

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No. 26-cv-00706-CNS

CARLOS ALBERTO MOLINA QUIJANO,

Petitioner,

v.

JUAN BALTAZAR, Warden of the Denver Contract Detention Facility;  
GEORGE VALDEZ<sup>1</sup>, Field Office Director, Denver Field Office, U.S. Immigration and  
Customs Enforcement;  
TODD M. LYONS, Acting Director, U.S. Immigration and Customs Enforcement;  
KRISTI NOEM, Secretary, U.S. Department of Homeland Security; and  
PAMELA BONDI, United States Attorney General,

Respondents.

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**MOTION TO VACATE THE COURT'S ORDER (ECF No. 11)**

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Respondents hereby move to vacate the Court's Order, ECF No. 11.<sup>2</sup>

Specifically, Respondents request that the Court vacate (1) the portion of its Order directing that "Respondents SHALL RETURN" Petitioner's driver's license and Employment Authorization Document ("EAD card") "within TWO DAYS of this Order", and (2) the portion of its Order requiring Respondents to provide Petitioner a "pre-deprivation bond hearing" if he is re-detained in the future. ECF No. 11.

In brief, as set forth below, Respondents no longer possess Petitioner's driver's license and EAD card. Respondents released Petitioner's wallet to a third party that

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<sup>1</sup> George Valdez, the Acting Field Office Director for ICE's Denver Field Office, is substituted for Robert G. Hagan pursuant to Fed. R. Civ. P. 25(d).

<sup>2</sup> Pursuant to D.C.COLO.LCivR 7.1(a), Respondents have conferred with counsel for Petitioner, who opposes the relief sought herein.

Petitioner authorized to pick up his personal belongings. Petitioner states that he did not receive those documents. Respondents have requested a new EAD card for Petitioner. But since Respondents no longer possess Petitioner's driver's license or EAD card, Respondents request the Court vacate its Order directing Respondents to return the documents. In addition, Respondents respectfully request that this Court reconsider its Order that Immigration and Customs Enforcement ("ICE") provide Petitioner a pre-deprivation bond hearing before he can be re-detained in the future because a speculative future detention does not present a live case or controversy, the provisions of the Immigration and Nationality Act that could serve as the basis for a future detention do not provide for a pre-deprivation hearing, and any challenge to a future detention would need to be brought in a new habeas action in the jurisdiction of confinement.

### **BACKGROUND**

Petitioner Carlos Molina Quijano is a native and citizen of Venezuela. ECF No. 1 ¶ 1. Petitioner was taken into the custody of Immigration and Customs Enforcement ("ICE") on February 10, 2026. *Id.* ¶ 4. Petitioner filed his Petition on February 20, 2026, asserting violations of the Immigration and Nationality Act and the Fifth Amendment based on allegations that Respondents have unlawfully detained him. *Id.* ¶¶ 54-71. Petitioner asked the Court to direct "Respondents to release him from custody" and sought declaratory relief. *Id.* ¶¶ 6, 62, 71, at 19.3

On March 11, 2026—before Respondents responded to the Petition—Petitioner was released from ICE custody. ECF No. 9-1 ¶ 5 (Declaration of Kurt Nissen). Upon

his release, Petitioner signed his Detainee Personal Property Inventory Form indicating that the listed property was returned to him at the time of his release. See Ex. A, Declaration of Rosa Escareno, ¶ 7, Att. 1. In addition, after his release, Ms. Fonseca Carrasco—a person Petitioner authorized to pick up his personal belongings—picked up Petitioner’s keys, wallet, and phone from the Denver Contract Detention Facility (“Denver CDF”). *Id.* ¶ 8, Att. 2.

The day of his release, Petitioner’s counsel informed undersigned counsel that Petitioner had not received his driver’s license or his EAD card (collectively “identification documents”). In hopes of resolving the issue without Court intervention, ICE personnel sought to locate those identification documents and return them, as described in the declaration. See Ex. A ¶ 9. On the evening of March 11, 2026, an ICE officer reached out to Petitioner’s counsel to explain that he was unable to locate Petitioner’s driver’s license or EAD card, but that he had put in a request with U.S. Citizenship and Immigration Services (“USCIS”) to have an EAD card re-issued to Petitioner. *Id.* ¶ 10; see also ECF No. 10 at 4 n.2.

Respondents filed a Response to the Order to Show Cause after Petitioner had been released. ECF No. 9. Respondents explained that the Petition should be dismissed without prejudice because Petitioner been released from custody and, as such, his Petition was now moot. *Id.*

On March 13, 2026, Petitioner filed a Traverse in support of his Petition. ECF No. 10. Petitioner explained that his identification documents were not returned to him when he was released. *Id.* at 1. Petitioner sought an order (1) requiring Respondents

to either return his identification documents or “if Respondents have lost them, replace the DHS-issued EAD;” and (2) “enjoining Respondents from re-detaining Petitioner while his [Temporary Protected Status] protections are in place.” *Id.*

After Petitioner filed his Traverse in Support of his Petition, ECF No. 10, ICE undertook another effort to locate his driver’s license and EAD card. Ex. A ¶¶ 11. Based on this inquiry, ICE could not locate Petitioner’s identification documents. *Id.* ¶ 12.

That same day, the Court granted the Petition in part. ECF No. 11. The Court ordered, among other relief, that Respondents return Petitioner’s identification documents within two days of the Order and enjoined Respondents “from re-detaining Petitioner unless they demonstrate, by clear and convincing evidence at a pre-deprivation bond hearing, that Petitioner is a flight risk or danger to the community such that his physical custody is legally justified.” *Id.* at 3-4.

## ARGUMENT

### **I. Petitioner’s action is moot and thus the Court lacked jurisdiction to grant relief.**

As Respondents explained in their Response to the Order to Show Cause, the Petition became moot when Petitioner was released from ICE’s custody on March 11, 2026. ECF No. 9. Courts “have no subject matter jurisdiction if a case is moot.” *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1109 (10th Cir. 2010). Respondents respectfully submit the Court lacked jurisdiction to order Petitioner any further relief. See ECF No. 11.

Furthermore, retaining identification documents is not a condition of release, and requiring return of the documents falls outside the ambit of this habeas action. “[T]he

essence of habeas corpus 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.” *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). “[C]ourts in every circuit have held that property claims cannot be raised in habeas.” *Burgess v. California*, No. 222CV0573DADDMCP, 2022 WL 4238265, at \*1 (E.D. Cal. Sept. 14, 2022), *report and recommendation adopted*, No. 222CV00573DADDMCHC, 2022 WL 17178361 (E.D. Cal. Nov. 23, 2022) (collecting cases).

Here, Petitioner did not assert a property claim in his Petition. See ECF No. 1 at 19 (requested relief). And by the time Respondents filed their Response, Petitioner had received the relief he sought: immediate release. Thus, the Court lacked jurisdiction to grant him any relief, let alone relief related to his property. See ECF No. 11 at 3. The Court should vacate its Order requiring Respondents to return Petitioner’s documents to him. Respondents note that they do not have the documents and have requested that a new EAD card be issued to Petitioner. See Ex. A ¶¶ 9-12.

**II. The Court should reconsider and vacate its Order to provide Petitioner a pre-deprivation hearing for any potential future detention.**

Respondents respectfully request the Court also vacate the portion of its Order that enjoins and restrains Respondents from “from re-detaining Petitioner unless they demonstrate, by clear and convincing evidence at a pre-deprivation bond hearing, that Petitioner is a flight risk or danger to the community such that his physical custody is legally justified.” ECF No. 11 at 4. The order should be vacated for two reasons. First, a speculative future detention does not present a live controversy or establish that Petitioner is currently suffering any concrete injury that warrants the Court’s

intervention. Second, any challenge to a future detention would need to be brought in a new habeas action in the jurisdiction of confinement.

**A. Any speculative, future detention does not present a live controversy.**

As explained above, Petitioner's claims challenging his detention are moot because he has been released from detention. See *Rio Grande Silvery Minnow*, 601 F.3d at 1110 ("The crucial question [in determining mootness] is whether granting a *present* determination of the issues offered will have some effect in the real world." (emphasis in original)).

Petitioner has not established that he continues to suffer from any specific, concrete disadvantage or disability, much less that such injury requires a bond hearing under 8 U.S.C. § 1226(a). Respondents have no current intent to detain Petitioner again absent a change in circumstances. Ex. A ¶ 13.

Notably, Petitioner does not provide any reason to believe that he is at risk of being detained again pursuant to 8 U.S.C. § 1225(b)(2). And 8 U.S.C. § 1226(a) does not require a pre-deprivation hearing—it only requires a *post-deprivation* bond hearing. Moreover, there are other provisions of the Immigration and Nationality Act under which Petitioner could be detained in the future; Sections 1225(b)(2) and 1226(a) are not the only provisions that allow for detention of noncitizens. For example, 8 U.S.C. § 1226(c) requires detention of noncitizens who have committed certain crimes. That section does not provide for a bond hearing at all, much less a *pre-deprivation* bond hearing. Similarly, 8 U.S.C. § 1231(a)(2)(A) requires detention of noncitizens following the entry of a final order of removal and does not provide for a bond hearing.

The Court's order alters the statutory scheme by requiring a process that even 8 U.S.C. § 1226(a) does not require: a pre-deprivation hearing. The Court did not hold that § 1226(a), § 1226(c), or § 1231 are unconstitutional, and the legal basis for a general requirement to hold a pre-deprivation hearing regardless of the statutory authority for any future detention is unclear.

Because Petitioner has been released and has not provided any reason to believe that he is at risk of being again detained under the same circumstances challenged in this habeas action, there is no live controversy and his claims in this action are moot. Respondents request that the Court vacate its order requiring that Respondents hold a pre-deprivation bond hearing for a speculative future detention under unknown factual circumstances and unknown legal authority.

**B. Any challenge to a future detention would need to be brought in a new habeas action.**

Any challenge to a future detention, if it occurred, would need to be filed in a new habeas action. Indeed, at this time it is unknown where Petitioner would be detained if he is, in fact, detained again. Since a habeas petition must be brought in the district in which the Petitioner is detained, Petitioner would need to bring a new habeas petition if he seeks relief for any future detention. See *Trump v. J.G.G.*, 604 U.S. 670, 672 (2025) (“For ‘core habeas petitions,’ ‘jurisdiction lies in only one district: the district of confinement.’”) (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004)).

Moreover, Petitioner never requested relief related to any speculative future detention in the Petition. See ECF No. 1 at 19 (relief requested in Petition). Rather, a request for such relief was improperly raised for the first time in his Traverse in support

of his Petition. See ECF No. 10 at 1; *see also Ortega v. Kaiser*, No. 25-CV-05259-JST, 2025 WL 2243616, at \*4 (N.D. Cal. Aug. 6, 2025) (“[A] request for affirmative relief is not proper when raised for the first time in an opposition.”).

Since Petitioner has received the relief requested in the Petition—immediate release from custody, ECF No. 1 at 19—and the fact or location of any future detention is entirely speculative, the Court should decline to order additional relief.

### CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court (1) vacate the portion of the Order requiring the return of Petitioner’s documents; and (2) vacate the portion of the Order requiring a pre-deprivation bond hearing.

Dated: March 15, 2026

Respectfully submitted,

PETER MCNEILLY  
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*Counsel for Respondents*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 15, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

s/ Julia M. Prochazka  
**Julia M. Prochazka**  
Assistant United States Attorney  
Counsel for Respondents