

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION

ABDELKERIM BICHARA (A ,
X), §
Petitioner, §
v. § CIVIL ACTION NO. 5:25-cv-00126
NORBAL VASQUEZ, in his Official §
Capacity as Warden of Rio Grande City §
Processing Center, *et al.*, §
Respondent. §

**RESPONDENTS' MOTION TO DISMISS PETITION FOR A WRIT OF HABEAS
CORPUS AS MOOT**

Pursuant to Federal Rule of Civil Procedure 12(b)(1),¹ Federal Respondents² move to dismiss the above-captioned case for mootness. Petitioner, Abdelkerim Bichara³ (Petitioner) was removed from the United States; therefore, the habeas petition should be dismissed as moot.

I. NATURE AND STAGE OF THE PROCEEDING

Petitioner brings this action under 28 U.S.C. § 2241, the U.S. Constitution and the laws of the United States. (Petition at 7). Petitioner does not challenge the merits of his immigration case. Rather, he alleges that he is being held indefinitely with no foreseeable means of removal. (Petition at 1-2). Specifically, Petitioner alleges he was taken into immigration custody on April 7, 2025,

¹ Respondents have filed this Rule 12 motion in lieu of their answer and preserve all affirmative defenses for inclusion in their answer in the event that the instant motion is denied.

² The United States Department of Justice does not represent the warden in this action. Federal Respondents, however, have detention authority over aliens detained under Title 8 of the United States Code.

³ Noting that Petitioner's name is Bichara Abdelkerim Bichara but "incorrectly registered with only his surname 'Abdelkerim Bichara.'" (Petition at 1)

and it has been over 365 days since his removal order became final and that he has been in custody more than more than 210 days. (Petition at 18 and 20).

On July 25, 2025, Petitioner was removed from the United States. Respondents' Exhibit 1, Warrant of Removal/Deportation.

II. STANDARD OF REVIEW

A. Fed. R. Civ. P. 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).

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 the 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. Lavalle*, 391 U.S. 234 (1968).

The Petitioner was removed from the United States on July 25, 2025. Defendants' Exhibit 1, Warrant of Removal/Deportation. Because the only basis for his petition is Petitioner's claim that his past 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 July 25, 2025, making his claim moot. Respondents' Exhibit 1, Warrant of Removal/Deportation. Therefore, the Petition for Writ of Habeas Corpus should be dismissed under Rule 12(b)(1).

IV. CONCLUSION

For the reasons stated above, the Petition for Writ of Habeas Corpus should be dismissed due to lack of subject matter jurisdiction because the matter is now moot.

Respectfully submitted,

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Attorney for the Respondents

CERTIFICATE OF CONFERENCE

The undersigned attempted to confer with counsel for Plaintiff but did not receive a response and therefore this motion is presumed opposed.

s/Hilda M. Garcia Concepcion
Hilda M. Garcia Concepcion
Assistant United States Attorney

CERTIFICATE OF SERVICE

I certify that on October 10, 2025, the foregoing was filed and served on Plaintiff through the Court's CM/ECF system.

s/Hilda M. Garcia Concepcion
Hilda M. Garcia Concepcion
Assistant United States Attorney