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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

ERIC JALLAYOU,	)	
	)	
Petitioner,	)	
	)	
v.	)	CIV 09-01592 PHX MHM (MEA)
	)	
JAMES KIMBLE, KATRINA KANE,	)	REPORT AND RECOMMENDATION
JANET NAPOLITANO, ERIC H.	)	
HOLDER, JR.,	)	
	)	
Respondents.	)	
	)	

15 TO THE HONORABLE MARY H. MURGUIA:

16 Mr. Eric Jallayou ("Petitioner"), who is represented by  
17 counsel in this matter, filed a Petition for Writ of Habeas  
18 Corpus ("Petition") pursuant to 42 U.S.C. § 2241 on August 3,  
19 2009, asserting his continued detention by Respondents pending  
20 his removal from the United States violated United States law.

21 **1. Procedural History**

22 Petitioner is a native and citizen of Liberia. See  
23 Docket No. 1. Petitioner entered the United States on or about  
24 April 9, 2004. Id. Petitioner was taken into the custody of  
25 United States Immigration and Customs Enforcement ("ICE") on or  
26 about March 19, 2009. In his federal habeas petition,  
27 Petitioner asserted his detention by ICE was in violation of  
28 federal statutes and his rights pursuant to the United States  
Constitution. The relief sought in the petition was

1 declaratory, i.e., that Petitioner's detention was not  
2 authorized, and Petitioner's immediate release from custody.

3 Petitioner also filed a motion for preliminary  
4 injunctive relief. See Docket No. 2. Petitioner also filed a  
5 motion for joinder, a motion to consolidate cases, and an  
6 amended motion to consolidate cases. See Docket No. 4, Docket  
7 No. 9, Docket No. 10. On August 14, 2009, the Court denied the  
8 motions for injunctive relief and to consolidate cases.

9 Also on August 14, 2009, Petitioner filed a motion to  
10 withdraw his petition for relief, averring to the Court that he  
11 has been released from ICE custody and "therefore, his claim for  
12 relief has been satisfied." Docket No. 12.

## 13 **2. Analysis**

14 Petitioner avers he has been released from detention.  
15 Because the petition for habeas relief attacks only Petitioner's  
16 continued detention, the petition is now moot. The  
17 case-or-controversy requirement of Article III, § 2, of the  
18 United States Constitution "subsists through all stages of  
19 federal judicial proceedings ... The parties must continue to  
20 have a personal stake in the outcome of the lawsuit." Lewis v.  
21 Continental Bank Corp., 494 U.S. 472, 477-78, 110 S. Ct. 1249,  
22 1253-54 (1990) (internal quotations omitted). If it appears  
23 that the Court is without the power to grant the relief  
24 requested by a habeas petitioner, then that case is moot. See  
25 Picrin-Peron v. Rison, 930 F.2d 773, 775 (9th Cir. 1991).

26 The relief that Petitioner requested in his habeas  
27 petition, i.e., his release from continued detention, can no  
28 longer be granted by the Court. Therefore, this habeas action,

1 alleging his continued detention violates federal law and his  
2 constitutional rights, is moot. See Abdala v. I.N.S., 488 F.3d  
3 1061, 1065 (9th Cir. 2007); Picrin-Peron, 930 F.2d at 775; Ferry  
4 v. Gonzales, 457 F.3d 1117, 1132 (10th Cir. 2006); Soliman v.  
5 United States, 296 F.3d 1237, 1243 (11th Cir. 2002).

### 6 3. Conclusion

7 The Petition for Writ of Habeas Corpus is moot because  
8 the petition challenges only the legitimacy of Petitioner's  
9 continued detention and Petitioner has now been released from  
10 detention. There is no existing case or controversy over which  
11 this Court may exercise jurisdiction and, therefore, this case  
12 is moot.

13  
14 **IT IS THEREFORE RECOMMENDED** that Mr. Jallayou's motion  
15 to withdraw his petition be **granted** and the Petition for Writ of  
16 Habeas Corpus be **dismissed with prejudice as moot**.

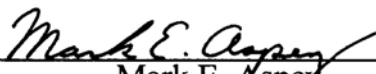
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18 This recommendation is not an order that is immediately  
19 appealable to the Ninth Circuit Court of Appeals. Any notice of  
20 appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate  
21 Procedure, should not be filed until entry of the district  
22 court's judgment.

23 Pursuant to Rule 72(b), Federal Rules of Civil  
24 Procedure, the parties shall have ten (10) days from the date of  
25 service of a copy of this recommendation within which to file  
26 specific written objections with the Court. Thereafter, the  
27 parties have ten (10) days within which to file a response to  
28 the objections. Pursuant to Rule 7.2, Local Rules of Civil

1 Procedure for the United States District Court for the District  
2 of Arizona, objections to the Report and Recommendation may not  
3 exceed seventeen (17) pages in length.

4 Failure to timely file objections to any factual or  
5 legal determinations of the Magistrate Judge will be considered  
6 a waiver of a party's right to de novo appellate consideration  
7 of the issues. See United States v. Reyna-Tapia, 328 F.3d 1114,  
8 1121 (9th Cir. 2003) (en banc). Failure to timely file  
9 objections to any factual or legal determinations of the  
10 Magistrate Judge will constitute a waiver of a party's right to  
11 appellate review of the findings of fact and conclusions of law  
12 in an order or judgment entered pursuant to the recommendation  
13 of the Magistrate Judge.

14 DATED this 31<sup>st</sup> day of August, 2009.

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19 Mark E. Aspey  
20 United States Magistrate Judge  
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