**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| **DJAMEL AMEZIANE (ISN 310),**<br><br>**Petitioner,**<br><br>**v.**<br><br>**BARACK H. OBAMA, *et al.*,**<br><br>**Respondents.** | **Civil Action No. 05-CV-0392 (ESH)** |

**RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION FOR GRANT OF HABEAS RELIEF IN THE FORM OF AN ORDER REQUIRING THE GOVERNMENT TO RETURN PETITIONER'S PERSONAL PROPERTY, AND CROSS-MOTION TO DISMISS.**

## INTRODUCTION

On March 7, 2014, Petitioner filed a Motion for Grant of Habeas Relief in the Form of an Order Requiring the Government to Return Petitioner's Personal Property ("Petitioner's Motion"). See ECF No. 351. Petitioner also filed under seal a Supplement in Support of Petitioner's Motion. See ECF Nos. 352, 355. Respondents hereby file their Opposition to Petitioner's Motion, see Minute Order of March 21, 2014, and a Cross-Motion to Dismiss.

On December 5, 2013, Respondents filed a Notice of Transfer of Petitioner Djamel Ameziane stating that the United States has relinquished custody of Petitioner and transferred him to the control of the Government of Algeria. ECF No. 345. On March 7, 2014, Petitioner filed a motion seeking an order granting what Petitioner describes as habeas relief in the form of an order requiring the Government to return approximately 700 British pounds that were not returned to Petitioner when he was

transferred out of United States custody, as well as payment of interest on these funds from the date they were seized.[1] Alternatively, Petitioner requests a full hearing on the merits of his habeas petition, claiming that an outcome from the hearing favorable to Petitioner, in turn, will lead to the return of the money. Conceding that the order he seeks is a matter of first impression for the Court, Petitioner contends that he is entitled to the return of his personal property under Army Regulation 190-8 and international law it implements, and that the Court has equitable habeas authority to order the Government to return his property. Respondents oppose Petitioner's Motion and cross-move to dismiss this case as moot.

Petitioner's Motion must be denied because his claim for the return of his personal property is not cognizable as a habeas corpus claim. Petitioner cites to no habeas case where a court has ordered the return of a prisoner's or detainee's personal property, and courts in every circuit have held that claims for the return of property are not habeas claims. Because Petitioner's personal property claim is not a proper habeas claim, it is barred by 28 U.S.C. § 2241(e)(2), which withdraws court jurisdiction over any non-habeas claim that relates to any aspect of a detainee's current or former detention or transfer. Therefore, the Court does not have jurisdiction over Petitioner's claim.

In addition to this jurisdictional bar, Petitioner's appeal to Army Regulation 190-8 as a substantive basis for his claim to return of property is flawed. The regulation cannot be properly invoked in this particular habeas setting and, in any event, does not require the judicial relief Petitioner seeks.

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[1] Petitioner's recitation of the procedural history of this case prior to Petitioner's transfer, Petitioner's Motion at 2, is inaccurate. See Respondents' Response to Petitioner's Motion for Order of Release at 3-13 (ECF Nos. 318, 319) (filed under seal).

Furthermore, Petitioner's habeas case is altogether moot and should be dismissed because the United States has relinquished custody of Petitioner and he has not suffered any collateral consequence of his detention that can be redressed by this Court. Even if the Court were to determine or had previously determined that Petitioner was entitled to a writ of habeas corpus, Department of Defense policy, developed to prevent the potential use of detainee funds to support terrorist organizations or activities, would still require that the currency seized from Petitioner at the time of his capture not be returned to him upon his transfer from United States custody. And, as discussed above, Petitioner's case otherwise cannot serve as a proper vehicle for a claim for return of property. Accordingly, Petitioner has suffered no collateral consequence from his detention that would be affected by a successful outcome for him in his habeas case or that properly could be redressed by this Court. Therefore, Petitioner's case is moot; his Motion should be denied; and this case should be dismissed.

## BACKGROUND

On December 5, 2013, Petitioner was transferred out of United States custody to the custody and control of the Government of Algeria. Exhibit 1 (Declaration of Jay Alan Liotta, Principal Director for the Office of Rule of Law and Detainee Affairs in the Office of the Under Secretary of Defense for Policy) at ¶¶ 3-4. Joint Task Force Guantanamo (JTF-GTMO) prepares a travel package for all departing detainees that includes a Koran in the detainee's language, a blanket, two sets of clothing (pants and smocks), two pairs of underwear, prayer caps, socks, shower shoes, slip-on shoes, a towel, washcloth, toothbrush, tooth paste, shaving cream, deodorant, shampoo, razor, and a comb. Liotta Decl. at ¶ 7. Petitioner received this travel package when he left

Guantanamo Bay. Id. at ¶ 8. With the exception of the monetary funds that were seized from Mr. Ameziane at the time of capture, all remaining items that he had at the time of capture or later acquired at Guantanamo were transported with him when he left the detention facility at Guantanamo and returned to Algeria. Id. at ¶ 8. Mr. Ameziane is not being detained in Algeria. See Petitioner's Motion at 3; Exhibit A to Petitioner's Motion at 6.

Department of Defense policy is to return to departing detainees all of the property with which they arrived at Guantanamo and all property they accumulated during their time at the facility, except for three general categories of material: contraband, potential law enforcement evidence, and money that was in the possession of a detainee at the time of his capture. Liotta Decl. at ¶¶ 9-11. The policy to retain money associated with detainees "is based on a strong national security interest in preventing these funds from being used in a manner that would adversely impact the safety and security of the United States." Id. at ¶ 11. Pursuant to this policy, JTF-GTMO continues to hold 740 British pounds, 429,000 Afghanis, and 2,300 Pakistani rupees that were seized from Mr. Ameziane at the time of his capture. Id. at ¶ 11.

The policy to retain contraband, law enforcement evidence, and currency is uniformly applied to all detainees in Department of Defense custody at Guantanamo. Liotta Decl. at ¶¶ 9, 12. No distinctions are made based on a detainee's status or whether they have sought or obtained habeas corpus relief. Id. Further, no distinction has been made based on the amount of money held by JTF-GTMO in relation to a specific detainee. Id. at ¶ 12. No detainees who have been transferred or released by the

Department of Defense from Guantanamo have ever been provided with inventoried funds attributable to them upon their departure. Id.

## ARGUMENT

### I. The Court Does Not Have Jurisdiction Over Petitioner's Claim for Return of Property.

Petitioner concedes at the outset of his argument that his claim presents "a matter of first impression involving Guantanamo detainees." Petitioner's Motion at 5. Indeed, Petitioner cites no case in which a habeas court has ordered the return of a former prisoner's or detainee's personal property. In fact, such claims are not proper habeas claims, and the Court lacks jurisdiction over Petitioner's claim.

#### A. Petitioner's Claim for Return of his Personal Property is Not a Claim that is Cognizable in Habeas Corpus.

As noted above, Petitioner cites to no case in which a habeas court has ordered the return of a former prisoner's or detainee's personal property. In fact, courts have consistently held that property-related claims are not within the scope of the writ of habeas corpus, which has historically and consistently been utilized as a means to obtain release of a natural person from confinement. See, e.g., Rumsfeld v. Padilla, 542 U.S. 426, 435 (2004) (stating that habeas corpus has been "a proceeding against some person who has the immediate custody of the party detained, with the power to produce the body of such party before the court or judge, that he may be liberated if no sufficient reason is shown to the contrary.") (quoting Wales v. Whitney, 114 U.S. 564, 574 (1885)).

In an unpublished per curiam opinion in the domestic prison context, the Court of Appeals concluded that an inmate seeking return of his property through a writ of habeas corpus had brought a claim for "non-habeas relief." In re Hill, No. 04-5436, 2005 WL

613262, at *1 (D.C. Cir. Mar. 15, 2005). Consequently, the Court of Appeals denied the habeas petition "because the court has no authority to order the return of petitioner's property." Id. Similarly, also in the prison context, another Judge of this Court has stated that while "a habeas petition is a vehicle capable of challenging the basis of a governmental restriction on a person's liberty," "[a] habeas petition is not capable of addressing private property rights . . . ." Prentice v. State of Michigan Court of Appeals, No. 09-CV-230 (HHK), 2009 WL 1956274 at *1 (D.D.C. July 9, 2009) (Kennedy, J.).

These decisions are consistent with a long line of cases from other jurisdictions holding that claims for return of lost, damaged, or confiscated property are not cognizable in a writ of habeas corpus. Indeed, courts in every circuit have held that property claims cannot be raised in habeas. See, e.g., Whiting v. United States, No. 97-2033, 1998 WL 1281294 at *2 (1st Cir. June 26, 1998) (concluding that "the district court understandably dismissed the motion [seeking return of property] without prejudice on the ground that it was not cognizable in a habeas proceeding") (unpublished); Anaya v. Smith, No. 3:11CV779, 2014 WL 315277 at *27 n.7 (N.D. Ohio Jan. 28, 2014) (holding that claim challenging the seizure of property "is not cognizable on federal habeas review"); Weaver v. Sanders, No. CV 13-3269-FMO (JPR), 2013 WL 2147806 at *1-2 (C.D. Cal. May 16, 2013) (dismissing habeas claim brought by inmate seeking to "get his property back or receive the fair value of it"); Nance v. Heley, No. 11–CV–1173 (ARR), 2012 WL 2953740 at *2 (E.D.N.Y July 19, 2012) (concluding that "Petitioner's claim to recover his personal property is not cognizable under habeas review"); Buchanan v. Johnson, 723 F. Supp. 2d 722, 726-27 (D. Del. 2010) ("Considering that the instant proceeding is one for federal habeas relief, the court does not have the authority to order the return of

petitioner's property."); Hall v. Norris, No. 09-CV-4078, 2010 WL 5071201 at *1 (W.D. Ark. Dec. 9, 2010) ("Because Petitioner's claim for relief seeks the return of forfeited property, it is not cognizable in a federal habeas corpus proceeding. Reasonable jurists would not find this conclusion debatable."); Veal v. Superintendent, No. 3:08-CV-3-TS, 2009 WL 4799935 at *2 (N.D. Ind. Dec. 8, 2009) ("Finally, Veal alleges that there was approximately $400 worth of personal property taken from his cell. This is in essence a state tort claim that is not cognizable in this habeas proceeding."); Starr v. Ward, No. 04-CV-0787-CVE-PJC, 2006 WL 2474914 at *1 (N.D. Okla. Aug. 25, 2006) ("The Court finds that claims relating to Petitioner's dispute over personal property allegedly seized from Petitioner by Department of Corrections personnel are not cognizable in this habeas action."); Olajide v. United States Bureau of Immigration and Customs Enforcement, 402 F. Supp. 2d 688, 694-95 (E.D. Va. 2005) (dismissing immigration detainee's habeas claim alleging that "officials have stolen some of his personal property including his money and luggage"); Bowen v. United States, No. 7:05-CV-37 (CDL), 2005 WL 1676668 at *2 (M.D. Ga. June 29, 2005) (dismissing habeas petition seeking return of currency because a "writ of habeas corpus is not the proper vehicle for the type of relief petitioner seeks"); Turner v. Johnson, 46 F. Supp. 2d 655, 675-76 (S.D. Tex. 1999) (holding that "a petition for a writ of habeas corpus is an improper method to raise" a claim that a "typewriter and other personal property were confiscated, lost, or destroyed by prison officials"); Ronson v. Drohan, No. 89-CIV-7842 (RWS), 1990 WL 128925 *1 (S.D.N.Y. Aug. 28, 1990) (holding that inmate's claims that "he was wrongfully deprived of property by the State is not considered here, as it is not cognizable by a habeas court"); Fayerweather v. Bell, 447 F. Supp. 913, 915 (M.D. Pa. 1978) (dismissing inmate's

habeas claim brought under 28 U.S.C. § 2241 "for wilful and wrongful taking of his personal property").

Nor is there any support that claims seeking the return of property could be raised in habeas at common law. See David Clark and Gerard McCoy, The Most Fundamental Legal Right: Habeas Corpus in the Commonwealth 48 n.95 (2000) ("The remedy is still limited to persons and cannot be used to reclaim property unlawfully seized by others."); see also Ex Parte Watkins, 28 U.S 193 (1830) (stating that the purpose of the writ is "to liberate an individual from an unlawful imprisonment"). At common law, the writ of replevin, not the writ of habeas corpus, was the proper procedural vehicle to seek return of property. See, e.g., Fuentes v. Shevin, 407 U.S. 67, 78 (1972) ("Replevin at common law was an action for the return of specific goods wrongfully taken or 'distrained.' ").[2]

Accordingly, Petitioner's claim for the return of his personal property is not cognizable in habeas.[3]

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[2] Petitioner contends that he is entitled to move for the return of his personal property pursuant to Federal Rule of Criminal Procedure 41(g). Petitioner's Motion at 10. Even assuming for the sake of argument that an individual formerly detained in armed conflict can invoke that rule, claims under Rule 41(g) are treated as civil claims for return of property, see U.S. v. Martinson, 809 F.2d 1364, 1366-67 (9th Cir. 1987), which, as discussed above, are not cognizable in habeas petitions and, as explained below, are barred by 28 U.S.C. § 2241(e)(2).

[3] Petitioner claims that he is entitled to interest in addition to the value of the withheld currency, citing 28 U.S.C. § 2465(b)(1)(C). Just as Petitioner's property claim is not a proper habeas claim, his claim for interest as to the currency at issue is also not a proper habeas claim, and, as explained below, would also be barred by 28 U.S.C. § 2241(e)(2). Furthermore, the statute cited by Petitioner only applies to civil forfeiture proceedings. See Carvajal v. United States, 521 F.3d 1242, 1247 (9th Cir. 2008) ("It is clear from the statutory text that the interest payment provision of CAFRA, 28 U.S.C. § 2465(b)(1)(C), is triggered only when the government institutes civil forfeiture proceedings and a plaintiff substantially prevails.").

**B. The Court Does Not Have Jurisdiction Over Petitioner's Claim for the Return of Money.**

As explained above, Petitioner's claim for the return of the money seized at the time of his capture is not a claim that is cognizable in habeas. Because the claim is a non-habeas claim regarding an aspect of his detention at or transfer from Guantanamo Bay, the Court lacks jurisdiction over the claim under 28 U.S.C. § 2241(e)(2).

Federal courts are courts of limited subject-matter jurisdiction. E.g., Al-Zahrani v. Rodriguez, 669 F.3d 315, 317-318 (D.C. Cir. 2012). Accordingly, for a federal court to exercise jurisdiction, "the Constitution must have supplied to the courts the capacity to take the subject matter and an Act of Congress must have supplied jurisdiction over it." Id. Here, through Section 7 of the Military Commission Act of 2006 ("MCA"), 28 U.S.C. § 2241(e)(2), Congress has exercised its constitutional prerogative, not to grant, but to withdraw from the federal courts jurisdiction to adjudicate non-habeas claims by Guantanamo detainees regarding aspects of their detention or transfer. Section 7 addresses habeas claims in its subsection (e)(1), while subsection (e)(2) provides:

> **[N]o court, justice, or judge shall have jurisdiction** to hear or consider **any other action** against the United States or its agents **relating to any aspect of the detention**, **transfer**, treatment, trial, or conditions of confinement of an alien who is **or was detained by the United States** and has been determined by the United States to have been properly detained as an enemy combatant.

28 U.S.C. § 2241(e)(2) (emphasis added). The Court of Appeals has squarely held that section 2241(e)(2) is a valid exercise of congressional power. Al-Zahrani, 669 F.3d at 318-20 (upholding the continuing applicability of the section 2241(e)(2) bar to "our jurisdiction over 'treatment' cases").

Petitioner's claim for the return of the money that was seized at the time of his capture, was held by the Government during his detention, and was retained upon Petitioner's transfer, see Liotta Decl. at ¶¶ 8-12, is clearly a non-habeas claim relating to an aspect of his detention or transfer, and, thus, is barred by 28 U.S.C. § 2241(e)(2).[4] Therefore, the Court has no jurisdiction over this claim, and it must be dismissed.[5]

**C. Neither Army Regulation 190-8 Nor International Law Requires or Authorizes this Habeas Court to Order the Return of Petitioner's Personal Property.**

Petitioner cites to Army Regulation 190-8 (AR 190-8) and Al Warafi v. Obama, 716 F.3d 627 (D.C. Cir. 2013), for the proposition that the Government's detention authority under the Authorization for Use of Military Force, as informed by the laws of war, is limited by AR 190-8 in that, according to Petitioner, it requires the Government to return money that was seized upon Petitioner's capture. See Petitioner's Motion at 7-8. Petitioner cites to provisions of AR 190-8 that concern the return of personal property

[4] The Court of Appeals' recent decision in Aamer v. Obama, 742 F.3d 1013 (D.C. Cir. 2014), is not to the contrary. Aamer involved a challenge to the practice of enteral feeding at Guantanamo, and the Court of Appeals' panel, with one judge dissenting, held that Guantanamo detainees could challenge their conditions of confinement in habeas. Aamer focused solely on the "current scope of statutory habeas" and examined prior Court of Appeals habeas cases to reach the conclusion "that one in custody may challenge the conditions of his confinement in a petition for habeas corpus." Id. at 1031-32. Accordingly, as explained by the Aamer panel, because 28 U.S.C. § 2241(e)(1) no longer legitimately bars habeas claims by Guantanamo detainees under Boumediene v. Bush, 553 U.S. 723 (2008), Guantanamo detainees can pursue conditions of confinement claims in their habeas cases. Aamer, 742 F.3d at 1030-32. As explained supra with respect to the instant case, however, there is no precedent in statutory habeas or common law habeas for habeas jurisdiction over a claim for the return of personal property. Aamer, therefore, is inapposite.

[5] Petitioner appeals to the Court's equitable powers, suggesting that the Court can use those powers to provide the remedy he seeks. The Court's equitable powers, however, cannot overcome that Petitioner's claim is not a proper habeas claim and that jurisdiction over the claim otherwise has been withdrawn by 28 U.S.C. § 2241(e)(2). Cf. Gul, 652 F.3d at 22 ("Equity is not a substitute for meeting the requirements of Article III.").

and effects to enemy prisoners of war ("EPWs"), retained personnel ("RPs")[6], and civilian security internees ("CIs"). See AR 190-8 §§ 3-14(d), 6-16(b), and 6-3. Assuming for purposes of argument, but without conceding, that Petitioner may appeal to provisions of the regulation applicable to EPWs, RPs, and CIs, Petitioner's reliance on AR 190-8 and Al Warafi is misplaced, as explained below, and does not give rise to a proper habeas claim.

**1. Army Regulation 190-8 Cannot Be Invoked in this Habeas Case under Al Warafi.**

Army Regulation 190-8 performs a number of functions, including to help implement certain international law obligations of the United States, such as those reflected in the 1949 Geneva Conventions, with respect to the treatment of EPWs, RPs, and CIs in the context of armed conflicts to which the Geneva Conventions apply, and provides that, "[i]n the event of conflicts or discrepancies between this regulation and the Geneva Conventions, the provisions of the Geneva Conventions take precedence." AR 190-8 §§ 1-1(a), (b), and (b)(4). In Section 5 of the Military Commissions Act of 2006, Congress prohibited the invocation of the Geneva Conventions as a source of rights in a habeas proceeding. See Military Commissions Act of 2006, Pub. L. No. 109-366, sec. 5, 120 Stat. 2600, 2631 (codified at 28 U.S.C. § 2241 note); see also Al Warafi v. Obama, 716 F.3d 627, 629 (D.C. Cir. 2013); Al Adahi v. Obama, 613 F.3d 1102, 1111 n.6 (D.C. Cir. 2010). The Al-Warafi Court, however, concluded that AR 190-8 expressly incorporates aspects of the Geneva Conventions relevant to the claims made in that case

[6] RPs include certain types of military medical and religious personnel. See AR 190-8 at 33 (defining Retained Personnel).

in which the petitioner, a Guantanamo detainee, asserted he was a type of medical personnel entitled to release. The Court stated as follows:

> Army Regulation 190-8 is domestic U.S. law, and in a habeas proceeding such as this, a detainee may invoke Army Regulation 190-8 to the extent that the regulation explicitly establishes a detainee's entitlement to release from custody.

Al-Warafi, 716 F.3d at 629 (emphasis added). Here, of course, Petitioner Ameziane is not invoking AR 190-8 for the purpose of obtaining his release. Petitioner relies upon AR 190-8 for the proposition that he is entitled to the return of the money, not for his release from custody, which has already occurred. Because Petitioner is not utilizing and cannot utilize AR 190-8 to argue for his release, Petitioner may not invoke the regulation under the plain language of Al Warafi, and Petitioner further may not appeal in this case to the Geneva Conventions, as implemented by AR 190-8, as a source of rights to support his claim for the return of the money.[7]

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[7] Even if AR 190-8 were applicable to this case, the Regulation does not substantively validate Petitioner's claim in this matter because it does not inexorably require the return of all detainee property without qualification. Multiple sections of AR 190-8 contemplate that not all personal property necessarily be returned by a detaining power to a detainee when the detainee is transferred. See AR 190-8 § 3-14(d) (referring to "[a]ll confiscated property that can be released") (emphasis added); AR 190-8 § 3-14(f) (referring to "confiscated property that cannot be released"); AR 190-8 § 3-14(g)(3) (referring to the disposition of "confiscated property"); AR 190-8 § 6-16(b) (the theater commander may direct "that any impounded currency or articles be withheld").

Petitioner also mistakenly contends that customary international law supports his position that Respondents are obligated to return the entirety of Petitioner's property. See Petitioner's Motion at 9. The authority that Petitioner cites is inapposite, as it focuses on the offense of pillage. See id. (citing Jean-Marie Henckaerts & Louise Doswald-Beck, 1 Customary International Humanitarian Law Rule 122 (Int'l Comm. of the Red Cross, Cambridge Univ. Press reprtg. 2009) (discussing pillage); Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non–International Armed Conflicts (Protocol II), art. 4(2)(a)(g), June 8, 1977, 1125 U.N.T.S. 609 (listing pillage among other offenses without discussion). Respondents have not pillaged Petitioner's property, as pillage is defined as "the taking of the personal belongings of detainees with the intent of unlawful appropriation" for "private or

**2. Any Issue Regarding the Return of Money, in Any Event, is Not for Resolution Through a Habeas Claim.**

AR 190-8 also makes clear that if there is a dispute regarding a detainee's personal property that is not returned to him upon his transfer, it is not a claim that can be brought by the former detainee against the detaining power or a claim cognizable in court. Section 6-3(b)(2) states that "[a]ny claim by a CI for compensation for personal effects, money, or valuables stored or impounded by the United States and not returned upon repatriation or any loss alleged to be the fault of the United States or its agents will be referred to the country to which the CI owes allegiance." Thus, if there is a dispute regarding impounded monies, it will be referred to the detainee's home country for resolution. A judicial remedy in U.S. courts is not contemplated.

Moreover, the Third Geneva Convention itself does not contemplate a judicial remedy for Petitioner's claim. The Article 18 Commentary to Geneva Convention III (GC III) states as follows regarding the personal articles of prisoners of war after captivity:

> But if such articles and monies are not returned at the end of captivity, the prisoner of war cannot make a claim against the former Detaining Power. It is therefore suggested at the conference of Government Experts that such compensation should be incumbent rather upon the Power of origin of the prisoner concerned, and that it would then be for the Power of origin to arrange for a general solution of the question with the Detaining Power, within the context of the peace treaty.

Art. 18 Commentary to GC III.[8]

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personal use." See Henckaerts & Doswald-Beck, supra, at 185, 493. As discussed above, Respondents' seizure of Petitioner's money is based on legitimate and reasonable security goals. See Liotta Decl. at ¶ 11.

[8] Article 18 of Geneva Convention III concerns the property of prisoners of war.

Similarly, Article 68[9] of Geneva Convention III states that "[a]ny claim from a prisoner of war for compensation in respect of personal effects, monies or valuables impounded by the Detaining Power under Article 18 [of GC III] and not forthcoming on his repatriation, or in respect of loss alleged to be due to the fault of the Detaining Power or any of its servants, shall likewise be referred to the Power on which he depends." In the same vein, the commentary on paragraph 2 of Article 68 of Geneva Convention III states as follows in pertinent part: "In fact, however, at the end of captivity a prisoner of war will have no opportunity to make a claim against the Detaining Power. The Convention therefore makes the Power on which he depends responsible for compensating him. All claims must therefore be referred to the latter Power through the intermediary of the Protecting Power."[10] At the end of the commentary, it states that "once the victim has received compensation from the Power on which he depends,[11] arrangements must be made between the two Powers concerned, under Article 67."[12]

For all these reasons, Petitioner's reliance on AR 190-8 is misplaced. Neither AR

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[9] Article 68 of Geneva Convention III concerns claims for compensation for prisoners of war.

[10] Courts have similarly held that such claims by detainees for the return of personal property are actually claims of the State and not the individual. See Burger-Fisher v. Degussa AG, 65 F. Supp. 2d 248, 273 (D. N.J., 1999) ("[u]nder international law claims for compensation by individuals harmed by war-related activity belong exclusively to the state of which the individual is a citizen."); id. at 274 ("The war-related claims of individual citizens can be asserted only by their government …"); see also S.N.T. Fratelli Gondrand v. U.S., 166 Ct.Cl. 473, 1964 WL 8545 at 4-5 (Ct.Cl.) (under international law an occupying power can seize property, and the warring powers resolve claims about the property seizure at the end of hostilities.).

[11] The term "the Power on which he depends" typically refers to a former detainee's country of origin or nationality.

[12] Article 67 of Geneva Convention III concerns adjustments between the parties to the conflict.

190-8 nor the international law it implements requires or authorizes this Court to order the return of a detainee's personal property or gives rise to a proper habeas claim.

**II. This Case is Moot and Should Be Dismissed.**

The United States has relinquished custody of Petitioner, and he is currently in Algeria and no longer detained. Liotta Decl. at ¶¶ 3-4; Petitioner's Motion at 3; Exhibit A to Petitioner's Motion at 6. Because Petitioner is no longer in U.S. custody, this case is moot and should be dismissed in its entirety. Petitioner argues that his case is not moot because he continues to suffer collateral consequences as a result of his prior detention. See Petitioner's Motion at 12. For the reasons described below, however, Petitioner has not suffered any collateral consequences that can be redressed by this Court in this habeas case, and the case should be dismissed.

In Gul v. Obama, 652 F.3d 12 (D.C. Cir. 2011), the Court of Appeals addressed the issue of mootness with respect to habeas cases by former Guantanamo detainees who had been transferred out of the custody and control of the United States. The Court affirmed Judge Hogan's dismissal of over 100 habeas petitions of former Guantanamo Bay detainees, holding that the petitioners had suffered no redressable injury under Article III. Id. at 14. While reserving the question whether the collateral consequences doctrine applied to former Guantanamo detainees,[13] the Court of Appeals held that, even

[13] The collateral consequences doctrine arose in the context of statutory habeas review of criminal convictions and provides that release from custody generally moots a habeas petition unless a petitioner continues to suffer "some concrete and continuing injury other than the now-ended incarceration." See Spencer v. Kemna, 523 U.S. 1, 7 (1998) (interpreting the "in custody" requirement of 28 U.S.C. § 2254). In Gul the Court of Appeals assumed without deciding that the collateral consequences doctrine applies to a habeas petition filed by a detainee. 652 F.3d at 16. Respondents maintain that the collateral consequences doctrine, derived from an understanding of statutory habeas in

if the doctrine applied, it could "not save from mootness the petitions filed in these cases." Id. at 16.

The Court of Appeals rejected any presumption that a former detainee suffers collateral consequences, stating that "we cannot merely presume a former detainee faces collateral consequences sufficient to keep his petition from becoming moot upon his release." Gul, 652 F.3d at 17. "A former detainee … must instead make an actual showing his prior detention or continued designation burdens him with 'concrete injuries.'" Id. (quoting Spencer v. Kemna, 523 U.S. 1, 14 (1998)). The Court further noted that "[a]s no continuing injury is to be presumed …, the burden of demonstrating jurisdiction is properly borne by the [petitioners]."

Petitioner contends that "as a direct consequence of his prior detention at Guantanamo and the government's persistent claim that he, like all detainees, was properly detained without charge as part of the Taliban, Al Qaeda or associated forces, the Government has refused to return money that belongs to him" and as a consequence, he is presently unable to support himself. Petitioner's Motion at 12. The loss of Petitioner's money is not a collateral consequence of his "prior detention or continued designation" that can be redressed by this Court in this habeas case, however. As explained above, a claim for the return of personal property is not cognizable in a habeas corpus case. Additionally, the Government's retention of the money that was seized at the time of Petitioner's capture is independent of any claim by Petitioner to habeas relief or the outcome of his habeas case. As explained by Jay Alan Liotta, Principal Director for the Office of Rule of Law and Detainee Policy in the Office of the Under Secretary of

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the context of criminal convictions in state and federal courts, is inappropriate for application to the context of these wartime detentions. See Gul 652 F.3d at 16.

Defense for Policy, Department of Defense, the Department of Defense's policy has been and is to retain all monies of former Guantanamo detainees in DoD custody seized upon the detainees' capture, regardless of their detention status and whether they have sought or obtained habeas corpus relief. See Liotta Decl. at ¶¶ 9, 12. Thus, even if this Court had made or were to make a determination on the merits of Petitioner's habeas case, any such determination would not lead to the return of Petitioner's money under Department of Defense policy, see id., nor would it give rise to a proper habeas claim for return of the money, as discussed supra.

As explained by Principal Director Liotta, DoD's policy of not returning money to Guantanamo detainees is based on a strong national security interest in preventing these funds from being used in a manner that would adversely impact the safety and security of the United States. Liotta Decl. at ¶ 11. Because terrorist organizations such as al-Qaida rely on financing and support networks to sustain operations and launch attacks, efforts to counter terrorist financing have played a critical role in U.S. counterterrorism strategy. Id. These efforts include disrupting terrorist financing networks and stopping the flow of money to terrorist organizations. Id. Financial support is integral to terrorist support activities, including those conducted by former Guantanamo detainees who reengage in terrorist activities or support for such activities, because money is necessary for recruitment, training, and equipment. Id. (noting confirmed reengagement in terrorist or insurgent activities of former Guantanamo detainees). Because money can be as useful to a terrorist organization as a weapon, the Department of Defense mitigates the threat that a detainee released from Guantanamo

may pose by not returning any of his financial instruments or currency that might be used to adversely impact the safety and security of the United States.[14] Id.

In Gul, an issue analogous to that presented in this case arose as to the "No Fly List." The former detainees in Gul argued, inter alia, that their habeas cases were not moot because as long as they were designated as enemy combatants, they would suffer the collateral consequence of being on the "No Fly List" and thus being barred from flights entering the United States. Gul, 652 F.3d at 19. The Court of Appeals, however, rejected this argument because an order granting a former detainee's habeas petition would not lead to his removal from the "No Fly List" Id. The Court explained that "'any individual who was a detainee held at … Guantanamo Bay'" id. (quoting 49 U.S.C. § 44903(j)(2)(C)(v)), was to be included on the "No Fly List." Thus, petitioners would be "barred from flights entering the United States regardless of whether a court declares they were unlawfully detained." Id. The Court further explained that "[a]n order granting a detainee's habeas petition would not mean his exoneration, nor would it be a determination he does not pose a threat to American interests; it would mean only that the Government has not proven the detainee more likely than not" satisfied the Authorization for Use of Military Force, ("AUMF"), Pub. L. No. 107-40, 115 Stat. 224 (2001),

[14] Because DoD's policy implements the mitigation of threat of Guantanamo detainees transferred from United States custody, the matter is properly vested in the Executive, and judicial intervention with respect to the policy would not be appropriate. Cf. Awad v. Obama, 608 F.3d 1, 11 (D.C. Cir. 2010) ("Whether a detainee would pose a threat to U.S. interests if released is not at issue in habeas corpus proceedings in federal courts concerning aliens detained under the authority conferred by the AUMF."); Al-Quraishi v. Nakhla, 728 F. Supp. 2d 702, 721 (D. Md. 2010) ("Since the power to seize or destroy enemy property is so broad, military commanders enjoy ample discretion to determine what property should be seized or destroyed to further the war effort without giving rise to civil liability."); see also Ludecke v. Watkins, 335 U.S. 160, 170 (1948) (analyzing a detainee's "potency for mischief" is a matter "of political judgment for which judges have neither technical competence nor official responsibility").

detention standard, including being "'part of' a force associated with al Qaeda or the Taliban." Id.

By analogy, here, DoD's longstanding policy is to not return money to former Guantanamo detainees upon their transfer or release regardless of their detention status or whether they have been granted a writ of habeas corpus. Liotta Decl. at ¶¶ 9, 12. Similar to the "No Fly List," the policy applies to all detainees who have been held at Guantanamo by the Department of Defense.[15] Thus, any determination on the merits of Petitioner's habeas case would not lead to the return of Petitioner's money under Department of Defense policy, nor would it give rise to a proper habeas claim for return of the money, as discussed supra. Petitioner, therefore, has not established any concrete injury from his detention that can be redressed by this habeas court.

Because the United States has relinquished custody of Petitioner and Petitioner cannot establish any collateral consequence of his detention that can be redressed by this habeas court, this case is moot and should be dismissed.

## CONCLUSION

For the reasons explained above, Petitioner's Motion should be denied and Respondents' Motion to Dismiss should be granted.

Dated: April 11, 2014

Respectfully submitted,

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[15] Petitioner concedes that "the government's position is not based on anything that Mr. Ameziane has done, but rather on a general policy applicable to all former detainees," and that the Government's position "is based solely on Mr. Ameziane's prior detention at Guantanamo . . . ." Petitioner's Motion at 5-6.

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