

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

MANUEL ESPINOZA	)	
DELGADO,	)	
	)	
Petitioner,	)	
v.	)	Case No. CIV-25-1342-D
	)	
RUSSELL HOLT et al.,	)	
	)	
Respondents.	)	

REPORT AND RECOMMENDATION

Manuel Espinoza Delgado, a noncitizen, seeks habeas corpus relief under 28 U.S.C. § 2241. Doc. 1.¹ Chief United States District Timothy D. DeGiusti referred the matter to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B), (C). Doc. 3. Because Petitioner is no longer in custody and this Court can grant no relief to Petitioner, the undersigned recommends the Court dismiss the petition as moot.

I. Factual background and procedural history.

Petitioner is a citizen of Mexico. Doc. 1, at 6. Petitioner has resided in the United States since at least 2010, and lived in Oklahoma City, Oklahoma,

¹ Citations to a court document are to its electronic case filing designation and pagination. Except for capitalization, quotations are verbatim unless otherwise indicated.

before being detained by ICE. *Id.* at 14. On December 16, 2024, Petitioner filed with U.S. Citizenship and Immigration Services (USCIS) an “Application for Advance Permission to Enter as a Noncitizen Victim of Crime”; “an Application for Employment Authorization”; and a “Petition for Qualifying Family Member of a U-1 Recipient.” *Id.* at 15.

On September 9, 2025, Petitioner was arrested by ICE following the targeted traffic stop of a vehicle in which he was a passenger. *Id.* at 14-15. Petitioner was then detained at the Cimarron Correctional Facility in Cushing, Oklahoma. *Id.* at 15. ICE “issued a custody determination and did not allow Petitioner to post bail. *Id.* at 16. At a bond redetermination hearing, the Immigration Judge (IJ) assigned to Petitioner’s case determined she lacked jurisdiction based on the Board of Immigration Appeals’ (BIA) decision in *Matter of Yajure Hurtado*, 29 I. & N. Dec. 216 (BIA 2025), which held that those who entered the country without admission or parole are ineligible for a bond hearing and are detained under 8 U.S.C. § 1225(b)(2)(A). *Id.* at 17.

Petitioner raises two grounds for relief:

Ground One: Respondents’ application of § 1225(b)(2) unlawfully mandates his continued detention and violates the Immigration and Nationality Act (INA).

Ground Two: His detention without a bond redetermination hearing to determine whether he is a flight risk or danger to others violates his right to due process.

Id. at 17-22.

He seeks an order directing Respondents to immediately release him, or in the alternative, provide a bond hearing within seven days under 8 U.S.C. § 1226(a), declare that his detention is unlawful, and award him attorney's fees and costs under the Equal Access to Justice Act (EAJA). *Id.* at 22.

II. Petitioner's voluntary departure.

The undersigned ordered Respondents to "not transfer Petitioner to another district unless they provide[d] 72-hours advance notice of the intended move." Doc. 6, at 4. On November 22, 2025, Respondents' counsel filed notice with the Court. Doc. 8. Counsel informed the Court that Petitioner applied for voluntary departure in lieu of removal, which was granted, and that Petitioner was transported to Mexico to facilitate his voluntary departure on November 20, 2025. *Id.*

III. Screening.

This Court must review a habeas petition and dismiss it "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court." Rule 4, Rules Governing Section 2254

Cases in the U.S. District Courts;² *see also Garza v. Davis*, 596 F.3d 1198, 1205 (10th Cir. 2010) (holding that a federal court possesses “the discretion . . . to dismiss the 28 U.S.C. § 2241 petition if it appear[s] that the petitioner was not entitled to relief”). Having screened the petition, the undersigned recommends the Court dismiss the petition as moot.

IV. The petition is moot because Petitioner is no longer in custody.

“The writ of habeas corpus shall not extend to a prisoner unless . . . he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). “[T]he ‘in custody’ requirement of § 2241 is satisfied” if a petitioner files the habeas application while they are incarcerated. *King v. Ciolli*, 2024 WL 1179908, at *2 (10th Cir. Mar. 19, 2024) (citing *Spencer v. Kemna*, 523 U.S. 1, 7 (1998) & *Riles v. INS*, 310 F.3d 1253, 1256 (10th Cir. 2002)).

A § 2241 petition must be filed in the district where the prisoner is confined. *Brace v. United States*, 634 F.3d 1167, 1169 (10th Cir. 2011). “[J]urisdiction attaches on the initial filing for habeas corpus relief, and it is

² The Court may apply the Rules Governing § 2254 Cases to habeas petitions arising under § 2241. *See* Rule 1(b); *Whitmore v. Parker*, 484 F. App’x 227, 231 n.2 (10th Cir. 2012) (“The Rules Governing 2254 Cases may be applied discretionarily to habeas petitions under § 2241.” (citing *Boutwell v. Keating*, 399 F.3d 1203, 1211 n.2 (10th Cir. 2005))).

not destroyed by a transfer of the petitioner and the accompanying custodial change.” *Santillanes v. U.S. Parole Comm’n*, 754 F.2d 887, 888 (10th Cir. 1985); *cf. Rumsfield v. Padilla*, 542 U.S. 426, 442 (2004).

Petitioner was confined in this district when he filed his § 2241 petition. *See* Doc. 1, at 1. But he is no longer in custody as Respondents have removed him to Mexico. *See* Doc. 8. The undersigned has also separately confirmed that Petitioner’s location in ICE custody no longer appears on ICE’s Online Detainee Locator System. <https://locator.ice.gov/odls/#/search> (last visited Nov. 25, 2025). Although this Court’s jurisdiction attached when Petitioner filed his habeas corpus petition, his release from custody renders his petition moot.

Under Article III of the Constitution, federal courts may only adjudicate live controversies. *See Alvarez v. Smith*, 558 U.S. 87, 92 (2009) (“An actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.” (quoting *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975))). A case becomes moot “if an event occurs while a case is pending . . . that makes it impossible for the court to grant ‘any effectual relief whatever’ to a prevailing party” *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)).

“Mootness . . . is a fundamental bar to judicial review that must be accounted for at all stages of a proceeding, and applies in habeas as in any

other type of litigation.” *Miller v. Glanz*, 331 F. App’x 608, 610 (10th Cir. 2009). A habeas petition does not become moot, however, just because a petitioner is no longer in custody. Rather, the relevant inquiry is whether the petitioner is subject to collateral consequences “adequate to meet Article III’s injury-in-fact requirement.” *King*, 2024 WL 1179908, at *2 (quoting *Spencer*, 523 U.S. at 14).

Once Respondents released Petitioner from their custody, he no longer had a redressable injury arising from his detention. *See id.* (holding that a “petitioner must demonstrate some concrete and continuing injury” to overcome mootness after release from custody (quoting *Spencer*, 523 U.S. at 7)). And the Court cannot determine whether Petitioner was entitled to a bond hearing under 8 U.S.C. § 1226(a), because it would be an advisory opinion. *See Ferry v. Gonzales*, 457 F.3d 1117, 1132 (10th Cir. 2006) (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 [Department of Homeland Security’s] future conduct towards [him].”)

So the Court should dismiss the petition as moot. *Sule v. I.N.S.*, 1999 WL 668716, at * 1 (10th Cir. 1999) (dismissing habeas petition as petitioner’s deportation to Nigeria “mooted his challenge to the legality of his detention”).

V. Recommendation and notice of right to object.

Petitioner's voluntary departure renders his petition moot because there is no live case or controversy for this Court to decide. The undersigned therefore recommends the Court dismiss the habeas corpus petition as moot. Doc. 1.

The undersigned advises the parties of their right to file an objection to this Report and Recommendation with the Clerk of Court on or before December 16, 2025, under 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(2). The undersigned further advises the parties that failure to file a timely objection to this Report and Recommendation waives the right to appellate review of both factual and legal issues contained herein. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

This Report and Recommendation disposes of all issues and terminates the referral to the undersigned Magistrate Judge in the captioned matter.

ENTERED this 25th day of November, 2025.


SUZANNE MITCHELL
UNITED STATES MAGISTRATE JUDGE