

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:25-cv-62467-LEIBOWITZ

CERLY GLEYCE DE SOUZA MOITA,

Petitioner,

v.

MIAMI FIELD OFFICE DIRECTOR, IMMIGRATION
AND CUSTOMS ENFORCEMENT AND
REMOVAL OPERATIONS, *et al.*,

Respondents.

**PETITIONER'S MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENTS'
MOTION TO DISMISS AND RESPONSE TO ORDER TO SHOW CAUSE**

Petitioner respectfully submits this Memorandum of Law in Opposition to Respondents' Motion to Dismiss and in response to the Court's Order to Show Cause. As set forth below, Respondents' Motion is legally deficient and should be denied.

INTRODUCTION

Respondents' Motion to Dismiss rests on a legally incorrect premise: that the Government can unilaterally defeat federal habeas jurisdiction by forcibly removing a detainee while her statutory appeal period remained open, and while this Court's habeas jurisdiction had already attached. That position is squarely foreclosed by Supreme Court and Eleventh Circuit precedent.

Petitioner's removal does not moot this case. To the contrary, her removal is the constitutional injury, accomplished in violation of due process, statutory safeguards, and long-standing habeas

principles prohibiting the Government from mooting judicial review through its own unlawful conduct.

This Court retains jurisdiction, and dismissal would reward precisely the type of conduct habeas corpus exists to prevent.

ARGUMENT

As a threshold matter, Respondents concede that the Immigration Judge issued a removal order on December 10, 2025. Under 8 U.S.C. § 1101(a)(47)(B) and 8 C.F.R. § 1003.38, that order did not become administratively final until January 9, 2026, because Petitioner expressly reserved her right to appeal. Yet ICE removed Petitioner on December 30, 2025, before the appeal period expired. That removal was *ultra vires*.

Consistent with long-standing precedent, courts have repeatedly held that removal executed before the conclusion of the administrative appeal process violates due process and does not moot habeas jurisdiction. See *Nken v. Holder*, 556 U.S. 418, 421 (2009) (recognizing the severe and often irreparable consequences of removal before judicial review); *Singh v. Waters*, 87 F.3d 346, 349 (9th Cir. 1996) (government may not moot habeas review by prematurely removing petitioner). A removal carried out before finality attaches is not a jurisdiction-destroying act — it is a reviewable constitutional violation.

Moreover, it is undisputed that Petitioner was in ICE custody at the time the habeas petition was filed. Jurisdiction therefore attached at filing. The Supreme Court has made clear that once habeas jurisdiction attaches, subsequent release or removal does not divest the court of jurisdiction. See *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968); *Ex parte Endo*, 323 U.S. 283, 304–07 (1944). The Eleventh Circuit follows the same rule. See *Mattern v. Secretary for Dep't of Corr.*, 494 F.3d 1282, 1285 (11th Cir. 2007).

Accordingly, ICE cannot manufacture mootness by deporting a detainee whose habeas challenge is already pending. Any other rule would permit the Executive Branch to extinguish Article III review at will, an outcome flatly incompatible with separation-of-powers principles.

By contrast, Respondents' reliance on *Soliman v. INS*, 296 F.3d 1237 (11th Cir. 2002), is misplaced. *Soliman* involved a petitioner who was lawfully removed pursuant to a final order, with no allegation of premature or unlawful execution of removal. Here, by contrast: (1) Petitioner was removed before her removal order became final; (2) the removal itself violated statutory and constitutional protections; and (3) Petitioner seeks relief from ongoing legal consequences caused by that unlawful removal, including bars to reentry and loss of appellate rights.

In these circumstances, courts consistently distinguish *Soliman* where, as here, the Government's own unlawful conduct created the alleged mootness. See *Rosales-Garcia v. Holland*, 322 F.3d 386, 395–96 (6th Cir. 2003) (en banc). As the Sixth Circuit explained, “even if [the petitioner] had been released from INS custody, such release would not necessarily moot his appeal,” because “for purposes of the habeas statutes, a petitioner need only be ‘in custody’ at the time the petition was filed,” *id.* (quoting *Spencer v. Kemna*, 523 U.S. 1, 7 (1998)). Moreover, habeas jurisdiction is not limited to physical detention, but extends to ongoing restraints on liberty imposed by the Executive. *Zadvydas v. Davis*, 533 U.S. 678, 688 (2001).

Even assuming arguendo that removal could trigger mootness, multiple exceptions apply.

First, under the voluntary cessation doctrine, the Government cannot moot a case by ceasing challenged conduct where it remains free to repeat it.

Second, Petitioner continues to suffer concrete legal consequences from her unlawful removal, including statutory bars and deprivation of appellate rights. See *Spencer v. Kemna*, 523 U.S. 1, 7–8 (1998).

Third, ICE's practice of executing removals before appeal deadlines systematically evades

judicial review and is capable of repetition. See *Southern Pac. Terminal Co. v. ICC*, 219 U.S. 498, 515 (1911).

Finally, federal courts possess authority to grant effective equitable relief where removal was unlawfully executed. See *Nken v. Holder*, 556 U.S. 418, 435 (2009); *Ex parte Endo*, 323 U.S. 283, 304–07 (1944). At minimum, the Court may adjudicate the legality of the detention and removal and grant declaratory and equitable relief.

Petitioner submits this memorandum in compliance with the Court’s Order to Show Cause and Local Rule 7.1(c). As demonstrated above, Respondents’ Motion to Dismiss is legally and factually flawed and should not be granted by default. Petitioner has shown good cause why dismissal would be improper and why this Court retains jurisdiction to adjudicate the merits of her constitutional claims.

WHEREFORE, Petitioner respectfully requests that the Motion to Dismiss be denied and that the Court retain jurisdiction over this action.

DATED this 12th day of February, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 12, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which automatically serves all counsel of record.

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