

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

RUBEN GARCIA MEMIJE,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-25-1287-G
)	
SCARLET GRANT, et al.,)	
)	
Respondents.)	

REPORT AND RECOMMENDATION

Petitioner Ruben Garcia Memije, a Mexican citizen proceeding with counsel, filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 (“Petition”) challenging his detention by the U.S. Immigration and Customs Enforcement (“ICE”).¹ (Doc. 1).² United States District Judge Charles B. Goodwin referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B), (C). (Doc. 3). Because Petitioner is now subject to mandatory detention under 8 U.S.C. § 1231(a)(2), this Court cannot grant relief. The undersigned accordingly recommends that the Petition be **DISMISSED** as moot.

¹ Petitioner is housed at Cimarron Correctional Facility in Cushing, Oklahoma. (Doc. 1, at 2).

² Citations to the parties’ filings and attached exhibits will refer to this Court’s CM/ECF pagination.

I. Background

Petitioner received a removal order from an immigration judge in 2022. (Doc. 1, at 12; Doc. 9, at Ex. 1, at 2). He was arrested by ICE on approximately September 15, 2025. (Doc. 1, at 12; Doc. 9, at 4). In his Petition, Petitioner claims he is entitled to a bond hearing under 8 U.S.C. § 1226, which could result in his release back into the public unless or until his detention status changes. (Doc. 1, at 13-15). At the time he filed his Petition, Petitioner had an appeal of his 2022 removal order pending with the Board of Immigration Appeals (“BIA”). (*Id.* at 12; *see also id.* at Ex. 3, at 1 (receipt for appeal to the BIA)).

On November 19, 2025, Respondents notified the Court that the BIA had dismissed Petitioner’s appeal and ordered him removed from the United States to Mexico. (Doc. 10, at 1).³ The Court ordered Petitioner to “file a notice to this Court on or before 5:00 p.m. on November 20, 2025, advising what effect, if any, Respondents’ notice has on the instant matter.” (Doc. 11, at 1). Neither Petitioner nor his counsel filed a responsive notice.

II. Standards of Review

To obtain habeas corpus relief, Petitioner must show that he is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). “Challenges to immigration detention are properly brought directly through

³ The undersigned additionally takes judicial notice of the Executive Office for Immigration Review’s Automated Case Information webpage, which notes that Petitioner’s BIA appeal was dismissed on November 12, 2025. Automated Case Information for Ruben Garcia-Memije, Exec. Off. Immigr. Rev., <https://acis.eoir.justice.gov/en> (enter Petitioner’s A-Number and nationality; then click “submit”) (last visited Dec. 4, 2025).

habeas.” *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) (citing *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001)).

“Mootness is a threshold issue because 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). “Because mootness is a matter of jurisdiction, a court may raise the issue sua sponte.” *Id.*

III. The BIA’s Dismissal of Peititoner’s Appeal Moots the Instant Petition.

“Article III of the Constitution limits federal-court jurisdiction to ‘cases’ and ‘controversies.’” *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 160 (2016) (quoting U.S. Const. art. III, § 2). “In order to invoke federal-court jurisdiction, a [petitioner] must demonstrate that he possesses a legally cognizable interest, or personal stake, in the outcome of the action.” *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71 (2013) (internal quotation marks omitted). This means “an actual controversy must be extant at all stages of review, not merely at time the [petition] is filed.” *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 67 (1997) (quoting *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975)). “If an intervening circumstance deprives the [petitioner] of a personal stake in the outcome of the lawsuit, at any point during litigation, the action can no longer proceed and must be dismissed as moot.” *Genesis Healthcare Corp.*, 569 U.S. at 72 (internal quotation marks omitted). “A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.” *Knox v. Serv. Emps. Int’l Union, Loc. 1000*, 567 U.S. 298, 307 (2012) (internal quotation marks omitted).

8 U.S.C. § 1226 governs pre-removal-order detention of non-citizens and only applies to non-citizens “pending a decision on whether the[y are] to be removed from the United States.” 8 U.S.C. § 1226(a). “After the pre-removal period concludes, the statutory authority to detain an alien shifts to 8 U.S.C. § 1231.” *Carbajal v. Holder*, 43 F. Supp. 3d 1184, 1188 (D. Colo. 2014) (“[W]hen an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days”) (quoting 8 U.S.C. § 1231(a)(1)(A)). This shift from the “pre-removal” period under Section 1226 to the “removal” period under Section 1231 is triggered by the latest of three events:

- (i) The date the order of removal becomes administratively final.
- (ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court’s final order.
- (iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

8 U.S.C. § 1231(a)(1)(B). A removal order becomes administratively final upon “a determination by the Board of Immigration Appeals affirming such order.” 8 U.S.C. § 1101(a)(47)(B)(i).

If, as Petitioner alleged when he filed his Petition, he was or should have been detained pursuant to Section 1226, this pre-removal-order period ended when the BIA dismissed his appeal and affirmed the removal order. Thus, Petitioner’s claims alleging his entitlement to a bond hearing under Section 1226 became moot at that time. Petitioner has not alleged his removal order is being or has been judicially reviewed and that the reviewing court ordered a stay of removal, nor has he alleged he is presently detained or

confined under a non-immigration process. Therefore, Petitioner is presently subject to Section 1231, which mandates detention without bond. 8 U.S.C. § 1231(a)(2)(A) (“During the removal period, the Attorney General shall detain the alien.”).

The large majority of courts encountering this issue have determined that an administratively final order of removal moots a petitioner’s bond hearing entitlement claim. *See, e.g., Carbajal*, 43 F. Supp. 3d at 1189 (collecting cases, and stating “[a]pplicant’s claims challenging his mandatory detention without an individualized bond hearing during the pre-removal period now are moot because the Board of Immigration Appeals dismissed his administrative appeal on December 27, 2013, thereby affirming the order of removal”); *De La Teja v. United States*, 321 F.3d 1357, 1363 (11th Cir. 2003) (“Because the Attorney General no longer is acting pursuant to § 1226[], it is unnecessary and altogether inappropriate for us to take up the question addressed by the district court . . .); *Oyelude v. Chertoff*, 170 F. App’x 366, 367 n.4 (5th Cir. 2006) (“Oyelude’s challenge to his § 1226 detention was mooted on June 23, 2004[,] when his final removal order was entered and the Attorney General’s authority to detain him shifted to § 1231.”).

The undersigned has encountered one case that did not find a petitioner’s claims were moot under similar circumstances. In *Perez v. Aviles*, the court noted that a petitioner “retains the right to seek judicial review and a stay of [a final removal] order from [a court of appeals] within 30 days of the BIA dismissal.” 188 F. Supp. 3d 328, 331 (S.D.N.Y. 2016) (citing 8 U.S.C. § 1252(b)(1)). The *Perez* court determined that this right meant “it [wa]s not clear that the removal period” pursuant to Section 1231 “ha[d] begun.” *Id.* The undersigned disagrees with this analysis. While that court was correct that following the

BIA's dismissal of an appeal a petitioner may appeal his order of removal to the appropriate court of appeals, the text of Section 1231(a)(1)(B)(ii) states that appellate review of a removal order only delays the removal period if the court of appeals has ordered a stay of removal. Moreover, the statute that the *Perez* court cites explicitly states that the pendency of the appellate review period "does not prevent the Attorney General, after a final order of removal has been issued, from detaining the alien under section 1231(a)" 8 U.S.C. § 1252(b)(8)(A). The undersigned declines to follow *Perez* and instead agrees with the weight of authority holding that Petitioner's claims became moot when the BIA dismissed his appeal. Indeed, the undersigned cannot recommend any form of effectual relief for Petitioner in light of his unsuccessful BIA appeal.

A court cannot "dismiss a petition as moot if (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; [or] (3) the defendant voluntarily ceases an allegedly illegal practice but is free to resume it at any time" *Riley v. INS*, 310 F.3d 1253, 1257 (10th Cir. 2002) (internal quotation marks omitted). "However, none of these exceptions apply to [Petitioner], who has no reasonable expectation that he will once again be detained under 8 U.S.C. § 1226." *Carbajal*, 43 F. Supp. 3d at 1190. Petitioner's claims should be dismissed as moot.

IV. Recommended Ruling and Notice of Right to Object

For the reasons discussed above, the Court recommends that the Petition for habeas relief (Doc. 1) be **DISMISSED** as moot.

The court advises the parties of their right to object to this Report and Recommendation by December 19, 2025, under 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2). The Court further advises the parties that failure to make timely objection to this report and recommendation waives their right to appellate review of both factual and legal issues contained herein. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This Report and Recommendation disposes of all issues and terminates the referral to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 5th day of December, 2025.


AMANDA L. MAXFIELD
UNITED STATES MAGISTRATE JUDGE