

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAIFULLAH PARACHA,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 04-CV-2022 (PLF)
)	
GEORGE W. BUSH,)	
President of the United States,)	
<i>et al.</i> ,)	
)	
Respondents.)	
)	

**RESPONDENTS’ OPPOSITION TO PETITIONER’S
MOTION FOR LEAVE TO FILE SECOND AMENDED PETITION
AND TO ADD THE ATTORNEY GENERAL AS A RESPONDENT**

Despite the fact that the Court has stayed this case, petitioner has filed a Motion for Leave to File a Second Amended Petition and to Add the Attorney General as a Respondent (“Motion”) (dkt. no. 83) in which he seeks leave to amend in order to allege that he is detained at Guantanamo Bay, Cuba, not by the Department of Defense (“DoD”), but under the “control” of the Federal Bureau of Investigation (“FBI”), and to add the Attorney General as a respondent. This motion is yet another in a series of prior motions by petitioner that have disregarded the stay this Court has entered in this case and the reasons supporting that stay, see Order (Dec. 7, 2005) (dkt. no. 81); Order (Mar. 23, 2005) (dkt. no. 49); petitioner fails even to acknowledge the existence of the stay in his filing. Petitioner’s Motion should be denied because petitioner has failed to provide a sufficient legal or factual basis to justify departure from the stay in this case for purposes of moving forward with the amendment to the petition he seeks. Petitioner’s Motion is inappropriate at this time because of the pendency of the D.C. Circuit’s review of cases

involving other Guantanamo detainees and of the consolidated interlocutory appeals in this very case, which will determine how petitioner's case should proceed, if at all, in this Court.

BACKGROUND

Petitioner, a citizen of Pakistan currently detained by DoD as an enemy combatant at Guantanamo Bay Naval Base, initiated this action by filing a Petition for Writ of Habeas Corpus on November 17, 2004. Respondents filed a motion to dismiss petitioner's habeas petition and a factual return explaining the basis for petitioner's detention by DoD as an enemy combatant on January 18, 2005. See Response to Amended Petition for Habeas Corpus and Motion to Dismiss or for Judgment as a Matter of Law and Supporting Memorandum (Jan. 18, 2005) (dkt. no. 22); Respondents' Factual Return to Petition for Writ of Habeas Corpus by Petitioner Saifullah Paracha and Notice of Submission of Factual Return Under Seal (Jan. 18, 2005) (dkt. no. 21). A Combatant Status Review Tribunal, that is, a tribunal implemented by DoD with respect to aliens detained by DoD at Guantanamo,¹ found petitioner to be affiliated with the al Qaeda terrorist organization after reviewing evidence related to such matters, including (1) that petitioner was involved in an al Qaeda plan to smuggle explosives into the United States; (2) that petitioner held and managed large amounts of al Qaeda money given to him by known al Qaeda operatives; and (3) that petitioner recommended to an al Qaeda operative that nuclear weapons be used against

¹ See July 7, 2004 Order Establishing Combatant Status Review Tribunal at 1 ("This Order applies only to foreign nationals held as enemy combatants in the control of the Department of Defense at the United States Naval Base at Guantanamo Bay, Cuba . . .") (available online at <<<http://www.defenselink.mil/news/Jul2004/d20040707review.pdf>>>); July 29, 2004 Memorandum "Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba, at ¶ 1 (same) (available online at <<<http://www.defenselink.mil/news/Jul2004/d20040730comb.pdf>>>).

U.S. troops and suggested where such weapons might be obtained. See Respondents' Factual Return at Exhibit A.

On January 19, 2005, Judge Richard Leon of this Court issued a Memorandum Opinion and Order granting respondents' Motion to Dismiss or For Judgment As A Matter of Law in two other Guantanamo detainee cases. See Khalid v. Bush, Boumediene v. Bush, Nos. 04-CV-1142 (RJL), 04-CV-1166 (RJL), 355 F. Supp. 2d 311 (D.D.C. 2005). Judge Leon held that "no viable legal theory exists" by which the Court "could issue a writ of habeas corpus" in favor of the Guantanamo detainees. Id. at 314. Then, on January 31, 2005, Judge Green entered a Memorandum Opinion and Order in eleven other pending Guantanamo habeas cases denying in part and granting in part Respondents' Motion to Dismiss or For Judgment As A Matter of Law. See Memorandum Opinion Denying in Part and Granting in Part Respondents' Motion to Dismiss or for Judgment as a Matter of Law, No. 02-CV-0299, et al., In re Guantanamo Detainee Cases, 355 F. Supp. 2d 443 (D.D.C. 2005). In contrast to Judge Leon's decision, Judge Green held, inter alia, that "the detainees at Guantanamo Bay have the fundamental right to due process of law under the Fifth Amendment" to challenge the legality of their detention through petitions for writs of habeas corpus.² Id. at 463.

On February 3, 2005, in response to a motion filed by respondents, Judge Green certified for interlocutory appeal her January 31, 2005 opinion and stayed proceedings in the eleven cases

² Judge Green also concluded that some petitioners – those held because of their relationship with the Taliban, but not those held as al Qaeda – have certain judicially enforceable claims under the Third Geneva Convention. Id. at 478-80. The D.C. Circuit recently held in another Guantanamo detainee case, however, that the Third Geneva Convention is not judicially enforceable. See Hamdan v. Rumsfeld, 415 F.3d 33, 40-41 (D.C. Cir. 2005). The Hamdan case is pending before the Supreme Court on certiorari, having been argued on March 28, 2006.

coordinated in In re Guantanamo Detainee Cases for all purposes pending the resolution of all appeals. On March 23, 2005, this Court in the instant case similarly granted respondents' motion to stay and stayed this case pending resolution of all appeals of Judge Green's January 31, 2005 decision in In re Guantanamo Detainee Cases (proceeding on appeal as Al Odah v. United States) and of Judge Leon's January 19, 2005 decision in Khalid (proceeding on appeal as Boumediene v. Bush). See Order (dkt. no. 49).³

Following the entry of the stay, numerous interlocutory appeals have been filed in this case. Petitioner filed a notice of appeal on May 17, 2005, from the Order (1) "keeping the protective order [applicable in the Guantanamo habeas cases] in effect and denying petitioner's motion to vacate the order entered December 16, 2004, applying the protective order," and (2) "staying this case and proceedings." See Notice of Appeal (dkt. no. 55). While that appeal was pending, petitioner also filed a request for a writ of mandamus in the D.C. Circuit on June 2, 2005, seeking vacatur of this Court's stay and an order directing this Court to promptly address his habeas petition. On August 12, 2005, respondents filed a notice of appeal (dkt. no. 64) with respect to the portion of the Court's Memorandum Order dated June 16, 2005 (dkt. no. 58) that prohibits respondents from removing petitioner from Guantanamo Bay Naval Base unless the Court and counsel for petitioner receive thirty days' advance notice of such removal. The same day, petitioner filed a notice of appeal that he was appealing the part of the June 16, 2005 Order (dkt. no. 58) which "denies petitioner's motion for a preliminary injunction ordering his removal from isolation." See Notice of Appeal (dkt. no. 65).

³ The Court noted that motions for emergency relief would be exempted from the stay. See Order (dkt. no. 49).

On August 4, 2005, the D.C. Circuit denied petitioner's motion for summary reversal of this Court's March 23, 2005 Order imposing a stay and denying vacatur of the protective order and also denied his motion for an injunction pending appeal. The D.C. Circuit consolidated and expedited petitioner's appeals and petition for a writ of mandamus seeking to vacate the stay. Oral argument in the consolidated appeals was held December 8, 2005.

Prior to the December 8, 2005 argument, however, petitioner filed in this Court a motion to allow discovery, as well as other motions related to conditions of confinement and a motion seeking to have the pending motions "promptly resolved." See dkt. nos. 68, 69, 72, 75. The Court entered an order on December 7, 2005, denying the motion for discovery and the motion to have other pending motions resolved. See dkt. no. 81. With respect to the motion for discovery, the Court stated:

Petitioner, however, fails even to acknowledge the fact that on March 23, 2005, the Court stayed all proceedings in this case, with the exception "of any motion for emergency relief," pending resolution of all appeals in In re Guantanamo Detainee Cases, 355 F. Supp. 2d 443 (D.D.C. 2005), and Khalid et al. v. Bush, 355 F. Supp. 2d 311 (D.D.C. 2005). The discovery sought by petitioner clearly is not "emergency relief," and petitioner offers no other reason why the stay should not, for the time being, act to bar his request. Accordingly, the Court denies petitioner's motion for discovery.

Id. at 2 (footnote omitted).

On December 30, 2005, the Detainee Treatment Act of 2005, Pub. L. No. 109-148, tit. X, 119 Stat. 2680 ("DTA"), became law. The DTA, among other things, amends 28 U.S.C. § 2241 to remove court jurisdiction to hear or consider applications for writs of habeas corpus and other actions brought in this Court by or on behalf of aliens detained at Guantanamo Bay. Section 1005(e)(1) of the Act amends 28 U.S.C. § 2241 to provide that "no court, justice, or judge shall

have jurisdiction” to consider either (1) habeas petitions filed by aliens detained by DoD at Guantanamo, or (2) any other action relating to any aspect of the detention of such aliens. In addition, the Act creates an exclusive review mechanism in the D.C. Circuit to address the validity of the detention of such aliens held as enemy combatants; section 1005(e)(2) of the Act states that the D.C. Circuit “shall have exclusive jurisdiction to determine the validity of any final decision of a Combatant Status Review Tribunal that an alien is properly detained as an enemy combatant,” and it further specifies the scope and intensiveness of that review. Section 1005(e)(1), which eliminates the jurisdiction of the courts to consider habeas and other actions brought by Guantanamo detainees, was made immediately effective without reservation for pending cases, and section 1005(e)(2), which establishes the exclusive review mechanism in the D.C. Circuit, was made expressly applicable to pending cases. Id. § 1005(h).

In light of the DTA, the Court of Appeals ordered supplemental briefing in Al Odah and Boumediene regarding the effect of the Act on pending appeals, including whether the district court retains jurisdiction in pending cases and whether the petitioners must proceed exclusively in the Court of Appeals.⁴ The government has argued, inter alia, that pending Guantanamo detainee cases should be converted into petitions for review in the Court of Appeals, and issues previously briefed and argued in the pending appeals, such as whether Guantanamo detainees have judicially enforceable rights under the Constitution or laws of the United States, should be decided expeditiously given the involvement of such issues in petitions for review under the DTA. See DTA § 1005(e)(2)(C) (review of enemy combatant determinations includes whether procedures used in such determinations are consistent with U.S. Constitution and laws).

⁴ Argument on the DTA issues was held March 22, 2005.

On January 20, 2006, petitioner filed in the pending appeal in this case a “Memorandum on Recent Legislation [i.e., the DTA] and Motion to Vacate the Stay of the Lower Court,” in which he argued, inter alia, that the DTA had no application to him because he is detained by the FBI and not DoD. See Memorandum on Recent Legislation and Motion to Vacate the Stay of the Lower Court, filed in Paracha v. Bush, Nos. 05-5194, 05-5211, 05-5333 (D.C. Cir.), at 17-18 (excerpt attached as Exhibit 1). The Court of Appeals, however, has deferred action and ordered the parties to file motions to govern further proceedings in the case within 30 days of the Court of Appeals’ resolution of the Al Odah and Boumediene appeals.⁵ See April 19, 2006 Order in Paracha v. Bush, Nos. 05-5194, 05-5211, 05-5333 (D.C. Cir.) (copy attached as Exhibit 2).

On April 28, 2006, petitioner filed in this Court his Motion for Leave to File a Second Amended Petition and to Add the Attorney General as a Respondent (dkt. no. 83) in which he seeks leave to amend in order to allege that he is detained at Guantanamo Bay not by DoD, but under the “control” of the Department of Justice and the FBI with DoD acting as agent of the Department of Justice, see id. [Proposed] Second Amended Petition ¶ 10A, and to add the Attorney General as a respondent.

⁵ Petitioner has also filed two petitions for review under the DTA. See Nos. 06-1038, 06-1117 (D.C. Cir.). The Court of Appeals likewise has deferred action on most of the motions filed in those proceedings and ordered the parties to file motions to govern further proceedings within 30 days of the Court of Appeals’ resolution of the Al Odah and Boumediene appeals. See May 8, 2006 Order in Paracha v. Rumsfeld, No. 06-1038 (D.C. Cir.) (copy attached as Exhibit 3).

ARGUMENT

I. PETITIONER’S MOTION SHOULD BE DENIED BECAUSE THE CASE IS PROPERLY STAYED AND PETITIONER HAS PROVIDED NO JUSTIFICATION FOR DEPARTURE FROM THE STAY.

Petitioner’s Motion should be denied because this case is properly stayed and petitioner has provided no appropriate justification for departure from the stay. Petitioner’s Motion fails even to acknowledge that a stay is in effect pursuant to the Court’s March 23, 2005 Order (dkt. no. 49), much less make a showing that would justify lifting the stay to permit the filing of an amended petition and the addition of a new respondent. Just as the Court denied a previous motion filed by petitioner that inexplicably failed to acknowledge the March 23, 2005 stay or address reasons justifying departure from it, see Order (Dec. 7, 2005) (dkt. no. 81), the Court should similarly deny the instant motion.

Indeed, the considerations warranting the Court’s stay of proceedings in this case remain vital, such that the stay should be given full force and effect.⁶ The Court of Appeals will still be deciding whether and how claims by Guantanamo detainees such as petitioner may proceed, including whether such detainees – aliens detained outside of United States territory – have rights under the Constitution and laws of the United States. The Court should not abandon or modify its stay while the asserted legal bases for petitioner’s claims could be resolved or determined by the Court of Appeals.

While petitioner fails to explain why his motion to amend should be granted in the face of the Court’s stay, he does explain that the proposed amendment is of relevance with respect to the

⁶ While the Court’s stay does not “bar the filing and disposition of any motion for emergency relief,” see Order (Mar. 23, 2005) at 2 (dkt. no. 49), petitioner’s Motion is not asserted to constitute such a motion, nor is it one.

DTA, which is limited in application to DoD detainees at Guantanamo. See Motion at 6. But this does not warrant departure from the stay. If petitioner's assertion that he is not a DoD detainee were ultimately accepted, presumably the Court's habeas jurisdiction would remain unaffected, but that does not mean that petitioner would be entitled to pursue claims under the Constitution or other laws or treaties, an issue that will be settled in the pending appeals before the D.C. Circuit. The existence of the DTA adds additional jurisdictional issues to the case, but a stay would be appropriate even absent application of the DTA because the merits issues involved in the case, e.g., whether alien detainees at Guantanamo have constitutional rights, remain on appeal. Indeed, the stay was appropriately entered and in effect in this case prior to the enactment of the DTA. The Court of Appeals essentially recognized as much when, faced with petitioner's assertion that the DTA had no application to him because he is detained by the FBI and not DoD, see Exhibit 1, the Court did not take up the matter but, instead, ordered the parties merely to file motions to govern further proceedings in the case within 30 days of the Court of Appeals' resolution of the Al Odah and Boumediene appeals. See supra at 7.

The Court's stay, and the rationale supporting it, remain viable, and petitioner's motion, providing no legitimate basis for departure from the stay, accordingly should be denied.

II. PETITIONER'S MOTION SHOULD BE DENIED BECAUSE IT IS NOT SUPPORTED BY SUFFICIENT FACTS TO WARRANT DEPARTURE FROM THE STAY OR LEAVE TO AMEND.

Petitioner's motion also should be denied because it is not supported by sufficient facts to warrant departure from the stay or leave to amend and appears to be but a questionable tactic to circumvent the legitimate proscriptions of the DTA. Leave to amend is often freely given, but only "when justice so requires," see FED. R. CIV. P. 15(a), and leave can be denied for any

number of reasons, “such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.,” Foman v. Davis, 371 U.S. 178, 182 (1962).

Here, petitioner’s primary proposed amendment is nothing more than a blatant attempt to escape the withdrawal of this Court’s habeas jurisdiction under the DTA. Petitioner presents no significant facts, new or otherwise, calling into question his current status as a DoD detainee at Guantanamo, so as to warrant departure from the stay or leave to amend. Respondents have indicated in multiple filings since the outset of this case in this Court, and in the Court of Appeals, that petitioner is being held in the Joint Task Force-Guantanamo detention facility at the U.S. Naval Base in Guantanamo Bay by and under the authority of DoD. The military installation on which petitioner is being held is operated by DoD, and, as indicated in the declaration accompanying the factual return filed by respondents, Respondents’ Factual Return (dkt. no. 21) at Exhibit A (Declaration of Commander James R. Crisfield, Jr., Judge Advocate General’s Corps, United States Navy), officers of the Department of Defense conducted petitioner’s Combatant Status Review Tribunal, a proceeding implemented by DoD with respect to aliens detained by DoD at Guantanamo, see supra note 1.

Indeed, petitioner himself admits in his declaration submitted in support of the Motion that, “I am a prisoner of the Department of Defense . . . on the physical level,” (albeit he characterizes his detention by DoD as “only” on the physical level). See Motion, February 14, 2006 Declaration of Saifullah Paracha. Further, petitioner struck out language in his declaration that stated, “On several occasions I have been told that I am here [in Guantanamo] at the request

of the FBI.” Id. ¶ 5. Further, petitioner has filed two petitions for review in the Court of Appeals under the DTA, see Nos. 06-1038, 06-1117 (D.C. Cir.), vehicles available under the DTA only to aliens detained at Guantanamo by DoD,⁷ in which he challenges a determination by DoD that is an enemy combatant properly subject to detention by DoD.

Petitioner’s proposed amendment to his petition, elucidated by his declaration in support of the motion to amend, comes down to nothing more than an assertion that because FBI agents have been involved in interrogations during his detention, then he is, in fact, detained not by DoD but by the FBI. But involvement by FBI agents in petitioner’s interrogations, presumably in connection with criminal investigations, in no way suggests that petitioner is currently in the custody of the FBI rather than DoD. Petitioner’s proposed amendment merely asserts a legal conclusion regarding which agency is detaining him, but that conclusion is not supported by the facts he offers or the facts in the record. The Court should not countenance such a tactic intended merely to circumvent the DTA – nor should respondents be put to task of further disproving petitioner’s allegation that he is not a DoD detainee – based on such feeble and frivolous material.⁸ This is especially the case where Congress, through the DTA, was obviously intending to respond to and address, through the cabining of court jurisdiction (including the withdrawal of

⁷ See DTA § 1005(e)(2)(B):

LIMITATION ON CLAIMS.— The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to claims brought by or on behalf of an alien—

(i) who is at the time a request for review by such court is filed, detained by the Department of Defense at Guantanamo Bay, Cuba

⁸ For these same reasons, petitioner’s proposal to add the Attorney General as a respondent is inappropriate and would be futile. See Foman, 371 U.S. at 182.

this Court's jurisdiction), what it rightly perceived to be a habeas litigation crisis involving scores of pending cases on behalf of hundreds of Guantanamo detainees. See also 151 Cong. Rec. S14256, S14261 (Dec. 21, 2005) (noting boasting of one of the coordinating counsel for petitioners that the habeas litigation "is brutal" for ongoing United States military operations at Guantanamo). Because petitioner's Motion is not supported by sufficient facts to warrant departure from the stay or leave to amend, and appears to be merely a questionable tactic to circumvent the DTA, the Court should deny petitioner's Motion.

CONCLUSION

For the foregoing reasons, Petitioner's Motion for Leave to File a Second Amended Petition and to Add the Attorney General as a Respondent should be denied.

Dated: May 12, 2006

Respectfully submitted,

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[signature block continued on next page]

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EXHIBIT 1

FILED WITH
COURT SECURITY OFFICER
1/29/06 J. Campbell
DATE

CASE WAS ARGUED DECEMBER 8, 2005

Nos. 05-5194, 05-5211, and 05-5333

**In the United States Court of Appeals for the
District of Columbia Circuit**

SAIFULLAH PARACHA,
and his Next Friend FARHAT PARACHA,
Appellants,

v.

Hon. GEORGE W. BUSH, Hon. DONALD RUMSFELD,
and Brigadier General JAY HOOD,
Appellees.

**Appeal from the U.S. District Court for the
District of Columbia**

In re:
SAIFULLAH PARACHA, Petitioner, and
FARHAT PARACHA, Next Friend.

Proceeding for the Writ of Mandamus

PETITIONER-APPELLANT'S
MEMORANDUM ON RECENT LEGISLATION
AND MOTION TO VACATE THE STAY OF THE LOWER COURT

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They do not wear uniforms. They are terrorists. They hide among civilians. They cheat. They do anything one can imagine to have their way. They do not abide by any international regimes.

Senator Graham, 151 CR S8811.

(Paracha, of course, has never worn a uniform because he has never been a soldier or anywhere near combat. He certainly was not wearing a uniform when he was set upon and seized at the Bangkok airport on his way to a meeting with K-Mart.) The same prejudging was clear throughout the debates. E.g., 131 CR S14266, where Senator Kyl compares the Guantanamo detainees to the Nazi perpetrators of the Malmedy massacre.

Thus Saifullah Paracha is serving an indefinite sentence of solitary confinement for supposed support to terrorists, but, if his habeas corpus is dismissed or suspended, he will be confined not because of some independent assessment of his guilt, but under a legislative determination thereof. This is a bill of attainder, a breach of the separation of powers, and the Constitution does not allow it.

III. THE STATUTE APPLIES TO ALIENS "DETAINED BY THE DEPARTMENT OF DEFENSE AT GUANTANAMO BAY, CUBA," BUT PARACHA IS DETAINED BY THE FBI.

The Detainee Treatment Act, section 1005(e)(1), P.L. 109-148, 119 Stat. 2680, suspends the writ of habeas corpus for any "alien detained *by the Department of Defense* at Guantanamo Bay, Cuba [emphasis supplied]." Section 1005(e)(1) abrogates all jurisdiction over any action against the United States or its agents relating to "the detention *by the Department of Defense* of an alien at Guantanamo Bay, Cuba [emphasis again supplied]," who is in military custody or has been determined to be an enemy combatant. Thus to be affected by these provisions it is necessary that the person

detained not only be an alien and be at Guantanamo, but that he be detained by the Department of Defense.

This reflects the basic purpose of the Act, to protect the wartime powers of the armed services against judicial intrusion. If it were not so limited, the Act would create an all-purpose zone of incarceration free of judicial inquiry where any agency could dump any person with no legal justification. But that is exactly what has happened to Paracha. He was seized by an FBI operation far from any Department of Defense activity, he was questioned by the FBI, and, when it became clear that there was no evidence to bring him to prosecution, he was sent to Guantanamo by the FBI. Both his continued imprisonment and the terms of his daily suffering are controlled by the FBI, not the Department of Defense.

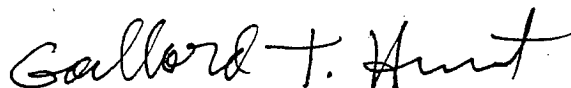
Before the passage of this Act, it was of no relevance which department of the Executive Branch was causing Paracha's detention. Also, the stay entered by the lower court has prevented proper development of the facts, many of which became public for the first time at a trial of another person in the Southern District of New York in November, 2005. It is now clear that it is the Department of Justice, not the Department of Defense, whose officials lured Saifullah Paracha to Bangkok, arranged for a gang of masked men to set upon him in the airport parking lot, and have supervised his interrogation and confinement since then. These facts are partially tendered for the record in the Combatant Status Review Tribunal hearing, App. 111-171. On remand, Paracha will show that he is a civilian prisoner, and not among the military prisoners the jurisdiction-stripping provision purports to cover.

Thus the stay should be vacated and the case remanded to the District Court.

The government will oppose this motion.

Respectfully submitted,

January 20, 2006



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EXHIBIT 2

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 05-5194

September Term, 2005

04cv02022

Filed On:

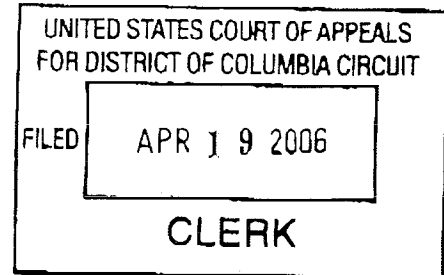
Saifullah Paracha, Detainee, Guantanamo Bay Naval
Station and Farhat Paracha, Next Friend,
Appellants

v.

George W. Bush, Jr., et al.,
Appellees

Consolidated with 05-5211, 05-5333

06-1038



Saifullah Paracha,
Petitioner

v.

Donald H. Rumsfeld, Secretary of Defense,
Respondent

06-1117

Saifullah Paracha,
Petitioner

v.

Secretary of Defense,
Respondent

BEFORE: Ginsburg, Chief Judge, Randolph, Circuit Judge, and
Edwards, Senior Circuit Judge

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 05-5194**September Term, 2005**

ORDER

Upon consideration of the motion to consolidate Nos. 05-5194 and No. 06-1038; the motion to consolidate Nos. 05-5194, 06-1038, and 06-1117; the motion for leave to proceed in forma pauperis filed in No. 06-1117; the motion for appropriate conditions of confinement, the emergency motion on conditions of confinement, the opposition to the motion for appropriate conditions of confinement and the emergency motion on conditions of confinement, and the reply to the response to the emergency motion, all filed in No. 06-1038; the motion to clarify the record, the motion to produce witness or for habeas corpus ad testificandum, the combined response to the motion to clarify the record and motion to produce witness, and the reply thereto, all filed in No. 06-1038; and petitioner's dispositive motion to vacate the finding that he is an enemy combatant and the opposition thereto, filed in No. 06-1038, it is

ORDERED that the motion for leave to proceed in forma pauperis in No. 06-1117 be granted. It is

FURTHER ORDERED that the government file, by April 26, 2006 at 4:00 p.m., a more concrete response to the emergency motion on conditions of confinement, specifically addressing Mr. Paracha's allegation that he is unable to summon aid in the event of an emergency. Any reply must be filed by 4:00 p.m. on May 1, 2006. It is

FURTHER ORDERED that consideration of the remaining motions be deferred pending further order of the court. The parties are directed to file motions to govern further proceedings herein within 30 days of this court's resolution of No. 05-5064, Al Odah v. United States, and No. 05-5062, Boumediene v. Bush.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:



Deputy Clerk/LD

EXHIBIT 3

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 06-1038

September Term, 2005

Filed On: May 8, 2006 [967044]

Saifullah Paracha,
Petitioner

v.

Donald H. Rumsfeld, Secretary of Defense,
Respondent

BEFORE: Ginsburg, Chief Judge, Randolph, Circuit Judge, and Edwards,
Senior Circuit Judge

ORDER

Upon consideration of the motion for appropriate conditions of confinement, the emergency motion on conditions of confinement, the opposition to the motion for appropriate conditions of confinement and the emergency motion on conditions of confinement, the reply to the response to the emergency motion, the supplemental response to the emergency motion on conditions of confinement, and the reply thereto, it is

ORDERED that the emergency motion be dismissed in part as moot. Petitioner's claim that he is unable to summon aid in the event of an emergency is moot in light of the government's representation that the outgoing intercom in his cell has been switched on. This aspect of petitioner's motion is subject to renewal should that intercom be switched off. It is

FURTHER ORDERED that consideration of the remainder of the motions be deferred pending further order of the court. The parties are directed to file motions to govern further proceedings with respect to those motions within 30 days of this court's resolution of No. 05-5064, Al Odah v. United States, and No. 05-5062, Boumediene v. Bush.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

By:
Deputy Clerk/LD