

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION

b

DANIELA VARGAS

CIVIL ACTION NO. 1:17-CV-00356

VERSUS

CHIEF JUDGE DRELL

UNITED STATES DEPARTMENT
OF HOMELAND SECURITY, *ET*
AL.

MAGISTRATE JUDGE PEREZ-MONTES

REPORT AND RECOMMENDATION

I. Background

Before the Court is a Petition for Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2241 by Daniela Vargas (“Vargas”). Vargas, a native and citizen of Argentina, contends she has been in the custody of the United States Department of Homeland Security, U.S. Immigration and Customs Enforcement (“ICE”) since March 1, 2017. Vargas arrived in the United States under the Visa Waiver Program in 2001, when she was seven years old, and has twice been granted deferred action on removal under the Deferred Action for Childhood Arrivals (“DACA”) program, in 2012 and 2014. Vargas admits she subsequently failed to timely reapply for deferred action under DACA in 2016.

ICE arrested Vargas’s brother and father in February 2017. Vargas alleges she reapplied for deferred action later that month. Her DACA application is still

pending. Vargas also alleges that an application for a “U” nonimmigrant visa¹ was filed on her behalf in 2014, which is also still pending.

In March 2017, Vargas made statements to the media concerning the arrest of her brother and father by ICE officials. Afterward, Vargas was arrested and detained by ICE. Vargas alleges that an ICE official told her she will be summarily removed from the United States without a hearing, because she waived her right to contest removal when she was admitted in 2001 pursuant to the Visa Waiver Program.²

Vargas filed an “Emergency Motion for Stay of Removal” (Doc. 2). Vargas also seeks (1) a release from detention; (2) a copy of all of Vargas’s immigration records; (3) rescission of the “Final Administrative Removal Order”; (4) a judgment declaring Vargas is being detained in violation of the First and Fifth Amendments and the Administrative Procedure Act; and (5) an award of costs and attorney fees. Vargas alleges and shows (Doc. 2-18) that she is subject to a final administrative order of removal. Since this Court lacks jurisdiction over the portions of Vargas’s petition that challenge her removal order, those claims have been transferred to the United States Court of Appeals for the Fifth Circuit (Doc. 16).

¹ A “U-Visa” is a type of visa that can be granted to victims of certain listed crimes who later help United States law enforcement officials investigate or prosecute those crimes. See Ordonez Orosco v. Napolitano, 598 F.3d 222, 224 (5th Cir. 2010); see also 8 U.S.C. § 1101(a)(15)(U).

² A notice of intent to issue a final administrative removal order was served on Vargas in Mississippi on March 1, 2017 (Doc. 18-2). Vargas’s final order of removal (undated and unsigned, but served on March 1, 2017) was issued from New Orleans. The final order of removal states the “DHS will proceed with your removal from the United States unless a court order is issued to stay your removal or an application for asylum, withholding or deferral of removal is pending before the Department of Justice, Executive Office for Immigration Review” (Doc. 18-2). Vargas alleges she has a pending application for deferral of removal.

Vargas's remaining Zadvydas claim, challenging her pre-removal detention, remains pending before this Court. The sole remaining relief requested by Vargas is release from custody pending her removal, pursuant to Zadvydas v. Davis, 533 U.S. 678 (2001).

II. Law and Analysis

Respondents filed a motion to dismiss Vargas's petition (Doc. 32), showing through documentary evidence that Vargas was ordered released on supervision on March 10, 2017 (Doc. 32-2). Moreover, counsel for Vargas twice informed the Court by telephone that ICE was releasing Vargas.

An action is rendered moot when the court cannot grant the relief requested by the moving party. See Salgado v. Federal Bureau of Prisons, 220 Fed. Appx. 256, 257 (5th Cir. 2007) (citing Brown v. Resor, 407 F.2d 281, 283 (5th Cir. 1969)). A moot case presents no Article III case or controversy, and a court has no constitutional jurisdiction to resolve the issues it presents. See Adair v. Dretke, 150 Fed.Appx. 329, 331 (5th Cir. 2005) (citing Goldin v. Bartholow, 166 F.3d 710, 717-18 (5th Cir. 1999)).

Since Vargas has been released and has thereby achieved the sole remaining relief requested in her habeas petition, Vargas's habeas petition has been rendered moot. Therefore, Respondents' motion to dismiss Vargas's habeas petition (Doc. 32) should be granted.

III. Conclusion

Based on the foregoing discussion, IT IS RECOMMENDED that Respondents' motion to dismiss (Doc. 32-2) be GRANTED and that Vargas's habeas petition be DENIED and DISMISSED AS MOOT.

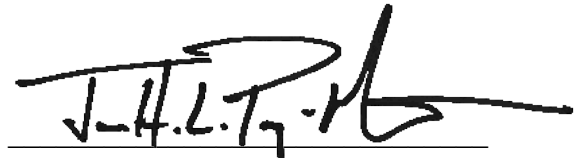
Under the provisions of 28 U.S.C. Section 636(b)(1)(C) and Rule 2(b), parties aggrieved by this recommendation have fourteen (14) days from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within fourteen (14) days after being served with a copy of any objections or response to the District Judge at the time of filing. No other briefs (such as supplemental objections, reply briefs etc.) may be filed. Providing a courtesy copy of the objection to the Magistrate Judge is neither required nor encouraged. Timely objections will be considered by the District Judge before he makes a final ruling.

Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in this Report and Recommendation within fourteen (14) days following the date of its service, or within the time frame authorized by Fed.R.Civ.P. 6(b), shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Court, except upon grounds of plain error. See Douglass v. United Services Automobile Association, 79 F.3d 1415 (5th Cir. 1996).

Pursuant to Rule 11(a) of the Rules Governing Section 2254 cases (and other habeas cases pursuant to see Rule 1(b)) in the United States District Courts, this

court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Unless a Circuit Justice or District Judge issues a certificate of appealability, an appeal may not be taken to the court of appeals. **Within fourteen (14) days from service of this Report and Recommendation, the parties may file a memorandum setting forth arguments on whether a certificate of appealability should issue. See 28 U.S.C. § 2253(c)(2). A courtesy copy of the memorandum shall be provided to the District Judge at the time of filing.**

THUS DONE AND SIGNED in chambers at Alexandria, Louisiana on this
27th day of March, 2017.

A handwritten signature in black ink, appearing to read 'J.H.L. Perez-Montes', written over a horizontal line.

Joseph H.L. Perez-Montes
United States Magistrate Judge