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IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

PHONG PHAN,

Petitioner,

v.

FACILITY ADMINISTRATOR, GOLDEN  
STATE ANNEX,

Respondents.

CASE NO. 2:25-CV-01757-DC-JDP

RESPONDENTS' RESPONSE AND MOTION  
TO DISMISS PETITIONER'S FIRST AMENDED  
PETITION UNDER 28 U.S.C. § 2241 AS MOOT

**BACKGROUND**

On 7/3/2025, Petitioner filed a first amended petition demanding relief under 28 USC § 2241. ECF 15. Petitioner raised the following § 2241 first amended petition grounds: (1) unlawful re-detention in violation of 8 C.F.R. §§ 241.13(i)(2); (2) violation of procedures for revocation of release for lack of changed circumstances under 8 C.F.R. § 241.13(i)(3); (3) violation of the Immigration and Nationality Act of 1952, to wit: 8 U.S.C. § 1231(a)(1)-(6); (4) unconstitutionally indefinite detention in violation of procedural due process rights under the Fifth Amendment to the U.S. Constitution; and (5) unconstitutionally inadequate procedures regarding third country removal in violation of procedural due process rights under the Fifth Amendment to the U.S. Constitution. *Id.* at 24–28.

RESPONDENTS' RESPONSE AND  
MOTION TO DISMISS PETITIONER'S  
FIRST AMENDED PETITION AS MOOT

On 7/16/2025, this court-of-custody granted Petitioner injunction relief. ECF 22. Through its injunction relief, this court-of-custody granted Petitioner immediate release from civil detention. *See id.* at 11-12. Petitioner thus has been returned to OSUP conditions, and he is not in civil detention. Following this court-of-custody's order, Petitioner has no standing for further proceedings or remedies on claims (1) through (4). *Id.* at 12. Also, Respondents submit any demand for further decision and remedy for cause of actions (1) through and including (4) is constitutionally infirm for mootness and lack of ripeness. *See infra.*

Similarly, regarding Petitioner's prophylactic concern of third country removal, which is not based on any fact or action of Respondents, this court-of-custody ordered "Respondents [] ENJOINED AND RESTRAINED from re-detaining or removing Petitioner to a third country without notice and an opportunity to be heard". ECF 22 at 11-12 (emphasis in original). Accordingly, to the extent there was prior standing on the fantasy projection of third country removal in claim (5), following this court-of-custody's order in ECF 22, Petitioner again has no standing, and the claim is otherwise constitutionally infirm (for mootness and lack of ripeness) for further proceedings or remedy. *See infra.*

### DISCUSSION

According to Article III of the U.S. Constitution, federal courts have jurisdiction over "cases" and "controversies." Significantly, "[f]ailure to satisfy Article III's case-or-controversy requirement renders a habeas petition moot." *Mujahid v. Daniels*, 413 F.3d 991, 994 (9th Cir.2005) (citing *Spencer v. Kemna*, 523 U.S. 1, 7 (1998)). *See, e.g., Brady v. U.S. Parole Com.*, 600 F.2d 234, 236 (9th Cir. 1979) (§ 2241 petitioner attacking parole custodian's decision to keep petitioner in custody is moot after custodian released petitioner from custody); *Fendler v. United States Bureau of Prisons*, 846 F.2d 550, 555 (9th Cir. 1988) (holding that district court properly denied § 2241 as moot where petitioner had been released); *Rhodes v. Judiscak*, 676 F.3d 931, 935 (10th Cir. 2011) (holding that petitioner's release from custody mooted his § 2241 habeas petition).

As a § 2241 jurisdictional matter, parties are required to have an actual controversy that "make[s] resolution of the controverted issue a practical necessity." *See Poe v. Ullman*, 367 U.S. 497, 502-05 (1961). This requirement of ripeness serves "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and

also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.” *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49 (1967), abrogated on other grounds by *Califano v. Sanders*, 430 U.S. 99 (1977). A claim is not ripe “if it involves contingent future events that may not occur as anticipated or indeed may not occur at all.” *United States v. Streich*, 560 F.3d 926, 931 (9th Cir. 2009) (quoting *Thomas v. Union Carbide Agr. Prods. Co.*, 473 U.S. 568, 580-81 (1985)). Also, a § 2241 petitioner lacks standing when a court cannot provide a remedy. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

Here, Petitioner challenges his continued detention and seeks release under an order of supervision. Because Petitioner has been released from detention under an order of supervision, the relief he requests can no longer be granted. Therefore, no “case or controversy” remains and the Petition is moot. *See Picrin–Peron v. Rison*, 930 F.2d 773, 776 (9th Cir.1991) (finding that because petitioner only requested release from custody and had been released, the court could provide no further relief and the petition was properly dismissed); *see also Abdala v. INS*, 488 F.3d 1061, 1064–65 (9th Cir.2007) (discussing and collecting cases in which a petitioner’s release from detention, parole, or removal rendered a habeas petition moot); *Flores–Torres v. Mukasey*, 548 F.3d 708, 710 n.3 (9th Cir.2008) (dismissing as moot a challenge to immigration detention without a hearing because the alien had subsequently received a hearing). The Court does not have subject matter jurisdiction to consider a habeas claim that is moot. *See McCullough v. Graber*, 726 F.3d 1057, 1060 (9th Cir.2013).

In this case, on TRO briefing, this court-of-custody has already imposed full relief on supposed 8 C.F.R. §§ 241.13(i)(2) violation. In accord with this court-of-custody’s grant of an injunction returning Petitioner to OSUP conditions, ECF 22, any remnant claim in the first amended petition is now moot. *See Rule 4 of the Rules Governing Section 2254 Cases* (a district court “must promptly examine” the petition and, “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief,” the “judge must dismiss the petition”).

Further, resolution of any remnant claim in the first amended petition is unlawful because this court-of-custody does not have authority to issue advisory opinions on non-dispositive issues and claims. *Flast v. Cohen*, 392 U.S. 83, 96 (1968) (emphasizing that “it is quite clear that ‘the oldest and

1 most consistent thread in the federal law of justiciability is that the federal courts will not give advisory  
2 opinions.”) (internal citation omitted). Petitioner does not have standing to claim advisory opinion  
3 relief. In other words, to the extent there is an unresolved claim in the underlying first amended petition,  
4 such claim is now constitutionally infirm through lack of ripeness and lack of standing (in addition to  
5 mootness), because Petitioner is no longer in civil detention through injunction relief. *Lujan*, 504 U.S.  
6 at 560–61 (a litigant, to establish standing, must show he suffered an injury in fact that is “concrete and  
7 particularized,” can be fairly traced to the opposing party’s action, and can be redressed by a favorable  
8 decision of the court); *see also Warth v. Seldin*, 422 U.S. 490, 498 (1975) (standing is absent when the  
9 named litigant is not “entitled to have the court decide the merits of the dispute”). Significantly, in the  
10 instant matter, following the grant of an injunction prior to merits briefing, there is no additional redress  
11 for this court-of-custody to provide. *Id.* See ECF 15 at 28-29.

## 12 CONCLUSION

13 Respondents respectfully request this court-of-custody dismiss the remaining grounds in  
14 Petitioner’s first amended petition under 28 U.S.C. § 2241 as constitutionally infirm. Petitioner has  
15 already received the relief he was seeking through this court’s injunction. There is no further remedy for  
16 this court-of-custody to provide.

17 Dated: July 28, 2025

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