

No. 07-5427

In the Supreme Court of the United States

PETRU MIRONESCU, PETITIONER

v.

HARLAN COSTNER, UNITED STATES MARSHALL
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA,
ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT*

**BRIEF FOR THE
FEDERAL RESPONDENT IN OPPOSITION**

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QUESTION PRESENTED

Whether the court of appeals correctly concluded that Congress has barred judicial review of a challenge under the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 85, and the Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, Div. G, 112 Stat. 2681-761, to the Secretary of State's decision to reject a fugitive's claim that he will be tortured if returned to his home country and to surrender the individual for extradition.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A at 1-22) is reported at 480 F.3d 664. The opinion of the district court (Pet. App. D at 1-10) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on March 22, 2007. A petition for rehearing was denied on April 17, 2007 (Pet. App. C at 1). The petition for a writ of certiorari was filed on July 16, 2007. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner was convicted in Romania *in absentia* for various crimes relating to auto theft and was sentenced to an aggregate term of four years imprisonment. In 2003, after Romania requested petitioner's extradition, he was arrested in the United States. A magistrate judge certified that petitioner was extraditable. Pet. App. A at 6. Petitioner sought habeas corpus relief to challenge that determination. The district court ruled that the extradition certification for petitioner was valid. Petitioner also claimed that his extradition was contrary to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), *adopted* Dec. 10, 1984, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 85, as implemented by Section 2242 of the Foreign Affairs Reform and Restructuring Act (FARR Act), Pub. L. No. 105-277, Div. G, 112 Stat. 2681-822 (8 U.S.C. 1231 note). The court ruled that that claim was not ripe for judicial review and should be brought to the attention of the Secretary of State. See 345 F. Supp. 2d 538, 540-541 (M.D.N.C. 2004); see *id.* at 542-543 (magistrate judge's recommendation).

The Secretary of State then determined that the CAT did not bar petitioner's extradition and that the government would proceed with petitioner's extradition. Pet. App. A at 7; Pet. App. D at 2.

2. Petitioner next filed this habeas action against, among others, respondent Harlan Costner, who is the United States Marshal for the Middle District of North Carolina and who was holding petitioner pursuant to the district court's order certifying his extradition to the Secretary of State. Petitioner asserted that his extradition would violate the CAT and the FARR Act. Respon-

dents moved to dismiss, arguing that the district court lacked authority to review the Secretary of State's extradition decision. The district court denied that motion. It ordered the United States not to surrender petitioner to Romanian authorities and to produce the extradition record for *in camera* review. Pet. App. A at 6-8; Pet. App. D at 1-2, 9-10.

3. Respondents appealed that order to the Fourth Circuit, which held that the district court had lacked jurisdiction to consider petitioner's claims in light of the wording of Section 2242(d) of the FARR Act, 112 Stat. 2681-822. The court of appeals ruled that Congress had in that provision barred consideration of claims under the CAT, except in seeking review of a final order of removal under the immigration laws. The Fourth Circuit therefore remanded the matter for dismissal of petitioner's action. Pet. App. A at 15-22. On April 16, 2007, the Fourth Circuit stayed its mandate, pending the timely filing of a petition for a writ of certiorari. Pet. App. B at 1. Petitioner filed such a petition on July 16, 2007.

4. Meanwhile, the United States was notified by Romanian officials that petitioner, based on information provided by the United States, had then been detained for the full term of his sentenced period of incarceration in Romania. Because Romania credits a defendant's sentence with the time he has spent awaiting extradition, petitioner no longer had any time left to serve in his Romanian sentence. Respondents therefore moved the court of appeals to dismiss this case as moot, informing the court that, under such circumstances, further extradition proceedings are not warranted, and the United States no longer sought petitioner's extradition to Romania.

On September 19, 2007, the Fourth Circuit denied that motion, explaining that petitioner apparently remained in custody pending extradition and that this action was, therefore, not moot. App. A, *infra*, 1a-2a. The court of appeals was apparently unaware that, at the request of the United States, on September 17, 2007, the district court had entered an order releasing petitioner from custody “pending final action in the appeal of this matter.” The district court noted in its order that “the United States has now withdrawn its request for extradition of Petitioner to Romania and does not oppose this court entering an order releasing Petitioner on his own recognizance.” App. B, *infra*, 3a. Accordingly, petitioner was released, and he is no longer in custody pending extradition or otherwise.

5. In light of these developments, respondents renewed their motion in the court of appeals to dismiss this case as moot. Petitioner consented to that motion. Respondents informed the Fourth Circuit that petitioner had indeed been released and that the United States has no intention to have him placed in custody again for purposes of extradition on the Romanian charges that formed the original basis of his detention.

On October 24, 2007, the Fourth Circuit issued a corrected order, noting that petitioner had been released from custody and that “the Government no longer seeks his extradition to Romania.” App. C, *infra*, 5a. For that reason, the court observed, “it appears that [petitioner’s] habeas action challenging that detention is now moot.” *Ibid.* The court of appeals stated, however, that, when its March 22, 2007, opinion had been issued, a live controversy existed, and it therefore declined to dismiss petitioner’s appeal as moot. *Id.* at 5a-6a.

On November 1, 2007, the Fourth Circuit issued its mandate, providing that the judgment of the court entered on March 22, 2007, was now to take effect. App. D, *infra*, 7a.

ARGUMENT

As the court of appeals correctly recognized in its October 24, 2007, order, this case is moot. Petitioner has been released from custody and the United States has stated unequivocally in its papers filed in the court of appeals that it has no intention of having him placed in custody again for purposes of extradition on the relevant Romanian charges. Under these circumstances there is no longer any live controversy for this Court to review.

“It has long been settled that a federal court has no authority ‘to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.’” *Church of Scientology v. United States*, 506 U.S. 9, 12 (1992) (quoting *Mills v. Green*, 159 U.S. 651, 653 (1895)). Thus, “[t]o qualify as a case fit for federal-court adjudication, an actual controversy must be extant at all stages of review.” *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997) (internal quotation marks and citation omitted). “[I]f an event occurs while a case is pending on appeal that makes it impossible for the court to grant ‘any effectual relief whatever’ to a prevailing party,” *Church of Scientology*, 506 U.S. at 12, or that deprives that party of a “legally cognizable interest in the outcome,” *City of Erie v. Pap’s A.M.*, 529 U.S. 277, 287 (2000) (quoting *County of L.A. v. Davis*, 440 U.S. 625, 631 (1979)), the appeal must be dismissed for want of Article III jurisdiction.

Because this case is moot, further review of the merits of petitioner's claim is no longer possible, and the petition for a writ of certiorari should be denied. Petitioner's counsel has authorized us to state that he agrees with this result.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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Attorney

NOVEMBER 2007

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6457

PETRU MIRONESCU, PETITIONER-APPELLEE

v.

HARLON E. COSTNER, RESPONDENT-APPELLANT

AND

WILLIAM SCHATZMAN, SHERIFF OF
FORSYTH COUNTY, RESPONDENT

Filed: Sept. 19, 2007

ORDER

Respondent-Appellant Harlon E. Costner has moved this Court to dismiss the case as moot and to order the release of Petitioner-Appellee Petru Mironescu from incarceration pending extradition. Mironescu has responded to the motion.

Though Costner's motion states that the Government no longer intends to extradite Mironescu, he apparently remains in custody after having been detained for extradition. *See* 28 U.S.C.A. § 2241(c)(3) (West 2006) (providing that a prisoner may seek habeas relief if he is "in custody in violation of the Constitution or laws or treaties of the United States"). Because the Government

has not yet released Mironescu from incarceration, Mironescu's habeas petition challenging his detention is not moot. *Cf. Spencer v. Kemna*, 523 U.S. 1, 7 (1998) (explaining that a convicted prisoner's incarceration "constitutes a concrete injury" for purposes of meeting the case-or-controversy requirement in a habeas action). Further, this Court cannot order Mironescu's release. *See Mironescu v. Costner*, 480 F.3d 664, 673-77 (4th Cir. 2007) (holding that § 2242(d) of the FARR Act bars consideration of Mironescu's habeas petition), *petition for cert. filed*, No. 07-5427 (U.S. Jul. 16, 2007). The Court therefore denies Costner's motion.

Entered for a quorum of the panel at the direction of Senior Judge Wilkins, with the concurrence of David A. Faber, United States District Judge for the Southern District of West Virginia, sitting by designation.

FOR THE COURT,

CLERK

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

No. 1:05CV00683

PETRU MIRONESCU, PETITIONER

v.

HARLON E. COSTNER, ET AL., RESPONDENTS

Filed: Sept. 17, 2007

ORDER ALLOWING RELEASE

Upon Motion of Petitioner, Petru Mironescu, seeking an order pursuant to Rule 23(b) of the Federal Rules of Appellate Procedure for his release on his personal recognizance pending final action in the appeal of this matter; and

It appearing that the United States has withdrawn its request for the extradition of Petitioner to Romania and does not oppose this court entering an order releasing Petitioner on his own recognizance; and

It further appearing that the only additional action required in this matter is an order to be entered by the Fourth Circuit Court of Appeals dismissing the case as moot,

It is hereby ordered that the Petitioner, Petru Mironescu, be immediately released upon his personal recognizance and that the United States Marshal for the Middle District of North Carolina take such steps as necessary to effect his release.

SO ORDERED this 17th day of September, 2007.

/s/ JAMES A. BEATY
JAMES A. BEATY
United States District Court Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6457

PETRU MIRONESCU, APPELLEE

v.

HARLON E. COSTNER, UNITED STATES MARSHAL FOR
THE MIDDLE DISTRICT OF NORTH CAROLINA,
RESPONDENT-APPELLANT

AND

WILLIAM SCHATZMAN, SHERIFF OF
FORSYTH COUNTY, RESPONDENT

Filed: Oct. 24, 2007

CORRECTED ORDER

Respondent-Appellant Harlon E. Costner has filed a renewed motion to dismiss this case as moot. According to Costner's motion, Petitioner-Appellee Petru Mironescu has been released from custody, and the Government no longer seeks his extradition to Romania.

Because Mironescu has been released from detention, it appears that his habeas action challenging that detention is now moot. However, when this Court issued its judgment and opinion on March 22, 2007, a live controversy still existed. Thus, although the mandate has

not yet issued, the Court declines to dismiss the appeal as moot. See *Bastien v. Office of Sen. Ben Nighthorse Campbell*, 409 F.3d 1234 (10th Cir. 2005) (per curiam) (denying motion to dismiss appeal when the case became moot after court of appeals filed judgment and opinion but before it issued mandate); *Humphreys v. DEA*, 105 F.3d 112 (3d Cir. 1996) (same); *Armster v. U.S. Dist. Ct.*, 806 F.2d 1347, 1354-57 (9th Cir. 1986) (same); see also *Clarke v. United States*, 915 F.2d 699, 713-15 (D.C. Cir. 1990) (en banc) (Edwards, Circuit Judge, dissenting) (discussing circumstances under which Supreme Court may elect to vacate court of appeals decision when case has become moot following that decision); *Armster*, 806 F.2d at 1356 n.12 (same). The Court therefore denied Costner's renewed motion.

Entered for a quorum of the panel at the direction of Senior Judge Wilkins, with the Concurrence of David A. Faber, United States District Judge for the Southern District of West Virginia, sitting by designation.

FOR THE COURT,

/s/ Patricia S. Conner
CLERK

7a

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 06-6457
1:05-cv-00683-JAB

PETRU MIRONESCU, PETITIONER-APPELLEE

v.

HARLON E. COSTNER, UNITED STATES MARSHAL FOR
THE MIDDLE DISTRICT OF NORTH CAROLINA,
RESPONDENT-APPELLANT

AND

WILLIAM SCHATZMAN, SHERIFF OF
FORSYTH COUNTY, RESPONDENT

Filed: Nov. 1, 2007

MANDATE

The judgment of this Court, entered 3/22/07, takes effect this date.

A certified copy of this Court's judgment and a copy of its decision are issued to the district court and constitute the mandate of this Court.

/s/ Patricia S. Conner
CLERK