

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FAWZI KHALID ABDULLAH FAHAD AL ODAH,)
et al.,)
Plaintiffs-petitioners,)
v.) No. CV 02-0828 (CKK)
UNITED STATES OF AMERICA, *et al.*,)
Defendants-respondents.)

**OPPOSITION TO MOTION TO DISMISS
PETITION OF NASSER NIJER NASER AL MUTAIRI**

Plaintiffs-petitioners Fawzi Khalid Abdullah Fahad Al Odah *et al.* [the “Kuwaiti Detainees”] oppose the motion by defendants-respondents the United States of America *et al.* [the “government”] to dismiss the petition of Nasser Nijer Naser Al Mutairi and to direct the Court Security Office to destroy all classified and protected information pertaining to Al Mutairi that was provided to his counsel. The government argues that Nasser Al Mutairi’s petition is “moot” because the United States has transferred him from the U.S. Naval Base, Guantanamo Bay, Cuba, to the custody of the Government of Kuwait. However, in light of the Court’s ruling of January 31, 2005, that the detainees at Guantanamo have enforceable rights under the Fifth Amendment, Nasser Al Mutairi may have claims against the government and the individual defendants-respondents that survive his transfer to the custody of the Government of Kuwait and that he may assert by further amendment to his present amended complaint. Therefore, Nasser Al Mutairi’s case is not moot.

1. If an event occurs during the pendency of a case “that makes it impossible for the court to grant ‘*any effectual relief whatever*’” (emphasis added) to the plaintiff, there is no longer a justiciable controversy under Article III and the case must be dismissed as moot. *See Church*

f Scientology v. United States, 506 U.S. 9, 12 (1992); *Public Utilities Com'n of Calif. v. FERC*, 236 F.3d 708, 714 (D.C. Cir. 2001). However, a defendant's unilateral cessation of the conduct that precipitated a suit by the plaintiff does not automatically render a case moot. If the plaintiff continues to suffer collateral injury as a result of the defendant's challenged conduct and a court may rectify that injury, a justiciable "case or controversy" remains. "While a court may not be able to return the parties to the *status quo ante* ... a court can fashion *some* form of meaningful relief in circumstances such as these." *Church of Scientology*, 506 U.S. at 12-13. *See also Twelve John Does v. District of Columbia*, 117 F.3d 571, 575 (D.C. Cir. 1997) (plaintiff inmates' appeals from orders concerning living conditions at central facility of Lorton prison were not rendered moot by the transfer of those inmates to other facilities because a court could grant them relief as representatives of a proposed subclass of inmates).

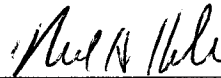
2. Nasser Al Mutairi and the other Kuwaiti Detainees filed both an amended complaint and an application for the issuance of a writ of habeas corpus. In their amended complaint the Kuwaiti Detainees allege, among other things, that the government and the individual defendants-respondents unlawfully denied them fundamental due process rights in violation of the Fifth Amendment. Amended Complaint, ¶¶ 22-29. This Court, in its decision of January 31, 2005, held that the detainees at Guantanamo have enforceable rights under the Fifth Amendment.

As a result of the Court's decision, Nasser Al Mutairi may have valid claims against the government and the individual defendants-respondents that survive his transfer to the custody of the Government of Kuwait. The existence and extent of those claims cannot be determined until the Kuwaiti Detainees are allowed to proceed with discovery to determine the nature of the actions taken against them by the government and the individual defendants-respondents, including acts of torture, severe mistreatment, and abuse. The fruits of such discovery, coupled

with the classified and protected information already provided by the government to counsel for Nasser Al Mutairi, may cause the Kuwaiti Detainees to seek leave to amend their complaint a second time, and such further amendment may include additional claims for relief by Al Mutairi.

Accordingly, this Court may be able to “fashion *some* form of meaningful relief” in this case for Nasser Al Mutairi. *Church of Scientology*, 506 U.S. at 12-13. For this reason, Nasser Al Mutairi’s petition and amended complaint still present a live “case or controversy” and should not be dismissed, nor should the Court direct the Court Security Officer to destroy the classified and protected information about Al Mutairi that the government has provided to his counsel.

Respectfully submitted,



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