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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MARTIN CRUZ ODED,

Petitioner,

v.

JEFFERSON B. SESSIONS III,

Attorney General,

Respondent.

Case No.: 3:18-cv-00647-GPC-NLS

**ORDER DENYING PETITION FOR
WRIT OF HABEAS CORPUS**

On March 28, 2018, Petitioner Martin Cruz Oded (“Petitioner”), proceeding *pro se*, filed a petition for writ of habeas corpus (“Petition”) pursuant to 28 U.S.C. § 2241. (ECF No. 1.) He moved for immediate release from custody and declarations that his detention and removal were unauthorized and unconstitutional. (*Id.* at 8.¹) Respondent is Jefferson B. Sessions III, Attorney General of the United States of America. (*Id.* at 1.) On May 4, 2018, Respondent filed a return to petition for writ of habeas corpus. (ECF No. 5.) On June 1, 2018, Petitioner timely filed a reply reiterating his request for the Court to review the constitutionality of his detention and removal. (ECF No. 7.) On June 27, 2018, the

¹ Page numbers are based on the CM/ECF pagination.

1 Court ordered Respondent to respond to Petitioner’s reply. (ECF No. 8.) On July 7, 2018,
2 Respondent filed a sur-reply. (ECF No. 9.) After a thorough review of the issues and the
3 documents presented, the Court **DENIES** the petition for writ of habeas corpus.

4 **I. Background**

5 Petitioner is a native and citizen of Mexico. (ECF No. 1 at ¶ 8.) On April 15, 1994,
6 Petitioner legally entered the United States as a lawful permanent resident of the United
7 States of America. (*Id.* at ¶ 11.) In 2008, Petitioner plead guilty to second degree robbery
8 under California Penal Code section 211 and was sentenced to two years in prison. (*Id.*)
9 On November 4, 2010, after completing his sentence, Petitioner was charged with
10 deportability for conviction of an aggravated felony under 8 U.S.C. § 1227(a)(2)(A)(iii)
11 based on his 2008 conviction. (*Id.*, Ex. 1 at 10.) His conviction was classified as a crime
12 of violence as defined by 8 U.S.C. § 1101(a)(43)(F) and amounted to an aggravated
13 felony under 18 U.S.C. § 16. (*Id.*)

14 On May 19, 2011, an immigration judge (“IJ”) found that the conviction was
15 accurately classified as a “crime of violence,” subsequently found Petitioner ineligible for
16 “cancellation of removal,” and ordered Petitioner removed from the United States to
17 Mexico. (*Id.* at ¶ 14; ECF No. 5-1, Ex. at 11.) On October 12, 2011, the Board of
18 Immigration Appeals (“BIA”) affirmed the IJ’s order. (ECF No. 5-1, Ex. at 13.) On
19 March 10, 2014, the IJ denied Petitioner’s application for relief from removal and
20 ordered him removed to Mexico. (*Id.*, Ex. at 33-37.) On June 19, 2014, during the appeal
21 to the BIA, the IJ granted Petitioner’s request for a change in custody status and set bond
22 at \$15,000. (*Id.*, Ex. at 40.) On June 26, 2014, Petitioner was released on bond. (*Id.*, Ex.
23 at 41-44.) On February 13, 2015, the BIA issued a final order reaffirming the IJ’s order
24 for removal. (*Id.*, Ex. at 45-48.) On March 9, 2015, Petitioner filed a petition for review
25 with the Ninth Circuit. *See Oded v. Lynch*, No. 15-70720 (9th Cir. 2015). On March 10,
26 2015, the Ninth Circuit granted a stay of removal. (ECF No.7, Ex. 6 at 32; ECF No. 9-1,
27 Ex. at 64.)

28 On November 1, 2017, Petitioner was arrested by the San Diego Police Department.

1 (ECF No. 5-1, Ex. at 49-52.) Then, on November 17, 2017, Petitioner was released to the
2 custody of Immigration and Customs Enforcement (“ICE”). (*Id.*) On the same day,
3 Petitioner was removed to Mexico and ICE cancelled his \$15,000 bond. (ECF No. 9-1,
4 Ex. at 64). It appears that ICE employees misinterpreted the Ninth Circuit’s order. (ECF
5 No. 5-1, Ex. at 51; ECF No. 9-1, Ex. at 64, 72.) In mid-December 2017, ICE became
6 aware of its error and began arranging for Petitioner’s parole back into the United States.
7 (ECF No. 9-1, Ex. at 79-81.) On January 6, 2018, Petitioner was paroled back into
8 detention. (ECF No. 1, Ex. 2 at 13, Ex. 3 at 15, Ex. 4 at 17.) On March 28, 2018, while in
9 the custody of ICE, Petitioner filed his petition for writ of habeas corpus with this Court
10 seeking immediate release and declarations of the unconstitutionality and unauthorized
11 nature of his detention and removal. (ECF No. 1.)

12 On April 17, 2018, the Supreme Court ruled that 18 U.S.C. § 16(b), as incorporated
13 into the aggravated felony definition in 8 U.S.C. § 1101(a)(43)(F), is unconstitutionally
14 vague. *See Sessions v. Dimaya*, 138 S. Ct. 1204, 1223 (2018). On April 24, 2018, in light
15 of *Dimaya*, the government moved to remand the Ninth Circuit appeal to the BIA. (ECF
16 No. 5-1, Ex. at 53-56.) The IJ, after reviewing Petitioner’s custody status, ordered him
17 released from custody on his own recognizance. (ECF No. 5-1, Ex. at 61.) On April 27,
18 2018, the Ninth Circuit ordered that Petitioner’s case be remanded. (ECF No. 5-1, Ex. at
19 53-56.) On May 3, 2018, during the pendency of this case, ICE released Petitioner from
20 custody on his own recognizance under the “Alternatives to Detention” (“ATD”)
21 program. (ECF No. 7 at 5.) Petitioner did not appeal the IJ’s decision to release him from
22 custody. (ECF No. 9-1, Ex. at 64.)

23 On May 4, 2018, Respondent filed a response requesting that this Court dismiss
24 Petitioner’s case for lack of subject matter jurisdiction. (ECF No. 5.) On June 1, 2018,
25 Petitioner filed a reply reiterating his request for the Court to review the constitutionality
26 of his detention and removal. (ECF No. 7.) In his reply, Petitioner sought an order
27 declaring that his conditional release under the ATD program constituted continued
28 detention that was unauthorized by the Immigration and Nationality Act (“INA”) and

1 violated his due process rights and that his November 17, 2017 forced removal violated
2 the Ninth Circuit’s stay of removal and his procedural due process rights. (*Id.* at 23.)

3 On June 15, 2018, Petitioner was arrested for public intoxication and transferred to the
4 San Diego Sheriff’s Department on an active warrant, after which ICE terminated his
5 participation in the ATD program. (ECF No. 9-1, Ex. at 63.) On June 26, 2018, Petitioner
6 was returned to ICE custody, and on that same day, he was released from custody on an
7 Order of Supervision, without bond or participation in the ATD program. (*Id.*) On July
8 11, 2018, Respondent filed a sur-reply reiterating his request for the Court to dismiss
9 Petitioner’s case, contending that the case is moot. (ECF No. 9 at 1.)

10 **II. Legal Standard**

11 Under 28 U.S.C. § 2241(c), a “writ of habeas corpus shall not extend to a prisoner
12 unless. . . (3) He is in custody in violation of the Constitution or laws or treaties of the
13 United States.” 8 U.S.C. § 2241(c). Pursuant to 28 U.S.C. § 2241, alien detainees can
14 properly challenge the extent of the Attorney General’s authority to detain a removable
15 alien under the statutes authorizing detention. *Zadvydas v. Davis*, 533 U.S. 678, 687-89
16 (2001); *see also Demore v. Kim*, 538 U.S. 510, 516-17 (2003).

17 **III. Discussion**

18 In the petition, Petitioner sought release from his January 6, 2018 detention,
19 contending that his 2008 conviction of robbery should not have been considered a
20 deportable offense. (ECF No. 1 at ¶ 35.) He also argued that the length of his detention
21 was beyond the six-month statutorily authorized reasonableness limitation. (*Id.*) In his
22 reply, Petitioner sought release from the ATD program on the grounds that his
23 supervised release constituted continued detention and was both unauthorized and a
24 violation of his due process rights. (ECF No. 7 at 5, 23.) In addition, Petitioner sought an
25 order declaring that his November 17, 2017 forced removal to Mexico violated the Ninth
26 Circuit’s stay of removal and his procedural due process rights. (*Id.* at 19, 23.)

27 Respondent contends that this Court has no jurisdiction to review Petitioner’s
28 challenge to his removal proceedings because under the REAL ID Act, Pub. L. No. 109-

1 13, Div. B., 119 Stat. 231 (2005), a petition for review in the Court of Appeals is the
2 “sole and exclusive means for judicial review of an order of removal.” (ECF No. 5 at 4
3 (citing *Singh v. Holder*, 638 F.3d 1196, 1210 (9th Cir. 2011) (quoting 8 U.S.C. §
4 1252(a)(5))). Furthermore, Respondent contends that Petitioner’s June 26, 2018 release
5 from custody without bond or participation in the ATD program renders his petition
6 moot. (ECF No. 9 at 1.)

7 **A. Challenge to Removal Order**

8 In his petition, Petitioner sought release from his January 6, 2018 detention,
9 contending that his 2008 conviction of robbery should not have been considered a
10 deportable offense. (ECF No. 1 at 8.) Petitioner argues that the petition presents
11 questions of law, including “application of law to undisputed facts.” (ECF No. 7 at 2.).

12 The REAL ID Act of 2005 divested district court jurisdiction over habeas petitions
13 challenging orders of removal; however, the district court retains jurisdiction over
14 challenges to detention. *Martinez v. Napolitano*, 704 F.3d 620, 622 (9th Cir. 2012)
15 (affirming district court’s order that it lacked jurisdiction because Petitioner’s claim
16 indirectly attacks his order of removal) (citation omitted); *Singh v. Gonzales*, 499 F.3d
17 969, 979 (9th Cir. 2007) (reversing district court’s order that it lacked jurisdiction
18 because a successful petition would lead to nothing more than “a day in court” for
19 Petitioner); *Nadarajah v. Gonzales*, 443 F.3d 1069, 1075 (9th Cir. 2006) (stating that the
20 REAL ID Act eliminated federal habeas corpus jurisdiction over final orders of
21 removal). Pursuant to 28 U.S.C. § 2241, alien detainees can properly challenge the
22 extent of the Attorney General’s authority to detain a removable alien under the statutes
23 authorizing detention. *Zadvydas*, 533 U.S. at 687-89; *see also Kim*, 538 U.S. at 516-17.
24 In contrast, claims that challenge the procedure and substance of an agency
25 determination that is “inextricably linked” to the order of removal are barred. *See*
26 *Martinez*, 704 F.3d at 623.

27 Petitioner contends that his criminal conviction of robbery should not be considered a
28 deportable offense because the federal criminal code’s definition of “crime of violence,”

1 as incorporated into the INA’s definition of aggravated felony, is overbroad and violates
2 due process. (ECF No. 1 at ¶¶ 10, 33-34.) This Court does not have jurisdiction to review
3 this challenge, as it is “inextricably linked” to an order of removal. *See Martinez*, 704
4 F.3d at 623. Thus, the Court declines to rule on the effect of the *Dimaya* decision on this
5 petition and **DENIES** the petition on this issue.

6 **B. Challenge to Detention**

7 Petitioner initially sought release from his January 6, 2018 detention, contending that
8 the length of his detention was beyond the six-month statutorily authorized
9 reasonableness limitation. (ECF No. 1 at 8.) In his reply, he challenged his supervised
10 release under the ATD program, imposed on May 3, 2018, as an improper continued
11 detention. (ECF No. 7 at 5, 23.) Respondent argued in his sur-reply that Petitioner’s
12 release from custody without bond or ATD on June 26, 2018 renders his petition moot.
13 (ECF No. 9 at 1.)

14 Under 28 U.S.C. § 2241, the Court has jurisdiction to consider a petitioner’s
15 challenges to his detention. *Zadvydas*, 533 U.S. at 687-89. At any stage of the
16 proceeding, a case may become moot when it “no longer present[s] a case or controversy.
17 . . .” *Abdala v. INS*, 488 F.3d 1061, 1064 (9th Cir. 2001) (quoting *Spencer v. Kemna*, 523
18 U.S. 1, 7 (1998)). A habeas petition no longer presents a live case or controversy when a
19 petitioner is released from custody, as it renders challenges to the legality of his extended
20 or indefinite detention moot. *Id.* at 1064-65 (citing *Riley v. INS*, 310 F.3d 1253, 1256-57
21 (10th Cir. 2002) (holding that “[a]ppellant’s release from detention moots his challenge
22 to the legality of his extended detention”) and *Sayyah v. Farquharson*, 382 F.3d 20, 22 n.
23 1 (1st Cir. 2004) (holding that a “claim [of] indefinite detention. . . was mooted by [a
24 petitioner’s] subsequent release”). Here, Petitioner’s recent release from custody without
25 bond or ATD on June 26, 2018 renders his petition moot.² Accordingly, because the
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27 ² Respondent also argues that Petitioner’s failure to appeal the IJ’s order mandating his release from
28 custody under the ATD program constituted a failure to exhaust his remedies. This Court declines to
address a new issue raised for the first time in the sur-reply. *Thompson v. Commissioner*, 631 F.2d 642,

1 claim no longer presents a live case or controversy, the Court **DENIES** the claim as
2 moot.

3 **C. Forced Removal**

4 Petitioner seeks an order declaring that his November 17, 2017 forced removal to
5 Mexico violated the Ninth Circuit’s stay of removal and his procedural due process
6 rights.

7 The Ninth Circuit has held that the INA “restricts jurisdiction only with respect to the
8 executive’s exercise of discretion.” *Singh*, 638 F.3d at 1202 (citing 8 U.S.C. §
9 1252(a)(2)(B)(ii) (2005)). Nonetheless, district courts have habeas jurisdiction to review
10 a petitioner’s claims of constitutional and legal error under 8 U.S.C. § 1252(a)(2)(B)(ii)
11 of the INA. *Id.* A petitioner’s claim that the execution of his removal order was in
12 violation of a stay is directly connected to the execution of the removal order and
13 constitutes a challenge of the executive’s discretion; thus, the district court does not have
14 jurisdiction to hear such claims. *See Silva v. United States*, 866 F.3d 938, 940 (8th Cir.
15 2017) (holding that district court lacked jurisdiction to hear claim challenging the
16 execution of a removal order in violation of a stay). Accordingly, the Court declines to
17 grant Petitioner’s request for an order declaring that his forced removal violated the Ninth
18 Circuit’s stay of removal; however, this Court retains jurisdiction over Petitioner’s claims
19 regarding the constitutionality of his forced removal.

20 As to this remaining claim, the Court finds it, too is moot. The Declaratory Judgment
21 Act, in a case of “actual controversy,” allows any court to “declare the rights and other
22 legal relations of any interested party seeking such declaration.” *City of Colton v.*
23 *American Promotional Events, Inc.-West*, 614 F.3d 998, 1007 (9th Cir. 2010).
24 Declaratory relief requires the presence of an actual controversy. *Id.*; *see Merit*
25 *Healthcare Int’l, Inc. v. Merit Med. Sys., Inc.*, 721 Fed. App’x 628, 628-29 (2018)

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28 649 (9th Cir. 1980) (“The general rule is that appellants cannot not raise a new issue for the first time in
their reply briefs”).

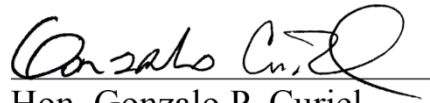
1 (affirming district court's dismissal of declaratory judgment action where manufacturer
2 failed to show actual controversy). Here, Petitioner was paroled back into the United
3 States on January 6, 2018 and has been released from custody on an Order of Supervision
4 without bond or participation in the ATD program on June 26, 2018. As a result,
5 Petitioner's declaratory claim lacks an actual controversy and the Court **DENIES** this
6 claim as moot.

7 **IV. Conclusion**

8 The Court **DENIES** the petition for writ of habeas corpus.

9 **IT IS SO ORDERED.**

10 Dated: July 23, 2018

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12 Hon. Gonzalo P. Curiel
13 United States District Judge
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