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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

MAKALE DENG KUAL AROB,)	
)	
Petitioner,)	CIV 09-01132 PHX PGR (MEA)
)	
v.)	REPORT AND RECOMMENDATION
)	
KATRINA KANE,)	
)	
Respondent.)	
_____)	

TO THE HONORABLE PAUL G. ROSENBLATT:

Mr. Makale Deng Kual Arob ("Petitioner"), filed a Petition for Writ of Habeas Corpus ("Petition") pursuant to 42 U.S.C. § 2241 on May 26, 2009, and an amended petition on July 24, 2009, asserting his continued detention by Respondent violated United States law and his constitutional rights. At that time, Petitioner was confined in Respondents' custody in Florence, Arizona. Respondents filed a motion to dismiss the petition on November 16, 2009, asserting the petition for relief is now moot because Petitioner has been released from detention under an order of supervision. See Docket No. 10.

1. Procedural History

The amended petition contends Petitioner's detention pending his deportation to Sudan, as ordered on January 21, 2009, violates the United States Supreme Court's opinion in Zadvydas v. Davis.

1 **2. Analysis**

2 Respondents present evidence to the Court that
3 Petitioner was released from detention on or about August 14,
4 2009. Because the amended petition for habeas relief attacks
5 only Petitioner's continued detention, the petition is now moot.
6 The case-or-controversy requirement of Article III, § 2, of the
7 United States Constitution "subsists through all stages of
8 federal judicial proceedings ... The parties must continue to
9 have a personal stake in the outcome of the lawsuit." Lewis v.
10 Continental Bank Corp., 494 U.S. 472, 477-78, 110 S. Ct. 1249,
11 1253-54 (1990) (internal quotations omitted). If it appears
12 that the Court is without the power to grant the relief
13 requested by a habeas petitioner, then that case is moot. See
14 Picrin-Peron v. Rison, 930 F.2d 773, 775 (9th Cir. 1991).

15 The relief that Petitioner requested in his amended
16 habeas petition, i.e., his release from continued and
17 potentially indefinite detention, can no longer be granted by
18 the Court. Therefore, this habeas action, alleging his
19 continued detention violates federal law and his constitutional
20 rights, is moot. See Abdala v. I.N.S., 488 F.3d 1061, 1065 (9th
21 Cir. 2007); Picrin-Peron, 930 F.2d at 775; Ferry v. Gonzales,
22 457 F.3d 1117, 1132 (10th Cir. 2006); Soliman v. United States,
23 296 F.3d 1237, 1243 (11th Cir. 2002).

24 **3. Conclusion**

25 The Petition for Writ of Habeas Corpus is moot because
26 the petition challenges only the legitimacy of Petitioner's
27 continued detention and Petitioner has now been released from
28 detention under an Order of Supervision. There is no existing

1 case or controversy over which this Court may exercise
2 jurisdiction and, therefore, this case is moot.

3

4 **IT IS THEREFORE RECOMMENDED** that Mr. Kual Arob's
5 Petition for Writ of Habeas Corpus be **dismissed with prejudice**
6 **as moot.**

7 This recommendation is not an order that is immediately
8 appealable to the Ninth Circuit Court of Appeals. Any notice of
9 appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate
10 Procedure, should not be filed until entry of the district
11 court's judgment.

12 Pursuant to Rule 72(b), Federal Rules of Civil
13 Procedure, the parties shall have fourteen (14) days from the
14 date of service of a copy of this recommendation within which to
15 file specific written objections with the Court. Thereafter,
16 the parties have fourteen (14) days within which to file a
17 response to the objections. Pursuant to Rule 7.2, Local Rules
18 of Civil Procedure for the United States District Court for the
19 District of Arizona, objections to the Report and Recommendation
20 may not exceed seventeen (17) pages in length. Failure to
21 timely file objections to any factual or legal determinations of
22 the Magistrate Judge will be considered a waiver of a party's
23 right to de novo appellate consideration of the issues. See
24 United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir.
25 2003) (en banc). Failure to timely file objections to any
26 factual or legal determinations of the Magistrate Judge will
27 constitute a waiver of a party's right to appellate review of
28 the findings of fact and conclusions of law in an order or

1 judgment entered pursuant to the recommendation of the
2 Magistrate Judge.

3 DATED this 22nd day of December, 2009.

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8 Mark E. Aspey
9 United States Magistrate Judge
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