

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Civil No. 26-cv-02469-LMP-LIB

Nabijon NIYOZOV,

Petitioner,

v.

Markwayne MULLIN, *et al.*,

Respondents.

**RESPONDENTS'
MEMORANDUM IN
OPPOSITION TO PETITIONER'S
SUPPLEMENTAL BRIEFING**

INTRODUCTION

The Court ordered Respondents to file responsive briefing, if applicable, to any supplemental briefing Petitioner may file in order to demonstrate why this habeas action is not moot. ECF Nos. 17. On July 7, 2026, Petitioner filed their supplemental briefing, but they do not show why this habeas is moot. ECF No. 18. Instead, Petitioner shows that he is in someone's custody, just not Respondents'. Petitioner further deviates from their pleadings to this habeas to allege harms by custodians not a party to this habeas, custodians over whom U.S. Immigration and Customs Enforcement (ICE) exercises no legal control, and to seek additional relief than what habeas could allow here.

ARGUMENT

First, Petitioner argues that the Court has broad authority to order removal of restraints on Petitioner's liberty. Second, Petitioner claims that Petitioner's liberty remains restrained because of Respondents through custody or an ICE detainer. Third, Petitioner claims that Petitioner's continued custody because of an "ICE Hold" violates Minnesota law. Fourth, Petitioner claims that finding the habeas moot would be subject to

continued detention without a custodian authorized to release him. Fifth, Petitioner claims the Court should order Petitioner's release because a custody redetermination hearing was not held for Petitioner both when the Court ordered it and prior to the Court ordering it. Respondents will address each in turn.

Petitioner has not been in ICE custody since June 5, 2026. ECF No. 12. Prior to his release, ICE had received a writ from Hennepin County (ECF No. 13-2), which caused ICE to release Petitioner into the custody of Hennepin County. Hennepin County remains the custodian of Petitioner. Until Respondents take Petitioner back into their custody, he is not in the physical custody of Respondents. The source of Hennepin County's custody is its own writ.

The United States Constitution limits Article III court's subject-matter jurisdiction to ongoing cases and controversies. *See* U.S. Const. art. III, § 2, cl. 1. The case or controversy must persist beyond the time of filing and "through all stages of the litigation." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 90-91 (2013). When circumstances change and a federal court can no longer grant effective relief, the case may be deemed moot. *See Ali v. Cangemi*, 419 F.3d 722, 723 (8th Cir. 2005). Circumstances have changed. A state court issued a writ and order on Respondents to produce Petitioner for a state court matter. ECF No. 13-2. Respondents have not had custody over Petitioner since June 5, 2026. ECF No. 12. Hennepin County continues to hold Petitioner pending disposition of his state court trial. By all indications, this case has gone moot.

I. Petitioner's cited authorities do not support his position that his requested extraordinary relief is warranted

The Court ordered Petitioner to reference authorities that support their position that the Court's order to hold a bond hearing (ECF No. 11) is moot. ECF No. 17. Petitioner's cited authorities are of limited providence here. First, Petitioner cites *Alberto C.M. v. Noem*, 817 F. Supp. 3d 735 (D. Minn. 2026). In that case, ICE agents referred petitioner to a hospital for medical treatment and asserted continued custody of petitioner over the objection of hospital staff. *Noem*, 817 F.Supp.3d at 738-39. The Court ordered removal of ICE's physical restraints and that ICE agents leave the hospital. *Id.* at 739. Unlike the instant case, ICE agents were actively making claims of custody and did not leave the petitioner's side. *Alberto C.M.* also presented other issues that the Court addressed rather than making any specific jurisdictional finding.

The same can be said for the next cited case: *Franklin I.G.R. v. Bondi*, No. 26-cv-00567 (DWF/DTS), 2026 WL 207357 (D. Minn. Jan. 27, 2026). The petitioner's location was unknown to the Court. *Id.* Nevertheless, Petitioner remained in the physical custody of respondents until January 27, 2026, the day of the Court's order. *Id.* at ECF No. 11. The Court does not discuss any jurisdictional issue such that it may be relied on as dispositive to a subject-matter jurisdictional question here. Petitioner uses it here to show that the Court threatened contempt for failure to return missing property seized during physical custody following a court order to that effect. *Id.* at 2. The Court's exercise of its

contempt powers arose out of the physical custody respondents exercised over petitioner at the time of the Court's order.¹

The next cited case is similarly unavailing. In *Rigoberto S.J. v. Bondi*, the Court ordered respondents to release the petitioner with all of his property. The respondents in that case defaulted on the return of an immigration document seized during detention. The Court never analyzed jurisdiction in its opinion. It did not need to. It was a matter of court-order compliance.

These cases do not support Petitioner's contention that "[t]his Judicial District has repeatedly found authority to decide habeas petitions despite the fact that the non-citizens were not in the physical custody of Respondents." ECF No. 18, at 3-4. The Court in each case decided the petitions without independent jurisdictional analysis. They did not need to under their respective facts. Those petitioners were in the physical custody of the federal government when the habeas was granted unlike Petitioner. These facts distinguish these cases from Petitioner's.

Petitioner uses these cases to suggest that the Court has the authority to order Respondents to "remove the restraints" on Petitioner. This position misunderstands how

¹ "Respondents are directed to release Petitioner with all personal documents and belongings, such as his driver's license, passport, other immigration documents, and cell phone, and *without conditions such as ankle monitors or tracking devices.*" *Franklin I.G.R. v. Bondi*, No. 26-cv-00589, 2026 WL 207357, at *2 (D. Minn. Jan. 27, 2026) (emphasis added) At the time this order was made, petitioner was in the custody of respondents. The orders following this order related to a violation of the italicized portion above. This case presented no jurisdictional questions, nor does it appear to have been raised by the parties.

exactly custody transferred from Respondents to Hennepin County. Respondents received a writ from Hennepin County to transfer Petitioner “to the custody of the Hennepin County Sheriff.” ECF No. 13-2. The scope of the Hennepin County District Court’s order says, “[t]his Order and Writ shall extend to the disposition of all proceedings in the above-entitled matter. At the conclusion of all proceedings, the Hennepin County Sheriff will return the person to your custody....” *Id.* Respondents believe the only restraint on Petitioner’s liberty interest is Hennepin County’s ongoing exercise of this writ so that Petitioner appears for his state criminal trial. Respondents complied with this writ that was an order from the Hennepin County District Court. On the date ordered, Respondents released Petitioner into the custody of Hennepin County. ECF No. 12. Petitioner treats the writ as though Respondents drafted and control it, which was not the case. The writ is not a document of Respondents, it is a document of the current custodian of Petitioner.

Respondents are unaware of what control they have over Hennepin County’s current custody over Petitioner. Petitioner attempts to draw Respondents back into being the custodian of Petitioner because Hennepin County allegedly will not release on bail. Respondents are not responsible for the decisions made by a separate political entity.

Petitioner’s references to *U.S. v. Cole* are also inapposite. The question under review by the Eighth Circuit was whether a defendant’s federal sentence began running at the time of his original federal sentence when he was still in state custody for separate criminal offenses. *U.S. v. Cole*, 416 F.3d 894, 896 (8th Cir. 2005). The Eighth Circuit held that because the federal government relinquished Cole on a recognizance bond and he

was taken into custody by the state of Arkansas, his federal sentence did not legally start. *Id.* at 897. The purported sovereigns of the federal government and state government are not contesting over claims to Petitioner here, nor can they. Hennepin County gained custody related to state criminal proceedings, whereas Respondents' are responsible for administering nonpunitive civil immigration detention. It is unclear that *U.S. v. Cole* extends beyond computing sentences for defendants with state and federal criminal convictions. Petitioner has not demonstrated it does.

Lastly, Petitioner relies on *Jones v. Cunningham* to encourage the Court to intervene in Hennepin County's current physical custody over Petitioner. 371 U.S. 236 (1963). Petitioner does not appreciate an important caveat within that decision. The petitioner in *Jones* was released by the superintendent of the Virginia State Penitentiary to the Virginia Parole Board. *Jones*, 371 U.S. at 241. The Supreme Court permitted the petitioner to continue to test non-detention, liberty restraints imposed by the Virginia Parole Board, but noted that the habeas insofar as it named the superintendent of the prison is moot because "the superintendent's custody had come to an end." *Id.*² *Jones's* full text does not support revising Hennepin County's custody as properly belonging to Respondents, nor does it appear to support keeping Respondents named in this habeas. Respondents seems more akin to the superintendent of the Virginia State Penitentiary

² Because the *Jones* petitioner motioned to add custodians with the Virginia Parole Board to the habeas action, the Supreme Court gave its blessing that the overall habeas action could continue sans the non-custodial respondent. The mootness only affected that named respondent who released petitioner. *See Jones v. Cunningham*, 371 U.S. 236, 241 (1963).

than the Virginia Parole Board. Petitioner has not adequately reconciled with the limitations of the decisions he has chosen to advance here.

II. The Enforceability or Unenforceability of ICE detainers does not answer whether the habeas is moot

Petitioner next argues that ICE detainers or holds are illegal under Minnesota state law. Respondents do not attempt to argue the alternative because they would not need to here. The fact that ICE detainers and holds are of no legal effect in Minnesota favors Respondents' position, not Petitioner's. If we take Petitioner's suggestion that any residual claim ICE could potentially have over Petitioner is legally unenforceable, then it would follow that the purported residue is less than meaningless. What would result is that Hennepin County is the exclusive custodian of Petitioner. Whether Hennepin County returns Petitioner to ICE would amount to a matter of discretion for Hennepin County under such a reading. Accordingly, Petitioner is ignoring his actual custodian.

Habeas requires naming the appropriate custodian before seeking relief. *Rumsfeld v. Padilla*, 542 U.S. 426, 434 (2004); *see also* 28 U.S.C. §§ 2242 & 2243. The Supreme Court has generally understood the appropriate custodian to be he or she with "the ability to produce the prisoner's body before the habeas court." *Rumsfeld*, 542 U.S. at 435 (paraphrasing *Wales v. Whitney*, 114 U.S. 564, 574 (1885)). At this time that is some custodian employed by Hennepin County, not U.S. Immigration and Customs Enforcement. Because it is unclear what that could theoretically change, the habeas is moot.

Respondents also note that the Petition makes explicit reference to the scope of alleged harm Petitioner sought relief from. Petitioner's Petition repeatedly asks this Court for relief from physical custody. "As a result of Respondents' unlawful actions, he is in their *physical* custody at the Sherburne County Facility in Elk River, Minnesota." (emphasis added) Pet. ¶ 1. "Petitioner is in the *physical* custody of Respondents." (emphasis added) Pet. ¶ 5. Petitioner should be held to his word.

The Hennepin County writ entirely circumscribes the terms of Petitioner's custody. ECF No. 13-2. It details when Respondents must give up physical custody over Petitioner. *Id.* It details Hennepin County's intent to have Respondents take back custody at some point. *Id.* Respondents can assume this custody would end, but not when. At this time, he is not under federal custody and ICE has advised the undersigned counsel that he is not subject to a detainer request. Even if Petitioner were theoretically subject to a detainer request, it is a request. 8 C.F.R. § 287.7(a). And according to Petitioner, it is a request that is unenforceable under Minnesota state law.

Moreover, it appears the state trial is actively litigating this issue as evidenced by a recent motion filing in the state criminal case. Def.'s Mot. to Dismiss the Writ and Deem it Satisfied, *Minnesota v. Niyozov*, No. 27-CR-24-18065 (Minn. Dist. Ct. July 6, 2026). It appears that the parties in the state court criminal case appear to not have opposed the

original writ.³ Now, that same writ is being challenged in state court. At this time, there is no controversy here. The controversy lies with a state court.

III. Finding the habeas moot does not resolve the underlying writ, but that writ continues exists whether this habeas is mooted or not.

It is untrue that finding the habeas is moot would result in an unconstitutional scenario where no jailer has the authority to order the release of Petitioner. There is an outstanding motion to dismiss the writ that caused Petitioner to be transferred to the custody of Hennepin County. The court may rule on this motion, which may terminate custody Hennepin County has in the Petitioner. If Hennepin County is ordered to return Petitioner to ICE custody, ICE would then have custody of Petitioner. If Hennepin County does not return Petitioner to ICE, ICE would have to regain custody through re-arresting Petitioner. ICE may then produce Petitioner for this Court to dispose of this habeas. ICE would respectfully seek to lift the stay of the original Court's order and hold a custody redetermination hearing for Petitioner. But that is entirely theoretical.

Hennepin County wanted Petitioner enough to seek his release from Respondents' custody. Due to an unopposed writ by the Hennepin County District Attorney, Petitioner now resides in the Hennepin County Jail. His custodian is an employee of the Hennepin County Jail. Unlike the cases that Petitioner cites, Respondents' officers do not watch over Petitioner at the Hennepin County Jail. It is very unlikely Respondents' officers

³ "On May 18, 2026, this Court granted the request for a writ, which was unopposed." Def.'s Mot. to Dismiss the Writ and Deem it Satisfied, *Minnesota v. Niyozov*, Case No. 27-CR-24-18065 (Minn. Dist. Ct. July 6, 2026)

could ever do so given no 287(g) agreement exists between ICE and Hennepin County.⁴ The custodian Petitioner seeks to test any restraint against is simply not named in this habeas.

IV. The lack of a prior bond hearing does not justify release

Respondents maintain the immigration court cannot hold a custody redetermination hearing as the immigration judge would lack bond jurisdiction. *Matter of Sanchez*, 20 I. & N. Dec. 223, 225 (BIA 1990). *Sanchez* is instructive. The Board of Immigration Appeals (BIA) specifically rejected an immigration judge's claim to "technical" custody over a noncitizen that was under the custody of the state of Maryland at the time the immigration judge exercised bond jurisdiction. *Sanchez*, 20 I.&N. at 225. "To make a proper custody determination ... the Service must first have custody of the respondent." *Id.* The BIA clarifies that the sort of custody required is "actual physical custody." *Id.* That is the type of custody it likewise denies arises out of the issuance of a detainer request. *Id.*

This is not the case of switching between facilities of the Department of Homeland Security (DHS). The BIA has specified that the immigration judge would maintain bond jurisdiction if a noncitizen moves between DHS facilities. *Matter of Armanda Cerda Reyes*, 26 I. & N. Dec. 528, 530 (BIA 2015). In other words, an immigration judge could not deny jurisdiction on the grounds that DHS shuffled the noncitizen among DHS facilities, even if the gaining facility is outside the geographic reach of the immigration

⁴ Henn. Cnty. Bd. Of Comm'rs, Resolution No. 26-0069 R1 (Feb. 12, 2026).

judge who had jurisdiction to redetermine custody status at the losing facility. *Id.* Despite that, the BIA reaffirmed that this venue distinction does not defeat the overall point in *Sanchez* that actual physical custody by DHS is required to redetermine custody status for immigration detention. *Matter of Armanda Cerda Reyes*, 26 I. & N. Dec. 528, n. 7 (BIA 2015) (“The limits on an Immigration Judge’s jurisdiction over bond proceedings in section 236 still prohibit the Immigration Judge from hearing a request for a custody redetermination filed in advance of an alien’s transfer from criminal custody into DHS custody.”) Accordingly, *Sanchez* still supports Respondents’ position that until Respondents take actual physical custody over Petitioner, they may not provide him with a bond hearing. The jurisdiction problem persists.

Likewise, this disposes of Petitioner’s argument that the Court should order release because Respondents have refused a bond hearing after the Court’s order (ECF No. 11) ordering Respondents to hold a bond hearing. Respondents notified the Court of Petitioner’s release once the undersigned counsel learned of Petitioner’s release through counsel for Petitioner and had the same confirmed with employees of Respondents. ECF No. 12. Respondents did not refuse this Court’s order, the order became legally impossible for Respondents to bring effect to. *Sanchez*, 20 I. & N. Dec. 223, 225 (BIA 1990). Respondents notified the Court of this, and the Court ordered a stay of the order. ECF No. 15. If Respondents do not have bond jurisdiction over Petitioner, which they do not, they would have to refuse to hold a bond hearing until that requisite custody is restored.

Respondents acknowledge that there is an ongoing issue here. However, it is an issue best resolved with the state either dismissing the writ and returning Petitioner to the custody of Respondents, or proceeding with an efficient resolution of the trial and then returning Petitioner to the custody of Respondents. Respondents have no say in how the state may want to resolve this. Unless the facts before the Court change, this habeas is moot.

CONCLUSION

The Court should deny any additional relief given Respondents' release of Petitioner to Hennepin County.

Dated: July 14, 2026

Respectfully submitted,

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