

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

STEPHEN W. RUSSELL

CIVIL ACTION NO. 08-CV-1289

VS.

JUDGE MELANÇON

**WARDEN, FEDERAL DETENTION
CENTER, OAKDALE**

MAGISTRATE JUDGE METHVIN

***REPORT AND RECOMMENDATION AND
ORDER CANCELING EVIDENTIARY HEARING***

Before the court is the government's motion to dismiss petitioner Stephen Russell's petition for writ of *habeas corpus*, filed pursuant to 28 U.S.C. §2241.¹ The motion is unopposed.² This matter has been referred to the undersigned magistrate judge for review, report, and recommendation in accordance with 28 U.S.C. §636(b)(1)(B).

At the time the petition was filed, petitioner was in detention of the United States Immigration and Customs Enforcement ("ICE"), and he sought to have the court review his post-removal-order detention. The government's motion states, however, that on January 6, 2009, the petitioner was released from custody and deported to his native country of the Bahamas pursuant to a Warrant of Removal/Deportation.³ Because the petitioner is no longer in custody, his challenge to his post-removal-order of detention is now moot and should be dismissed.

Accordingly,

¹ Rec. Doc. 14.

² The government's motion was served by electronic filing on March 6, 2009. (Rec. Doc. 13-3, p. 9) Pursuant to LR7.5W, oppositions must be filed within 15 days after service of the motion. Fed. R. Civ. P. Rule 6 provides three additional days for service. Thus, petitioner's opposition was due on March 24, 2009.

³ Rec. Doc. 13-4, Exhibit 1.


IT IS ORDERED that the evidentiary hearing set for **April 15, 2009 at 9:30 a.m.** is **CANCELED.**

IT IS FURTHER RECOMMENDED that the motion to dismiss be **GRANTED** and that the petition be **DENIED and DISMISSED without prejudice as moot.**

Under the provisions of 28 U.S.C. Section 636(b)(1)(C) and Rule 72(b), parties aggrieved by this recommendation have ten (10) business days from receipt of this report and recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party's objections within ten (10) days after receipt of a copy of any objections or responses to the district judge at the time of filing.

Failure to file written objections to the proposed factual findings and/or the proposed legal conclusions reflected in this Report and Recommendation within ten (10) days following the date of receipt, or within the time frame authorized by Fed.R.Civ.P. 6(b), shall bar an aggrieved party from attacking either the factual findings or the legal conclusions accepted by the District Court, except upon grounds of plain error. See Douglass v. United Services Automobile Association, 79 F.3d 1415 (5th Cir. 1996).

Signed at Lafayette, Louisiana, on April 2, 2009.



Mildred E. Methvin
United States Magistrate Judge
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