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

Kole Akinola,
Petitioner,
v.
Kris Kline, et al.,
Respondents.

No. CV-17-02975-PHX-DJH
ORDER

This matter is before the Court on the Report and Recommendation (“R&R”) issued by United States Magistrate John Z. Boyle (Doc. 19) to Respondents’ Motion to Dismiss and/or Transfer Venue to the District of New Jersey. (Doc. 13). Petitioner filed his Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 on August 31, 2017 (Doc. 1). Respondents filed their Motion to Dismiss on October 3, 2017. The R&R recommends granting the Motion to Dismiss the Petition. Petitioner has filed an Objection to the Report and Recommendation (Doc. 20). Respondents have filed a response to Petitioner’s Objection (Doc. 23). Petitioner also filed a supplemental objection to the R&R (Doc. 21) and a “Traverse” to the Respondents’ Response (Doc. 24). The Court will strike both of those filings as being non-compliant with the Local Rules.¹

¹ Petitioner filed a sixteen-page objection and a seven-page “Supplemental Objection” containing substantially the same information that was included in his first Objection. He also filed a “Traverse” in response to the Respondents’ Reply. (Doc. 24). These supplemental pleadings do no more than highlight arguments already made. Because they were filed without leave of the Court in violation of LRCiv 7.2(e)(3), these pleadings will be stricken from the record.

1 Petitioner, who is awaiting removal to Nigeria, asserts his detention period has
2 been longer than what is reasonable and therefore that he is entitled a bond hearing
3 pursuant to 8 U.S.C. § 1226(a). (Doc. 1). An order was issued for Petitioner to be
4 removed from the country. Petitioner filed a Petition for Review (“PFR”) of that decision
5 in the Ninth Circuit Court of Appeals, which automatically stayed Petitioner’s removal.
6 The present Petition followed.

7 Respondents’ Motion to Dismiss argues that the Petition is duplicative of a
8 Petition filed by Petitioner in the District of New Jersey. (Doc. 13). Moreover,
9 subsequent to the filing of the Motion to Dismiss, the Ninth Circuit denied the PFR and
10 vacated the stay of Petitioner’s removal. (Doc. 17-1 at 15). Based on this ruling, the
11 R&R found that the Petitioner’s arguments are moot. Additionally, the R&R found that
12 all of the claims in the Petition are duplicative to the New Jersey Petition.² Accordingly,
13 the Magistrate Judge recommends the Motion to Dismiss be granted. (Doc. 19 at 6). For
14 reasons stated below, the Court will adopt the recommendation of the Magistrate Judge
15 and grant Respondents’ Motion to Dismiss.

16 **I. Background**

17 Petitioner, a citizen of Nigeria, was convicted in state court in New Jersey on April
18 13, 2000, and was sentenced to a term of ten years imprisonment. (Doc. 13-1 at 1). On
19 July 12, 2010, an immigration judge ordered Petitioner to be removed from the United
20 States. (*Id.*) On April 27, 2011, Petitioner was arrested on federal criminal charges and
21 was detained pending trial. (*Id.*) This detention forms the basis for the Petition. The
22 R&R summarizes the remainder of the procedural background of the case, including his
23 cases from the immigration court, the District of New Jersey, and the Third and Ninth
24 Circuit Court of Appeals.³ (Doc. 27 at 1-3). The Court therefore finds it unnecessary to

25 ² Respondents’ Motion to Dismiss was filed one-week prior to the Ninth Circuit vacating
26 the stay of the removal order.

27 ³ Importantly, the R&R discusses the New Jersey District Court’s decision to deny the
28 Petitioner’s original Petition in that District, stating that “were it not for Petitioner’s
eleventh hour motion for a stay with the Ninth Circuit, which provided him with a
temporary and now vacated stay of removal, Petitioner would have been removed in

1 repeat the same information here. Moreover, Petitioner has not objected to the
2 information in the background section. *See Thomas v. Arn*, 474 U.S. 140, 149 (1989)
3 (The relevant provision of the Federal Magistrates Act, 28 U.S.C. § 636(b)(1)(C), “does
4 not on its face require any review at all . . . of any issue that is not the subject of an
5 objection.”).

6 **II. Analysis**

7 The district judge “shall make a de novo determination of those portions of the
8 report or specified proposed findings or recommendations to which objection is made.”
9 28 U.S.C. § 636(b)(1)(C); *see also* Fed.R.Civ.P. 72(b)(3) (“The district judge must
10 determine de novo any part of the magistrate judge’s disposition that has been properly
11 objected to.”); *U.S. v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003)(same). The
12 judge “may accept, reject, or modify, in whole or in part, the findings or
13 recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C);
14 Fed.R.Civ.P. 72(b)(3).

15 Respondents argue, in their reply to Petitioner’s objection to the R&R, that the
16 Ninth Circuit decision to vacate his stay of removal renders Petitioner’s claims moot.
17 (Doc. 23). Respondents also move to dismiss the Petition on the ground that it is
18 duplicative of the petition filed by Petitioner in the District of New Jersey.

19 **A. Petitioner’s Claims are Moot**

20 When a stay of a removal order is lifted by the appellate court, the order of
21 removal becomes administratively final and the statute governing the detention of a
22 petitioner shifts from 8 U.S.C. § 1226, and is subsequently governed by 8 U.S.C. §
23 1231(a). *See Casas-Castrillon v. Dep’t of Homeland Sec.*, 535 F.3d 942, 947 (9th Cir.
24 2008) (“If an alien has filed a petition for review with [the circuit] court and received a
25 judicial stay of removal, the ‘removal period’ under § 1231(a) does not begin until [the]
26 court ‘denies the petition and withdraws the stay of removal.’”). Moreover, a case
27 becomes moot when it no longer satisfies Article III standing requirements. “This case-

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August [2017],” and would no longer be in custody. (Doc. 19 at 4).

1 or-controversy requirement subsists through all stages of federal judicial proceedings,
2 trial and appellate.” *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477–478 (1990).

3 Before this Court, Petitioner asserts that he was detained pursuant to 8 U.S.C. §
4 1226(a). (Doc. 1 at 7). The Petition seeks habeas relief based on the stay of removal that
5 was issued by the Ninth Circuit, arguing that his “prolonged detention in excess of six
6 months” entitles him to a bond determination hearing. (Doc. 1 at 7). At the time the
7 Petition was filed in this Court, the PFR and the stay of removal before the Ninth Circuit
8 were the only pending matters justifying detention pursuant to 8 U.S.C. § 1226(a). As
9 discussed above, the Ninth Circuit vacated the stay of removal on October 11, 2017,
10 finding that it lacked jurisdiction over the Petition. (Doc. 17-1). When the Ninth Circuit
11 denied the PFR and lifted the stay of the removal order, the order of removal became
12 administratively final, and Petitioner was no longer being held pursuant to 8 U.S.C. §
13 1226(a), but rather 1231(a). *See Casas-Castrillon*, 535 F.3d at 94. The Court can no
14 longer grant the relief Petitioner seeks pursuant to 8 U.S.C. § 1226(a). *See Lewis*, 494
15 U.S. at 477–478. Therefore, Petitioner’s claims for relief based on his detention under 8
16 U.S.C. § 1226(a) are moot and the Court will adopt the R&R and grant Respondents’
17 Motion to Dismiss the Petition.

18 **B. Petition is Duplicative**

19 Having found that the Petition is moot, the Court need not address the issue of
20 duplicative petitions, but will briefly discuss the issue. As an additional and independent
21 ground for adopting the R&R, the Petition is also duplicative to the Petition filed in New
22 Jersey.

23 Federal courts “retain broad powers to prevent duplicative or unnecessary
24 litigation.” *Slack v. McDaniel*, 529 U.S. 473, 478 (2000). “A suit is duplicative if the
25 claims, parties, and available relief do not significantly differ between the two actions.”
26 *iStar RC Paradise Valley LLC v. Five Star Dev.*, No. CV-10-2191- PHX-GMS, 2011 WL
27 4852293, at *8 (D. Ariz. Oct. 13, 2011) (quoting *Barapind v. Reno*, 72 F. Supp. 2d 1132,
28 1145 (E.D. Cal.1999) (internal citation omitted)). Where a petitioner files more than one

1 suit in more than one district with similar claims, parties, and relief, “the court has
2 discretion to abate or dismiss the second action.” *Id.*; see also *Alltrade, Inc. v. Uniweld*
3 *Products, Inc.*, 946 F.2d 622, 625 (9th Cir. 1991) (citing *Pacesetter Systems, Inc. v.*
4 *Medtronic, Inc.*, 678 F.2d 93, 95 (9th Cir. 1982) (holding dismissal is proper “when a
5 complaint involving the same parties and issues has already been filed in another
6 district”)).

7 The R&R found that the claims in the Petition (that Petitioner’s detention has been
8 overlong and that he is entitled to release) are substantively identical to the allegations in
9 the New Jersey Petition (that Petitioner’s “detention has become overlong and that he is
10 therefore entitled to release from immigration detention.”). (Doc. 19 at 6). In opposition
11 to the R&R, Petitioner filed two Objections. In those objections, Petitioner asserts that 8
12 U.S.C. § 1226(a) governs his New Jersey case as opposed to 8 U.S.C. § 1231(a), because
13 the Third Circuit has entered an order staying his removal based on an appeal from the
14 District of New Jersey. Therefore, he argues that the two cases are not duplicative, as
15 two different statutes are currently in effect. Alternatively, Petitioner argues that he is
16 entitled to a bond hearing under 8 U.S.C. § 1226(a), pursuant to Ninth Circuit case law.
17 See *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015). However, this argument is not
18 persuasive to the Court as *Rodriquez* has been overturned by the Supreme Court. See
19 *Jennings v. Rodriguez*, 138 S. Ct. 830, 847, 200 L. Ed. 2d 122 (2018) (holding that
20 individuals detained under 8 U.S.C. § 1226(a) are not entitled to periodic bond hearings
21 while detained).

22 The Court finds that the claims in the Petition are substantively identical to the
23 allegations in the New Jersey Petition and therefore that the Petition before this Court is
24 duplicative. Additionally, as explained above, Petitioner is no longer being held pursuant
25 to 8 U.S.C. § 1226(a), and therefore his Petition seeking relief under that statute is moot.
26 Moreover, even if Petitioner’s detention were still governed by 8 U.S.C. § 1226(a), as he
27 argues, the Supreme Court has held that detainees held pursuant to § 1226(a) are not
28 entitled to bond hearings. *Id.*

1 **III. Conclusion**

2 For the foregoing reasons, and after conducting a *de novo* review of the Magistrate
3 Judge's determinations, the Court agrees with the Magistrate Judge and concludes that
4 Petitioner's grounds for relief are both moot and duplicative.

5 Accordingly,

6 **IT IS ORDERED** that Magistrate Judge Boyles' R&R (Doc. 19) is **accepted** and
7 **adopted**. Petitioner's Objections (Doc. 20) are overruled.

8 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus
9 pursuant to 28 U.S.C. § 2254 (Doc. 1) is **denied** and **dismissed with prejudice**.

10 **IT IS FURTHER ORDERED** that Respondents' Motion to Dismiss (Doc. 13) is
11 **GRANTED**.

12 **IT IS FURTHER ORDERED** that Respondents' Motion Transfer Venue to the
13 District of New Jersey (Doc. 13) is **DENIED**.

14 **IT IS FURTHER ORDERED** the Motion (Doc. 18) is **DENIED**.

15 **IT IS FURTHER ORDERED** that Petitioner's Supplemental Objection (Doc.
16 21) is hereby stricken from the record.

17 **IT IS FURTHER ORDERED** that Petitioner's Traverse (Doc. 24) is hereby
18 stricken from the record.

19 **IT IS FURTHER ORDERED** that Petitioner's Motion for Status Inquiry (Doc.
20 28) is **DENIED** as moot.

21 **IT IS FURTHER ORDERED** that Petitioner's Motion to Expedite Judgment
22 (Doc. 28) is **DENIED** as moot.

23 **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing
24 Section 2254 Cases, a Certificate of Appealability and leave to proceed *in forma pauperis*
25 on appeal are **denied** because dismissal of the Petition is justified by a plain procedural
26 bar and jurists of reason would not find the procedural ruling debatable, and Petitioner
has not made a substantial showing of the denial of a constitutional right.


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IT IS FINALLY ORDERED that the Clerk of Court shall terminate this action and enter judgment accordingly.

Dated this 22nd day of June, 2018.



Honorable Diane J. Humetewa
United States District Judge