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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 LESLIE HERNANDEZ NIEVES,

13 Petitioner,

14 v.

15 POLLY KAISER, *et al.*,

16 Respondents.
17

) No. 3:25-cv-06921-LB

) **RESPONDENTS' RETURN TO WRIT OF**
) **HABEAS CORPUS**

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION1

II. FACTUAL AND PROCEDURAL BACKGROUND.....1

III. ARGUMENT2

 A. Petitioner’s Petition for Writ of Habeas Corpus Is Moot As DHS Can No
 Longer Assert Detention Authority Over Petitioner.....2

 B. Any Ruling On This Habeas Petition Must Allow For Re-Detention Upon a
 Final Administrative Removal Order.....3

IV. CONCLUSION.....4

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cases

Abdala v. I.N.S., 488 F.3d 1061, 1064 (9th Cir. 2007)..... 2, 3

Aguilar Garcia v. Kaiser, No. 25-cv-5070, 2025 WL 2998169 (N.D. Cal. Oct. 24, 2025) 4

Cook Inlet Treaty Tribes v. Shalala, 166 F.3d 986 (9th Cir.1999) 1, 2

Foster v. Carson, 347 F.3d 742 (9th Cir. 2003) 2

Meza v. Bonnar, No. 18-CV-2708, 2022 WL 2954333 (N.D. Cal. July 26, 2022)..... 3

Zadvydas v. Davis, 533 U.S. 678 (2001) 3, 4

Statutes

8 U.S.C. § 1182 1, 4

8 U.S.C. § 1225..... 2, 3

8 U.S.C. § 1227..... 4

8 U.S.C. § 1229a 1, 2

8 U.S.C. § 1231..... 3

Regulations

8 C.F.R. § 1003.38 2

8 C.F.R. § 1003.39 2

1 **I. INTRODUCTION**

2 Respondents respectfully request that the Court deny Petitioner’s petition for writ of habeas corpus
3 as moot, as the Department of Homeland Security (“DHS”) can no longer assert detention authority over
4 Petitioner due to the dismissal of her removal proceedings. *See Cook Inlet Treaty Tribes v. Shalala*, 166
5 F.3d 986, 989 (9th Cir.1999) (“Mootness can be characterized as the doctrine of standing set in a time
6 frame: The requisite personal interest that must exist at the commencement of the litigation (standing)
7 must continue throughout its existence (mootness).”) (internal quotation marks omitted). On September 2,
8 2025, Petitioner’s removal proceedings were dismissed by an immigration judge, and Petitioner did not
9 appeal this decision. *See* Supplemental Declaration of Jesse Cruz (“Cruz Suppl. Decl.”) at ¶ 5. As such,
10 Petitioner is no longer in removal proceedings under 8 U.S.C. § 1229a and DHS cannot currently assert
11 detention authority over Petitioner.

12
13 **II. FACTUAL AND PROCEDURAL BACKGROUND**

14 Petitioner is a native and citizen of Mexico who entered the United States without inspection on
15 or about May 23, 2024. Declaration of Juan Abad (“Abad Decl.”) (ECF No. 17-1) at 2, 13. DHS
16 Customs and Border Protections (“CBP”) officers encountered Petitioner near the port of entry in
17 Sasabe, Arizona. *Id.* at 13. DHS took Petitioner into custody and transported her to a facility in Tucson
18 for processing. *Id.* During processing, Petitioner admitted to lacking valid immigration documents that
19 would allow her to legally enter, pass through, or remain in the United States. *Id.* Petitioner also
20 admitted to having entered the United States the same day without presenting herself to an immigration
21 officer for inspection at a designated port of entry. *Id.* Petitioner “stated that she [did] not have fear of
22 persecution or torture if returned to Mexico.” *Id.* The following day, May 24, 2024, DHS placed
23 Petitioner into removal proceedings, as an alien present without admission or parole, and charged her as
24 removable under section 212(a)(6)(A)(i) [8 U.S.C. § 1182(a)(6)(A)(i)] of the Immigration and
25 Nationality Act (“INA”). *Id.* at 5. On that same day, DHS released Petitioner on her own recognizance
26 “due to humanitarian reasons and a lack of detention space” pending her removal proceedings. *Id.* at 13,
27 15.

28 On August 15, 2025, Petitioner appeared for her initial master calendar hearing in San Francisco

1 immigration court. *Id.* at 20. At the hearing, DHS counsel made an oral motion to dismiss removal
2 proceedings. *Id.* at 2, 20. The immigration judge did not rule on the motion and gave Petitioner time to
3 respond to the motion. *Id.* After the hearing concluded, U.S. Immigration and Customs Enforcement
4 (“ICE”) Enforcement and Removal Operations (“ERO”) officers took Petitioner into custody pursuant to
5 8 U.S.C. § 1225(b). *Id.* ICE ERO had previously reviewed the case and determined that Petitioner was
6 subject to expedited removal pursuant to 8 U.S.C. § 1225(b) [INA § 235(b)]. *Id.* On August 17, 2025,
7 ERO released Petitioner after this Court issued a temporary restraining order requiring her release. ECF
8 Nos. 10, 11. Following additional briefing and a hearing, this Court, on September 3, 2025, granted a
9 preliminary injunction requiring Petitioner’s continued release pending these proceedings. ECF No. 23.
10 On September 2, 2025, the immigration judge granted DHS’s motion to dismiss removal proceedings.
11 Cruz Suppl. Decl. at ¶ 5. Petitioner did not appeal this decision. *Id.* Petitioner is no longer in removal
12 proceedings under 8 U.S.C. § 1229a. *Id.* Additionally, ICE has not processed Petitioner for Expedited
13 Removal under 8 U.S.C. § 1225(b)(1) *Id.* at ¶ 6.

15 III. ARGUMENT

16 A. Petitioner’s Petition for Writ of Habeas Corpus Is Moot As DHS Can No Longer 17 Assert Detention Authority Over Petitioner

18 “Mootness is a jurisdictional issue, and ‘federal courts have no jurisdiction to hear a case that is
19 moot, that is, where no actual or live controversy exists.’” *Foster v. Carson*, 347 F.3d 742, 745 (9th Cir.
20 2003) (citing *Cook Inlet Treaty Tribes*, 166 F.3d at 989). If an individual is released while a habeas petition is
21 pending, the petition may “continue to present a live controversy” if there remain some “collateral
22 consequence that may be redressed by success on the petition.” *Abdala v. I.N.S.*, 488 F.3d 1061, 1064 (9th
23 Cir. 2007). An immigration judge’s decision becomes final if an appeal is not filed with the Board of
24 Immigration Appeals (“BIA”) within thirty calendar days. *See* 8 C.F.R. §§ 1003.38(b), 1003.39.

25 On September 2, 2025, the immigration judge granted DHS’s motion to dismiss removal proceedings
26 pursuant to 8 U.S.C. § 1229a. Petitioner did not appeal the immigration judge’s decision, so it became final
27 when the appeal period expired on October 3, 2025. As Petitioner is no longer in removal proceedings
28 pursuant to 8 U.S.C. § 1229a, or any immigration proceedings, DHS can no longer assert any detention

1 authority over her.

2 Additionally, Petitioner has not presented any possible collateral consequences that can be redressed
3 by the habeas petition. *See Abdala*, 488 F.3d at 1064. A Court in this district has already found that a habeas
4 petition filed by an individual in a similar position to this Petitioner was moot when she “has not been re-
5 detained by DHS, and her underlying removal proceedings have been terminated.” *Meza v. Bonnar*, No. 18-
6 CV-2708, 2022 WL 2954333, at *1 (N.D. Cal. July 26, 2022). In *Meza*, this Court found that the relief
7 sought through the habeas petition was “tethered to [Meza’s] removal proceedings”. *Id.* at *5. Similarly, in
8 *Meza*, the Court found that the collateral consequences exception did not apply as “the possibility of future
9 immigration proceedings is too speculative” and “does not present a concrete legal disadvantage sufficient to
10 implicate the collateral consequences exception.” *Id.* at *6.

11 Here, Petitioner’s requested relief in her habeas petition is based on her ongoing removal
12 proceedings. ECF No. 1 at 14. Although Petitioner’s removal proceedings were dismissed so that ICE could
13 pursue Expedited Removal pursuant to 8 U.S.C. § 1225(b)(1), ICE has declined to do so in the more than
14 four months since the immigration judge granted dismissal. Cruz Supp. Decl. at ¶¶ 5, 6. Therefore, Petitioner
15 has not presented any “legal disadvantage sufficient to implicate the collateral consequences exception” and
16 her habeas petition is moot. *Meza*, 2022 WL 2954333, at *6.

17 **B. Any Ruling On This Habeas Petition Must Allow For Re-Detention Upon a Final**
18 **Administrative Removal Order.**

19 Petitioner’s habeas petition asks this Court to categorically enjoin her re-detention without a pre-
20 detention hearing before a neutral arbiter. ECF No. 1 at 14. But any indefinite injunction would interfere
21 with Respondents’ ability to execute a valid order of removal and would both exceed the Court’s
22 jurisdiction and contravene the Supreme Court’s unambiguous holding in *Zadvydas v. Davis* that
23 mandatory detention without a bond hearing during the removal period is constitutionally permitted. *See*
24 *Zadvydas v. Davis*, 533 U.S. 678 (2001) (upholding mandatory detention under 8 U.S.C. § 1231(a)(2)
25 for the 90-day removal period).

26 Although Petitioner’s immigration proceedings have ended, at some point, Petitioner may be
27 subject to a final order of removal. Assuming Petitioner becomes subject to a final order of removal, her
28 detention is mandatory under the INA. *See* 8 U.S.C. § 1231(a)(2)(A) (“During the removal period, the

1 Attorney General shall detain the alien. Under no circumstance during the removal period shall the
2 Attorney General release an alien who has been found inadmissible under section 1182(a)(2) or
3 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title”). The
4 Supreme Court has upheld the constitutionality of both the mandatory 90-day detention during the
5 removal period and the presumptively reasonable six-month discretionary detention period following the
6 removal period, both without the requirements of any bond hearing. *See Zadvydas*, 533 U.S. at 701.
7 Thus, if Petitioner becomes subject to a future final order of removal, her detention will be both
8 constitutionally permissible and statutorily required. Any ruling by this Court, therefore, must allow for
9 the detention of Petitioner to execute a final removal order. *See Aguilar Garcia v. Kaiser*, No. 25-cv-
10 5070, 2025 WL 2998169, at *4 (N.D. Cal. Oct. 24, 2025) (denying motion for preliminary injunction in
11 petition seeking pre-detention hearing after petitioner’s detention authority shifted to § 1231(a)(2)).
12

13 **IV. CONCLUSION**

14 Petitioner is no longer subject to detention by DHS. Accordingly, Respondents respectfully request
15 that the Court deny Petitioner’s habeas petition as moot. To the extent the Court grants Petitioner relief, it
16 must limit any injunction to permit the execution of a future final order of removal.
17

18 DATED: January 27, 2026

Respectfully submitted,

19
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