

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

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|---|---|--------------------------------|
| Hector Miguel Herrera-Moreno, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | Civil Action No. 1:25-cv-01411 |
| |) | |
| Warden, North Lake Correctional Facility; |) | |
| Secretary of the U.S. Dept of Homeland |) | |
| Security; |) | |
| U.S. Attorney General; |) | |
| Field Office Director, U.S. Immigration and |) | |
| Customs Enforcement, Detroit Field Office, |) | |
| Respondents. |) | |

PETITIONER’S OPPOSITION TO RESPONDENTS’ MOTION TO DISMISS

Petitioner, by and through undersigned counsel, respectfully submits this Opposition to Respondents’ Motion to Dismiss. Respondents assert that this habeas petition is moot because an immigration-court custody hearing was scheduled. But that hearing did **not** occur, no custody determination was made, and the Immigration Judge expressly **declined jurisdiction** and instructed Petitioner to refile a corrected motion after DHS produces the I-213.

Petitioner continues to be detained without any lawful custody determination. The petition is not moot and remains fully within this Court’s habeas jurisdiction.

I. INTRODUCTION

Respondents’ Motion rests on the incorrect assumption that Petitioner received the relief sought: a custody redetermination under INA § 236(a). In reality, the November 19, 2025 hearing did not proceed, and the Immigration Judge declined to adjudicate custody. Because Petitioner remains detained without a valid custody review, the habeas petition is not moot and should be adjudicated on the merits.

II. RELEVANT POST-FILING PROCEDURAL HISTORY

After Respondents filed their Motion to Dismiss on November 19, 2025, the following occurred at the scheduled custody hearing:

1. DHS acknowledged it **had not filed the I-213** in ECAS.
2. DHS introduced two municipal citations not previously in the record.
3. IJ Russo stated he **lacked jurisdiction** over the pending bond motion because it had been filed pre-NTA.
4. The IJ **withdrew the hearing** and refused to adjudicate custody.
5. The IJ directed DHS to file the I-213.
6. The IJ directed Petitioner to **refile** a new bond motion.
7. **No custody determination occurred**, and Petitioner remains detained.

This is the opposite of mootness.

III. LEGAL STANDARD

A habeas action is not moot unless the Court can no longer provide **any effectual relief**. *Chafin v. Chafin*, 568 U.S. 165, 172 (2013).

A challenge to immigration detention remains live where the petitioner has not received:

- A constitutionally adequate custody determination, or
- Release.

See *Demore v. Kim*, 538 U.S. 510 (2003); *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018).

IV. ARGUMENT

A. Petitioner Has Not Received a Custody Determination — the Injury Continues

A hearing scheduled but not held does not resolve a habeas claim. Because:

- No bond was set
- No oral ruling was made
- No written decision issued
- No findings under *Guerra* were made
- No custody review occurred

The habeas claim remains fully live.

B. The IJ's Refusal to Exercise Jurisdiction Confirms Federal Habeas Jurisdiction

Where the immigration court declines jurisdiction, habeas remains the correct vehicle. See *Gill v. INS*, 420 F.3d 82, 89 (2d Cir. 2005).

Petitioner cannot be required to wait for DHS to upload records while detention continues.

C. The Case Is Not Moot Under Voluntary Cessation Principles

Even if DHS's actions partially addressed the issue (they did not), the government must show it is "absolutely clear" the violation cannot recur. *Friends of the Earth v. Laidlaw*, 528 U.S. 167, 190 (2000). Detention without lawful review is ongoing.

D. Alternatively, This Case Fits the "Capable of Repetition Yet Evading Review" Exception

Short, unpredictable immigration detention often evades review. The underlying issue—denial of lawful custody review—recurs frequently for similarly situated detainees.

V. CONCLUSION

Petitioner respectfully requests that this Court:

1. **Deny Respondents' Motion to Dismiss,**
2. Order Respondents to file the complete administrative detention record, including the I-213,
3. Proceed to adjudicate the habeas petition on the merits, and
4. Grant release or order a constitutionally adequate custody redetermination.

Dated: November 19, 2025
Respectfully submitted,
/s/ Kimberly Sabrina Weiss
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Certificate of Service

I hereby certify that on November 19, 2025, I electronically filed the foregoing Opposition with the Clerk of Court using the CM/ECF system, which will send notice to all registered counsel.

/s/ Kimberly Sabrina Weiss

Kimberly Sabrina Weiss