

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

ALBERTO SOLAR CARMONA,	:	
	:	
Petitioner,	:	
	:	
v.	:	Case No. 4:26-CV-19-CDL-AGH
	:	28 U.S.C. § 2241
	:	
WARDEN, STEWART DETENTION CENTER,	:	
	:	
	:	
Respondent.	:	

RESPONDENT'S MOTION TO DISMISS

On December 21, 2025, Petitioner, through his wife, filed an application for a writ of habeas corpus (the "Petition").¹ ECF No. 1. On January 22, 2026, the Court ordered Respondents to file a comprehensive response within twenty-one (21) days of the Court's order. ECF No. 4. On February 5, 2026, Petitioner, through his wife, filed an Emergency Motion for Order Requiring Petitioner's Immediate Return to United States Jurisdiction and for Contempt Sanctions claiming that Petitioner was removed while a Notice of Appeal was pending before the Board of Immigration Appeals ("BIA").² ECF No. 5. On February 10, 2026, the Court ordered Respondent to address the issues raised in Petitioner's Emergency Motion. ECF No. 6. Respondent now files this Motion to Dismiss the Petition. Petitioner was removed from the United States to Mexico on

¹ To the extent the Court agrees that the Petition is moot due to Petitioner's removal, there would be no reason to address the Next Kin standing of Petitioner's wife. To the extent the Court disagrees and prefers to receive a more exhaustive response brief on this issue, Respondent respectfully requests leave to file such a brief and will do so upon the Court's Request.

² Petitioner appears to claim that he could not be removed while his habeas petition was pending before this Court. Doc. 5. Any such claim is incorrect as his habeas petition solely concerns his detention pending removal and this Court lacks jurisdiction to judicially review removal orders. *See* 8 U.S.C. § 1252(b)(9).

February 2, 2026, and the Petition should consequently be dismissed as moot. Petitioner's Emergency Motion should also be dismissed.

BACKGROUND

Petitioner is a native and citizen of Mexico. Gillikin Decl. ¶ 4 & Ex. A. Petitioner entered the United States without inspection on an unknown date and at an unknown location. *Id.* ¶ 5.

On September 24, 2025, Petitioner was encountered by Immigration and Customs Enforcement, Enforcement and Removal Operations ("ICE/ERO") at the Sampson County Probation office in Clinton, North Carolina and was taken into ICE/ERO custody. Gillikin Decl. ¶ 6 & Ex. A. On September 24, 2025, ICE/ERO served Petitioner a Form I-862, Notice to Appear ("NTA"), alleging inadmissibility pursuant to Immigration and Nationality Act ("INA") § 212(a)(6)(A)(i) and § 212(a)(7)(A)(i)(I). *Id.* ¶ 7 & Ex. B.

On November 10, 2025, Petitioner filed Form EOIR-42, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents with the immigration court. Gillikin Decl. ¶ 8. On December 9, 2025, Petitioner filed an application for relief from removal with the immigration court. *Id.* ¶ 9. On December 29, 2025, the immigration judge ("IJ") denied all Petitioner's applications for relief and ordered him removed to Mexico. *Id.* ¶ 10 & Ex. C. Petitioner reserved his right to appeal the December 29, 2025, decision ordering him removed and was instructed to file his appeal by January 29, 2026. *Id.* ¶ 11. Petitioner failed to file a timely appeal that was received by the Board of Immigration Appeal ("BIA") by January 29, 2026, and as such his order of removal became final. *Id.* Petitioner remained detained by ICE/ERO pursuant to INA § 241(a) and on February 2, 2026, ICE/ERO removed Petitioner to Mexico. *Id.* ¶ 12 & Ex. D.

ARGUMENT

On February 2, 2026, the Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”) removed Petitioner from the United States to Mexico. *See* Ex D, Form I-205, Warrant of Removal/Deportation. Because Petitioner is no longer in Respondent’s custody, the Court lacks subject-matter jurisdiction over his claims. Accordingly, the Court should dismiss the Petition as moot.

The case-or-controversy requirement of Article III, section 2 of the United States Constitution subsists through all stages of federal judicial proceedings. *See Spencer v. Kemna*, 523 U.S. 1, 7 (1998). A petitioner “must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision.” *Lewis v. Cont’l Bank Corp.*, 494 U.S. 472, 477 (1990). “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.” *Soliman v. United States*, 296 F.3d 1237, 1242 (11th Cir. 2002) (internal quotation marks and citation omitted). “Put another way, a case is moot when it no longer presents a live controversy with respect to which the court can grant meaningful relief.” *Fla. Ass’n of Rehab. Facilities, Inc. v. Fla. Dep’t of Health & Rehab. Servs.*, 225 F.3d 1208, 1217 (11th Cir. 2000) (internal quotation mark and citation omitted). Thus, “[i]f events that occur subsequent to the filing of a lawsuit or an appeal deprive the court of the ability to give the plaintiff or appellant meaningful relief, then the case is moot and must be dismissed.” *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1336 (11th Cir. 2001). “Indeed, dismissal is required because mootness is jurisdictional.” *Id.*; *see also De La Teja v. United States*, 321 F.3d 1357, 1362 (11th Cir. 2003). Once a petitioner has been removed from the United States, the dispute regarding his detention is rendered moot and must be dismissed. *See Soliman*, 296 F.3d at 1243.

Here, Petitioner requested release from custody. Pet. 5, ECF No. 1. He was removed from the United States on February 2, 2026, and is no longer in Respondent's custody. Ex. D. In Petitioner's Emergency Motion, Petitioner states that his wife mailed a Notice of Appeal and an Emergency Motion to Stay Removal to Board of Immigration Appeals on January 27, 2026. ECF No. 5 at 4. She further states that the Notice and the Motion were delivered to the BIA on January 31, 2026—two days past the final day for the Notice to have been received and filed.³ *Id.* Notice of Appeals for the BIA do not relate back to the date the Notice was mailed but rather the date the Notice arrives to the BIA. *See* Exhibit E at 1. Form EOIR-26 states “[Petitioner] must send the Notice of Appeal so that it is **received** by the Board within thirty (30) calendar days after the Immigration Judge's oral decision, or within thirty (30) calendar days after the date the Immigration Judge's written decision was mailed (if no oral decision was rendered).” *Id.* (emphasis in original). The Form further states “[s]imply mailing [Petitioner's] Notice of Appeal in thirty (30) days or less is not enough. [Petitioner's] Notice of Appeal must **arrive** at the Board in thirty (30) days or less. If [Petitioner's] Notice of Appeal arrives late, [Petitioner's] notice will be dismissed.” *Id.* (emphasis in original). Petitioner's notice of appeal was not timely received by the BIA which Petitioner also admits in his Emergency Motion. Doc. 5 at 4. As such, Petitioner's order of removal became final on January 29, 2026. Gillikin Decl. ¶ 11. Because Petitioner is not in Respondent's custody, the Court can no longer give Petitioner any meaningful relief regarding his detention. Accordingly, the Petition is moot and should be dismissed along with Petitioner's Emergency Motion.

CONCLUSION

For the foregoing reasons, Respondent requests that Petitioner's application for habeas relief be dismissed along with Petitioner's Emergency Motion.

Respectfully submitted this 13th day of February, 2026.

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CERTIFICATE OF SERVICE

This is to certify that I have this date filed the Motion to Dismiss with the Clerk of the United States District Court using the CM/ECF system, which will send notification of such filing to the following:

N/A

I further certify that I have this date mailed by United States Postal Service the document and a copy of the Notice of Electronic Filing to the following non-CM/ECF participants:

Alberto Solar Carmona
A# 
Stewart Detention Center
P.O. Box 248
Lumpkin, GA 31815

Leticia Leon Santiago


This 13th day of February, 2026.

BY: s/ Travis D. Lynes
TRAVIS D. LYNES
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