

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'¹ REPLY TO PETITIONER'S RESPONSE TO MOTION FOR
RELIEF UNDER FED. R. CIV. P. 60(b) [DOC. 18] AND
PETITIONER'S RESPONSE TO NOTICE OF IMPENDING REMOVAL [DOC. 19]**

Respondents timely filed a brief that (1) sought clarification of the Court's order under Fed. R. Civ. P. 60(b), (2) explained the substantive basis for Petitioner's detention (8 U.S.C. § 1231) and that expedited removal is not a relevant issue, and (3) requested additional time for Petitioner to brief the actual issues in this case, and for Respondents to then respond. [Doc. 16.] Respondents then notified the Court in a separate filing that Petitioner's removal is scheduled to occur on or before September 27, 2025. [Doc. 17.] Petitioner wrongly argues that Respondents' first brief was untimely, and she does not refute that Petitioner may be lawfully removed.

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.

I. Respondents' post-hearing brief was timely.

The Court ordered Petitioner to file a post-hearing brief within ten days of the August 28, 2025 hearing. [Doc. 11, PageID.40.] Petitioner filed her brief on Saturday, September 6. [Doc. 12.] Respondents were ordered to file their post-hearing brief within seven days of Petitioner's brief. [Doc. 11, PageID.40.] Respondents filed their joint Fed. R. Civ. P. 60(b) motion and motion for extension of time on September 12 – six days after Petitioner's filing. [Doc. 16.] Petitioner's timeliness argument is meritless.

II. Petitioner does not have a pending asylum claim.

Petitioner's first asylum claim was denied in 2018, prior to his first removal. [Exhibit 1, ERO Declaration.] Petitioner's second asylum claim was denied in November 2024. [*Id.*; Exhibit 2, Nov. 25, 2024 Notice of Dismissal of Form I-589.] In the Notice of Dismissal, Petitioner was informed that he could file a reasonable fear claim, which he did. [Ex. 2 at 1; *see* Doc. 16-4, PageID.140-41 (denying his reasonable fear claim).] Petitioner filed a petition for review with the Sixth Circuit after the immigration judge denied his reasonable fear claim. *Aleman v. Bondi*, 25-3666 (6th Cir. Aug. 21, 2025). Petitioner can be removed while his petition for review is pending before the Sixth Circuit because Petitioner has not sought from the Sixth Circuit a stay of removal. *See, e.g., Roa v. Garland*, 2024 U.S. App. LEXIS 21006, at *1-5 (6th Cir. Aug. 19, 2024).

III. Petitioner's I-246, Application for a Stay of Deportation or Removal, does not prevent his removal.

Petitioner has pending before U.S. Immigration and Customs Enforcement an I-246, Application for a Stay of Deportation or Removal, that he filed in May 2025, but

that application does not prevent removal. Indeed, the instructions to the I-246 explicitly state: “**A pending application does not preclude the execution of a final order of deportation or removal.**” [Exhibit 3 at 2, Form I-246.] The instructions further explain: “**No advance notice is required for the execution of a final order of removal.**” [Id.] Moreover, 8 U.S.C. § 1252(g) deprives the Court of subject matter jurisdiction over claims related to ICE’s execution of a final removal order, which encompass claims related to a pending I-246. *Trejo-Quiroz v. Kolutwenzew*, 2019 WL 13292487, 2019 U.S. Dist. LEXIS 250401, at *6-7 (C.D. Ill. July 3, 2019).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2025, I filed this document via CM/ECF, which will automatically provide service to all counsel of record.

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