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10
11 UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13 WESTERN DIVISION

14 SALIM NIZAR ESMAIL,
15 *Petitioner,*
16 *v.*
17 KRISTI NOEM, *et al.,*
18 *Respondents.*

No. 2:25-cv-08325-WLH-RAO

**RESPONDENTS'
MOTION TO DISMISS**

*[Proposed Order filed
concurrently herewith]*

Hearing

Date: Nov. 5, 2025
Time: 10:00 a.m.
Courtroom: 590

Hon. Rozella A. Oliver
U.S. Magistrate Judge

NOTICE OF MOTION

PLEASE TAKE NOTICE THAT on November 5, 2025 at 10:00 a.m., or as soon thereafter as the parties may be heard, Respondents will move to dismiss the instant Petition for a Writ of Habeas Corpus for mootness and ripeness. The hearing will take place before the Honorable Rozella A. Oliver, United States Magistrate Judge, in her courtroom located at Roybal Federal Building and United States Courthouse, 255 E. Temple St., Los Angeles, CA, 90012, Courtroom 590, 5th Floor.

Respondents bring this motion on the grounds detailed in the accompanying Memorandum of Points and Authorities. This motion is made upon this Notice, the attached Memorandum of Points and Authorities, the pleadings and papers on file herein, any oral argument that may be heard by the Court, and any other matters that the Court deems appropriate.

Dated: October 1, 2025

Respectfully submitted,

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Attorneys for Respondent

1 On September 3, 2025, Petitioner Salim Esmail (Petitioner) filed a Petition for a
2 Writ of Habeas Corpus (the Petition). Dkt. No. 1. Since September 13, 2025, Petitioner
3 has been released from custody. For the reasons below, Respondents hereby move to
4 dismiss the Petition.

5 I. BACKGROUND

6 A. Petitioner

7 Petitioner Salim Esmail is a native and citizen of Tanzania. Dkt. No. 12-1
8 (Declaration of John Park (Park Decl.)), ¶ 3.

9 On or about March 19, 1993, Petitioner was convicted of attempted murder under
10 section 125.25(a) of the New York Penal Law and sentenced to a term of 100 months to
11 25 years. *Id.* ¶ 4.

12 On or about August 18, 2008, Petitioner was ordered removed to Tanzania by an
13 immigration judge. *Id.* ¶ 5. The immigration judge also granted Petitioner deferral of
14 removal to Tanzania under Article III of the United Nations Convention Against Torture.
15 *Id.*

16 On or about October 21, 2011, Petitioner was released from custody on an Order of
17 Supervision (OSUP) with reporting requirements. *Id.* ¶ 6; *see* Dkt. No. 4-1, at 9.

18 While on OSUP, on or about January 17, 2017, Petitioner was convicted of
19 Elder/Dependent Adult: Harm/Death offense under section 368(B)(1) of the California
20 Penal Code. Dkt. No. 12-1 (Park Decl.), ¶ 7. He was sentenced to 132 days in jail for that
21 offense. *Id.*

22 On or about July 11, 2025, Homeland Security Investigations (HSI) Los Angeles
23 initiated an investigation regarding Petitioner after it became known he had been a
24 registered voter since February 10, 2022. *Id.* ¶ 8.

25 B. Petitioner's Detention

26 After that investigation, on or about September 4, 2025, Mr. Esmail's OSUP was
27 revoked, and he was taken into DHS custody. *Id.* ¶ 9.

28 ///

1 **C. Petitioner’s Release**

2 On or about September 13, 2025, pursuant to this Court’s order, Mr. Esmail was
3 released from DHS custody on OSUP issued by the ERO office in Eloy, Arizona. *Id.* ¶ 10;
4 *see* Dkt. No. 9-1, at 6.

5 On or about September 22, 2025, ERO Los Angeles re-issued OSUP for Mr. Esmail
6 and called him to report for service of the new OSUP. Dkt. No. 12-1 (Park Decl.), ¶ 11,
7 Dkt. No. 12-2 (Exh. A to Park Decl.) (a true and correct copy of the draft OSUP, which
8 ERO Los Angeles will serve Petitioner with once he comes in, as requested)).

9 **D. The Court’s Preliminary Injunction**

10 On September 26, 2025, the Court entered a preliminary injunction, enjoining
11 Petitioner’s further detention unless and until he is provided proper due process necessary
12 for the revocation of an Order of Supervision and enjoining Petitioner’s removal to a third
13 country without notice or the opportunity to challenge removal through a reasonable fear
14 interview. Dkt. No. 14.

15 **E. Underlying Habeas Petition**

16 Petitioner’s underlying habeas petition was filed on three grounds. *First*, Petitioner
17 claimed that he was detained in violation of his due process rights under the Fifth
18 Amendment of the United States Constitution. Dkt. No. 1, at 3. *Second*, that the nature
19 and manner of his detention violated the Administrative Procedure Act. *Id.* And *third*,
20 that he feared he “will be removed to a third country without the notice or an opportunity
21 to challenge the removal.” *Id.* at 4.

22 **II. ARGUMENT**

23 The case or controversy requirement of Article III of the U.S. Constitution deprives
24 federal courts of jurisdiction to hear moot cases. *Iron Arrow Honor Soc’y v. Heckler*, 464
25 U.S. 67, 70 (1983). Nor do courts have subject matter jurisdiction over unripe claims. *See*
26 *S. Pac. Transp. Co. v. City of L.A.*, 922 F.2d 498, 502 (9th Cir. 1990) (“If a claim is unripe,
27 federal courts lack subject matter jurisdiction.”).

28 ///

1 At the outset, Petitioner is no longer detained. Dkt. No. 12-1 (Park Decl.), ¶ 10;
2 Dkt. No. 9-1, at 6. In fact, he has been released from custody for over two weeks. *Id.* As
3 the Court recognized in its September 26, 2025 Order, “Petitioner’s Motion primarily
4 repeats the same arguments – with respect to his “original” detention claim – which this
5 Court has already considered and found meritorious.” Dkt. No. 14, at 6. But there is no
6 new detention claim. Indeed, at no point in the last eighteen days since his release has
7 Petitioner been re-detained. Nevertheless, the Court found his old detention claim was not
8 moot because of the TRO’s expiration and “the necessity of further injunctive relief
9 maintaining the status quo during the pendency of litigation means the claim is necessarily
10 *not* moot.” Dkt. No. 14 at 7 n. 5 (emphasis in original). But again, Petitioner has not been
11 re-detained. And rather than attempt to re-detain him, Respondents issued a new Order of
12 Supervision (OSUP), removing certain conditions that Petitioner challenged.¹
13 Nevertheless, the Court enjoined Petitioner’s future detention unless and until he is
14 provided proper due process necessary for the revocation of an Order of Supervision. But
15 his new OSUP has not been revoked.²

16 Respondents respectfully submit that Petitioner’s original detention claim and his
17 APA challenge to the manner and nature of the revocation of his *old* OSUP are moot in
18 light of the issuance of his *new* OSUP, which has not been revoked, and the fact that he
19 has not been re-detained. For the same reasons, Respondents further respectfully submit
20 that any future, hypothetical re-detention and any future, hypothetical revocation of his
21 *new* OSUP are not ripe. Under either scenario, the Court lacks subject matter jurisdiction.
22 *Iron Arrow*, 464 U.S. at 70; *S. Pac. Transp. Co.*, 922 F.2d at 502.

23
24 ¹ The Court’s September 26, 2025 Order found his challenge to those conditions
25 moot. Dkt. No. 14, at 7 (“Many of Petitioner arguments regarding the allegedly unlawful
26 conditions placed on Petitioner pursuant to the September 12 OSUP, (see *id.* ¶¶ 33-36),
are rendered moot by the September 22 OSUP, which removed some of the challenged
conditions.”).

27 ² And as to his challenge to the other conditions, namely those which relate to
28 securing travel documents, the Court found his challenge “likely time-barred,” given that
such conditions have been in place for almost fifteen years. Dkt. No. 14 at 8 (citing *Corner
Post, Inc. v. Board of Governors of Fed. Reserve System*, 603 U.S. 799, 825 (2024)).

1 The same holds true of Petitioner's fear of a prospective third-country removal. As
2 the Court rightly stated in its September 12, 2026 Order, "any efforts to remove Petitioner
3 to a third country must comport with due process," and Respondents already as a matter
4 of law must "afford Petitioner a meaningful opportunity to contest his removal to a third
5 country on the basis of fear of persecution or torture." Dkt. No. 8, at 16 n. 14 (citing 8
6 U.S.C. § 1231(b)(3)(A); 28 C.F.R. § 200.1; 8 C.F.R. § 208.16-18, 1208.16-18). Moreover,
7 as the Court properly highlighted in its subsequent September 26, 2025 Order,
8 "[i]mmigration proceedings must provide the procedural due process protections
9 guaranteed by the Fifth Amendment." Dkt. No. 14, at 11 (quoting *Vilchez v. Holder*, 682
10 F.3d 1195, 1199 (9th Cir. 2012) (citing *Lacsina Pangilinan v. Holder*, 568 F.3d 708, 709
11 (9th Cir. 2009)); *see id.* (collecting cases). And while the Court found Petitioner has
12 Article III standing for prospective injunctive relief, Dkt. No. 14, at 11, Respondents
13 respectfully submit any such future third-country removal is not ripe in light of the
14 issuance of his *new* OSUP, which has not been revoked, and the fact that he has not been
15 re-detained. *S. Pac. Transp. Co.*, 922 F.2d at 502.

16 III. CONCLUSION

17 Accordingly, Respondents respectfully request that the Court deny the Petition for
18 Writ of Habeas Corpus and dismiss Petitioner's action for lack of subject matter
19 jurisdiction.

20 Dated: October 1, 2025

Respectfully submitted,

21 BILAL A. ESSAYLI
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23 Chief, Civil Division
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27 *Attorneys for Respondents*
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CERTIFICATE OF COMPLIANCE

The undersigned counsel of record for Respondents certifies that this brief contains 1,251 words in compliance with L.R. 11-6.1's word limit.

Dated: October 1, 2025

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