

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

HERIBERTO SALGADO FLORES,)
)
Petitioner,)
)
vs.)
)
KRISTI NOEM, Secretary of Homeland)
Security, EXECUTIVE OFFICE FOR)
IMMIGRATION REVIEW, SAMUEL)
OLSON, Field Office Director, ICE,)
PAMELA BONDI, Attorney General, and)
JACOB WELSH, Warden, Chase County)
Detention Center,)
)
Respondents.)
_____)

Case No. 25-cv-03244-JWL

**MOTION TO DISMISS AND
RESPONSE IN OPPOSITION TO PETITIONER’S MOTION TO MAINTAIN STAY**

Respondents hereby move the Court to dismiss Petitioner’s Petition for Writ of Habeas Corpus as moot and oppose Petitioner’s Motion to Maintain Stay. Doc. 14.

STATEMENT OF THE FACTS

Petitioner, a native of Mexico, filed this habeas action on November 10, 2025. Doc. 1, ¶ 2. Petitioner alleged that he was improperly detained under 8 U.S.C. § 1225(b)(2), rather than 8 U.S.C. § 1226(a). *Id.* ¶ 5. Petitioner sought a writ of habeas corpus “requiring that Respondents release Petitioner, or in the alternative, provide Petitioner with a bond hearing to determine whether he is a flight risk or danger to others pursuant to 8 U.S.C. § 1226(a).” *Id.* at pp. 13-14.

On December 23, 2025, Petitioner notified the Court that he had been scheduled for a Bond/Custody Determination Hearing on January 6, 2026, and requested that the Court hold the case in abeyance until January 9, 2026. Doc. 10, ¶ 6. Respondents did not oppose the motion, and the Court stayed this matter pending further order of the Court on December 31, 2025. Doc. 12.

On January 6, 2026, Petitioner was granted a \$5,000 bond and was released from custody. Docs. 13, 13-1; *see also* Doc. 14, ¶ 3. On January 16, 2026, Petitioner requested that, despite his release, the Court stay this matter, rather than dismiss it as moot. Doc. 14.

ARGUMENT

Petitioner’s habeas claim should be dismissed because Petitioner’s claim is moot. Article III of the Constitution extends the jurisdiction of federal courts only to “live, concrete” cases or controversies. *Rio Grande Silvery Minnow v. Bureau of Reclamation*, 601 F.3d 1096, 1109 (10th Cir. 2010). “Article III’s requirement that federal courts adjudicate only cases and controversies necessitates that courts decline to exercise jurisdiction where the award of any requested relief would be moot—i.e. where the controversy is no longer live and ongoing.” *Cox v. Phelps Dodge Corp.*, 43 F.3d 1345, 1348 (10th Cir. 1994), *superseded by statute on other grounds*. Consequently, “[m]ootness is a threshold issue because the existence of a live case or controversy is a constitutional prerequisite to federal court jurisdiction.” *Rio Grande*, 601 F.3d at 1109 (citation omitted).

Petitioner filed this habeas action on November 10, 2025, seeking a writ of habeas corpus “requiring that Respondents release Petitioner, or in the alternative, provide Petitioner with a bond hearing to determine whether he is a flight risk or danger to others pursuant to 8 U.S.C. § 1226(a).” Doc. 1, pp. 13-14. Petitioner admits that “[o]n January 6, 2026, the IJ granted Petitioner a \$5000 bond, leading to his release from physical custody once he posted it.” Docs. 13, 13-1; *see also* Doc. 14, ¶ 3. Because Petitioner has been released from custody, his habeas petition is now moot. *See, e.g.*, Order of Dismissal, *Soudom v. Carter*, No. 25-cv-3167-JWL, Doc. 13 (D. Kan. Nov. 7, 2025); Order of Dismissal, *Otunyo v. U.S. Att’y Gen.*, No. 25-cv-3032-JWL, Doc. 15 (D. Kan. July 30, 2025); Order of Dismissal, *Rocha v. U.S. Att’y Gen.*, No. 25-cv-3072-JWL, Doc. 5 (D. Kan. June 25, 2025); Order of Dismissal, *Olatunde v. Carter*, No. 25-cv-3041-JWL, Doc. 6 (D. Kan.

May 15, 2025); *Battle v. Hudson*, No. 20-cv-03050-JWL, 2020 WL 8834789, at *2 (D. Kan. June 15, 2020) (citing *Rhodes v. Judiscak*, 676 F.3d 931, 935 (10th Cir. 2022)).

In considering mootness, courts must look to “whether granting a *present* determination of the issues offered will have some effect in the real world.” *Fleming v. Gutierrez*, 785 F.3d 442, 444-45 (10th Cir. 2015) (citation omitted). Because Petitioner has been granted a bond and released from custody, any ruling on Petitioner’s habeas claim would have no effect in the real world. Thus, the Court “must dismiss the case, rather than issue an advisory opinion.” *Id.* at 445 (citation omitted).

Apparently recognizing the Court’s duty to avoid the issuance of advisory opinions, Petitioner requests that, rather than ruling on his habeas petition, the Court extend a stay of this case. *See generally* Doc. 14. But, the Court should decline this request as it would require the Court to reject its Constitutional duty to examine its own jurisdiction and, instead, grant a stay based merely on a speculative, future harm. *See* Doc. 14, ¶ 7 (“If DHS appeals and succeeds, Petitioner *may* be re-detained unlawfully, necessitating habeas relief once again.”) (emphasis added).

Because there is no live case or controversy with respect to Petitioner’s habeas claim, the Court should dismiss the Petition as moot and deny Petitioner’s request to extend the stay of this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2026, the foregoing document was electronically filed by using the CM/ECF System, which will send notification of such filing to the following ECF registrants:

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