

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

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| <p>VICTORIA OGWONNA OWOEDU,</p> |) | |
| |) | |
| Petitioner, |) | 2: 09-cv-00654 JWS |
| |) | |
| vs. |) | ORDER FROM CHAMBERS |
| |) | |
| J. SCHOMIG, |) | |
| |) | |
| Respondent. |) | |
| |) | |

At docket 1 Victoria Ogonna Ofoedu filed a petition pursuant to 28 U.S.C. § 2241 alleging that she was being kept in custody unlawfully while awaiting removal to Nigeria. Thereafter, Ofoedu filed a motion at docket 11 “Asking for Stays of Removal/release from ICE custody” on July 9, 2009.¹ Subsequently, respondent filed a suggestion of mootness pointing out that Ofoedu had been released under an order of supervision. Such a release would render her petition moot. *Abdala v. INS*, 488 F.3d 1061, 1064 (9th Cir. 2007). A day later, Ofoedu filed a motion of voluntary dismissal of her petition at 15.

After reviewing the record, the magistrate judge recommended that the motion at docket 11 be denied, the motion at docket 15 be granted, and the petition at docket 1 be

¹Doc. 11 at p. 2.

dismissed without prejudice as moot. Neither party filed a timely objection to the recommendation. Ofoedu, however, did file an untimely objection at docket 18. The objection confirms that she has been released from custody, but asks that she be afforded a stay of removal.

When reviewing a magistrate judge's recommendations in a case such as this one, this court conducts *de novo* review of all recommended conclusions of law, and any recommended findings of fact to which objections have been taken.

Recommended findings of fact as to which no objection has been taken are reviewed for clear error. Having applied those standards of review, this court finds that the recommended findings of fact and conclusions of law are correct in all material respects save one. The magistrate judge did not consider the fact that the motion at docket 11 also included a request for stay of removal. However, the request for a stay of removal in the motion at docket 11 has effectively been replaced by Ofoedu's new motion for stay of removal at docket 19. Ofoedu has also filed a document at docket 21 which the court interprets to be further support for the motion at docket 19.

Under the unusual circumstances created by Ofoedu's actions taken subsequent to the recommendation by the magistrate judge and subsequent to the expiration of the time for objections to his recommendations, this court has determined to proceed as follows:

IT IS ORDERED:

This court adopts the recommendation at docket 18 and pursuant thereto the motion at docket 11 is **DENIED**, the motion at docket 15 is **GRANTED**, and the petition at docket 1 is **DISMISSED as moot**, provided, however, that,

IT IS FURTHER ORDERED:

This case will remain open despite dismissal of the original petition so that the motion at docket 19 may be considered, and the motion at docket 19 is referred to the magistrate judge for a report and recommendation pursuant to 28 U.S.C. § 636 (b).

DATED this 12th day of August 2009.

/s/ JOHN W. SEDWICK
UNITED STATES DISTRICT JUDGE