

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAHMOAD ABDAH, *et al.*

Petitioners,

v.

GEORGE W. BUSH, *et al.*,

Respondents.

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Civil Action No. 04-CV-1254 (HHK)

**RESPONDENTS' REPLY IN SUPPORT OF
MOTION TO VACATE TEMPORARY RESTRAINING ORDER**

In their opposition to respondents' motion to vacate the TRO, petitioners do not dispute that the imminent emergency they portrayed *ex parte* to the Court based on press reports and rumors never actually existed. Thus, the TRO never should have been entered. Nevertheless, apparently hoping to benefit from inertia, petitioners urge that a TRO entered on an erroneous factual proffer be maintained (and extended) based on the possibility that the situation could change, and because they perceive "no practical prejudice to Respondents." Petrs' Opp. at ¶ 2. Respondents' previous representations to counsel and to the Court have made very clear that if the situation did change, that is, if a determination were made today to transfer or repatriate a petitioner-detainee, the transfer or repatriation would not be consummated for weeks thereafter. Thus, regardless of what relevance petitioners' "situation may change" theory may have to their pending preliminary injunction motion for advance notice – a matter that can be and has heretofore been fully and fairly litigated on a normal PI schedule – that theory does not change the plain fact there is not, and never was, any emergency warranting TRO relief. Moreover, petitioners' suggestion that a TRO entered on erroneous pretenses can be saved (and extended)

provided there is "no practical prejudice to Respondents" makes a mockery of the stringent test that normally governs issuance of TROs.¹ Continuing the TRO in effect, or extending it, would essentially reward petitioners' counsel for making reckless representations to the Court in an *ex parte* capacity. The TRO should be vacated forthwith.

Dated: March 17, 2005

Respectfully submitted,

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¹ In any event, contrary to petitioners' perception, there is considerable prejudice to respondents. Among other things, petitioners in numerous other pending Guantanamo detainee cases have cited the TRO – resting as it is on an erroneous factual predicate – as a template for similar relief in their respective cases.

/s/ Terry M. Henry

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