

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

GASPAR MANUEL SEBASTIAN,

Petitioner,

v.

MARCOS CHARLES, ET AL.,

Respondents.

Case No. 2:26-cv-00731-KCD-NPM

**FEDERAL RESPONDENTS' OPPOSITION TO PETITION FOR
WRIT OF HABEAS CORPUS**

Respondents, by and through undersigned counsel, hereby respond to the Court's March 17, 2026 Order to Show Cause (ECF No. 5) in opposition to Petitioner Gaspar Manuel Sebastian's ("Petitioner") petition for habeas corpus.

BACKGROUND

Petitioner is a citizen of Guatemala who entered the United States in 2013. Petitioner filed a Petition for Writ of Habeas Corpus, ECF No. 1 ("Petition"), ¶¶ 3, 17, 27, 28. On November 16, 2017, Petitioner was ordered removed from the United States *in absentia* as he did not appear for his hearing before an immigration judge. *Id.*, ¶¶ 2, 30. He then sought reopening of his removal proceedings unsuccessfully in 2018. *See* EOIR Automated Case Information printout, attached as "Exhibit A" at p. 2.

On December 6, 2025, Petitioner was detained by immigration authorities

following a vehicle stop. Petition, ¶¶ 12, 17. On December 18, 2025, he filed another motion seeking reopening of his removal proceedings. *See* ECF No. 1-7. He purports to have filed a second motion to reopen in February. ECF No. 1-8. It does not appear that decisions on either motion have issued. *See* Exhibit A.

On March 13, 2026 the instant petition was filed as was a motion seeking a temporary restraining order. ECF Nos. 1, 2. Petitioner challenges Immigration and Customs Enforcement's ("ICE") detention while his motions seeking reopening of his removal proceedings remain pending. Petition, ¶¶ 2, 5, 16. On March 17, 2026, this Court issued two orders: an order to show cause why the petition should not be granted—ECF No. 5—and an order denying the temporary restraining order motion—ECF No. 6. On March 17, 2026, Petitioner's final order of removal was executed. *See* EARM Detention History, attached as Exhibit B.

CERTIFIED HABEAS RETURN

The Court has power to grant writs of habeas corpus where (among other instances) a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). Petitioner bears the burden of proof in establishing that his detention violates federal law. *Whitfield v. U.S. Sec'y of State*, 853 F. App'x 327, 329 (11th Cir. 2021).

Petitioner was ordered removed from the United States on November 16, 2017. He sought reopening of his *in absentia* proceedings however the motion was denied in 2018 making his removal order both final and executable. He was thus detained under

8 U.S.C. § 1231(a) when he was apprehended in December 2025. However, he has since been removed from the United States. Exhibit B. Therefore he is not currently detained by the United States government.

ARGUMENT

I. Petitioner's Claims are Moot.

The doctrine of mootness derives directly from the case-or-controversy limitation because “an action that is moot cannot be characterized as an active case or controversy.” *Adler v. Duval County Sch. Bd.*, 112 F.3d 1475, 1477 (11th Cir.1997). “[W]hen the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome” the matter is moot. *Al Najjar*, 273 F.3d at 1335-36; *see also Florida Ass’n of Rehab. Facilities, Inc.*, 225 F.3d at 1216-17 (finding a case moot when it no longer presents a controversy that can be meaningfully remedied through the court). In the habeas context the general rule is that there is only a live case or controversy when a petitioner is in custody. 28 U.S.C. § 2241(c); *Spencer v. Kemna*, 523 U.S. 1, 7-8 (1998); *Salmeron-Salmeron v. Spivey*, 926 F.3d 1283, 1289 (11th Cir. 2019). Accordingly, if—subsequent to the filing of the lawsuit—events take place that deprive the court of the ability to grant meaningful relief, the matter is moot and the case must be dismissed. *See, e.g., Hall v. Beals*, 396 U.S. 45, 48 (1969) (per curiam). Still, the Eleventh Circuit has found that in the immigration context, a habeas petition filed by an alien who is subsequently deported may survive a mootness challenge where the petition challenges not only his detention, but also his final order of removal. *See Moore v.*

Ashcroft, 251 F.3d 919, 922 (11th Cir. 2001).

Here, Petitioner—subject to a final order of removal—was detained for the purpose of executing that order. *See* Ex. A, B. Petitioner has presented nothing to suggest that the order was unlawful. *See generally* Petition. Rather, he seeks release from detention so that he may effectively stay his removal while his motions to reopen immigration proceedings are adjudicated, claims that this Court is jurisdictionally barred from considering. As to Petitioner’s detention—which forms the sole basis of this action—there is no relief for the Court to grant because Petitioner is no longer detained by or in the United States. Because Petitioner challenges his detention—and only his detention—the general rule in immigration habeas petition mootness should apply, and this case should be dismissed.

Furthermore, Petitioner has not demonstrated that any of the other exceptions to the mootness doctrine apply here. There are three distinct scenarios in which a court may find jurisdiction notwithstanding subsequent action that otherwise moots a case: (1) when the defendant’s action is capable of repetition yet evading review, (2) when collateral consequences are at issue, and (3) when a petitioner has taken all necessary steps to preserve the status quo. None are applicable in this case.

The first exception—capable of repetition yet evading review—is a narrow exception, applicable only in exceptional situations. *Al Najjar*, 273 F.3d at 1336. It applies when “(1) there [is] a reasonable expectation or a demonstrated probability that the *same* controversy will recur involving the *same* complaining party, and (2) the

challenged action is in its duration too short to be fully litigated prior to its cessation or expiration.” *Soliman v. U.S. ex rel. INS*, 296 F.3d 1237, 1242-43 (11th Cir. 2002) (quoting *Sierra Club v. Martin*, 110 F.3d 1551, 1554 (11th Cir.1997) (emphasis added)). A remote possibility of repetition is not enough. *Al Najjar*, 271 F.3d at 1336. Here, Petitioner has made no allegation that this exception should apply to this case and there is no reason to believe that the same detention dispute will take place between these parties, particularly given the fact that Petitioner is no longer in the United States. Put simply, the same dispute is not likely to arise again between these parties because Respondents have no reason to detain Petitioner for removal when he has already been removed. *See* Ex. B.

The second exception—collateral consequences—is triggered where detention has a “tangible collateral consequence” that persists after release. *See Salmeron-Salmeron*, 926 F.3d at 1290; *Djadju v. Vega*, 32 F.4th 1102, 1107 (11th Cir. 2022). Here, Petitioner has not asserted that any collateral consequence is attached to his detention and rightly so, because there is none. Petitioner was detained for the purpose of executing an order of removal that has been final for years. Ex. A. The sole consequence of his detention is that he was removed from the United States pursuant to a valid and final order allowing as such. *See* Ex. B. Petitioner did not—and could not—challenge his removal order through his habeas petition and the only relief the Court could have granted on his detention challenge was release, yet Petitioner has already been released, as discussed *supra*. This exception does not apply here.

Finally, the third exception—all necessary steps—is implicated where a petitioner “has taken all steps necessary to perfect the appeal and to preserve the status quo before the dispute becomes moot.” *B&B Chem. Co. v. EPA*, 806 F.2d 987, 990 (11th Cir. 1986). “This exception, however, is an extremely narrow one that has been limited primarily to criminal defendants who seek to challenge their convictions notwithstanding that they have been released from custody.” *Ethredge v. Hail*, 996 F.2d 1173, 1176-77 (11th Cir. 1993). Petitioner is not such a petitioner and undersigned counsel has identified no cases in which the “all necessary steps” doctrine has been applied in circumstances like these. In fact, applying all necessary steps in this context would effectively make any habeas case “live” when an alien is removed during the pendency of legal proceedings contrary to this circuit’s precedent. *See, e.g., Salmeron-Salmeron*, 926 F.3d at 1290 (holding habeas moot when removal occurred during the pendency of the action); *Soliman*, 296 F.3d at 1243-44 (same during appeal).

When Petitioner was removed—pursuant to a valid, enforceable order—this matter became moot. It remains moot today. Because there is no live case or controversy that can be remedied by any order of this Court, this case should be dismissed.

II. 8 U.S.C. § 1252(g) Strips the Court of Jurisdiction to Review Petitioner’s Claims Because They Arise From ICE’s Execution of a Final Order of Removal.

Even were this case not moot, the Court would not have jurisdiction to consider Petitioner’s claims. Federal court jurisdiction is presumptively limited. *Kokkonen v.*

Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994); *Sheldon v. Sill*, 49 U.S. 441, 448 (1850) (“Congress, having the power to establish the courts, must define their respective jurisdictions.”). Courts “possess only the power authorized by the Constitution and statute, which is not to be expanded by judicial decree.” *Kokkonen*, 511 U.S. at 377 (internal citations omitted); *see also Sheldon*, 49 U.S. at 449 (“Courts created by statute can have no jurisdiction but such as the statute confers.”). As relevant here, in 1996 Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act, which included provisions depriving federal courts of jurisdiction over certain matters. Specifically, 8 U.S.C. § 1252(g) deprives the court of jurisdiction to review claims arising from the Attorney General’s actions or decisions in three distinct areas: the commencement of proceedings, adjudication of cases, or execution of removal orders. 8 U.S.C. § 1252(g); *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013). Congress spoke clearly and emphatically, providing that “no court” has jurisdiction over “any cause or claim” arising from the execution of removal orders “notwithstanding any other provision of law,” whether “statutory or nonstatutory,” including habeas, mandamus, or the All Writs Act. *Id.* Accordingly, by its terms, the jurisdiction-stripping provision of 8 U.S.C. § 1252(g) precludes review over claims arising from a decision or action to “execute” a final order of removal. *See Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999). These activities “represent the initiation or prosecution of various stages in the deportation process” that Congress had “good reason” to withhold from judicial review. *Id.*

This bar is subject to limitations and must be applied “to just those three specific actions” listed in the INA. *Jennings v. Rodriguez*, 583 U.S. 281, 294 (2018). Indeed, courts of appeal addressing this issue have time and time again held that Section 1252(g) eliminates subject-matter jurisdiction over habeas challenges to the arrest or detention of an alien for the purpose of executing a final order of removal. *See Rauda v. Jennings*, 55 F.4th 773, 778 (9th Cir. 2022) (holding that the court lacked jurisdiction over alien’s habeas challenge to the exercise of discretion to execute his removal order); *Tazu v. Att’y Gen. U.S.*, 975 F.3d 292, 297 (3rd Cir. 2020) (observing that “the discretion to decide *whether* to execute a removal order includes the discretion to decide *when* to do it” and that “[b]oth are covered by the statute”) (emphases in original); *Hamama v. Adducci*, 912 F.3d 869, 874–77 (6th Cir. 2018) (vacating district court’s injunction staying removal and concluding that Section 1252(g) stripped the district court of jurisdiction over petitioner’s removal-based claims). The Eleventh Circuit has treated Section 1252(g) no differently. *See Camerena v. Dir., ICE*, 988 F.3d 1268, 1272 (11th Cir. 2021) (“[W]e do not have jurisdiction to consider ‘any’ cause or claim brought by an alien arising from the government’s decision to execute a removal order. If we held otherwise, any petitioner could frame his or her claim as an attack on the government’s authority to execute a removal order rather than its execution of a removal order.”).

In this case, Petitioner has been subject to a final order of removal for several years. Ex. A. He was detained for the purpose of effecting his removal from the United

States. Ex. B. His Petition is centered around the contention that his removal should be delayed while he pursues reopening of removal proceedings.¹ *See generally* Petition. These are exactly the activities and decisions the Section 1252(g)'s jurisdictional bar was designed to insulate from judicial review.

CONCLUSION

Petitioner's claims must be dismissed. Petitioner is no longer detained in the United States and the Court lacks a mechanism to provide meaningful relief. This matter is moot without exception. In addition, the Court lacks jurisdiction to consider his claims because they arise from the government's actions and decisions related to his removal from the United States, activity 8 U.S.C. § 1252(g) precludes judicial review of. Respondent respectfully requests that this matter be dismissed.

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¹ Petitioner suggests that his removal is automatically stayed during the pendency of his motion to reopen because his removal order was issued *in absentia*. Petition, ¶¶ 5, 37. This is incorrect. Though INA § 1229a(b)(5)(C) and 8 C.F.R. § 1003.23(b)(4)(ii) provide that removal is automatically stayed pending the disposition of an *in absentia* order of removal based on lack of notice, only one such motion may be filed. *See* 8 C.F.R. § 1003.23(b)(4)(ii). In this case, Petitioner's motion seeking reopening of *in absentia* proceedings was resolved in 2018 when it was denied. *See* Exhibit A. Though Petitioner is free to seek reopening through subsequent motions to reopen, automatic stays are not triggered in those cases. *See* 8 C.F.R. § 1003.23(b)(1)(v).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 3, 2026, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Amanda Saylor
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