

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FAWZI KHALID ABDULLAH FAHAD)

AL ODAH, *et al.*,)

Petitioners,)

v.)

UNITED STATES OF AMERICA,)

et al.,)

Respondents.)

Civil Action No. 02-CV-0828 (CKK)

**NOTICE OF TRANSFER OF PETITIONER NASSER NIJER NASER AL MUTAIRI
AND MOTION TO DISMISS HIS PETITION FOR WRIT OF HABEAS CORPUS**

COME NOW Respondents, by and through their undersigned counsel, and hereby give notice that petitioner Nasir Najr Nasir Balud Al Mutayri (listed in the petition as Nasser Nijer Naser Al Mutairi) has been transferred from the custody of the United States to Kuwait. Because petitioner Nasir Najr Nasir Balud Al Mutayri has been transferred from the custody of the United States, there is no case or controversy before the Court and there exists no remedy that the Court can provide to this petitioner. Thus, respondents respectfully request that the Court dismiss his petition for writ of habeas corpus as moot. As grounds for this motion, respondents state as follows:

1. Petitioner Nasir Najr Nasir Balud Al Mutayri, a citizen of Kuwait, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. §§ 2241 and 2242. His petition challenges the validity of his detention in the United States Naval Base in Guantanamo Bay, Cuba, and requests a declaration that his detention is unlawful. Petitioner seeks either a writ of habeas corpus or an

order requiring his release from custody. See Amended Complaint, filed July 8, 2002; Petitioners' Applications for Writ of Habeas Corpus, filed July 27, 2004; Court's Orders dated July 23, 2004 and September 17, 2004.

2. The United States has transferred petitioner Nasir Najr Nasir Balud Al Mutayri from detention in Guantanamo Bay to the government of Kuwait. Thus, petitioner is no longer within the custody of the United States.

3. Article III courts are limited "to deciding 'actual, ongoing controversies.'" Clarke v. United States, 915 F.2d 699, 700-01 (D.C. Cir. 1990) (en banc) (quoting Honig v. Doe, 484 U.S. 305, 317 (1988)); accord Preiser v. Newkirk, 422 U.S. 395, 401 (1975) (a federal court has no "power to render advisory opinions [or] . . . 'decide questions that cannot affect the rights of litigants in the case before them.'" (citation omitted). To satisfy the case-or-controversy requirement of Article III, "it is not enough that a dispute was very much alive when suit was filed . . . The parties must continue to have a personal stake in the outcome of the lawsuit." Lewis v. Continental Bank Corp., 494 U.S. 472, 477-78 (1990) (internal citations and quotations omitted). "A case is moot if 'events have so transpired that the decision will neither presently affect the parties' rights nor have a more-than-speculative chance of affecting them in the future.'" Pharmachemie B.V., 276 F.3d 627, 631 (D.C. Cir. 2002) (quoting Clarke, 915 F.2d at 700-01); accord Public Util. of the State of Cal. v. Federal Energy Regulatory Comm'n, 236 F.3d 708, 714 (D.C. Cir. 2001) (recognizing that a case becomes moot where events occur while the case is pending that "make it impossible for the court to grant any effectual relief whatever to a prevailing party") (internal quotations omitted). A court lacks subject matter jurisdiction over a case that has become moot. See Lewis, 494 U.S. at 477.

4. The habeas statute provides that a writ of habeas corpus may be granted to a prisoner who “is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2241(c)(3). See also Preiser v. Rodriguez, 411 U.S. 475, 484 (1973) (“[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody”). Petitioner Nasir Najr Nasir Balud Al Mutayri is no longer within the custody of the United States. Consequently, petitioner no longer has a personal stake in the outcome of his petition, and there is no relief that the Court can grant petitioner. Thus, his petition is moot, and there is no case or controversy before the Court. The Court lacks subject-matter jurisdiction over the petition filed by petitioner Nasir Najr Nasir Balud Al Mutayri. Nasir Najr Nasir Balud Al Mutayri should be dismissed as a petitioner in this case, and all pending motions pertaining to him should be denied as moot.

5. Pursuant to Paragraphs 34 and 45 of the Amended Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantanamo Bay, Cuba, dated November 8, 2004, all classified and protected information pertaining to petitioner Nasir Najr Nasir Balud Al Mutayri made available to counsel for petitioners in these proceedings must be promptly destroyed, as explained therein.

WHEREFORE, for the reasons stated herein, respondents respectfully request that the Court dismiss Nasir Najr Nasir Balud Al Mutayri as a petitioner in this case, and that all pending motions pertaining to him be denied as moot. A proposed order is attached.

Dated: January 18, 2005

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

KENNETH L. WAINSTEIN
United States Attorney

BRIAN D. BOYLE
Principal Deputy Associate Attorney General

DAVID B. SALMONS
Assistant to the Solicitor General

DOUGLAS N. LETTER
Terrorism Litigation Counsel

ROBERT D. OKUN
Assistant United States Attorney
Chief, Special Proceedings Section

/s/ Preeya M. Noronha

JOSEPH H. HUNT (D.C. Bar No. 431134)
VINCENT M. GARVEY (D.C. Bar No. 127191)

TERRY M. HENRY

LISA A. OLSON

JAMES J. SCHWARTZ

PREEYA M. NORONHA

ROBERT J. KATERBERG

ANDREW I. WARDEN

NICHOLAS J. PATTERSON

Attorneys

United States Department of Justice

Civil Division, Federal Programs Branch

20 Massachusetts Ave., N.W. Room 7144

Washington, DC 20530

Tel: (202) 514-4107

Fax: (202) 616-8470

Attorneys for Respondents