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Via Electronic Filing

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

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

Dear Judge Padin:

I represent the Petitioner. My appearance has been entered in this matter.

The purpose of this submission is to submit this reply letter brief to the Respondents' Answer that was submitted on September 25, 2025. I apologize for misfiling a letter today intended to be filed in another matter. Kindly disregard that letter and accept this one.

In their Answer the Respondents indicated that the Petitioner was recently removed from the United States to Guatemala on September 1, 2025. The Respondents now argue that the Petition is moot and that this Court lacks subject matter jurisdiction. This is a matter in which the Petitioner was removed while he had a joint or stipulated motion to reopen and terminate already filed with the BIA (as well as this instant habeas corpus petition). Petitioner submits that his detention (and removal) under these circumstances is unlawful and that he should be returned from Guatemala and released into the U.S.

I. The Instant Petition is Not Moot Because "Extreme Circumstances" Exist In This Case Due to Abuse of Executive Power.

As a preliminary matter, there is no issue that the Petitioner filed his habeas petition in this case when he was clearly "in custody" in the U.S. and he argued that his continued detention violated the INA and the Due Process Clause because he was being detained notwithstanding the fact that Respondent DHS and his immigration attorney (Joyce Phipps, Esq.) had already stipulated to reopen his removal case and had submitted the joint motion before the BIA. He argued, in his petition, that his detention was unlawful because ICE Counsel had already stipulated to reopen his removal matter but ICE officers had, nonetheless, detained him and quickly removed him to Guatemala in violation of his INA and his right to due process given the circumstances.

With regards to his rights under the INA and accompanying regulations, the Petitioner submits that even if a stay was technically not pending, the fact that ICE Counsel or OPLA had agreed or stipulated with his immigration counsel to reopen proceedings at the very least creates an "extreme circumstances" situation in this case where this court may hold that an immigrant already removed may still receive habeas review.

Most importantly, the Petitioner submits that, due to the fact that a joint motion to reopen was pending, the termination of his removal order should have been mandatory or automatic under regulation, given him the same protection as if an automatic stay was in effect. In other words, the BIA was bound to reopen his case by operation of law, making his detention unlawful since he was no longer removable by operation of law and, thus, his detention should not have been triggered since it was not correlated to his removability. Given this backdrop, what Respondents did in this case was an abuse of executive power and constitutes extreme circumstances warranting habeas review.

In Rivera v. Ashcroft, 387 F.3d 835 (9th Cir. 2004), the 9th Circuit Court of Appeals determined, in the habeas corpus context, that a U.S. citizen who had been wrongly removed to Mexico was nonetheless eligible for habeas corpus relief under the "extreme circumstances" exception. Id. at 840. Reviewing the district court's dismissal of a Section 2241 petition for lack of jurisdiction *de novo*, the Ninth Circuit Court of Appeals determined that the extreme circumstances exception applied because the case was analogous to that of Singh v. Waters, 87 F.3d d346 (9th Cir. 1996) where the INS had removed the alien in violation of a stay of deportation by the immigration judge and after interfering with the right to counsel in that case.

The instant case is analogous to that in Singh v. Waters and Rivera v. Ashcroft for two reasons. First, while there was no "automatic stay" in effect in this case, there a violation of due process in that ICE sought to arrest and remove Mr. Barrios while ICE Counsel had already agreed to reopen and terminate his (and his wife's removal proceedings) through a joint motion to reopen. The fact that Mr. Barrios and DHS had agreed to a joint termination is significant in terms of a due process violation because Respondent was taking two contrary positions, one by ICE counsel in agreeing to reopen and terminate proceedings, that is, not remove the Petitioner while ICE agents, working under a new policy to arrest and deport everyone and scare everyone into self-deporting, was doing the exact opposite. Thus, Petitioner was faced with conflicting messages from the same Respondent agency, ICE, violating his due process rights in terms of notice and inhibiting his ability to meaningfully and properly challenge his removal which was clearly prohibited by the new EOIR docket management regulations. 8 C.F.R. Section 1003.18

Most importantly, while Petitioner was technically not subject to an "automatic stay" under the automatic stay provisions of the INA, he was, in fact, subject to the recently enacted Executive Office for Immigration Review (EOIR) "mandatory termination" provisions which serve as the functional equivalent of automatic stays, or even better, automatic terminations. This new rule went into effect on July 29, 2024 and codified the EOIR authority to issue administrative closure decision and termination of removal proceedings decisions. Id.

The final rule describes when an Immigration Judge or the Board of Immigration Appeals can terminate proceedings. It creates two separate types of termination: "mandatory termination" and "discretionary" termination. 8 C.F.R. Section 1003.18; 1003.1(m); see also 8 C.F.R. Section 1239.2(b).

Under the "mandatory termination" category which applies to this case, the Immigration Judges and the Board of Immigration Appeals are "required" to terminate proceedings if any of the following circumstances are present:

- The removal charges cannot be sustained;
- Termination is otherwise required by law;
- Fundamentally fair proceedings are not possible because of mental illness;
- The noncitizen obtained US citizenship after removal proceedings started;
- The noncitizen has obtained statute, LPR status, refugee status, U status, T status, S status;
- The noncitizen meets the termination standard under NACARA;
- **(G) "The parties jointly filed a motion to terminate, or one party filed a motion to terminate and the other party affirmatively indicated its non-opposition, unless the immigration judge articulates unusual, clearly identified, and supported reasons for denying the motion."**

See 8 CFR Section 1003.18(d))(1)(i)(G)(Docket Management, Mandatory Termination)(**emphasis added).** And, in fact, this is exactly what happened in this case,

where, after the Respondents physically removed the Petitioner to Guatemala on September 1, 2025, the BIA, on September 25, 2025 issued a decision, mandatorily reopening and terminating both the Petitioner and his wife's removal proceedings as a matter of operation of law. Instant counsel is in the process of obtaining a copy of this BIA decision and will forward it to this Court as soon as possible.

Thus, it is apparent from a review of this case and the Rivera and the Singh cases, in all three cases, that there exist clear instances of what the Rivera v. Ashcroft Court would call "abuses of executive power," Rivera v. Ashcroft, at 846, which stem from unlawful removals that fly in the face of clear legal statutory rights such as a valid claim to U.S. citizenship (Rivera) or issuance of a stay of removal by an immigration judge (Singh) or, as in this case, *the codification of these legal principals* including the instances where there is a joint or stipulated motion to reopen becomes mandatory and removals reopened simply by operation of law. Id. Petitioner submits that given that he fell under the "mandatory" termination category, the reopening of his removal order acted much like an automatic stay or better in that the BIA was mandated to terminate his removal order (which they did) and that the only reason for the delay was due to the BIA's consideration of that "mandatory" motion which was supposed to kick-in by operation of law. Petitioner had no control over how long the BIA took to get to his case and issue the mandatory termination. To this extent, what ICE or Respondents did in this case in unlawfully detaining and removing the Petitioner, who had an absolute or mandatory statutory right to vacate his removal order by operation of law, should constitute an "abuse of executive power" and warrant issuance of the writ of habeas corpus under the "extreme circumstances" exception." Rivera v. Ashcroft, at 846 ("These abuses of executive power, the unknowing and involuntary nature of the

waiver of appeal, and the fact that the Fourteenth amendment does not permit involuntary relinquishment of citizenship all support our finding of extreme circumstance sufficient to permit a writ of habeas corpus in this case").

Thank you for your attention to this matter.

Respectfully,

s/Regis Fernandez
Regis Fernandez, Esq.

cc: AUSA's Office