

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

DR. SAMI AL-ARIAN,)	
)	
Petitioner,)	
)	
vs.)	Civil Action No. 1:08cv871
)	
MICHAEL MUKASEY,)	
Attorney General, <i>et al.</i> ,)	
)	
Respondents.)	
_____)	

**RESPONDENTS' RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS &
EMERGENCY REQUEST FOR RELEASE FROM DETENTION**

Pursuant to this Court's order of August 27, 2008, respondents, through their undersigned counsel, respectfully submit the instant response to the petition for habeas corpus and emergency request for release from detention filed by petitioner Dr. Sami Al-Arian (" Dr. Al-Arian") in the above-captioned action.

INTRODUCTION

Dr. Al-Arian filed the instant petition and emergency request on August 25, 2008 (Dkt. Nos. 1-2). Through that petition, Dr. Al-Arian averred that his continued placement in civil immigration custody, pursuant to a final order of removal from the United States, ran afoul of both constitutional and statutory strictures. Petition, ¶¶1-2, 17-18, 54-59. On August 27, 2008, this Court entered an order directing respondents to file their response by close of business on September 2, 2008 (Dkt. No. 3).

As the attached materials demonstrate, federal immigration officials have elected to release Dr. Al-Arian from his civil immigration detention, and that decision was executed on

September 2, 2008.¹ Respondent's Exhibit ("REX") A.²

ARGUMENT

It is well-established that, pursuant to Article III of the United States Constitution, this Court's jurisdiction extends only to "cases or controversies." U.S. CONST. art. III; see also Whitmore v. Arkansas, 495 U.S. 149, 154-55 (1990) ("Article III, of course, gives the federal courts jurisdiction over only 'cases or controversies' . . ."). Part of the constitutional "case or controversy" requirement is that which has become known as the "mootness" doctrine, which provides generally that a "case or controversy" no longer exists "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." Powell v. McCormack, 395 U.S. 486, 496 (1969); see also Mellen v. Bunting, 327 F.3d 355, 363-64 (4th Cir. 2003). As the Supreme Court has repeatedly held, "[t]his case-or-controversy requirement subsists through all stages of federal judicial proceedings, trial and appellate." Lewis v. Continental Bank, 494 U.S. 472, 477-78 (1990).

As provided above, the only issue presented in the instant habeas petition and emergency request is whether Dr. Al-Arian's continued detention in federal immigration custody violated either the Constitution or federal statute. Petition, ¶¶54 ("Petitioner's continued detention by Respondents is unlawful and contravenes 8 U.S.C. § 1231, as interpreted by the Supreme Court in Zadvydas"); 57 (averring that Dr. Al-Arian's continued immigration detention runs afoul of

¹It should be noted that in releasing Dr. Al-Arian from his federal civil immigration custody, ICE officials remained duly cognizant of the mandates of this Court's bond orders in Dr. Al-Arian's pending criminal action. In particular, ICE has placed Dr. Al-Arian on an electronic monitoring unit, REX A, and instructed him to report to this Court's office of Pretrial Services within twenty-four hours. Order (July 10, 2008) (1:08cr131, Dkt. No. 10), at 2; Order (July 10, 2008) (1:08cr131, Dkt. No. 11), at 2.

²Consistent with Local Rule 7(C), all potential personal identifiers (*i.e.*, home addresses and telephone numbers) have been redacted from the documentation attached to this response.

the Fifth Amendment); 59 (same). Because Dr. Al-Arian has been released from that custody, however, that issue is no longer “live,” and accordingly, his petition has been rendered moot. Several courts – including the Fourth Circuit and one of this Court’s colleagues – have so held under analogous circumstances. See Reyes v. USINS, 141 Fed. Appx. 96, 98 (4th Cir. 2005) (holding that petitioner’s “parole pursuant to Clark [v. Martinez], 543 U.S. 371 (2005)] renders this issue moot”); Watson v. INS, 271 F. Supp. 2d 838, 839-40 (E.D. Va. 2003).³ Indeed, this Court has held similarly in analogous circumstances. REX B. Nor does Dr. Al-Arian’s ostensible request for prospective injunctive relief, Petition, ¶64, at all alter this conclusion insofar as Dr. Al-Arian cannot demonstrate the necessary likelihood that he is in danger of being “wronged” again “in a similar way” (*i.e.*, prolonged civil immigration detention without his removal being likely in the reasonably-foreseeable future).⁴ See City of Los Angeles v. Lyons, 461 U.S. 95, 111 (1983); see also Carlson v. Landon, 342 U.S. 524, 546 (1952) (holding that habeas inquiry is limited to the propriety of present detention); Al-Najjar v. Ashcroft, 273 F.3d 1330, 1340 (11th Cir. 2001) (“The narrow exception for actions that are capable of repetition yet evading review applies only in the exceptional circumstance in which the same controversy will recur and there will be inadequate time to litigate it prior to its cessation . . . we may not hypothesize whether circumstances will eventually require that the question . . . be addressed.”).

³Respondents have therefore eschewed a presentation of their arguments as to why Dr. Al-Arian’s civil immigration detention – especially given the unique circumstances presented – was consistent with both statutory and constitutional norms. Should this Court ultimately disagree as to the mootness of the instant petition and emergency request, respondents respectfully request a further opportunity to present such arguments on the merits of Dr. Al-Arian’s petition.

⁴The instant response assumes *arguendo* that such injunctive relief is available through a habeas petition filed pursuant to 28 U.S.C. § 2241, but does not concede the issue.

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (“NEF”) to the following:

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Date: September 2, 2008

_____/s/
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