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,** ***et al.,***	)	
Respondents.	)	

RESPONDENTS' OPPOSITION TO PETITIONER'S MOTION TO BE ALLOWED A BIBLE AND OTHER BOOKS

Despite the fact that the Court has stayed this case, petitioner has filed a Motion to be Allowed a Bible and Other Books[1] ("Motion") (dkt. no. 72) in which he requests to have a copy of the Bible in English and all other published books sent to him or for him by his relatives or by counsel.[2] This motion is yet another in a continuing series of motions by petitioner that disregard the stay this Court has entered in this case and the reasons supporting that stay. 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-

[1] Petitioner has chosen to file the following separate documents as one docket entry: Petitioner's Motion to be Allowed a Bible and Other Books, Affidavit of Gaillard T. Hunt ("Affidavit"), Points and Authorities in Support of Petitioner's Motion to be Allowed a Bible and Other Books, Certificate of Conferring, (Proposed) Order Requiring Delivery of Books. See dkt. no. 72.

[2] As petitioner's counsel admits, Affidavit at 3-4, he attempted to circumvent appropriate procedures for the submission of non-legal materials for detainees by sending the Bible, a dictionary, and two books (Julius Caesar and Hamlet) to a chaplain at Guantanamo Bay Naval Base with a cover letter stating that petitioner had requested the Bible. Under the protective order, non-legal mail materials are to be submitted through normal detainee mail channels.

2022 (PLF) (Apr. 5, 2005) (dkt. no. 50); 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 Allow and to Accelerate Discovery (dkt. no. 68). Petitioner's Motion 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; indeed, petitioner fails even to acknowledge the existence of the stay in his filing.[3] Petitioner's Motion is inappropriate at this time because of the pendency of the D.C. Circuit's review of related cases involving other detainees and of the consolidated interlocutory appeals in this very case, the former of which may determine how cases such as petitioner's should proceed, if at all, with the latter potentially determining or affecting his entitlement to the relief he seeks. Further, the Court does not have jurisdiction to consider petitioner's claim under the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb, and even if it did, petitioner has not shown that the practice of his religion has been "substantially burdened." Additionally, this Court has no authority to interfere with, and it should defer to the military's judgments, regarding whether and when petitioner, who is held as an enemy combatant, should receive books and other reading materials. Accordingly, petitioner's Motion is inappropriate,

[3] As respondents' noted in their motion for an extension of time (dkt. no. 74), petitioner's Motion is neither titled nor does it make reference to being a preliminary injunction in its text, but petitioner electronically filed his motion as a preliminary injunction. The arguments presented herein support a denial of petitioner's Motion under the traditional four-factor preliminary injunction analysis requiring an assessment of (1) the movant's likelihood of success on the merits; (2) the possibility of irreparable harm to the movant without interim relief; (3) the harm to others should the injunction be granted; and (4) the public interest. See, e.g., Mova Pharm. Corp. v. Shalala, 140 F.3d 1060, 1066 (D.C. Cir. 1998). Since petitioner fails to explicitly address these factors in the Motion or even explicitly state that he is asking for an injunction, an extensive factor-by-factor analysis is not necessary to deny the Motion.

unsound, and should be denied.

BACKGROUND

Petitioner, a citizen of Pakistan currently detained 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. On December 16, 2004, the Amended Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantanamo Bay, Cuba, In re Guantanamo Detainee Cases, 344 F. Supp. 2d 174 (D.D.C. 2004) ("protective order"), which was previously adopted by Senior Judge Joyce Hens Green in the coordinated Guantanamo detainee cases – after long negotiations, litigation of certain issues, and Judge Green's consideration of and revisions to a proposed order and counsel access procedures – was entered in this case. See Order (dkt. no. 13) (Dec. 16, 2004). Petitioner subsequently moved to vacate the protective order (dkt. no. 20), but the Court denied that motion on March 23, 2005. See Order (dkt. no. 49) (Mar. 23, 2005).

The protective order and counsel access procedures contain, inter alia, detailed provisions regarding correspondence between counsel and detainees. Upon counsel's compliance with the terms of the protective order, correspondence is processed according to its designation into one of two distinct categories: legal mail or non-legal mail. See Revised Procedures for Counsel Access, ¶ II.E (defining legal mail). Special procedures exist for legal mail that are intended to balance national security interests and the asserted need to maintain such communications as privileged.

The protective order, however, appropriately does not regulate non-legal, non-privileged mail to or from detainees, except that it prohibits counsel from using legal mail channels as a

conduit for non-legal mail. Id. at ¶¶ IV.A., V. Unlike legal mail, the contents of any non-legal mail is reviewed by military personnel at Guantanamo Bay under standard operating procedures applicable outside the context of this litigation. See id. Once cleared for release to the detainee or the intended recipient, the mail is then forwarded accordingly.

Respondents filed a motion to dismiss petitioner's habeas petition and a factual return explaining the basis for petitioner's detention 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 ("CSRT") 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 U.S. troops and suggested where such weapons might be obtained.[4] Respondents' Factual Return, Exhibit A.[5]

On January 19, 2005, Judge Richard Leon of this Court issued a Memorandum Opinion

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[4] Additionally, petitioner's son, Uzair Paracha, is being tried for providing material support to a foreign terrorist organization, among other offenses. See United States v. Paracha, 03-cr-1197 (S.D.N.Y.).

[5] The Court is referred to the classified version of respondents' Factual Return, on file with the Court, for further detail regarding the evidence supporting petitioner's enemy combatant classification.

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. In reaching this decision, Judge Leon concluded that aliens held at Guantanamo, that is, outside the sovereign territory of the United States, are not possessed of constitutional rights. Furthermore, Judge Leon determined that "the Court's role in reviewing the military's decision to capture and detain a non-resident alien is, and must be, highly circumscribed," and that the Court would "not probe into the factual basis for the petitioners' detention." Id. at 329. According to Judge Leon, the Constitution allocates exercise of war powers "among Congress and the Executive, not the Judiciary," and such separation of powers concerns necessarily limit any role of the Court in reviewing challenges of non-resident aliens to their detention in the midst of ongoing armed conflict. Id. Judge Leon also noted that petitioners' challenges to the conditions of their custody did not support the issuance of a writ of habeas corpus because such claims, even if true, would not render the custody itself unlawful. Id. at 324-25.

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 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. Id. at 463. Based on this decision, Judge Green concluded that the CSRT proceedings the Military has used to confirm petitioners' status as enemy combatants do not satisfy procedural due process requirements. Id. at 465-78.[6] Finally, Judge Green dismissed petitioners' remaining claims under the Sixth, Eighth, and Fourteenth Amendments, the Suspension Clause, other international treaties, and under Army Regulation 190-8, the Alien Tort Statute and the Administrative Procedure Act. Id. at 480-81.

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 coordinated in In re Guantanamo Detainee Cases for all purposes pending the resolution of all appeals. Various petitioners in the eleven cases sought reconsideration of Judge Green's stay order, arguing that the Court should permit discovery and proceedings regarding detainee living conditions to go forward, but Judge Green denied the motion for reconsideration

> in light of the substantial resources that would be expended and the significant burdens that would be incurred should this litigation go forward, and . . . [in] recognition that a reversal of the Court's January 31, 2005 rulings would avoid

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[6] Judge Green also adopted the reasoning of Judge Robertson in Hamdan v. Rumsfeld, 344 F. Supp. 2d 152, 165 (D.D.C. 2004), to conclude that Articles 4 and 5 of the Third Geneva Convention are "self-executing" and can provide some petitioners – those held because of their relationship with the Taliban, but not those held as al Qaeda – with a judicially enforceable claim in a habeas action to a hearing consistent with Article 5 of the Third Geneva Convention to determine whether the detainee qualifies for "prisoner of war" protections, as defined by Article 4 of the Convention. Id. at 478-80. The D.C. Circuit recently reversed Judge Robertson's Hamdan decision, finding, inter alia, that the Third Geneva Convention is not judicially enforceable and, even if it were, it would not apply to members of al Qaeda. Hamdan v. Rumsfeld, 415 F.3d 33, 40-41 (D.C. Cir. 2005), cert. granted, 74 U.S.L.W. 3108 (U.S. Nov. 7, 2005) (No. 05-184).

the expenditure of such resources and incurrence of such burdens . . . .

See In re Guantanamo Detainee Cases, Order Denying Motion for Reconsideration of Order Granting Stay Pending Appeal (Feb. 7, 2005).

On February 9, 2005, pursuant to Judge Green's certification, respondents filed a petition for interlocutory appeal of the January 31, 2005 decision with the D.C. Circuit, see 28 U.S.C. § 1292(b), and requested that the appeal proceed on an expedited basis. Petitioners, in the coordinated cases, in responding to the petition for interlocutory appeal, filed their own cross-petition for interlocutory appeal. On March 10, 2005, the D.C. Circuit granted the petition and cross-petition for interlocutory appeal. The D.C. Circuit heard oral arguments in In re Guantanamo and Khalid on September 8, 2005.

On March 23, 2005, the Court in the instant case 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 and of Judge Leon's January 19, 2005 decision in Khalid. See Order (dkt. no. 49).[7] 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 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

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

August 12, 2005, respondents filed a notice of appeal (dkt. no. 64) that they were appealing to the D.C. Circuit from the portion of this 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).

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, however, consolidated and expedited petitioner's appeals and petition for a writ of mandamus seeking to vacate the stay and issued a briefing schedule. See Order (attached as Exhibit A). Pursuant to the Order's briefing schedule, petitioner filed his brief with the D.C. Circuit on September 14, 2005, respondents filed their brief on October 14, 2005, and petitioner filed a reply brief on October 31, 2005. Oral argument in the consolidated appeals is scheduled for December 8, 2005. On November 1, 2005, petitioner filed his current Motion to be Allowed a Bible and Other Books (dkt. no. 72). In the Affidavit of Gaillard T. Hunt, petitioner's counsel states that on or about September 30, 2005, he mailed a Bible, an English dictionary, and paperback editions of Hamlet and Julius Caesar to "a chaplain at Guantanamo Bay Naval Station, with a cover letter explaining" that petitioner had requested it. Affidavit ¶¶ 4, 8 (dkt. no. 72). Additionally, when petitioner's counsel visited petitioner on September 14, 2005, he brought eleven books which petitioner's relatives had given counsel to give to petitioner. Id. ¶ 9. Two of

the books petitioner's counsel sent to the chaplain, Hamlet and Julius Caesar, have been screened and authorized for delivery to petitioner. Petitioner's proposed order would allow petitioner "to have in his cell a copy of the Bible in English." See (Proposed) Order Requiring Delivery of Books (dkt. no. 68). Moreover, petitioner's proposed order would also require this Court to have respondents allow petitioner "to have all other published books sent to him by his relatives or by counsel, unless respondents report to counsel and to this Court specific reasons for objecting to a given publication within ten days of its arrival at the prison." Id.

ARGUMENT

A. The Court Should Deny Petitioner's Motion Because the Court has Stayed this Case.

As a threshold matter, this Court should deny petitioner's Motion because the Court has granted "respondents' Motion to Stay Proceedings Pending Appeal." See Order, No. 04-CV-2022 (PLF) (Mar. 23, 2005) (dkt. no. 49) at 2. This Order, which petitioner inexplicably does not mention in his brief, stayed this case pending "resolution of all appeals in In re Guantanamo Detainee Cases, Civil No. 02-CV-0299, et al., 355 F. Supp. 2d 443 (D.D.C. 2005), and Khalid et al. v. Bush, Civil No. 04-CV-1142, 355 F. Supp. 2d 311 (D.D.C. 2005). Id. Since these appeals have not been resolved, the stay, including with respect to the RFRA claim petitioner puts forth in his current motion, 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] Thus, petitioner's Motion is procedurally improper and should be denied given the pendency of the

[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.

stay.

Further, granting petitioner's Motion in the face of the stay 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 170 habeas cases pending on behalf of well over 250 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 grant petitioner's Motion for a Bible and other books pending 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 require the military to provide specific books and other outside materials to detainees in those cases, which could result in the lifting or modifying of stays that have already been entered and the imposition of an enormous logistical and security burden on respondents. 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.).

B. The Court Should Deny Petitioner's Motion Given that the Pending D.C. Circuit Appeals Will Determine Whether and How, if at all, Guantanamo Detainee Cases Should Proceed, or Will Potentially Impact Petitioner's Request for Relief.

The Court should also deny petitioner's Motion given that the legal bases for petitioner's whole habeas petition could be affected by the D.C. Circuit's decisions in the In re Guantanamo and Khalid appeals. The D.C. Circuit may decide that Guantanamo detainees, such as petitioner,

have no legal bases for their habeas petitions. Such a decision would effectively nullify petitioner's ability to bring a RFRA claim and a motion to be allowed other books, which is essentially a conditions of confinement claim, pending any further appeal.

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, which would affect petitioner's ability to bring his current request for relief, it is likely that any decision of this Court regarding petitioner's Motion would have to be relitigated or revisited once the Court of Appeals provides its guidance. Thus, to avoid any needless expenditure of any further judicial, litigation, and government resources pending the appeals, and for the reasons discussed infra, the Court should deny petitioner's Motion.

The consolidated interlocutory appeals pending before the D.C. Circuit in this case, and the D.C. Circuit's decision on those appeals, likewise may affect the proper disposition of petitioner's Motion. Again, petitioner inexplicably makes no mention of his own pending appeals. In those appeals, the D.C. Circuit will consider three issues: (1) whether this Court abused its discretion in staying petitioner's habeas action pending the D.C. Circuit's expedited resolution of Khalid and In re Guantanamo Detainee Cases; (2) whether this Court abused its discretion in applying in this case the protective order that governs all the other detainee cases; and (3) whether the district court properly declined to grant preliminary injunctive relief releasing petitioner from solitary confinement where petitioner failed to make a showing that he was, in fact, being held in solitary confinement. In light of the potential that petitioner's Motion would have to be relitigated or revisited once the Court of Appeals provides guidance on the stay and preliminary injunctive relief issues, the Court should deny petitioner's Motion.

Thus, for all of these reasons relating to the stay and the pending appeals before the D.C. Circuit, the Court should deny petitioner's Motion.

C. The Court Lacks Jurisdiction Over Petitioner's RFRA Claim.

This Court does not have jurisdiction to consider the RFRA claim and arguments raised in petitioner's Motion. RFRA by no means authorizes the extraordinary action attempted by petitioner here. There is no basis for concluding that Congress intended RFRA to be applicable outside the United States or to subject the military to claims under RFRA by enemy combatants detained by the Executive Branch as part of an ongoing war effort, such as petitioner.

It is a "longstanding principle of American law" that congressional legislation is presumed not to have extraterritorial application unless such intent is clearly manifested. EEOC v. Arabian American Oil Co., 499 U.S. 244, 248 (1991). Here, while the D.C. Circuit has found RFRA applicable to the federal government, Henderson v. Kennedy, 265 F.3d 1072, 1073 (D.C. Cir. 2001),[9] neither the Supreme Court nor the D.C. Circuit has ruled on whether RFRA is operative outside the United States. See Cutter v. Wilkinson, 125 S. Ct. 2113, 2118 n.2 (2005) ("This Court . . . has not had occasion to rule on the matter" of whether RFRA is operative as to "federal territories and possessions."). Nothing in RFRA, however, evidences an intent, much less a clear intent, that the statute apply to Guantanamo Bay.

While the Ninth Circuit found that RFRA applies to Guam, a federal instrumentality, Guam v. Guerrero, 290 F.3d 1210, 1221-22 (2002), that case is inapposite. RFRA in "its

[9] The Supreme Court, however, "has not had occasion to rule on the matter" of whether RFRA "remains operative as to the Federal Government," Cutter v. Wilkinson, 125 S. Ct. 2113, 2118 n.2 (2005), although it was held invalid as applied to states. City of Boerne v. Flores, 521 U.S. 507, 532-36 (1997).

original form" expressly applied to Guam but not to Guantanamo Bay. See id. at 1221. Moreover, the Ninth Circuit found that RFRA applied to Guam because it was a federal territory, and Guantanamo Bay is not a federal territory. Although the Supreme Court in Rasul v. Bush, 542 U.S. 466, 481 (2004), held that jurisdiction for the purposes of the habeas corpus statute extended to Guantanamo Bay, the Court did not find that Guantanamo is itself a federal territory. Also, while the Court specifically discussed the historical reach of the writ of habeas corpus to "so-called 'exempt jurisdictions,' where ordinary writs do not run, and all other dominions under the sovereign's control," id. at 482 (citation omitted), RFRA does not have a similarly long, historical jurisdictional reach.

Furthermore, there is no reason for believing that Congress intended to subject the military to claims under RFRA by an enemy combatant such as petitioner detained by the Executive Branch as part of an ongoing war effort. Military operations during time of war have traditionally been left to the discretion of the Executive. See Hamdi v. Rumsfeld, 542 U.S. 507, 531 (2004) (plurality opinion) (stating that "[w]ithout doubt, our Constitution recognizes that core strategic matters of warmaking belong in the hands of those who are best positioned and most politically accountable for making them"). Courts do not presume that Congress wishes to curtail the discretion of the Executive Branch with respect to military functions, unless Congress does so in clear and unequivocal terms. See Dep't of Navy v. Egan, 484 U.S. 518, 530 (1988) ("unless Congress specifically has provided otherwise, courts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security affairs"). Thus, as the Supreme Court has put it, the presumption in favor of judicial review "runs aground when it encounters concerns of national security . . . committed by law to the appropriate agency of the

Executive Branch." Egan, 484 U.S. at 527; Saavedra Bruno v. Albright, 197 F.3d 1153, 1162 (D.C. Cir. 1999) (same).

In passing RFRA, Congress evinced no intent – let alone a specific and clear intent – to encroach on the traditional powers of the Commander in Chief and the armed forces to conduct war, especially a power so sensitive as that to determine the rights and duties towards detained enemies. See Ex parte Quirin, 317 U.S. 1, 27-28 (1942). In the absence of such an expression of intent, this Court should not extend RFRA's judicial review provision to an alien enemy being detained by the military and should deny jurisdiction on that basis.

Having thus failed to allege any valid basis for jurisdiction, petitioner's Motion should be dismissed with prejudice.

D. Petitioner has Not Established that Respondents have "Substantially Burdened" the Practice of His Religion.

Even if this Court were to conclude that it has jurisdiction over petitioner's RFRA claim, it should still dismiss that claim because, at a minimum, petitioner has failed to allege facts that could establish that the government "substantially burdened" the practice of his religion. As this Court has previously held, individuals asserting RFRA claims "have the initial burden of establishing that the government has substantially interfered with their exercise of religion." Branch Ministries, Inc. v. Rossotti, 40 F. Supp. 2d 15, 24 (D.D.C. 1999) (Friedman, J.) (citing Weir v. Nix, 114 F.3d 817, 820 (8th Cir. 1997)), aff'd, 211 F.3d 137 (D.C. Cir. 2000); see 42 U.S.C. § 2000bb-1.

A "substantial burden exists where the government 'put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs. . . .'" Rossotti, 40 F. Supp. 2d at 25 (quoting Thomas v. Review Bd. of Indiana Employment Security Div., 450 U.S. 707, 718

(1981)), "or where the government forces an individual to 'choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion.'" Id. (quoting Sherbert v. Verner, 374 U.S. 398, 404 (1963)). The challenged rule must burden "a central tenet or important practice of the litigant's religion." Levitan v. Ashcroft, 281 F.3d 1313, 1320 (D.C. Cir. 2002). The "law is clear . . . that governmental programs that 'may make it more difficult to practice certain religions but which have no tendency to coerce individuals into acting contrary to their religious beliefs' do not infringe on free exercise rights protected by the First Amendment (and therefore RFRA)." Newdow v. Bush, 355 F. Supp. 2d 265, 290 (D.D.C. 2005) (quoting Lyng v. Northwest Indian Cemetary Protective Ass'n, 485 U.S. 439, 450-51 (1988)).

Under these standards, petitioner's RFRA claim fails as a matter of law. Petitioner's allegation at most suggests that his religious practice has been inconvenienced. Petitioner alleges only that he has been denied a Bible and that the "Bible is among the scriptures accepted in Islam." Motion at 6. He does not allege, however, that such denial interferes with any "central tenet or important practice of" his religion. Levitan, 281 F.3d at 1320. In short, petitioner has nowhere alleged that such denial "was in any way connected to" petitioner's "refusal to violate [his] religious beliefs or abandon a precept of [his] religion." Rossotti, 40 F. Supp. 2d at 25. Thus, the denial of the Bible falls well short of the "substantial burden" required by RFRA and petitioner's Motion should be denied.

E. Petitioner's Motion as it Relates to "Other Books" Should also be Denied.

Petitioner's Motion as it relates to access to the "other books" that counsel has sent and brought to Guantanamo should also be denied. Petitioner cites no legal authority for his request with respect to books other than the Bible. Indeed, the Court lacks authority to interfere with and it should defer to the military's determinations on which books petitioner receives and when he receives them, and deny petitioner's Motion.[10]

Furthermore, even in the penal context, which this is not, see Hamdi, 542 U.S. at 518 (detention of enemy combatants is not punishment or penal in nature), there would be no basis for court intervention. Prison administrators are entitled to great deference regarding the ways in which they manage prisons and the means used to care for and detain prisoners. The Supreme Court has stated that the operation of even domestic "correctional facilities is peculiarly the province of the Legislative and Executive Branches of our Government, not the Judicial," and has admonished lower courts to avoid becoming "enmeshed in the minutiae of prison operations." Bell v. Wolfish, 441 U.S. 520, 548, 562 (1979). Accordingly, the Supreme Court has directed that prison administrators "should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." Wolfish, 441 U.S. at 547.

Here, of course, petitioner is challenging the practices of a military detention center during a time of war, and separation of powers principles counsel even greater deference to and

[10] Petitioner's Motion in this regard is particularly mooted by two of the books at issue, Julius Caesar and Hamlet, being cleared for release to petitioner. Certain books are not released to detainees, including those that can be used to incite detainees, devise codes, or develop English language skills that could allow them to obtain and exploit information from guards. Petitioner, however, cites no authority authorizing judicial intervention in such matters.

non-interference with military authorities. See, e.g., Hamdi, 542 U.S. at 531 (stating that "[w]ithout doubt, our Constitution recognizes that core strategic matters of warmaking belong in the hands of those who are best positioned and most politically accountable for making them"); id. at 518 (noting that capture and detention of suspected combatants is an important incident of war); Khalid v. Bush, 355 F. Supp. 2d 311, 328 (D.D.C. 2005) (explaining that management of wartime detainees' confinement conditions is the province of the Executive and Legislative branches, thus precluding judicial scrutiny of such conditions).

For all of these reasons, petitioner's Motion should be denied.

CONCLUSION

For the foregoing reasons, petitioner's Motion to Be Allowed a Bible and Other Books should be denied.

Dated: November 15, 2005

Respectfully submitted,

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