

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT BOWLING GREEN

MARIANO VENTURO GONZALEZ,

PETITIONER

v.

CIVIL ACTION NO. 1:25-CV-150-GNS (*e-filed*)

KRISTI NOEM, in her Official Capacity as
Secretary, U.S. Department of Homeland Security;
TODD LYONS, in his Official Capacity as Acting
Director, U.S. Immigration and Customs Enforcement;
PAM BONDI, in her Official Capacity as
Attorney General of the United States
MIKE WOODRUM, in his Official Capacity as
Casey County Jailer

RESPONDENTS

RESPONSE TO ORDER TO SHOW CAUSE AND MOTION TO DISMISS

Kristi Noem, Todd Lyons, and Pam Bondi, collectively the “Federal Respondents”, tender this response to the Court’s Order to Show Cause. For the reasons stated below, Petitioner’s Writ of Habeas Corpus should be dismissed.

INTRODUCTION

Petitioner’s Writ of Habeas Corpus is moot and should be dismissed because the facility he asks to be released from no longer maintains custody over him; he was never in federal custody at the time he filed his petition; and this Court lacks jurisdiction under 8 U.S.C. § 1252 to review Petitioner’s claims.

BACKGROUND

Petitioner is a native and citizen of Mexico. [Petition at ¶17, Doc. 1 at PageID.4.]
He entered the United States at an unknown place on an unknown date and was not

admitted or paroled. [Declaration of Duckworth, Exhibit 1 at ¶6.] In the early morning of October 18, 2025, Petitioner was arrested by local law enforcement in Liberty, Kentucky, for the following violations: no operators/moped license, license to be in possession, and rear license not illuminated. [Citation, Exhibit 2.] Petitioner was arrested and taken to the Casey County Detention Center (CCDC) to be lodged. [*Id.*]

While conducting routine jail screening at CCDC, Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) identified the Petitioner and determined that he was a citizen and national of Mexico. [Declaration of Duckworth, Exhibit 1 at ¶6.] It was determined that Petitioner entered the United States without inspection on an unknown date, at an unknown location. [*Id.*] As a result, pursuant to 28 C.F.R. §287.7, ICE tendered a request for an immigration detainer to the CCDC on October 18, 2025, requesting that the CCDC alert ICE when the Petitioner would be released so that ICE ERO could take custody of the Petitioner. [*Id.*] An I-200 Warrant for Arrest of Alien was also issued by ICE directing that the Petitioner should be taken into ICE custody by any appropriately authorized immigration officer. [Declaration of Duckworth, Exhibit 1 at ¶¶7, 12]

On October 23, 2025, Petitioner pled guilty to no operators/moped license and was sentenced to a \$143.00 fine with a credit for five days jail time served.

[*Commonwealth v. Gonzalez* Docket, Exhibit 3.] The remaining charges were dismissed by the Commonwealth. [*Id.*] On October 23, 2025, CCDC contacted ICE ERO to advise that the Petitioner was ready to be transferred into ICE custody. [Declaration of Duckworth, Exhibit 1 at ¶8.] Prior to any transfer into ICE Custody, Petitioner filed his writ of

habeas corpus asking this court to order his immediate release from the CCDC.

[Petition at ¶5, Doc. 1, PageID.2.]

On October 24, 2025, ICE took custody of Petitioner. [Declaration of Duckworth, Exhibit 1 at ¶9.] ICE issued Petitioner a Notice to Appear in immigration court, stating that Petitioner had not been admitted or paroled after inspection by an Immigration Officer, and initiated removal proceedings. [Notice to Appear, Exhibit 4]. On October 24, 2025, Petitioner was transported by ICE ERO to the Kenton County Detention Center where he is currently being held for detention and pending removal proceedings. [Declaration of Duckworth, Exhibit 1 at ¶10.] Petitioner has a hearing on November 3, 2025, before an Immigration Judge. [*Id.*]

Prior to taking Petitioner into custody on October 24, 2025, at approximately 7 a.m. local time, ICE did not maintain custody of the Petitioner. [Declaration of Duckworth, Exhibit 1 at ¶11.]

STANDARD OF REVIEW

A district court may grant a writ of habeas corpus if a petitioner is in custody in violation of the Constitution or a federal law. 28 U.S.C. § 2241. “Petitioner ‘bears the burden of proving that he is being held contrary to law; and because the habeas proceeding is civil in nature, he must satisfy his burden of proof by a preponderance of the evidence.’” *Freeman v. Pullen*, 658 F. Supp. 3d 53, 58 (D. Conn. 2023) (quoting *McDonald v. Feeley*, 535 F. Supp. 3d 128, 135 (W.D.N.Y. 2021)) (cleaned up); *Lallave v. Martinez*, 609 F. Supp. 3d 164, 171 (E.D.N.Y. 2022) (same) (quoting *Skaftouros v. United States*, 667 F.3d 144, 158 (2d Cir. 2011)); *Bradin v. United States Prob. & Pretrial Servs.*, No.

22-cv-3032-JWL, 2022 WL 1154622, at *3 (D. Kan. Apr. 19, 2022) (citing cases discussing burden of proof in a habeas case under § 2241).

Petitioner's sole allegation is that the Federal Respondents and the Casey County Jailer illegally detained him at CCDC. [Petition, Doc. 1.] However, he has failed to meet his burden to demonstrate that either the Federal Respondents had him in custody at the time his petition was filed or that the Federal Respondents were illegally detaining him at the CCDC.

ARGUMENT

I. An Immigration Detainer Does Not Place Petitioner in ICE Custody for Habeas Purposes

A civil immigration "detainer is a request filed ... with the institution in which a prisoner is incarcerated, asking the institution either to hold the prisoner for the agency or to notify the agency when release of the prisoner is imminent." *Carchman v. Nash*, 473 U.S. 716, 719 (1985). "A detainer serves to advise another law enforcement agency that the Department [of Homeland Security] seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible." 28 C.F.R. §287.7(b). As acknowledged by Petitioner, these detainers request that a law enforcement agency "maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody

by the Department.” 28 C.F.R. §287.7(d); *see also* [Petition at ¶¶4, 21, Doc. 1 PageID.2, 4].

CCDC’s receipt of the immigration detainer did not place Petitioner in federal custody for habeas purposes. Several courts have held that the issuance of an immigration detainer does not constitute the requisite custody for federal habeas jurisdiction. *Zolicoffer v. U.S. Dep’t of Just.*, 315 F.3d 538, 541 (5th Cir. 2003) (holding that prisoners are not “in custody” for purposes of 28 U.S.C. § 2241 simply because the INS¹ has lodged a detainer against them); *Campos v. INS*, 62 F.3d 311, 314 (9th Cir.1995) (detainer letter alone does not sufficiently place an alien in INS custody for habeas purposes); *Mohammed v. Sullivan*, 866 F.2d 258, 260 (8th Cir.1989)(filing of an INS detainer with prison officials does not constitute the requisite “technical custody” for purposes of habeas jurisdiction); *Garcia-Echaverria v. United States*, 376 F.3d 507, 510–11 (6th Cir. 2004) (“an alien is not ‘in custody’ for removal purposes if he is detained pursuant to a sentence for a criminal conviction, even if the INS has filed a detainer order with the prison where the petitioner is incarcerated.”).²

On October 23, 2025, when Petitioner filed his habeas, he was not in ICE’s custody. [Declaration of Duckworth, Exhibit 1 at ¶11.] ICE did not take custody of

¹ INS stands for Immigration and Naturalization Service. The Homeland Security Act of 2002 disbanded INS on March 1, 2003. Its constituent parts contributed to 3 new federal agencies serving under the newly-formed Department of Homeland Security (“DHS”): (1) Customs and Border Protection (“CBP”); (2) Immigration and Customs Enforcement (“ICE”), and (3) U.S. Citizenship and Immigration Services (“USCIS”). <https://www.uscis.gov/sites/default/files/document/fact-sheets/INSHistory.pdf>

² Consistent with 28 C.F.R. §287.7, the Immigration Detainer – Notice of Action issued by ICE ERO to CCDC merely requested that CCDC “maintain custody of the individual for a period **NOT TO EXCEED 48 HOURS** beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. This detainer arises from DHS authorities and should not impact decisions about the individual’s bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters.” [Detainer, Exhibit 5 at p. 1 (emphasis in original).]

Petitioner until approximately 7 a.m. on October 24, 2025. [Declaration of Duckworth, Exhibit __ at ¶9.] Nevertheless, Petitioner requests relief from this Court for a time period where he was not in federal custody for habeas purposes. As such, Petitioner's habeas should be dismissed.

II. Petitioner's Writ of Habeas Petition is Moot

Petitioner's habeas petition alleges that he was detained at CCDC beyond the 48 hours requested in ICE's detainer. However, Petitioner was released from CCDC custody and is now held in the Kenton County Detention Center (KCDC) in the Eastern District of Kentucky. Because Petitioner was released from CCDC's custody, his petition is now moot. More importantly, Petitioner should file any grievances he has in the district where he is detained.

On October 24, 2025, Petitioner was released from CCDC custody. As Petitioner's release moots his habeas petition, the Court lacks jurisdiction to consider it. *See Lane v. Williams*, 455 U.S. 624, 631-32 (1982) (absent circumstances inapplicable here, a petitioner's release from custody generally moots their habeas petition); *see also Ikharo v. Att'y Gen. of United States*, 2019 WL 3227834, at *6 (S.D. Ohio July 17, 2019) (collecting cases); *report and recommendation adopted sub nom Ikharo v. United States Att'y Gen.*, 2021 WL 3662479 (S.D. Ohio Aug. 18, 2021). Although, Petitioner is in custody at KCDC, the petition focuses solely on CCDC and asks for release from CCDC, where Petitioner is no longer held. Accordingly, the Court should dismiss the petition.

The Court only has "jurisdiction to hear cases or controversies," *In re Kramer*, 71 F.4th 428, 438 (6th Cir. 2023), *reh'g denied*, 2023 WL 5498744 (6th Cir. Aug. 16, 2023), and

does “not have the power to adjudicate disputes that are moot,” *Hanrahan v. Mohr*, 905 F.3d 947, 960 (6th Cir. 2018). A “case is moot when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Powell v. McCormack*, 395 U.S. 486, 496 (1969). To make this determination, the Court asks whether it would “make a difference to the legal interests of the parties” if we granted the relief sought. *Hanrahan*, 905 F.3d at 960 (citation omitted). Here, Petitioner requests his “immediate release” from CCDC. [Petition at ¶5, Doc 1, PageID. 2.] But Petitioner is no longer in custody at CCDC, and thus this Court cannot grant such relief. As such, the Court lacks jurisdiction to adjudicate this moot dispute.

III. This Court Lacks Jurisdiction Under 8 U.S.C. § 1252(g)

Petitioner claims that he was unlawfully detained by CCDC and the Federal Respondents without any legal basis in violation of his constitutional rights. [Doc. 1, PageID. 5]. Although he does not allege in his petition that ICE illegally took him into custody on October 24, 2025, assuming *arguendo* that such a claim is implied in his petition, it should be denied as this Court presently lacks subject matter jurisdiction.

There is no factual basis to assert that Petitioner was ever detained by the Federal Respondents at the time this petition was filed, and there is no factual allegation contained in the petition concerning ICE’s decision to commence removal proceedings against the Petitioner and detain him in relation to those proceedings. Moreover, there is no legal basis to challenge such actions. 8 U.S.C. § 1252(g) strips federal courts of subject matter jurisdiction over claims “arising from the decision or action by [DHS] to commence proceedings, adjudicate cases, or execute removal orders against any alien . .

..” 8 U.S.C. § 1252(g); *see also Karki v. Jones*, 2025 U.S. App. LEXIS 20660, at *8-9 (6th Cir. Aug. 13, 2025) (explaining that § 1252(g) applies to habeas claims and does not violate the Suspension Clause).

Although Petitioner has not alleged it in his petition, ICE clearly has authority to detain the Petitioner in Kenton County under 8 U.S.C. § 1225(b)(2) at the commencement of his removal proceedings initiated pursuant to U.S.C. § 1229a. The decision to detain by taking custody of Petitioner on October 24, 2025, arose from the commencement of his removal proceedings as indicated in the October 24, 2025 Notice To Appear, which charged Petitioner with violations of 8 U.S.C. §§ 1182(a)(6)(A)(i) and 1182(a)(7)(A)(i)(I). [Notice to Appear, Exhibit 4.] *See Alvarez v. ICE*, 818 F.3d 1194, 1203-04 (11th Cir. 2016) (citing *Gupta v. McGahey*, 709 F.3d 1062, 1065 (11th Cir. 2013)); *Hodgson v. United States*, 2014 U.S. Dist. LEXIS 115435, at *13-20 (W.D. Tex. Aug. 19, 2014).

While 8 U.S.C. § 1252(g) does not cover “all claims” arising from decisions to commence proceedings, adjudicate cases, or execute removal orders, it continues to bar review of narrow matters “arising from” those decisions. *See Dep’t of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1907 (2020). Here, Petitioner’s detention by the Federal Respondents on October 24, 2025, arose directly from ICE’s decision to commence removal proceedings, and as such his detention is “connected directly and immediately” with the commencement of his proceedings. *See Tsering v. USCIS*, 403 F. App’x 339, 343 (10th Cir. 2010) (quotation omitted). Consequently, the decision to detain is outside the Court’s jurisdiction to review. *But see Ozturk v. Hyde*, 136 F.4th 382,

397 (2d Cir. 2025). Petitioner has a hearing in immigration court scheduled for November 3, 2025, and should raise his claims in that court.³

CONCLUSION

Because Petitioner requests to be released from a facility that no longer maintains custody of him; was not in federal custody at the time of his habeas filing; and does not allege that ICE was without legal authority to take him into custody on October 24, 2025; the Federal Respondents respectfully request that the Court dismiss his petition.

Respectfully submitted,

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³ “Because of the expertise the Board of Immigration Appeals and the immigration courts more generally have in the statutory and administrative regimes governing the admission and removal of foreigners, many of the purposes for requiring exhaustion’ may be served by permitting agency review in the first instance.” *Abdoulaye Ba v. Dir. of Detroit Field Office*, No. 4:25-cv-02208, 2025 U.S. Dist. LEXIS 207739, at *6 (N.D. Ohio Oct. 22, 2025) (citations omitted).

CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2025, I filed this document via CM/ECF,
which will automatically provide service to all counsel of record.

/s/ Calesia Henson
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