

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DAVID M. HICKS,

Petitioner,

v.

GEORGE WALKER BUSH,

President of the United States,

et al.,

Respondents.

**Civil Action No. 1:02-CV-00299 (CKK)
ECF**

**RESPONSE TO ORDER TO SHOW CAUSE REGARDING RESPONDENTS' MOTION
TO DISMISS OR FOR JUDGMENT AS A MATTER OF LAW WITH RESPECT TO
CHALLENGES TO THE MILITARY COMMISSION PROCESS**

On November 18, 2004, this Court ordered that "counsel for petitioners and respondents shall file written submissions on or before November 29, 2004 showing cause why the respondents' Motion to Dismiss or for Judgment as a Matter of Law with Respect to Challenges to the Military Commission Process should not be held in abeyance pending resolution of all appeals in Hamdan v. Rumsfeld." Order to Show Cause Regarding Respondents' Motion to Dismiss or for Judgment as a Matter of Law with Respect to Challenges to the Military Commission Process at 2 (dkt. no. 123) ("Order"). For the following reasons, respondents do not oppose the suggestion that their pending Motion to Dismiss on military commission issues be held in abeyance.

It is not in the interest of the efficient administration of justice for this Court to review the legality of military commission proceedings at this time. As this Court has stated, "respondents recently filed a notice of appeal in Hamdan seeking expedited review of the legality of the

military commission proceedings that are also at issue in this case." Order at 1. Briefing in the Hamdan appeal is proceeding on an expedited basis and is scheduled to be completed by January 10, 2005.¹ Holding the military commission issues in abeyance is warranted in the instant case because a decision from the D.C. Circuit in Hamdan would provide guidance on how to address these issues. Any decision on the military commission issues in this case that came before the D.C. Circuit's ruling in Hamdan would need to be reevaluated in light of the D.C. Circuit's decision. In the interests of judicial efficiency, the resolution of these issues should be stayed pending the Hamdan decision.

Further, the trial in Mr. Hicks' military commission proceeding is not until March 15, 2005, as currently scheduled. No additional proceedings in the military commission matter are scheduled; thus, it does not appear that the Court needs to resolve the issues raised in this case concerning the military commission proceedings anytime soon. It is quite possible that the D.C. Circuit, working on an expedited review schedule, will make a decision in Hamdan before March 15, 2004. Respondents are willing to notify this Court if the situation regarding the scheduling of the military commission proceedings or the appeal changes.

Therefore, there is currently no reason for this Court not to wait for the D.C. Circuit's decision in Hamdan before addressing these significant issues.

DATED this 29th day of November, 2004.

¹ The petitioner in Hamdan has petitioned the Supreme Court to grant certiorari before judgment in the Court of Appeals, and has sought expedited consideration of the matter. To date, the Supreme Court has not ruled on petitioner's requests.

Respectfully submitted,

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