

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

OSCAR DARIO GALLEGOS OSORIO,

Petitioner,

v.

MARCELLO VILLEGAS, et al.,

Respondents.

Civil Action No. 1:25-CV-293-H

**RESPONSE TO AMENDED MOTION FOR
TEMPORARY RESTRAINING ORDER (DKT. NO. 12)**

In response to the Court's directive in its order of December 31, 2025 for Respondents to "address[] whether the government will commit not to remove the petitioner pending the Court's resolution of the petitioner's habeas petition and motion for TRO," (Dkt. No. 6), Respondents filed a notice on January 2, 2026, explaining that U.S. Immigration and Customs Enforcement (ICE) is working on Petitioner's removal and will continue to do so pending the resolution of Petitioner's habeas petition, and that if Respondents obtain removal documents before this litigation concludes, they will provide Petitioner's counsel and the Court with at least three days' notice before executing any removal of Petitioner from the United States. (*See* Dkt. No. 9.)

Petitioner has now filed a document (Dkt. No. 12) that is in the nature of an amended motion for temporary restraining order or for other emergency relief, and in which Petitioner claims that a TRO is necessary because the government's notice

allegedly “confirms that the threat of removal is active and imminent.” (Dkt. No. 12 at 3.¹) Petitioner explains that he has a “master calendar hearing” scheduled for January 21, 2026 in his removal proceedings in immigration court, and he argues that “if a removal order is issued on January 21, Petitioner could be removed as early as January 24.” (Dkt. No. 12 at 4.) This, Petitioner, contends, would “effectively moot[] the litigation before Petitioner can file a meaningful reply” to the government’s anticipated January 20, 2026 response to his habeas petition. (Dkt. No. 12 at 4.)

But Petitioner’s arguments provide no basis for the extraordinary relief of a TRO or any other emergency order in this action. To be clear, Petitioner is still in removal proceedings and there is not yet any final order of removal for Petitioner. Therefore, when Respondents’ previously-filed notice explained that ICE was continuing to work on Petitioner’s removal, that simply means, in the current context and procedural posture of Petitioner’s removal proceedings, that ICE is continuing to prosecute the removal proceedings by advocating for a ruling from the immigration court (and any higher authority, if necessary) for a removal order. There is nothing improper about that, and even Petitioner does not contend that the mere fact that he has filed this habeas proceeding somehow precludes ICE from moving forward in the administrative litigation in immigration court to attempt to secure an order of removal.

Petitioner’s argument that “if a removal order is issued on January 21, Petitioner

¹ The title of Petitioner’s filing is “Petitioner’s Reply to Respondents’ Notice [Dkt. 9], Renewed Motion for Emergency Stay and Temporary Restraining Order, and Motion to Reconsider Briefing Schedule.”

could be removed as early as January 24” also fails to provide any basis for relief here. (Dkt. No. 12 at 4.) For one, Petitioner does not explain how he has come up with this timetable for a possible removal, and it does not appear to be accurate. Even if the January 21st “master calendar hearing” scheduled in Petitioner’s removal proceedings were assumed to be the final merits hearing relating to Petitioner’s removal,² and even if the immigration court did enter an order of removal at that time on January 21, the order of removal would not yet be *final* so as to allow for removal unless Petitioner affirmatively waives appeal in immigration court at that time. *See* 8 C.F.R. § 1241.1; *see also id.* § 241.2 (explaining that a warrant of removal can be issued “based on the final administrative order”). Absent such a waiver (which Petitioner presumably is not intending to give—and Petitioner is apparently represented in immigration court by the same counsel who represents him here), an order of removal entered in immigration court does not become final until the expiration of the deadline to administratively appeal to the Board of Immigration Appeals (which is a 30-day deadline, *see* 8 C.F.R. § 1003.38(b)), or, if such an appeal is filed, upon the later date of the subsequent decision on, or

² The undersigned admits to not being an expert in the field of immigration court procedure, but understands that the “master calendar hearing” is more in the nature of a preliminary or scheduling hearing, and does not represent the final hearing at which the immigration court makes a decision to order removal or grant other relief. *See* EOIR, Immigration Court Practice Manual, § 4.15 Master Calendar Hearing, <https://www.justice.gov/eoir/reference-materials/ic/chapter-4/15> (accessed Jan. 5, 2026) (“Master calendar hearings are held for pleadings, scheduling, and other similar matters.”); *see also id.* § 4.16 Individual Calendar Hearing, <https://www.justice.gov/eoir/reference-materials/ic/chapter-4/16> (accessed Jan. 5, 2026) (“Evidentiary hearings on contested matters are referred to as individual calendar hearings or merits hearings. Contested matters include challenges to removability and applications for relief.”).

dismissal of, the appeal by the BIA.³ See 8 C.F.R. § 1241.1; see also 8 U.S.C. § 1231 (specifying that the “removal period” during which time the government is to attempt to remove an alien begins on the *latest* of the date the order of removal becomes administratively final, or the date of the final order in any judicial review proceeding if the removal has been stayed by the court pending such review, or the date the alien is released from some non-immigration detention or confinement (e.g., imprisonment under a criminal sentence)).

In any event, even if an order of removal were obtained on January 21 and somehow became final immediately or within 3 days, that would not entitle Petitioner to any relief (of a temporary or emergency nature, or of a permanent nature) in this Court. In this habeas proceeding, Petitioner is challenging the government’s determination that Petitioner is subject to mandatory detention under 8 U.S.C. § 1225 pending the completion of his removal proceedings. Petitioner argues that he is not subject to § 1225, but instead that his detention is governed by the discretionary detention statute at 8 U.S.C. § 1226, under which bond hearings are available in immigration court. But regardless of which statute properly applies, the key point is that the relevant provisions at issue within these statutes both relate only to *pre-final-order-of-removal* detention.

Once a final order of removal is obtained, the authority for detention shifts from § 1225 (or § 1226, as applicable), to an entirely different statute, at 8 U.S.C. § 1231. And

³ There is an exception for an order of removal entered *in absentia*, but that seemingly would not apply here because Petitioner presumably will be attending the hearings in immigration court, and there is also an alternative provision for voluntary departures, which likewise does not appear to apply. See 8 C.F.R. § 1241.1(e), (f).

§ 1231 has a mandatory detention provision during the 90-day “removal period” after the removal order becomes administratively final (and/or after judicial review is completed if a court has ordered the removal stayed pending review, or after the alien is released from other non-immigration detention). *See* 8 U.S.C. § 1231(a)(1). Therefore, once there is a final order of removal as to Petitioner, any claims in this habeas action contesting whether § 1225 properly applies, or whether a bond hearing should be available in immigration court, or anything of the like, will all be moot. There is accordingly no basis for the grant of emergency relief in this action—which again is premised entirely on alleged deficiencies in Petitioner’s pre-final-order-of-removal detention—based on Petitioner’s theories about what might happen *after* a final order of removal is obtained. There is no dispute that aliens are subject to mandatory detention at that point, per § 1231, and Petitioner’s arguments about § 1225 and the *Matter of Hurtado* or *Maldonado Bautista* decisions would have no relevance whatsoever once a final order of removal is obtained.

Petitioner’s related request to shorten the briefing schedule in this case is similarly based on a misapprehension of how Petitioner’s removal could potentially affect (and moot out) these proceedings. Petitioner complains that the current schedule might result in Petitioner’s removal as earlier as January 24, and that this would “effectively moot[] the litigation before Petitioner can file a meaningful reply.” (Dkt. No. 12 at 4.) Petitioner therefore appears to be suggesting that his *removal* pursuant to a final order of removal would moot this habeas case (and that that would somehow be improper by depriving the Court of the chance to first rule on Petitioner’s claims). But Petitioner is wrong about

this, in several respects.

First, Petitioner is wrong about what the triggering mootness event would be. It is not Petitioner's removal that will moot this litigation, but rather the existence of a final order of removal (because that is the point at which the statutory authority for Petitioner's detention will convert to § 1231, and will render moot any challenges to § 1225 as alleged in this lawsuit). Even if Petitioner is never ultimately removed (for example if for some reason it proves impossible to remove him because no country will accept him, or for some other operational reason), it is nonetheless the case that the minute there is a final order of removal in existence, Petitioner's claims in this proceeding will be moot. At that point he will no longer be subject to the allegedly unlawful § 1225 detention that he complains of in his habeas petition.

Second, Petitioner is also wrong to suggest that if this proceeding were to become moot by reason of the government's obtaining a final order of removal as to Petitioner, that would somehow be improper in having deprived the Court of the opportunity to rule on Petitioner's claims. This is not a situation, like some other cases with different facts, where the habeas claims are premised on an argument that the government cannot properly remove the person, such that if a removal does occur before the court has the opportunity to rule, the person will suffer the very (alleged) harm that he is seeking relief against in the litigation. Petitioner's situation is more akin to a pretrial detainee in a criminal case who is complaining about not having been allowed release on bond pending trial. If a trial then occurs and the person is convicted and sentenced to prison, the authority for keeping the person in custody shifts, and any complaints the person may

have had about pretrial detention are rendered moot but not in such a way that the alleged harm the person was complaining about—the allegedly unlawful pretrial detention—is permitted to continue. The same is true of Petitioner. He will not continue to suffer the alleged harm he is complaining of if a final order of removal renders his challenge to his current § 1225 detention moot prior to any ruling from this Court on that issue. To the contrary, he will no longer be in the allegedly unlawful § 1225 detention and—assuming his removal is quickly effectuated—he will no longer be in any detention at all.

Petitioner’s alleged concerns about the possibility of his challenge to § 1225 detention becoming moot therefore do not warrant further adjustments to the briefing schedule, or any other relief.

Petitioner also “objects” to the fact that Respondents have declined to agree not to move or transfer Petitioner from his current place of detention to a different detention facility within the United States that may be outside this district. (Dkt. No. 12 at 4.) As Respondents’ notice explained, though, such transfers sometimes are necessary for operational reasons (e.g., to relieve overcrowding), and they do not destroy or displace this Court’s jurisdiction for this proceeding (which was fixed at the time of filing). (*See* Dkt. No. 9 at 1–2 (including citations to caselaw on this issue).) Petitioner asserts in a cursory fashion that such a hypothetical transfer could “severely impede Petitioner’s access to counsel and his ability to prepare for his upcoming hearing,” (Dkt. No. 12 at 4), but this claim is not developed (and is wholly speculative at this point), and Petitioner also identifies no authority establishing a right to be housed in any particular ICE facility of his choosing—much less that such a right is cognizable via the “Great Writ” of habeas,

which instead is concerned with correcting serious constitutional errors and not with micro-managing ICE's operational administration of its detention centers.

For all these reasons, Petitioner's amended TRO motion should be denied.

Respectfully submitted,

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Certificate of Service

On January 5, 2026, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all parties electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Brian W. Stoltz
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