

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA

LAZARO DIAZ GARCIA,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-25-1239-D
)	
DR. SCARLET GRANT, Warden,)	
et al.,)	
)	
Respondents.)	

REPORT AND RECOMMENDATION

Petitioner Lazaro Diaz Garcia, a noncitizen detainee under an immigration order of removal, filed a Petition for Writ of Habeas Corpus (“Petition”). Doc. 1. Petitioner challenges under 28 U.S.C. § 2241 his detention by U.S. Immigration and Customs Enforcement (“ICE”). United States Chief District Judge Timothy D. DeGiusti referred this matter to the undersigned Magistrate Judge in accordance with 28 U.S.C. § 636(b)(1)(B)-(C). Because Petitioner is no longer in ICE custody and this Court can grant no relief to him, the undersigned recommends the Court dismiss the Petition as moot. The undersigned also recommends that the Court deny as moot Petitioner’s Motion to Appoint Counsel, Doc. 5.

I. Background and Petitioner’s Claims

Petitioner is a native and citizen of Cuba. Doc. 11 at 3. Petitioner alleges that he was arrested by ICE on February 26, 2025, and had a prior removal order from January 19, 1999. Doc. 1 at 4. The undersigned liberally construes the Petition to allege the government violated Petitioner’s due process rights by holding him “in detention more than

6 months post-removal order” in violation of the Supreme Court’s decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). Doc. 1 at 6. Petitioner challenges his detention and seeks immediate release. *Id.* at 2, 7. He also filed a Motion to Appoint Counsel, requesting appointment of counsel based on his age and knowledge of the law. Doc. 5.

When Petitioner verified his Petition on October 2, 2025, he was detained at the Cimarron Correctional Facility in Cushing, Oklahoma. Doc. 1 at 1, 8. On November 24, 2025, Respondent advised the Court that Petitioner had been transferred to Prairieland Detention Center in Alvarado, Texas. Doc. 10. That same day, Respondents advised the Court that Petitioner had been manifested for removal to Mexico out of Mesa Gateway Airport (“IWA”) on November 15, 2025, but that “Petitioner’s age prevents removal through IWA.” Doc. 11 at 7. Respondents further advised that ICE was “assessing the availability of a different port of return or an alternate third country for his removal,” but “there is a significant likelihood of Petitioner’s removal to Mexico in the reasonably foreseeable future.” *Id.* at 8.

On December 15, 2025, Respondent filed a notice that Petitioner “was removed to Mexico on December 5, 2025.” Doc. 14. The undersigned has separately confirmed that Petitioner’s location in ICE custody no longer appears on ICE’s Online Detainee Locator System, at <https://locator.ice.gov/odls/#/results> (last visited Dec. 15, 2025).

II. Standard of Review

To obtain habeas corpus relief, Petitioner must show that he is “in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). “Challenges to immigration detention are properly brought directly through

habeas.” *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) (citing *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001)).

“Mootness is a threshold issue because the existence of a live case or controversy is a constitutional prerequisite to federal court jurisdiction.” *McClendon v. City of Albuquerque*, 100 F.3d 863, 867 (10th Cir. 1996). “Because mootness is a matter of jurisdiction, a court may raise the issue sua sponte.” *Id.*

III. Analysis

Petitioner properly filed his Petition in this district because he was detained here at the time of filing. Doc. 1 at 1; *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir. 1996) (noting a § 2241 petition “must be filed in the district where the prisoner is confined”). Petitioner satisfied the “in custody” requirement under § 2241 “at the time the petition was filed.” *Spencer v. Kemna*, 523 U.S. 1, 7 (1998); *see also Riley v. I.N.S.*, 310 F.3d 1253, 1256 (10th Cir. 2002) (noting that petitioner met the “in custody” requirement of § 2241 because he was “in custody at the time of filing” (quoting 28 U.S.C. § 2241)). “The more substantial question, however, is whether petitioner’s subsequent release caused the petition to be moot because it no longer presented a case or controversy under Article III, § 2, of the Constitution.” *Spencer*, 523 U.S. at 7.

“Article III of the Constitution limits federal-court jurisdiction to ‘cases’ and ‘controversies.’” *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 160 (2016) (quoting U.S. Const. art. III, § 2). “In order to invoke federal-court jurisdiction, a [petitioner] must demonstrate that he possesses a legally cognizable interest, or personal stake, in the outcome of the action.” *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 71 (2013)

(citation modified). This means “an actual controversy must be extant at all stages of review, not merely at time the [petition] is filed.” *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 67 (1997) (citation modified). “If an intervening circumstance deprives the [petitioner] of a personal stake in the outcome of the lawsuit, at any point during litigation, the action can no longer proceed and must be dismissed as moot.” *Genesis Healthcare Corp.*, 569 U.S. at 72 (citation modified). “A case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party.” *Knox v. Serv. Emps. Int’l Union, Loc. 1000*, 567 U.S. 298, 307 (2012) (citation modified).

Here, Petitioner is no longer in ICE custody and has been removed to the third country of Mexico. Though jurisdiction attached in this district when Petitioner filed his Petition here, his subsequent release from ICE custody and removal from the United States may render his Petition moot. The Petition does not become moot, however, merely because Petitioner has been removed from the country. If a petitioner “has been released from custody while his or her habeas petition is pending, a court’s jurisdiction depends upon the existence of ‘collateral consequences . . . adequate to meet Article III’s injury-in-fact requirement.’” *King v. Ciolli*, No. 23-1201, 2024 WL 1179908, at *2 (10th Cir. Mar. 19, 2024) (quoting *Spencer*, 523 U.S. at 14). To overcome mootness after release from custody, a petitioner must show “some concrete and continuing injury” “if the suit is to be maintained.” *Spencer*, 523 U.S. at 7.

Petitioner challenges his detention, and not his underlying removal order. *See* Doc. 1 at 2. Courts have concluded that a petitioner’s release from immigration custody mooted his habeas challenge to the legality of his detention, where the only possible “continuing

injury” or collateral consequence “stems from his removal order, not his detention.” *Ferry v. Gonzales*, 457 F.3d 1117, 1132 (10th Cir. 2006). Further, any determination now as to whether Petitioner’s detention violated his due process rights would amount to an advisory opinion that this Court cannot issue. *Id.* (declining “to issue an advisory opinion regarding [petitioner’s] entitlement to a bond hearing because a declaratory judgment on that question would have no meaningful effect on the [immigration officials’] future conduct” with petitioner).

Petitioner is no longer in ICE custody, and the relief he requests is no longer available and cannot be redressed by a favorable judicial decision. The undersigned is not aware from the record of any collateral consequences to Petitioner that would constitute an exception to the mootness doctrine. As such, Petitioner’s habeas challenge to his detention no longer presents a case or controversy subject to this Court’s jurisdiction, and the Petition should be dismissed as moot. *See, e.g., Sule v. I.N.S.*, 189 F.3d 478, 1999 WL 668716, at *1 (10th Cir. 1999) (unpublished table decision) (concluding that an immigration detainee’s “release [from immigration custody through deportation] has mooted his challenge to the legality of his detention”); *McLean v. Bondi*, No. CIV-25-1165-PRW, Doc. 11 (W.D. Okla. Oct. 23, 2025) (recommending dismissal of habeas petition as moot when petitioner was removed to home country and no longer in ICE custody) (R&R), *adopted*, Doc. 18 (W.D. Okla. Nov. 14, 2025); *Vasiliu v. Holder*, No. CIV-11-551-C, 2011 WL 4430882, at *3 (W.D. Okla. Aug. 15, 2011) (same) (R&R), *adopted*, 2011 WL 4433586 (W.D. Okla. Sept. 21, 2011); *see also Souphanthong v. Bondi*, No. CIV-25-1220-D, Doc. 16 (W.D. Okla. Dec. 1, 2025) (same) (R&R); *Bolom Vazquez v. Holt*, No. CIV-25-1191-J,

Doc. 12 (W.D. Okla. Nov. 6, 2025) (recommending dismissal of habeas petition as moot when petitioner's request for cancellation of removal was granted and he was released from ICE custody) (R&R), *adopted*, Doc. 13 (W.D. Okla. Nov. 21, 2025).

IV. Recommendation and Notice of Right to Object

Petitioner's release from ICE custody and removal to Mexico render his Petition moot, as there is no longer an actual case or controversy for the Court to decide. The undersigned therefore recommends that the Court **DISMISS** the Petition, Doc. 1, as moot. The undersigned further recommends that the Court **DENY** Petitioner's Motion to Appoint Counsel, Doc. 5, as moot.

The parties are advised of their right to object to this Report and Recommendation. *See* 28 U.S.C. § 636. Any objection must be filed not later than **December 29, 2025**. *See id.* § 636(b)(1); Fed. R. Civ. P. 72(b)(2). Failure to object timely waives the right to appellate review of the factual and legal issues addressed in this Report and Recommendation. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in this matter.

ENTERED this 15th day of December, 2025.


CHRIS M. STEPHENS
UNITED STATES MAGISTRATE JUDGE