

MELISSA HOLYOAK, United States Attorney (9832)
MICHAEL KENNEDY, Assistant United States Attorney (8759)
Attorneys for the United States of America
111 South Main Street, Suite 1800
Salt Lake City, Utah 84111
(801) 524-5682
michael.kennedy@usdoj.gov

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

FEDERICO REYES VASQUEZ,

Petitioner,

v.

KRISTI NOEM, in her official capacity as
Secretary of the Department of Homeland
Security, et al.,

Respondents.

**RESPONSE TO ORDER TO SHOW
CAUSE AND MOTION TO DISMISS
AMENDED PETITION FOR WRIT OF
HABEAS CORPUS**

Case No. 2:25-cv-1146-JNP

Chief Judge Jill N. Parrish

Pursuant to the Court's January 8, 2026, Order to Show Cause,¹ Respondents respond to the Amended Verified Petition for Habeas Corpus (Amended Petition). The Court should deny the Amended Petition seeking a certification from this Court that the Petitioner is a victim of a qualifying U-Visa crime and dismiss the Petition. Respondents also request the Court to dissolve the restraining order of December 19, 2025, prohibiting Respondents from removing Petitioner

¹ ECF No. 16.

from the United States or transferring him from the District of Utah,² and rescind the parts of the Order of December 31, 2025, requiring Respondents to facilitate the return of Petitioner to the United States and imposing attorney's fees and costs on Respondents.³

INTRODUCTION

Petitioner Federico Reyes Vasquez (Petitioner), a citizen of Mexico, has been removed from the United States multiple times. Each of his removals was pursuant to an Immigration Judge's Final Order of Removal. Petitioner was detained by ICE on December 19, 2025, because he was determined to have reentered the United States without inspection after a prior removal. He was determined to have a final removal order that was reinstated, and he was removed on December 23, 2025.

Petitioner, erroneously believing he was subject to 8 U.S.C. § 1226, filed a habeas petition on December 19, 2025, alleging that he was constitutionally entitled to a bond hearing and demanded the same. Recognizing the error of his petition and acknowledging that he was no longer detained, on December 23, 2025, the Petition was withdrawn. That same day, Petitioner withdrew the withdrawal of his habeas petition, not based on continued unlawful detention, but rather a desire to seek sanctions against Respondents.

On December 29, 2025, six days after Petitioner was released from detention, he filed an Amended Verified Petition for Habeas Corpus, alleging that he is a victim of a crime qualifying

² ECF No. 4.

³ ECF No. 13.

him for a U-Visa and demanding that this Court certify him as such. Petitioner erroneously alleged that he “is in custody” for the purposes of § 2241.

Petitioner is not in custody, this Court lacks jurisdiction over the Amended Petition, and Petitioner’s requested relief is not cognizable in habeas.

Factual and Procedural Background

Petitioner is a citizen of Mexico who entered the United States illegally at least as early as February 2003.⁴ A final order of removal took effect on March 12, 2003. He was removed from the United States pursuant to that order first in March 2003 and again in January 2005.⁵ Sometime thereafter he again entered the United States without inspection and was arrested by ICE in Orem, Utah on Friday, December 19, 2025. ICE detained Petitioner pursuant to the immigration judge’s March 2003 final order of removal and pursuant to the authority of 8 U.S.C. § 1231(a)(5). Petitioner was issued a Form I-871, Notice of Intent/Decision to Reinstate Prior Order. He signed the form, acknowledging that he “[did] not wish to make a statement contesting” the removability determination.⁶ After processing at ICE’s Salt Lake City office, Petitioner was transferred the same day to the Uinta County Detention Center in Wyoming and detained there.⁷

⁴ ECF No. 10; 10-1 ¶ 5.

⁵ *Id.* ¶¶ 9-14.

⁶ Exhibit A, I-871 Form

⁷ ECF No. 10; 10-1 ¶ 15.

At 5:13 pm on Friday, December 19, 2025, Petitioner’s counsel filed a Verified Petition for Habeas Corpus (“petition”).⁸ The petition requested a declaration that Petitioner’s continued detention without an opportunity for a bond was unlawful, and an order that he be given an immediate bond hearing.

The petition alleged only that the Petitioner was a citizen of Mexico, that he entered the United States in 2005 without inspection, was arrested by ICE on December 19, 2025, and was currently detained by ICE in West Valley City, Utah.⁹ Petitioner provided no more details about his illegal entry into the United States. The petition did not provide the key facts that he was removed from the United States twice previously, in March 2003 and again in January 2005, and that sometime after, again entered the United States without inspection.¹⁰ Also absent from the petition were the dispositive facts that Petitioner was subject to and detained pursuant to an immigration judge’s final order of removal and under authority of 8 U.S.C. § 1231(a)(5),¹¹ and that Petitioner had that same day signed an acknowledgement that he was not contesting the reinstatement of his removal order.¹²

However, with only the petition’s bare allegations and incomplete facts to rely on, the Court issued its OSC on Monday, December 22, 2025, at 3:36 pm.¹³ The OSC included

⁸ ECF Nos. 1, 2; Exhibit B, ECF Notice.

⁹ Petition at ¶¶ 1, 15 (ECF No. 2).

¹⁰ ECF No. 10; 10-1 ¶¶ 9-14.

¹¹ ECF No. 10; 10-1 ¶ 15.

¹² Exhibit A, I-871 Form

¹³ Exhibit C, ECF Notice.

provisions prohibiting Petitioner's removal from the United States and his transfer out of the District of Utah.¹⁴ The OSC directed Petitioner to serve a copy of the Order by December 23, 2025, at 5:00 p.m.¹⁵ The Court also required Respondents show cause as to why the petition should not be granted by December 29, 2025.¹⁶

Meanwhile, on Monday, December 22, 2025, the Petitioner was in transit from Uinta County, Wyoming, to ICE's staging facility in Florence, Arizona. He arrived at Florence in the early morning of Tuesday, December 23rd, and within a few hours was removed from the United States to Mexico in compliance with the Immigration Court's reinstated final order of removal. ICE personnel in Arizona responsible for Petitioner's physical removal were unaware of the OSC¹⁷ prohibiting his removal at the time he was removed.¹⁸

On December 23, 2025, at 9:36 am, Petitioner's counsel contacted Respondent's counsel by email and advised Respondent's counsel that Petitioner likely was ineligible for a bond, and that he would consider withdrawing the Petition.¹⁹ The Petition was withdrawn that same day at 4:46 pm, with counsel's full awareness that the Petitioner had been removed from the United States.²⁰ On the night on December 23rd Petitioner's counsel filed a withdrawal of the

¹⁴ ECF No. 4 at 3-4.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ ECF No. 4.

¹⁸ ECF No. 10; 10-1 ¶ 16.

¹⁹ Exhibit D, Email from Alec Bracken to Joel Ferre and others

²⁰ ECF No. 6 at 2.

withdrawal of the Petition²¹ and a Motion for Sanctions against Respondents.²² On December 24, 2025, Petitioner filed a motion that the Court certify him as a victim of a crime so he might qualify for a U-Visa (“U-Visa motion”).²³ Respondents filed their reply to the Petition on December 29, 2025.²⁴ On the same day, Petitioner filed his Amended Verified Petition for Habeas Corpus (Amended Petition), in which he fully abandoned the bond and detention issues, and instead made the same arguments he made in the U-Visa motion. The Amended Petition seeks the same relief as the U-Visa motion.²⁵

The Court held a Status Hearing on December 31, 2025. After the hearing, the Court ordered Respondents to facilitate Petitioner’s return to the United States if he wished to return. Respondents had already voluntarily agreed to facilitate Petitioner’s return.²⁶ The Court also ordered Respondent to pay legal fees.²⁷ The Court issued its Order to Show Cause why the Amended Petition should not be granted on January 8, 2026.²⁸

²¹ ECF No. 7.

²² ECF No. 8.

²³ ECF No. 9.

²⁴ ECF No. 10.

²⁵ ECF No. 11.

²⁶ ECF No. 13.

²⁷ *Id.*

²⁸ ECF No. 16.

Legal Framework

Federal courts have jurisdiction to grant writs of habeas corpus to persons “*in custody* in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3) (emphasis added). A petitioner must satisfy the “in custody” requirement as a prerequisite to habeas corpus jurisdiction. *Carter v. United States*, 733 F.2d 735, 736 (10th Cir.1984), *cert. denied*, 469 U.S. 1161 (1985). This principle applies equally to removed aliens:

A petitioner who has been removed from the country is “not subject to restraints not shared by the public generally that significantly confine and restrain his freedom. [He] is subject to no greater restraint than any other non-citizen living outside American borders.” *Miranda v. Reno*, 238 F.3d 1156, 1159 (9th Cir.2001). *See also Patel v. U.S. Attorney General*, 334 F.3d 1259, 1263 (11th Cir.2003). As the [court] explained in *Miranda*, “[n]o interpretation of § 2241 that is not utterly at war with its plain language permits us to exercise habeas corpus jurisdiction” when the petitioner has already been removed from the country. *Id.* . . . [P]etitioners who have already been removed from the country do not satisfy the “in custody” requirement for habeas corpus jurisdiction.

Kumarasamy v. Att’y Gen. of U.S., 453 F.3d 169, 173 (3d Cir. 2006), as amended (Aug. 4, 2006) (footnotes omitted).

Even where the habeas petition was filed prior removal,²⁹ jurisdiction is absent if the removal renders the issues moot and no longer presents a case or controversy.

A non-citizen who has been deported must go beyond satisfying the ‘in custody’ requirement of the federal habeas statute; it must also be demonstrated that the case is not moot as a result of the deportation.” *So*, 251 F.Supp.2d at 1120–21. “[A] case is moot when the issues presented are no longer “live” or the parties lack a legally cognizable interest in the outcome.” *County of Los Angeles v. Davis*, 440 U.S. 625, 631, 99 S.Ct. 1379, 59 L.Ed.2d 642 (1979) (quoting *Powell*

²⁹ “The ‘in custody’ requirement is satisfied if the petitioner files the habeas petition before being deported.” *So v. Reno*, 251 F.Supp.2d 1112, 1120 (E.D.N.Y.2003) (citing *Gonzalez v. INS*, No. 01 Civ. 6229(HB), 2002 WL 31444952, at *3 (S.D.N.Y. Oct. 31, 2002) (stating that petitioner satisfies “in custody” requirement of 28 U.S.C. § 2241 so long as he is in physical custody at the time the petition is filed even if petitioner is later deported)).

v. McCormack, 395 U.S. 486, 496, 89 S.Ct. 1944, 23 L.Ed.2d 491 (1969)); accord *City of Erie v. Pap's A.M.*, 529 U.S. 277, 287, 120 S.Ct. 1382, 146 L.Ed.2d 265 (2000); *New York City Employees' Retirement System v. Dole*, 969 F.2d 1430, 1433 (2d Cir.1992).

Gonzalez v. I.N.S., 2002 WL 31444952 (S.D. New York, 2002) (Not Reported in F.Supp.2d).

“Under Article III, section 2 of the Constitution, federal courts lack jurisdiction to decide questions that cannot affect the rights of litigants in the case before them.” *Davis v. New York*, 316 F.3d 93, 99 (2d Cir.2002); see also *Spencer v. Kemna*, 523 U.S. 1 (1998) (mootness of habeas petition challenging revocation of petitioner's parole, once petitioner had been released from prison, simply deprived court of power to act).

Jurisdiction also depends on whether the relief requested is cognizable under the provision of law relied on. “It is clear, not only from the language of § 2241(c)(3) . . . , but also from the common-law history of the writ, that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). “The fundamental purpose of a § 2241 habeas proceeding is ... ‘an attack by a person in custody upon the legality of that custody, and ... the traditional function of the writ is to secure release from illegal custody.’” *Betancourt Barco v. Price*, 457 F. Supp. 3d 1088, 1097–98 (D.N.M.), order clarified, 478 F. Supp. 3d 1153 (D.N.M. 2020). The writ is not available for complaints which do not challenge custody or detention. See *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 494–495 (1973) (“The writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody.”)

Argument

The Court Lacks Jurisdiction to Consider the Amended Petition.

The Amended Petition should be dismissed because the Court lacks jurisdiction to consider it. Habeas relief is available when an individual “is in custody in violation of the Constitution or laws or treaties of the United States. 28 U.S.C. § 2241(c)(3). Here, the Court lacks jurisdiction because the Petitioner is not in custody, the claims in the Amended Petition are moot, and the claims in the Amended Petition do not challenge the detention of the Petitioner.

It is undisputed that the Petitioner is not in custody.³⁰ He was removed from the United States to Mexico on December 23, 2025. He had been out of custody for six days before the Amended Petition was filed. This alone deprives the Court of jurisdiction. Numerous circuits have determined that an alien who has been removed pursuant to a final removal order is not “in custody” for habeas purposes. *See Kumarasamy v. Attorney General*, 453 F.3d 169, 173 (3d Cir.2006); *Patel v. U.S. Attorney General*, 334 F.3d 1259, 1263 (11th Cir.2003); *Miranda v. Reno*, 238 F.3d 1156, 1159 (9th Cir.2001), *see also Macias v. Greene*, 28 F.Supp.2d 635, 638-39 (D. Colorado, 1998) (deported alien was not “in custody” as required to seek habeas corpus relief).

Jurisdiction based on custody may be preserved if the petition was filed prior to deportation. *See So v. Reno*, 251 F.Supp.2d 1112, 1120 (E.D.N.Y.2003) “The ‘in custody’

³⁰ Petitioner alleged in the Amended Petition that he “‘is in custody’ for the purposes of § 2241 because Petitioner is arrested and detained by Respondents.” ECF No. 11 at ¶ 21. He also alleged that he “is a Mexico [sic] citizen, who is *currently* in the custody of the Department of Homeland Security in West Valley City, Utah.” *Id.* at ¶ 22 (emphasis added). These are material misrepresentations relating to this Court’s jurisdiction. *See Fed. R. Civ. P. 11(c)(2) and (3).*

requirement is satisfied if the petitioner files the habeas petition before being deported,” (citing *Gonzalez v. INS*, No. 01 Civ. 6229(HB), 2002 WL 31444952, at *3 (S.D.N.Y. Oct. 31, 2002) (stating that petitioner satisfies “in custody” requirement of 28 U.S.C. § 2241 so long as he is in physical custody at the time the petition is filed even if petitioner is later deported)).

But this doesn’t save Petitioner’s Amended Petition for several reasons. First, only his original Petition was filed prior to his deportation. It was then withdrawn, and its detention-related claims were abandoned, creating a clear break in the litigation and in Petitioner’s claims. *Cf. Gonzalez*, 2002 WL 31444952, at *3 (same petition pending before and after deportation). Nor was withdrawing the withdrawal effective in perpetuating his original habeas claims since Petitioner’s stated purpose was not to press those claims, but rather to seek sanctions against Respondents. Put simply, from the moment Petitioner withdrew and abandoned his detention-related claims, he no longer had a viable case in habeas.

Second, the claims in the original Petition were themselves unsupportable as conceded by the Petitioner. He was not entitled to a bond and had no defense to summary removal. *See Merlan v. Holder*, 667 F.3d 538, 539 (5th Cir. 2011) (circumstance that district court lacked jurisdiction to review final order of removal supported finding that deported alien was not in custody for purposes of habeas review).

Finally, jurisdiction only survives removal if removal didn’t render the case moot. The Court is without authority to hear the Amended Petition

unless it presents a “case or controversy” within the meaning of Article III of the Constitution. For the case-or-controversy requirement to be met when a habeas petitioner is no longer in custody, the petitioner must be suffering a “concrete and continuing injury” constituting a “collateral consequence” of the petitioner’s detention that can be rectified if he prevails in his quest for the writ.

Gonzalez, 2002 WL 31444952, at *3 (citing *Spencer v. Kemna*, 523 U.S. 1 (1998)).

Here, the claims included in the Amended Petition, that he is entitled to certification that he is a victim of a crime for a U-Visa, do not describe a concrete and continuing injury which habeas can correct. His amended claims are directed entirely toward challenging his removal – that is, his *release*, not his continued detention. He cannot show that his removal has resulted in any continuing injury, collateral consequences, or restraints in Mexico not experienced by other non-citizens who lack the documentation to enter the United States. His Amended Petition is moot and because the Amended Petition in no way touches any part of his detention, the subject matter is not within habeas corpus purview.

Lastly, the circumstance that Petitioner was removed after entry of an order barring removal does not alter the jurisdictional analysis. The circumstances of how petitioner was released from custody³¹ do not alter the fact that he is not in custody. Moreover, the Court lacks jurisdiction over the Amended Petition not only because Petitioner is no longer in custody, but also because his claims are not cognizable in habeas. “The fundamental purpose of a § 2241 habeas proceeding is ... ‘an attack by a person in custody upon the legality of that custody, and ... the traditional function of the writ is to secure release from illegal custody.’” *Betancourt Barco v. Price*, 457 F. Supp. 3d 1088, 1097–98 (D.N.M.) Here, Petitioner wants to return to custody for the sole purpose of alleging that he was released from custody unlawfully. This is a perversion of the habeas writ, and the Court lacks jurisdiction to hear it.

³¹ Respondents do not challenge on jurisdictional grounds the Court’s ancillary ability to hear the motion for sanctions for Petitioner’s removal and will respond to that motion separately. Respondents note for purposes of this Response that removal was well underway prior to the entry of the restraining order.

Conclusion

For the foregoing reasons, Respondents respectfully request that the Court deny and dismiss the Amended Petition. Because dismissal of the Petition would render them moot, Respondents also request that the Court dissolve the restraining order of December 19, 2025, and rescind the parts of the Order of December 31, 2025, requiring Respondents to facilitate the return of Petitioner to the United States and imposing attorney's fees and costs on Respondents.

Pursuant to D. Utah Civ. R. 7-1(a)(4)(D), the undersigned certifies that this Response contains 3,018 words, which does not exceed the 3,100-word limit.

Dated January 19, 2026.

MELISSA HOLYOAK
United States Attorney

/s/ Michael Kennedy
MICHAEL KENNEDY
Assistant United States Attorneys