

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-11862

NELSON OSWALDO LINARES,

Petitioner,

versus

U.S. ATTORNEY GENERAL,

Respondent.

Petition for Review of a Decision of the
Board of Immigration Appeals
Agency No. A216-462-840

Before WILSON, JORDAN, and ABUDU, Circuit Judges.

BY THE COURT:

Nelson Linares originally filed this petition for review of the Board of Immigration Appeals' March 21, 2023 final order of removal in the United States Court of Appeals for the Tenth Circuit. However, the Tenth Circuit transferred the petition to us in June 2023. Meanwhile, in May 2023, Linares filed a separate petition for review of the same order with us. We granted the government's motion to dismiss that petition because it was untimely filed. The government moves to dismiss this petition as well.

First, this petition for review was timely filed in the Tenth Circuit. The 30-day time limit required Linares to file a petition for review on or before April 20, 2023. *See* INA § 242(b)(1), 8 U.S.C. § 1252(b)(1); *Stone v. INS*, 514 U.S. 386, 405 (1995). Although the Tenth Circuit did not receive Linares's petition until April 21, 2023, we deem the petition to be timely filed on April 20, 2023. *See* Fed. R. App. P. 25(a)(2)(A)(iii) (providing that a petition filed by a *pro se* inmate is timely if it is deposited in the institution's mailing system before the last day for filing). The envelope containing the petition was postmarked on that date, and the postmark stamp indicated that postage had been paid. *See id.* Further, in response to the government's motion to dismiss the May 2023 petition, Linares submitted a form indicating that he used his institution's mailing system. Accordingly, under Fed. R. App. P. 25, the petition is timely.

Second, this petition is not duplicative of the May 2023 petition. We dismissed that petition for lack of jurisdiction before briefing, so review of the merits of the instant petition would not

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result in duplicative litigation that would waste judicial resources. *See I.A. Durbin, Inc. v. Jefferson Nat'l Bank*, 793 F.2d 1541, 1551 (11th Cir. 1986).

Finally, this petition is not moot. The petition presents a live controversy regarding the March 21, 2023 final order of removal, and granting the petition would provide Linares meaningful relief. *See Christian Coal. of Fla., Inc. v. United States*, 662 F.3d 1182, 1189 (11th Cir. 2011) (holding that an issue is moot “when it no longer presents a live controversy with respect to which the court can give meaningful relief”).

Accordingly, the government’s motion to dismiss is DENIED.