

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO: 25-21439-CIV-MARTINEZ

VICTOR SMIRNOV,

Petitioner,
v.

DEPARTMENT OF HOMELAND
SECURITY, *et al.*,

Respondents.

RESPONDENTS' MOTION TO DISMISS FOR MOOTNESS

Respondents,¹ by and through the undersigned Assistant United States Attorney, respectfully move to dismiss Petitioner Victor Smirnov's *Petition for a Writ of Habeas Corpus*, in which he asks this Court to "order Petitioner's release within 30 days. . ." (ECF No. 1). Because Petitioner was released on May 19, 2025 (Exhibit A), this case is moot. *See Spencer v. Kemna*, 523 U.S. 1, 7 (1998).

I. FACTUAL BACKGROUND

In March 2025,² Petitioner filed a *Petition for Writ of Habeas Corpus* (ECF No. 1), claiming that he has been "detained in immigration custody for over 10 months even though no neutral decision maker – whether a federal judge or an immigration judge – has conducted

¹ The United States adopts this Court's case captioning (ECF No. 5) and notes that Petitioner improperly named as Respondents "Kriti Noem, Secretary of the Department of Homeland Security; Pamela Bondi, Attorney General of the United States; and Jose Sierra, Director of the Miami Field Office" (ECF No. 1).

² Petitioner appears to have signed the Petition on March 20, 2025 (ECF No. 1 at 14), although the Certificate of Service is dated October 7, 2024 (*id.* at 15). The envelope to this Court is postmarked March 27, 2025 (*id.* at 16).

a hearing to determine whether this lengthy incarceration is warranted based on danger or flight risk, the only two permissible bases for immigration detention prior to entry of an executable removal order" (*id.* at ¶ 2). Claiming that this "prolonged detention" violates his constitutional rights (*id.* at ¶ 3), Petitioner asked this Court to either "determine that Petitioner's detention is not justified" or "order Petitioner's release within 30 days unless [Respondents] schedule a hearing before an immigration judge" (*id.* at ¶¶ 4-5).

On March 31, 2025, this Court issued an Order to Show Cause, directing Respondents to "file a memorandum of fact and law to show cause why this Petition should not be granted" and to submit "documents and transcripts necessary for the resolution of the Petition" (ECF No. 5 at 2). Respondents complied with this Court's Order, explaining that an Immigration Judge "issued a written decision granting Petitioner's application for relief," but the matter was before the Board of Immigration Appeals (ECF No. 6 at 6). Respondents further explained that if the Board of Immigration Appeals were to affirm the Immigration Judge's decision to grant Petitioner's application for relief, Petitioner would be released, thereby mooted this case. (*Id.*)

On May 19, 2025, the Board of Immigration Appeals affirmed the Immigration Judge's decision, and Petitioner was released (Exhibit A).

II. ARGUMENT

This Court should dismiss Petitioner's petition as moot because the relief that Petitioner seeks, namely his release from custody, was achieved on May 19, 2025.

Although this Court's jurisdiction is usually determined at filing, after-arising events can affect jurisdiction because the case-or-controversy requirement of Article III, Section 2 of the United States Constitution subsists through all stages of federal judicial proceedings.

Spencer v. Kemna, 523 U.S. 1, 7 (1998). Further, a plaintiff “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. Continental Bank Corp.*, 494 U.S. 472, 477 (1990). When there is nothing for the Court to redress (as in this case, where the Plaintiff seek to have this Court compel a hearing to determine Petitioner’s eligibility for release, which has already happened), a case is moot. *See Spencer*, 523 U.S. at 17. Mootness deprives a court of the power to act when there is nothing to remedy. *Id.* at 18. A district court must dismiss an action if the court lacks jurisdiction over the subject matter of the suit. *See FED. R. CIV. P. 12(b)(1), 12(h)(3)*.

In this case, there is no injury for the Court to redress because Petitioner was released from custody on May 19, 2025. Accordingly, the Complaint should be dismissed as moot

Respectfully submitted,

**HAYDEN P. O’BYRNE
UNITED STATES ATTORNEY**

By: /s/ H. Ron Davidson
H. Ron Davidson, Esq.
Assistant United States
Attorney
Court ID: A5501144
United States Attorney’s
Office Southern District of
Florida
99 N.E. 4th Street
Miami, FL 33132
Tel: (305) 961-9405
Email: h.ron.davidson@usdoj.gov

Counsel for Respondents

CERTIFICATE OF SERVICE

I certify that on May 22, 2025, I uploaded the attached document to the Court's PACER system and mailed a copy to:

Victor Smirnov
A [REDACTED]
Krome Service Processing Center
Inmate Mail/Parcels
18201 SW 12th Street
Miami, FL 33194
PRO SE

By: /s/ H. Ron Davidson
H. Ron Davidson, Esq.
Assistant United States
Attorney