

JAN 04 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

IDRISA SESAY,

Petitioner - Appellant,

v.

JANET NAPOLITANO,\* Secretary of the  
Department of Homeland Security; ERIC  
H. HOLDER JR., Attorney General of the  
United States; ROBIN BAKER, Director  
of San Diego Field Office, U.S.

Immigrations and Customs Enforcement;  
JOHN A. GARZON, Officer-in-Charge,

Respondents - Appellees.

No. 08-56812

D.C. No. 3:07-cv-02354-JM-LSP

O R D E R

Appeal from the United States District Court  
for the Southern District of California  
Jeffrey T. Miller, District Judge, Presiding

Argued and Submitted August 5, 2009  
Pasadena, California

Before: CANBY, WARDLAW and CALLAHAN, Circuit Judges.

The government's motion to dismiss this appeal on the ground of mootness  
is GRANTED. *See Clark v. Martinez*, 543 U.S. 371, 376 n.3 (2005) *Rodriguez v.*

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\* Janet Napolitano is substituted for her predecessor Michael Chertoff,  
Secretary of the Department of Homeland Security, pursuant to Fed. R. App. P.  
43(c)(2).

*Hayes*, 578 F.3d 1032, 1044 (9th Cir. 2009); *Picrin-Peron v. Rison*, 930 F.2d 773, 776 (9th Cir. 1991). This appeal is dismissed as moot.

Because this mootness was caused by the unilateral act of the government, we vacate the decision of the district court and remand with instructions to dismiss the petition as moot. *See U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18, 25 (1994) (stating that equitable considerations favor vacatur “when mootness results from unilateral action of the party who prevailed below”); *see also Alvarez v. Smith*, \_\_\_ U.S. \_\_\_, 2009 WL 4573274, at \*5-7 (U.S. Dec. 8, 2009).

**APPEAL DISMISSED; REMANDED with instructions.**