

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ZOILA ESPERANZA MARQUEZ-MURILLO,

Petitioner,

v.

PAM BONDI,
US Attorney General;
KRISTI NOEM,
Secretary of Department of
Homeland Security;
ROBERT LYNCH,
Field Office Director for the
Michigan Field Office;
WARDEN of North Lake Correctional Facility

Respondents.

Case No. 1:25-cv-01489

Hon. Robert J. Jonker
U.S. District Judge

Hon. Ray Kent
U.S. Magistrate Judge

**RESPONDENTS' MEMORANDUM IN SUPPORT
OF MOTION TO DISMISS FOR MOOTNESS**

INTRODUCTION

On November 27, 2025, the Department of Homeland Security (DHS) successfully removed Petitioner, Zoila Esperanza Marquez-Murillo, to Honduras. She is not in DHS custody. Accordingly, her Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 is moot. The Court no longer retains jurisdiction over this matter due to the absence of a live case or controversy under Article III of the United States Constitution. Respondents therefore requests that the Court dismiss the petition with prejudice. To the extent the petition alludes to claims other than for habeas relief, it fails to state a claim upon which relief can be granted and the Court lacks jurisdiction over such claims.

FACTUAL BACKGROUND

Petitioner is a native of Honduras, who entered the United States on December 18, 2018, as an asylum applicant. (Pet. ¶ 11, PageID.5.) She has been in ICE custody since February 14, 2025. (*Id.*) An immigration judge (IJ) ordered Petitioner removed on May 18, 2025. (*Id.*) She waived her right to appeal the IJ's decision and Petitioner's order of removal became administratively final the same day. (*Id.*)

DHS removed Petitioner to Honduras on November 25, 2025. (Ex. A, Patillo Decl. ¶ 4.)

ARGUMENT

I. Motion Standards.

A. Rule 12(b)(1)

When subject matter jurisdiction is challenged pursuant to Federal Rule of Civil Procedure 12(b)(1), the party asserting jurisdiction bears the burden of establishing that subject matter jurisdiction exists. *Grewal v. Ashcroft*, 301 F. Supp. 2d 692, 694 (N.D. Ohio 2004) (citing *Moir v. Greater Cleveland Reg'l Transit Auth.*, 895 F.2d 266, 269 (6th Cir. 1990)); *Wisecarver v. Moore*, 489 F.3d 747, 749 (6th Cir. 2007). In considering a factual attack on subject matter jurisdiction, the court is not confined to the allegations in the plaintiff's complaint and can consider matters beyond the pleadings to decide factual matters relating to jurisdiction. *Gentek Bldg. Prod., Inc. v. Sherwin-Williams Co.*, 491 F.3d 320, 330 (6th Cir. 2007).

B. Rule 12(b)(6)

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal where the complaint fails to "state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "To state a valid claim, a complaint must contain . . . allegations respecting all the material elements to sustain recovery under some viable legal theory." *League of United Latin Am. Citizens v. Bredesen*, 500

F.3d 523, 527 (6th Cir. 2007). A court should dismiss a claim under Rule 12(b)(6) when the plaintiff has failed to plead “sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible only where it “pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. While the court should accept the complaint’s factual allegations as true in connection with a Rule 12(b)(6) motion, the court need not accept legal conclusions, including those that are couched as factual allegations. *Id.*

II. The Habeas Petition is moot.

For a court to have subject matter jurisdiction over a case, the litigation must present an actual case or controversy sufficient to satisfy Article III of the United States Constitution. U.S. Const. art. III, § 2; *Gottfried v. Med. Plan. Servs., Inc.*, 280 F.3d 684, 691 (6th Cir. 2002) (citing *Honig v. Doe*, 484 U.S. 305, 317 (1988)). The doctrine of mootness derives directly from the case or controversy limitation. *Friends of the Earth, Inc. v. Laidlaw Env’t. Servs. (TOC), Inc.*, 528 U.S. 167, 180 (2000) (“The Constitution’s case-or-controversy limitation on federal judicial authority, Art. III, § 2, underpins ... [the court’s] mootness jurisprudence.”). The mootness inquiry must be made at every stage of the case. When a case becomes moot, an Article III case or controversy no longer exists. *Id.*

Federal courts have habeas jurisdiction when a petitioner is “in custody” of the respondent in violation of federal law. 28 U.S.C. § 2241(c)(3); *Prieto v. Gluch*, 913 F.2d 1159, 1162–63 (6th Cir. 1990) (“for the District Court to have jurisdiction over petitioners’ habeas claims, petitioners must be in the custody of the INS.”). In the removal context, a habeas petition generally becomes moot when the petitioner is removed from the United States. *Nasreldeen v. ICE Detroit Field Off.*,

No. 1:23-CV-82, 2023 WL 2965709, at *2 (W.D. Mich. Apr. 17, 2023) (“Petitioner’s request for release from custody became moot . . . when he was removed from the United States and was no longer in ICE custody.”); *See also Enazeh v. Davis*, 107 F. App’x 489, 491 (6th Cir. 2004) (“Because he has already been deported, the court can no longer grant the requested relief”); *Al-Khawalani v. U.S. Dep’t. of Homeland Sec.*, No. 2:19-CV-00182, 2020 WL 1990965 (W.D. Mich. Apr. 1, 2020), *report and recommendation adopted*, 2020 WL 1986485 (W.D. Mich. Apr. 27, 2020); *Al-Rabiah v. Adducci*, No. 1:18-CV-520, 2018 WL 6704877, at *1 (W.D. Mich. Oct. 30, 2018), *report and recommendation adopted*, 2018 WL 6704872 (W.D. Mich. Dec. 13, 2018); *Van v. Adducci*, No. 1:13-CV-1299, 2014 WL 5307915, at *2 (W.D. Mich. Oct. 16, 2014). The Court can no longer order U.S. Immigration and Customs Enforcement (ICE) to release a petitioner when ICE has already released her from custody. *Merlan v. Holder*, 667 F.3d 538, 539 (5th Cir. 2011) (holding that a petitioner who had been removed from the United States was no longer “in custody” for purposes of a habeas petition and dismissing the petition as moot).

Here, Petitioner asks this Court to issue a writ of habeas corpus directing Respondents to immediately release her from custody and schedule a bond hearing before an Immigration Judge. (Pet., PageID.8.) For the Court to have jurisdiction over Petitioner’s habeas claims, she must be in Respondents’ custody. But her removal from the United States to Honduras renders her requested relief from Respondents moot. She is not in DHS custody. (*See Ex. A, Patillo Decl.* ¶ 4.) And she does not seek relief from collateral consequences of removal. *See Zundel v. Berrong*, 106 F. App’x 331, 334–35 (6th Cir. 2004). Consequently, this case does not present an actual case or controversy, and this Court lacks subject matter jurisdiction over the habeas petition. As a result, the Petition should be dismissed as moot.

III. Any remaining claims fail under Rules 12(b)(6) and 12(b)(1).

If Petitioner is attempting to assert claims beyond the request for habeas relief, this is unclear. Her additional allegations are largely incomprehensible and fail to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Martin v. Overton*, 391 F.3d 710, 714 (6th Cir. 2004) (ruling that the leniency granted to pro se petitioners does not require a habeas court to conjure allegations on a petitioner's behalf.)

Any additional claims the petition potentially could be alluding to also fail for lack of subject matter jurisdiction. To the extent Petitioner is attempting to challenge her removal order, this District Court would lack jurisdiction over such claims. *Elgharib v. Napolitano*, 600 F.3d 597, 600–07 (6th Cir. 2010); 8 U.S.C. §§ 1252(a)(5); 1252(g). Moreover, if she is trying to bring civil rights claims beyond seeking habeas relief, she must do so in a separate civil action. *Nasreldeen v. ICE Detroit Field Off.*, No. 1:23-CV-82, 2023 WL 2965709, at *2 (W.D. Mich. Apr. 17, 2023) (citing *Avery v. Phillips*, No. 2:14-CV-1276-STA-EGB, 2016 WL 94143, at *2 (W.D. Tenn. Jan. 7, 2016)); *see also Wilson v. Williams*, 961 F.3d 829, 838 (6th Cir. 2020) (“[C]onditions of confinement claims seeking relief in the form of improvement of prison conditions or transfer to another facility are not properly brought under [28 U.S.C.] § 2241.”). Therefore, any possible remaining claims in the petition must be dismissed.

CONCLUSION

The Court should dismiss the Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241 as moot. She has been removed from the United States and is not in ICE custody. Any remaining claims should be dismissed for failure to state a claim and lack of subject matter jurisdiction.

Respectfully submitted,

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Dated: December 4, 2025

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