

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

HERVE MELLON,

Petitioner.

Case # 16-CV-471-FPG

v.

DECISION AND ORDER

JEFFERSON B. SESSIONS,
Attorney General of the United States, et al.,

Respondents.

Pro se Petitioner Herve Mellon (“Petitioner”) has filed this action seeking a Writ of Habeas Corpus under 28 U.S.C. § 2241. ECF No. 1. Petitioner alleges that he was ordered removed to Haiti, but he has not yet been removed, and instead has remained in the custody of the Department of Homeland Security (“DHS”) for over six months pending his deportation. *Id.* Due to this delay, Petitioner seeks to be released from custody.

The government has moved to dismiss this case because Petitioner has now been deported to Haiti, making this action moot. *See* ECF Nos. 9, 10. Petitioner did not respond to the government’s motion.

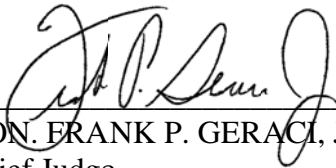
“Where an alien challenging his detention under 28 U.S.C. § 2241 is released during the pendency of his petition under an order of supervision, the petition is rendered moot.” *Harvey v. Holder*, 63 F.Supp. 3d 318, 320 (W.D.N.Y. 2014). Here, the uncontroverted evidence demonstrates that Petitioner was removed from the United States on a flight chartered by Immigration and Customs Enforcement that departed from the Miami International Airport on December 20, 2016. *See* ECF No. 9-1. As such, this action has become moot, and must be dismissed.

CONCLUSION

The government's Motion to Dismiss (ECF Nos. 9, 10) is granted, as this case has become moot. No certificate of appealability shall issue, as Petitioner has failed to make a substantial showing of a denial of a constitutional right. The Clerk of Court is directed to close this case.

IT IS SO ORDERED.

DATED: Rochester, New York
May 26, 2017



HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court