IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION TO VACATE THE STAY AND TO GRANT PETITIONER'S MOTION FOR SUMMARY JUDGMENT

Respondents hereby oppose petitioner's Motion to Vacate the Stay and to Grant Petitioner's Motion for Summary Judgment ("motion") (dkt. no. 90).[1] This motion[2] is yet another in a continuing series of motions by petitioner that completely disregard the reasons supporting the stay this Court has entered in this case.[3] In fact, petitioner admits that "much of

[1] Petitioner has chosen to file the following separate documents as one docket entry: Petitioner's Motion to Vacate the Stay and to Grant Petitioner's Motion for Summary Judgment; Attachment: Motions Pending in Paracha v. Bush, 04CV2022-PLF as of July 5, 2006; Certificate of Conferring; Petitioner's Points and Authorities in Support of His Motion to Vacate the Stay and to Grant Petitioner's Motion for Summary Judgment ("Petr. Memo."); (Proposed) Order. See dkt. no. 90.

[2] Petitioner has filed a motion seeking substantially the same relief, i.e., remand with direction that the Court decide the merits of petitioner's case, with the Court of Appeals.

[3] See Order, No. 04-CV-2022 (PLF) (Mar. 23, 2005) (dkt. no. 49); Petitioner's Motion for Preliminary Injunction Ordering His Removal From Isolation and Prohibiting His Rendition, No. 04-CV-2022 (PLF) (Apr. 5, 2005) (dkt. no. 50); Petitioner's Motion to Allow and to Accelerate Discovery, No. 04-CV-2022 (PLF) (Oct. 6, 2005) (dkt. no. 68); Petitioner's Motion for Preliminary Injunction Ordering His Removal From Punitive Conditions of Confinement, No. 04-CV-2022 (PLF) (Oct. 7, 2005) (dkt. no. 69); Petitioner's Motion to Be Allowed a Bible

(continued...)

this motion is recycled from previous filings." Petr. Memo. at 5. As explained below, petitioner's motion is inappropriate, unsound, and should be denied.

ARGUMENT

A. The Court Should Deny Petitioner's Motion Because the Detainee Treatment Act of 2005 Granted the D.C. Circuit Exclusive Jurisdiction Over this Action.

Petitioner claims in his motion that in light of the Supreme Court's recent decision in Hamdan v. Rumsfeld, 548 U.S. —, 126 S. Ct. 2749 (U.S. June 29, 2006), the Court should lift its stay and proceed directly to the merits of this case by granting petitioner's previously filed motion for summary judgment. A correct reading of Hamdan, however, makes clear that such action is not appropriate. Indeed, the Detainee Treatment Act of 2005, Pub. L. No. 109-148, tit. X, 119 Stat. 2680 ("the Act"), vests exclusive jurisdiction over this action in the D.C. Circuit. The Act, among other things, not only amends 28 U.S.C. § 2241 to eliminate court jurisdiction to consider habeas petitions and other claims by aliens held as enemy combatants at Guantanamo Bay, id., § 1005(e)(1), it also creates an exclusive review mechanism in the D.C. Circuit to address the validity of the detention of such aliens and final decisions of any military commissions, id., § 1005(e)(1), (e)(2), (e)(3). 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. While the Supreme Court in Hamdan held that § 1005(e)(1) of the Detainee Treatment Act did not apply to habeas petitions

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[3](...continued)
and Other Books, No. 04-CV-2022 (PLF) (Nov. 11, 2005) (dkt. no. 72); Petitioner's Motion for Order to Show Cause Why Pending Motions Should Not Be Promptly Resolved, No. 04-CV-2022 (PLF) (Nov. 11, 2005) (dkt. no. 75).

pending prior to the enactment of the Act, it recognized that the exclusive review provisions of the Act did expressly apply to cases pending prior to enactment. See 126 U.S. at 2762-69. Although the petitioner in Hamdan escaped the Act because his challenge did not involve a final decision of a military commission within the exclusive jurisdiction of the Court of Appeals under § 1005(e)(3), the Court reserved the question of the effect of the exclusive review provisions of the Act on other cases, stating that "[t]here may be habeas cases that were pending in the lower courts at the time the DTA was enacted that do qualify as challenges to 'final decision[s]' within the meaning of subsection (e)(2) or (e)(3). We express no view about whether the DTA would require transfer of such an action to the District of Columbia Circuit." 126 S. Ct. at 2769 n.14.

The instant case is such an action, i.e., challenging petitioner's designation as an enemy combatant through the Combatant Status Review Tribunal ("CSRT"), and given the Act's investment of exclusive review in the Court of Appeals, the District Court lacks jurisdiction over this case for it is well-settled that an exclusive-review scheme, where applicable, precludes the exercise of jurisdiction under more general grants of jurisdiction, including habeas corpus. Cf., e.g., 5 U.S.C. § 703 ("form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for . . . writs of . . . habeas corpus"); Thunder Basin Coal Co. v. Reich, 510 U.S. 200, 207-09 (1994) ("exclusive" jurisdiction under federal Mine Act precludes assertion of district court jurisdiction); FCC v. ITT World Communications, Inc., 466 U.S. 463, 468 (1984) (Hobbs Act) ("The appropriate procedure for obtaining judicial review of the agency's disposition of these issues was appeal to the Court of Appeals as provided by statute."); Laing v. Ashcroft, 370 F.3d 994, 999-1000 (9th

Cir. 2004) ("§ 2241 is ordinarily reserved for instances in which no other judicial remedy is available"); Lopez v. Heinauer, 332 F.3d 507, 511 (8th Cir. 2003) ("Because judicial review was available . . . the district court was not authorized to hear this § 2241 habeas petition."). See also Telecommunications Research and Action Center v. FCC, 750 F.2d 70, 77 (D.C. Cir. 1984) ("even where Congress has not expressly stated that statutory jurisdiction is 'exclusive' . . . a statute which vests jurisdiction in a particular court cuts off original jurisdiction in other courts in all cases covered by that statute") (footnote omitted); id. at 75, 78-79 (request for relief in district court that might affect Court of Appeals' future, exclusive jurisdiction is subject to the exclusive review of the Court of Appeals).

Petitioner's claim that his case does not involve a challenge to the CSRT's determination that he is an enemy combatant is undermined by the fact that the majority of his memorandum in support of his motion is devoted to a discussion of what he perceives as the defects of the CSRT's decision and the standards used by the CSRT. See, e.g., Petr. Memo. at 6 ("The failure to include any . . .allegations [in the CSRT's summary of evidence] that petitioner is an enemy combatant should be the end of this case."); id. at 8 ("This motion points out that . . . even if true [the allegations before the CSRT] would not support a finding that petitioner . . . is an enemy combatant."); id. ("The July 7, 2004, Order of the Department of Defense [creating the CSRTs] defines the category 'enemy combatant' with the ordinary military sense of the phrase."); id. at 12 ("The plain language of the order excludes civilians such as Paracha."). In fact, the merits arguments in petitioner's memorandum can be characterized as nothing other than a challenge to the CSRT's designation of petitioner as an enemy combatant.

Granting the relief petitioner requests would be an assertion of jurisdiction and authority

in this case inconsistent with the Act's investment of exclusive jurisdiction in the Court of Appeals, and respondents' argument in this regard is in no way immaterial or premature. 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."); see also Ex parte McCardle, 74 U.S. (7 Wall.) 506, 514 (1869) ("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.").

The effect of the Act was addressed in supplemental briefing in the Guantanamo detainee appeals pending before the D.C. Circuit (Boumediene v. Bush, No. 05-5062, and Al Odah v. United States, No. 05-5064),[4] and respondents have recently requested that the Court of Appeals permit additional briefing on the effect of the Hamdan decision on this issue.[5] Accordingly, petitioner's motion to vacate the stay and grant petitioner's motion for summary judgment should be denied.

Further, petitioner's argument that "the possibility of some overlapping jurisdiction between this Court and the Court of Appeals is no bar to this Court granting full relief," is incorrect. Petr. Memo. at 3. There is no overlapping jurisdiction because the D.C. Circuit has exclusive jurisdiction over this action. While the Supreme Court chose to "express no view about whether the DTA would require transfer" to the D.C. Circuit of an action, such as the instant case, that was pending in the lower courts when the DTA was enacted and that

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[4] Oral argument before the D.C. Circuit was held on March 22, 2006.

[5] Petitioners in the cases involved in the appeals have opposed respondents' request for supplemental briefing.

challenged the final decision of a CSRT,[6] Hamdan, 126 S. Ct. at 2769 n. 14, the plain language of Section 1005(e)(2) of the DTA states that the D.C. Circuit "shall have exclusive jurisdiction to determine the validity of any final decision of" a CSRT that an alien is properly detained as an enemy combatant. Although petitioner "strongly prefers to litigate all the issues in his case" before this Court rather than the D.C. Circuit, his preference is irrelevant in light of Congress vesting exclusive jurisdiction for his type of case in the D.C. Circuit. Petr. Memo. at 4. Thus, petitioner's motion should be denied because the D.C. Circuit has exclusive jurisdiction over this action pursuant to the Detainee Treatment Act of 2005. And even if, as petitioner asserts, the Supreme Court's Hamdan opinion left "open the question of possible concurrent jurisdiction in this Court and the D.C. Circuit," Petr. Memo. at 5, petitioner's motion should be denied because the effect of the Detainee Treatment Act on cases like this remains pending before the Court of Appeals.

B. The Court Should Deny Petitioner's Motion Because There Has Been No Change in Circumstances That Warrants Lifting the Stay.

Petitioner's motion also should be denied in its entirety because petitioner has failed to provide a sufficient factual or legal basis to justify departure from the stay in this case for purposes of the requested relief. See Order, No. 04-CV-2022 (PLF) (Mar. 23, 2005) (dkt. no. 49) at 2. The Court stayed this case pending "resolution of all appeals in In re Guantanamo Detainee Cases, Civil No. 02-CV-0299, et al., 2005 WL 195356 (D.D.C. Jan. 31, 2005), and

[6] As explained supra, petitioner's assertion that his case does not involve a challenge to the CSRT's decision that he is an enemy combatant, and therefore is not subject to the jurisdiction of the D.C. Circuit pursuant to the DTA, is contradicted by the fact that the majority of his brief's arguments challenge the CSRT's procedures and decision.

Khalid et al. v. Bush, Civil No. 04-CV-1142, 2005 WL 100924 (D.D.C. Jan 19, 2005)."[7] Id. Since these appeals have not been resolved, the stay is still in effect. Petitioner's counsel makes no showing of any change in circumstances since this Court entered this Order that would in any way warrant a lifting of the stay, even if such action was appropriate in light of the pending appellate proceedings.[8]

Indeed, while Hamdan addressed one aspect of the Detainee Treatment Act, it did not resolve the effect of the exclusive jurisdiction provision of the Act as it applies to cases like this one, nor did it resolve the multiple, significant issues regarding how Guantanamo detainees' challenges to their detention should proceed. For example, the Court of Appeals will determine the rights available, if any, to detainees at Guantanamo under the Fifth Amendment and various statutes and treaties.[9] In light of the potential for the D.C. Circuit's ruling to moot or at least significantly impact the legal bases for and future proceedings on petitioner's habeas petition, the likelihood that any decision by this Court regarding petitioner's motion would have to be relitigated or revisited once the Court of Appeals provides its guidance, this Court should deny petitioner's motion pending resolution of these appeals.

The Court should also deny petitioner's motion because consolidated interlocutory appeals are pending before the D.C. Circuit in this case, including whether this Court abused its discretion in staying petitioner's habeas action pending the D.C. Circuit's expedited resolution of

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[7] On appeal these cases are titled Al Odah v. United States, No. 05-5064, and Boumediene v. Bush, No. 05-5062.

[8] While the Order does not "bar the filing and disposition of any motion for emergency relief," see Order at 2 (dkt. no. 49), petitioner's Motion clearly is not such a motion.

[9] The D.C. Circuit heard oral arguments on those issues on September 8, 2005.

the Khalid and In re Guantanamo Detainee Cases appeals. See generally United States v. DeFries, 129 F.3d 1293, 1302 (D.C. Cir. 1997) ("The filing of a notice of appeal, including an interlocutory appeal, confers jurisdiction on the court of appeals and divests the district court of control over those aspects of the case involved in the appeal.") (internal quotations omitted). At the very least, the D.C. Circuit's decision in those appeals may affect whether the stay remains in place. If this Court were to grant petitioner's motion before the D.C. Circuit rules on these consolidated appeals, the matter would likely have to be relitigated or revisited after the D.C. Circuit's ruling.

Further, granting petitioner's motion would potentially have far-reaching consequences because such an order doubtless would trigger a cascade effect in other Guantanamo detainee cases. Presently, there are more than 200 habeas cases pending on behalf of well over 300 detainees at Guantanamo; the majority of those cases and petitioners were not subject to the decisions of Judges Leon and Green in Khalid and In re Guantanamo. A decision to lift the stay before the resolution of the appeals could precipitate a chain reaction – the scores of petitioners in other pending and future Guantanamo detainee habeas cases, seeking parity of treatment, would request the Court to lift or modify stays that have already been entered. This scenario is exactly what Judge Green aimed to avoid when she denied petitioners' motion to reconsider her order granting a stay pending appeal "in light of the substantial resources that would be expended and the significant burdens that would be incurred should this litigation go forward." See Order Denying Motion for Reconsideration of Order Granting Stay Pending Appeal in In re Guantanamo Detainee Cases (Feb. 7, 2005) (Green, J.). For all of these reasons, the Court should deny petitioner's motion.

CONCLUSION

For the foregoing reasons, Petitioner's Motion to Vacate the Stay and to Grant Petitioner's Motion for Summary Judgment should be denied.

Dated: July 21, 2006

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

DOUGLAS N. LETTER
Terrorism Litigation Counsel

/s/ Nicholas J. Patterson
JOSEPH H. HUNT (D.C. Bar No. 431134)
VINCENT M. GARVEY (D.C. Bar No. 127191)
TERRY M. HENRY
EDWARD H. WHITE
JAMES J. SCHWARTZ
PREEYA M. NORONHA
ROBERT J. KATERBERG
ANDREW I. WARDEN
NICHOLAS J. PATTERSON
Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W. Room 7220
Washington, DC 20530
Tel: (202) 514-4523
Fax: (202) 616-8470
E-mail: nicholas.patterson@usdoj.gov

Attorneys for Respondents