FILED
FEB 21 2007
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LUIS POSADA-CARRILES,	§	
Petitioner,	§	
	§	
v.	§	**EP-06-CV-130-PRM**
	§	
ALFREDO CAMPOS et al.,	§	
Respondents.	§	

ORDER OF DISMISSAL

On this day, the Court considered Petitioner Luis Posada-Carriles's "Petition for Writ of Habeas Corpus," filed on April 6, 2006, and Respondents Alfredo Campos et al.'s "Motion to Dismiss the Habeas Petition as Moot," filed on January 31, 2007, in the above-captioned cause. After due consideration, the Court is of the opinion that Respondents' Motion to Dismiss should be granted.[1]

In his petition, Petitioner challenges his "continued detention by the Department of Homeland Security" pending removal from the United States. Petr.'s Pet. 2. Respondents ask that the Court dismiss Petitioner's habeas petition because the Court cannot provide Petitioner with the sought-after relief, as Petitioner is no longer in the custody of the Department of Homeland Security.[2]

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[1]Pursuant to Local Court Rule CV-7(d) of the United States District Court for the Western District of Texas ("Local Rule CV-7(d)"), a party must file any response in opposition to a motion within eleven days of service of the motion. Therefore, if Petitioner opposes Respondents' Motion to Dismiss, he should have filed a response on or before February 15, 2007. As of the date of this order, Petitioner has not done so. Therefore, under the provisions of Local Rule CV-7(d), the Court may grant the Motion to Dismiss as unopposed.

[2]Respondents also ask the Court to vacate the order, issued on November 2, 2006, requiring Respondents to show cause in writing by no later than February 1, 2007, as to why relief should not be granted in this cause. The Court finds that the instant Motion to Dismiss satisfies the letter, if not the spirit, of that order, as Respondents have claimed that relief should not be granted because the Court lacks jurisdiction to grant relief. However, the Court's show cause order also specifically directed Respondents to determine the applicability of 8 C.F.R.

Resps.' Mot. to Dismiss at 2. Respondents have informed the Court that Petitioner was committed to the custody of the Attorney General pursuant to a detention order issued on January 22, 2007, in criminal cause number EP-07-CR-087-KC. *Id.*, Ex. B. In that cause, an indictment was filed on January 11, 2007, charging Petitioner with one count of naturalization fraud in violation of 18 U.S.C. § 1425(a) and six counts of false statement in a naturalization proceeding in violation of 18 U.S.C. § 1015(a).

The Court finds that it cannot grant Petitioner his requested relief, as Petitioner is no longer in the custody of the Department of Homeland Security. *See Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (stating that the case-or-controversy requirement in Article III of the Constitution "means that, throughout the litigation, the plaintiff 'must have suffered, or be threatened with, an actual injury traceable to the defendant and likely to be redressed by a favorable judicial decision'" (quoting *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990))). Because Petitioner challenges only his continued detention by the Department of Homeland Security, the Court is of the opinion that Petitioner's petition should be dismissed without prejudice as moot. *Cf. Zalawadia v. Ashcroft*, 371 F.3d 292, 297 (5th Cir. 2004) (holding that a petition challenging a removal order "presents a live case or controversy," even when the petitioner is deported during the litigation, because of the penalties

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§ 241.14(c), which authorizes the continued detention of an alien whose release will have "serious adverse foreign policy questions," even where there is no significant likelihood of the alien's removal. 8 C.F.R. § 241.14(c). Respondents now claim that they lack the authority to make such a determination. Resps.' Mot. to Dismiss 3. However, the Department of Homeland Security informed Petitioner in a letter dated October 5, 2006, that it had decided to begin the review process to determine whether further detention of Petitioner was justified pursuant to 8 C.F.R. § 241.14. Resps.' Objections, Attach. A. Petitioner was not committed to the custody of the Attorney General until January 22, 2007, over three months later. Resps.' Mot. to Dismiss, Ex. B. The Court is mindful that Respondents had over three months to consider the applicability of 8 C.F.R. § 241.14(c), and have elected to forgo the opportunity to inform the Court in an appropriate pleading.

resulting from the removal order).

Accordingly, **IT IS ORDERED** that Respondents' "Motion to Dismiss the Habeas Petition as Moot" (Docket No. 46) is **GRANTED**.

IT IS FURTHER ORDERED that Petitioner's "Petition for Writ of Habeas Corpus" is **DISMISSED WITHOUT PREJUDICE**.

SIGNED this 21st day of **February, 2007**.

PHILIP R. MARTINEZ
UNITED STATES DISTRICT JUDGE