. Pet. ¶ 1. He entered the United States on a B1/B2 visa in 1991 and overstayed. *Id.* ¶ 9. Petitioner applied for asylum, but the immigration court denied the application, and, in July 2002, the Board of Immigration Appeals ("BIA") dismissed the appeal. Pet. Ex. A, Joint Motion to Reopen at 1, ECF No. 1. Petitioner accepted voluntary departure from the United States but failed to depart. *Id.* His voluntary departure order accordingly became a final order of removal. *Id.*

In 2013, U.S. Citizenship and Immigration Services ("USCIS") granted Petitioner's Form I-130, Petition for Alien Relative. A Form I-130 petition allows certain eligible relatives to apply for a green card. Pet. ¶ 13; *see also* USCIS, *I-130, Petition for Alien Relative* available at <https://www.uscis.gov/i-130>. "[A]pproval of this petition does not give [the recipient] any immigration status or benefit"; it only allows the recipient to apply for green card, which has its own rigorous requirements.

See USCIS, *I-130, Petition for Alien Relative*. In 2018, Petitioner and ICE signed a joint motion to reopen Petitioner’s immigration case to apply for a green card and try to vacate the final order of removal. Pet. Ex. A; see also Pet. ¶¶ 14-15. Although ICE joined the motion to reopen, ICE did not concede Petitioner was entitled to a green card; rather, ICE “reserve[d] the right to challenge the merits of the application for adjustment of status [i.e., a green card] at the time of the hearing in this matter.” Pet. Ex. A at 2. Petitioner did not file the motion to reopen with the BIA until July 30, 2025. Pet. ¶ 1.

As the filing receipt for the Motion to Reopen indicated, filing a motion does not prevent removal:

Filing a motion with the Board DOES NOT automatically stop the Department of Homeland Security from executing an order of removal or deportation. If you are in DHS detention and are about to be deported, you may request the Board to stay your deportation on an emergency basis.

Ex. 1, Filing Receipt for Motion dated Aug. 1, 2025 (emphasis in original). The motion to reopen is pending before the BIA. *Id.* ¶ 22.

On August 1, 2025, ICE arrested Petitioner pursuant to a Warrant of Removal and detained him at Delaney Hall Contract Detention Facility. Pet. ¶ 1; see also Ex. 2, Form I-205, Warrant of Removal dated Aug. 1, 2025. On August 8, 2025, Petitioner asked ICE to stay removal, but ICE declined. *Id.* ¶ 19. Petitioner does not claim that he sought, or received, a stay of removal from the BIA.

On August 29, 2025, Petitioner filed this Petition alleging that his “continued detention” violated his due process rights and the Immigration and Nationality Act (“INA”) “given DHS’s stipulation to reopen his removal order.” *Id.* ¶ 26. Petitioner sought “immediate release” from detention. Prayer for Relief ¶ 1.

On September 1, 2025, ICE removed Petitioner from the United States. Ex. 2 at 2 (indicating removal by flight in section marked “Port, Date, and Manner or Removal”).

II. Procedural History

Petitioner filed a motion for order to show cause on August 30, seeking, among other things, a stay of removal. ECF Nos. 2-3. On September 5, 2025, the Court denied Petitioner’s order to show cause because Petitioner “is presently subject to a final order of removal” and has not been subject to prolonged detention. ECF No. 4 at 2. The Court stated that the pending motion to reopen does not invalidate his final order of removal:

Petitioner filed a motion to reopen to adjust status in 2018, and although it was a joint motion “signed by Respondent’s BIA counsel and DHS Attorney,” it was never acted upon. *Id.* ¶ 14, and Petition, Ex. A. Petitioner has a motion to reopen removal proceedings pending with the BIA since July 30, 2025. *Id.* ¶ 1. Nonetheless, Petitioner has not alleged the motion has been granted, and failure to voluntarily depart within time renders a person subject to detention and removal.

ECF No. 4 at 2 n.3 (internal citations omitted). The Court ordered Respondents to answer the Petition within twenty days (or, September 25). ECF No. 4 at 3.

On September 12, 2025, Respondents informed the Court that ICE had removed Petitioner on September 1, four days before the Court issued its September 5 order to answer at ECF No. 4.

III. The Petition is Moot

Because Petitioner has been removed from the country, his habeas petition challenging his detention is moot, and the Court lacks subject matter jurisdiction over it.

“Under Article III, § 2 of the United States Constitution, the exercise of judicial power depends upon the existence of a case or controversy.” *Chong v. Dist. Dir., I.N.S.*, 264 F.3d 378, 383 (3d Cir. 2001). For a case or controversy to exist, a petitioner “must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.” *DeFoy v. McCullough*, 393 F.3d 439, 442 (3d Cir. 2005) (citation omitted). As a result, “a petition for habeas corpus relief generally becomes moot when a prisoner is released from custody before the court has addressed the merits of the petition.” *Id.*

In *Vasquez v. Aviles*, the Third Circuit affirmed this Court’s dismissal of a habeas petition under the same circumstances here, finding that a “petition was moot insofar as it challenged the legality and length of his detention, for upon his removal his petition no longer presented a justiciable case or controversy.” *Vasquez v. Aviles*, 639 F. App’x 898, 902 (3d Cir. 2016). *See also Kurtishi v. Cicchi*, 270 F. App’x 197, 199 (3d Cir. 2008) (affirming district court’s dismissal of petition as moot because petitioner was no longer detained and had already been deported, noting “[i]n view of Kurtishi’s deportation, there are no remaining collateral consequences that may be redressed by success on Kurtishi’s challenge under § 2241 to his ‘continued restraint by DHS–ICE’”).

That Petitioner has a motion to reopen pending before the BIA does not change the result. Courts often reject due process challenges to removal while motions to reopen are pending, reasoning that the noncitizen can still litigate the immigration matter and that ICE can execute the final order of removal. *See, e.g., M’Bagoyi v.*

Barr, 423 F. Supp. 3d 99, 106 (M.D. Pa. 2019) (“[T]o the extent that the petitioner seeks a stay of his removal until he exhausts his remedies with respect to his motion to reopen his immigration proceedings, that would be a direct challenge to his removal order and the court does not have jurisdiction over that aspect of the petitioner’s filing under § 1252.”); *Ponce v. Garland*, No. 22-1751JG, 2022 WL 14318031, at *1 (C.D. Cal. Oct. 24, 2022) (rejecting argument that petitioner sought “a stay of removal until the Bureau of Immigration Appeals rules on Petitioner’s pending motion to reopen”); *Beltran Prado v. Nielsen*, 379 F. Supp. 3d 1161, 1169-70 (W.D. Wash. 2019) (“If he is removed to Mexico while his motion to reopen is pending, he may continue to litigate his case from abroad . . . Allowing petitioner to remain in the United States while his motion to reopen is pending is unlikely to provide additional value, in terms of due process protections, and it likely would provide at least some administrative burdens on ICE”).

* * *

Accordingly, Respondents respectfully request that the Court dismiss the Petition for lack of subject matter jurisdiction. We thank the Court for its attention to this matter.

Respectfully submitted,

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cc: Counsel of record (by ECF)