

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

ANTONIO AGUIRRE VILLA

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Petitioner,

vs.

TONY NORMAND, *in his official capacity as*
Warden of Folkston Detention center, and
TODD LYONS, *in his official capacity as Acting*
Director of Immigration and Customs Enforcement, and
GEORGE STERLING, *Field Office Director ICE Atlanta*
Field Office
KRISTI NOEM, *Secretary of Homeland Security*, and
PAMELA BONDI, *Attorney General*

Respondents.

CASE NO.:
5:25-cv-89-LGW-BWC

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

COMES NOW Petitioner, Antonio Aguirre Villa, and respectfully submits this Response in Opposition to the Respondents' Motion to Dismiss as Moot filed on October 9, 2025 (ECF 16). Petitioner requests that this Court: (1) DENY Respondents' motion to dismiss as moot; (2) **Grant the Writ of Habeas Corpus outright as soon as possible, as Respondents have not properly responded to the Order to Show cause and the Court's Orders and in their Motion to Dismiss as Moot do not list a single lawful reason for his continued detention, therefore this writ of habeas must be granted**; or, alternatively, (3) Schedule a hearing on the Writ of Habeas or the TRO motion (ECF 7) as soon as possible this week due to the urgent nature of the proceedings and the continued irreparable harm that Petitioner's unlawful detention entails that may soon reach a point of no return.

I. INTRODUCTION

This action is a petition for a writ of habeas corpus challenging Petitioner's continued detention by Immigration and Customs Enforcement (ICE). Initially, Petitioner's detention stemmed from the Department of Homeland Security's (DHS) invocation of the automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), after an Immigration Judge (IJ) ordered his release on a \$10,000 bond on July 14, 2025. The original Petition (Doc. 1) challenged this automatic stay as ultra vires and violative of Petitioner's Fifth Amendment due process rights. The Executive Office for Immigration Review (EOIR) is an agency under Respondent Bondi, which administers the immigration courts and the Board of Immigration Appeals (BIA), the appellate board over IJs.

Following the BIA's *Matter of Yajure Hurtado* decision, ICE filed a motion for bond redetermination and on September 30, 2025, an IJ issued an order, denying bond based on the reinterpretation of the Immigration and Nationality Act (INA) in the *Yajure Hurtado* decision. *See* 29 I & N Dec 216 (BIA 2025). Petitioner filed an Amended Petition (ECF 15) expanding his claims to challenge not only the automatic stay but also the new agency policies that reclassify Petitioner an "arriving alien" subjecting him to mandatory detention under 8 U.S.C. § 1225(b) and denying him bond under 8 U.S.C. § 1226(a).

Respondents now move to dismiss the petition as moot (ECF 16), arguing the automatic stay no longer applies and the original petition is superseded by the amended one. However, this case is not moot. The Amended Petition directly addresses the **new legal basis** for Petitioner's detention, ensuring that a live "case or controversy" persists, as required by Article III of the Constitution.¹ As demonstrated herein, the case presents ongoing factual and legal disputes

¹ *Preiser v. Newkirk*, 422 U.S. 395, 401-03 (1975) cited by Respondents is inapplicable because it involved a prisoner transfer from a medium-security prison to a maximum-security prison. After filing suit challenging the transfer, alleging it was retaliatory and violated his constitutional rights, Newkirk was transferred back to the medium-security facility. The Court found no live controversy because the specific harm Newkirk alleged (transfer to maximum

regarding the statutory and constitutional validity of Petitioner's continued detention, INA sections 8 U.S.C. § 1225(b) versus § 1226(a), and the government's evolving policies and interpretations.

Petitioner remains unlawfully detained, and the Amended Petition challenges the ongoing application of agency policies—including the automatic stay regulation, the July 2025 ICE memorandum, and the *Yajure Hurtado* decision—as ultra vires, arbitrary and capricious, and unconstitutional. The Court retains the ability to provide meaningful relief, including ordering Petitioner's immediate release, declaring his detention is governed by § 1226(a), and enjoining the enforcement of the challenged policies. The government's argument that the original petition is moot due to the filing of an amended petition is a technicality relies on *Preiser v. Newkirk*, which is easily distinguishable from the situation here. *See* note 1, *supra*.

The government's mootness arguments fail to account for the continuing harm to Petitioner and the unresolved legal questions at the heart of this matter. Both the automatic stay and the *Yajure Hurtado* decision are contrary to law. The petitioner is detained unlawfully; the government is simply using a bait and switch strategy to create additional reasons for his detention. ICE invoked the automatic stay because it was still attempting to argue the same argument put forth in *Yajure Hurtado*, but had lost and therefore invoked an emergency measure to detain the Petitioner. Accordingly, dismissal is unwarranted, and the case should proceed to a determination on the merits as soon as possible.

II. PROCEDURAL AND RELEVANT FACTS

Petitioner Mr. Villa has resided in Gainesville, Georgia, for approximately sixteen years, living with his long-time partner and their four children, two of whom are U.S. citizens. He entered the U.S. without inspection around 2009. In 2011, he was placed in removal proceedings, which

security) had ceased, and there was no evidence of ongoing or future harm. This is clearly distinguishable from the live controversy here since Petitioner continues to be detained unlawfully by Respondents preserving live controversy.

were administratively closed on November 29, 2011². Prior to his recent detention, Mr. Villa was employed as a construction subcontractor. On June 24, 2025, Mr. Villa was arrested by Georgia State Patrol for a traffic offense (driving without a license). He was subsequently transferred to ICE custody on June 26, 2025, initially at the Atlanta Federal Penitentiary; and then to the Folkston ICE Processing Center on July 9, 2025, where he remains detained. He was served with a Notice to Appear (NTA) on August 5, 2025, for inadmissibility under INA § 212(a)(6)(A)(i).³

Although Petitioner is not a criminal, he has been detained among hardened criminals in that facility under terrible conditions. During his detention, he experienced severe psychological distress, including suicidal ideation, and was hospitalized following a suicide attempt in August 2025 after experiencing harassment and an attempted sexual assault by another detainee. His mental capacity has continued to deteriorate significantly in detention. See Exhibit 1⁴.

On August 29, 2025, Petitioner filed his original Petition for Writ of Habeas Corpus (ECF 1), challenging his continued detention under the automatic stay regulation, arguing it was ultra vires and violated his due process rights, **as well as other counts** challenging his detention. Subsequently, on September 5, 2025, the BIA issued the *Yajure Hurtado* decision, which expanded the interpretation of mandatory detention to all individuals who entered without inspection. DHS then filed a Motion for Custody Redetermination on September 11, 2025. On September 30, 2025, the Immigration Judge denied bond, citing a lack of jurisdiction under *Yajure Hurtado*, which prompted the need to amend his Complaint.

² Although administrative closure of proceedings is not permanent and the government may reopen proceedings at any time based on changed circumstances, Petitioner contends that there were no changed circumstances, and many courts around the country have determined that once the government agrees to administratively close proceedings, it confers a liberty interest upon a person. Thus, administrative closure cannot be revoked or rescinded without due process and an opportunity to be heard prior to the revocation of the liberty interest. Petitioner Villa was not afforded that in his case. See Amended Complaint (ECF 15).

³ See ECF 16-1, Pensack Declaration page 2, section 6 and page 9 (Notice to Appear).

⁴ See Exhibit 1, Declaration of attorney Helen Vargas-Crebas pertaining to Petitioner's mental deterioration

On September 19, 2025, the Court granted Petitioner's Motion for Order to Show Cause, ordered service on federal officials, required an Answer within 14 days, as well as a response to the TRO within 7 days thereafter; but denied the request to take custody of Petitioner or "produce the body." ECF 10-11. The record shows that service was effectuated as to Respondent Normand on September 2, 2025 (ECF 8), and service on Respondent Bondi was on September 8, 2025 (ECF 9). The U.S. Attorney's Office were served again by the U.S. Marshalls on September 25, 2025.

On October 9, 2025, before Respondents had filed an answer, Petitioner filed an Amended Verified Petition for Writ of Habeas Corpus (ECF 15), incorporating these new factual and legal developments, including challenges to the new mandatory detention interpretation and the agency actions as arbitrary and capricious. The amended Complaint was necessary because the government is still detaining the Petitioner unlawfully; it is simply has sought new justifications for its clearly unlawful action. Petitioner incorporated the initial Complaint and added new allegations that stem from the Respondents' new and still unlawful interpretation of the INA resulting in his continued detention. On September 30, 2025, attorney Leithart entered an appearance on behalf of Respondents (ECF 12). On October 9, 2025, Respondents filed a Motion to Dismiss as Moot (ECF 16), **but they have not responded to the Order to Show Cause as directed by the Court.**

III. THE COURT SHOULD GRANT THIS WRIT OF HABEAS OUTRIGHT

Based on Petitioner's motion for Order to Show Cause, the Court issued the following order:

Given the emergent nature of the cause and associated Motion for TRO, the Court **ORDERS** Respondent to show cause, in writing, why Petitioner's writ should not be granted by filing an Answer within **14 days** of service of the Petition. *See* Rule 5 of the Rules Governing Section 2254 Petitions. Respondent's Answer must address the allegations in the Petition.

See ECF 10 and ECF 11. The Court's Order in ECF 10, also ordered Respondents to:

In addition, the **Respondent** must attach to the answer parts of any transcript that

the respondent considers relevant. See Rule 5(c) of the Rules Governing Section 2254 Petitions. **To that end, the Court directs Respondent to produce a copy of the record of Petitioner's immigration proceedings, including any bond proceedings.**

Despite producing only partial administrative records, **Respondents have failed to comply with the Court's order to produce the full record of proceedings and, critically, have not shown cause in writing as to why the writ should not be granted.** Rather than responding substantively to the Court's Order to Show Cause, Respondents instead filed a motion to dismiss as moot, which contains both factual and legal misrepresentations seemingly to mislead the Court and avoid adjudication on the merits. **This failure to comply with the Court's Orders—specifically, the lack of a written response addressing the Order to Show Cause and any valid reason for Petitioner's continued detention—warrants the granting of the Writ of Habeas Corpus outright.** According to the partial administrative record filed by Respondents, they charged him only with inadmissibility under INA § 212(a)(6)(A)(i) (being present without admission or parole), not INA § 212(a)(7)(A)(i)(I) (as an “arriving alien” who presents at the border without valid entry documents).⁵ **Notwithstanding, Respondents are now detaining Petitioner based on their new claim or interpretation that Petitioner is an arriving alien, despite the “alien classification” box in Petitioner's NTA clearly classifying him as “an alien present in the United States who has not been admitted or paroled,” not an “arriving alien.”** Moreover, the NTA contains no factual allegations that support the classification of Petitioner as an “arriving alien.” Based on the foregoing, the NTA and the administrative record fail to support Respondents' current rationale for detaining Petitioner. In addition to being unsupported by the record, Respondents' attempt to justify mandatory detention under § 1225(b) is contrary to the statutory and regulatory framework. This inconsistent treatment of Petitioner for purposes of grounds for removal and a basis for

⁵ See ECF 16-1, Pensack Declaration page 2, section 6 and page 9 (Notice to Appear).

detention is a critical defect that undermines the government's mootness argument and supports Petitioner's entitlement to relief.

Government's Reliance on the Pensack Declaration

The government's reliance on the Pensack declaration is misplaced and incomplete. While the declaration recites the procedural history and asserts a change in the statutory basis for detention, it does not address the absence of any "arriving alien" charge in the NTA, nor does it provide any factual basis for reclassifying Petitioner under § 1225(b). The declaration fails to reconcile the government's current position with the actual record and omits critical facts regarding Petitioner's eligibility for bond and the Immigration Judge's prior findings. As such, it cannot serve as a valid basis for dismissing the case as moot or justify Petitioner's continued detention.

Furthermore, Pensack's declaration misstates significant facts.⁶ There is little likelihood of Petitioner's removal to Mexico in the near future. He is eligible for relief from removal in form of Cancellation of Removal for non-permanent residents (EOIR-42B). Even assuming, *arguendo*, that the IJ denies relief in the near future, Petitioner could appeal the ruling to the BIA, which currently has an estimated backlog of a million cases, which will take years to resolve with only 28 board members.⁷ Until the BIA denies the appeal, such removal order is not yet final. Immigration detention of noncitizens who do not have final orders of removal, which are civil in nature, can only be justified for two reasons: prevent flight and risk to the community.⁸ Petitioner's continued detention is unjustified under either and a judge already ordered his release. He has already been detained for more than 90 days, which is more than what is normally permitted for noncitizens with **final** removal orders, even though he does not have a removal order yet. *See* 8 U.S.C. § 1231.

⁶ *See* ECF 16-1, Pensack Declaration page 2, section 11.

⁷ <https://tracreports.org/immigration/quickfacts/eoir.html>

⁸ *Zadvydas v. Davis*, 533 U.S. 678 (2001), although *Zadvydas* dealt with detention after final removal order

IV. THE COURT SHOULD DENY RESPONDENTS' MOTION TO DISMISS

Instead of responding to the Order to Show Cause as they were ordered to, Respondents filed a Motion to Dismiss as Moot (ECF 16). They contend that because Petitioner's Complaint challenged his improper detention due to the "misapplication" of 8 C.F.R. § 1003.19(i)(2) and circumstances changed after the Complaint has been filed, the Court should dismiss it as moot. As set forth below, this argument is baseless.

The government contends that the habeas petition challenging the lawfulness of Petitioner's detention is moot due to alleged changes in the basis for detention and the filing of an amended petition. However, as demonstrated herein, the case presents ongoing factual and legal disputes regarding the statutory and constitutional validity of Petitioner's continued detention, the application of 8 U.S.C. § 1225(b) versus § 1226(a), and the Respondents' evolving policies and interpretations. These disputes remain live and justiciable, and the Court retains jurisdiction to resolve them. The Respondents' mootness arguments fail to account for the continuing harm to Petitioner and the unresolved legal questions at the heart of this matter. Accordingly, dismissal is unwarranted, and the case should proceed to a determination on the merits.

V. MOOTNESS AND JURISDICTIONAL ANALYSIS

Respondents bring their Motion to Dismiss under Federal Rule of Civil Procedure (FRCP) 12(b)(1), which challenges the court's subject matter jurisdiction. Respondents contend that the subsequent denial of bond by the IJ on September 30, 2025, renders Petitioner's challenge to the automatic stay regulation moot. This argument fails because the Petitioner's detention remains unlawful, and the underlying legal questions regarding the scope of agency authority and due process violations are still very much alive.

When evaluating a challenge based on subject matter jurisdiction, the court must first determine whether the movant is raising a factual or facial challenge. The Respondents' Motion to

Dismiss as Moot is raising a **factual challenge** to subject-matter jurisdiction not a **facial** challenge. Respondents assert two grounds for dismissal: (1) that a change in the statutory or regulatory basis for Petitioner's detention renders the case moot, and (2) that the filing of an Amended Petition moots the original petition. Both arguments misapprehend the nature of mootness and the procedural effect of amended pleadings. The government's motion asserts that the petition is moot because "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)." The motion relies on the Declaration of Erica Pensack and other supporting documents to establish that Petitioner is now detained under a different statutory authority (INA § 235(b)), not the automatic stay regulation challenged in the original petition. They argue that as a result of these changed facts, the court no longer has jurisdiction to grant relief, and the case is moot.

As set forth below, the controversy remains live, ongoing harm persists, and this Court retains jurisdiction to grant meaningful relief. The exercise of judicial power depends on the existence of a case or controversy. An actual controversy must exist not only at the time the complaint is filed, but through all stages of the litigation.⁹ The doctrine of mootness requires dismissal of actions where intervening events have eliminated the possibility of meaningful relief, rendering the dispute no longer live.¹⁰ However, mootness is not a mechanical rule; courts

⁹ Similarly to FN1 above why *Preiser v. Newkirk* is inapplicable here, *Westmoreland v. Nat'l Transp. Safety Bd.*, 833 F.2d 1461, 1462 (11th Cir. 1987) is likewise inapposite here. Westmoreland had her Commercial Pilot Certificate suspended by the FAA via an Emergency Order. She contended that the suspension was retaliatory, stemming from her filing a civil rights complaint against her supervisor. The court determined that since Westmoreland had regained her Commercial Pilot Certificate, there was no longer a need for the court to grant the requested relief, thus rendering the case moot. She had already obtained the relief sought while the case was pending and the court found that potential future employment disqualification to be too speculative to establish a cognizable interest in the outcome.

¹⁰ *Jews for Jesus v. Hillsborough County Aviation Auth.*, 162 F.3d 627, 629 (11th Cir. 1998), is likewise inapplicable because Jews for Jesus, a religious organization, initiated a lawsuit seeking injunctive and declaratory relief to permit the distribution of literature at Tampa International Airport as a first amendment activity that was prohibited. After the lawsuit commenced, the airport lifted its prohibition on literature distribution, subsequently allowing individuals and organizations to distribute literature there. The airport's change in policy had already provided plaintiffs with the relief they sought—ability to distribute literature—meaning there was no meaningful relief left for the court to grant.

recognize several exceptions and nuances, particularly where ongoing controversies or collateral consequences persist.

A case is moot when parties to an action no longer “continue to have a ‘personal stake in the outcome’” of the legal action in question. *Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (citations omitted). Throughout litigation, 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**” to satisfy this case-or-controversy requirement. *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990) (citations omitted) (emphasis added). “[A] **suit becomes moot ...when it is impossible for a court to grant *any effectual relief* whatever to the prevailing party.**” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (emphasis added).¹¹ However, the alleged lack of authority to issue requested relief does not render a legal claim moot, as this confuses mootness with the merits. *Id.* The Eleventh Circuit has clarified that **mootness does not arise where subsequent events create a situation in which the court can still provide effective relief or where the alleged wrong is likely to recur.**¹² *Chiles v. Thornburgh*, 865 F.2d 1197, 1202 (11th Cir. 1989). There clearly remains a live controversy throughout the litigation and Respondents’ conduct is

The court concluded that the “capable of repetition, yet evading review” doctrine did not apply, given the absence of a reasonable expectation that the challenged conduct would recur.

¹¹ *SEC v. Med. Comm. for Human Rights*, 404 U.S. 403, 406-07 (1972) is similarly inapplicable. The controversy between the SEC and MCHR had become moot because the underlying shareholder proposal issue **had been resolved and the SEC’s challenged conduct had ceased** (Conversation Context). The Court reasoned that the series of events, including Dow’s inclusion of the proposal in the 1971 proxy statement and the meager shareholder support, mooted the controversy. In contrast, Petitioner Villa continues to be detained by Respondents unlawfully to date.

¹² This case supports Petitioner’s claims regarding no mootness. Florida state officials, including Governor Chiles, sued federal officials, challenging the federal government’s practice of transferring federal prisoners to state custody for service of state sentences and then returning them to federal custody to complete federal sentences. The plaintiffs argued that this practice violated federal law and imposed financial and administrative burdens on the state. During the litigation, the federal government changed its policy, ceasing the challenged transfers. **The Eleventh Circuit held that the case was not moot. The voluntary cessation of the challenged practice did not eliminate the controversy because the government could resume the conduct in the future, and the plaintiffs continued to face the risk of harm. Therefore, a live controversy persisted, and the court retained jurisdiction to decide the case. The court specifically held that the case was not moot because intervening events had not irrevocably eradicated the effects of the alleged violation.** Likewise, Petitioner Villa continues to be detained, but even if he had been released during the Pendency of this Complaint, the government Respondents could re-detain him at any time under the same contention that he is an “arriving alien”.

capable of repetition yet evading review as Petitioner continues to be unlawfully detained. Thus, he suffers collateral consequences that continue to affect him.

VI. THE CASE REMAINS LIVE CONTROVERSY AND THE COURT RETAINS JURISDICTION TO GRANT RELIEF

The government contends that the habeas petition challenging the lawfulness of Petitioner's detention is moot due to alleged changes in the basis for detention and the filing of an amended petition. In the context of immigration detention, courts have repeatedly held that **changes in the government's basis for detention, or the filing of amended pleadings, do not automatically moot a habeas petition where the underlying legal and factual disputes remain unresolved and the petitioner continues to suffer ongoing harm**. As demonstrated herein, the case presents ongoing factual and legal disputes regarding the statutory and **constitutional validity** of Petitioner's *continued* unlawful detention, the application of 8 U.S.C. § 1225(b) versus § 1226(a), and the government's evolving policies and interpretations. Respondents' mootness arguments fail to account for the **continuing harm** and the **unresolved legal questions** at the heart of this matter that continue his detention. Accordingly, dismissal is unwarranted, and the case should proceed to a determination on the merits.

Moreover, the government's assertion that the amended petition renders the original petition a "legal nullity" is not dispositive where the amended pleading incorporates and realleges the original claims and the controversy persists. Petitioner's amended complaint, timely filed on October 9, 2025, realleges and incorporates all prior claims and evidence, and specifically challenges the government's ongoing detention policy, statutory misclassification, and the constitutionality of the regulatory framework. The amended complaint asserts that Petitioner's detention remains unlawful and unconstitutional, as it is based on a novel and controversial agency interpretation that conflicts with decades of established practice, statutory language, and binding

precedent. The facts mentioned above underscore the ongoing nature of the controversy and set the stage for the legal arguments demonstrating why the case is not moot and the Court retains jurisdiction. Respondent's mootness arguments misapprehend the law. Respondents argue that this case is moot for two reasons: (1) Petitioner's detention is no longer predicated on the automatic stay provision of 8 C.F.R. § 1003.19(i)(2), but instead on the mandatory detention provision of INA § 235(b), codified at 8 U.S.C. § 1225(b); and (2) the filing of the amended petition renders the original petition a legal nullity, thereby extinguishing any live controversy. Both arguments are fundamentally flawed, both factually and legally.

A. Change in Detention Basis Does Not Moot the Controversy

Respondents' assertion that the controversy is mooted by its shift in rationale or statutory basis for Petitioner's detention (from the automatic stay regulation (8 C.F.R. § 1003.19(i)(2)) to mandatory detention under INA § 235(b), 8 U.S.C. § 1225(b)), is unpersuasive. The Amended Petition directly challenges the lawfulness of Petitioner's *original* detention (under 8 C.F.R. § 1003.19(i)(2)), his *continued* detention under § 1225(b), and the government's novel and controversial statutory interpretation of reclassifying long-term residents apprehended in the interior as "arriving aliens" subject to mandatory detention, like it has done in this case with Petitioner. The distinction between 8 U.S.C. § 1225(b) and 8 U.S.C. § 1226(a) is central to Petitioner's claims. Section 1225(b) generally applies to "arriving aliens" and mandates detention for people at or near ports of entry as they are in the process of entering the country, while Section 1226(a) governs the detention of other noncitizens and allows for discretionary bond hearings. Petitioner, who has lived in the U.S. since approximately 2009 with family ties and no significant criminal history, argues he is not properly classified under § 1225(b) and is entitled to be released under § 1226(a). The Government's attempt to shift the legal justification for detention from one challenged regulation to another challenged statutory interpretation does not resolve this

fundamental legal dispute. Petitioner alleges that this reclassification is unlawful, ultra vires, and contrary to decades of established agency practice and statutory interpretation.¹³ Therefore, the government's assertion that a change in the statutory basis for detention moots this case is unavailing.

Petitioner remains detained under a statutory and regulatory scheme that is unlawful, and the government's own evolving policies have not resolved the underlying controversy. The amended complaint seeks both declaratory and injunctive relief, including an order for Petitioner's immediate release. The Amended Complaint realleges and incorporates all prior claims in the original complaint, including those challenging the automatic stay regulation, and expands the scope of the dispute to encompass the government's evolving detention policies.

The government's own supporting documents (ECF 16-1) confirm that Petitioner remains in custody Folkston and that his detention is now justified under the new agency interpretation of INA § 235(b), even though his only NTA charge is under INA § 212(a)(6)(A)(i) (present in the U.S. without admission or parole). Petitioner was never charged with being an arriving alien, yet he is now detained by them due to their new interpretation that he is one. The core controversy—whether Petitioner's detention is lawful under the correct statutory and regulatory framework, statutory classification and application of agency regulations—remains unresolved. The government's shift in rationale does not eliminate the ongoing harm to Petitioner or the need for judicial review of the legality of his detention. A case becomes moot only when it is **impossible for a court to grant any effectual relief whatever** to the prevailing party. However, even the availability of a partial remedy is sufficient to prevent a case from being moot. Accordingly, the Court retains jurisdiction to resolve these disputes and to grant appropriate relief.

¹³ See Exhibit 2, "Under Trump Policy, Bonds for Immigrants Facing Deportation Are Vanishing", NY Times

B. The Amended Complaint Adds Justiciable Issues and Preserves Live Controversy

The government's argument that the amended complaint moots the original petition is equally misplaced. While it is true that an amended pleading supersedes the original, the amended complaint in this case **expressly realleges and incorporates all prior claims and evidence** including those challenging the automatic stay regulation and expands the scope of the dispute to encompass the government's evolving detention policies and their ongoing application to Petitioner. The amended complaint was filed to address new factual and legal developments, including the government's own change in detention rationale, and to ensure that the Court is presented with the most current and complete basis for relief. The controversy persists because the amended complaint continues to challenge the lawfulness of Petitioner's detention, the statutory classification, and the constitutionality of the government's actions (detention under § 1225(b), as well as the government's novel and controversial interpretation of the statute and regulations classifying Petitioner now as an "arriving alien" subject to mandatory detention). The core controversy—whether Petitioner's detention is lawful under the correct statutory and regulatory framework—remains unresolved. The government's shift in rationale does not eliminate the ongoing harm to Petitioner or the need for judicial review of the legality of his detention.

The government's assertion that the amended complaint moots the original petition is incorrect and does not defeat the existence of a live controversy. The amended complaint expressly realleges and incorporates all prior claims and evidence, including the challenge to the automatic stay regulation and the statutory classification of Petitioner's detention. Rather than extinguishing the underlying dispute, the amended complaint refines and expands the operative claims to address new factual and legal developments, including the government's evolving detention rationale. Courts consistently hold that the filing of an amended complaint does not moot a case where the

controversy remains live and the amended pleading incorporates the original claims. The controversy persists because Petitioner continues to challenge the lawfulness of his detention, the statutory and regulatory framework, and the constitutionality of the government's actions. The government's reliance on procedural technicalities cannot obscure the substantive disputes that remain at the heart of this litigation. Courts routinely hold that the filing of an amended complaint does not moot a case where the underlying controversy remains live and the amended pleading incorporates the original claims. The Eleventh Circuit clarified that "an amended complaint supersedes the original complaint, and the original complaint is thereafter disregarded,"¹⁴ but this refers to the pleading in a situation when a plaintiff disavows a prior complaint by an amendment, not the case itself becoming moot in the jurisdictional sense.

The purpose of an amended complaint or petition is to refine, clarify, or expand upon the claim—not to terminate the underlying controversy. It is specifically authorized by the habeas statute that an application for a writ of habeas corpus "may be amended or supplemented as provided in the rules of procedure applicable to civil actions." 28 U.S.C. § 2242. The claims from the original petition are not extinguished; rather, they are carried forward and potentially refined in the amended petition, which then becomes the operative pleading before the Court. The Court's jurisdiction over the case continues uninterrupted. Petitioner remains detained, and the Amended Petition presents live claims for which this Court can grant meaningful relief. The government's

¹⁴ *Hoefling v. City of Miami*, 811 F.3d 1271 (11th Cir. 2016). In *Hoefling*, the Court dismissed a second amended complaint and considered exhibits attached to earlier complaints, which were expressly disavowed in the operative second amended complaint, when ruling on a motion to dismiss. The court stated that as a matter of law, the second amended complaint filed by Mr. Hoefling superseded the former pleadings, and the original pleadings were abandoned by the amendment holding that cases do not permit a district court to consider, on a motion to dismiss, exhibits attached to an earlier complaint that a plaintiff has expressly disavowed or rejected as untrue in a subsequent amended complaint. This case is inapplicable to Petitioner as Petitioner did not disavow his original complaint, to the contrary, he included all the original claims in the original complaint and incorporated them into the amended complaint. The original statute and reasons for Petitioner Villa's detention are still at issue in the amended complaint.

argument would imply that any time a plaintiff amends a complaint, the entire case becomes moot, which is contrary to established procedural law, FRCP, and common practice.

In sum, neither the change in statutory basis nor the filing of the amended complaint has extinguished the live controversy. Petitioner remains detained under a challenged and unlawful statutory and regulatory scheme, continues to suffer ongoing harm, and seeks meaningful relief that this Court is empowered to grant. The mootness arguments misconstrued the facts and the law and do not warrant dismissal of this action.¹⁵ Courts routinely hold that the filing of an amended complaint does not moot a case where the underlying controversy remains live and the amended pleading incorporates the original claims. The government's reliance on procedural technicalities cannot obscure the substantive disputes that remain at the heart of this litigation.

C. Ongoing Harm and Collateral Consequences

Petitioner continues to suffer significant and ongoing harm as a direct result of his detention, including separation from his family, loss of employment, and severe mental health impacts, such as a reported suicide attempt while in custody. These collateral consequences are not remedied by the government's change in statutory basis or the mere filing of an amended complaint. The harm is concrete, immediate, and ongoing, underscoring the necessity for judicial intervention. Petitioner continues to suffer concrete and ongoing harm as a result of his detention. This includes separation from his family, loss of employment, and significant physical and mental health impacts, including a reported suicide attempt while in custody. The Supreme Court and lower courts have consistently recognized that ongoing harm¹⁶ and collateral consequences preserve a

¹⁵ The proper course for the Government, if it believes the claims are moot, is to direct its motion to dismiss at the Amended Petition, which is the live pleading, and argue that the claims contained therein are moot, not merely that the original pleading has been superseded.

¹⁶ Unfortunately, mental health issues suffered by Petitioner are becoming more common as non-criminals like him are put in prolonged detention by ICE. *See* Exhibit 3 New York Times article "People Are Losing Hope Inside ICE Detention Centers".

live controversy, precluding mootness in habeas and civil detention cases.

Moreover, the government's argument attempts to create a "moving target" scenario, where any change in the stated legal basis for detention would render a habeas petition moot, effectively preventing judicial review of systemic issues and contravene the habeas statute itself allowing to amend complaints. Such an approach would allow the government to evade scrutiny by simply re-articulating its justification for detention, even as the underlying injury—unlawful detention—persists. Intervening events are not sufficient to render a case moot if the effects of the alleged violation have not been "irrevocably eradicated."¹⁷ The mere voluntary cessation of a challenged practice does not render a case moot if there is a reasonable expectation that the challenged practice will resume after the lawsuit is dismissed. The cases cited by the government are inapposite. *Hussain v. Gonzales*, 492 F. Supp. 2d 1024, 1031 (E.D. Wis. 2007), *Vargas Lopez v. Trump*, No. 8:25-cv-526, 2025 WL 2780351, at *10 (D. Neb. Sept. 30, 2025), *Altayar v. Lynch*, No. CV-16-02479, 2016 WL 7383340, at *3 (D. Ariz. Nov. 23, 2016), *El-Dessouki v. Cangemi*, No. CIV 06-3536, 2006 WL 2727191, at *2 (D. Minn. Sept. 22, 2006). These cases involved situations where they were found to be moot because the petitioners had initially contested the automatic stay provision, but either the respondents then asked for an emergency discretionary stay or this type of stay was granted by the BIA. Because of that, these courts found the petitioners' petitions contesting the validity of the automatic stay provision was moot. Here, Petitioner remains detained, the case not being moot because he is still dealing with automatic stay provision, not emergency discretionary stay and the fundamental legal question of his entitlement to a bond hearing now shifted under 8 U.S.C. § 1226(a) versus mandatory detention under 8 U.S.C. § 1225(b) is very much alive. The Amended Petition also seeks declaratory and injunctive relief against future re-

¹⁷ *Chiles v. Thornburgh*, 865 F.2d 1197, 1203 (11th Cir. 1989)

detention under the same policies and challenges ongoing collateral consequences, which further prevents mootness even if the immediate detention basis were resolved. The constitutional and statutory questions raised by Petitioner—regarding the proper interpretation of the INA, the validity of agency regulations, and the procedural safeguards required by due process—remain unresolved and require judicial intervention. The government’s evolving policies and interpretations create a risk that the challenged conduct will recur, either to Petitioner or similarly situated individuals.

D. The Case Remains Justiciable; Statutory and Constitutional Claims Remain Unresolved and Relief Remains Available

Federal courts possess jurisdiction under 28 U.S.C. § 2241 to review habeas petitions challenging the lawfulness of civil immigration detention. The writ of habeas corpus extends to a prisoner who is “in custody in violation of the Constitution or laws or treaties of the United States” 28 U.S.C. § 2241(c)(3). This Court has jurisdiction as well under 28 U.S.C. § 1331 and the Administrative Procedure Act (APA) to adjudicate claims of arbitrary, capricious, or ultra vires agency action. The Supreme Court has repeatedly affirmed the availability of habeas review for colorable constitutional claims arising from immigration detention, even in the face of government arguments regarding mootness or statutory limitations. Jurisdiction is further supported by the Suspension Clause and Article III, which empower federal courts to address ongoing violations of constitutional rights and ensure that individuals are not deprived of liberty without due process. The Supreme Court has repeatedly affirmed the availability of habeas review for constitutional claims arising from immigration detention, even in the face of government arguments regarding mootness or statutory limitations. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018).

Petitioner’s amended complaint raises substantial statutory and constitutional claims, including

violations of the INA, the APA, and the Due Process Clause of the Fifth Amendment.¹⁸ These claims are not rendered moot by the government's change in detention rationale or the filing of an amended complaint.¹⁹ The controversy remains live because the legality of Petitioner's continued detention, the proper statutory classification, and the validity of agency regulations are unresolved and require judicial determination. The Court's intervention is necessary to resolve these ongoing disputes and to grant meaningful relief.

E. Capable of Repetition Yet Evading Review Exceptions to Mootness (Recurrence Risk)

The government's mootness arguments fail to account for well-established exceptions that also preserve the Court's jurisdiction over this case. First, even if the specific statutory basis for Petitioner's detention has changed, the collateral consequences of his continued confinement—including separation from family, loss of employment, and mental health deterioration—persist and are not remedied by the government's procedural maneuvers. Courts have recognized that ongoing harm and collateral consequences preserve a live controversy and preclude mootness, particularly in the context of civil detention and habeas proceedings. Petitioner's ongoing deprivation of liberty, the impact on his family, and the risk of future unlawful detention all ensure that the controversy remains live and justiciable.

¹⁸ The Amended Petition asserts violations of the Administrative Procedure Act (APA) and the *Accardi* doctrine. Petitioner alleges that the government's actions are arbitrary, capricious, an abuse of discretion, and in excess of statutory authority under 5 U.S.C. § 706(2)(A) and (C). These claims challenge the legality of the government's policy shift, not merely the application of a single regulation. The *Accardi* doctrine requires administrative agencies to follow their own regulations and procedures. The alleged reclassification of individuals contrary to the plain language of the INA established regulations and the expansion of mandatory detention beyond statutory limits constitute ongoing violations that remain live and justiciable.

¹⁹ Petitioner's Amended Petition seeks immediate release from custody; a declaration that his detention is governed by 8 U.S.C. § 1226(a), not § 1225(b); an injunction against enforcement of the automatic stay and re-detention under the challenged interpretation; and judicial invalidation of the July 2025 ICE memo, the automatic stay regulation, and Matter of Yajure Hurtado as applied to him. Even if the specific mechanism of the automatic stay were no longer the sole basis for detention, the underlying challenge to the legality of detention itself under the new policy remains a live controversy. This Court can still provide meaningful relief by declaring the new policy unlawful, declare that he is detained pursuant to 8 U.S.C. § 1226(a) and order his release from detention. The constitutional and statutory questions raised by Petitioner—regarding the proper interpretation of the INA, the validity of agency regulations, and the procedural safeguards required by due process—remain unresolved and require judicial determination.

Second, the doctrine of “capable of repetition, yet evading review” applies squarely here. This exception is triggered when (1) the challenged action is too short in duration to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again. The government’s evolving policies and interpretations create a substantial risk that the challenged conduct will recur, either to Petitioner or to similarly situated individuals.²⁰ The controversy is not academic; it is a live dispute with ongoing consequences for Petitioner and for the proper administration of immigration law. The government’s ability to alter the basis for detention mid-litigation, as occurred here, demonstrates that the challenged conduct is inherently capable of repetition yet evades effective judicial review. *See Chiles v. Thornburgh*, 865 F.2d 1197, 1202-3 (11th Cir. 1989).

In the present case, Petitioner’s detention and the government’s shifting statutory basis for that detention are subject to rapid changes in agency interpretation and policy, as evidenced by the recent adoption of *Matter of Yajure Hurtado* and the July 2025 ICE memorandum. The risk that Petitioner—or similarly situated individuals—will again be subject to unlawful detention under a novel or controversial statutory classification is substantial. The government’s ability to alter the basis for detention mid-litigation, as occurred here, demonstrates that the challenged conduct is inherently capable of repetition yet evades effective judicial review. There are tens of thousands of noncitizens like Petitioner around the country who have the same issue. It is likely that other noncitizens detained at Folkston are also detained there solely due to the ultra vires automatic stay regulation or the wrongful “arriving alien” classification. In fact, undersigned counsel is working on additional cases to be filed in Folkston where other noncitizens who entered without inspection

²⁰ In *Kiakombua v. Wolf*, 498 F.Supp.3d 1 (D. D.C. 2020), the court noted that agencies could insulate themselves from judicial review by quickly changing plaintiffs’ status, which is exactly what the government did in that case. Within days of learning about this lawsuit, the government acted in an effort to moot plaintiffs’ claims.

were detained and then denied bond by the IJ as they were deemed “arriving aliens” years after they had entered into the country. *See* Exhibit 4²¹ TRO granted decision in another case of undersigned counsel’s challenging solely detention pursuant to an “arriving alien” claim.

Even if Respondents had already released Petitioner from detention, he would still have a claim “capable of repetition, yet evading review” because the Respondents could re-detain him at any time based on their new “arriving alien” interpretation that is against the law. Only by this Court granting habeas and declaratory relief that he is not subject to mandatory detention as he was apprehended in the interior and not an arriving alien can the case be resolved.

Additionally, the public interest exception to mootness is implicated, as the issues presented—statutory interpretation of the INA, the validity of agency regulations, and the procedural safeguards required by due process—are of significant public importance and likely to recur, yet evade review if dismissed as moot. There are dozens of published federal district court decisions from around the country dealing with the same circumstances and not one of the district court judges decided that the government’s novel interpretation of “arriving alien” is justified.²²

F. Public Importance and the Necessity of Judicial Review

The issues presented—statutory interpretation of the INA, the validity of agency regulations, and the procedural safeguards required by due process—are of significant public importance. The Supreme Court has emphasized that federal courts retain jurisdiction to review colorable constitutional claims arising from immigration detention and agency action alleged to be arbitrary, capricious, or contrary to law, even where the government asserts mootness based on changed circumstances or statutory limitations. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 840–41 (2018); *Boumediene v. Bush*, 553 U.S. 723 (2008) (habeas court must have the power to order the

²¹ *Jose Alejandro v. Forestal*, Case 1:25-cv-02027-JPH-MKK (S.D. In. October 11, 2025)

²² *See* Amended Complaint, ECF 15, specifically pages 32-38, sections 86, 87, 88

conditional release of an individual unlawfully detained, detained, although release need not be the exclusive remedy). Petitioner's claims challenge not only his individual detention, but also the legality of the government's evolving policies and interpretations, which have broad implications for similarly situated noncitizens. Judicial review is essential in cases challenging agency action—especially where the legality of detention, statutory classification, and procedural safeguards are at issue to ensure the government's compliance with statutory and constitutional requirements and to prevent arbitrary or unlawful agency action. The public interest in the proper administration of immigration law and the protection of individual liberty further supports the Court's continuing jurisdiction.²³

Given the ongoing nature of civil immigration detention, the risk of recurrence, and persistent collateral consequences, courts must exercise vigilant oversight and avoid premature dismissal on mootness grounds. Detention cases, by their nature, require careful judicial scrutiny to ensure compliance with statutory and constitutional requirements and to protect fundamental liberty interests. The present case exemplifies the need for judicial intervention to resolve live statutory and constitutional disputes and to prevent arbitrary or unlawful agency action.

In sum, the government's claim of changed circumstances causing mootness is superficial and does not eliminate the ongoing controversy. Dismissal on mootness grounds is therefore unwarranted. The amended complaint preserves all prior claims and expands the dispute to encompass the government's new detention rationale. In light of these principles, the Court retains jurisdiction over this case. The controversy remains live due to ongoing harm, unresolved statutory and constitutional questions, and the risk of recurrence inherent in the government's evolving detention policies, requiring judicial resolution. Dismissal on mootness grounds would improperly

²³ Exhibit 2 "Under Trump Policy, Bonds for Immigrants Facing Deportation Are Vanishing", New York Times.

foreclose judicial review of important legal, statutory and constitutional issues and deny Petitioner meaningful relief.

VII. RELIEF SOUGHT IS TAILORED TO ONGOING HARM AND LEGAL VIOLATIONS

The ongoing liberty deprivations imposed on Petitioner constitute classic irreparable harm warranting injunctive relief. Courts have repeatedly recognized that the loss of liberty, even when not amounting to physical incarceration, is a paradigmatic form of irreparable injury. *Hensley v. Mun. Ct.*, 411 U.S. 345, 351 (1973). Here, Petitioner's daily life is spent in jail with convicted felons. He is confined of movement and association and is inflicted with physical and psychological distress and anguish. He is unable to maintain stable employment and family relationships. He is prevented from preparing applications for relief from removal and properly participate in his defense from removal.²⁴

The deprivation of Petitioner's liberty and statutory rights further supports a finding of irreparable harm. The ongoing and threatened injuries here are not speculative; they are concrete, immediate, and continuing. Accordingly, injunctive relief is not only appropriate, but necessary to prevent further irreparable harm to Petitioner and his family. Each form of relief requested is directly linked to the specific, ongoing injuries Petitioner continues to suffer. The relief sought is narrowly tailored to address the precise legal violations and concrete harms at issue, ensuring that the Court's intervention is both justified and proportionate.

In addition to the legal arguments, the equities in this case strongly favor relief. Petitioner is a long-term resident, a father to U.S. citizen children, a person with a stable employment who had never suffered a psychological problem in his life, until he was detained and attacked in prison. Unfortunately, this is a common occurrence now that happens due to the government's unlawful

²⁴ See Exhibit 1 Attorney Declaration.

detention of thousands of people under the “arriving alien” scheme.²⁵ The public interest is served by ensuring that the government follows the law and that noncitizens and their families are not subjected to arbitrary or unlawful agency action. These humanitarian factors underscore the urgency and justice of the relief sought. Courts routinely recognize that the loss of liberty, separation from family, and deprivation of statutory rights are injuries that cannot be remedied by monetary damages, and thus, warrant injunctive relief.

VIII. CONCLUSION AND RELIEF REQUESTED

For the foregoing reasons, Petitioner respectfully requests that the Court deny Respondents’ Motion to Dismiss as Moot.²⁶ Their arguments for mootness are unpersuasive and misapply established legal principles. A live case or controversy persists, and this Court retains jurisdiction to provide meaningful relief based on the claims presented in the Amended Petition. Therefore, the claims challenging the ultra vires nature of the automatic stay regulation²⁷ and the unlawful application of mandatory detention provisions of “arriving aliens”²⁸ are still directly implicated by Petitioner’s ongoing detention.

Furthermore, the government’s contention that the original petition is moot due to the filing of an Amended is a procedural truism that does not warrant dismissal of the entire case. An amended pleading supersedes the original, but the operative pleading—the Amended Petition—contains live claims that challenge the legality and constitutionality of Petitioner’s continued detention, especially when it incorporates the entire prior pleading and adds additional claims. The

²⁵ See Exhibit 2, “Under Trump Policy, Bonds for Immigrants Facing Deportation Are Vanishing”, NY Times

²⁶ While the original petition challenged the automatic stay, the Amended Petition explicitly broadens the challenge to include the July 2025 ICE memorandum and the *Yajure Hurtado* decision, which unlawfully reclassify noncitizens who entered without inspection as “arriving aliens” subject to mandatory detention under INA § 1225(b). Petitioner’s current detention, as of the filing of the Amended Petition, remains solely due to the combined effect of the automatic stay and this new agency interpretation.

²⁷ See *Campos-Leon v. Forestal*, Case 1:25-cv-01774-SEB-MJD, 2025 WL 2694763, (S.D. In., Sept 22, 2025)

²⁸ See *Jose Alejandro v. Forestal*, Case 1:25-cv-02027-JPH-MKK (S.D. In. October 11, 2025), Exhibit 4

controversy remains live due to ongoing harm, unresolved statutory and constitutional questions, and the risk of recurrence inherent in the government's evolving detention policies. Denying the government's motion to dismiss will allow the Court to resolve the live controversy efficiently and prevent further harm to Petitioner. Prompt adjudication of the merits will conserve judicial resources, avoid unnecessary delay, and ensure that Petitioner's ongoing detention is subject to timely judicial review. The interests of justice and judicial economy strongly favor proceeding to a determination on the merits.

Should the Court determine that immediate relief cannot be granted on the pleadings alone, Petitioner respectfully requests an expedited hearing on the merits of his claims. Petitioner's financial means are limited, and continued detention places an undue burden on him and his family. While undersigned counsel appreciates that the Court is busy, this case presents a life or death emergency. Based on undersigned counsel's experience in 3 recent similar cases, less than two weeks lapsed from initial complaint filing to a TRO hearing and granting of relief to similarly situated individuals, and the most recent one took 6 days from filing until TRO was granted.²⁹

WHEREFORE, Petitioner respectfully prays that this Honorable Court:

- (1) Deny Respondents' Motion to Dismiss as Moot (ECF 16) and Retain jurisdiction over this matter;
- (2) Issue a Writ of Habeas Corpus ordering Petitioner's immediate release;
- (3) Set an expedited hearing on the TRO/preliminary injunction this week;
- (4) Declare that Petitioner's detention is governed by INA § 1226(a), not § 1225(b);

²⁹ See *Jose Alejandro v. Forestal*, Case 1:25-cv-02027-JPH-MKK (S.D. In. October 11, 2025), Exhibit 4

- (5) Issue a declaratory judgment that Petitioner is not an “applicant for admission” or “arriving alien” subject to mandatory detention under 8 U.S.C. § 1225(b);
- (6) Issue a declaratory judgment that the automatic stay regulation, 8 C.F.R. § 1003.19(i)(2), is ultra vires and unconstitutional as applied to Petitioner;
- (7) Issue an injunction prohibiting Respondents from enforcing the automatic stay regulation and from re-detaining Petitioner under the challenged interpretation of INA § 1225(b);
- (8) Judicially invalidate the July 2025 ICE memorandum and the BIA’s *Matter of Yajure Hurtado* decision, as applied to Petitioner; and
- (9) Grant such other and further relief as this Court deems just and proper.

Respectfully submitted this 13th day of October, 2025.

/s/ Karen Weinstock

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CERTIFICATE OF SERVICE

I certify that on 13th day of October, 2025, I electronically filed the foregoing **PETITIONER'S RESPONSE IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS AS MOOT** with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to Respondents' attorney(s) of record.

/s/ Karen Weinstock

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