IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 25-cv-03078-WJM-KAS

JESUS MORALES LOPEZ,

Petitioner,

v.

JUAN BALTASAR, Warden of the Denver Contract Detention Facility, Aurora, Colorado, in his official capacity;
ROBERT GAUDIAN, Field Office Director, Denver Field Office, U.S. Immigration and Customs Enforcement, in his official capacity;
KRISTI NOEM, Secretary, U.S. Department of Homeland Security, in her official capacity;
TODD LYONS, Acting Director of Immigration and Customs Enforcement, in his official capacity; and
PAM BONDI, Attorney General, U.S. Department of Justice, in her official capacity,

Respondents.

RESPONDENTS' SUPPLEMENTAL BRIEF PURSUANT TO ECF No. 21

Respondents respectfully submit the following Supplemental Brief in response to the Court's Order dated October 28, 2025. ECF No. 21. That Order specifically directed supplemental briefing on (1) whether this habeas proceeding was rendered moot by the October 23, 2025 decision of the Board of Immigration Appeals (BIA) reversing an immigration judge's prior bond order, *see* ECF No. 18 at 17-18, and (2) whether it would be appropriate in light of that development for the Court to grant Mr. Morales Lopez leave to amend his habeas petition. ECF No. 21. As to the first issue, Respondents' position is that because the operative habeas petition challenges his detention solely by

contesting the legality of the regulation that had allowed an automatic stay of bond, and because that regulation no longer applies to Mr. Morales Lopez, the challenge to detention Mr. Morales Lopez raised therein is moot. As to the second issue, Respondents do not oppose granting Mr. Morales Lopez leave to amend his Petition.

BACKGROUND

Mr. Morales Lopez is a non-citizen who entered the country without inspection in 2006. *See* ECF No. 1 at ¶ 22. In July 2025, U.S. Immigration and Customs Enforcement (ICE) arrested Petitioner and charged him pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) as a non-citizen present in the United States who was not lawfully admitted. *Id.* at ¶ 23. Petitioner requested a bond hearing before an immigration judge. *Id.* at ¶ 29. At that hearing, the Department of Homeland Security (DHS) argued that Petitioner was subject to 8 U.S.C. § 1225(b)(2)(A), which applies to applicants for admission, and thus was subject to mandatory detention. *Id.* at ¶ 28. The immigration judge disagreed with DHS, and granted Petitioner release on bond. *Id.* at ¶ 29. DHS appealed the immigration judge's order, which triggered an automatic stay of the bond pursuant to 8 C.F.R. § 1003.19(i)(2). *Id.* at ¶ 30.

Mr. Morales Lopez then filed this habeas action on October 1, 2025. *See generally* ECF No. 1. In the Petition, he challenged the legality of the automatic stay regulation. *See, e.g., id.* at ¶¶ 5, 41, 49, 62, 69, 75. Specifically, Mr. Morales Lopez challenged his detention on the grounds that the automatic stay provision is unlawful because it: (1) violates his Fifth Amendment substantive due process rights, *see id.* at 14-15; (2) violates his Fifth Amendment procedural due process rights, *see id.* at 15-16;

and (3) is *ultra vires*, *id.* at 16. As relief, he requests that the Court find the automatic stay unconstitutional, and order that Respondents immediately release him "in accordance with the bond order from [the immigration judge]." *Id.* at 16.

Notably, the Petition did not challenge the statutory basis for Petitioner's detention. The Petition acknowledges that Mr. Morales Lopez was initially detained pursuant to 8 U.S.C. § 1226(a), and that during the bond hearing, DHS argued for the first time that he was instead being held pursuant to Section 1225(b)(2)(A). *See* ECF No. 1 at ¶¶ 25-28. However, the Petition did not challenge the legality of detaining Mr. Morales Lopez under Section 1225(b)(2)(A) (which does not provide for a bond hearing), nor seek, as a form of relief, that he instead be held pursuant to Section 1226(a) (which does provide for a bond hearing).[1]

On October 23, 2025, the BIA issued an order on DHS's appeal of the immigration judge's bond order. *See* ECF No. 18 at 17-18. The BIA held that immigration judges lack authority to hear bond requests for non-citizens who are detained pursuant to Section 235(b)(2)(A) of the Immigration and Nationality Act (that is, 8 U.S.C. § 1225(b)(2)(A)). *Id.* Accordingly, the BIA vacated the bond order. *Id.*

ARGUMENT

I. The issues raised in the operative Petition are moot.

[1] The Petition does request a general court order declaring that Mr. Morales Lopez's detention is "contrary to law and unconstitutional," *see* ECF No. 1 at 16, however it does not assert any challenges to the legality of detaining him pursuant to Section 1225(b)(2)(A).

Mr. Morales Lopez's Petition challenge the constitutionality of his detention based on alleged legal defects in the automatic stay provision, 8 C.F.R. § 1003.19(i)(2). But Mr. Morales Lopez is no longer being held pursuant to an automatic stay pending the appeal to the BIA. The BIA determined that Mr. Morales Lopez is being held under Section 1225(b)(2)(A) (which does not provide for bond hearings). *See* ECF No. 18 at 17-18. Accordingly, Mr. Morales Lopez's current challenges in his Petition to the legality of his detention—which are all premised on challenges to the automatic stay provision—are moot, and the Court lacks jurisdiction over the habeas petition as it is currently pleaded.

Courts "have no subject matter jurisdiction if a case is moot." *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1109 (10th Cir. 2010). "'Mootness is a threshold issue because the existence of a live case or controversy is a constitutional prerequisite to federal court jurisdiction.'" *Id.* (quoting *Disability Law Ctr. v. Millcreek Health Ctr.*, 428 F.3d 992, 996 (10th Cir. 2005)).

Under Article III's case or controversy requirement, "an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997) (citations and quotation marks omitted). A case becomes constitutionally moot "when intervening acts destroy a party's legally cognizable interest in the outcome" of the claims presented. *Tandy v. City of Wichita*, 380 F.3d 1277, 1290 (10th Cir. 2004). "No matter how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit, the case is moot if the dispute is no longer embedded in any actual controversy about the

plaintiffs' *particular* legal rights." *Robert v. Austin*, 72 F.4th 1160, 1163 (10th Cir. 2023) (emphasis added) (internal quotations omitted), *cert. denied*, 144 S. Ct. 573 (2024). Courts lack authority "to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Navani v. Shahani*, 496 F.3d 1121, 1127 (10th Cir. 2007) (quoting *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992)).

As relevant here, if a challenged regulation or statute no longer applies to a plaintiff or petitioner, the case is moot. *Hill v. Snyder*, 878 F.3d 193, 204 (6th Cir. 2017) (affirming the "well-established legal principle that a claim premised on a statute that no longer applies to the challenging party does not satisfy Article III's case-or-controversy requirement"); *cf. Kansas Jud. Rev. v. Stout*, 562 F.3d 1240, 1246 (10th Cir. 2009) (noting that repeal of a challenged statute generally causes a case to become moot, as the "parties have no legally cognizable interest in the outcome, rendering any remedial action by the court ineffectual") (internal quotations omitted). As the Tenth Circuit recently held, a party challenging a statute or regulation cannot demonstrate an injury merely based on the fact that the statute exists. *InfoCision Mgmt. Corp. v. Griswold*, No. 22-1264, 2024 WL 3738578, at *8 (10th Cir. Aug. 9, 2024) (determining that because a decision of the Colorado Secretary of State no longer applied to the plaintiff, the constitutional challenge to the Colorado statute upon which the Secretary's decision was based was moot).

Here, because Mr. Morales Lopez's challenges to his detention all contest the legality of a regulation to which he is no longer subject—the automatic stay of bond

provided for in 8 C.F.R. § 1003.19(i)(2)—his challenges in his current Petition are moot, and the Court lacks jurisdiction to decide them.

In his Reply in Support of the Motion for a TRO, Mr. Morales Lopez argues that although he is no longer subject to the automatic stay regulation, the Court retains jurisdiction over the case. However, his arguments in support of this position fail.

First, he argues that the BIA decision was "not a neutral act, but a procedural maneuver by an executive agency to avoid judicial review." *See* ECF No. 18 at 3. But Mr. Morales Lopez offers no legal or factual support for this characterization of the BIA's order, which was an order on an appeal the BIA was required to determine.

Second, he makes a new argument not found in his Petition: that his detention—now under 8 U.S.C. § 1225(b)(2)(A)—is unlawful. *See id.* at 6-8. But Mr. Morales Lopez's current Petition does not challenge the legality of detention under that section, and he cannot amend his challenges via his Reply; rather, he must first comply with the Federal Rules of Civil Procedure and this Court's local rules. *See* 28 U.S.C. § 2242 (providing that a habeas petition "may be amended or supplemented as provided in the rules of procedure applicable to civil actions").

Accordingly, the Court should find that the Petition—as currently pleaded—is moot.

II. Respondents do not oppose granting Mr. Morales Lopez leave to amend his Petition.

Under the circumstances, and upon consideration of the relevant law on amendment to pleadings, Respondents do not oppose granting Mr. Morales Lopez leave to file an amended petition.

As noted above, a habeas petition "may be amended or supplemented as provided in the rules of procedure applicable to civil actions." *See* 28 U.S.C. § 2242. Accordingly, for Mr. Morales Lopez to amend his Petition, he must comply with the Federal Rules of Civil Procedure and this Court's local rules. Federal Rule of Civil Procedure 15 allows for leave "when justice so requires." Fed. R. Civ. P. 15(a)(2). In evaluating a motion to amend under Rule 15(a)(2), the Court may consider a wide range of factors, including undue delay, bad faith, dilatory motive, undue prejudice to the opposing party, repeated failure to cure deficiencies through previous amendments, and futility. *See Minter v. Prime Equip. Co.*, 451 F.3d 1196, 1204 (10th Cir. 2006).

Here, the factors likely weigh in favor of amendment.

First, there is no undue delay, bad faith, or dilatory motive by Mr. Morales Lopez. Instead, the BIA's decision on the appeal of his bond altered the circumstances (albeit, in a foreseeable manner). To be sure, Mr. Morales Lopez could have challenged ICE's authority to detain him under Section 1225(b)(2)(A) as an alternative argument in his habeas petition. However, at the time the Petition was filed, it was arguably unclear whether he was being held pursuant to Section 1225(b)(2)(A) or 1226(a).

Second, the prejudice to Respondents is minimal. Respondents now may need to respond to an amended habeas petition. But Respondents would likely have to do so regardless: if the Court denies Mr. Morales Lopez leave to amend, he could file a new habeas action.[2]

---

[2] Additionally, amendment does not appear, at this time, to be facially futile, at least to the extent this Court has jurisdiction to hear a challenge to Mr. Morales Lopez's continued detention. Though the BIA has now issued a final decision on whether to

Accordingly, Respondents do not oppose affording Mr. Morales Lopez leave to file an amended petition.

CONCLUSION

For the reasons stated above, the Court should find Mr. Morales Lopez' habeas petition, as currently pleaded, moot, and allow him leave to amend.

Dated: November 5, 2025

PETER MCNEILLY
United States Attorney

s/ Leslie Schulze
Leslie Schulze
Assistant United States Attorney
U.S. Attorney's Office
1801 California Street, Suite 1600
Denver, CO 80202
Telephone: (303) 454-0131
Email: Leslie.schulze@usdoj.gov
Counsel for Respondents

---

release Mr. Morales Lopez on bond, challenge to the BIA's order remains proper in the district court, not the Tenth Circuit Court of Appeals. *See Gudiel Polanco v. Garland*, 839 F. App'x 804, 805 (4th Cir. 2021) (explaining that the appeals court has jurisdiction to review "final orders of removal or deportation," not "request[s] for release on bond"); *Romero v. Hyde,* No. 25-cv-11631-BEM, 2025 WL 2403827, at *6 (D. Mass. Aug. 19, 2025) ("courts of appeal do not have independent jurisdiction to review BIA bond decisions", thus "there is no path from the denial of a bond appeal by the BIA to any appellate court"). Judicial review of a bond determination is properly sought by a habeas petition filed in district court. *See De Ming Wang v. Brophy*, 2019 WL 4199901, at *1 (2d Cir. Aug. 1, 2019) ("Appellee ... cannot challenge an immigration judge's denial of bond in this Court in the first instance" ... "[a]n application for a writ of habeas corpus must be made to the appropriate district court."

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2025, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Skylar Madison Larson, Esq.
8275 East 11th Avenue
Suite 200176
Denver, CO 80220
skylarmlarsonesq@gmail.com

s/ Leslie Schulze
U.S. Attorney's Office