



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

*86 Chambers Street  
New York, New York 10007*

October 3, 2025

By ECF

The Honorable P. Kevin Castel  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *Tamay-Tamay, et al. v. Almodovar*, No. 25-cv-7984 (PKC)

Dear Judge Castel:

This Office represents the government in the above-captioned immigration habeas action brought pursuant to 28 U.S.C. § 2241, in which the petitioners challenge their detention by U.S. Immigration and Customs Enforcement (“ICE”). I write respectfully in response to the petition and this Court’s September 26, 2025, Order to Show Cause. ECF No. 4. As discussed below, although venue is not proper in the Southern District of New York, the Court should dismiss this action as moot because the petitioners have been removed from the United States.

Factual Background

The petitioners are natives and citizens of Ecuador. *See* Declaration of Deportation Officer Kim Haynes (“Haynes Decl.”) ¶ 2. They unlawfully entered the United States in July 2021 and were apprehended by U.S. Customs and Border Protection (“CBP”). *Id.* ¶ 3. CBP served the petitioners with charging documents for removal proceedings, which were ultimately commenced in New York, and released them from custody in the interim. *Id.* ¶¶ 4-5. In November 2022, an immigration judge ordered the petitioners removed to Ecuador, and in December 2023, the Board of Immigration Appeals dismissed their appeal, rendering the removal orders final. *Id.* ¶¶ 7-9.

On September 23, 2025, ICE took the petitioners into custody for purposes of executing their removal orders. *Id.* ¶ 10. The petitioners were temporarily held at 26 Federal Plaza in New York, New York, until September 24, 2025, when they were transported and booked into temporary accommodations in McAllen, Texas. *Id.* ¶¶ 10-11. In the evening of September 25, 2025, the petitioners were taken to the Valley International Airport in Harlingen, Texas, where they were placed on a flight that departed at 4:50 a.m. CDT on September 26, 2025, thereby effectuating their removal to Ecuador pursuant to the final removal orders. *Id.* ¶¶ 13-14.

The Habeas Petition

At 8:50 p.m. on September 25, 2025, the petitioners filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241. Pet. (ECF No. 1). They alleged that their detention violated due process and requested an order directing their immediate release from detention. *See generally id.*

### Discussion

While this action is amenable to dismissal for being filed in the wrong court,<sup>1</sup> the Court should dismiss this action for lack of subject matter jurisdiction because it is moot. “Under Article III of the Constitution, federal courts may adjudicate only actual, ongoing cases or controversies.” *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990). “An ‘actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.’” *Alvarez v. Smith*, 558 U.S. 87, 92 (2009). “The principle that a federal court ‘lacks jurisdiction to consider the merits of a moot case is a branch of the constitutional command that the judicial power extends only to cases or controversies.’” *Chevron Corp. v. Donziger*, 833 F.3d 74, 123 (2d Cir. 2016) (citation omitted). Federal courts have no authority to give an opinion upon a question that is moot as a result of events that occur during the pendency of the action. *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992); *see also Russman v. Bd. of Educ. of Enlarged City Sch. Dist. of Watervliet*, 260 F.3d 114, 118-19 (2d Cir. 2001) (“Whenever mootness occurs, the court . . . loses jurisdiction over the suit, which therefore must be dismissed.”).

The petitioners filed this habeas action to challenge their detention by ICE. But ICE has executed the valid, final removal orders of the petitioners, effectuating their removal from the United States on September 26, 2025, and so they are no longer in ICE custody. *See* Haynes Decl. ¶ 14. Thus, this action is moot. *See, e.g., Chevron Corp.*, 833 F.3d at 123; *see also, e.g., Hassoun v. Searls*, 976 F.3d 121, 130 (2d Cir. 2020) (detention challenge moot where petitioner had been removed from the United States); *Escobar-Hernandez v. Barr*, No. 20 Civ. 9714 (RA), 2021 WL 1863972, at \*2-3 (S.D.N.Y. May 10, 2021) (same); *De La Cruz v. DHS*, No. 20 Civ. 2219 (AJN), 2021 WL 431037, at \*2 (S.D.N.Y. Feb. 8, 2021) (dismissing petition challenging detention and seeking stay of removal as moot after the petitioner was removed from the United States); *Diop v. Sessions*, No. 18 Civ. 8245 (ALC), 2019 WL 1894387 (S.D.N.Y. Mar. 20, 2019) (same); *Li v. Shanahan*, No. 16 Civ. 2351 (PAE) (BCM), 2016 WL 7077110 at \*2 (S.D.N.Y. Oct. 25, 2016) (habeas petition moot “[b]ecause petitioner has already been removed from the United States, [and] the court can no longer grant the relief she sought”), *rep. & recomm’n adopted*, 2016 WL 7106033 (S.D.N.Y. Dec. 5, 2016).

---

<sup>1</sup> A habeas petition brought under 28 U.S.C. § 2241 challenging detention must be brought against the immediate custodian and filed in the district in which the petitioner is detained. *See Rumsfeld v. Padilla*, 542 U.S. 426, 437 (2004) (“Whenever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of confinement.”); *accord Trump v. J.G.G.*, 145 S. Ct. 1003, 1005-06 (2025) (“For core habeas petitions, jurisdiction lies in only one district: the district of confinement.” (cleaned up)); *Khalil v. Joyce*, 771 F. Supp. 3d 268, 280–86 (S.D.N.Y. 2025) (holding that court lacked habeas jurisdiction where petitioner was transferred from 26 Federal Plaza to a facility in the District of New Jersey prior to filing of the petition). Thus, venue for this petition is improper in the Southern District of New York because the petitioners were detained in McAllen, Texas at the time of filing on September 25, which is within the Southern District of Texas. Haynes Decl. ¶¶ 11-12. Regardless, as discussed above, the case is moot and should be dismissed accordingly.

Accordingly, while venue is not proper in the Southern District of New York, this Court should nonetheless dismiss this action as moot because the petitioners have been removed from the United States, and thus are no longer in ICE custody.

We thank the Court for its consideration of this submission.<sup>2</sup>

Respectfully submitted,

JAY CLAYTON  
United States Attorney for the  
Southern District of New York

By: /s/ Brandon M. Waterman  
BRANDON M. WATERMAN  
Assistant United States Attorney  
86 Chambers Street, Third Floor  
New York, New York 10007  
Telephone: (212) 637-2743  
E-mail: brandon.waterman@usdoj.gov

cc: Counsel of Record (by ECF)

---

<sup>2</sup> If the Court wishes to receive a formal motion to dismiss, the government will file one upon request of the Court. Earlier this week, the government reached out to petitioners' counsel to seek a voluntary dismissal, but did not receive a response.