

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

HUNG QUOC NGUYEN,

Petitioner,

v.

CIVIL NO. 4:25-CV-03325

WARDEN RANDY TATE,

Respondent.

**GOVERNMENT'S MOTION TO DISMISS, AND ALTERNATIVELY,
MOTION FOR SUMMARY JUDGMENT**

The Government¹ files this Motion to Dismiss, and alternatively, Motion for Summary Judgment under Federal Rules of Civil Procedure 1 and 56, requesting that the Court dismiss the pending habeas petition for lack of jurisdiction or grant Respondents judgment as a matter of law and dismiss Petitioner's Writ of Habeas Corpus under 28 U.S.C. § 2241. (Dkt. 1). Petitioner, Hung Quoc Nguyen, has been removed from the United States. Therefore, the pending habeas petition is moot.

I. NATURE AND STAGE OF PROCEEDINGS

Petitioner was an immigration detainee in the custody of the Department of Homeland Security (DHS), United States Immigration and Customs Enforcement (ICE). Dkt. 1 at 2. Petitioner is a native and citizen of Vietnam who was awaiting removal from the United States after receiving a final order of removal from an Immigration Judge (IJ) on February 22, 2007.

¹ The proper respondent in a habeas petition is generally the person with custody over the petitioner. 28 U.S.C. § 2242; *see also* § 2243; *Rumsfeld v. Padilla*, 542 U.S. 426, 435, 124 S.Ct. 2711, 159 L.Ed.2d 513 (2004). However, it is the named federal respondents, not the named warden in this case, who make the custodial decisions regarding aliens detained in immigration custody under Title 8 of the United States Code.

Dkt. 1 at 3. Allegedly, Petitioner had been released on an Order of Supervision (OSUP) for almost eighteen years and he was taken back into ICE custody on June 30, 2025. (Dkt. 1 at 4). In his habeas petition, Petitioner alleged that there was no significant likelihood of his removal in the reasonably foreseeable future. (Dkt. 1).

Petitioner filed the instant habeas petition on July 17, 2025, alleging that there is no significant likelihood of his removal in the reasonably foreseeable future, and he filed a motion for temporary restraining order on August 21, 2025. (Dkt. 1 and 11). The Court issued an order to answer on July 25, 2025. (Dkt. 6). The Petitioner was removed from the United States on September 2, 2025. Therefore, the pending habeas petition is moot.

II. STANDARD OF REVIEW

A. Federal Rule of Civil Procedure 12(b)(1)

Federal Rule of Civil Procedure 12(b)(1) governs challenges to a court's subject matter jurisdiction. "A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Home Builders Ass'n of Miss., Inc. v. City of Madison*, 143 F.3d 1006, 1010 (5th Cir. 1998). In ruling on a motion to dismiss pursuant to Rule 12(b)(1), the court may consider: "(1) the complaint alone; (2) the complaint supplemented by undisputed facts in the record; or (3) the complaint supplemented by undisputed facts plus the court's resolution of disputed facts." *Clark v. Tarrant County*, 798 F.2d 736, 741 (5th Cir.1986) (*citing Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir.1981)).

However, all factual allegations of the complaint must be accepted as true. *Den Norske Stats Oljeselskap As v. HeereMac Yof*, 241 F.3d 420, 424 (5th Cir. 2002).

Federal courts lack jurisdiction to decide moot cases because their constitutional authority extends only to actual cases or controversies. Mootness is a question of subject matter jurisdiction, *Alwan v. Ashcroft*, 388 F.3d 507, 511 (5th Cir. 2004), and if a question of mootness arises, the court must resolve it before it can assume jurisdiction, *North Carolina v. Rice*, 404 U.S. 244, 246, 92 S.Ct. 402, 30 L.Ed.2d 413 (1971). A case becomes moot “when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *United States Parole Comm’n v. Geraghty*, 445 U.S. 388, 395, 100 S.Ct. 1202, 63 L.Ed.2d 479 (1980). “If a dispute has been resolved or if it has evanesced because of changed circumstances ... it is considered moot.” *American Med. Ass’n v. Bowen*, 857 F.2d 267, 270 (5th Cir.1988).

B. Federal Rule of Civil Procedure 56

Summary judgment is appropriate where the pleadings and evidence demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Materiality is determined from the governing substantive law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986). Disputes over facts that may affect the outcome of the case according to the substantive law are “material” and a dispute is “genuine” if the evidence allows a reasonable jury to return a verdict for the nonmoving party. If the moving party meets its burden, the

non-moving party must show a genuine issue of material fact exists. *Celotex*, 477 U.S. at 322; *Anderson*, 477 U.S. at 256.

III. ARGUMENT

Because a petition for a writ of habeas corpus challenges a government custodian's authority to keep an individual detained, an alien's removal will generally moot the habeas petition where the petition does not challenge the order of removal, but rather, challenges the length of time in custody or being in custody without bond. *Lane v. Williams*, 455 U.S. 624, 632 (1982); *Ortez v. Chandler*, 845 F.2d 573 (5th Cir. 1988) (habeas challenge to the legality of petitioner's detention is moot when the petitioner is removed); *Ferry v. Gonzales*, 457 F.3d 1117 (10th Cir. 2006); *See Odus v. Ashcroft*, 61 Fed. Appx. 121, 2003 WL 342719, at *1 (5th Cir. Feb. 7, 2003); *Green v. Reno*, 167 F.3d 538 (5th Cir. 1998) (unpublished); *Sodipo v. U.S. Dept. of Justice*, 37 F.3d 629 (5th Cir. 1994); *Adetiba v. U.S. Atty. Gen.*, 20 F.3d 466 (5th Cir. 1994) (unpublished); *Benson v. U.S. Atty. Gen.*, 16 F.3d 125 (5th Cir. 1994) (unpublished); *Yao v. District Director*, No. 3:08-CV-1618-G, 2008 WL 4999011, at *1 (N.D. Tex. Nov. 24, 2008); *Novikova v. Prendes*, No. 3:06-CV-0039-M, 2006 WL 1424255, at *2 (N.D. Tex. May 24, 2006). The one general exception is if the removed petitioner can establish that he will suffer some future collateral consequence as a result of the initial detention. *Lane*, 455 U.S. at 632; *Sibron v. New York*, 392 U.S. 40 (1968); *Carafas v. Lavallo*, 391 U.S. 234 (1968).

The Petitioner was removed from the United States on September 2, 2025. Government Exhibit 1, Warrant of Removal/Deportation. Because the only basis for his petition is Petitioner's claim that his detention was allegedly unlawful because it was possibly indefinite, this issue is now moot. Therefore, the habeas petition should be dismissed.

The Petitioner does not challenge any future detention, and even if he had, the possibility of future detention is too speculative to give rise to a case or controversy. Rather, if future detention does occur, Petitioner may file another habeas corpus petition at that future time. *See Cruz v. Cruz*, 140 F.3d 1037 (5th Cir. March 18, 1998) (unpublished) (relief from future immigration custody does not present a live case or controversy), *citing Bailey v. Sutherland*, 821 F.2d 277 (5th Cir. 1987)); *Lewin v. Thompson*, 996 F.2d 305 (5th Cir. June 21, 1993) (unpublished), and *United States ex rel. Marcello v. District Director of INS*, 634 F.2d 964 (5th Cir. 1981)). The Court lacks jurisdiction because Petitioner was removed from the United States on September 2, 2025, making his claim moot. Government Ex. 1. Therefore, the habeas petition should be dismissed under Rule 12(b)(1). Alternatively, the Court should grant summary judgment in the Government's favor under Rule 56.

IV. CONCLUSION

For the reasons stated above, Petitioner's complaint should be dismissed due to lack of subject matter jurisdiction because the matter is now moot.

Dated: September 26, 2025

Respectfully submitted,

NICHOLAS J. GANJEI
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By: /s/ Catina Haynes Perry

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Counsel for Defendant

CERTIFICATE OF CONFERENCE

Counsel for the Government attempted to confer with counsel for Petitioner about the relief requested in this motion by e-mail on September 26, 2025. As of the time of filing, the Government has not yet received a response. Therefore, it is presumed that the Petitioner opposes this motion.

/s/ Catina Haynes Perry
Catina Haynes Perry
Assistant United States Attorney

CERTIFICATE OF SERVICE

I certify that on September 26, 2025, the foregoing was filed and served on counsel of record through the Court's CM/ECF system.

/s/ Catina Haynes Perry
Catina Haynes Perry
Assistant United States Attorney