

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

FAWZI KHALID ABDULLAH FAHAD AL ODAH,)	
<i>et al.,</i>)	
Plaintiffs,)	
)	
v.)	No. CV 02-0828 (CKK)
)	
UNITED STATES OF AMERICA, <i>et al.</i>,)	
)	
Defendants.)	
)	

**OPPOSITION TO DEFENDANTS' MOTION FOR
JOINT CASE MANAGEMENT CONFERENCE, ENTRY OF
COORDINATION ORDER, AND REQUEST FOR EXPEDITION**

In a transparent effort to circumvent this Court's Order and Memorandum Opinion of July 26, 2004 ("July 26 Opinion") denying consolidation of the cases brought on behalf of detainees at the Guantanamo Bay Naval Base, the government moves for a "Joint Case Management Conference" involving all the judges before whom those cases are pending. Respondents' Motion for Joint Case Management Conference, Entry of Coordination Order, and Request for Expedition ("Gov't Motion"). According to the government, such a conference would enable the judges to enter a "coordination order" that would allow for "the orderly and efficient resolution of the many common questions of law presented by these petitions." Gov't Motion, p. 1. Without such coordination, the government argues "all parties will be prejudiced, both by the potential for inconsistent rulings on similar issues pertaining to Guantanamo Bay detainees, as well as by the practical and logistical difficulties presented by briefing and arguing the same legal issues before at least eight separate district judges." *Id.*, pp. 3-4.

The government's arguments are without merit. As the Court already explained in its July 26 Opinion, neither the interests of the detainees nor the interests of judicial economy will

be served by the grant of the government's motion. In addition, two of the six common issues of law identified by the government in its motion have already been fully briefed and argued in this case and await imminent resolution by the Court. The litigation and disposition of the other four putative common issues of law will not be enhanced by the grant of that motion. Therefore, the Court should deny the government's motion.¹

1. The government argues that the parties and the judges of this Court stand to benefit from joint briefing, joint hearing, and joint disposition of common issues of law. Gov't Motion, 11-14). But the benefits it cites are benefits mostly to the government itself – for example, the government says the grant of its motion “would help alleviate the logistical burdens Respondents face in responding to multiple habeas petitions on potentially divergent schedules.” *Id.*, p. 13. The government does not explain how the grant of its motion will provide any benefits to, or alleviate any burdens upon, the detainees, their counsel, or the judges of this Court.

In fact, grant of the government's motion would burden counsel for the detainees in the 13 pending cases. These counsel are located in three different geographical areas of the country. It would be time-consuming and logistically difficult for them to be forced to agree upon joint briefing and joint hearing schedules in cases that raise non-common legal and factual issues and that likely will require development at different paces. As the Court pointed out in denying consolidation three weeks ago: “[T]he several cases at issue here are not the co-ordinated effort of one attorney or law firm on behalf of a variety of clients. Rather the cases Respondents seek to consolidate are brought by a number of different attorneys * * * .” July 26 Opinion, pp. 4-5.

¹ The government has filed this motion simultaneously in 13 detainee cases pending before eight judges of this Court. However, the government does not say whether it would press for the relief it seeks if between one and six judges deny the motion.

Similarly, the grant of the government's motion will not provide any benefits to, or alleviate any burdens upon, the judges of this Court. Again, as the Court observed in denying consolidation, "[a]lthough Petitioners may use similar legal arguments to press for similar relief, the individualized analyses necessary to consider the propriety of [their] detention will be no more efficiently undertaken by one judge than by several." July 26 Opinion, p. 4. It would seem more cumbersome for eight judges to be forced to arrange their schedules to accommodate joint briefing and joint hearings of designated issues in these cases than simply to schedule the briefing and hearing of those issues as the demands of those individual cases and the exigencies of their own dockets allow.

Even with respect to the government it is difficult to understand what benefits will accrue from the grant of the government's motion. Contrary to the government's implication (Gov't Motion, p. 14), there would appear to be no greater burdens upon "Department of Justice personnel involved in processing security clearances for Petitioners' counsel" if the pending cases proceed individually rather than in the fashion the government suggests. The same is true for "Department of Defense personnel" (Gov't Motion, p. 14). And while it may be burdensome for the Department of Justice attorneys working on these cases to prepare briefs in 13 pending cases that have some common questions of law, modern computer technology allows those attorneys to replicate significant portions of their briefs with the touch of a button.

Finally, although the government contends that "coordinated treatment" may lessen the possibility of "conflicting determinations on the fundamental legal questions that unite the petitions" (Gov't Motion, p. 13), it concedes that, even if its motion were granted, "each district court [could] reserv[e] the discretion to reach his or her own conclusion and enter separate orders * * * ." *Id.* Thus, even that putative benefit will not be achieved. Moreover, it is entirely

possible that the judges of the Court will defer to prior rulings by other judges on identical questions of law, thus lessening the possibility of “conflicting determinations.”

In sum, grant of the government’s motion will not streamline the litigation of the 13 pending cases and is likely only to burden the detainees’ counsel and the Court. For those reasons alone the motion should be denied.

2. The premise of the government’s motion is that there are six common issues of law in the 13 pending cases, and that they can be handled more efficiently by joint briefing, joint hearing, and joint disposition than by separate briefing, hearing, and disposition in the individual cases. Gov’t Motion, pp. 2-3, 11-12. But that premise is incorrect.

The first two issues identified by the government – (i) the right of the detainees to access to counsel and (ii) the ability of the government to restrain that right by imposing monitoring of attorney-detainee communications and the like -- have been fully briefed and argued in the present case, and the Court has announced that a decision on those issues is imminent. The litigation and disposition of those issues obviously will not be enhanced by the grant of the government’s motion.

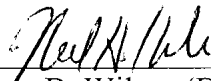
The third and fourth issues identified by the government – (iii) whether the detainees may challenge their detention under the Constitution and (iv) whether they may challenge it under treaties of the United States – have already been resolved by the Supreme Court. In *Rasul v. Bush*, 124 S. Ct. 2686, 2698 n. 15 (2004), the Supreme Court ruled that plaintiffs’ allegations that they were being detained “without access to counsel and without being charged with any wrongdoing – unquestionably describe ‘custody in violation of the Constitution or laws or treaties of the United States.’” Therefore, the government should not be litigating these issues.

Finally, the litigation and disposition of the fifth and sixth issues identified by the government – (v) whether the pending habeas cases should be suspended pending completion of the so-called “Combatant Status Review Tribunal” process and (vi) whether and to what extent the results of that process should be taken into account in the present habeas cases – will not be enhanced by the grant of the government’s motion at the present time. Plaintiffs’ position is that the “Combatant Status Review Tribunal” process is entirely irrelevant to this case, except to the extent it results in the release from detention of any of the plaintiff-detainees. But the government has not sought to stay or delay this case because of the introduction of that process, and it is not apparent when, if ever, the two issues the government mentions in connection with that process will be presented to the Court. Until such time as the government seeks such a stay or delay in this case or any of the other detainee cases, it is premature to suggest that the litigation and disposition of those two issues will be enhanced by joint briefing, joint hearing, and joint disposition.

CONCLUSION

For the foregoing reasons, the Court should deny the government’s motion.

Respectfully submitted,



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Dated: August 16, 2004