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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 Alexksandr Kniazev,

13 Petitioner,

14 v.

15 Kristopher Kline,

16 Respondent.

CV-25-02036-PHX-SPL (JZB)

**RESPONDENT'S ANSWER TO
PETITIONER'S WRIT OF HABEAS
CORPUS UNDER 28 § U.S.C. 2241**

17
18 Respondent Kristopher Kline, through counsel, hereby requests this Court dismiss
19 this matter. Habeas challenges are limited to those in custody. The Petitioner was removed
20 from the United States on June 12, 2025, pursuant to an expedited removal order. As such,
21 the habeas petition is moot and should be dismissed. There is no longer any live case or
22 controversy, and this Court can no longer issue effective relief. This Court also lacks
23 jurisdiction to apply his challenge under 8 U.S.C. § 1252(a)(2)(A). To the extent Petitioner
24 is challenging the expedited removal process pursuant to Section 1252(e), his claims
25 similarly fail because he is no longer in custody. Finally, though not requested, there is no
26 basis to order any other relief.

27 **MEMORANDUM OF POINTS AND AUTHORITIES**

28 **I. Factual Background.**

1 On April 10, 2025, Kniazev, a citizen of Russia, applied for admission into the
2 United States at the Otay Mesa, California port of entry on April 10, 2025. *See* Declaration
3 of Cesar A. Topete, Assistant Field Office Director, Enforcement and Removal Operations
4 (ERO), attached as Exhibit A, at ¶ 4.¹ He lacked sufficient documents for lawful entry, and
5 he was processed for expedited removal pursuant to section 212(f) of the Immigration and
6 Nationality Act (INA) according to Presidential Proclamation 10888. *Id.* Kniazev was
7 issued a Notice and Order of Expedited Removal on April 15, 2025. *Id.* at ¶ 6. Kniazev
8 was referred to U.S. Citizenship and Immigration Services (USCIS) for an assessment
9 under the Convention Against Torture (CAT) after manifesting a fear of torture on or about
10 April 18, 2025. *Id.* at ¶ 7. On April 22, 2025, Kniazev was issued a negative determination
11 by USCIS with regard to his claimed fear of torture as USCIS determined he failed to
12 establish a likelihood of torture if returned to Russia. *Id.* at ¶ 8.

13 Kniazev was only in Arizona as a brief stopping point for staging purposes pending
14 his already planned removal. Following the negative CAT assessment, he was transferred
15 to the San Luis Regional Detention Center (SLRDC) in San Luis, Arizona, for staging for
16 eventual removal on May 23, 2025. *Id.* at ¶ 9. Upon arriving for staging, aliens possess
17 their removal document and passport or other travel document, and ERO cannot readily
18 identify whether the alien is being removed under Proclamation 10888 or another basis,
19 such as an order of removal issued by an Immigration Judge (IJ) or DHS. *Id.* at ¶ 12. He
20 was transferred from the SLRDC to the Florence Staging Center in Florence, Arizona, on
21 June 6, 2025, and he was originally scheduled to depart from Florence to Dallas, Texas, on
22 June 8, 2025, but he was rejected due to flight overcrowding. *Id.* at ¶¶ 11, 13. Kniazev was
23 subsequently transferred from the Florence Staging Center to the Florence Service
24

25 ¹ This Declaration was filed as Exhibit 12 attached to the Respondent's Opposition
26 to Petitioner's Motion for Temporary Restraining Order and Preliminary Injunction in
27 *Fatemeh Tabatabaeifar v. Kika Scott, et al.*, CV-25-01238-PHX-GMS. Doc. 47-1.
28 Defendants also attach it here as it is directly relevant to the issues presented in this case. Respondents request this Court take judicial notice under Fed. R. Civ. P. 201 of its contents for purposes of deciding this case only.

Processing Center (SPC) on June 9, 2025. *Id.* at ¶ 14. He departed SPC and traveled to the
 Prairieland Detention Center in Alvarado, Texas, on June 10, 2025, and arrived there at
 approximately 0500 hours on June 11, 2025.² *Id.* at ¶¶ 17-18. He was removed on June 12,
 2025. *Id.* at ¶ 19; *see also* Notice to Alien Ordered Removed/Departure Verification,
 attached as Exhibit B. Respondent was not aware of Kniazev's Petition until this Court's
 Order was filed on June 16, 2025. Doc. 3. Service of the habeas petition was effectuated
 via certified mail on June 20, 2025. Petitioner's request to stay his removal was denied.
 Doc. 3.

Under Ground One of his habeas petition, Kniazev claimed he was "interviewed
 only for fear of torture rather than fear of persecution in general," and that he received a
 negative finding upon USCIS's assessment of his claimed fear of torture. Doc. 1 at 7. Under
 Ground Two, he challenged the conditions of his confinement in Florence. *Id.* As of the
 date of his Petition, June 8, 2025, he had been in the Florence Staging Center since June 6,
 2025, two days, at that point. Doc. 1 at 9; Ex. A at ¶¶ 11, 14. He was transferred from the
 Florence Staging Center to the SPC by the time he had placed his petition in the prison
 mail system, and left SPC for Texas that same day. *Id.*; Ex. A at ¶¶ 14, 17. For relief,
 Petitioner requested release from detention, a stay of removal, and an asylum interview.
 Doc. 1 at 8.

II. Argument.

A. Plaintiff's Habeas Petition is Moot.

Petitioner's release from custody renders his Petition for Writ of Habeas Corpus
 moot. The jurisdiction of federal courts depends on the existence of a live case or

² Kniazev had already departed from SPC in Arizona and was traveling to the
 Prairieland Detention Center in Alvarado, Texas, by the time the Phoenix ERO Field Office
 issued interim guidance to its Phoenix staff regarding an advisement not to remove aliens
 under section 212(f) based on this District's June 6, 2025 Order filed in *German Togoiev v.*
Attorney General, Case No. CV-25-01960-PHX-GMS (MTM), temporarily restraining the
 United States from depriving those who sought a credible fear determination and an IJ's
 review under 8 C.F.R. § 208.30 and 8 U.S.C. § 1225(b)(1)(B)(iii)(III) for 14 days through
 the District of Arizona. Doc. 6 at 5.

1 controversy under Article III of the Constitution. *PUC v. FERC*, 100 F.3d 1451, 1458 (9th
 2 Cir. 1996). At any stage of the proceeding a case becomes moot when “it no longer
 3 present[s] a case or controversy under Article III, § 2 of the Constitution.” *Spencer v.*
 4 *Kemna*, 523 U.S. 1, 7 (1998). The test for mootness is whether the court can give a party
 5 any effective relief in the event that it decides the matter on the merits in their favor.
 6 *Reimers v. Oregon*, 863 F.2d 630, 632 (9th Cir. 1989). A case loses its quality as a live
 7 controversy and becomes moot when the court can no longer issue effective relief.
 8 *Feldman v. Bomar*, 518 F.3d 637, 642-43 (9th Cir. 2008); *see also Picrin-Peron v. Rison*,
 9 930 F.2d 773, 775 (9th Cir. 1991) (“if it appears that [the court is] without power to grant
 10 the relief requested, then the case is moot.”). Furthermore, Article III requires that a live
 11 case or controversy exist not only when the complaint is filed, but throughout the litigation.
 12 *Seven Words L.L.C. v. Network Solutions*, 260 F.3d 1089, 1094-95 (9th Cir. 2001); *Cook*
 13 *Inlet Treaty Tribes v. Shalala*, 166 F.3d 986, 989 (9th Cir. 1999). A litigant must continue
 14 to have a personal stake in the outcome of the suit throughout “all stages of federal judicial
 15 proceedings.” *United States v. Verdin*, 243 F.3d 1174, 1177 (9th Cir. 2001).

16 The writ of habeas corpus affords relief to persons *in custody* pursuant to the
 17 judgment of a court in violation of the Constitution, laws, or treaties of the United States.
 18 *See* 28 U.S.C. § 2241(c).³ Here, Petitioner’s release from custody renders his habeas
 19 petition moot because the relief requested, and the only relief this Court could grant under
 20 28 U.S.C. § 2241, is release from custody, and a petition challenging the conditions of his
 21 confinement, which are both no longer available to him. *McCullough v. Graber*, 726 F.3d
 22 1057, 1060 (9th Cir. 2013). Thus, because the Court lacks the power to grant any further
 23

24 ³ This Court references *Tabatabaeifar*, a Writ of Mandamus matter, in its Order
 25 dated June 16, 2025, (Doc. 3), in which that Court granted a preliminary injunction and
 26 determined that Proclamation 10888 “likely lacks statutory or constitutional authority and,
 27 resultingly, does not prevent Plaintiff from pursuing a final determination on her asylum
 28 claim.” Petitioner has not established standing to challenge the Proclamation, especially
 after his removal, and cannot do so in a habeas petition. While Respondent reserves the
 right to provide the Court with supplemental briefing on the constitutionality of the
 Proclamation itself, any substantive matters before this Court are moot because there is no
 live case or controversy to render on the now removed-Petitioner’s habeas petition.

1 effective relief, the habeas petition is now moot. *Reimers*, 863 F.2d 632; *Feldman*, 518
 2 F.3d at 642-43; *Picrin-Peron*, 930 F.2d at 775. Likewise, because Petitioner is no longer
 3 in custody, he no longer has a stake in the outcome of his habeas petition which challenged
 4 the constitutionality of his continued detention. *Verdin*, 243 F.3d at 1177.

5 Importantly, Kniazev's cause of action differs from *Fatemeh Tabatabaeifar v. Kika*
 6 *Scott, et al.*, CV-25-01238-PHX-GMS, in which the Petitioner there sought a Writ of
 7 Mandamus compelling the United States to provide her with a credible fear interview and
 8 IJ review. Kniazev's claims here are brought under a Writ of Habeas Corpus, a cause of
 9 action reserved for challenging custody and confinement conditions and limited to
 10 affording relief to those in custody (with the relief being release from unlawful custody).
 11 *See Heck v. Humphrey*, 512 U.S. 477 (1994) (explaining that the purpose of a writ of habeas
 12 corpus is to challenge the legal authority under which a prisoner is held in custody); *Allen*
 13 *v. McCurry*, 449 U.S. 90, (1980) (the unique purpose of habeas corpus is to release the
 14 applicant for the writ from unlawful confinement). A petitioner must allege a deprivation
 15 of federal rights before habeas relief may be granted. *Engle v. Isaac*, 456 U.S. 107 (1982).

16 For these reasons, the case was rendered moot when he was released from detention.
 17 *Abdala v. INS*, 488 F.3d 1061, 1064-65 (9th Cir. 2007) (discussing and collecting cases
 18 wherein a petitioner's release from detention or parole or their removal rendered a habeas
 19 petition moot). The Court should dismiss the petition for lack of subject matter jurisdiction
 20 because Petitioner's habeas petition is now moot. *McCullough*, 726 F.3d at 1060.

21 **B. Sections 1252(a)(2)(A) Serves as a Jurisdictional Bar.**

22 Even if this case were not moot—which it is—the Court would lack jurisdiction
 23 over Petitioner's challenge to the government's application of the expedited removal
 24 process, 8 U.S.C. § 1225(b)(1)—that is, the agency's application of a CAT assessment
 25 rather than a credible fear interview under Presidential Proclamation 10888. Although 28
 26 U.S.C. § 1331 generally supplies jurisdiction over federal questions, 8 U.S.C. §
 27 1252(a)(2)(A) eliminates jurisdiction for claims related to the decision to invoke the
 28 provisions of the expedited removal statute unless expressly permitted by 8 U.S.C. §

1 1252(e). *See Make the Road v. Wolf*, 962 F.3d 612, 626 (D.C. Cir. 2020). Section
 2 1252(a)(2)(A), titled “Matters not subject to judicial review,” provides that
 3 “[n]otwithstanding any other provision of law ... no court shall have jurisdiction to review
 4 ... except as provided in subsection (e),” “a decision ... to invoke the provisions of such
 5 section,” or “procedures and policies adopted ... to implement” § 1225(b)(1). 8 U.S.C. §
 6 1252(a)(2)(A)(i), (ii), (iv). Section 1252(a)(2)(A) thus removes from federal courts any
 7 jurisdiction to review issues “relating to section 1225(b)(1),” *i.e.*, expedited removal
 8 proceedings or credible fear determinations, other than as permitted by § 1252(e). *See*
 9 *Patchak v. Zinke*, 583 U.S. 244, 248–49 (2018) (“notwithstanding any other provision of
 10 law” in jurisdictional provision encompasses 28 U.S.C. § 1331). 8 U.S.C. § 1252(e) strictly
 11 limits the availability of relief, and generally only allows for review of expedited removal
 12 proceedings in the context of a habeas petition, and only in limited circumstances not
 13 applicable to Petitioner’s case. *See* 8 U.S.C. § 1252(e)(1), (2).

14 **C. Section 1252(e)(2) Challenges are Limited to Petitioners in Custody.**

15 To the extent Petitioner is challenging the expedited removal process—specifically,
 16 that he received a CAT assessment for his torture claim rather than a credible fear interview
 17 for his persecution claim—pursuant to Section 1252(e), his claims also fail and are moot,
 18 as discussed above, because he is no longer in custody and has already been removed from
 19 the United States. This is true even though he filed his petition while in custody because
 20 the only matter Petitioner can challenge under Section 1252(e)(2) is his detention. In *I.M.*
 21 *v. United States Customs & Border Prot.*, the Court held that “when Congress used th[e]
 22 phrase [habeas] in § 1252(e)(2),” it was referring to “a proceeding in which a person in
 23 custody challenges his detention.” 67 F.4th 436, 442 (D.C. Cir. 2023). Section 1252(e)(2)
 24 “cannot be used to challenge something other than the fact or length of [] confinement.”
 25 *I.M.*, 67 F.4th at 442; *see also id.* at 443 (noting that Congress repealed prior regime for
 26 review of removal orders and replaced it with “a new (and significantly more restrictive)
 27 one” but in doing so specifically chose to retain the use of “habeas corpus” proceedings
 28 only for the limited challenges permitted under Section 1252(e)(2)).

1 It would make little sense in the context of Section 1252(e)(2) to permit a plaintiff
2 to maintain a habeas challenge after his removal. “Habeas is at its core a remedy for
3 unlawful executive detention,” *Munaf v. Geren*, 553 U.S. 674, 693 (2008), and the
4 traditional function of the writ is to seek one’s release from unlawful detention,
5 *Thuraissigiam*, 591 U.S. at 117. As the Supreme Court held, relief other than “simple
6 release” is not available in a habeas action. *Id.* at 119 (“Claims so far outside the core of
7 habeas may not be pursued through habeas.”) (internal quotations and citations omitted).
8 And Section 1252(e)(2), in particular, “cannot be used to challenge [anything] other than
9 the fact or length of [] confinement.” *I.M.*, 67 F.4th at 442.

10 A claim is considered no longer “live” when a court cannot provide effectual relief
11 because no justiciable case remains. *Church of Scientology of Cal. v. United States*, 506
12 U.S. 9, 12 (1992). Here, the only relief that is available under Section 1252(e)(2) is
13 placement into Section 1229a removal proceedings. 8 U.S.C. § 1252(e)(4). But that relief
14 is relevant only where “a removal hearing *can* result in release” *I.M.*, 67 F.4th at 443
15 (emphasis in original) (explaining why the relief contemplated by Section 1252(e)(4) is not
16 inconsistent with holding that a petitioner can raise a claim under Section 1252(e)(2) only
17 when “in custody”). Here that is not the situation. Removal proceedings cannot be
18 commenced against someone who is not in the United States, nor can the Government serve
19 a Notice to Appear, which initiates removal proceedings, 8 U.S.C. §§ 1229, 1229a, upon
20 someone outside the country’s jurisdictional territory. *Sale v. Haitian Ctrs. Council, Inc.*,
21 509 U.S. 155, 188 (1993) (“Acts of Congress [including the INA,] normally do not have
22 extraterritorial application unless such an intent is clearly manifested.”). And because
23 removal occurs upon departure from the United States pursuant to an order, *see* 8 U.S.C. §
24 1101(g), the Government cannot remove an alien from a place he is not located. Therefore,
25 because there is no relief that this Court can provide, Plaintiff’s habeas claim is moot.

26 **D. Petitioner Does Not Request Other Relief and No Such Relief is Available.**

27 As Petitioner was removed before his petition was filed, any relief pertaining to the
28 expedited removal process—which takes place within the United States—is not available

(in habeas or otherwise). Petitioner does not seek any additional relief, such as allowing him to return to the United States. But even if he had made such a request to allow him to participate in a credible fear interview with an assessment for asylum, Petitioner would need to identify a basis for an affirmative injunction requiring the government to return him to the United States for that purpose. To obtain an order compelling an agency to take a specific action—whether under the APA, 5 U.S.C. § 706(1), or under traditional equitable principles—a court must first conclude that “an agency failed to take a discrete agency action that it is required to take.” *Norton v. Southwestern Utah Wilderness Alliance*, 542 U.S. 55, 64 (2004). Under traditional mandamus principles that have been carried forward into the APA, such an affirmative injunctive remedy is “normally limited to enforcement of a specific, unequivocal command”—that is, “the ordering of a precise, definite act about which an official has no discretion whatever.” *Id.* at 53 (quotation and alterations omitted). He would need to identify a statute that creates a specific, unequivocal duty requiring the government to take affirmative steps to return individuals—even those removed pursuant to a process later held unlawful—to the United States. *See Kiyemba v. Obama*, 555 F.3d 1022, 1028-29 (D.C. Cir. 2009), *vacated*, 559 U.S. 131 (2010), *reinstated after vacatur*, 605 F.3d 1046 (D.C. Cir. 2010). Petitioner would also need to identify a specific remedial statute permitting the affirmative injunction, even in the absence of a specific duty that could support the requested relief under the APA or traditional equitable practice, support such a drastic request.

Furthermore, the restraining order in *Togoev*, which was issued by another judge in this District before the government respondents had appeared and without any certification of a class or finding that district-wide relief was necessary to address the harms of the plaintiff/petitioner before that court,⁴ appeared to apply prospectively and did not contain

⁴ As the Supreme Court reinforced in its decision addressing nationwide injunctions in *Trump v. CASA, Inc.*, 2025 WL 1773631 (U.S. June 27, 2025), traditional principles of equity require that injunctive relief be no more burdensome than necessary to provide complete relief to the parties before the court. *See E. Bay Sanctuary Covenant v. Barr*, 934 F.3d 1026, 1029 (9th Cir. 2019); *California v. Azar*, 911 F.3d 558, 582 (9th Cir. 2018).

any directive to re-interview those who were interviewed previously in other jurisdictions, nor did it contain a blanket stay of removal. Kniazev entered the United States on April 10, 2025, almost two months before the Court's Order in *Togoev* was issued. Ex. A at ¶ 4. He had already been issued a Notice and Order of Expedited Removal on April 15, 2025, and received a negative determination on his CAT assessment on April 22, 2025, well-before June 6, 2025. *Id.* at ¶¶ 6-8. He arrived at a Florence staging facility on June 6, 2025. *Id.* at ¶ 13. While that happened to overlap with the Court's June 6, 2025, Order, he was in Arizona briefly for staging purposes only pending his already planned removal pursuant to an expedited removal order. *Id.* at ¶¶ 9-11, 14, 17. Kniazev was under no stay of removal while the TRO issued in *Togoev* was in effect. Additionally, as addressed above, Petitioner had already departed SPC in Arizona and begun traveling to Alvarado, Texas, on June 11, 2025, the day before Phoenix ERO Field Office issued interim guidance to its Phoenix staff on June 12, 2025, not to remove aliens who were subject to removal in Arizona under section 212(f) as a precautionary measure while the agency determined to whom the order properly applied. Ex. A. at ¶¶ 16-17.

III. Conclusion

For the foregoing reasons, the Court should dismiss Petitioner's habeas petition as his removal renders his petition moot and leaves this Court with no live case or controversy. Petitioner cannot be afforded any affective relief at this point.

Respectfully submitted on June 30, 2025.

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