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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 FRANCISCO GUILLEN DURAN,

12 Petitioner,

13 v.

14 ERIC HOLDER, et al.,

15 Respondent.
16

No. EDCV 13-1921-SVW (AGR)

**OPINION AND ORDER ON PETITION
FOR WRIT OF HABEAS CORPUS (28
U.S.C. § 2241)**

17 The Court agrees with Respondent's April 18, 2016 Suggestion Of Mootness
18 showing that Petitioner, whose Petition sought conditional release from pre-removal ICE
19 custody, has been removed from the United States. His removal renders the case
20 moot.

21 **1.**

22 **BACKGROUND**

23 On October 22, 2013, Petitioner filed a Petition for Writ of Habeas Corpus
24 pursuant to 28 U.S.C. § 2241 ("Petition"). Petitioner stated in the Petition that he is a
25 48-year old citizen of Mexico who entered the United States in 1985 and has five drunk-
26 driving convictions. (*Id.* at 6-8; see Dkt. No. 5-2 (order denying conditional release) at 2
27 (reciting that Petitioner has 5 DUI convictions).) Those convictions underlie an
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1 Immigration Judge’s order that Petitioner be removed from the United States. Petitioner
2 challenges the length of his pre-removal detention.

3 On April 18, 2016, Respondent filed a Suggestion Of Mootness. (Dkt. No. 12.)
4 Exhibit A to the document is a Warrant Of Removal indicating that Petitioner was
5 removed from the United States in the afternoon on January 14, 2016.

6 **2.**

7 **DISCUSSION**

8 Mootness is jurisdictional. See *Koppers Indus. v. U.S.E.P.A.*, 902 F.2d 756, 758
9 (9th Cir. 1990). The fundamental issue in deciding mootness is whether there is a
10 current controversy to which effective relief can be granted. *American Rivers v.*
11 *National Marine Fishery Serv.*, 126 F.3d 1118, 1123 (9th Cir. 1997) (“If an event occurs
12 that prevents the court from granting effective relief, the claim is moot and must be
13 dismissed.”). “This means that, throughout the litigation, the Plaintiff must have
14 suffered, or be threatened with, an actual injury traceable to the defendant and likely to
15 be redressed by a favorable judicial decision.” *Spencer v. Kemna*, 523 U.S. 1, 7 (1998)
16 (citation and quotation marks omitted).

17 In the context of whether a habeas petition is moot, the “analysis is specifically
18 limited to the sort of equitable relief we may grant in response to a habeas petition.”
19 *Burnett v. Lampert*, 432 F.3d 996, 999 (9th Cir. 2005). A habeas petition is moot when
20 the petitioner “seeks relief [that] cannot be redressed by a favorable decision of the
21 court issuing a writ of habeas corpus.” *Id.* at 1000-01 (citation, quotation marks, and
22 ellipses omitted).

23 “Deportation from the United States after filing a habeas petition does not
24 necessarily moot a petitioner’s claim.” *Abdala v. Immigration and Naturalization*
25 *Service*, 488 F.3d 1061, 1063 (9th Cir. 2007). “For a habeas petition to continue to
26 present a live controversy after the petitioner’s release or deportation, . . . there must be
27 some remaining ‘collateral consequence’ that may be redressed by success on the
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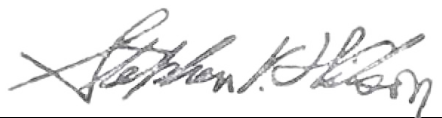
1 petition.” *Id.* at 1064. “[W]here the grounds for habeas relief will not redress collateral
2 consequences, a habeas petition does not continue to present a live controversy once
3 the petitioner is released from custody.” *Id.*

4 Just as in *Abdala*, Petitioner “challenge[s] only the length of his detention at the
5 INS facility.” *Id.* at 1065; *Martinez-Reyes v. Burns*, 2011 WL 1375293, *2 (C.D. Cal.
6 March 18, 2011) (“the pending Petition seeks only petitioner’s release from ICE custody
7 and a stay of deportation pending adjudication of the petition”; “since petitioner’s
8 removal from the United States has released him from ICE custody, he has received the
9 only relief this Court might provide him, and the pending Petition is moot”), *adopted by*
10 2011 WL 1375163 (C.D. Cal. April 11, 2011).; *see also Picrin-Peron v. Rison*, 930 F.2d
11 773, 776 (9th Cir. 1991) (“By his petition for habeas corpus, Picrin-Peron has requested
12 only release from custody. Because he has been released, there is no further relief we
13 can provide.”); *Ferry v. Gonzales*, 457 F.3d 1117, 1132 (10th Cir. 2006) (“Ferry’s
14 challenge to the legality of his detention without an opportunity for bond or a bond
15 hearing is moot. Ferry’s administrative removal order of his detention without an
16 opportunity for bond or a bond hearing is moot. Ferry’s administrative removal order
17 has been executed, and thus, Ferry is no longer in the custody of DHS to benefit from a
18 bond determination or release.”).

19 Given that Petitioner has already been released, this Court is unable to provide
20 the relief Petitioner requests. *See McNutt v. Chelan County*, 2008 WL 4148604, *1 n.1
21 (E.D. Wash. 2008) (“Habeas petition[s] brought under § 2241 are subject to summary
22 dismissal pursuant to Rules 1(b) and 4 of the Rules Governing Section 2254 Cases.”).

23 IT IS HEREBY ORDERED that the Petition is DENIED as moot.

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26 DATED: November 22, 2016



STEPHEN V. WILSON
United States District Judge