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

12 MARIA JOSE JARABA OLIVEROS,

13 Petitioner,

14 v.

15 POLLY KAISER, *et al.*,

16 Respondents.
17

) No. 5:25-cv-07117-BLF

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

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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 Calvin Choi (“Choi Supp. 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 Colombia who entered the United States without inspection,
15 admission or parole on December 9, 2023. Razalan Decl. (Dkt. No. 10-1) at ¶ 5. DHS Customs and
16 Border Protections (“CBP”) officers encountered and apprehended Petitioner at or near Eagle Pass,
17 Texas, and not at a designated port of entry on that day. *Id.* ¶ 5. On December 10, 2023, Petitioner was
18 “processed for a Notice to Appear (I-862) and approved for release on their own recognizance with an I-
19 220(A).” *Id.* ¶ 6. She was served a Warrant for Arrest of Alien (Form I-200), a Notice to Appear (Form
20 I-862) charging her as an inadmissible noncitizen “present in the United States without being admitted
21 or paroled, or who arrived in the United States at any time or place other than as designated by the
22 Attorney General,” a Notice of Custody Determination (Form I-286), and an Order of Release on
23 Recognizance (Form I-220A). *Id.* Petitioner was released on her own recognizance and placed into
24 removal proceedings, as an alien present without admission or parole, and was charged with
25 removability under section 212(a)(6)(A)(i) of the Immigration and Nationality Act (“INA”) [8 U.S.C.
26 § 1182(a)(6)(A)(i)]. *Id.*

27 On August 22, 2025, Petitioner appeared for her initial master calendar hearing in San Francisco
28 immigration court. *Id.* ¶ 7. At the hearing, DHS counsel made an oral motion to dismiss removal

1 proceedings. *Id.* The immigration judge did not rule on the motion and gave Petitioner time to respond
2 to the motion. *Id.* After the hearing concluded, U.S. Immigration and Customs Enforcement (“ICE”)
3 Enforcement and Removal Operations (“ERO”) officers took Petitioner into custody pursuant to 8
4 U.S.C. § 1225(b). *Id.* ¶ 8. ICE ERO had previously reviewed the case and determined that Petitioner was
5 subject to expedited removal pursuant to 8 U.S.C. § 1225(b) [INA § 235(b)]. *Id.* ¶ 8. On the same date,
6 ERO released Petitioner after this Court issued a temporary restraining order requiring her release. *Id.*
7 ¶ 10; Dkt. No. 7. Following additional briefing and a hearing, this Court, on September 19, 2025,
8 granted a preliminary injunction requiring Petitioner’s continued release pending these proceedings.
9 Dkt. No. 27. On September 2, 2025, the immigration judge granted DHS’s motion to dismiss removal
10 proceedings. Choi Supp. Decl. at ¶ 5. Petitioner did not appeal this decision. *Id.* Petitioner is no longer in
11 removal proceedings under 8 U.S.C. § 1229a. *Id.* Additionally, ICE has not processed Petitioner for
12 Expedited Removal under 8 U.S.C. § 1225(b)(1) *Id.* at ¶ 6.

13 III. ARGUMENT

14 A. Petitioner’s Petition for Writ of Habeas Corpus Is Moot As DHS Can No Longer 15 Assert Detention Authority Over Petitioner

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

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

28 Additionally, Petitioner has not presented any possible collateral consequences that can be redressed

1 by the habeas petition. *See Abdala*, 488 F.3d at 1064. This Court has already found that a habeas petition
2 filed by an individual in a similar position to this Petitioner was moot when she “has not been re-detained by
3 DHS, and her underlying removal proceedings have been terminated.” *Meza v. Bonnar*, No. 18-CV-02708-
4 BLF, 2022 WL 2954333, at *1 (N.D. Cal. July 26, 2022). In *Meza*, this Court found that the relief sought
5 through the habeas petition was “tethered to [Meza’s] removal proceedings”. *Id.* at *5. Similarly, in *Meza*,
6 this Court found that the collateral consequences exception did not apply as “the possibility of future
7 immigration proceedings is too speculative” and “does not present a concrete legal disadvantage sufficient to
8 implicate the collateral consequences exception.” *Id.* at *6.

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

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

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

23 Although Petitioner’s immigration proceedings have ended, at some point, Petitioner may be
24 subject to a final order of removal. Assuming Petitioner becomes subject to a final order of removal, her
25 detention is mandatory under the INA. *See* 8 U.S.C. § 1231(a)(2)(A) (“During the removal period, the
26 Attorney General shall detain the alien. Under no circumstance during the removal period shall the
27 Attorney General release an alien who has been found inadmissible under section 1182(a)(2) or
28 1182(a)(3)(B) of this title or deportable under section 1227(a)(2) or 1227(a)(4)(B) of this title”). The

1 Supreme Court has upheld the constitutionality of both the mandatory 90-day detention during the
2 removal period and the presumptively reasonable six-month discretionary detention period following the
3 removal period, both without the requirements of any bond hearing. *See Zadvydas*, 533 U.S. at 701.
4 Thus, if Petitioner becomes subject to a future final order of removal, her detention will be both
5 constitutionally permissible and statutorily required. Any ruling by this Court, therefore, must allow for
6 the detention of Petitioner to execute a final removal order. *See Aguilar Garcia v. Kaiser*, No. 25-cv-
7 05070-JSC, 2025 WL 2998169, at *4 (N.D. Cal. Oct. 24, 2025) (denying motion for preliminary
8 injunction in petition seeking pre-detention hearing after petitioner’s detention authority shifted to
9 § 1231(a)(2)).

10 **IV. CONCLUSION**

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

14
15 DATED: January 21, 2026

Respectfully submitted,

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