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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

OVBOKHAN A.D.,

Petitioner,

v.

RON CHARLES, in his official
capacity as Director of ECCF, *et al.*,

Respondents.

HON. SUSAN D. WIGENTON

Civil Action No. 25-2262 (SDW)

**RESPONDENTS' RESPONSE TO PETITIONER'S WRIT
OF HABEAS CORPUS AND REQUEST
FOR TEMPORARY RESTRAINING ORDER**

Pursuant to this Court's April 3, 2025 Order, ECF 4, Respondents hereby file this response to Petitioner's Writ of Habeas Corpus ECF 1.

PRELIMINARY STATEMENT

Petitioner Ovbokhan A.O. brings this habeas action under 28 U.S.C. § 2241 to challenge her continued detention at the Essex County Correctional Facility ("ECCF") pursuant to a detainer lodged by U.S. Immigration and Customs Enforcement ("ICE"). Since Petitioner filed this Petition, Essex County has returned Petitioner to ICE custody, and she is currently detained within the Western District

of Pennsylvania at Moshannon Valley Processing Center (“Moshannon”) in Philipsburg, Pennsylvania.

The Court should deny the Petition for two reasons. First, Petitioner’s claims – which challenge her custody by Essex County pursuant to an ICE detainer – are now moot in light of her transfer from Essex County custody into ICE custody, which extinguished the ICE detainer. Second, if Petitioner’s claims are not moot, the Court should deny or dismiss the Petition, as Petitioner is within the mandatory 90-day removal period pursuant to 8 U.S.C. § 1231(a)(2)(A).

FACTUAL AND PROCEDURAL BACKGROUND

A. Alleged Actions Giving Rise to Petitioner’s Arrest

On February 20, 2024, Petitioner was arrested on New Jersey State charges. *See* ECF 1 ¶ 29. The State charged Petitioner with robbery, conspiracy, aggravated assault, and burglary. *Id.* Petitioner alleges this arrest involved a “minor, pre-indictment theft charge,” but State law enforcement charged her with robbery, conspiracy to commit aggravated assault, and burglary in the second degree. *Id.* ¶ 2; ECF 1-9 (Writ of Habeas Corpus Order to Produce) at page 2 of 4 (noting charges).

ICE took Petitioner into custody on February 22, 2024. *See* Declaration of David C. O’Neill (“O’Neill Decl.”) ¶ 4. She was temporarily held at the Elizabeth Contract Detention Facility in Elizabeth, New Jersey, and transferred to the Moshannon Valley Processing Center on February 23, 2024. *See id.*

On January 10, 2025, an Immigration Judge ordered Petitioner removed to Nigeria but withheld removal to Nigeria. *See id.* ¶ 5; ECF 1-7 (Order of Removal). As

both parties waived appeal, the removal order became administratively final on January 10, 2025. *See id.*

On March 12, 2025, ICE released custody of Petitioner to the New Jersey Essex County Sheriff's Office, pursuant to a Writ of Habeas Corpus, Order to Produce, signed by the Honorable Karina D. Fuentes, J.S.C. *See* ECF 1-9 (Writ of Habeas Corpus, Order to Produce), (Prosecutor's Certification dated March 3, 2025). This Order to Produce directed the Essex County Sheriff's Office to transport Petitioner from Moshannon Valley Processing Center to the custody of ECCF to secure her presence for a State court hearing on March 14, 2025. *See id.* at Page 2. The State court order further stated that "The county of Essex will honor the ICE detainer. Upon completion of the Essex County matter and at the request of ICE, . . . it will be determined if [Petitioner] is to be released on [an] Order of Supervision or be returned to ICE custody." *Id.*

On March 17, 2025, Petitioner appeared in State court in Essex County in connection with her State charges. *See* ECF 1 ¶ 39. On that date, the State withdrew its motion relating to violation of monitoring provisions. *See id.* ¶ 39, ECF 1-8.

Petitioner filed the Petition at approximately 1:19 am on April 3, 2025. *See* Declaration of Brooks Doyne, Exhibit A (ECF Notice). Later that day, the Essex County Sheriff's Office returned Petitioner to ICE custody at the Moshannon Valley Processing Center. *See* O'Neill Decl. ¶ 7. Petitioner was booked in to the Moshannon Valley Processing Center at approximately 2:05 p.m. on April 3, 2025. *See id.*

I. PETITIONER'S CHALLENGE TO HER CUSTODY PURSUANT TO AN ICE DETAINER IS NOW MOOT

Federal courts have no authority to rule where the case or controversy has become moot. Under Article III of the Constitution, courts have “no authority to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.” *Whiting v. Krassner*, 391 F.3d 540, 544 (3d Cir. 2004) (quoting *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992)) (internal quotation marks omitted). Moreover, “an actual controversy must be extant at all stages of [the Court's] review, not merely at the time the complaint is filed.” *Camesi v. University of Pittsburgh Medical Center*, 729 F.3d 239, 247 (3d Cir. 2013) (quoting *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71 (2013)).

The doctrine of mootness asks “whether changes in circumstances that prevailed at the beginning of the litigation have forestalled any occasion for meaningful relief.” *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 596 (3d Cir. 2010). “A case is moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Id.* (quoting *Donovan ex rel. Donovan v. Punxsutawney Area Sch. Bd.*, 336 F.3d 211, 216 (3d Cir. 2003)). Additionally, a party’s claims become moot when the party obtains all the relief that it sought in litigation. *See Blanciak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 698-99 (3d Cir. 1996); *see also, e.g., In re Serrano-Vargas*, 776 F. App’x 74 (3d Cir. 2019) (“[B]ecause [the petitioner] has obtained the relief he requested, the mandamus petition will be dismissed as moot.”). Thus, “if an event occurs while a

case is pending . . . that makes it impossible for the court to grant ‘any effectual relief whatever’ to a prevailing party, the [case] must be dismissed.” *Church of Scientology*, 506 U.S. at 12 (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)).

The doctrine of mootness applies to applications seeking writs of habeas corpus. In this context, a habeas petition “generally becomes moot when a prisoner is released from custody before the court has addressed the merits of the petition.” *DeFoy v. McCullough*, 393 F.3d 439, 441 (3d Cir. 2005); *see also Juan E. M. v. Decker*, No. 20-4594 (KM), 2022 WL 17340669, at *2 (D.N.J. Nov. 30, 2022) (“The mootness doctrine often applies with particular force to habeas petitions filed in immigration matters”). When an inmate challenges a particular type of custody, the petition can become moot if the challenged custody ends – even if the inmate remains in another type of custody. For example, when an inmate in state or federal criminal custody challenges a detainer, that claim will become moot if the inmate leaves the original custodian and the detainer is no longer in effect.

In *Bohannon v. Capozza*, No. 18-1238, 2019 WL 367037 (W.D. Pa. Jan. 30, 2019), a Pennsylvania State inmate filed a habeas petition challenging his custody, “which arose from the lodging of a detainer against Petitioner by the Pennsylvania Board of Probation and Parole. . . directing that he be maintained in custody until the New York state authorities could retrieve him for parole revocation proceedings to be held in New York.” *Id.* at *1. During the pendency of the habeas proceeding, the inmate transferred to New York State criminal custody. *See id.* The District Court

dismissed the petition as moot because the transfer to New York State custody had extinguished the detainer. *See id.* at *1-2. The Court held:

Clearly, by means of the Petition, Petitioner was challenging the validity of his detention/custody caused by the detainer which the Board had lodged against him. . . . [U]pon Petitioner's release from Pennsylvania state authorities and his transfer into the custody of the New York authorities, all custody stemming from the detainer ceased and his custody thereafter was pursuant to the legal authority of the New York state authorities. Upon his transfer, Petitioner was no longer subject to the challenged detainer and his custody was no longer pursuant to the detainer but to other lawful process. As a matter of law, the detainer was dissolved *ipso facto* by his release into the custody of New York state authorities. . . . Instantly, the detainer that Petitioner alleged to have been unlawful and to have caused him to be illegally held in custody by the Board at SCI-Fayette is no longer in existence, and hence, no matter what this Court rules concerning the validity of the detainer, it is eminently clear that this habeas petition is now moot and should be dismissed as such.

Id. at *2; *see also Ogunde v. Holder*, 563 F. App'x 237, 237 (4th Cir. 2014) (where inmate in Virginia state custody challenged immigration detainer, inmate's transfer to ICE custody during pendency of case mooted his appeal); *Lynch v. Warden, FCI-McKean*, No. 10-122, 2010 WL 11921722, at *2 (W.D. Pa. Dec. 8, 2010) (where inmate in federal criminal custody challenged lawfulness of detainer, inmate's "release from BOP custody to the custody of ICE effectively terminated the challenged detainer and rendered the instant petition moot"), *R&R adopted*, 2010 WL 11921724 (W.D. Pa. June 14, 2011).

This petition is analogous to *Bohannon*, and that the Court should similarly dismiss Petitioner's claims as moot. At the time that Petitioner filed the petition, at approximately 1:19 a.m. on April 3, 2025, *see* Doyne Decl., Ex. A, Petitioner was in

the custody of Essex County with an ICE detainer in place, as indicated in the Order to Produce issued by Judge Fuentes. *See* ECF 1-9 (Order to Produce) at 2. The Order to Produce directed that the Essex County Sheriff's Office would transport Petitioner from MVPC to the custody of ECCF to secure her presence for a criminal proceeding in Superior Court, Essex County. *See id.* The Order further provided:

The county of Essex will honor the ICE detainer. Upon completion of the Essex County matter and at the request of ICE, . . . it will be determined if [Peticioner] is to be released on Order of Supervision or be returned to ICE custody.

Id.

By the time Petitioner filed this Petition at 1:19 a.m. on April 3, 2025, the Essex County matter had concluded. *See* ECF 1 ¶ 38 (noting that State of New Jersey withdrew motion regarding monitoring violations and court vacated bench warrant on March 17, 2025); ECF 1-8 (eCourts entry). Petitioner thus brought this Petition challenging her “continued detention at the ECCF,” based on the ICE detainer, which was no longer in effect. ECF 1 ¶¶ 10, 16, 17, Count III ¶ 10.

Since the filing of the Petition, however, Essex County returned Petitioner to ICE custody at the Moshannon Valley Processing Center. *See* O'Neill Decl. ¶ 7 (noting that “[o]n April 3, 2025, the Essex County Sheriff's Office returned Petitioner to ICE custody at the MVPC. Petitioner was booked in to the MVPC at approximately 2:05 p.m. on April 3, 2025”). When Petitioner returned to ICE custody, the ICE detainer – and her custody pursuant to that detainer – extinguished. Accordingly, as in *Bohannon*, the Court should conclude that Petitioner's claims are moot.

II. PETITIONER IS WITHIN THE 90-DAY MANDATORY DETENTION REMOVAL PERIOD

Should the Court conclude that Petitioner's claims are not moot, the Court should still dismiss the Petition, because Petitioner is mandatorily detained pursuant to 8 U.S.C. § 1231(a). The Government's authority to detain an alien pending his removal "depends on where the alien is in the removal process." *Ali v. Aviles*, No. 11-2072 (FSH), 2011 WL 677468, t *2 (D.N.J. July 9, 2012). Once an alien has been ordered removed, however, the alien's detention is governed by the "post-removal" statute of 8 U.S.C. § 1231(a). *See Johnson v. Arteaga-Martinez*, 596 U.S. 573, 578 (2022). Pursuant to that statute, ICE has 90 days to remove an alien after a final order of removal has been issued. *See* 8 U.S.C. § 1231(a)(1)(A). During the 90-day "removal period," detention of an alien is mandatory. *See* 8 U.S.C. § 1231(a)(2)(a). Even after the 90-day removal period has expired, ICE may further detain an alien if she is removable under 8 U.S.C. §§ 1227(a)(1)(C), 1227(a)(2), or 1227(a)(4), or if the Attorney General has determined that alien is "a risk to the community or unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6).

Here, Petitioner's removal order became administratively final on January 10, 2025. *See id.* ¶ 5; ECF 1-7 (Order of Removal). Thereafter, ICE mandatorily detained Petitioner in accordance with 8 U.S.C. § 1231(a)(2)(a). The 90-day removal period ends no earlier than April 10, 2025, and thus the Petition, filed on April 3, 2025, is premature. *See Khotessouvan v. Morones*, 386 F.3d 1298, 1299 (9th Cir. 2004) (no colorable due process claim for alien detained under 1231(a)(2) until at least 90 days of detention have passed).

Further, the Court should exclude from the 90-day removal period the 22 days (March 12, 2025 through April 3, 2025) that Petitioner spent in the custody of Essex County Correctional Facility. *See Joseph v. Betti*, No. 23-61, 2024 WL 3362270, at *3 (M.D. Pa. July 9, 2024) (holding that period alien spent in state custody “cannot be counted towards his 90-days removal period”). If the Court excludes the days Petitioner spent in Essex County custody, Petitioner has been in ICE custody for approximately 65 days, and the Petition is premature.

CONCLUSION

For these reasons, Respondents respectfully request that the Court dismiss or deny the petition in all respects.

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