

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
MAMDOUH HABIB, <i>et al.</i>)	
)	
Petitioners,)	
)	
v.)	Civil Action No. 02-CV-1130 (CKK)
)	
GEORGE WALKER BUSH,)	
President of the United States,)	
<i>et al.</i> ,)	
)	
Respondents.)	
_____)	

NOTICE OF OPPOSITION TO DISMISSAL

On August 3, 2007, the Court conditionally dismissed this action because Mr. Habib has been released from Guantánamo Bay, but gave the parties till August 17, 2007, to file any opposition. With due respect, the Court has erred. First, because the Court of Appeals has recalled its mandate in this matter, this Court does not have jurisdiction to dismiss this case. Second, even if the Court were possessed of jurisdiction, dismissal would be inappropriate because the United States is subjecting Mr. Habib to unspecified collateral consequences arising from his detention. His case, therefore, is not moot.

1. On June 29, 2007, the Supreme Court granted *certiorari* in *Boumediene v. Bush*, ___ U.S. ___, 2007 WL 1854132 (June 29, 2007). Thereafter, the D.C. Circuit granted the petitioners’ motion to recall the mandate in the underlying case of *Al Odah, et al. v. United States, et al.*, No. 05-5064, Order (D.C. Cir. July 26, 2007). Mr. Habib’s case, D.C. Circuit No. 05-5099, is among the appeals consolidated in *Al Odah. Id.* The mandate in this matter, therefore, remains with the Court of Appeals.

2. Of course, “[t]he filing of a notice of appeal is an event of jurisdictional significance – it confers jurisdiction on the court of appeals and divests the district court

of its control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982); *see also Princz v. Federal Republic of Germany*, 998 F.2d 1 (D.C.Cir.1993) (per curiam). The issue on appeal, and now before the Supreme Court, is whether the district courts have jurisdiction over habeas action filed by Guantánamo inmates, which necessarily embraces the subsidiary question of whether jurisdiction is altered by a prisoner’s release. Accordingly, therefore, this Court has no authority to dismiss the case.

3. If there were any doubt about whether this issue is properly before the Court of Appeals, that doubt could not survive the government’s litigation. The government has moved in the D.C. Circuit to dismiss Mr. Habib’s case, along with that of several other released prisoners, in the mistaken belief that their release moots the cases. Mr. Habib and the other prisoners have opposed the motion, which remains pending at this writing. *See* Respondents’ Motion to Dismiss (Selected) Cases as Moot, *Al Odah, et al. v. United States, et al.*, No. 05-5064 (D.C. Cir. Sept. 21, 2006); Petitioners’ Memorandum of Law in Joint Opposition to the Government’s Motion to Dismiss the Cases as Moot, *Al Odah, et al. v. United States, et al.*, No. 05-5064 (D.C. Cir. Oct. 13, 2006). Given that the Court of Appeals has this very question before it – fully briefed by the parties – and has recalled its mandate over the appeal, it is clear beyond peradventure that this Court has no jurisdiction to prejudge the issue before the appellate court and dismiss the case.

4. Finally, even if the Court had jurisdiction, dismissal would be inappropriate. It is hornbook law that release from custody does not by itself moot a habeas case. Randy Hertz & James S. Leibman, *Federal Habeas Corpus Practice & Procedure* § 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. *See, e.g., 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). For that reason, unless the government can demonstrate that Mr. Habib suffers no collateral consequences from his many years of imprisonment at Guantánamo, his case remains sound.

5. But the government can make no such showing. Upon his release, the United States government announced that Mr. Habib’s transfer to Australia was conditioned on “a number of [unspecified] security assurances to the U.S. government.” *See* U.S. Department of Defense News Release, Jan. 11 2005, available at <http://www.defenselink.mil/releases/2005/nr20050111-1945.html> (last visited August 10, 2007). The government has never declared that these secret disabilities have come to an end, even though the litigation in the D.C. Circuit has been pending for nearly a year. Mr. Habib, therefore, continues to suffer collateral disabilities as a result of his unlawful detention, and his release did not moot his case.

CONCLUSION

For the foregoing reasons, this Court should rescind its Order of August 3, 2007.

Dated: August 10, 2007

Respectfully submitted,

____s/_____
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