

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

LUIS ERNESTO MARTINEZ-	)	
POCOSANGRE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Civil Action No. 1:25cv1898
	)	
RUSS HOTT,	)	
Field Office Director, U.S.	)	
Immigration & Customs	)	
Enforcement, <i>et al.</i> ,	)	
	)	
Respondents.	)	
	)	

MOTION FOR VACATUR BASED ON INTERVENING EVENTS

The federal respondents, through their undersigned counsel, hereby respectfully move this Court for partial vacatur of its past orders in the above-captioned habeas action as a result of intervening events involving petitioner's removal proceedings. The good cause for this relief is as follows:

1. Petitioner Luis Ernesto Martinez-Pocosangre filed his petition for a writ of habeas corpus on October 29, 2025 (Dkt. No. 1). On October 31, 2025, this Court entered an order to show cause, requiring the federal respondents to file a response to the habeas petition by a particular date (Dkt. No. 2). Of import to the instant motion, however, that order to show cause also provided as follows:

ORDERED that the Respondents and any of Respondents' officers, agents, servants, employees, and attorneys, as well as other person acting in concert with them, be, and the same hereby are ENJOINED from removing the Petitioner from this judicial district pending further order of the Court.

(*Id.*). Although this Court is, of course, the master of its own order, it appears that this language was intended by this Court to ensure – consistent with the All Writs Act – the continuation of its jurisdiction over the habeas petition during the pendency of this action. *Cf. Rumsfeld v. Padilla*, 542 U.S. 426, 442 (holding that petitions seeking a writ of habeas corpus must be originally brought in the district in which the petitioner is being confined).

2. After the federal respondents filed a response to the petition (Dkt. No. 5), on December 10, 2025, this Court entered an order granting the habeas petition, holding that petitioner was detained during the pendency of his removal proceedings pursuant to 8 U.S.C. § 1226(a) (and not § 1225(b)(2)), and providing as follows, in pertinent part:

ORDERED that Respondents provide Petitioner with a bond hearing before an immigration judge pursuant to 8 U.S.C. § 1226(a) within seven days of the date of this Order.

(Dkt. No. 7, at 5).

3. But on December 16, 2025, the Immigration Court issued an order that concluded that petitioner was inadmissible to the United States pursuant to 8 U.S.C. § 1182(a)(6)(A)(i), memorialized that petitioner had withdrawn his applications for asylum and withholding of removal, and granted petitioner the opportunity to voluntarily depart the United States with an alternative order of removal to El Salvador should he not depart by March 20, 2026. *Federal Respondents' Exhibit* (“FREX”) A. And importantly, petitioner waived any appeal of that order to the Board of Immigration Appeals, rendering the decision administratively final. *See* 8 U.S.C. § 1101(a)(47)(B). Presumably because of this decision, petitioner also withdrew his request for release on bond.

4. As a result of these events, the federal respondents respectfully request partial vacatur of the two orders that this Court has entered in this habeas action.

a. *First*, the federal respondents request vacatur of this Court's order to show cause, at least insofar as it precludes federal immigration authorities from removing petitioner from this district. Given that petitioner remains detained, to facilitate petitioner's assumed interest in taking advantage of the Immigration Court's offer of voluntary departure, it is likely that federal immigration authorities must remove petitioner from the Eastern District of Virginia.¹ And of course, as the Immigration Court's final order provides, should petitioner not exercise the opportunity to take voluntary departure by the stated deadline, the order automatically transforms into an order of removal – which will definitely require removal from the Eastern District of Virginia.

As noted earlier, although the instant habeas petition only sought relief from petitioner's detention status *during the pendency of removal proceedings*, and it is doubtful that this Court intended the provision of its order to show cause regarding removal from the district to apply after this Court adjudicated the merits of the petition or to the execution of any subsequently-entered final order of removal (or voluntary departure grant), the federal respondents wish to ensure that it does not run afoul of the plain text of this Court's orders. And in any event, the Article III courts lack jurisdiction to exercise judicial review over federal immigration authorities' actions to execute a final order of removal. *See* 8 U.S.C. § 1252(g).

b. *Second*, this Court's merits order holds, consistent with the limits of the petition itself, that the statutory authority for petitioner's detention during the pendency of his

¹Even though he remains detained at the current time, petitioner has two avenues from which to choose in executing the Immigration Court's grant of voluntary departure. *First*, he can ask federal immigration authorities to send him (typically via a government charter) to El Salvador; pragmatically, this is virtually the same as the removal process – including transfer to a staging facility in another part of the country – but without the ten-year ban on returning to the United States that comes with the execution of a removal order. *Second*, he can pay for his own flight to El Salvador, which, unless it leaves from an airport in the Eastern District of Virginia, will similarly require federal immigration authorities to transfer him to a facility outside this district.

removal proceedings was § 1226(a), and not § 1225(b)(2). From that premise, this Court ordered the federal respondents to provide a bond hearing for petitioner within seven (7) days. But petitioner *himself* has voluntarily withdrawn his request for release on bond. The federal respondents thus respectfully request vacatur of this Court's merits order, at least insofar as it requires the provision of a bond hearing for petitioner.

6. On the afternoon of December 18, 2025, undersigned counsel transmitted an electronic mail message to petitioner's counsel, asking whether petitioner consented to the relief sought through this motion. As of this filing, undersigned counsel has not received a response.

7. A proposed order has been attached for the convenience of this Court.

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Respectfully submitted,

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ATTORNEYS FOR FEDERAL
RESPONDENTS

Date: December 23, 2025

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing ("NEF") to the following:

Lauren Rachel O'Neal
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Date: December 23, 2025

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