

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MUHAMMAD AL-ADAHI, *et al.*,)
)
)
 Petitioners,)
)
 v.) Civil Action No. 05-CV-0280 (GK)
)
)
 GEORGE W. BUSH,)
 President of the United States, *et al.*,)
)
 Respondents.)

MAJID ABDULLA AL JOUDI, *et al.*,)
)
)
 Petitioners,)
)
 v.) Civil Action No. 05-CV-0301 (GK)
)
)
 GEORGE W. BUSH,)
 President of the United States, *et al.*,)
)
 Respondents.)

**RESPONDENTS’ OPPOSITION TO PETITIONERS’ MOTIONS FOR IMMEDIATE
ISSUANCE OF A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2243**

Respondents hereby submit this memorandum in opposition to petitioners’ motions for immediate issuance of a writ of habeas corpus under 28 U.S.C. § 2243. Because the motions filed in the above-captioned cases are coordinated and substantially similar, see Petitioners’ Motion for Immediate Issuance of a Writ of Habeas Corpus Under 28 U.S.C. § 2243 and/or for Sanctions, Based on Respondents’ Failure to Comply with a Direct Order of this Court in Al-Adahi v. Bush, No. 05-CV-280 (GK) (dkt. no. 22) (“Al-Adahi Motion”); Petitioners’ Motion for Immediate Issuance of a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2243 in Al Joudi v.

Bush, No. 05-CV-301 (GK) (dkt. no. 21) (“Al Joudi Motion”), respondents are filing this consolidated opposition.

ARGUMENT

Petitioners claim that respondents failed to comply with the Court’s Orders requiring respondents to show cause by March 28, 2005 as to “why this writ should not be granted.” See Orders dated March 7, 2005 in Al-Adahi (dkt. no. 8) and Al Joudi (dkt. no. 9). To the contrary, respondents complied with the Court’s Orders by filing motions to stay proceedings which demonstrated “why this writ should not be granted” pending the resolution of appeals of related decisions of this Court which will resolve the core issues presented by these cases and, thus, will determine how these cases will proceed, if at all. See Khalid et al. v. Bush, No. 04-CV-1142 (RJL), 2005 WL 100924 (D.D.C. Jan. 19, 2005), appeals docketed, Nos. 05-5062, 05-5063 (D.C. Cir. Mar. 2, 2005), and In re Guantanamo Detainee Cases, No. 02-CV-0299, et al., 2005 WL 195356 (D.D.C. Jan. 31, 2005), petition for interlocutory appeal granted, No. 05-8003 (D.C. Cir. Mar. 10, 2005). In these motions to stay, filed on March 11, 2005, respondents argued that, given the extraordinary circumstances involved in the pending Guantanamo detainee cases, the relief requested by petitioners should not be granted, and these cases should be held in abeyance, because it would be a wasteful expenditure of resources to proceed with litigation regarding the alleged rights of detainees at Guantanamo Bay when the law governing any such rights is presently in dispute and will be resolved by the Court of Appeals on an expedited basis. See Respondents’ Motion to Stay Proceedings Pending Related Appeals and for Continued Coordination, filed March 11, 2005 in Al-Adahi (dkt. no. 15) and Al Joudi (dkt. no. 10). Thus,

respondents' submission of these motions to stay fulfilled their obligation pursuant to the Court's March 7, 2005 Orders to "show cause why this writ should not be granted."

Respondents' submission of motions to stay proceedings in response to the Court's March 7, 2005 Orders is also consistent with the Rules Governing Section 2254 Cases in the United States District Courts ("2254 Rules"). As explained in respondents' reply in support of their motion to stay, the 2254 Rules are applicable to petitions for writ of habeas corpus other than those arising under 28 U.S.C. § 2254, such as the petitions in these cases, which were filed pursuant to 28 U.S.C. § 2241.¹ See Respondents' Reply Memorandum in Support of Motion to Stay Proceedings Pending Related Appeals and for Continued Coordination, filed March 29, 2005 in Al-Adahi (dkt. no. 20) and Al Joudi (dkt. no. 18), at 2-3, n.2. Rule 4 of the 2254 Rules provides:

The clerk must promptly forward the petition to a judge under the court's assignment procedure, and the judge must promptly examine it. If it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner. If the petition is not dismissed, the judge must order the respondent to file an *answer, motion, or other*

¹ See 2254 Rule 1(b) ("In applications for habeas corpus in cases not covered by subdivision (a) [involving persons in state custody], these rules may be applied at the discretion of the United States district court."). See also Castillo v. Pratt, 162 F. Supp. 2d 575, 577 (N.D. Tex. 2001) ("The Supreme Court intended the 2254 Rules to apply to petitions filed under § 2241."); Ukawabutu v. Morton, 997 F. Supp. 605, 608 n.2 (D.N.J. 1998) (The 2254 Rules "apply to petitions filed pursuant to 28 U.S.C. § 2241 as well as 28 U.S.C. § 2254."); Wyant v. Edwards, 952 F. Supp. 348, 352 (S.D. W. Va. 1997) ("[T]he Court has concluded that the § 2254 Rules were intended to apply to § 2241 cases . . ."); Hudson v. Helman, 948 F. Supp. 810, 811 (C.D. Ill. 1996) ("Thus, while the instant Petition is brought pursuant to 28 U.S.C. § 2241, not 28 U.S.C. § 2254, and involves a prisoner in federal custody, the Rules Governing Section 2254 Cases may still be applied here."); Kramer v. Jenkins, 108 F.R.D. 429, 431 (N.D. Ill. 1985) ("[A]lthough [petitioner's] petition is under section 2241, and not section 2254, the court may properly apply Rule 4 of the 2254 Rules.").

response within a fixed time, or to take other action the judge may order. . . .

2254 Rule 4 (emphasis added).² Consistent with Rule 4, respondents filed motions to stay proceedings in these cases by March 28, 2005, the deadline fixed by the Court.

Although petitioners argue that, by failing to file factual returns by March 28, 2005, respondents have “ignore[d] the express language of 28 U.S.C. § 2243, which requires that a return certifying the true cause of the detention be filed in response to this Court’s Order,” Al-Adahi Mot. ¶ 5, see also Al Joudi Mot. ¶ 16, to the extent that the 2254 Rules are in conflict with 28 U.S.C. § 2243, the 2254 Rules supercede the requirements of 28 U.S.C. § 2243. See 28 U.S.C. § 2072(b) (“All laws in conflict with [rules promulgated by the Supreme Court such as the 2254 Rules] shall be of no further force or effect after such rules have taken effect.”). See also Castillo, 162 F. Supp. 2d at 577 (“[T]he Court finds that the 2254 Rules take precedence over 28 U.S.C. § 2243. . . .”; Wyant, 952 F. Supp. at 350 (“Rule 4 of the § 2254 Rules prevails over 28 U.S.C. § 2243.”). As demonstrated above, Rule 4 of the 2254 Rules authorizes respondents to file an “answer, motion, or other response” to a petition for writ of habeas corpus. See 2254 Rule 4. Rule 4 provides such flexibility to allow courts to efficiently manage cases, such as the dozens of petitions recently filed on behalf of detainees at Guantanamo Bay, in which either outright dismissal or an order to file an answer providing a factual basis for detention is inappropriate. See Advisory Committee Notes to 2254 Rule 4; see also Lonchar v. Thomas, 517 U.S. 314, 325 (1996) (stating that the 2254 Rules confer “ample discretionary authority” on district courts “to tailor the proceedings” in habeas cases).

² Rule 4 was amended in 2004 to “reflect[] that the response to a habeas petition may be a motion.” See Advisory Committee Notes to 2254 Rule 4.

Respondents' motions to stay complied with the Court's March 7, 2005 Orders, the 2254 Rules, and the extraordinary circumstances of these cases. Indeed, respondents' motions to stay are consistent with the typical progression of similar cases filed by detainees at Guantanamo Bay. Even though orders to show cause why the writ should not be granted were issued in several of the early Guantanamo cases, see El-Banna v. Bush, No. 04-CV-1144 (RWR) (dkt. no. 4), Anam v. Bush, No. 04-CV-1194 (HHK) (dkt. no. 9), Abdah v. Bush, No. 04-CV-1254 (HHK) (dkt. no. 7), respondents, in response to those orders to show cause, filed motions to postpone the submission of factual returns and motions to dismiss in those cases pending the coordination of all of the pending cases, see El-Banna (dkt. no. 16), Anam (dkt. no. 14), Abdah (dkt. no. 11). Once the cases were coordinated for management by Judge Green, the Court established a reasonable schedule for the submission of factual returns on a rolling basis over a period of several months and a briefing schedule for respondents' motion to dismiss the petitions. Since the appeals of those cases are now pending in the Court of Appeals, the circumstances in these extraordinary related cases warrant that neither factual returns nor substantive legal briefing should proceed at this time. See generally Resps' Mot. to Stay. Thus, the relief requested by petitioners should be denied.³

³ Although petitioners allege that respondents' March 11, 2005 motions to stay proceedings in effect granted themselves a "self-help extension of time" to respond to the Court's March 7, 2005 Orders, see Al-Adahi Mot. ¶ 6 and n.1, Al Joudi Mot. ¶ 11, respondents' motions were plainly not filed at the "last minute" only because there was no time to seek an extension. See Ramos v. Ashcroft, 371 F.3d 948, 949-50 (7th Cir. 2004) (stating that, when a brief on the merits is due, a "last-minute motion concerning jurisdiction, venue, sanctions, or any other subject" should not be filed instead of a merits brief simply because it is too late to request an extension).

CONCLUSION

For the reasons stated, petitioners' motions for immediate issuance of a writ of habeas corpus under 28 U.S.C. § 2243 should be denied.

Dated: April 5, 2005

Respectfully submitted,

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