

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

DAINIER ALEMAN GARCIA

PETITIONER

v.

NO. 3:25-CV-522-RGJ

KRISTI NOEM, in her Official Capacity as
Secretary, Department of Homeland Security;
TODD LYONS, in his Official Capacity as
Acting Director, U.S. Immigration and
Customs Enforcement;
PAM BONDI, in her Official Capacity as
Attorney General of the United States; and
JEFF TINDALL, in his Official Capacity as
Oldham County Jailer

RESPONDENTS

RESPONDENTS' MOTION FOR RELIEF UNDER FED. R. CIV. P. 60(b) AND
MOTION FOR EXTENSION OF TIME TO RESPOND

Respondents¹ move for relief from the Court's recent Memorandum of Hearing and Order [Doc. 11] under Fed. R. Civ. P. 60(b)(1). Respondents base their request for relief from and clarification of the Order for the following two reasons:

1. The Order mistakes the legal framework for this case. Petitioner is not subject to expedited removal proceedings under 8 U.S.C. § 1225. Rather, Petitioner is detained under 8 U.S.C. § 1231 because he is subject to a reinstated final order of

¹ The federal respondents are Kristi Noem, in her official capacity as Secretary for the Department of Homeland Security, and Todd Lyons, in his official capacity as Acting Director for U.S. Immigration and Customs Enforcement (ICE), and Pam Bondi, in her official capacity as Attorney General of the United States. As noted in their Response to the Show Cause Order [Doc. 5], 28 U.S.C. § 517 allows the Office of the United States Attorney to make appearances in court to attend to the United States' interests, and consistent with that statute and *Roman v. Ashcroft*, 340 F.3d 314, 319-20 (6th Cir. 2003), this filing attends to the United States' interests to the extent that the petition names Jeff Tindall, the Oldham County Jailer, as a respondent.

removal. Consequently, *Make the Road New York, et al. v. Noem*, 2025 WL 2494908 (D.D.C. Aug. 29, 2025), is irrelevant.

2. It is unclear whether Petitioner can be removed based on the Order. Petitioner is also eligible to be removed at any time by DHS, and the Court lacks subject matter jurisdiction to interfere with Petitioner's removal under 8 U.S.C. § 1252. The Court's order states that it "does not intend to . . . 'frustrate the removal order,'" but it also orders that Petitioner cannot "be transferred from Oldham County Jail to another detention facility until the completion of his Habeas Proceeding." These seemingly contradictory statements are significant because Petitioner is scheduled to be removed before the end of September.

In light of the mistake regarding expedited removal and the fact that Petitioner's brief is focused on expedited removal, Respondents ask the Court to establish a new briefing schedule so Petitioner can set forth an argument based on the actual legal and factual framework of this case and Respondents can respond.

I. Fed. R. Civ. P. 60(b)(1).

Rule 60(b) grants authority for a party to move to amend an order based on several specific grounds, and one catchall category. Here, Respondents' motion is filed under Rule 60(b)(1), which allows for an order to be amended because of a mistake of fact or law. *See Kemp v. United States*, 596 U.S. 528, 534 (2022).

II. Petitioner is not subject to expedited removal proceedings under 8 U.S.C. § 1225, because he already has an order of removal.

Petitioner is not subject to “expedited removal proceedings” under 8 U.S.C. § 1225. [Doc. 11, PageID. 42.] Expedited removal proceedings occur before a final order of removal is issued. *See Matter of M-S-*, 27 I&N Dec. 509, 510-12 (BIA 2019). Expedited removal proceedings are one path that can lead to a final order of removal, which DHS then carries out by removing someone—i.e., moving an alien from the United States to another country. Because Petitioner is not subject to expedited removal proceedings under 8 U.S.C. § 1225, *Make the Road New York, et al. v. Noem*, 2025 WL 2494908 (D.D.C. Aug. 29, 2025), is irrelevant because it only addresses claims related to the expedited removal process set forth in 8 U.S.C. § 1225(b).

Neither Petitioner nor Respondents argued that 8 U.S.C. § 1225 could frustrate removal or have any bearing on this matter. Indeed, the transcript of the August 28, 2025 hearing shows that “1225” was never mentioned. “1225” was not mentioned in Petitioner’s habeas petition or Respondents’ response to the Court’s show cause order. Petitioner referenced “expedited removal” twice in his Petition, [Doc. 1, PageID. 4-5 (¶¶ 5, 7)]² and Petitioner’s counsel—who has represented Petitioner since May 2025—mentioned “expedited removal” once at the hearing, but then counsel disclaimed knowledge of the statutory basis for Petitioner’s detention. [Doc. 13, PageID.106 (lines 1-

² Those paragraphs (like most of the petition) were nearly identical to allegations in the petition filed in *Mejia v. Woosley, et al.*, 4:25-cv-82-RGJ, Doc. 1, PageID.4-5 (¶¶ 6, 8) (W.D. Ky. July 31, 2025). Petitioner also repeated Mejia’s claim that he is in detention “hours away from his infant child, his fiancé, his family, and his job,” [Doc. 1, PageID 5 (¶ 7) but unlike Mejia who lived in Indiana, Petitioner stated to ICE in 2024 and 2025 that he lives in Louisville.

15).] Respondents have explained that Petitioner is subject to a reinstated final order of removal and is detained pursuant to 8 U.S.C. § 1231. [Doc. 5, PageID.26.]

The Court's Order focuses on 8 U.S.C. § 1225 and appears to premise its holding and requests for additional briefing on that statute. [Doc. 11, PageID.42-43]. As previously noted, Petitioner's detention and current status fall under 8 U.S.C. § 1231.

III. Petitioner is detained and eligible to be removed under 8 U.S.C. § 1231.

Petitioner is detained and is scheduled to be removed to Cuba because he received a final order of removal in 2018 that was reinstated in 2023, as shown to opposing counsel and the Court during the August 28, 2025 hearing, and reinstated again in May 2025. [Exhibit 1: 2018 Order of Removal; Exhibit 2: 2023 Reinstatement of Order of Removal; Exhibit 3: 2025 Reinstatement of Order of Removal.] Petitioner sought relief from the second reinstated final order in May 2025 by claiming "reasonable fear" of being returned to Cuba.³ On July 23, 2025, an immigration judge affirmed the Department of Homeland Security's decision that Petitioner had not established a reasonable possibility that he would be persecuted on a protected ground or tortured in Cuba. [Exhibit 4: July 23, 2025 Order of the Immigration Judge]; *see also* 8 C.F.R. § 1208.31(g)(1). Petitioner has filed an action seeking review of the immigration

³ Respondents stated in their response to the Court's show cause order that Petitioner claimed "credible fear" and "reasonable fear." Because Respondent is subject to a reinstated final order of removal, he is only eligible to assert a claim of "reasonable fear." *See* 8 C.F.R. § 1208.31.

Petitioner's counsel in this matter helped Petitioner in the reasonable fear proceeding, and she filed a petition for review with the Sixth Circuit of the immigration judge's decision denying Petitioner's reasonable fear claim. *Aleman v. Bondi*, 25-3666 (6th Cir. Aug. 21, 2025). In fact, on September 9, 2025, the Sixth Circuit filed in its record a 61-page administrative record related to this proceeding.

judge's order with the Sixth Circuit, but because the immigration judge's order is not stayed under 8 U.S.C. § 1231(a)(1)(B)(ii), he can be removed while the Sixth Circuit conducts its review. *See also Roa v. Garland*, 2024 U.S. App. LEXIS 21006, at *1-5 (6th Cir. Aug. 19, 2024) (denying a motion to stay removal while a petition for review was pending); *Dorville v. Searls*, 2023 WL 4107981, 2023 U.S. Dist. LEXIS 107390, at *12-18 (W.D.N.Y. June 21, 2023) (explaining how the law related to stays of removal and petitions for review has been amended).

IV. Petitioner is scheduled to be removed before the end of September.

Clarifying that Petitioner is not subject to expedited removal proceedings under 8 U.S.C. § 1225 is important because, if Petitioner was in expedited removal proceedings, he would not necessarily be subject to removal under 8 U.S.C. § 1231. But here, Petitioner is subject to a final order of removal and because no stay of removal has been ordered by a circuit court, he can be removed. 8 U.S.C. § 1231(a)(1)(A). DHS, in fact, plans to remove Petitioner before the end of September.

Respondents explained during the August 28, 2025 hearing that, because Petitioner is subject to a final order of removal, there is no subject matter jurisdiction for the Court to impede the execution of that removal order. [Doc. 13, PageID.116; *see also id.*, PageID.114 (lines 14-23).] Respondents cited to the Court 8 U.S.C. § 1252(g) as the relevant authority. [*Id.*, PageID.114 (lines 15-19).] The Court stated that it would not issue an order that interfered with Petitioner's removal: "I'm not trying to defeat removal." [Doc. 13, PageID.117 (lines 19-20).] Immediately preceding that statement, the Court distinguished transferring Petitioner to another district (which has not happened

in any habeas matter in the Western District of Kentucky except when petitioners were removed pursuant to final orders of removal), and removal:

There is a difference between me saying he cannot be transferred out of the district so that I can finish the proceeding. That does not run afoul of removal. I'm simply saying you can't move him to another facility in another district solely for the purpose of defeating the petition's completion, because then they have to go bring another petition in another location. That is the problem.

[*Id.* (lines 12-18).] The Court continued: "So there's a little bit of a difference I think between what you're saying and what I am saying and what she's asking for, which is he can't be transferred to another facility in another district. That's different than saying you can't remove him." [*Id.*, PageID. 118 (lines 3-6).] Respondents sought to clarify that the Court was only limiting Petitioner's transfer, not Petitioner's removal, which might involve first moving Petitioner from the Western District of Kentucky to another location a short time before Petitioner is flown to Cuba. [*Id.*, PageID.118 (lines 11-16).] The Court suggested further clarification was unnecessary because it would likely not be an issue. [*Id.* (lines 17-20).]

Following the hearing, the Court issued an order that appears to conflict with what the Court stated during the hearing. The order states in bold text, "**the Court orders that Petitioner not be transferred from Oldham County Jail to another detention facility until the completion of his Habeas Proceeding.**" [Doc. 11,

PageID.42.]⁴ The order, however, also states that “[e]nsuring that Petitioner remain in this jurisdiction for purposes of this petition, notwithstanding his removal, helps ensure that this action can be completed as swiftly and as expeditiously as possible.” [Doc. 11, PageID.42.] The order goes on to state, consistent with the Court’s message from the hearing, that it “does not intend to ... ‘frustrate the removal order.’” [Doc. 11, PageID.42-43.] These latter two statements appear to suggest that, perhaps, consistent with the commands of 8 U.S.C. § 1252, the Court’s order is not intended to limit DHS’s ability to remove Petitioner from the United States. However, the other statements can be construed to conflict with the jurisdictional constraints on this court: (1) 8 U.S.C. § 1252(g)’s jurisdictional bar related to claims interfering with the execution of removal orders; (2) 8 U.S.C. § 1252(a)(5)’s mandate that “a petition for review filed with an appropriate court of appeals . . . shall be the sole and exclusive means for judicial review of an order of removal entered and issued”; and (3) 8 U.S.C. § 1252(b)(9)’s instruction that “[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States . . . shall be available only in judicial review of a final order under this section.” *See also Jianmei Lin v. Borgen*, 2025 WL 2158874, 2025 U.S. Dist. LEXIS 145537, at *7-14 (S.D.N.Y. July 30, 2025) (explaining that 8 U.S.C. § 1252 barred the court from considering

⁴ Petitioner only requested to not be transferred out of the Western District of Kentucky, [See Doc. 1, PageID.6] but the Court issued an order more restrictive than what Petitioner sought, or the parties addressed before the Court [see Doc. 13, PageID.116-18].

petitioner's habeas claim because he was subject to a final order of removal and his arguments for release constituted a challenge to his final order of removal); *Ceesay v. Bondi*, 2025 WL 1435615, 2025 U.S. Dist. LEXIS 94489, at *4-6 (S.D.N.Y. May 16, 2025) (explaining that the Court lacked jurisdiction under 8 U.S.C. § 1252 because the relief requested constituted an indirect attack on the removal order).

The Court repeatedly indicates that its order is intended to serve judicial economy and access to counsel for purposes of this proceeding. [Doc. 11, PageID.41, 42, 43.] But such concerns do not supersede DHS's interests in promptly removing Petitioner because he is subject to a final order of removal. Indeed, habeas petitions are commonly mooted because petitioners are released by removal. *See, e.g., Enazeh v. Davis*, 107 F. App'x 489, 491 (6th Cir. 2004); *Nasreldeen v. ICE Detroit Field Office*, 2023 WL 2965709, 2023 U.S. Dist. LEXIS 66236, at *2-5 (W.D. Mich. Apr. 17, 2023); *Singh v. Lynch*, 2023 U.S. Dist. LEXIS 18959, at *2 (N.D. Ohio Feb. 3, 2023).

CONCLUSION

Respondents ask the Court to correct its order stating that expedited removal under 8 U.S.C. § 1225 is at issue and ordering the Parties to address *Make the Road New York, et al. v. Noem*, 2025 WL 2494908 (D.D.C. Aug. 29, 2025), which Petitioner failed to do in his brief [Doc. 12].

Further, Respondents ask the Court to clarify its order on removing the Petitioner. Respondents agree that Petitioner will not be transferred out of the district for the purposes of delaying this proceeding. However, Respondents ask the Court to clarify that its order does not stand in the way of Petitioner being removed and that, as

a necessary step in that process, DHS is permitted to transfer Petitioner to another district for a short time before he is flown to Cuba and released.

Finally, Respondents ask the Court to provide Petitioner time to file a new brief that addresses the actual issues in this case and then re-set their deadline to respond to Petitioner's brief so that they can have the opportunity to respond to Petitioner's arguments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2025, I filed this document via CM/ECF,
which will automatically provide service to all counsel of record.

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