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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

FLORENCIO PADILLA PEREZ,

Petitioner,

v.

**KRISTI NOEM, in her official capacity as Secretary
of the Department of Homeland Security (DHS);**

**TODD LYONS; in his official capacity as Acting
Director of Immigration and Customs Enforcement
(ICE);**

**FIELD OFFICE DIRECTOR, for Immigration and
Customs Enforcement (ICE) for Southern Nevada;**

**JOHN MATTOS, in his official capacity as Warden
of the Nevada Southern Detention Center;**

**PAMELA BONDI, in her official capacity as the
United States Attorney General;**

The Executive office for Immigration Review;

**United States Immigration and Customs
Enforcement (ICE).**

Respondents.

**PETITIONER’S REPLY IN SUPPORT OF
VERIFIED PETITION FOR WRIT OF
HABEAS CORPUS AND ON THE ISSUE
OF TIMELINESS OF DHS’S NOTICE OF
APPEAL**

CASE NO: 2:25-cv-02399-CDS-DJA

Petitioner Florencio Padilla Perez (“Petitioner”), by and through counsel, respectfully submits this Reply pursuant to the Court’s Order requesting further briefing and evidentiary support regarding the timeliness of the Notice of Appeal before deciding the merits of the Petition, and avers that Respondents’

“Response” (ECF No. 21) should be rejected for what it is: a non-responsive mootness filing that ignores the merits, misstates the relief sought, and fails to provide the evidentiary support the Court required.

I. RESPONDENTS’ “RESPONSE” DOES NOT COMPLY WITH THE COURT’S ORDER OR THE PARTIES’ MERITS BRIEFING STIPULATION.

Respondents were Ordered by this Court to file a merits response supported by evidence—particularly evidence addressing the timeliness of DHS’s appeal. The parties’ stipulated scheduling order expressly required that Respondents’ merits response “include all evidentiary support of Respondents’ position with respect to the timeliness of the Notice of Appeal... including authenticated EOIR/BIA receipt records, declarations, or other competent evidence.” **Respondents did not do that.**

Instead, Respondents filed a five-page brief that largely refuses to engage the merits of the Petition at all and does not submit a single piece of additional evidence addressing timeliness. The Response is, in substance, a motion to dismiss—premised on the claim that Petitioner “has already received the only relief sought in the Petition—release from detention.” That assertion is incorrect and contradicted by the record and the Court’s continuing preliminary injunction.

More importantly, Respondents’ refusal to supply competent proof of timely receipt underscores why the Court required additional evidentiary support in the first place. The record contains two (2) documents bearing directly on the appeal’s filing/receipt timeline. Those two documents are as follows:

- (1) Exhibit A – EOIR Immigration Court transmittal:** This document is a filing receipt for DHS’s Appeal to the Board of Immigration Appeals (BIA), which clearly shows the date the filing was submitted, which is “**Nov 24, 2025,**” which is four (4) days past the thirty (30) day filing deadline of “November 20, 2025,” – i.e., after the 30-day deadline running from the Immigration Judge’s October 22, 2025 oral decision;
- (2) Exhibit B – BIA “Filing Receipt for Appeal or Motion”:** This second document likewise reflects a “**Date of Notice: 11/24/2025** and a wholly uncorroborated conclusory notation purporting to acknowledge receipt by the BIA of both the “appeal or motion,” and the “fee or fee waiver request,” on “**11/18/2025.**”

Again, it is critical to note that purported “receipt” date on these documents is not accompanied by any sort of corroborating evidence whatsoever – such as an authenticated mailroom stamp, EOIR/BIA fee payment receipt or fee waiver request, tracking documentation, or sworn declaration explaining what was received, how it was received, who received it, and how EOIR generated that date – all of which should be readily obtainable by the Respondents. That is, IF such existed. In other words, the single most important fact for timeliness—**actual receipt by the BIA**—is presented here as a conclusory administrative notation with **no competent evidentiary foundation whatsoever.**

Respondents’ failure to provide competent supporting evidence is not a minor defect—it is exactly the defect the Court asked the parties to correct through “further briefing and evidentiary support.” Respondents were specifically obligated to produce “authenticated EOIR/BIA receipt records, declarations, or other competent evidence.” **They did not.**

If Respondents intend to rely on a “receipt” date to claim timeliness, then Respondents must do what the parties’ Stipulated Order required them to present: provide authenticated proof of receipt—not merely cite to an internally inconsistent administrative form that simultaneously reflects a “Date of Notice” of 11/24/2025 while asserting an earlier “receipt” date without supporting documentation. On this record, Respondents have not established—through any evidence whatsoever, let alone competent evidence—that DHS’s appeal was timely filed received by the BIA as required by regulation.

Finally, Respondents’ refusal to meet the evidentiary issue is particularly glaring because the governing framework is strict. Respondents themselves have previously taken the position that timeliness is determined by receipt and that filing deadlines are rigid under EOIR practice. *See, e.g., Matter of Liadov*, 23 I. & N. Dec. 990, 993 (BIA 2006). Yet here, Respondents ask this Court to accept an unsupported “receipt” assertion while simultaneously asking the Court to dismiss the case without reaching the merits issue the Court specifically flagged. This is not compliance with the stipulated briefing order in any way, and it is not the evidentiary presentation the Court requested. Therefore, it is clear that Respondents have not carried their burden, and they have failed to comply with the Court’s directive to provide further briefing and evidentiary support on this issue before merits resolution.

For those reasons, Respondents’ “Response” should be treated for what it is: a non-responsive attempt to evade merits review and avoid producing the evidentiary support the Court requested regarding timeliness.

II. CONTRARY TO RESPONDENTS’ ASSERTIONS, THE PETITION IS NOT MOOT.

Respondents’ entire Response rests on the flawed premise that Petitioner’s habeas petition “no longer presents a live case or controversy” simply because Petitioner has been released. That premise fails for multiple independent reasons, which are as follows:

A. PETITIONER REMAINS “IN CUSTODY” FOR HABEAS PURPOSES.

A habeas petition is not moot where the petitioner remains subject to ongoing restraints on liberty. Here, Petitioner’s “release” is expressly conditioned on (1) a \$2,500 bond and (2) continuing supervision conditions imposed by the Immigration Judge, DHS, and ICE, and (3) the Court’s continuing injunctive framework while the petition is resolved on the merits. (*See, 25-(ECF No. 16); Order Granting Preliminary Injunction*). Critically, the Court specifically ordered that Petitioner be afforded until February 7, 2026 to satisfy the \$2,500 bond condition. (*See, Id.*). This is a glaringly clear example of an ongoing restraint and a very real potential threat to his liberty, tied directly to this litigation and the legality of detention authority.

The Ninth Circuit has held that where a petitioner’s release remains subject to “strict limitations on [his] freedom,” the petitioner retains a personal stake and the matter is not moot. *Rodriguez v. Hayes*, 591 F.3d 1105, 1118 (9th Cir. 2010).

Therefore, Respondents’ characterization of this case as “fully resolved” is both factually and legally incorrect.

B. RESPONDENTS MISSTATE THE RELIEF SOUGHT—AND THE COURT’S ORDER CONFIRMS THE CASE REMAINS LIVE.

Respondents claim Petitioner received “the only relief sought in the Petition—release from detention.” (*See, (ECF No. 21); Respondent’s Response to Petition*). This claim is demonstrably false.

Respondents themselves admit Petitioner sought an order releasing him “without bond or conditions.” (*See, Id.*).

The Court’s preliminary injunction did not grant that relief; it ordered release **subject to bond and conditions**. (*See, 25-(ECF No. 16); Order Granting Preliminary Injunction*). This alone defeats mootness: Petitioner has not received the full relief he requested, and the Court has expressly maintained an injunction “pending a resolution of the Petition... on the merits.” (*See, Id.*)

C. VOLUNTARY CESSATION / LITIGATION-DRIVEN “RELEASE” DOES NOT MOOT HABEAS CHALLENGES TO UNLAWFUL DETENTION AUTHORITY.

Respondents’ mootness theory is straightforward: *because Petitioner has been released, the Petition “no longer presents a live case or controversy;”* and, that *Petitioner allegedly “already received the only relief sought in the Petition—release from ICE custody.”* (*See, 25-(ECF No. 16); Order Granting Preliminary Injunction*). However, in the same breath, Respondents then ask the Court to dismiss the case without reaching the evidentiary timeliness dispute the Court expressly reserved for merits briefing. (*See, Id.*).

This argument fails under the *voluntary cessation* doctrine. A defendant cannot moot a case simply by temporarily stopping the challenged conduct after litigation begins. The Supreme Court has repeatedly held that “a case might become moot if subsequent events made it **absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur;**” and that the party asserting mootness bears a “**heavy**” or “**formidable**” burden to prove it. *Friends of the Earth, Inc. v. Laidlaw Env’t Servs.*, 528 U.S. 167, 189 (2000); *see also, Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (same standard). The Supreme Court recently reaffirmed this principle, explaining that the Government must satisfy a “formidable burden” to moot a case by voluntary cessation. *FBI v. Fikre*, No. 22-1178, slip op. at 6–8 (U.S. Mar. 19, 2024), wherein the Court stated:

We have described this as a “formidable burden.” *Friends of the Earth*, 528 U. S., at 190.

And the reason for it is simple: “The Constitution deals with substance,” not strategies.

Cummings v. Missouri, 4 Wall. 277, 325 (1867). Were the rule more forgiving, a defendant might suspend its challenged conduct after being sued, win dismissal, and later pick up where it left off; it might even repeat “this cycle” as necessary until it achieves all of its allegedly “unlawful ends.” *Already*, 568 U. S., at 91. A live case or controversy cannot be so easily disguised, and a federal court’s constitutional authority cannot be so readily manipulated. To show that a case is truly moot, a defendant must prove “no reasonable expectation” remains that it will “return to [its] old ways.” *W. T. Grant Co.*, 345 U. S., at 632–633. **That much holds for governmental defendants no less than for private ones.** See, e.g., *West Virginia v. EPA*, 597 U. S. 697, 719 (2022); *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U. S. 449, 457, n. 1 (2017); *Parents Involved in Community Schools v. Seattle School Dist.* No. 1, 551 U. S. 701, 719–720 (2007). *Id.*

Respondents do not even attempt to meet that burden here. They do not concede that the detention was unlawful; they do not provide any binding assurance that the challenged detention theory will not recur; and they remain bound by (and subject to) this Court’s continuing injunctive order “pending a resolution of the Petition... on the merits.” (See, 25-(ECF No. 16); *Order Granting Preliminary Injunction*).

In short, Respondents’ position would create the exact “heads-I-win, tails-you-lose” rule the voluntary-cessation doctrine prohibits: detain first, litigate until compelled to release, then evade merits review by declaring the case moot. The Court should reject Respondents’ mootness maneuver and resolve the merits—particularly because the Court expressly ordered further briefing and evidentiary support on the timeliness of DHS’s Notice of Appeal before deciding the Petition. In other words, Respondents’ should not be permitted to duck the issue the Court specifically told us to brief.

D. THE GOVERNMENT’S RELIANCE ON *ABDALA* IS MISPLACED.

Respondents cite *Abdala v. INS*, 488 F.3d 1061 (9th Cir. 2007), for the proposition that release moots habeas absent collateral consequences. (See, 25-(ECF No. 16); *Order Granting Preliminary*

Injunction). However, *Abdala* involved a petitioner who was no longer in custody and whose requested relief could no longer be granted.

Here, by contrast, Petitioner remains subject to ongoing restraints and seeks additional relief—namely: (1) a ruling on finality/timeliness affecting detention authority, and (2) permanent relief prohibiting re-detention under an inapplicable mandatory detention statute and automatic-stay of release regime. Again, as previously stated, because Petitioner remains subject to the potentiality of ongoing restraints, this case is not moot under controlling Ninth Circuit authority. *Rodriguez v. Hayes*, 591 F.3d 1105, 1118 (9th Cir. 2010).

III. RESPONDENTS’ “NO JURISDICTION” ARGUMENT FAILS BECAUSE THIS IS A DETENTION-AUTHORITY HABEAS CASE, AND TIMELINESS/FINALITY IS A PREDICATE QUESTION THE COURT MUST RESOLVE.

Respondents argue this Court lacks jurisdiction to address the timeliness of DHS’s appeal because, in their view, such issues must be decided by the agency and then reviewed exclusively through a petition for review under 8 U.S.C. § 1252. That framing is wrong—both legally and procedurally.

First, Petitioner is not asking this Court to review the merits of removal proceedings or to adjudicate the correctness of the Immigration Judge’s cancellation decision. Rather, this action is a detention-authority habeas challenge under 28 U.S.C. § 2241 challenging whether Respondents had lawful authority to detain Petitioner at all under the detention statutes and the automatic-stay mechanics Respondents invoked. The Ninth Circuit has repeatedly recognized that district courts retain § 2241 habeas jurisdiction over immigration detention challenges that are sufficiently independent of the merits of a removal order.

Second, the “timeliness/finality” issue is not being raised as an appellate challenge to removal; it is the predicate fact that determines whether Respondents had any lawful basis to treat Petitioner’s case as non-final and to continue (or re-impose) detention based on a purportedly “pending” appeal. Where detention turns on whether DHS timely perfected an appeal sufficient to prevent finality, the Court necessarily may determine that predicate jurisdictional fact as part of its habeas inquiry into lawful custody authority. *See, e.g., Nadarajah v. Gonzales*, 443 F.3d 1069, 1075–76 (9th Cir. 2006) (recognizing habeas jurisdiction to review the legality of immigration detention).

Third—and most importantly—Respondents’ jurisdiction argument is procedurally disingenuous in this posture because the Court itself expressly preserved the timeliness question and requested further briefing and evidentiary support from both parties regarding the timeliness of the Notice of Appeal before deciding the merits of the Petition. Respondents cannot credibly claim “no jurisdiction” over the very issue the Court specifically directed the parties to brief and support with evidence.

In short, 8 U.S.C. § 1252’s channeling provisions do not convert this § 2241 habeas detention challenge into a petition for review of removal proceedings merely because the timeliness of DHS’s appeal is the determinative predicate fact underlying Respondents’ claimed detention authority. This Court retains jurisdiction under 28 U.S.C. § 2241 to resolve that limited timeliness/finality issue for the purpose of determining whether Petitioner’s detention—and threatened re-detention—was lawful.

IV. RESPONDENTS FAILED TO PROVIDE COMPETENT EVIDENCE OF TIMELY RECEIPT.

The governing regulations require that a Notice of Appeal be “filed” within 30 days of the Immigration Judge’s decision, and that the filing date is the date the Notice is received by the BIA. See 8 C.F.R. §§ 1003.38(b)–(c). Respondents’ Response supplies no authenticated receipt log, declaration, tracking proof, or other competent evidence establishing timely receipt. Instead, the record reflects a November 24, 2025 transmittal and a BIA receipt form bearing a “Date of Notice” of 11/24/2025, paired with an uncorroborated “acknowledges receipt” statement. That is precisely the evidentiary conflict the Court identified, and it is why the Court requested additional evidentiary support. Absent competent proof of timely receipt, Respondents cannot justify detention or restraints based on a purportedly pending appeal.

CONCLUSION

For all the foregoing reasons, Respondents’ “Response” should be rejected for what it is: a non-merits mootness/jurisdiction filing that ignores the Court’s evidentiary directive and fails to provide any competent proof that DHS’s Notice of Appeal was timely received by the BIA. Respondents were ordered—by stipulation and by the Court’s merits-briefing structure—to submit authenticated EOIR/BIA receipt

records, declarations, or other competent evidence establishing timeliness. They did not. On this record, the only documentary evidence reflects a transmittal/notice date of November 24, 2025, i.e., after the governing deadline, and Respondents offer nothing competent to support their contrary narrative.

Respondents' attempt to evade review by mooting the case through litigation-driven "release" also fails. Petitioner remains under ongoing restraints, including the bond requirement and supervision conditions, and Respondents remain free—absent merits resolution—to attempt re-detention under the same disputed theory. Voluntary cessation does not moot a live custody-authority habeas challenge, particularly where the Court has expressly reserved the timeliness/finality question for merits determination.

REQUEST FOR RELIEF.

For the foregoing reasons, Petitioner respectfully requests that the Court:

1. DENY Respondents' request to dismiss the Petition as moot;
2. GRANT the Verified Petition for Writ of Habeas Corpus on the merits;
3. Enter a final order confirming that Petitioner is not subject to mandatory detention under 8 U.S.C. § 1225(b)(2) and that Respondents may not rely on unconstitutional automatic-stay detention mechanics in this matter;
4. Order Petitioner's continued release and grant appropriate habeas relief, including release without bond or conditions, or alternatively modify the conditions of release as the Court deems just and lawful in light of the merits; and
5. Grant such other and further relief as the Court deems just and proper.

DATED this 22nd day of January, 2026.

Respectfully submitted:

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