

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

ANTONIO AGUIRRE VILLA,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 5:25-cv-89
)	
WARDEN, TONY NORMAND, et al.,)	
)	
Respondents. ¹)	

MOTION TO DISMISS AS MOOT

Petitioner Antonio Aguirre Villa has brought a habeas corpus petition under 28 U.S.C. § 2241 challenging a narrow aspect of his immigration detention. His sole challenge is that his detention is improper because the Department of Homeland Security (“DHS”) is misapplying 8 C.F.R. § 1003.19(i)(2). But circumstances changed after the Petition was filed, and Petitioner’s current detention is not related to the provisions of 8 C.F.R. § 1003.19(i)(2). Therefore, this Court should dismiss his Petition as moot.

FACTUAL BACKGROUND

Petitioner Antonio Aguirre Villa is a citizen of Mexico. Doc. 1, ¶ 24. He entered the United States in 2009. *Id.* He came into Immigration and Customs Enforcement (“ICE”) custody on October 3, 2011, and was released that same day. Respondents’

¹ The magistrate judge has entered a Report and Recommendation (“R&R”), finding that the only proper respondent is Warden Normand. *See* Doc. 10 at 2. Respondents take the same position but nevertheless file this response on behalf of all Respondents out of an abundance of caution because the Court has not yet ruled on that R&R.

Exhibit 1, Declaration of Erica Pensack (“Pensack Dec.”), ¶ 4. Those initial proceedings against were administratively closed on November 29, 2011. Doc. 1, ¶ 13.²

On June 26, 2025, Petitioner was again placed into ICE custody. Pensack Dec., ¶ 5. He was transferred to the Folkston ICE Processing Center in Folkston, Georgia, on July 9, 2025. *Id.* As of October 7, 2025, he is detained pursuant to the Immigration and Nationality Act (“INA”) § 235(b), which is codified at 8 U.S.C. § 1225(b).

On July 14, 2025, an immigration judge held a hearing at which Petitioner appeared with counsel. Pensack Dec., ¶ 7. The judge found that Petitioner was not a danger or flight risk and granted his request for bond. Doc. 1-1. DHS immediately filed a Notice of ICE Intent to Appeal Custody Redetermination on Form EOIR-43. Doc. 1-2. That form asserts that the bond determination is automatically stayed pursuant to 8 C.F.R. § 1003.19(i)(2).³ *Id.* On July 21, 2025, DHS also appealed the

² Administrative closure is a docket management tool and does not provide an alien with any immigration status. *Matter of B-N-K*, 29 I. & N. Dec. 96, 97 (BIA 2025).

³ 8 C.F.R. § 1003.19(i)(2) reads:

In any case in which DHS has determined that an alien should not be released or has set a bond of \$10,000 or more, any order of the immigration judge authorizing release (on bond or otherwise) shall be stayed upon DHS’s filing of a notice of intent to appeal the custody redetermination (Form EOIR-43) with the immigration court within one business day of the order, and, except as otherwise provided in 8 CFR 1003.6(c), shall remain in abeyance pending decision of the appeal by the Board. The decision whether or not to file Form EOIR-43 is subject to the discretion of the Secretary.

immigration judge's grant of bond to the Board of Immigration Appeals ("BIA"), and that appeal remains pending. Pensack Dec., ¶ 8.

On September 11, 2025, DHS filed a Motion for Custody Redetermination with the immigration court, in light of case law promulgated after the bond decision had been issued. Pensack Dec., ¶ 9; *see also* Pensack Dec., Attachment E (September 30, 2025, Order of the Immigration Judge). Both parties presented briefs. *Id.* Upon due consideration, the immigration judge concluded he lacked authority over Petitioner's custody determination because Petitioner was charged with entry without inspection and thus denied him bond. *Id.*; *see also* Pensack Dec., ¶ 9.

The Petition was served upon the United States Attorney's Office for the Southern District of Georgia on September 25, 2025. Doc. 13. Pursuant to this Court's Order, Respondents are required to file a Response by October 9, 2025. Doc. 10 at 3 (requiring an answer within 14 days of service).

On October 9, 2025, Petitioner filed an Amended Petition. Doc. 15. In the Amended Petition, Petitioner presented "new factual and legal developments." *Id.* at 1.

PETITIONER'S ALLEGATIONS

In his Petition, Petitioner challenges only one aspect of his detention: that he did not receive the bond granted to him by the immigration judge because of the "automatic stay" described in 8 C.F.R. § 1003.19(i)(2). He argues that § 1003.19(i)(2) is *ultra vires* and also that DHS's use of it violates his procedural and substantive due process rights.

ARGUMENT

I. The claims in the Petition are moot.

This action should be dismissed pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. Federal courts lack the authority to decide moot questions or abstract propositions of law because they do not constitute “cases or controversies” under Article III of the United States Constitution. *See, e.g., Preiser v. Newkirk*, 422 U.S. 395, 401-03 (1975). If a case or claim is moot, the court lacks subject-matter jurisdiction over it. *SEC v. Med. Comm. for Human Rights*, 404 U.S. 403, 406-07 (1972). In order for a court to retain jurisdiction, a real controversy must exist, not only when suit is filed, but throughout all stages of the case. *Chiles v. Thornburgh*, 865 F.2d 1197, 1202 (11th Cir. 1989).

The central question in mootness inquiries is whether changes in the circumstances existing at the beginning of litigation have forestalled any occasion for meaningful relief. *Westmoreland v. Nat’l Transp. Safety Bd.*, 833 F.2d 1461, 1462 (11th Cir. 1987). When an alleged wrong has ceased, and there is no reasonable expectation that it will be repeated, an action to enjoin that wrong is moot. *Preiser*, 422 U.S. at 402; *Westmoreland*, 833 F.2d at 1462. A case is also moot “when events subsequent to the commencement of a lawsuit create a situation in which the court can no longer give the plaintiff meaningful relief.” *Jews for Jesus v. Hillsborough County Aviation Auth.*, 162 F.3d 627, 629 (11th Cir. 1998).

Here, Petitioner’s petition has become moot. When he filed the Petition on August 29, 2025, Petitioner argued that he was detained “solely because of DHS’s

invocation of the automatic-stay regulation.” Doc. 1, ¶ 4. The automatic stay is a reference to 8 C.F.R. § 1003.19(i)(2). *Id.*, ¶ 3. Challenging this automatic stay is the entire basis of Petitioner’s challenge to his detention. *Id.*, ¶¶ 4, 16, 32, 42 (all describing Petitioner’s detention as based “solely” on § 1003.19(i)(2)). There is no dispute that DHS invoked that regulation immediately following the immigration judge’s first bond decision, but circumstances have changed.

After an applicable change in the case law, the immigration court issued a revised order regarding Petitioner’s bond on September 30, 2025. Pensack Dec., ¶ 9. In that order, the court denied bond to Petitioner—a change to its earlier decision granting bond. *Id.* The court ruled that, because Petitioner had been charged with entry without inspection, it lacked authority to grant Petitioner’s request for bond. Pensack Dec., Attachment E. Therefore, Petitioner is no longer detained pursuant to any stay invoked under § 1003.19(i)(2). That regulation applies only when DHS appeals an adverse order and also files Form EOIR-43. *See* 8 C.F.R. § 1003.19(i)(2). Since DHS has not appealed the September 30, 2025, order or filed the applicable form, the regulation no longer applies and is no longer related to Petitioner’s detention. Petitioner’s challenge to it is therefore moot.

Petitioner’s only legal challenge in his Petition is to DHS’s reliance on 8 C.F.R. § 1003.19(i)(2), which he describes repeatedly as the sole basis for his detention. Doc. 1, ¶¶ 4, 16, 32, 42. But his detention is no longer based on § 1003.19(i)(2)—after all, there is no longer any bond decision for which DHS could seek a stay. Instead, his current detention is based upon 8 U.S.C. § 1225(b). Pensack Dec., ¶ 5. When after a

change in circumstances change a habeas petitioner is no longer detained pursuant to the automatic stay described in § 1003.19(i)(2), his petition becomes moot. *Hussain v. Gonzales*, 492 F. Supp. 2d 1024, 1031 (E.D. Wis. 2007) (“Because Hussain is no longer being held on DHS’s automatic stay, respondents argue that his challenges to the automatic stay provision are moot and need not be addressed by the Court. The Court agrees.”), *aff’d*, 510 F.3d 739 (7th Cir. 2007); *see also Vargas Lopez v. Trump*, No. 8:25-cv-526, 2025 WL 2780351, at *10 (D. Neb. Sept. 30, 2025) (denying § 2241 challenge to § 1003.19(i)(2) as moot without deciding merits of due process claims); *Altayar v. Lynch*, No. CV-16-02479, 2016 WL 7383340, at *3 (D. Ariz. Nov. 23, 2016) (same), *report and recommendation adopted*, 2016 WL 7373353 (D. Ariz. Dec. 20, 2016); *El-Dessouki v. Cangemi*, No. CIV 06-3536, 2006 WL 2727191, at *2 (D. Minn. Sept. 22, 2006) (same).

Since the Petition’s only challenge is to a regulation that no longer applies to his situation, this Court should find that the Petition is moot and dismiss the Petition.

II. The Petition is also moot because Petitioner has filed an Amended Petition.

On October 9, 2025, Petitioner filed an Amended Petition. Doc. 15. When a plaintiff files an amended complaint, the earlier amended complaint becomes a legal nullity. *See, e.g., Hoefling v. City of Miami*, 811 F.3d 1271, 1277 (11th Cir. 2016). The same is true of habeas petitions: the earlier petition “is rendered moot.” *Deal v. Wilcher*, No. 4:23-cv-264, 2023 WL 7817933, at *1 (S.D. Ga. Oct. 6, 2023) (Ray, J.), *report and recommendation adopted*, 2023 WL 7726714 (S.D. Ga. Nov. 15, 2023). Therefore, the Petition filed on August 29, 2025, in this matter is now moot.

This Court ordered Respondents to file a response within 14 days of service of the Petition, Doc. 10 at 3, which Respondents have done through this filing. An amended pleading permits the responding party an additional 14 days in which to file a response. Fed. R. Civ. P. 15(a)(3). Because Petitioner filed his Amended Petition on October 9, 2025, Respondents intend to respond to the Amended Petition on or before October 23, 2025.

CONCLUSION

This Court should deny or dismiss the Petition as moot.

Respectfully submitted, this 9th day of October, 2025,

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