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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

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Sasa Buzancic,

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No. CV-09-1943-PHX-DGC (MHB)

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Petitioner,

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**ORDER**

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vs.

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Katrina Kane, Field Office Director,  
ICE; Eric H. Holder, Attorney General of  
the United States; Janet Napolitano,  
Secretary of the Department of  
Homeland Security; and John Crowther,  
Warden of Florence Service Processing  
Center,

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Respondents.

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Petitioner Sasa Buzancic is a citizen of Bosnia who entered the United States as a  
refugee in 2003. He was taken into custody by the United States Immigration and Customs  
Enforcement (“ICE”) in early September 2009 for having failed to become a lawful  
permanent resident within one year of having entered the United States as required by  
8 U.S.C. § 1159. On September 18, 2009, Petitioner filed a petition pursuant to 28 U.S.C.  
§ 2241 seeking a writ of habeas corpus releasing him from custody. Doc. 1. He argues  
that ICE has interpreted § 1159 to authorize his indefinite detention in violation of the  
Immigration and Nationality Act and the Due Process Clause of the Fifth Amendment. *Id.*

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Petitioner was released from custody on October 15, 2009. Doc. 19-1 at 8-10.  
Magistrate Judge Burns has issued a report and recommendation (“R&R”) that the petition

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1 be denied as moot. Doc. 51. Petitioner has filed objections (Doc. 52) and Respondents have  
2 replied (Doc. 53). No party has requested oral argument. For reasons that follow, the Court  
3 will accept the R&R and deny the petition as moot.<sup>1</sup>

4 **I. Legal Standard.**

5 A party may file written objections to an R&R within ten days after being served with  
6 a copy of the R&R. Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(C). The Court must  
7 undertake de novo review of those portions of the R&R to which specific objections are  
8 made. *See id.*; *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*,  
9 328 F.3d 1114, 1121 (9th Cir. 2003). The Court may accept, reject, or modify, in whole or  
10 in part, the findings or recommendations made by the magistrate judge. *See* 28 U.S.C. §  
11 636(b)(1).

12 **II. Analysis.**

13 “Under Article III of the Constitution, federal courts may adjudicate only actual,  
14 ongoing cases or controversies.” *Lewis v. Cont’l Bank Corp.*, 494 U.S. 472, 477 (1990).  
15 Article III generally “denies federal courts the power ‘to decide questions that cannot affect  
16 the rights of litigants in the case before them[.]’” *Id.* (citation omitted). This case or  
17 controversy requirement “subsists through all stages of federal judicial proceedings[.]” *Id.*

18 Petitioner’s release in October 2009 negates the purpose of a writ of habeas corpus,  
19 that is, “to secure immediate release from illegal physical custody.” *Picrin-Peron v. Rison*,  
20 930 F.2d 773, 775 (9th Cir. 1991). “Under certain circumstances, a petitioner who has been  
21 released may nevertheless meet the ‘case or controversy’ requirement by establishing that  
22 an exception to mootness applies.” *Alizadeh v. Kane*, No. CV-09-1942-PHX-GMS (MEA),  
23 2010 WL 5146743, at \*1 (D. Ariz. Dec. 13, 2010) (citing *Clark v. Martinez*, 543 U.S. 371,  
24 376 n.3 (2005)). Petitioner asserts that his petition for writ of habeas corpus is not moot

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26 <sup>1</sup>After his initial release in October 2009, Petitioner was convicted of possession of  
27 marijuana and drug paraphernalia. Doc. 19-1 at 16-23. He subsequently was granted a  
28 waiver of admissibility and, on February 24, 2010, ICE released him from custody to allow  
him to obtain vaccinations necessary to grant his application for adjustment of status.  
Doc. 41-1.

1 because the “capable of repetition” and “voluntary cessation” exceptions apply.

2 **A. Capable of Repetition.**

3 Petitioner acknowledges that “he is unlikely to be detained under § 1159 in the  
4 future.” Doc. 52 at 3. He nonetheless objects to the R&R on the ground that it “errs in  
5 limiting the ‘capable of repetition’ doctrine to cases in which the same party must again be  
6 subject to the same action.” *Id.*

7 Petitioner’s reliance on *United States v. Brandau*, 578 F.3d 1064 (9th Cir. 2009), is  
8 misplaced. The discussion of the “capable of repetition” exception in that case “was based  
9 on information ‘that strongly suggested’ that the policy of [full shackling at initial court  
10 appearances] was ongoing, including statements made by government counsel confirming  
11 the status of the policy.” *Alizadeh*, 2010 WL 5146743, at \*3 (brackets omitted). The Court  
12 concurs with the finding by Judge Burns (Doc. 51 at 8-9) that the written guidance provided  
13 by ICE in November 2009 and May 2010 governing detention of unadjusted refugees under  
14 § 1159 – specifically, that a determination must be made within 48 hours whether to release  
15 an alien or place him in removal proceedings (Doc. 50-1 at 3-8) – demonstrates the absence  
16 of an ongoing policy of indefinite detention. Petitioner has not shown otherwise. *See* Doc.  
17 51 at 9.

18 Petitioner’s reliance on *United States v. Howard*, 480 F.3d 1005 (9th Cir. 2007), is  
19 also misplaced. The criminal defendants in *Howard*, like the ones in *Brandau*, were  
20 “challenging an *ongoing* government policy.” 480 F.3d at 1010 (emphasis added).  
21 Furthermore, the defendants in *Howard* sought “to represent interests broader than their  
22 own[.]” *Id.* Petitioner, by contrast, has sought only *his* immediate release from custody. *See*  
23 Doc. 1 at 3 (Petitioner “petitions this Court for a writ of habeas corpus releasing *him* from  
24 custody); at 4 (Petitioner “seeks a writ of habeas corpus ordering *his* immediate release  
25 from immigration custody”); at 7-8 (Petitioner “argues that *his* ongoing detention is not  
26 authorized” and “*his* continued incarceration is unlawful”); at 9 (requesting an order that  
27 Respondents “immediately release *Petitioner*”) (emphasis added). Petitioner, “who only  
28 sought relief for himself in his habeas petition, cannot properly forestall a mootness dismissal

1 under the ‘capable of repetition’ exception by recharacterizing his petition as a generic  
2 challenge to ICE’s § 1159 detention policy.” Doc. 41 at 3, *Vue v. Kane*, No. CV-09-1939-  
3 PHX-PGR (MHB) (D. Ariz. Jan. 6, 2011).

4 A policy of indefinite detention under § 1159 is ongoing, Petitioner asserts, because  
5 “an immigration judge has no jurisdiction to conduct removal proceedings for a refugee who  
6 has not received a finding of inadmissibility from USCIS.” Doc. 52 at 5-6. But Petitioner  
7 cites no case law or statute in support of this assertion. He has not shown an ongoing policy  
8 of indefinite detention under § 1159, and therefore has not established the “capable of  
9 repetition” exception to mootness.

10 **B. Voluntary Cessation.**

11 Under the “voluntary cessation” exception, the mere cessation of alleged unlawful  
12 activity does not render litigation moot unless the party asserting mootness makes clear that  
13 the “allegedly wrongful behavior could not be expected to recur.” *Friends of the Earth,*  
14 *Inc. v. Laidlaw Envtl. Servs., (TOC), Inc.*, 528 U.S. 167, 189 (2000) (citation omitted). The  
15 Court finds that Respondents have sufficiently met their burden of showing that ICE’s  
16 adoption in 2009 and 2010 of guidance policies regarding detention of unadjusted refugees,  
17 coupled with the declaration of Director Kane detailing efforts made to ensure that those  
18 policies were being implemented, “has made it clear that the allegedly wrongful § 1159-  
19 related detention policies underlying this action cannot reasonably be expected to recur.”  
20 Doc. 41 at 3, *Vue v. Kane*, No. CV-09-1939. Judge Burns found, correctly, that the  
21 “voluntary cessation” exception does not apply in this case. Doc. 51 at 9-13.

22 **C. ICE’s Conduct in Other Cases.**

23 Petitioner objects (Doc. 52 at 9) to the finding by Judge Burns that ICE’s conduct in  
24 *Bangjeglavic v. Kane*, No. CV-09-2523-PHX-NVW (ECV), demonstrates compliance with  
25 the guidance memoranda, that is, although the petitioner “was initially detained in excess of  
26 the time allotted, once his file was reviewed – pursuant to the new guidelines – he was  
27 promptly released” (Doc. 51 at 13). Petitioner also notes that in *Gelee v. Kane*, CV-10-388-  
28 PHX-PGR (MHB), the petitioner was held for over two weeks before being placed in

1 removal proceedings. Doc. 52 at 9-10.

2 The Court does not disagree with Judge Burns. ICE's conduct in *Bangjeglavic*  
3 demonstrates a good faith effort to comply with the guidance memoranda and not detain  
4 unadjusted refugees indefinitely under § 1159. Moreover, ICE's conduct in both  
5 *Bangjeglavic* and *Gelee* predates the guidance memorandum issued by Executive Director  
6 Chaparro in May 2010. Doc. 50-1 at 5-8. That memorandum explicitly provides that "upon  
7 the arrest of an unadjusted refugee upon reasonable belief of removability, a DRO Field  
8 Office must determine, *no later than 48 hours after the arrest*, whether to release the  
9 individual or issue a Notice to Appear[.]" *Id.* at 6 (emphasis added). Where no  
10 determination has been made "within the initial 48-hour period," ICE officials are instructed  
11 to "release the alien[.]" *Id.* at 7. Petitioner has presented no evidence showing that ICE  
12 officials have failed to follow this directive.

13 **III. Conclusion.**

14 Petitioner has been released from custody. He "has neither demonstrated that there  
15 is a reasonable risk that he will be detained in the future nor that the policy of detaining  
16 refugees indefinitely under § 1159 is ongoing." *Alizadeh*, 2010 WL 5146743, at \*3. His  
17 petition for a writ of habeas corpus releasing him from custody is moot. *See id.*

18 **IT IS ORDERED:**

- 19 1. Magistrate Judge Burns' report and recommendation (Doc. 51) is **accepted**.  
20 2. Petitioner Sasa Buzancic's petition for writ of habeas corpus (Doc. 1) is  
21 **denied** as moot.  
22 3. A certificate of appealability is **denied** because Petitioner has not made a  
23 substantial showing of the denial of a constitutional right.  
24 4. The Clerk is directed to enter judgment accordingly.

25 DATED this 31st day of January, 2011.

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David G. Campbell  
United States District Judge