



1 On June 17, 2014, the government filed a motion to dismiss the  
2 petition for lack of subject matter jurisdiction, asserting that the  
3 BIA's denial of Gonzalez-Santos' request for a custody  
4 redetermination was not a final removal order, and that the circuit  
5 court lacked jurisdiction to review it. See 8 U.S.C. § 1252(a)  
6 (providing jurisdiction to review only final orders of removal);  
7 *Lopez-Ruiz v. Ashcroft*, 298 F.3d 886, 887 (9th Cir. 2002) (appellate  
8 court has jurisdiction to review only final orders of removal). The  
9 government also argues that Gonzalez-Santos' motion to stay  
10 removal should be denied as moot. See *Narayan v. INS*, 105 F.3d  
11 1335 (9th Cir. 1997) (dismissing as moot a motion for a stay of  
12 deportation after finding that the court had no jurisdiction to  
13 entertain a petition for review).

14 On September 17, 2014, the Ninth Circuit issued an order  
15 *sua sponte* granting Gonzalez-Santos an additional twenty-one days  
16 to file a response to the motion to dismiss. The court noted that if  
17 Gonzalez-Santos wanted the court to construe his petition for  
18 review as an original petition for writ of habeas corpus, filed under  
19 28 U.S.C. § 2241, and direct that the case be transferred to the  
20 United States District Court for the Central District of California,  
21 he could make such a request in his response. See 28 U.S.C. §  
22 1631 ("Whenever a civil action is filed in a court as defined in  
23 section 610 of this title or an appeal, including a petition for review  
24 of administrative action, is noticed for or filed with such a court  
25 and that court finds that there is a want of jurisdiction, the court  
26 shall, if it is in the interest of justice, transfer such action or appeal  
27 to any other such court in which the action or appeal could have  
28 been brought at the time it was filed or noticed, and the action or

1 appeal shall proceed as if it had been filed in or noticed for the  
2 court to which it is transferred on the date upon which it was  
3 actually filed in or noticed for the court from which it is  
4 transferred”).

5 On October 14, 2014, Gonzalez-Santos filed a response,  
6 requesting that his petition be construed as a petition for writ of  
7 habeas corpus. On December 2, 2014, the Ninth Circuit issued an  
8 order finding that it lacked jurisdiction to adjudicate Gonzalez-  
9 Santos’ petition because it was not an appeal from a final removal  
10 order. It granted his request to construe the petition for review as a  
11 petition for writ of habeas corpus, and transferred the matter to the  
12 Central District for further proceedings. All other pending  
13 motions, including the motion to stay, were denied as moot. The  
14 case was electronically transferred to the Central District the same  
15 day.

16 Dkt. 4 (footnotes omitted).

17 The first entry in this Court’s docket is Gonzalez-Santos’s May 28, 2014  
18 Motion for Emergency Stay of Deportation Pending Petition for Review,  
19 which the Ninth Circuit denied as moot on December 2, 2014. See Dkt. 1.  
20 Because, as Judge Morrow noted, that motion is no longer pending, it is  
21 unclear what relief Gonzalez-Santos seeks from this Court. See Dkt. 4 at 2.  
22 Judge Morrow also indicated, “Should Gonzalez-Santos file a brief, and  
23 should he wish to seek a stay of removal pending review of his petition for writ  
24 of habeas corpus, he may file a motion seeking such relief in this court.” See  
25 id. at 3. He has failed to do so, which could be because he may never have  
26 received a copy of the July 17, 2015 order as a result of his apparent failure to  
27 comply with Central District Local Rule 41-6. That rule provides:

28 A party proceeding *pro se* shall keep the Court and opposing parties

1 apprised of such party's current address and telephone number, if  
2 any, and e-mail address, if any. If mail directed by the Clerk to a  
3 *pro se* plaintiff's address of record is returned undelivered by the  
4 Postal Service, and if, within fifteen (15) days of the service date,  
5 such plaintiff fails to notify, in writing, the Court and opposing  
6 parties of said plaintiff's current address, the Court may dismiss  
7 the action with or without prejudice for want of prosecution.

8 Indeed, the Notice of Reference to U.S. Magistrate Judge that was sent to him  
9 was returned on December 18, 2014 by the Adelanto Detention Facility with  
10 the notation "Released." See Dkt. 3. Gonzalez-Santos has not notified the  
11 Court of a new address. Docket entry 9440904 for Ninth Circuit Case No.15-  
12 70645, a subsequent petition for review and motion for stay filed by Gonzalez-  
13 Santos, indicates that as of March 2, 2015, he was in the custody of the  
14 Adelanto Detention Facility. However, the Court has been unsuccessful in its  
15 recent attempts to locate Gonzalez-Santos there, and his current custody status  
16 is unknown.

17 Under 28 U.S.C. § 2241, removable aliens can properly challenge the  
18 length of detention under the general detention statutes. See Zadvydas v.  
19 Davis, 533 U.S. 678, 687-88 (2001). The REAL ID Act of 2005 eliminated  
20 district court habeas court jurisdiction over final orders of deportation and  
21 removal, and vested jurisdiction to review such orders exclusively in the courts  
22 of appeals. See Martinez-Rosas v. Gonzales, 424 F.3d 926, 928-29 (9th Cir.  
23 2005); see also Mamigonian v. Biggs, 710 F.3d 936, 941 (9th Cir. 2013)  
24 ("Habeas relief for final orders of removal is only available through a petition  
25 to the court of appeals."). The REAL ID Act was "not intended to 'preclude  
26 habeas review over challenges to detention that are independent of challenges  
27 to removal orders.'" See Hernandez v. Gonzales, 424 F.3d 42, 42 (1st Cir.  
28 2005). Thus, "in cases that do not involve a final order of removal, federal

1 habeas corpus jurisdiction remains in the district court, and on appeal to [the  
2 courts of appeals], pursuant to 28 U.S.C. § 2241.” Nadarajah v. Gonzales, 443  
3 F.3d 1069, 1076 (9th Cir. 2006).

4 Article III, Section 2 of the United States Constitution establishes the  
5 scope of federal court jurisdiction, which includes “all Cases . . . arising under  
6 this Constitution . . . [and] Controversies to which the United States shall be a  
7 Party.” The Article III case or controversy requirement prevents federal courts  
8 from deciding “questions that cannot affect the rights of litigants in the case  
9 before them.” Lewis v. Continental Bank Corp., 494 U.S. 472, 477 (1990)  
10 (internal quotation marks omitted). Where a federal court cannot redress a  
11 party’s injury with a favorable decision, the case is moot and must be  
12 dismissed. See, e.g., Spencer v. Kemna, 523 U.S. 1, 7 (1998) (“[T]hroughout  
13 the litigation, the plaintiff must have suffered, or be threatened with, an actual  
14 injury traceable to the defendant and likely to be redressed by a favorable  
15 judicial decision.” (internal quotation marks omitted)). “For a habeas petition  
16 to continue to present a live controversy after the petitioner’s release or  
17 deportation, however, there must be some remaining ‘collateral consequence’  
18 that may be redressed by success on the petition.” Abdala v. I.N.S., 488 F.3d  
19 1061, 1064 (9th Cir. 2007) (citing Spencer v. Kemna, 523 U.S. 1, 7 (1998)).  
20 “By contrast, where the grounds for habeas relief will not redress collateral  
21 consequences, a habeas petition does not continue to present a live controversy  
22 once the petitioner is released from custody.” Id.

23 Here, it appears that the only issue properly before this Court is whether  
24 Gonzalez-Santos’s continued detention without the opportunity for an  
25 individualized bond hearing before an immigration judge violates his statutory  
26 and constitutional rights. In this situation, the only relief which the Court  
27 could afford Gonzalez-Santos would be release from Respondent’s custody,  
28 should it be determined that his continued detention was unlawful. However,

1 as discussed above, it appears that he has already been released from custody,  
2 which would render these proceedings moot, absent some remaining collateral  
3 consequences that may be redressed by success on the habeas petition.

4 IT IS THEREFORE ORDERED that Gonzalez-Santos show cause  
5 within thirty (30) days of the date of this order: (1) why this action should not  
6 be dismissed without prejudice for failure to comply with Local Rule 41-6  
7 and/or for failure to prosecute (notice to the Court of a current address shall be  
8 deemed a sufficient response); and (2) why this action should not be dismissed  
9 as moot in light of his apparent release from custody. If Gonzalez-Santos does  
10 not timely and fully comply with this order to show cause, the Court will  
11 recommend that the action be dismissed without prejudice.<sup>1</sup>

12  
13 Dated: November 2, 2015



14  
15  
16 DOUGLAS F. McCORMICK  
United States Magistrate Judge  
17

18  
19 <sup>1</sup> Because the Court does not have any address for Gonzalez-Santos,  
20 other than his address of record at the Adelanto Detention Center, this order to  
21 show cause may be futile. While dismissal is a harsh penalty, “[i]t would be  
22 absurd to require the district court to hold a case in abeyance indefinitely just  
23 because it is unable, through the [petitioner’s] own fault, to contact the  
24 [petitioner] to determine if his reasons for not prosecuting his lawsuit are  
25 reasonable or not.” See Carey v. King, 856 F.2d 1439, 1441 (9th Cir. 1988)  
26 (affirming the district court’s dismissal of an action for failure to prosecute  
27 under a local rule similar to Local Rule 41-6). Moreover, a pro se litigant “is  
28 expected to abide by the rules of the court in which he litigates.” Carter v.  
C.I.R., 784 F.2d 1006, 1008 (9th Cir. 1986). Gonzalez-Santos’s failure to do so  
will be deemed to constitute an acknowledgment by him that he no longer  
wishes to pursue this action.