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9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 EFRAIN PEREZ AGUSTIN,

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13 Petitioner,

14 v.

15 CHRISTOPHER LAROSE, et al.,

16 Respondents.
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Case No.: 25-cv-02323 RMB DEB

**RETURN IN OPPOSITION
TO FIRST AMENDED PETITION FOR
WRIT OF HABEAS CORPUS**

1 **INTRODUCTION**

2 After posting bond, Petitioner was released from ICE custody on September 17, 2025.
3 The Court should therefore dismiss this case as moot.

4 **FACTUAL BACKGROUND**

5 Petitioner Efrain Perez Agustin is a citizen of Guatemala. First Amended Petition for
6 Writ of Habeas Corpus, ECF No. 2 at ¶ 7. In 1994, he entered the United States without
7 inspection. *Id.* at ¶ 18. On June 19, 2025, Petitioner encountered ICE agents, which resulted
8 in his detention while removal proceedings were initiated against him. *Id.* at ¶ 20. During
9 those proceedings, an Immigration Judge granted Petitioner a bond of \$7,500. *Id.* at ¶ 21.
10 On August 8, 2025, DHS filed a Form EOIR-43, Notice of Intent to Appeal the Custody
11 Redetermination, and indicated that it was invoking the automatic stay provision of 8 C.F.R.
12 § 1003.19(i)(2). *Id.* On August 25, 2025, DHS filed a Form EOIR-26, Notice of Appeal
13 from a Decision of an Immigration Judge, and EOIR-43 Senior Legal Official Certification.
14 *Id.* at ¶ 23. That appeal is currently pending.

15 In the interim, Petitioner posted bond and was released from ICE custody on
16 September 17, 2025. Form I-830E, attached as Exhibit 1 (judicial notice requested pursuant
17 to Federal Rule of Evidence 201).

18 **ARGUMENT**

19 There is no “case” or “controversy” when an issue is moot. “[T]he question of
20 mootness is . . . one which a federal court must resolve before it assumes jurisdiction.” *North*
21 *Carolina v. Rice*, 404 U.S. 244, 246 (1971). “A case becomes moot – and therefore no
22 longer a Case or Controversy for purposes of Article III – when the issues presented are no
23 longer live or the parties lack a legally cognizable interest in the outcome.” *Already, LLC*
24 *v. Nike, Inc.*, 568 U.S. 85, 91 (2013) (internal quotation marks and citations omitted). The
25 Supreme Court has routinely instructed that a case becomes moot if an event occurs while
26 a case is pending “that makes it impossible for the court to grant ‘any effectual relief
27 whatever’ to a prevailing party.” *Church of Scientology of Cal. v. United States*, 506 U.S.
28 9, 12 (1992). Thus, even a once-justiciable case becomes moot and must be dismissed

1 “when the issues presented are no longer ‘live’ or the parties lack a legally cognizable
2 interest in the outcome.” *Powell v. McCormack*, 395 U.S. 486, 496 (1969).

3 An individual may seek habeas relief under 28 U.S.C. § 2241 if he or she is “in
4 custody” under federal authority “in violation of the Constitution or laws or treaties of the
5 United States.” 28 U.S.C. § 2241(c). Such habeas relief is available to challenge only the
6 legality or duration of confinement. *Pinson v. Carvajal*, 69 F.4th 1059, 1067 (9th Cir. 2023);
7 *Crawford v. Bell*, 599 F.2d 890, 891 (9th Cir. 1979); *Dep’t of Homeland Security v.*
8 *Thraissigiam*, 591 U.S. 103, 117 (2020) (The writ of habeas corpus historically “provide[s]
9 a means of contesting the lawfulness of restraint and securing release.”). Thus, “a
10 petitioner’s release from detention under an order of supervision moot[s] his challenge to
11 the legality of his extended detention.” *Panosyan v. Mayorkas*, 854 Fed. App’x 787, 788
12 (9th Cir. 2021) (quoting *Abdala v. INS*, 488 F.3d 1061, 1063 (9th Cir. 2007)).

13 Petitioner’s amended habeas petition requests this Court facilitate his release from
14 ICE custody on bond. ECF No. 2 at ¶ 17. Since Petitioner has already been released and is
15 no longer in ICE custody, the Court cannot grant him “any effectual relief.” *Church of*
16 *Scientology of Cal.*, 506 U.S. at 12; *see also Picrin-Peron v. Rison*, 930 F.2d 773, 775 (9th
17 Cir. 1991). In other words, Petitioner has already obtained the relief he sought – to be
18 released from ICE custody pending the agency’s appeal of his bond order. *See* ECF No. 2
19 at ¶ 43 (“While ICE has the right to appeal the IJ’s bond decision to the BIA, such an appeal
20 should not automatically stay the IJ’s order.”).

21 Finally, Petitioner does not allege any collateral consequences if his habeas petition
22 is rendered moot. To the contrary, “[i]t is clear that the direct consequences of the action
23 challenged here can no longer be remedied in habeas” and his claim is moot. *Chan v. Sec’y*
24 *of Homeland Sec.*, No. 16-01709-VBF (GJS), 2016 WL 4204596, at *2 (C.D. Cal. Aug. 5,
25 2016) (quoting *Cox v. McCarthy*, 829 F.2d 800, 803 (9th Cir. 1987)); *see Singh v. ICE Field*
26 *Office Director*, No. 24-cv-400-TL-TLF, 2024 WL 3258090, at *1 (W.D. Wash. June 12,
27 2024) (“because petitioner’s habeas petition challenges only the length of his detention, his
28 claims were fully resolved by release from custody.”); *Shawn-D Omar W. v. Mayorkas*, No.

23-cv-511 JLS (BLM), 2023 WL 6627816, at *2 (S.D. Cal. Oct. 10, 2023) (finding petition seeking release from ICE custody pending removal was moot where petitioner was released); *Ying Jiao Ye v. Nordheim*, No. 218cv10072 JVS (KES), 2019 WL 979245, at *3 (C.D. Cal. Feb. 27, 2019) (“[H]abeas petitions that raise claims that are fully resolved by release from custody are rendered moot upon the petitioner’s release.”). If Petitioner seeks to challenge ICE’s decision to appeal the bond order or desires some other form of declaratory relief, this habeas petition is not the proper mechanism as a matter of law. *See McQuillion v. Schwarzenegger*, 369 F.3d 1091, 1095 (9th Cir. 2004) (“A judicial pronouncement, as it would relate to [a released habeas petitioner], would be an advisory opinion, which the Constitution prohibits.”); *see also A.N.M.L. v. Garland*, No. 19-CV-01980-BAS-BGS, 2021 WL 1853577 (S.D. Cal. May 10, 2021) (finding petitioner’s “request for declaratory relief is likewise moot” due to petitioner’s release from immigration custody); *Alawad v. Figueroa*, No. 3:16-cv-2227-JAH-BLM, 2021 WL 1195789, at *3 (S.D. Cal. Mar. 30, 2021) (finding petitioner’s release from immigration custody mooted his habeas petition and due process challenge). Accordingly, this Court should dismiss Petitioner’s pending habeas petition as moot.¹

CONCLUSION

For the reasons stated above, the Court should dismiss the petition for lack of subject matter jurisdiction.

DATED: September 24, 2025

Respectfully submitted,

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s/ Michael Garabed
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¹ Because the record shows that Petitioner is not entitled to habeas relief, there is no need for an evidentiary hearing in this matter. *See Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) (“[I]f the record refutes the applicant’s factual allegations or otherwise precludes habeas relief, a district court is not required to hold an evidentiary hearing.”).