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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JIN JIE SITU,

 Petitioner,

 v.

RAND BEERS, et al.,

 Respondents.

No. 2:13-cv-02617 AC P

ORDER AND FINDINGS AND
RECOMMENDATION

On December 18, 2013, petitioner Jin Jie Situ, a detainee in the custody of the Department of Homeland Security’s Bureau of Immigration and Customs Enforcement (“ICE”), proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. Respondent filed a motion to dismiss on January 13, 2014, arguing that the petition was mooted by petitioner’s release from detention on January 9, 2014. See ECF Nos. 7, 7-1 at 1 (Order of Supervised Release). Petitioner did not file an opposition to the motion, and the time period in which to do so has expired. Therefore, the motion is deemed submitted. For the reasons that follow, the undersigned recommends granting the motion.

I. Factual and Procedural Background

According to the allegations in the habeas application, petitioner is a native citizen of China and was ordered “deported/excluded/removed” from the United States on May 29, 2012 by an order from the Executive Office of Immigration Review. ECF No. 1 at 2. Petitioner’s appeal of the deportation order was denied by the Board of Immigration Appeals on October 11, 2012,

1 thus rendering the administrative decision final. Id. at 3. Petitioner contends that he has been
2 detained beyond the mandatory 90 day period pursuant to 8 U.S.C. § 1231(a)(1)(A)¹ of the
3 Immigration and Nationality Act and that he may now be placed on supervised release pursuant to
4 8 U.S.C. § 1231(a)(6). ECF No. 1 at 3. He further argues that the presumptively reasonable six
5 month period of detention pending deportation announced in Zadvydas v. Davis, 533 U.S. 678
6 (2001), has already passed. Id. (finding that “the [post-removal-period detention] statute, read in
7 light of the Constitution's demands, limits an alien's post-removal-period detention to a period
8 reasonably necessary to bring about that alien's removal from the United States. It does not
9 permit indefinite detention.”). Therefore, petitioner alleges that his continued detention is not
10 reasonable because there is no significant likelihood of removal to China in the reasonably
11 foreseeable future. Id. at 3-4. As grounds for relief, petitioner argues that his ongoing detention
12 violates his substantive and procedural due process rights as well the statutory provision for
13 detention of removable aliens under 8 U.S.C. § 1231(a)(6). ECF No. 1 at 4-5. In addition, he
14 asserts that his ongoing confinement is punitive in nature and therefore violates his due process
15 rights. Id. By way of relief, petitioner requests his immediate release from custody on supervised
16 release pursuant to 8 U.S.C. § 1231(a)(6). Id. at 3.

17 II. Motion to Dismiss

18 In their motion to dismiss, respondents argue that the present habeas petition is moot in
19 light of petitioner’s release from confinement on January 9, 2014. See ECF No. 7 at 1. As proof
20 thereof, respondents submitted petitioner’s order of supervised release. ECF No. 7-1 at 1. As a
21 basis to dismiss the pending habeas petition, respondents cite Picrin–Peron v. Rison, 930 F.2d
22 773 (9th Cir.1991), for the proposition that petitioner’s release from custody after the filing of the
23 present habeas petition has rendered the case moot. See ECF No. 7 at 1.

24 III. Legal Principles Governing Mootness

25 28 U.S.C. § 2241, like other federal habeas statutes, requires that a petitioner be in
26 custody as a jurisdictional prerequisite. See 28 U.S.C. § 2241(c)(1) (stating that “[t]he writ of

27 ¹ Under this section, an alien may be detained for a period of 90 days in order to accomplish that
28 alien’s removal from the United States.

1 habeas corpus shall not extend to a prisoner unless [h]e is in custody....”). However, the fact that
2 a petitioner is released from custody does not automatically render a habeas case moot where the
3 custody requirement was met at its inception. The dispositive question for mootness purposes is
4 whether a justiciable case or controversy remains. Lewis v. Continental Bank Corp., 494 U.S.
5 472, 477-78 (1990) (Article III “case or controversy” requirement applies throughout all stages of
6 judicial proceedings). The “case or controversy” requirement is satisfied where the plaintiff
7 “[has] suffered, or [is] threatened with, an actual injury traceable to the defendant and likely to
8 be redressed by a favorable judicial decision.” Spencer v. Kemna, 523 U.S. 1, 7 (1998) (citation
9 omitted). In a habeas case challenging a criminal conviction, this requirement remains satisfied
10 even after a petitioner is released from custody. That is because the conviction itself has
11 presumed collateral consequences that constitute an injury and that remain redressable by a
12 favorable decision invalidating the conviction. Id.; see also Chacon v. Wood, 36 F.3d 1459, 1463
13 (9th Cir. 1994).

14 When changed circumstances means that the habeas court is without power to grant the
15 relief requested, however, a case is moot. See Lane v. Williams, 455 U.S. 624, 632 (1982). Such
16 is the case where, for example, a habeas prisoner seeking relief from a term of parole has
17 completed that term, id., or where an immigration detainee seeking release to immigration parole
18 has obtained release, Picrin-Peron, 930 F.2d 773. In cases which do not seek to invalidate a
19 criminal conviction, the presumption of collateral consequences does not apply. See Spencer,
20 523 U.S. at 7. The dispositive question for mootness purposes is whether the relief requested can
21 still be provided. Id.; Lane, 455 U.S. at 632.

22 IV. Analysis

23 This case is governed squarely by Picrin-Peron, supra, in which the Ninth Circuit Court of
24 Appeal dismissed an appeal of a 28 U.S.C. § 2241 petition as moot because the immigration
25 detainee had been released. 930 F.2d at 776. Since the writ of habeas corpus is used “to secure
26 immediate release from illegal physical custody,” and such release was the only remedy which
27 the immigration detainee requested, there was no further relief that the court could provide. Id. at
28 775-776 (citing Preisser v. Rodriguez, 411 U.S. 475, 484-85 (1973)). Likewise, in the present

1 case, the petition seeks only release and does not implicate the validity of the underlying
2 immigration orders. Because petitioner he has already been released under supervision, there is
3 no effective relief remaining for the court to provide. See ECF No. 7-1 at 1. Accordingly, the
4 undersigned recommends granting the motion to dismiss based on mootness.

5 Accordingly, IT IS HEREBY ORDERED that the Clerk of Court randomly assign this
6 case to a District Court Judge.

7 IT IS FURTHER RECOMMENDED that respondent's motion to dismiss (ECF No. 7) be
8 granted.

9 These findings and recommendations are submitted to the United States District Judge
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-one days
11 after being served with these findings and recommendations, any party may file written
12 objections with the court and serve a copy on all parties. Such a document should be captioned
13 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
14 objections shall be filed and served within fourteen days after service of the objections. The
15 parties are advised that failure to file objections within the specified time may waive the right to
16 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 DATED: April 3, 2014

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20 ALLISON CLAIRE
21 UNITED STATES MAGISTRATE JUDGE
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