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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12
13 MANUEL AVILA-HEBRA,

14 Petitioner,

15 v.

16 Kristi NOEM, et al.,

17 Respondents.
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Case No.: 25-cv-3140-AGS-BJW

**RESPONDENTS' RETURN TO
HABEAS PETITION AND
OPPOSITION TO PETITIONER'S
MOTION FOR INJUNCTIVE
RELIEF**

1 **I. Introduction**

2 Petitioner filed a habeas petition and a motion for temporary restraining order.
3 ECF Nos. 1, 3. On November 14, 2025, the Court ordered a response and set a hearing.
4 ECF No. 4. On the same day, Petitioner was removed to Mexico. He is no longer in ICE
5 custody. The Court should dismiss the case for lack of subject matter jurisdiction as
6 moot.

7 **II. Factual and Procedural Background**

8 Petitioner is a citizen and national of Cuba. On April 3, 1998, an immigration
9 judge ordered Petitioner removed to Cuba following his felony conviction on charges
10 of conspiracy to manufacture a Schedule I controlled substance. Declaration of
11 Christoher Lowry (Lowry Decl.) at ¶¶ 4, 5. Petitioner was subsequently released from
12 immigration custody on an Order of Supervision because the United States government
13 did not have diplomatic relations with Cuba and was thus unable to remove him to Cuba
14 at that time. *Id.* at ¶ 5. Meanwhile, Immigration and Customs Enforcement (ICE) is now
15 working to remove Cuban noncitizens subject to final orders of removal to Cuba itself
16 or, failing that, to third countries, pursuant to the Immigration and Nationality Act
17 (INA).

18 On September 28, 2025, Petitioner was arrested for immigration violations in
19 Florida after Border Patrol Agents determined he did not have any valid immigration
20 documents that would allow him to be legally present in the United States. *Id.* at ¶ 8.
21 On October 2, 2025, Petitioner was transferred to ICE custody in Florida to execute his
22 administratively final removal order. *Id.* at ¶ 9. Petitioner was served a Form I-205,
23 Warrant of Removal/Deportation, and a Form I-294, Warning to Alien Ordered
24 Removed or Deported. *Id.*

25 Cuba requires that DHS “nominate” deportable Cuban citizens who entered the
26 United States on or before January 12, 2017, for removal on a case-by-case basis. *Id.* at
27 ¶ 11. Cuba routinely declines to accept Cuban citizens who have been nominated for
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1 removal via this process. *Id.* On November 4, 2025, ERO was informed that the Cuban
2 government declined to accept Petitioner for repatriation. *Id.*

3 Meanwhile, ERO identified Mexico as a third country in which Petitioner could
4 be resettled should Cuba decline to accept him for repatriation. On October 22, 2025,
5 ICE served Petitioner with a Notice of Removal informing him that ICE intended to
6 remove him to Mexico. *Id.* at ¶ 13; Exhibit 1.¹ ICE has located no records of Petitioner
7 expressing a fear of being removed to Mexico. *Id.* Petitioner himself does not indicate
8 that he expressed a fear to any DHS official. ECF No. 1 at 28-31.

9 On November 12, 2025, Petitioner was transferred from ICE custody in Florida
10 to the Otay Mesa Detention Center in this district. Lowry Decl. ¶ 14. On November 13,
11 2025, Petitioner initiated this habeas action and filed a motion for a temporary
12 restraining order. On November 14, 2025, Petitioner was removed to Mexico. *Id.* ¶ 15;
13 *see* 8 U.S.C. § 1231(b)(2)(C) (allowing for third country removal where the petitioner’s
14 country of designation is not willing to accept him); § 1231(b)(2)(E) (allowing third
15 country resettlement where removal to the country designated in the final order is
16 “impracticable, inadvisable, or impossible”). Also on November 14, the Court issued
17 an order requiring Respondents to respond to the petition and Petitioner’s motion. The
18 Court did not rule on Petitioner’s request for a temporary restraining order. The U.S.
19 Attorney’s Office notified ICE of the Court’s order to respond the same day.

20 On November 20, 2025, ICE informed undersigned counsel of Petitioner’s
21 November 14 removal. Respondents’ counsel requested Petitioner’s counsel’s consent
22 to the dismissal of the action. Petitioner’s counsel indicated that Petitioner opposed
23 dismissal.

24 **III. Argument**

25 There is no “case” or “controversy” when an issue is moot. “[T]he question of
26 mootness is . . . one which a federal court must resolve before it assumes jurisdiction.”
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¹ The attached exhibit is a true copy of the Notice obtained from ICE counsel.

1 *North Carolina v. Rice*, 404 U.S. 244, 246 (1971). “A case becomes moot—and
2 therefore no longer a Case or Controversy for purposes of Article III—when the issues
3 presented are no longer live or the parties lack a legally cognizable interest in the
4 outcome.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (internal quotation marks
5 and citations omitted). The Supreme Court has routinely cautioned that a case becomes
6 moot “if an event occurs while a case is pending on appeal that makes it impossible for
7 the court to grant ‘any effectual relief whatever’ to a prevailing party.” *Church of*
8 *Scientology of Cal. v. United States*, 506 U.S. 9, 12 (1992). Thus, even a once-justiciable
9 case becomes moot and must be dismissed “when the issues presented are no longer
10 ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Powell v.*
11 *McCormack*, 395 U.S. 486, 496 (1969). “[A] petitioner’s release from detention under
12 an order of supervision moot[s] his challenge to the legality of his extended detention.”
13 *Panosyan v. Mayorkas*, 854 Fed. App’x 787, 788 (9th Cir. 2021) (quoting *Abdala v.*
14 *INS*, 488 F.3d 1061, 1063 (9th Cir. 2007)).

15 Petitioner’s habeas petition requested this Court facilitate his release from ICE
16 custody and temporarily enjoin his removal to a third country. Since Petitioner has
17 already been removed and he is no longer in ICE custody, the court cannot grant “any
18 effectual relief whatever” to him. *Church of Scientology of Cal.*, 506 U.S. at 12; see
19 *Picrin-Peron v. Rison*, 930 F.2d 773, 775 (9th Cir. 1991) (case is moot if court lacks
20 power to grant relief can be granted). To the extent that Petitioner’s desired relief was
21 to be released from ICE custody, he has already obtained that relief.

22 Further, Petitioner does not allege any collateral consequences of his claim that
23 sound in habeas.² To the contrary, “[i]t is clear that the direct consequences of the

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25 ² An individual may seek habeas relief under 28 U.S.C. § 2241 if he is “in custody”
26 under federal authority “in violation of the Constitution or laws or treaties of the United
27 States.” 28 U.S.C. § 2241(c). But habeas relief is available to challenge only the legality
28 or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023);
Crawford v. Bell, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security v.*
Thraissigiam, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically
“provide[s] a means of contesting the lawfulness of restraint and securing release.”).

1 action challenged here can no longer be remedied in habeas” and his claim is moot.
2 *Chan v. Sec’y of Homeland Sec.*, No. 16-01709-VBF (GJS), 2016 WL 4204596, at *2
3 (C.D. Cal. Aug. 5, 2016) (quoting *Cox v. McCarthy*, 829 F.2d 800, 803 (9th Cir. 1987));
4 *see Singh v. ICE Field Office Director*, No. 24-cv-400-TL-TLF, 2024 WL 3258090, at
5 *1 (W.D. Wash. June 12, 2024) (“because petitioner’s habeas petition challenges only
6 the length of his detention, his claims were fully resolved by release from custody.”);
7 *Shawn-D Omar W. v. Mayorkas*, No. 23-cv-511 JLS (BLM), 2023 WL 6627816, at *2
8 (S.D. Cal. Oct. 10, 2023) (finding petition seeking release from ICE custody pending
9 removal was moot where petitioner was released from ICE custody); *Ying Jiao Ye v.*
10 *Nordheim*, No. 218cv10072 JVS (KES), 2019 WL 979245, at *3 (C.D. Cal. Feb. 27,
11 2019) (“[H]abeas petitions that raise claims that are fully resolved by release from
12 custody are rendered moot upon the petitioner’s release.”).

13 **IV. Conclusion**

14 For the foregoing reasons, Respondents respectfully request that the Court deny
15 the motion for injunctive relief and dismiss the habeas petition.

16 DATED: November 21, 2025

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United States Attorney

18 *s/ Erin Dimbleby*
ERIN DIMBLEBY
Assistant United States Attorney

20 Attorneys for Respondents

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25 The Ninth Circuit squarely explained how to decide whether a claim sounds in habeas
26 jurisdiction: “[O]ur review of the history and purpose of habeas leads us to conclude
27 the relevant question is whether, based on the allegations in the petition, release is
28 *legally required* irrespective of the relief requested.” *Pinson*, 69 F.4th at 1072 (emphasis
in original); *see also Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (The key
inquiry is whether success on the petitioner’s claim would “necessarily lead to
immediate or speedier release.”).