

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
RUZATULLAH, <i>et al.</i> ,)	
)	
Petitioners,)	
)	
v.)	Civil Action No. 06-CV-01707 (GK)
)	
ROBERT GATES,)	
Secretary, United States Department of)	
Defense, <i>et al.</i> ,)	
)	
Respondents.)	
_____)	

RESPONDENTS’ SUPPLEMENT TO MOTION TO DISMISS

Respondents hereby give notice that the United States had relinquished custody of petitioner Ruzatullah, one of the two habeas petitioners in this case, and transferred him to the custody and control of the Government of Afghanistan. Respondents previously have moved to dismiss this entire case for lack of jurisdiction, and their motion to dismiss is currently pending before this Court. Because petitioner Ruzatullah is no longer in the custody of the United States, the transfer constitutes an additional ground for dismissing Ruzatullah as a petitioner in this case. Specifically, respondents state as follows:

1. On October 2, 2006, a habeas petition was filed on behalf Ruzatullah and another citizen of Afghanistan who were detained by the United States at Bagram Airfield in Afghanistan. The petition challenges the validity of their detention by the United States. The petitioners subsequently amended the habeas petition on December 22, 2006 and January 9, 2007.

2. On January 29, 2007, respondents moved to dismiss the Second Amended Petition for lack of subject matter jurisdiction. Briefing was complete on April 20, 2007, and the Motion

to Dismiss is currently pending before this Court.

3. As explained in respondents' Motion to Dismiss, transfers of Afghan detainees from detention by the United States at Bagram Airfield to the Government of Afghanistan are contemplated. On or about June 19, 2007, the United States transferred petitioner Ruzatullah to the Government of Afghanistan, relinquishing all legal and physical custody of Ruzatullah. *See* Second Declaration of Colonel James W. Gray dated July 3, 2007 (attached hereto).

4. Article III courts are limited "to deciding 'actual, ongoing controversies.'" *Clarke v. United States*, 915 F.2d 699, 700-01 (D.C. Cir. 1990) (en banc) (quoting *Honig v. Doe*, 484 U.S. 305, 317 (1988)); *accord Preiser v. Newkirk*, 422 U.S. 395, 401 (1975) (a federal court has no "power to render advisory opinions [or] . . . 'decide questions that cannot affect the rights of litigants in the case before them.'" (citation omitted). To satisfy the case-or-controversy requirement of Article III, "it is not enough that a dispute was very much alive when suit was filed . . . The parties must continue to have a personal stake in the outcome of the lawsuit." *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477-78 (1990) (internal citations and quotations omitted). "A case is moot if 'events have so transpired that the decision will neither presently affect the parties' rights nor have a more-than-speculative chance of affecting them in the future.'" *Pharmachemie B.V.*, 276 F.3d 627, 631 (D.C. Cir. 2002) (quoting *Clarke*, 915 F.2d at 700-01).

5. Because Ruzatullah is no longer within the legal or physical custody of the United States, there is no case or controversy before this Court regarding him, and his petition should be dismissed as moot. *See Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) ("[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody").

WHEREFORE, for the reasons stated herein and in respondents' pending Motion to

Dismiss, respondents respectfully request that the Court dismiss Ruzatullah as a petitioner in this case, and that all pending motions pertaining to him be denied as moot.

Dated: July 6, 2007

Respectfully submitted,

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