IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ISA ALI ABDULLA ALMURBATI, *ET AL.*,	)	
	)	
Petitioners,	)	**Civil Action No. 04-1227 (RBW)**
	)	
v.	)	
	)	**RESPONSE TO ORDER**
GEORGE WALKER BUSH, *ET AL.*,	)	**TO SHOW CAUSE**
	)	
Respondents.	)	

PRELIMINARY STATEMENT

Petitioner Salah Abdul Rasool Al Bloushi hereby responds to the Court's October 27, 2006 Order to Show Cause why his petition should not be dismissed as moot in light of his recent transfer from Guantanamo Bay to the control of the government of Bahrain.

Because the United States Court of Appeals for the District of Columbia is already seized of this issue, petitioner Al Bloushi requests that the Court defer any decision with respect to mootness. The cases of all petitioners in this matter (as well as a number of other petitioners) have been pending before the Court of Appeals since early 2005. On September 21, 2006, in the context of that appeal, respondents served a Notice of Transfer and Motion to Dismiss Case as Moot as to Certain Petitioners ("Motion to Dismiss"). In the Motion to Dismiss, respondents requested that the cases of three petitioners in this action (as well as those of certain other petitioners) be dismissed as moot because the petitioners had been transferred to Bahrain. On October 13, 2006, petitioners in this action (as well as other petitioners) filed substantive opposition papers, explaining, *inter alia,* that their petitions were not moot in light of the fact that they will suffer significant collateral consequences due to their designations as "enemy

combatants." On October 19, 2006, respondents filed reply papers and the issue has been fully briefed before the Court of Appeals. Presently, the parties await a decision.

Even if the Court elects not to defer its decision of this issue, petitioner Al Bloushi's case should not be dismissed. It is hornbook law that release from custody does not by itself render moot a petition for habeas corpus. Randy Hertz & James S. Leibman, *Federal Habeas Corpus Practice & Procedur*e § 8.2b, at 394-99 (5th ed. 2005) (collecting cases). Courts have long held that a habeas petition remains justiciable, notwithstanding the release of the petitioner, if the conviction or detention being challenged results in "collateral consequences" that outlast the petitioner's confinement. *Carafas v. LaVallee*, 391 U.S. 234, 237 (1968); *In re Ballay*, 482 F.2d 648, 651 (D.C. Cir. 1973); *Justin v. Jacobs*, 449 F.2d 1017, 1019 (D.C. Cir. 1971). Thus, unless the Court can conclude that petitioner Al Bloushi will suffer no collateral consequences as a result of his many years of imprisonment in Guantanamo Bay, his designation as an "enemy combatant," or the terms of his transfer to the "control" of the government of Bahrain, his case cannot be dismissed as moot.

The Court could not find such an absence of collateral consequences here because, as explained below, petitioner Al Bloushi likely will suffer a variety of restrictions on his freedom that make the present dispute very much live. Petitioner Al Bloushi is therefore entitled to prosecute his case in order to demonstrate the unlawfulness of his detention.

DISCUSSION

A "case remains 'live' if a party may thereafter encounter adverse effects of the event in issue." *Justin*, 449 F.2d at 1019. Accordingly, courts have widely accepted that challenges to criminal convictions – whether in the habeas or direct-appeal context – remain "live" even after the petitioner or appellant's release, if the conviction at issue results in "collateral consequences"

for the person convicted. *See, e.g., Sibron v. New York*, 392 U.S. 40, 55-58 (1968); *Carafas*, 391 U.S. at 237 ("Because of these 'disabilities or burdens (which) may flow from petitioner's conviction, he has 'a substantial stake in the judgment of conviction which survives the satisfaction of the sentence imposed on him.'" (quoting *Fiswick v. United States*, 329 U.S. 211, 222 (1946)).

The D.C. Circuit has recognized that the same principles apply to habeas petitions that challenge detention, even outside of the context of a criminal conviction. *Ballay*, 482 F.2d at 651-52; *Justin*, 449 F.2d at 1019; *cf. Church of Scientology v. United States*, 485 F.2d 313, 317-18 (9th Cir. 1973) (finding "no distinction" between a civil and a criminal case for purposes of the collateral consequences doctrine). Thus, under the law of this circuit, the absence of a traditional criminal conviction in petitioner Al Bloushi's habeas case is not appropriately of any meaningful legal consequence.

Petitioner Al Bloushi was held in United States custody for nearly five years and was designated a "terrorist" and an "enemy combatant" by the President of the United States. His interest in vindicating his due process rights and obviating the consequences of those assertedly unlawful designations is equally as strong as (if not stronger than) it would be in the case of a traditional habeas petitioner asserting a collateral attack on a prior state or federal court conviction. Moreover, the collateral consequences that flow from petitioner Al Bloushi's detention are as significant as those that arise from a wrongful conviction as addressed below.

First, and most significantly, petitioner Al Bloushi's liberty may well be burdened by conditions imposed as a result of the diplomatic agreement that led to his release. Indeed, as the Court noted in its Order to show cause, the government has asserted that petitioner Al Bloushi was "transferred . . . to the *control* of the Government of Bahrain." (emphasis added). The true

meaning of this formulation is not entirely clear, but the fact that petitioner Al Bloushi will be subject to the "control of the Government of Bahrain" is not consistent with the unfettered exercise of freedom. Moreover, this formulation certainly suggests that respondents negotiated for conditions to be placed on petitioner Al Bloushi that will burden his liberty interest in connection with his transfer from Guantanamo Bay.

That such conditions may be imposed on petitioner Al Bloushi would be consistent with the experiences of other petitioners in this action who were transferred to Bahrain last year. Counsel has been informed that the United States Embassy in Bahrain has inquired as to whether these petitioners were being monitored and, as a result, petitioners have been subject to surveillance by Bahraini officials. Further, United States officials in Bahrain have inquired as to whether these petitioners will be prosecuted. In addition, these petitioners are not permitted to travel outside of Bahrain. Continuing restrictions on petitioners' liberty such as these represent the archetypal collateral consequence that precludes a finding of mootness. *E.g., Jago v. Van Curen*, 454 U.S. 14, 21 n.3 (1981) (rejecting suggestion that habeas petition had become moot, because petitioner's "release was conditioned upon respondent's compliance with terms that significantly restrict his freedom").

As such, unless and until respondents fully disclose the conditions of transfer for petitioner Al Bloushi to counsel and the court (including relevant burdens on petitioner Al Bloushi's freedom), the breadth of these collateral consequences cannot be determined, and petitioner Al Bloushi's case cannot be dismissed as moot. *Cf. Sibron*, 392 U.S. at 57 (holding that a case is moot "only if it is shown that there is *no possibility* that any collateral legal consequence will be imposed on the basis of the challenged conviction" (emphasis added)).

Petitioner Al Bloushi faces other collateral consequences as well. Courts have previously acknowledged that the stigma arising from being charged with certain crimes can constitute the type of collateral consequence that would keep a case "alive" and give a habeas petitioner an opportunity to vindicate his rights. *E.g.*, *Demjanjuk v. Petrovsky*, 10 F.3d 338, 355-56 (6th Cir. 1993) (holding that the petitioner's acquittal and release in Israel did not moot claim of unlawful extradition because of "collateral consequence" of stigma of being found by the district court to be Ivan the Terrible). Unless he is granted the opportunity to litigate his case, petitioner Al Bloushi will forever bear the stigma of being classified as a "terrorist" by the President of the United States. This would be an especially cruel result, considering that respondents have never even *accused* petitioner Al Bloushi of taking any action against the United States, its allies or others.

Additionally, petitioner Al Bloushi may face difficulty in obtaining future employment as a result of his detention and designation as an "enemy combatant," a contingency that also precludes holding his case to be moot. *See Robbins v. Christianson,* 904 F.2d 492, 496 (9th Cir. 1990) (acknowledging that the possibility of hindrance to future employment opportunities is not "too ephemeral to constitute a collateral consequence for mootness purposes"); *United States v. Schrimsher (In re Butts),* 493 F.2d 842, 844 (5th Cir. 1974) (recognizing that a conviction for contempt of court could have the collateral consequence of damaging petitioner's law practice by undermining his reputation, and refusing to dismiss the appeal as moot).

Finally, petitioner Al Bloushi has a strong fundamental interest in vindicating the claims raised in his petition, including claims that his designation and detention as an "enemy combatant" were unlawful, and that he took no action to warrant such designation or detention. As Judge Green held in her January 31, 2005 Memorandum Opinion and Order, petitioner Al

Bloushi has valid claims under the Due Process Clause of the Fifth Amendment of the United States Constitution. *In Re Guantanamo Detainee Cases,* 355 F. Supp. 2d 443, 464 (D.D.C. 2005). Petitioner Al Bloushi's interest in vindicating these claims precludes dismissal. Indeed, as the Supreme Court recognized in *Carafas*, the habeas corpus statute "does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted. It provides that 'the court shall . . . dispose of the matter *as law and justice require*.'" *Carafas,* 391 U.S. at 239 (citation omitted) (emphasis added).

CONCLUSION

For the foregoing reasons, the Court should not dismiss as moot the petition of petitioner Al Bloushi.

Dated: November 10, 2006

Respectfully submitted,

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