

ALE SEBASTIAN BARRIOS MALDONADO— A# [REDACTED]
PETITIONER'S OBJECTIONS TO THE REPORT AND RECOMMENDATION

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

ALE SEBASTIAN BARRIOS MALDONADO,

Petitioner,

v.

**WARDEN, NORTH LAKE CORRECTIONAL FACILITY;
U.S. DEPARTMENT OF HOMELAND SECURITY;
INMIGRATION AND CUSTOMS ENFORCEMENT (ICE)**

Respondents.

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§ **Case No. 4:26-cv-00039**
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§ **Hon. Clay D Land**
§ **U.S. District Court Judge**
§
§ **Hon. Alfreda L Sheppard**
§ **U.S Magistrate Judge**
§
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PETITIONER'S OBJECTIONS TO THE REPORT AND RECOMMENDATION

Petitioner, Ale Sebastian Barrios Maldonado, respectfully submits the following Objections to the Report and Recommendation and states:

I. STANDARD OF REVIEW

When a party files timely objections to a Magistrate Judge's Report and Recommendation, the District Court must conduct a de novo review of those portions of the Report to which objection is made. See 28 U.S.C. § 636(b)(1).

Accordingly, this Court must conduct a de novo review of the legal conclusions recommending dismissal of this habeas petition.

II. THIS CASE IS NOT MOOT

The Report recommends dismissal on mootness grounds because Petitioner was removed from the United States. However, removal does not render a habeas petition moot where the petitioner challenges the legality of the removal itself and the Court can still grant effective relief.

The Supreme Court has held that a case is not moot where a court can grant effective relief. See *Chafin v. Chafin*, 568 U.S. 165 (2013).

Courts have recognized that return to the United States is an available remedy in wrongful

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removal cases. See *Nken v. Holder*, 556 U.S. 418 (2009).

Because Petitioner seeks vacatur of voluntary departure, reopening of proceedings, and an order requiring the Government to facilitate his return, this Court can still grant effective relief and the case is not moot.

III. PETITIONER'S REMOVAL VIOLATED THE FIFTH AMENDMENT

Noncitizens present in the United States are entitled to due process of law in removal proceedings. See *Zadvydas v. Davis*, 533 U.S. 678 (2001).

Due process requires that a noncitizen be given a meaningful opportunity to be heard and to present claims for relief such as asylum.

Petitioner was detained and pressured into signing voluntary departure without a full and fair hearing before an immigration judge and without a meaningful opportunity to present his asylum claim, TPS status, and marriage-based relief. This violated the Due Process Clause of the Fifth Amendment.

IV. THE VOLUNTARY DEPARTURE WAS NOT KNOWING OR VOLUNTARY

A waiver of the right to a hearing must be knowing and voluntary. A removal order based on an invalid waiver violates due process. See *United States v. Mendoza-Lopez*, 481 U.S. 828 (1987).

Petitioner signed voluntary departure while detained, under pressure, and without understanding the consequences. Therefore, the waiver was invalid and the removal cannot stand.

V. PETITIONER HAD TPS, ASYLUM, AND MARRIAGE-BASED RELIEF

At the time of removal, Petitioner had:

- Temporary Protected Status (TPS);
- A pending asylum claim;
- A marriage in the United States;
- No criminal record;
- Strong family and community ties in the United States.

The failure to allow Petitioner to pursue these forms of relief before removal constitutes a violation of due process.

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VI. PETITIONER FEARS PERSECUTION AND WAS REMOVED DESPITE A PENDING ASYLUM CLAIM

Under U.S. law, a noncitizen has the right to apply for asylum if he fears persecution. See 8 U.S.C. § 1158.

Petitioner fears persecution based on political opinion and [REDACTED] After being removed to Venezuela, Petitioner was forced to flee again and is now in Colombia, where he also faces discrimination and danger.

Removing a person with a pending asylum claim and fear of persecution raises serious legal and constitutional concerns.

VII. INEFFECTIVE ASSISTANCE OF COUNSEL

Petitioner's prior attorney failed to properly represent Petitioner in his habeas case and removal proceedings. Ineffective assistance of counsel can constitute a due process violation and is a recognized basis for reopening immigration proceedings. See Matter of Lozada. Petitioner is now proceeding pro se to protect his rights.

VIII. THE COURT HAS AUTHORITY TO ORDER RETURN

Federal courts have authority under 28 U.S.C. § 2241 to remedy constitutional violations, including wrongful removal, and may order the Government to facilitate the return of a removed noncitizen where necessary to provide effective relief.


Without Petitioner's return, the Court cannot provide full relief.

IX. REMOVAL WHILE PROCEEDINGS WERE PENDING

Petitioner was removed from the United States while his immigration case and asylum application were still pending. Petitioner did not receive a full and fair hearing before an Immigration Judge before being removed.

Under 8 U.S.C. § 1229a, removal proceedings must be conducted before an Immigration Judge, and the noncitizen must be given an opportunity to be heard and present evidence.

Additionally, under 8 U.S.C. § 1158, a noncitizen physically present in the United States has the right to apply for asylum.

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Removing Petitioner while his proceedings were pending and before he had a full hearing violated due process and interfered with his statutory right to apply for asylum.

X. CONCLUSION

Petitioner respectfully objects to the Report and Recommendation and requests that the District Court conduct a de novo review, reject the recommendation of dismissal, and grant habeas relief.

XI. REQUEST FOR RELIEF

Petitioner respectfully requests that this Court:

1. Reject the Report and Recommendation;
2. Deny Respondents' Motion to Dismiss;
3. Grant the Petition for Writ of Habeas Corpus;
4. Vacate Petitioner's voluntary departure;
5. Order reopening of removal proceedings;
6. Order the Government to facilitate Petitioner's return to the United States;
7. Grant any other relief the Court deems just and proper.

Respectfully submitted,

Date: 03/31/2026

Ale Barrios

ALE SEBASTIAN BARRIOS MALDONADO

