

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

<b><i>In re Guantanamo Detainee Cases</i></b>	) ) ) ) ) ) )	<b>Civil Action Nos. 02-CV-0299 (CKK), 02-CV-0828 (CKK), 04-CV-1136 (JDB), 04-CV-1144 (RWR), 04-CV-1194 (HHK), 04-CV-1227 (RBW)</b>
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**RESPONDENTS' OPPOSITION TO MOTION FOR EMERGENCY HEARING  
ON FORTHCOMING MOTION FOR RECONSIDERATION OF  
ORDER GRANTING STAY PENDING APPEAL**

Respondents oppose petitioners' February 3, 2005 motion for emergency hearing on forthcoming motion for reconsideration of order granting stay pending appeal. While petitioners presumably may seek reconsideration of the stay entered in these cases, petitioners have made no showing of any actual, or even perceived, emergency requiring or otherwise warranting an emergency hearing on the matter. Nothing in petitioners' motion demonstrates the need for an emergency hearing. Likewise, petitioners' Joint Submission Regarding How These Cases Should Proceed, filed prior to the entry of the stay, articulates no emergency requiring the Court's immediate attention. Any motion for reconsideration of the stay can and should be briefed and considered in due course.

Nor are petitioners justified in their criticism of the Court's order granting a stay in these cases. A stay order is not improper simply because it is entered in connection with a district court's certification of an order for interlocutory appeal. *See* 28 U.S.C. § 1292(b). Section 1292(b) does not constrain or prohibit the entry of a stay along with a certification for interlocutory appeal, especially where, as here, the stay is well-grounded in the unique circumstances and extraordinary potential harms associated with further proceedings, all of a

constitutional dimension. *See* Respondents' Motion and Memorandum for Certification of January 31, 2005 Interlocutory Orders for Appeal Pursuant to 28 U.S.C. § 1292(b) and for Stay of Proceedings Pending Appeal (filed Feb. 3, 2005) at 21-27. Section 1292(b) states only that a certification does not *automatically* stay the order certified for appeal. *See* 28 U.S.C. § 1292(b) (an "application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or Court of Appeals or a judge thereof shall so order"). The Court properly ordered a stay in these cases. Any reconsideration of that order can be undertaken in due course.

Accordingly, petitioners' motion for emergency hearing on forthcoming motion for reconsideration of order granting stay pending appeal should be denied.<sup>1</sup>

Dated: February 3, 2005

Respectfully submitted,

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<sup>1</sup> Should the Court decide to have an emergency hearing, however, counsel for respondents has a conflicting obligation on Tuesday, February 8, 2005, from 11:45 am until 2:00 pm, and respectfully requests that any hearing not be scheduled to occur during that time.

/s/ Terry M. Henry

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