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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Moez Fardmanesh,

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No. CV-08-1526-PHX-ROS (LOA)

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Petitioner,

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REPORT AND RECOMMENDATION

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vs.

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Katrina Kane,

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Respondent.

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This matter arises on Petitioner’s Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241. (docket # 1) Petitioner claims that his prolonged detention by the Department of Homeland Security (“DHS”) beyond the 180-day removal period violates his due process rights as articulated in *Zadvydas v. Davis*, 533 U.S. 678 (2001). He further argues that he applied for supervised release on June 6, 2008, but had not received a ruling as of August 14, 2008. (docket # 1 at 4) Petitioner seeks release from custody pending his removal to Iran.

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I. Suggestion of Mootness

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On October 24, 2008, Respondent filed a Response to Petition for Writ of Habeas Corpus and Suggestion of Mootness, asserting that this matter is moot because Petitioner was released from custody under an order of supervision on October 16, 2008. (docket # 10) Respondent has submitted a copy of the Order of Supervision, signed by Petitioner, which evidences his release from custody pursuant to the terms of that Order. On October 27, 2008, the Court received returned mail marked undeliverable addressed to

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1 Petitioner at his address on file with the Court. (docket # 11) Petitioner has not notified
2 the Court of his current address.

3 Petitioner’s failure to advise the Court of his current address constitutes a
4 sufficient basis for dismissing this matter. *Carey v. King*, 856 F.2d 1439, 1441 (9th Cir.
5 1988) (“A party, not the district court, bears the burden of keeping the court apprized of
6 any changes in his mailing address.”) Moreover, as discussed below, this matter is moot.

7 **II. Analysis**

8 In his § 2241 Petition, Petitioner seeks immediate release from custody because his
9 prolonged and indefinite detention violates the Due Process clause. *See Zadvydas v.*
10 *Davis*, 533 U.S. 678 (2001). Petitioner specifically requests the Court “order the
11 Department of Homeland Security to immediately grant me supervised release.” (docket
12 # 1 at 9)

13 After Petitioner filed his Petition, on or about October 16, 2008, he was released
14 from custody under an order of supervised release. (docket # 10, Exh. A) In view of his
15 release on supervised release, Petitioner has received the only relief he was seeking in his
16 § 2241 petition.

17 The jurisdiction of the federal courts depends on the existence of a “case or
18 controversy.” *PUC v. FERC*, 100 F.3d 1451, 1458 (9th Cir. 1996). Specifically, “Article
19 III of the Constitution mandates that an actual case or controversy exist at all stages of
20 judicial review.” *Ortez v. Chandler*, 845 F.2d 573, 574-575 (5th Cir. 1988) (holding that
21 no case or controversy existed where movant, who challenged his bond determination,
22 had been deported because the relief he requested — reduction of his bond — could no
23 longer be effected.) This Court lacks jurisdiction to review moot issues. *Gator.com*
24 *Corp. v. L.L. Bean, Inc.*, 398 F.3d 1125, 1128-29 (9th Cir. 2005) (stating that “[i]t is an
25 inexorable command of the United States Constitution that the federal courts confine
26 themselves to deciding actual cases and controversies.”).

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28 Here, Petitioner only challenges his prolonged and indefinite detention by DHS.

1 In view of Petitioner’s release from custody, the relief he requests — release from
2 custody on supervised release — can no longer be effected. Therefore, no “case or
3 controversy” remains and the Petition is moot. *Picrin-Peron v. Rison*, 930 F.2d 773, 776
4 (9th Cir. 1991) (finding that because petitioner only requested release from custody and
5 had been released, the court could provide no further relief and the petition was properly
6 dismissed.); *American Rivers v. National Marine Fisheries Services*, 126 F.3d 1118, 1123
7 (9th Cir. 1997) (stating that “[a] claim is moot if it has lost its character as a present, live
8 controversy.”) (citation omitted); *Xie v. Schiltgen*, No. C 99-4150 VRW, 2001 WL
9 637409, * 1 (N.D. Cal., May 24, 2001). In cases in which the actions sought to be
10 enjoined or ordered have already occurred, and the courts “cannot undo what has already
11 been done, the action is moot.” *Friends of the Earth, Inc. v. Bergland*, 576 F.2d 1377,
12 1379 (9th Cir. 1978).

13 In view of the Petitioner’s failure to advise the Court of his current address and his
14 release from custody, which rendered his Petition moot, his Petition should be dismissed.

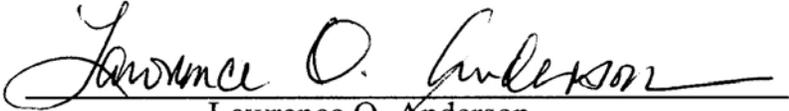
15 Accordingly,

16 **IT IS HEREBY RECOMMENDED** Petitioner’s Petition for Writ of Habeas
17 Corpus (docket # 1) be **DENIED**.

18 This recommendation is not an order that is immediately appealable to the Ninth
19 Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of
20 Appellate Procedure, should not be filed until entry of the District Court’s judgment. The
21 parties shall have ten days from the date of service of a copy of this recommendation
22 within which to file specific written objections with the Court. *See*, 28 U.S.C. §
23 636(b)(1); Rules 72, 6(a), 6(e), Federal Rules of Civil Procedure. Thereafter, the parties
24 have ten days within which to file a response to the objections. Failure timely to file
25 objections to the Magistrate Judge’s Report and Recommendation may result in the
26 acceptance of the Report and Recommendation by the District Court without further
27 review. *See United States v. Reyna- Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Failure
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1 timely to file objections to any factual determinations of the Magistrate Judge will be
2 considered a waiver of a party's right to appellate review of the findings of fact in an
3 order or judgment entered pursuant to the Magistrate Judge's recommendation. *See*, Rule
4 72, Federal Rules of Civil Procedure.

5 DATED this 10th day of November, 2008.

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8 Lawrence O. Anderson
United States Magistrate Judge

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