

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martinez**

Civil Action No. 25-cv-3078-WJM-KAS

JESUS MORALES LOPEZ

Petitioner,

v.

JUAN BALTAZAR, in his official capacity as warden
of the Aurora Contract Detention Facility, et al.

Respondents.

PETITIONER'S SUPPLEMENTAL BRIEFING PURSUANT TO ECF NO. 21

Petitioner Jesus Morales Lopez, by and through undersigned counsel, respectfully submit the following Supplemental Briefing in response to the Court's Order, dated October 28, 2025. ECF No. 21. The Court directed the parties to address 1) whether Morales Lopez's Petition for Writ of Habeas Corpus was rendered moot by the October 23, 2025, decision of the Board of Immigration Appeals (BIA) and 2) whether it would be appropriate in light of that development for the Court to grant Morales Lopez leave to amend his Petition. ECF No. 21.

On November 5, 2025, Respondents filed their Supplemental Briefing in accordance with the Court's Order. ECF No. 25. Respondents argued that Morales Lopez's Petition (ECF No. 1) was moot as the operative challenge in that Petition related to the automatic stay provision of 8 C.F.R. § 1003.19, which is no longer the basis of Morales Lopez's detention. ECF No. 25 at 1-2. Respondents do not oppose granting Morales Lopez leave to amend his Petition in light of this development. ECF No. 25 at 2.

On November 3, 2025, Morales Lopez moved for leave to amend his Habeas Petition and included a proposed First Amended Petition for Writ of Habeas Corpus with the motion. ECF No. 23. That Motion and First Amended Petition are pending before the Court. ECF No. 24.

Morales Lopez asserts that the Petition for Writ of Habeas Corpus (ECF No. 1) is not moot because the Court must review the procedural irregularities that resulted in the unlawful perfection of the automatic stay. Additionally, his motion for leave to amend should be granted because there was no undue delay, bad faith, or dilatory motive on the part of Morales Lopez and granting leave would cause “minimal” prejudice to Respondents. ECF No. 25 at 7.

BACKGROUND

Following the Immigration Judge granting Morales Lopez bond on August 14, 2025, the Department of Homeland Security (DHS) filed EOIR-43, Notice of ICE Intent to Appeal Custody Redetermination. ECF No. 23 at Attachment E. On August 18, 2025, undersigned counsel filed her EOIR-27, Entry of Appearance before the BIA in anticipation of DHS perfecting the automatic stay upon filing of the appeal. ECF No. 23 at Attachment G. On August 20, 2025, DHS filed EOIR-26, Notice of Appeal. ECF No. 23 at Attachment H. Included in DHS’s Notice of Appeal was evidence of them purporting to “cancel” DHS Form I-286 on August 20, 2025. ECF No. 23 at Attachment I. The Notice of Appeal did not state why this evidence could not have been obtained sooner and presented before the IJ, as required by BIA caselaw.

Morales Lopez did not receive notice that the appeal had been filed until seven (7) days after it was filed on August 27, 2025. Morales Lopez subsequently submitted a Motion to Dismiss asserting that DHS failed to serve the appeal properly. ECF No. 23 at Attachment K. When the BIA issued its decision on October 23, 2025, there was no mention of the pending Motion to Dismiss. ECF No. 23 at Attachment L. Instead, the BIA relied solely on *Matter of Yajure Hurtado*,

29 I&N Dec. 216 (BIA 2025) to purportedly vacate the IJ's bond order. ECF No. 23 at Attachment L.

ARGUMENT

I. The issues raised in the operative Petition are ripe for review.

The prejudice to Morales Lopez here is two-fold. First, Morales Lopez's statutory right to appeal was impaired when DHS failed to properly serve the EOIR-26, resulting in delayed notice and inability to participate in the proceedings. Second, while Morales Lopez remained detained and the automatic stay under 8 C.F.R. § 1003.19(i)(2) was in effect, the BIA nonetheless proceeded to issue a decision without addressing Morales Lopez's pending Motion to Dismiss for improper service. This deprived Morales Lopez of both the notice and opportunity to be heard that due process requires. Morales Lopez's Motion to Dismiss the DHS appeal, and therefore, the automatic stay, raised a threshold procedural defect that directly affected the validity of the automatic stay.

The BIA's subsequent silence on that motion means that the core injury persists: Morales Lopez was deprived of notice, excluded from meaningful participation, and subjected to a decision rendered without resolution of a procedural error that costed him his freedom. Because the Court retains authority to declare the BIA's decision void and Morales Lopez's continued detention unlawful, effective relief remains available. The failure to address a live procedural defect keeps the controversy alive under *Church of Scientology of California v. United States*, 506 U.S. 9, 12–13 (1992), and demonstrates why judicial review remains necessary to restore Morales Lopez's statutory and constitutional rights.

Mootness is a threshold issue before the existence of a live case or controversy is a constitutional prerequisite to federal court jurisdiction. *McClendon v. City of Albuquerque*, 100 F.3d 863, 867 (10th Cir. 1996). In deciding whether a case is moot, the crucial question is whether

granting a present determination of the issues offered will have some effect in the real world. When it becomes impossible for a court to grant effective relief, a live controversy ceases to exist, and the case becomes moot. *Ind v. Colo. Dep't of Corr.*, 801 F.3d 1209, 1213 (10th Cir. 2015). Federal courts have no authority to give an opinion upon a question that is moot due to events that occur during the pendency of the action. *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 12–13 (1992). However, the Court may entertain challenges to the procedural process that the executive branch follows in proceedings. *See Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999). The Tenth Circuit has provided four (4) exceptions to the mootness doctrine: 1) secondary or collateral injuries survive after resolution of the primary injury; 2) the issue is deemed a wrong, capable of repetition yet evading review; 3) the defendant voluntarily ceases an allegedly illegal practice but is free to resume it at any time; or 4) it is a properly certified class action suit. *Riley v. INS*, 310 F.3d 1253, 1257 (10th Cir. 2002).

Morales Lopez asserts that the Petition at ECF No. 1 is not moot because he has established a concrete and continuing injury by his continued detention that is a collateral consequence of the BIA failing to adjudicate his dispositive Motion to Dismiss the DHS appeal and automatic stay. Because the BIA never adjudicated the pending Motion to Dismiss, the agency never resolved whether the automatic stay was lawfully invoked in the first place. If the automatic stay was improperly perfected, then Morales Lopez has been held—and continues to be held—unlawfully. That is a live Article III injury the Court must reach.

Respondents argue the Petition is moot because Morales Lopez is now detained under INA § 235(b) rather than § 236(a). But this argument mischaracterizes the source of the harm. The constitutional and statutory injury did not arise from the BIA's later decision; it arose weeks earlier, when 1) DHS filed its EOIR-26 but failed to properly serve it; 2) EOIR provided notice to counsel

seven days later; 3) the improperly served appeal nevertheless perfected the automatic stay; 4) the BIA refused to adjudicate a dispositive Motion to Dismiss challenging the validity of that very appeal; and 5) the automatic stay continued to govern his custody despite a mandatory, unaddressed procedural defect.

Had the BIA carried out its non-discretionary obligations to adjudicate the Motion to Dismiss filed by Morales Lopez, the automatic stay would have been lifted immediately. Morales Lopez would have regained his bond order, been released, and had meaningful time and access to prepare defenses, gather evidence, and file this Petition before weeks of unlawful detention accrued. The BIA's complete silence on a pending dispositive motion deprived him of the only mechanism to challenge the automatic stay at the administrative level. Because the agency never performed these mandatory procedural steps, the underlying injury has *not* been remedied. The agency's omission and its failure to adjudicate a fully briefed Motion to Dismiss created a constitutional vacuum that only the Court can fill. The BIA's later decision does not retroactively cure (1) a week-long violation of notice, (2) the wrongful perfection of the automatic stay, (3) the deprivation of time-sensitive litigation rights, or (4) the denial of reasoned decision-making required by due process. The Court retains authority to review these procedural violations because they inflicted real-time harm and because the agency had a mandatory obligation to address them but declined to do so.

The BIA's failure to address Morales Lopez's pending Motion to Dismiss for improper service constitutes a violation of both its regulatory and constitutional duties. An agency acts arbitrarily when it "entirely fails to consider an important aspect of the problem." *See SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947). The motion raised a fundamental procedural defect—lack of service of the EOIR-26—that deprived Morales Lopez of notice and an opportunity to

participate during a period when an automatic stay under 8 C.F.R. § 1003.19(i)(2) was in effect. The BIA's silence on that issue not only deprived Morales Lopez of due process under *Mathews v. Eldridge*, 424 U.S. 319 (1976), but also resulted in a decision issued without valid jurisdiction.

The core injury here is not academic, it is jurisdictional, procedural, and constitutional. The BIA failed to determine whether the appeal was validity before it. The BIA then issued a decision even though jurisdiction was contested through a pending motion. The BIA allowed a seven-day notice violation to stand unreviewed. *The BIA treated an unserved appeal as properly filed.* The BIA never responded to a dispositive procedural challenge that would have lifted the automatic stay. An agency acts arbitrarily when it entirely fails to consider an important aspect of the problem. *Here, the "problem" was whether DHS ever perfected the appeal at all.* Because the BIA ignored this threshold defect, the injury persists, and the controversy remains live.

II. THE COURT SHOULD GRANT MORALES LOPEZ'S MOTION FOR LEAVE TO AMEND.

Rule 15(a) of the Federal Rules of Civil Procedure provides that leave to amend "shall be freely given when justice so requires." Fed. R. Civ. P. 15(a)(2). Leave should be refused only on a showing of undue delay, undue prejudice to the opposing party, bad faith or dilatory motive, failure to cure deficiencies by amendments previously allowed, or futility of amendment. *Duncan v. Manager, Dep't of Safety, City & Cnty. Of Denver*, 397 F.3d 1300, 1315 (10th Cir. 2005).

Under Rule 15(d), the Court may permit a party to serve a supplement pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented. Fed. R. Civ. P. 15(d). Rule 15(d) permits a party to add facts that occurred after the complaint's filing, regardless of when the party learned of the fact. *See Walker v. UPS, Inc.*, 240 F.3d 1268, 1278 (10th Cir. 2001).

Morales Lopez's First Amended Petition seeks to address Respondents' principal argument that he is detained under INA § 235(b). Additionally, the First Amended Petition seeks to add information about the arbitrary and capricious nature of the BIA's decision that only arose after the filing of his original Petition on October 23, 2025.

Morales Lopez's proposed amendments adequately plead the facts necessary to sustain the claim that he is continued detention by Respondents is unlawful under the INA and that the BIA acted arbitrarily and capriciously under the APA when it dismissed his appeal without adjudication of his pending Motion to Dismiss which must have been granted when Morales Lopez was not only not contemporaneously served with the Notice of Appeal but then while detained did not receive notice for 7 days—a full week. Therefore, his claims are not futile, and Respondents agree as much. ECF No. 25 at 7 n.2.

Morales Lopez acted in good faith by promptly moving for leave to amend his Petition after receiving new information with the BIA's October 23, 2025, decision. Granting Morales Lopez's leave would not prejudice Respondents because their same argument in response to the automatic stay—that Morales Lopez is detained under INA § 235(b)—addresses the same argument Morales Lopez addresses in the First Amended Petition.

The Court should freely give leave to amend because Morales Lopez's First Amended Petition is not futile, is not offered in bad faith, and does not prejudice Respondents.

CONCLUSION

Mootness requires a showing that the Court cannot grant any effectual relief whatsoever. That standard has not been met here because the real-world injury Morales Lopez challenges—the improperly perfected automatic stay and the BIA's refusal to adjudicate the pending Motion to Dismiss—have never been cured. The controversy before this Court remains as the agency failed

to abide by its own procedures and to adjudicate a dispositive motion that squarely challenged the validity of the appeal that perfected the automatic stay.

For an entire week, Morales Lopez remained detained under an automatic stay that was triggered by an EOIR-26 he had never received. During that time, he lost irreplaceable opportunities to prepare his defenses and timely seek judicial review. When undersigned counsel invoked the only available administrative mechanism to correct that defect—a Motion to Dismiss for improper service—the BIA simply refused to act. It then proceeded to issue a merits decision that assumed, without ever deciding, that the appeal had been properly perfected and that the automatic stay validly displaced the Immigration Judge’s bond order. These events inflicted concrete, time-sensitive harm that persists regardless of the BIA’s later decision.

Effective relief is both available and necessary. This Court may declare that the automatic stay was unlawfully perfected; that the BIA acted arbitrarily, capriciously, and contrary to law when it failed to adjudicate the Motion to Dismiss; and that the resulting decision is void. The Court may also clarify the statutory detention authority governing Morales Lopez’s custody and ensure that his continued detention complies with the INA, the Constitution, and fundamental principles of administrative regularity. Far from being moot, this case presents a live, ongoing controversy about the legality of the mechanism that has kept Morales Lopez detained for months.

Finally, leave to amend should be freely granted. Morales Lopez moved promptly once the BIA issued its decision, and his proposed First Amended Petition simply incorporates post-filing facts and Respondents’ own asserted detention theory into the existing framework of his claims. The amendments are not offered in bad faith, do not cause undue delay or prejudice, and are not futile—indeed, Respondents concede as much. Allowing amendment will enable this Court to resolve, in a single proceeding, both the original automatic-stay injury and the newly crystallized

challenges to the BIA's October 23 decision and the asserted § 235(b) detention authority. Rules 15(a) and 15(d) were designed for precisely this situation: where evolving facts during litigation make it necessary to update the pleadings so the Court can render a complete and just resolution of the dispute.

For all these reasons, Morales Lopez respectfully requests that the Court (1) hold that his original Petition is not moot; (2) exercise jurisdiction to review and remedy the procedural and constitutional violations surrounding the automatic stay and the BIA's refusal to adjudicate the Motion to Dismiss; and (3) grant Morales Lopez's Motion for Leave to Amend so that his claims may be fully and fairly adjudicated on the merits.

Dated this 14th day of November 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2025, I electronically filed the foregoing **Petitioner's Supplemental Briefing Pursuant to ECF No. 21** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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