

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

SUHAIL ABDUL ANAM, <i>et al.</i> ,	)	
	)	
Petitioners,	)	
	)	
v.	)	Civil Action No. 04-CV-1194 (HHK)
	)	
GEORGE W. BUSH,	)	
President of the United States,	)	
<i>et al.</i> ,	)	
	)	
Respondents.	)	
MAHMOAD ABDAH, <i>et al.</i> ,	)	
	)	
Petitioners,	)	
	)	
v.	)	Civil Action No. 04-CV-1254 (HHK)
	)	
GEORGE W. BUSH,	)	
President of the United States,	)	
<i>et al.</i> ,	)	
	)	
Respondents.	)	

**RESPONDENTS' MOTION REGARDING  
FURTHER BRIEFING ON COLLATERAL ESTOPPEL ISSUES**

Respondents hereby move the Court to defer further briefing, as set forth below, with regard to the Supplemental Memorandum in Opposition to Motion to Dismiss filed by the Anam and Abdah petitioners on November 26, 2004 ("Supplemental Opposition"). Given the voluminous briefing already before the Court on respondents' motion to dismiss or for judgment as a matter of law, respondents do not propose to presently file yet another brief; however, respondents do wish to be heard on the collateral estoppel issues newly raised by the Supplemental Opposition if the Court is inclined to reach or consider those issues. Thus, respondents ask that the Court permit them to reserve the right to file a brief addressing those

issues at such future time, if any, as may be directed or invited by the Court. Petitioners have indicated through their counsel that they expect to take no position on this motion. In support of this motion, respondents state as follows:

1. On October 4, 2004, respondents filed a global response to the petitions for a writ of habeas corpus and motion to dismiss or for judgment as a matter of law in the cases coordinated before Judge Green. On November 5, 2004, petitioners in the coordinated cases filed a global opposition. Petitioners in Al Odah also filed their own opposition, and petitioners in El Banna filed a separate supplemental opposition. Respondents filed a reply brief in Al Odah on October 27, 2004, and a global reply brief in all the other cases on November 16, 2004. Oral argument was held on December 1, 2004, and respondents' motion is now under submission.

2. On November 26, 2004, ten days after regular briefing on respondents' motion to dismiss or for judgment as a matter of law had closed, and three business days before the scheduled oral argument, petitioners in Anam and Abdah filed their Supplemental Opposition. The Supplemental Opposition argues that certain rulings in Judge Robertson's November 8, 2004, decision in Hamdan v. Rumsfeld, 2004 WL 2504508, on appeal, No. 04-5393 (D.C. Cir.; oral argument set for March 8, 2005, before Randolph, Roberts, and Williams, JJ.), should be applied in Anam and Abdah via nonmutual offensive collateral estoppel.

3. Respondents take issue with the arguments in the Supplemental Opposition on a number of grounds and are prepared to respond to those arguments in further briefing. However, respondents appreciate that the Court already has before it seven briefs – each of them of considerable length and complexity – in connection with the pending motion, that the motion already has been orally argued, and that it is presently under submission. Respondents have no

interest in unnecessarily burdening the Court with an eighth brief on their motion to dismiss or for judgment as a matter of law. At the same time, respondents wish to avoid any implication of waiver that might otherwise result from leaving supplemental arguments by petitioners in two of the coordinated cases unaddressed.

4. Respondents believe the following procedure would serve judicial economy and avoid unnecessarily burdening the Court with further briefing, while accommodating respondents' interest in being heard on the collateral estoppel issues if the Court is inclined to reach or consider them in connection with its ruling on respondents' motion to dismiss or for judgment as a matter of law. We ask that the Court defer additional briefing (i.e., respondents' brief in reply to the Supplemental Opposition) until such time, if any, that the Court deems such briefing necessary or appropriate. Respondents would be prepared to submit a reply brief in a short time frame (e.g., five days) following direction or invitation from the Court.<sup>1</sup>

5. Undersigned counsel for respondents discussed this motion with Mr. David Remes, counsel for petitioners in Abdah. Mr. Remes indicated that, subject to reviewing this motion once filed, the Abdah petitioners and Anam petitioners expected to take no position on this motion.

WHEREFORE, respondents respectfully request that the Court defer further briefing on

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<sup>1</sup> It is worth mentioning that respondents will be filing no later than December 13, 2004, a supplemental brief in the Boumediene/Khalid cases before Judge Leon that addresses, among other things, the collateral estoppel issues raised in the Supplemental Opposition. Petitioners in those cases have filed a joinder in the Supplemental Opposition. At oral argument before Judge Leon on December 2, 2004, Judge Leon invited the parties to submit supplemental briefs in those cases by December 13, 2004. Respondents would be prepared to provide a copy of their Boumediene/Khalid supplemental brief, or the appropriate excerpt thereof addressing collateral estoppel issues, available to this Court, or to file a unique brief with this Court, as this Court sees fit.

respondents' motion to dismiss or for judgment as a matter of law and allow respondents to reserve the right to be heard on the collateral estoppel issues raised by the Supplemental Opposition until such time as the Court may deem it necessary or appropriate to entertain such further briefing.

Dated: December 3, 2004

Respectfully submitted,

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