

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
MAMDOUH HABIB,)	
)	
Petitioners,)	
)	
v.)	Civil Action No. 02-CV-1130 (CKK)
)	
GEORGE W. BUSH, <i>et al.</i> ,)	
)	
Respondents.)	
_____)	

**RESPONDENTS’ RESPONSE TO PETITIONER’S
NOTICE OF OPPOSITION TO DISMISSAL**

Respondents hereby respond to petitioner Mamdouh Habib’s Notice Of Opposition To Dismissal (dkt. no. 126), which contends that, notwithstanding his release from Guantanamo Bay, this case is not moot because he is subject to unspecified collateral consequences in Australia. Petitioner also argues the Court lacks jurisdiction to dismiss the case because it is currently on appeal to the Supreme Court. Petitioner’s arguments are without merit. Petitioner’s vague and speculative claims regarding collateral consequences are not sufficient to prevent dismissal of this case. Moreover, the fact that this case is currently on appeal provides no basis whatsoever for refusing to dismiss this case, particularly on mootness grounds. Accordingly, consistent with the Court’s August 3, 2007 Order, this case should be dismissed.

1. As a threshold matter, this case should be dismissed because the Court lacks jurisdiction over this case pursuant to the statutes governing the Court’s subject matter jurisdiction. *See Boumediene v. Bush*, 476 F.3d 981 (D.C. Cir. 2007), *cert. granted*, 127 S.Ct. 3078, 75 U.S.L.W. 3705, 75 U.S.L.W. 3707 (U.S. Jun 29, 2007) (No. 06-1195). *See also* Respondents’ Motion To Dismiss (dkt. no. 123).

2. Petitioner's release from United States custody also provides a separate, independent basis for dismissal: this case is moot because the Court can no longer grant any remedy. *See* Respondents' Notice Of Transfer of Petitioner Mamdouh Habib And Motion To Dismiss His Petition For Habeas Corpus (dkt. no. 95). Release from U.S. custody usually resolves the controversy raised by a habeas petition and renders the case moot, because "the traditional function of the writ [of habeas corpus] is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). "[F]or a court to exercise habeas jurisdiction over a petitioner no longer in custody, the petitioner must demonstrate that . . . his subsequent release has not rendered the petition moot, i.e., that he continues to present a case or controversy under Article III, § 2 of the Constitution." *Qassim v. Bush*, 466 F.3d 1073, 1078 (D.C. Cir. 2006) (quoting *Zalawadia v. Ashcroft*, 371 F.3d 292, 297 (5th Cir. 2004) (alteration in original)). In other words, the petitioner bears the burden of showing that the case or controversy underlying the habeas petition persists because he continues to face collateral consequences related to his detention. Petitioner Habib has not met this burden. *See Qassim*, 466 F.3d at 1078 (dismissing appeals brought by several former Guantanamo detainees from a district court's decision denying their habeas petitions, finding that the petitioners' release rendered their appeals moot).

3. Notwithstanding his release, petitioner Habib asserts that he continues to suffer "collateral disabilities as a result of his unlawful detention" and that consequently the case is not moot. *See* Petitioner's Notice at 3. In past cases examining the availability of habeas relief after release from custody, the Supreme Court has declined to presume that adverse collateral consequences will flow from a determination other than a criminal conviction. *See Spencer v.*

Kemna, 523 U.S. 1, 7–14 (1998) (declining to presume adverse collateral consequences flowing from revocation of parole); *Lane v. Williams*, 455 U.S. 624, 631–33 (1982) (declining to presume adverse collateral consequences from determinations that the respondents had violated parole). An enemy combatant designation is not a criminal conviction; the identification and detention of enemy combatants is a preventive measure taken “to prevent captured individuals from returning to the field of battle and taking up arms once again.” See *Hamdi v. Rumsfeld*, 542 U.S. 507, 518 (2004) (plurality opinion). Thus, to avoid dismissal petitioner Habib bears the burden of identifying specific collateral consequences that he presently faces as a result of the enemy combatant designation. Petitioner Habib has not done so; he only speculates that he faces unspecified “secret disabilities.” See Petitioner’s Notice at 3. Such speculative or intangible repercussions are not sufficient to confer jurisdiction. See, e.g., *McBryde v. Cmte. to Review Circuit Council Conduct & Disability Orders of the Judicial Conf. of the U.S.*, 264 F.3d 52, 57 (D.C. Cir. 2001) (noting that “when injury to reputation is alleged as a secondary effect of an otherwise moot action, we have required that ‘some tangible, concrete effect’ remain, susceptible to judicial correction.”).

4. Further, potential repercussions flowing from independent acts by private parties and foreign sovereigns, and not directly from the acts of the respondents, would not establish a case or controversy even if those repercussions were present or imminent. The petitioner has not shown that a favorable decision in this case would prevent these potential harms from occurring. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562 (1992) (when the issue of justiciability “depends on the unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to

predict, . . . it becomes the burden of the plaintiff to adduce facts showing that those choices have been or will be made in such manner as to produce causation and permit redressability of injury”); *Greater Tampa Chamber of Commerce v. Goldschmidt*, 627 F.2d 258, 263 (D.C. Cir. 1980) (holding that a challenge against an executive agreement was not a justiciable case or controversy in part because redress of the plaintiffs’ alleged injuries would depend on the independent response of the United Kingdom). Accordingly, in *Idema v. Rice*, 478 F. Supp. 2d 47 (D.D.C. 2007), and 2007 WL 841391 (July 12, 2007) (Sullivan, J.), the Court found that damage to a petitioner’s professional reputation and denial of parental visitation rights did not amount to collateral consequences that would allow the petitioner to continue to pursue a habeas corpus action challenging his alleged unlawful detention in Afghanistan. *Id.* at 51–52. The Court found that the alleged adverse consequences, however serious, did not prevent the habeas action from becoming moot, because they were “based on the discretionary decisions of employers or judges and [were] not legally prescribed consequences of incarceration” that were “imposed by state or federal law.” *Id.* at 52. The Court further observed that a grant of habeas corpus relief would not necessarily affect the decisions of employers, family court judges, or foreign authorities. *Id.*

5. Finally, the fact that this case is among the coordinated Guantanamo Bay habeas cases now pending review in the Supreme Court does not prevent this Court from dismissing the case. Although the filing of an appeal generally divests a district court of jurisdiction to take action in connection with the aspects of a case that are involved in the appeal, *see United State v. DeFries*, 129 F.3d 1293, 1302 (D.C. Cir. 1997) a district court *always* retains jurisdiction to determine its jurisdiction. *Consolidated Edison Co. of New York v. Bodman*, 449 F.3d 1254,

1257 (D.C. Cir. 2006) (“A court has jurisdiction to determine its jurisdiction”); *Nestor v. Hershey*, 425 F.2d 504, 511 (D.C. Cir. 1969) (“we always have jurisdiction to determine our jurisdiction”). In this case (as in most litigation), this Court is faced with only two possible answers to the jurisdictional question: it either has jurisdiction or it does not. In light of the Court of Appeals’ decision in *Boumediene* that this Court does not have jurisdiction over any aspect of this proceeding, this Court can hardly conclude that it does have jurisdiction. Moreover, given petitioner Habib’s release from United States custody, this Court also lacks jurisdiction because the case is moot. *See JB Pictures, Inc. v. Department of Defense*, 86 F.3d 236, 238 (D.C. Cir. 1996) (concluding that mootness is jurisdictional). In the absence of such jurisdiction, the only thing for a federal court to do is to announce that fact and dismiss the proceeding. *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94 (1998).

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Respectfully submitted,

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