TIMOTHY COURCHAINE
United States Attorney
District of Arizona
NEIL SINGH
Assistant United States Attorney
Arizona State Bar No. 021327
Two Renaissance Square
40 North Central Avenue, Suite 1800
Phoenix, Arizona 85004-4449
Telephone: (602) 514-7500
neil.singh@usdoj.gov
Attorneys for Respondents

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Asel Musaeva,

Petitioner,

v.

John Cantu, *et al.*

Respondents.

No. 25-cv-04529-MTL--ASB

MOTION TO DISMISS

Petitioner in this habeas immigration matter has filed an Amended Petition through counsel stating that Petitioner is now in Russia and has been deported. Undersigned counsel for the government has additionally confirmed that the United States Department of Homeland Security removed Petitioner to Russia on December 7, 2025, pursuant to a final order of removal. This Court therefore lacks jurisdiction under Article III of the Constitution and should dismiss this action. Fed. R. Civ. P. 12(b)(1).

The government requests that the Court deem this motion to be responsive to the Court's Order to Show Cause, which had ordered a response to the Petition for Writ of Habeas Corpus. Doc. 7.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Background.

Petitioner filed this habeas action on December 6, 2025, styling it as an Emergency Petition for Writ of Habeas Corpus, and stating that Petitioner is a Kyrgyzstan national who was detained by Immigration and Customs Enforcement (ICE) on June 4, 2025. Doc. 1, ¶ 1. This Court issued an order dated December 11, 2025, that *inter alia* required the United States to respond to the habeas arguments on or before December 18, 2025. Doc. 7.

On December 12, 2025, Petitioner through counsel filed an Amended Petition for Writ of Habeas Corpus. Doc. 9. In it, counsel now identifies Petitioner as "a Russian national" and states that DHS has removed Petitioner to Russia. Doc. 9, ¶ 1 (Petitioner was "removed on December 7, 2025"), ¶ 17 ("Defendants have deported her [to] Russia"), ¶ 67 ("Petitioner was deported to Russia on December 7, 2025), ¶ 70 ("removed by federal agents"), ¶ 97 ("Petitioner has been deported to Russia"), ¶ 98 ("Respondents have removed Petitioner"). The undersigned Assistant U.S. Attorney represents to this Court that DHS has confirmed the fact of removal and that Petitioner was removed to Russia on December 7, 2025.

In Petitioner's initial filing, she argued (*inter alia*) that DHS was detaining her indefinitely in violation of *Zadvydas v. Davis*, which holds that the United States may not indefinitely detain a noncitizen in a scenario where removal is not likely in "the reasonably foreseeable future." 533 U.S. 678, 701 (2001). Doc. 1, ¶ 95 (arguing that "Petitioner remains unremovable..."). In her Amended Petition, she appears to withdraw her *Zadvydas* claim but now argues that this Court should "order Respondents… to return the Petitioner to the United States…" Doc. 9, ¶ 75. Petitioner also seeks to invoke this Court's jurisdiction to "have her asylum application properly adjudicated…" Doc. 9, ¶ 68.

II. Law and Argument.

This Court lacks jurisdiction to grant any of the relief sought by Petitioner. First, as to her argument that this Court should exercise jurisdiction to "have [Petitioner's] asylum application properly adjudicated," Congress has mandated the procedure for such an issue to be heard, which is to present it to an Immigration Judge (IJ), then appeal the IJ's ruling to the

Board of Immigration Appeals (BIA), and then appeal the BIA's decision strictly to the Ninth Circuit Court of Appeals. *See, generally, Martinez v. Napolitano*, 704 F.3d 620, 622-23 (9th Cir. 2012), and 8 U.S.C. § 1252(a)(5). A habeas action in this Court is not a valid legal basis on which Petitioner may pursue her legal theory that she is entitled to asylum. Secondly, since Petitioner is no longer in the United States and not in custody, this Court lacks the ability to issue any redressable relief to Petitioner. This action is thus moot and does not meet the constitutional requirement of a live case or controversy under Article III. *PUC v. FERC*, 100 F.3d 1451, 1458 (9th Cir. 1996).

Because Petitioner is now in Russia, it is axiomatic that her initial claims in her original Petition that the government was indefinitely detaining her in violation of *Zadyvdas,* 533 U.S. at 701, are moot. The significant factor in analyzing whether the government is in violation of the Supreme Court's holding in *Zadvydas* is whether its period of detention of a noncitizen for any reason, such as the government's inability to find a country that will accept the noncitizen, is in violation of the statutory and constitutional time limit for detention. Since the government here has obviously identified Russia as a country that would accept Petitioner, and Russia then *did* accept Petitioner, there is no longer a factual and legal basis for her to argue that she is being unlawfully detained. Perhaps recognizing this point, Petitioner's Amended Petition now appears to withdraw her *Zadvydas* claims and arguments. Doc. 9.

Petitioner nonetheless persists in arguing that this Court should somehow order the United States to return Petitioner from Russia, order DHS to provide her with a revocation hearing on her now defunct and moot Order of Supervision and also order DHS to allow Petitioner to "exercise her statutory right to apply for asylum." Doc. 9, ¶ 83. This claim exceeds the jurisdiction of any federal district court in multiple respects. Because Petitioner is no longer in custody, the factual basis of her detention that warranted habeas jurisdiction is no longer valid, nor is there any reason to conduct a hearing on whether to revoke her Order of Supervision. The issue of her Order of Supervision is not, in other words, a valid basis on which the Court can or should require Petitioner's return from Russia. As for her argument that she should be permitted to apply for asylum, again, a noncitizen has no legal basis to do

so before a federal district court. Pursuant to 8 U.S.C. § 1252(a)(5), solely the Ninth Circuit has jurisdiction to review any challenge to the adjudication of an asylum application by an IJ. *Martinez*, 704 F.3d at 622.

The United States notes that a federal district court may in some instances have jurisdiction over a deported noncitizen where, for example, the noncitizen faces collateral consequences arising from the deportation that implicate violations of criminal law. *See, e.g., Abdala v. I.N.S.*, 488 F.3d 1061, 1064 (9th Cir. 2007). Petitioner has made no such claims or arguments here, however. As such, this Court should dismiss the Amended Petition and enter judgment in favor of Respondents.

Respectfully submitted on December 16, 2025.

TIMOTHY COURCHAINE
United States Attorney
District of Arizona

s/*Neil Singh*
NEIL SINGH
Assistant United States Attorney
Attorneys for Respondents