

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

JUAN EFREN GONZALEZ,

Petitioner,

v.

Case No. 2:26-cv-745-SPC-DNF

WARDEN, EVERGLADES
CORRECTIONAL INSTITUTION et al.,

Respondents.

**RESPONSE TO AND MOTION TO DISMISS PETITION FOR WRIT OF
HABEAS CORPUS**

Petitioner Juan Efren Gonzalez seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2241, seeking his immediate release from immigration custody on the basis that the length of his detention is unlawful. *See* Pet. 7, ECF No. 1. Federal Respondent hereby responds and moves to dismiss Petitioner’s Writ of Habeas Corpus for lack of jurisdiction pursuant to Federal Rule of Procedure 12(b)(1) because the petition was moot upon filing.

BACKGROUND

Juan Efren Gonzalez is a national and citizen of Cuba. Composite Ex. 1 at 31 (2025 Form I-213)¹; Pet. at 2 & 6. Petitioner last entered the United States at an

¹ At the motion to dismiss stage, the Court “may take judicial notice . . . of relevant public documents . . . [and] facts that are not subject to reasonable dispute because they are capable of

unknown date and time. Composite Ex. 1 at 31 (2025 Form I-213). On May 3, 1991, Petitioner was detained. *Id.* at 1 (Detention History). On May 7, 1991, Petitioner was released and paroled into the United States. *Id.* at 1 (Detention History) & 32 (2025 Form I-213). On April 13, 1995, Petitioner became a lawful permanent resident, which was retroactive to May 7, 1991. *Id.* at 2 (2017 NTA) & 32 (2025 Form I-213).

On December 7, 2011, Petitioner was convicted in the Circuit Court of the Sixth Judicial Court in and for Pinellas County, Florida, of one count of Conspiracy to Traffic in Cocaine and one count of Trafficking in Cocaine. *Id.* at 7-14 (2011 State Conviction Records). Both convictions are first degree felonies in the state of Florida. *Id.* at 8 (Criminal Information). Petitioner was sentenced to be imprisoned for a term of 10 years for each count, to run concurrently, with credit for 909 days already served. *Id.* at 14-17 (2011 State Sentence). On December 15, 2011, ICE placed an immigration detainer on Petitioner. *Id.* at 28-29 (2011 ICE Hold).

On May 16, 2017, Petitioner was issued a Notice to Appear (NTA) and placed in removal proceedings. *Id.* at 2 (2017 NTA). The NTA informed Petitioner that he had been admitted to the United States but was removable, in part, because of his criminal conviction from December 7, 2011. *Id.* Accordingly, the NTA informed Petitioner he was removable pursuant to section 237(a)(2)(B)(i) of the Immigration

accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” *Bryant v. Avado Brands, Inc.*, 187 F.3d 1271, 1278 (11th Cir. 1999) (citing Fed. R. Evid. 201); see also *Watts v. Joggers Run Prop. Owners Ass’n, Inc.*, 133 F.4th 1032, 1036 n.3 (11th Cir. 2025) (taking judicial notice of information on defendant’s website at motion to dismiss phase).

and Nationality Act, codified at 8 U.S.C. § 1227, because he was convicted of a controlled substance offense after having been admitted to the United States. *Id.* at 4. On May 22, 2017, Petitioner was detained. *Id.* at 1 (Detention History). On June 19, 2017, Petitioner was ordered removed to Cuba. *Id.* at 30 (2017 Removal Order). Petitioner waived his right to appeal, so the removal order became final that day. *Id.*

On August 25, 2017, ICE issued Petitioner a letter informing him of their decision to grant an Administrative Stay of Deportation or Removal for one year pursuant to section 241(c)(2)(A)(i) of the INA, codified at 8 U.S.C. § 1231(c)(2)(A)(i). *Id.* at 46 (2017 Removal Admin. Stay); *see also* 8 U.S.C. § 1231(c)(2)(A)(i) (“The Attorney General may stay the removal of an alien under this subsection if the Attorney General decides that immediate removal is not practicable or proper.”). By granting the Administrative Stay, ICE informed Petitioner they would not pursue removal for the period the stay was granted unless it was revoked or terminated. *Id.* at 46. On August 31, 2017, Petitioner was released on an Order of Supervision (OSUP). *Id.* at 1 (Detention History) & 40-45 (2017 OSUP Docs.)

On November 2, 2025, U.S. Citizenship and Immigration Services (USCIS) encountered Petitioner after he reported as scheduled on his OSUP to the ICE Enforcement and Removal Operations (ERO) office in Miramar, Florida. Composite Ex. 1 at 32 (2025 Form I-213). Petitioner was taken into custody without incident. *Id.* That same day, ICE issued Petitioner a Notice of Revocation of Release, notifying

him that his OSUP had been revoked and he would be detained. *Id.* at 37-39 (2025 OSUP Revocation) (citing 8 C.F.R. §§ 241.4 (continued detention beyond removal period) and 241.13 (determination of whether there is a significant likelihood of removal in the reasonably foreseeable future)). On November 3, 2025, Petitioner was transferred to Florida Soft Side South. *Id.* at 1 (Detention History).

On January 15, 2026, ICE issued Petitioner a Notice of Removal, informing him that ICE intended to remove him to Mexico. *Id.* at 6 (2026 Notice of Removal). On February 14, 2026, Juan Efren Gonzalez completed and signed a petition for writ of habeas corpus. *Pet.* at 8. On February 22, 2026, Petitioner was transferred from Florida Soft Side South to Winn Correctional Center. *Composite Ex.* at 1 (Detention History). On February 25, 2026, Petitioner was transferred to Port Isabel SPC. *Id.* On February 27, 2026, Petitioner was removed through Port Isabel. *Id.* at 1 & 66-67 (Warrant of Removal/Deportation). His petition was not filed with the United States District Court for the Middle District of Florida until March 16, 2026. *See Pet.*

In his petition, Juan Efren Gonzalez alleges his custody violates the Due Process Clause of the Fifth Amendment. *Pet.* at 6. Specifically, Petitioner claims his “continued detention violates the Due Process Clause as interpreted in [*Zadvydas*]” because he “ha[s] been detained beyond the presumptively reasonable six month period, and there is no significant likelihood of removal in the reasonably foreseeable future” because “ICE has not secured travel documents, and Cuba routinely refuses or delays repatriation.” *Id.*

CERTIFIED HABEAS RETURN

ICE is no longer detaining Juan Efren Gonzalez, but was detaining him pursuant to 8 U.S.C. § 1231 and 8 C.F.R. § 241 up until February 27, 2026. *See* 28 U.S.C. § 2243 (“The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.”). Petitioner “has the burden of establishing his right to federal habeas relief and of proving all facts necessary to show a constitutional violation.” *Romine v. Head*, 253 F.3d 1349, 1357 (11th Cir. 2001).

LEGAL STANDARD

A court must dismiss an action if it determines, at any time, that it lacks subject matter jurisdiction. Fed. Rs. Civ. P. 12(b)(1) & 12(h)(3). The party invoking jurisdiction bears the burden of proving jurisdiction is proper. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 104 (1998). “A defendant can move to dismiss a complaint under Rule 12(b)(1) for lack of subject matter jurisdiction by either facial or factual attack.” *Stalley ex rel. U.S. v. Orlando Reg’l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008). When a defendant makes a factual attack, the court may consider matters outside of the pleadings that relate to the existence of subject matter jurisdiction. *Id.* If the defendant brings a facial attack under Rule 12(b)(1) by arguing that under the facts alleged in the complaint the court lacks subject matter jurisdiction, then a court will treat the factual allegations in the complaint as true—just as under a Rule 12(b)(6) motion—and will determine whether those allegations are sufficient to

establish subject matter jurisdiction. *See Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir. 1990). Defendant brings a factual challenge

Federal courts may only hear “cases” and “controversies.” U.S. CONST. art. III, § 2, cl. 1. A court lacks jurisdiction where an action no longer presents a live controversy through which meaningful relief can be granted. *Fla. Ass’n of Rehab. Facilities, Inc. v. Fla. Dep’t of Health and Rehab. Servs.*, 225 F.3d 1208, 1216-17 (11th Cir. 2000). The doctrine of mootness demands that the Court “look at the events at the present time, not at the time the complaint was filed.” *Dow Jones & Co. v. Kaye*, 256 F.3d 1251, 1254 (11th Cir. 2001). And where events take place subsequent to the filing of the claim that would preclude a court from granting meaningful relief, the issue becomes moot and the case must be dismissed. *Al Najjar v. Ashcroft*, 273 F.3d 1330, 1336 (11th Cir. 2001).

MEMORANDUM OF LAW

I. The Court Lacks Jurisdiction Over Juan Efren Gonzalez’s Habeas Petition Because His Claim is Moot

ICE removed Juan Efren Gonzalez on February 27, 2026, seventeen days before his habeas petition was filed with the Court on March 12, 2026. *Compare* Comp. Ex. 1 at 1 & 66-67 *with* Pet. The Court lacked subject matter jurisdiction over Petitioner’s petition at the time it was filed because there was no longer a live controversy through which meaningful relief could be granted. *Fla. Ass’n of Rehab.*

Facilities, Inc., 225 F.3d at 1216-17 (finding a case moot when it no longer presents a controversy that can be meaningfully remedied through the court).

The doctrine of mootness derives directly from the case-or-controversy limitation because “an action that is moot cannot be characterized as an active case or controversy.” *Adler v. Duval County Sch. Bd.*, 112 F.3d 1475, 1477 (11th Cir.1997). “[W]hen the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome” the matter is moot. *Al Najjar*, 273 F.3d at 1335-36. In the habeas context the general rule is that there is only a live case or controversy when a petitioner is in custody. 28 U.S.C. § 2241(c); *Spencer v. Kemna*, 523 U.S. 1, 7-8 (1998); *Salmeron-Salmeron v. Spivey*, 926 F.3d 1283, 1289 (11th Cir. 2019). Accordingly, if—subsequent to the filing of the lawsuit—events take place that deprive the court of the ability to grant meaningful relief, the matter is moot and the case must be dismissed. *See, e.g., Hall v. Beals*, 396 U.S. 45, 48 (1969) (per curiam).

Still, the Eleventh Circuit has found that in the immigration context, a habeas petition filed by an alien who is subsequently deported may survive a mootness challenge where the petition challenges not only his detention, but also his final order of removal. *See Moore v. Ashcroft*, 251 F.3d 919, 922 (11th Cir. 2001). Here, because Petitioner was removed before his petition was filed, the Court was never able to grant him any meaningful relief. However, even if he had been removed after his petition was filed, Petitioner specifically explains that he was “not challenging the removal order itself, only ICE’s continued detention.” Pet. at 5. Because Petitioner challenges

his detention—and only his detention—the general rule in immigration habeas petition mootness should apply, and this case should be dismissed.

Furthermore, none of the other exceptions to the mootness doctrine apply here. There are three distinct scenarios in which a court may find jurisdiction notwithstanding subsequent action that otherwise moots a case: (1) when the defendant's action is capable of repetition yet evading review, (2) when collateral consequences are at issue, and (3) when a petitioner has taken all necessary steps to preserve the status quo.

The first exception—capable of repetition yet evading review—is a narrow exception, applicable only in exceptional situations. *Al Najjar*, 273 F.3d at 1336. It applies when “(1) there [is] a reasonable expectation or a demonstrated probability that the *same* controversy will recur involving the *same* complaining party, and (2) the challenged action is in its duration too short to be fully litigated prior to its cessation or expiration.” *Soliman v. U.S. ex rel. INS*, 296 F.3d 1237, 1242-43 (11th Cir. 2002) (quoting *Sierra Club v. Martin*, 110 F.3d 1551, 1554 (11th Cir.1997) (emphasis added)). A remote possibility of repetition is not enough. *Al Najjar*, 271 F.3d at 1336. Here, there is no reason to believe that the same detention dispute will take place between these parties because Petitioner is no longer in the United States. Put simply, the same dispute is not likely to arise again between these parties because Federal Respondent has no reason to detain Petitioner under a removal order they have already executed.

The second exception—collateral consequences—is triggered where detention has a “tangible collateral consequence” that persists after release. *See Salmeron-Salmeron*, 926 F.3d at 1290; *Djadju v. Vega*, 32 F.4th 1102, 1107 (11th Cir. 2022). Here, there are none. Petitioner was detained for the purpose of executing an order of removal that has been final since 2017. Composite Ex. 1 at 30. The consequence of his detention is that he was removed from the United States pursuant to a valid and final order allowing as such. Petitioner did not—and could not—challenge his removal order through his habeas petition and the only relief the Court could have granted on his detention challenge was release. This exception therefore does not apply here.

Finally, the third exception—all necessary steps—is implicated where a petitioner “has taken all steps necessary to perfect the appeal and to preserve the status quo before the dispute becomes moot.” *B&B Chem. Co. v. E.P.A.*, 806 F.2d 987, 990 (11th Cir. 1986). “This exception, however, is an extremely narrow one that has been limited primarily to criminal defendants who seek to challenge their convictions notwithstanding that they have been released from custody.” *Ethredge v. Hail*, 996 F.2d 1173, 1176-77 (11th Cir. 1993). Although the undersigned has not identified any case applying this doctrine in the immigration habeas context, Federal Respondent argues this exception does not apply here. First, Petitioner did not appeal his final order of removal to the Board of Immigration Appeals; rather, he waived that right. *See* Pet. at 4; Composite Ex. at 30; *see also B&B Chem. Co.*, 806 F.2d at 990 (finding appellant did not satisfy the “all necessary steps” exception by failing to appeal to the appropriate

appellate court); *Kim v. Gentry*, No. 5:23-cv-1740-MHH-HNJ, 2025 WL 468670, at *2 (N.D. Ala. Jan. 13, 2025) (finding “all necessary steps” exception did not apply because the “case does not involve an appeal”). Second, he did not attempt to stay the execution of the removal order, even after ICE notified him of their intent to remove him to Mexico. Composite Ex. 1 at 6; see *Koppers Indus., Inc. v. U.S. E.P.A.*, 902 F.2d 756, 759 (9th Cir. 1990) (finding “all necessary steps” exception did not apply when appellant did not move to stay the execution of a warrant). Here, Petitioner did not challenge the validity of the removal order or its execution at all; he challenged the validity of his detention. See Pet. Thus, this exception does not apply either.

When Petitioner was removed pursuant to a final order of removal prior to his petition being filed with the Court, this matter became moot. See, e.g., *Salmeron-Salmeron*, 926 F.3d at 1290 (holding habeas moot when removal occurred during the pendency of the action); *Soliman*, 296 F.3d at 1243-44 (same during appeal); *Wilson Mayorga Carias v. ICE Field Officer Director*, No. 2:25-cv-853-KCD-DNF, Doc. 17 (M.D. Fla. Nov. 6, 2025) (denying habeas petition in part because his removal rendered the case or controversy moot). Indeed, from the date of filing, there was no live case or controversy that could be remedied by any order of this Court. This case should therefore be dismissed.

CONCLUSION

Federal Respondent moves for Petitioner Juan Efren Gonzalez's petition to be dismissed as moot or otherwise denied.

LOCAL RULE 3.01(g) CERTIFICATION

Pursuant to Local Rule 3.01(g), the undersigned cannot certify that she has contacted Petitioner, who is proceeding *pro se*, because he was removed prior to his petition being filed. The undersigned has no contact information for Petitioner who, upon information and belief, is in Mexico. Accordingly, the undersigned respectfully requests the Court suspend the application of Local Rule 3.01(g) in this instance.

DATED this 24th day of March, 2026.

Respectfully submitted,

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