

Nos. 06-8447, 06-8448, 06-8449

IN THE SUPREME COURT OF THE UNITED STATES

SAIFULLAH PARACHA, PETITIONER

v.

ROBERT M. GATES, SECRETARY OF DEFENSE, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI, WRIT OF MANDAMUS,
AND WRIT OF HABEAS CORPUS
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly concluded that petitioner failed to satisfy the standards for preliminary injunctive relief.

2. Whether petitioner has demonstrated extraordinary circumstances warranting either a writ of mandamus setting aside the district court's stay of his habeas petition or an original writ of habeas corpus.

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OPINIONS BELOW

The order of the court of appeals affirming the denial of preliminary injunctive relief (Pet. App. 43-44) is unreported. The orders of the district court staying petitioner's habeas case (Pet. App. 11-13) and denying a preliminary injunction (Pet. App. 40-41) are unreported.

JURISDICTION

The order of the district court staying petitioner's habeas case was entered on March 23, 2005. The order of the court of appeals denying preliminary injunctive relief was entered on December 1, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1), 1651(a), 2101(e), and 2241(a). However, as explained below, the Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600, withdraws jurisdiction over this action.

STATEMENT

1. Petitioner, Saifullah Paracha, is detained as an enemy combatant at Guantanamo Bay. Petitioner has received a formal adjudicatory hearing before a Combatant Status Review Tribunal (CSRT). On November 26, 2004, the CSRT found that petitioner is an enemy combatant based on petitioner's affiliation with the al Qaeda terrorist organization. The evidence before the CSRT of petitioner's affiliation with al Qaeda included, inter alia, (1) petitioner's involvement in an al Qaeda plan to smuggle explosives into the United States; (2) petitioner's possession and management of large amounts of al Qaeda money given to him by known al Qaeda operatives; and (3) petitioner's recommendation to an al Qaeda operative that nuclear weapons be used against U.S. troops and suggestion as to where such weapons might be obtained. C.A. App. 138-139.¹ The CSRT's finding was finalized on December 21, 2004. Id. at 114.

Petitioner filed a petition for a writ of habeas corpus on November 17, 2004. On March 23, 2005, the district court stayed petitioner's habeas case (with the exception of motions for emergency relief) pending the resolution by the court of appeals of the related appeals in Al Odah v. United States (D.C. Cir. 05-5064) and Boumediene v. Bush (D.C. Cir. 05-5062). See Pet. App. 11-13.

¹ C.A. App. refers to the joint appendix filed in petitioner's consolidated habeas appeals in the District of Columbia Circuit (Nos. 05-5194, 05-5211, 05-5333).

Petitioner appealed the stay in the court of appeals. That appeal is still pending.

2. Petitioner has a history of coronary heart disease, including experiencing two heart attacks prior to his detention at Guantanamo. See Pet. App. 162 (Declaration of Captain Ronald L. Sollock (Sollock Decl.) ¶ 10).² Since arriving at Guantanamo, petitioner has received extensive medical care. In October 2006, after complaining of increased chest pain, petitioner underwent an exercise stress test (EST) with a stress echocardiogram evaluation by a cardiologist. Ibid. Petitioner was diagnosed with coronary artery disease with an abnormal EST. Id. at 163 (Sollock Decl. ¶ 11). Currently, petitioner's heart condition is stable, and he is being treated with medication in accordance with the standard of care for his condition. Id. at 162-163 (Sollock Decl. ¶ 10). Recent monitoring, blood work, and electrocardiograms indicate that petitioner's condition has not changed since October 2006. Ibid. Due to his condition, the Guantanamo medical staff determined that petitioner needs to undergo a cardiac catheterization, which is a procedure that involves passing a thin flexible tube into the right or left side of the heart in order to obtain diagnostic information about the heart or its blood vessels or to provide treatment for certain types of heart conditions. Id. at 163 (Sollock Decl.

² Captain Ronald Sollock currently serves as the Commander of the Naval Hospital at Guantanamo Bay and as the Joint Task Force Surgeon there. Sollock Decl. ¶ 1.

¶ 11). Petitioner was advised about the surgery and the possibility of any follow-on procedures, and he preliminarily provided verbal consent. Id. at 164 (Sollock Decl. ¶ 15).

Petitioner was scheduled to undergo the cardiac catheterization procedure at the Guantanamo Naval Base Hospital on or around November 21, 2006. Pet. App. 163-164 (Sollock Decl. ¶¶ 12, 16). The Guantanamo Bay medical staff arranged for all necessary medical equipment and highly-trained, experienced medical personnel to be in place to perform the procedure on petitioner in compliance with the standard of care for cardiac catheterizations. Id. at 163 (Sollock Decl. ¶¶ 12-13). In addition to the extensive equipment and facilities already available at the Naval Base Hospital, specialized medical equipment, including a mobile cardiac catheterization unit and equipment for a full cardiothoracic surgery suite, was shipped to Guantanamo Bay to be fully operational for petitioner's procedure. Id. at 163-164 (Sollock Decl. ¶¶ 12-13, 15). All necessary and appropriate equipment to perform a cardiac catheterization was provided, as well as any equipment required for foreseeable follow-on work, such as placement of an artery stent or heart bypass surgery. Ibid. Furthermore, highly qualified and specialized medical personnel, including a board-certified cardiologist, a cardiothoracic surgeon, and a supporting surgical team, all of whom are experienced in performing cardiac catheterizations, were flown to Guantanamo and

were in place to perform the procedure. Id. at 163 (Sollock Decl. ¶ 12). These medical personnel come from a facility that has performed over 700 cardiac catheterization procedures since January 1, 2006, and are specifically trained in this procedure and the other types of treatments, such as artery stent placement or bypass surgery, that may be required depending on the results of the catheterization. Id. at 163-164 (Sollock Decl. ¶¶ 12, 15).

3. On November 14, 2006, petitioner filed a motion for a temporary restraining order and preliminary injunction prohibiting performance of the cardiac catheterization procedure at Guantanamo Bay without the consent of his wife or his attorney. See Pet. App. 124. Petitioner alleged that performance of the procedure at Guantanamo Bay poses the risk of irreparable harm because the facilities at Guantanamo lack a fully-equipped cardiac catheterization laboratory. Id. at 123. On November 17, 2006, the government filed an opposition, supported by two declarations, which explained that the necessary equipment and personnel were being sent to Guantanamo so that the procedure could be performed appropriately at the Guantanamo Naval Hospital. See id. at 142-147. The government also stated that the procedure would not be performed at Guantanamo Bay unless petitioner consented. Id. at 147 n.2.

On November 20, 2006, petitioner filed a second motion for a preliminary injunction. In that motion, petitioner conceded that

his first motion for a temporary restraining order and preliminary injunction was moot in light of the government's statement that the cardiac catheterization procedure would not be performed absent petitioner's consent. Pet. App. 170. Instead, petitioner sought an order requiring petitioner's transfer to a hospital in the United States or Pakistan with a cardiac catheterization laboratory for performance of the procedure. See id. at 170-171.

The district court held a hearing on November 20, 2006. Having reviewed the government's declarations,³ the district court observed that "procedures * * * are going to be in place, the equipment that's going to be in place, the doctors that are going to be there, [are] fully competent and trained, and this is what they do to do this kind of procedure and anything that may be necessary if anything were to go wrong or they discovered anything while they were doing the catheterization procedure." Pet. App. 31. In contrast, petitioner merely presented "concerns" that the procedure would not "be done well," but presented no "facts to show

³ In addition to the Sollock declaration referenced in the text, supra, the government submitted the declaration of Captain J.S. Edmondson, the Commander of the Joint Medical Group at Guantanamo Bay and the Commanding Officer of the Naval Hospital at Guantanamo Bay in 2003. Captain Edmondson explained that "a cardiac catheterization and coronary artery stenting were performed on a detainee at Guantanamo" in 2003, and that "the requisite medical equipment and specialized medical personnel were brought to the Naval Hospital Guantanamo Bay for use during those procedures," as they would be for petitioner's medical procedures. Pet. App. 166-167 (Edmondson Decl. ¶ 2).

that it's not going to be done properly." Id. at 34.⁴ Accordingly, the court concluded that the petitioner failed to meet his burden of "demonstrat[ing] imminent certain serious, or even likely harm, other than the medical risk that's involved in any procedure." Id. at 31.

The district court further determined that petitioner failed to show a likelihood of success on the merits because he was unable to show that respondents were deliberately indifferent to his medical condition. The court explained that "[petitioner] has not shown that his medical care at Guantanamo has been deficient to the point of violating any rights he may possess. Instead, the declarations that have been submitted show a difference of opinion as to whether or not the proper procedure can be properly provided at Guantanamo." Pet. App. 34. Moreover, the court found that

⁴ Petitioner submitted declarations from his attorney and a Pennsylvania physician. Petitioner's attorney related petitioner's concerns that "the equipment being sent to Guantanamo for the procedure and possible open-heart surgery will not be tried and tested" and that "there would not be any back-up procedures or equipment available, as there would be in an established hospital, should one of the machines, such as the bypass machine, fail during surgery." Pet. App. 133 (declaration of Zachary Philip Katznelson ¶ 12). The physician, while acknowledging that he was "not familiar with the medical facilities at Guantanamo," expressed the view that the procedure "should be done at a properly equipped hospital, such as Bethesda Naval Hospital, rather than at a military base hospital with no catheterization lab and without doctors experienced in performing that procedure." Id. at 137 (declaration of David Chomsky ¶¶ 8, 9).

petitioner presented only "his opinion as opposed to the facts and the evidence submitted by" the government. Ibid.

In addition, the court determined that the remaining two factors bearing on the propriety of a preliminary injunction, the public interest and harm to other interested parties, counseled against issuance of injunctive relief. Pet. App. 36-37. The district court recognized that an injunction would pose security risks by requiring transfer of a detainee to another facility, encourage other detainees to bring similar motions without any legal basis, interfere with the expertise and judgment of doctors, and waste the resources the government had already expended in preparing for the surgery at Guantanamo. Ibid. The district court accordingly denied petitioner's second motion seeking transfer to a hospital with a cardiac catheterization laboratory. Id. at 41.⁵

4. On November 24, 2006, petitioner filed an appeal from the district court's order and an emergency motion in the court of appeals, renewing his request to be transferred to a "proper medical setting" for performance of the cardiac catheterization procedure. Pet. App. 196. On December 1, 2006, the court of appeals summarily affirmed the district court's denial of a preliminary injunction. Id. at 43-44. The court held that the district court properly determined that petitioner "failed to

⁵ That same day, the district court denied petitioner's first motion for a temporary restraining order and preliminary injunction as moot. See Pet. App. 41.

satisfy the standards for issuance of a preliminary injunction.” Id. at 43. The court further explained that “[i]n particular, petitioner failed to demonstrate a substantial likelihood of success on the merits in view of the unresolved jurisdictional questions posed by his claim.” Ibid. The court dismissed petitioner’s emergency motion as moot. Ibid.

5. On December 12, 2006, petitioner filed in this Court a petition for a writ of certiorari (No. 06-8447), a petition for a writ of habeas corpus (No. 06-8448), and a petition for a writ of mandamus (No. 06-8449). Each of these petitions seeks the same relief: a preliminary injunction transferring him outside of Guantanamo Bay for medical treatment, and review of his enemy combatant status, either through a writ of mandamus lifting the stay of his habeas case or through an original writ of habeas corpus. On December 27, 2006, petitioner asked this Court to expedite consideration of his petitions. On January 8, 2007, this Court denied the request.

ARGUMENT

Petitioner contends (06-8447 Pet. 11)⁶ that he is entitled to a preliminary injunction transferring him outside of Guantanamo Bay to a foreign country for medical treatment. But petitioner does

⁶ Petitioner notes that his three petitions “cover[] essentially the same facts and arguments.” 06-8447 Pet. 12. This brief accordingly will cite only the petition for a writ of certiorari, which was docketed before the petitions for a writ of habeas corpus and for a writ of mandamus.

not offer any compelling reason for this Court to exercise its discretion to review the court of appeals' determination that petitioner failed to satisfy the standards for preliminary injunctive relief. Petitioner further contends (06-8447 Pet. 6-8, 10-11) that the district court's stay of his habeas case, pending the resolution of related cases in the court of appeals, constitutes a suspension of the writ of habeas corpus and warrants either a writ of mandamus lifting the stay or this Court's issuance of an original writ of habeas corpus. Petitioner fails to demonstrate any compelling circumstances to justify the extraordinary relief of mandamus or a writ of habeas corpus from this Court. He also cannot establish subject matter jurisdiction over this action in light of the Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600, which withdraws jurisdiction over this action and provides an independent basis for denying his requested relief. Further review therefore is not warranted.

1. "A petition for a writ of certiorari will be granted only for compelling reasons." Sup. Ct. R. 10. Petitioner does not offer a plausible reason, much less a compelling one, for this Court to grant his petition. The court of appeals correctly affirmed the district court's denial of preliminary injunctive relief after concluding that petitioner failed to meet the standards for such relief, particularly in light of petitioner's failure to establish that the court could exercise jurisdiction

over his claim. Pet. App. 43. That decision is entirely unremarkable, and does not conflict with any decision of this Court or court of appeals, or otherwise warrant this Court's review.

A request for preliminary injunctive relief "is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." Mazurek v. Armstrong, 520 U.S. 968, 972 (1997). As the court of appeals correctly held, petitioner failed to meet his burden here, in light of "unresolved jurisdictional questions posed by his claim." Pet. App. 43. The district court thus did not abuse its discretion in refusing to order petitioner's transfer to another facility for medical treatment. See Doran v. Salem Inn, Inc., 422 U.S. 922, 931-932 (1975) (grant or denial of preliminary injunction reviewed for abuse of discretion).

Pursuant to the Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 (MCA), which became law on October 17, 2006, neither the district court nor the court of appeals has jurisdiction over petitioner's claim challenging his conditions of confinement. The MCA amends 28 U.S.C. 2241 to provide that "[n]o court, justice, or judge shall have jurisdiction" to consider any action "relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement" of aliens detained by the United States as enemy combatants. See MCA § 7(a). This amendment to Section 2241 took effect on the date of enactment and

applies specifically "to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001." MCA § 7(B).

The relief requested by petitioner, therefore, would require an assertion of jurisdiction and authority in this case inconsistent with the MCA's withdrawal of jurisdiction specifically over claims relating to conditions of confinement, such as petitioner's motion for injunctive relief regarding his medical treatment.⁷ See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94 (1998) ("Without jurisdiction [a] court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.") (quoting Ex parte McCardle, 74 U.S. (7 Wall.) 506, 514 (1868)). Accordingly, the court of appeals correctly held that, in light of

⁷ A federal district court recently held that the MCA strips the federal courts of jurisdiction over habeas cases brought by Guantanamo detainees that were pending on the date the MCA went into effect. See Hamdan v. Rumsfeld, No. 04-1519(JR), 2006 WL 3625015, at *3 (D.D.C. Dec. 13, 2006) (holding that the MCA's language calling for application of Section 7(a) to pending habeas cases is "so clear that it could sustain only one interpretation") (quoting Lindh v. Murphy, 521 U.S. 320, 329 n.4 (1997)). Because petitioner brought his medical-transfer claim after the MCA went into effect, application of the MCA to that claim does not implicate any possible retroactivity concerns. And even if it did, Congress made clear that the MCA applies to pending cases brought by Guantanamo detainees, as the district court in Hamdan concluded.

the "unresolved jurisdictional questions" regarding the effect of the MCA, petitioner failed to establish a likelihood of success on the merits, as is required for issuance of a preliminary injunction. Pet. App. 43.

Petitioner disagrees (06-8447 Pet. 9-10) with the government about the jurisdictional effect of the MCA, but even if the MCA's jurisdiction-removing language were not so clear, this Court's review of the court of appeals' denial of a preliminary injunction still would not be warranted. As the court of appeals correctly recognized, petitioner bears the burden of establishing a likelihood of success on the merits, which includes establishing jurisdiction. Petitioner does not dispute, therefore, that the court of appeals applied the correct legal standard. Instead, petitioner's disagreement pertains to the underlying legal issue of the MCA's jurisdictional effect, which is an issue that has not yet been decided by the court of appeals. See Pet. App. 43 (referring to "unresolved jurisdictional questions"). Rather, that issue has been the subject of supplemental briefing to the court of appeals (completed on November 20, 2006) in Boumediene v. Bush, No. 05-5062 and Al Odah v. United States, No. 05-5064 (D.C. Cir.), and is currently pending before that court. Thus, that issue has not yet

been resolved by any court of appeals and is not ripe for this Court's review.⁸

Moreover, even apart from the jurisdictional considerations, the court of appeals correctly determined that petitioner failed to satisfy the well-settled standards for a preliminary injunction. See Pet. App. 43. As the district court explained at the hearing, petitioner was unable to demonstrate that receiving the cardiac catheterization procedure at Guantanamo would cause him irreparable harm, because the government submitted uncontroverted declarations explaining that the necessary equipment and highly-trained, experienced medical personnel were in place at the Guantanamo Naval Hospital to perform petitioner's surgery. *Id.* at 30-31. Although petitioner speculated that Guantanamo was ill-equipped to perform the cardiac catheterization or any follow-on procedures, petitioner provided no sworn evidence to support that speculation. Indeed, the only sworn declarations petitioner submitted to the district court were those of his counsel, which recounted petitioner's own speculation, *id.* at 133-134 (declaration of Zachary Philip Katznelson ¶ 12), and a Pennsylvania physician who was unable to provide any evidence about the medical facilities or personnel at Guantanamo, see *id.* at 137 (declaration of David Chomsky ¶¶ 6-9)

⁸ The Fourth Circuit is presently considering whether the MCA's removal of habeas jurisdiction applies to an action brought by an alien detained inside the United States. See Al-Marri v. Wright, No. 06-7427 (oral argument scheduled for February 1, 2007).

(admitting he is "not familiar with the medical facilities at Guantanamo").

Thus, the only evidence before the district court as to whether a cardiac catheterization could be performed properly at Guantanamo were the government's declarations of Captain J.S. Edmondson, see note 3, supra, and Dr. Sollock. Those declarations together demonstrated that respondents had arranged for appropriate and adequate medical facilities, supplies, and personnel at the Guantanamo Naval Hospital to perform petitioner's cardiac catheterization, as well as any follow-on or other medical care.

Indeed, the declaration of Dr. Sollock (Pet. App. 160-164)-- the Commander of the U.S. Naval Hospital at Guantanamo Bay and the Joint Task Force Surgeon there -- refutes petitioner's unsupported speculation that the required equipment and skilled personnel to perform a successful cardiac catheterization are not available at Guantanamo. As Dr. Sollock explained, Guantanamo provides extensive medical care facilities and resources for detainees. Id. at 161-162 (Sollock Decl. ¶¶ 4-9). The medical staff at Guantanamo has performed over 290 surgical procedures on detainees since January 2002, including a successful cardiac catheterization and artery stent placement in 2003. Id. at 162, 164 (Sollock Decl. ¶ 9, 14); 166-167 (Edmondson Decl. ¶ 2). When necessary, detainees are transferred to the Naval Base Hospital at Guantanamo to receive types of care not available at the detention hospital, and medical

specialists are flown in from outside Guantanamo in appropriate cases, such as petitioner's. Id. at 161-162 (Sollock Decl. ¶ 7).

Contrary to petitioner's allegations, the Guantanamo Naval Hospital is properly equipped to perform his surgery in compliance with the applicable standard of care. Respondents shipped to Guantanamo all of the necessary equipment, as well as highly-trained, experienced medical personnel. Pet. App. 163-164 (Sollock Decl. ¶¶ 12-15). Moreover, petitioner's concern about the proper functioning and reliability of the equipment shipped to Guantanamo is unfounded. See id. at 133-134 (Katznelson Decl. ¶ 12). As the government explained, all of the equipment was to be tested by the cardiologist and the cardiothoracic surgical team in advance of petitioner's procedure to ensure that it is in proper working order. Id. at 163 (Sollock Decl. ¶ 13). The team was also to "run through the procedure a sufficient number of times to ensure" that the equipment is functioning properly. Ibid. Electrical back-up for the mobile cardiac catheterization unit is available through the hospital generator and the unit's generator. Ibid. Furthermore, back-up medical equipment, such as an anesthesia machine, is available through the Naval Hospital. Ibid. Prior to the procedure, the medical personnel were to become familiar with

the back-up resources available. Id. at 163-164 (Sollock Decl. ¶ 13).⁹

Petitioner has submitted no evidence to rebut the government's declarations that the procedure can be performed appropriately at Guantanamo, failing in his petitions to this Court to even mention the evidence in those declarations. Accordingly, petitioner's suggestions that he is either being denied a necessary cardiac procedure or that the surgery would be deficiently performed at Guantanamo lack merit. See 06-8447 Pet. 6; Pet. App. 137 (Chomsky Decl. ¶ 9). All of the necessary equipment and personnel to perform a successful cardiac catheterization and any follow-on procedures were made available to petitioner at Guantanamo. Thus, the court of appeals correctly affirmed the district court's determination that petitioner failed to show that he would suffer irreparable injury by undergoing the cardiac catheterization at Guantanamo rather than at an alternative medical facility. That finding alone was sufficient to uphold the district court's denial of preliminary injunctive relief. See CityFed Financial Corp. v. Office of Thrift Supervision, 58 F.3d 738, 747 (D.C. Cir. 1995) (failure to make showing of irreparable injury is sufficient to deny preliminary injunction).

⁹ The government shipped to Guantanamo the requisite medical equipment and specialized medical personnel for a cardiac catheterization of a detainee in 2003, and the procedure was successful. See Pet. App. 164 (Sollock Decl. ¶ 14), 166-167 (Edmondson Decl. ¶ 2).

Moreover, as the district court properly found (Pet. App. 34), petitioner would be unable to establish a likelihood of success on the merits because even if petitioner could assert any constitutional rights, at a minimum he would need to demonstrate that the level of medical care provided to him exhibits "deliberate indifference" before court intervention would be warranted. Notably, district courts in analogous cases involving allegations of inadequate medical care by other Guantanamo detainees have applied the "deliberate indifference" standard in rejecting claims for court intervention in the provision of medical care at Guantanamo. See O.K. v. Bush, 344 F. Supp. 2d 44, 60-63 & n.23 (D.D.C. 2004) (Bates, J.); Al Odah v. United States, 406 F. Supp. 2d 37, 42-44 (D.D.C. 2005) (Kollar-Kotelly, J.) (applying "deliberate indifference" standard in rejecting request for court intervention into medical care provided to hunger-striking Guantanamo detainees). The record here demonstrates that respondents were taking extraordinary measures to protect petitioner's health, including arrangements for a substantial amount of sophisticated medical equipment and personnel to be brought to Guantanamo solely for petitioner's surgery. Such measures are the very opposite of deliberate indifference. Although petitioner may desire to have the surgery performed at a different facility, he has no right to choose where he receives his medical treatment. O.K., 344 F. Supp. 2d at 61 (finding that "a

prisoner has no discrete right to outside or independent medical treatment"); Roberts v. Spalding, 783 F.2d 867, 870 (9th Cir.) (same), cert. denied, 479 U.S. 930 (1986). Furthermore, the deliberate indifference standard calls for deference to the judgment of prison administrators, especially in the provision of medical care. See O.K., 344 F. Supp. 2d at 61; Inmates of Allegheny County Jail v. Pierce, 612 F.2d 754, 762 (3d Cir. 1979) (stating that federal courts will "disallow any attempt to second-guess the propriety of a particular course of treatment" chosen by prison doctors). Such deference is even more called for in the extraordinary context in which this case arises.

Because the court of appeals correctly held that petitioner failed to satisfy the standards for a preliminary injunction, no further review is warranted. Indeed, even if the court of appeals had erred in concluding, on the particular facts here, that petitioner failed to meet the standards for injunctive relief, such error would not make this case suitable for certiorari review. See S. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").

And, contrary to petitioner's allegation, the court of appeals' ruling does not create an inter-circuit conflict. The Ninth Circuit case that petitioner cites, Yong v. INS, 208 F.3d 1116 (2000), has nothing to do with preliminary injunctive relief,

but instead addresses the propriety of a stay in habeas cases. The court of appeals' ruling on petitioner's request for an injunction, therefore, presents no conflict with Yong that might warrant this Court's review.

2. Petitioner also seeks relief from the district court's stay of his habeas case. But petitioner has not made the showing necessary for issuance of a writ of mandamus (No. 06-8449) or a writ of habeas corpus (No. 06-8448) from this Court. Writs of mandamus are granted only "sparingly," upon a showing that "the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant exercise of the Court's discretionary powers, and that adequate relief cannot otherwise be obtained in any other form." S. Ct. R. 20.1. The "remedy of mandamus is a drastic one," Kerr v. United States District Court, 426 U.S. 394, 402 (1976), and "only exceptional circumstances amounting to a judicial usurpation of power will justify the invocation of this extraordinary remedy." Will v. United States, 389 U.S. 90, 95 (1967) (internal quotation marks omitted). "[A] party seeking issuance of the writ must show that there is 'no other adequate means to attain the relief he desires' and satisfy the burden of demonstrating that the right to issuance of the writ is 'clear and indisputable.'" Robert L. Stern, et al., Supreme Court Practice 583 (8th ed. 2002) (quoting Kerr, 426 U.S. at 402-403). Similarly, petitioner must demonstrate "exceptional

circumstances” and “that adequate relief cannot be obtained in any other form or from any other court” for this Court to issue a writ of habeas corpus. See S. Ct. R. 20.4(a) (“This writ is rarely granted.”). Petitioner cannot satisfy either of these exacting standards.

Petitioner can obtain adequate relief through review of his enemy combatant determination in the District of Columbia Circuit, pursuant to the Detainee Treatment Act of 2005 (DTA), Pub. L. No. 109-148, §§ 1001-1006, 119 Stat. 2680, 2739-2745. Section 1005(e)(2) of the DTA provides that the District of Columbia Circuit has exclusive jurisdiction to review the validity of any final decision of a CSRT. Thus, petitioner can seek review of his enemy combatant status, which is the relief he ultimately seeks. See 06-8447 Pet. 4-5, 10.¹⁰

Petitioner contends, however, that because review under the DTA has been delayed, such review is inadequate and amounts to a suspension of the writ of habeas corpus, warranting extraordinary relief from this Court. See, e.g., 06-8447 Pet. 5. Moreover, petitioner argues (06-8447 Pet.) that “[b]y allowing this delay,” the D.C. Circuit has “put itself squarely in conflict” with the Ninth Circuit’s decision in Yong, supra.

¹⁰ Petitioner has filed in the District of Columbia Circuit a petition for review of his designation as an enemy combatant by a CSRT (D.C. Cir. No. 06-1038).

Contrary to petitioner's suggestion (06-8447 Pet. 8), the District of Columbia Circuit has not yet ruled on whether the district court's stay of petitioner's habeas case pending resolution of related appeals is permissible. That issue is currently pending before the court of appeals as part of petitioner's consolidated appeals. Thus, there is no ruling by that court that could conflict with Yong. For that reason, extraordinary relief, or certiorari review of the district court's stay, would be premature, given that the court of appeals' resolution of the issue may obviate the need for any relief from this Court. And even if the court of appeals' April 19, 2006 order -- which deferred consideration of the remaining motions and required the parties to file motions to govern further proceedings within 30 days of the resolution of Al Odah and Boumediene)-- could be construed as informally holding petitioner's appeals in abeyance pending resolution of Al Odah and Boumediene, such a stay is fully appropriate for the same reasons that support the district court's stay.

The district court's stay of petitioner's habeas case was an entirely proper case-management order. A court "has broad discretion to stay proceedings as an incident to its power to control its own docket." Clinton v. Jones, 520 U.S. 681, 706 (1997); accord Rhines v. Weber, 544 U.S. 269, 276 (2005). As this Court has explained, "[e]specially in cases of extraordinary public

moment, [a plaintiff] may be required to submit to delay not immoderate in extent and not oppressive in its consequences if the public welfare or convenience will thereby be promoted." Clinton, 520 U.S. at 707 (quoting Landis v. North Am. Co., 299 U.S. 248, 256 (1936)). In accordance with these standards, and in light of the significant threshold legal issues pending before the court of appeals in the related Guantanamo detainee appeals, the district court properly exercised its discretion in staying the merits of petitioner's habeas case pending the resolution of those appeals. The Ninth Circuit's decision in Yong is not to the contrary. See 208 F.3d at 1119-1121 (concluding that an indefinite stay of habeas case, which would not even further judicial economy or other government interests, was an abuse of discretion). Moreover, because the stay is a reasonable case-management measure that falls within the bounds of the district court's authority, it is not an appropriate subject for a writ of mandamus. See Cheney v. United States Dist. Ct. for the Dist. of Columbia, 542 U.S. 367, 380 (2004) (mandamus not appropriate unless district court acts ultra vires).

CONCLUSION

The petitions for a writ of mandamus, habeas corpus, and certiorari should be denied or dismissed for want of jurisdiction.

Respectfully submitted.

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