04-CV-00777-ORD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHARLES SWIFT, as next friend for SALIM AHMED HAMDAN,

Petitioner,

v.

DONALD H. RUMSFELD, *et al.*,

Respondents.

Case No. C04-0777L

ORDER TRANSFERRING CASE TO DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

I. INTRODUCTION

This matter comes before the Court on a motion to dismiss or transfer (Dkt. # 34) filed by Respondents Donald H. Rumsfeld, *et al.* ("Respondents"). For the reasons set forth in this Order, the Court transfers this action to the United States District Court for the District of Columbia.

II. DISCUSSION

A. Background.

Petitioner Lieutenant Commander Charles Swift ("Petitioner"), as next friend for Salim Ahmed Hamdan ("Hamdan"), filed this petition for writ of mandamus or, alternatively, writ of habeas corpus, in this Court on April 6, 2004. Hamdan has been held at United States Naval

Base at Guantanamo Bay, Cuba, since having been taken into custody by United States military forces in Afghanistan in November of 2001. In July of 2003 the President determined that there was reason to believe that Hamdan was an Al Qaeda member or otherwise involved in terrorism directed at the United States and therefore designated Hamdan for trial before a military commission. The Department of Defense then appointed Petitioner to defend Hamdan before the military commission.

Petitioner challenges the military commission process, the conditions under which Hamdan is held, and Hamdan's detention on numerous grounds. See Petition at 15-23. Petitioner seeks an order compelling Respondents to release Hamdan from his current detention at Camp Echo to general detention at Camp Delta, enjoining Respondents from enforcing the military order pursuant to which Hamdan is detained, compelling Respondents to justify as lawful his continued detention, and, in the absence of adequate justification, ordering Hamdan's release. See id. at 24-25.

The Court ordered Respondents to file a return to Petitioner's petition by the earlier of thirty days after the Supreme Court's disposition of Rasul/Al Odah and Padilla or July 28, 2004. (Order Granting Motion to Hold Petition in Abeyance at 8.) Petitioner's reply was due two weeks after that deadline. The Court scheduled oral argument on the matter for September 8, 2004. On July 16, 2004, Respondents sought leave of the Court to file a motion regarding whether this matter should proceed in this Court. The Court granted Respondents leave to file that motion and modified the schedule for filing the return and reply.

Respondent's motion is presently before the Court.

B. Analysis.

Respondents argue that the Court must dismiss the action for lack of subject matter jurisdiction because Petitioner lacks standing as Hamdan's "next friend." See Motion at 3-8. Respondents further contend that even if dismissal is not warranted, the matter should be transferred to the United States District Court for the District of Columbia pursuant to Gherebi v.

Bush, 2004 WL 1534166, ___ F.3d ___ (9th Cir. July 8, 2004) [Gherebi II]. See id. at 8-9. Petitioner argues that next friend status is proper because Hamdan lacks meaningful access to the Court and/or Petitioner has third party standing in this case. See Response at 1-11. Petitioner further contends that transfer is not warranted because this is primarily a mandamus action and, pursuant to the Mandamus and Venue Act, Petitioner's residence in Washington State makes venue in this district proper. See id. at 11-24. Even if the Court determines that mandamus is unavailable here, Petitioner contends that Gherebi II does not require transfer of venue in this matter. See id. at 24-25.

1. Gherebi II.

On June 30, 2004, the United States Supreme Court vacated and remanded Gherebi v. Bush, 352 F.3d 1278 (2003) [Gherebi I], for reconsideration in light of Rumsfeld v. Padilla, 542 U.S. ___, 124 S. Ct. 2711 (2004). Bush v. Gherebi, 124 S. Ct. 2932 (2004). Following remand, the Gherebi II Court held that the proper venue for the next-friend petition for writ of habeas corpus on behalf of Faren Gherebi, a Guantanamo detainee, which named Secretary of Defense Donald Rumsfeld, President Bush, and other officials as respondents, to be the District of Columbia. Gherebi II, 2004 WL 1534166, at *9. This order was issued for the reasons of venue defect and transfer for convenience of the parties and the interests of justice.

2. Mandamus / Habeas.

Respondents contend that Petitioner's challenge to the legality of Hamdan's confinement is the exclusive province of habeas corpus and therefore this action should not be considered a petition for writ of mandamus. In support of this argument Respondents cite Preiser v. Rodriguez, 411 U.S. 475 (1973). In Preiser, New York State prisoners were deprived of "good-time" credits and filed actions in district courts seeking release pursuant to 42 U.S.C. § 1983. In conjunction with their Section 1983 claims, the prisoners brought petitions for writs of habeas corpus. The Court held that the prisoners' Section 1983 claims could not proceed because "when a state prisoner is challenging the very fact or duration of his physical imprisonment, and

the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus." Preiser, 411 U.S. at 500. Therefore, "[c]hallenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus." Muhammad v. Close, 124 S. Ct. 1303, 1304 (2004) (citing Preiser, 411 U.S. at 500).

Petitioner contends that this action is brought properly as a petition for writ of mandamus because such a writ is the correct method for obtaining relief from the unconstitutional conduct of an officer of the United States. In support of this argument Petitioner cites, *inter alia*, Benny v. United States Parole Comm'n, 295 F.3d 977 (9th Cir. 2002). In Benny a parolee petitioned for a writ of habeas corpus, or for a writ of mandamus, to either terminate supervision or to compel an early termination hearing and decision. The Ninth Circuit upheld the district court's denial of the petitioner's request for termination of supervision. Regarding whether the petitioner could proceed with a petition for writ of habeas corpus or a petition for writ of mandamus regarding the early termination hearing, the Court held that habeas was unavailable because the results of that hearing might not affect the fact or duration of the petitioner's confinement: "The fact or duration of Benny's custody is not causally linked to the Commission's delay in making an early termination decision. We conclude that habeas corpus is not the proper process to compel the Commission to hold an early termination hearing." Benny, 295 F.3d at 989. Rather, a petition for a writ of mandamus was the proper method to seek relief. Id. at 990.

Petitioner contends that because he is not challenging the fact or duration of Hamdan's imprisonment, the writ of mandamus is properly applied. Petitioner argues that this action challenges the legality of the military commission process and the conditions of Hamdan's confinement. (Response at 13.) Petitioner contends that "[i]t is entirely possible that even after the appropriate adjudication of his status and of the claims against him . . . , [Hamdan] will nevertheless be found to be an enemy combatant lawfully detained as a POW, or a war criminal

duly convicted and sentenced under U.S. law as enacted by Congress, or in conformity with customary international law." Id. Petitioner finds substantial support for his argument regarding this possible outcome in a statement by a "senior defense official" that the military commission process and detention at Guantanamo Bay are "two distinct issues." (April 5, 2004 Swift Decl. (Dkt. # 2) Ex. A.) At a background briefing the following exchange occurred:

> Q: So is it possible then that somebody could go through a commission, be found not guilty, and then have them say well, congratulations, you're not guilty but you're still an enemy combatant so back into wherever we're holding you?
>
> A: (Senior Defense Official): As a legal matter, they're two completely different questions. They're not being held because of any criminal activity or any charges. They're being held because they're enemy combatants in an ongoing armed conflict. What we're talking about with military commissions is a criminal process so in that regard they're two distinct issues.

Id.

Petitioner offers strong arguments that his challenge to the military commission process and the conditions of Hamdan's detention at the Guantanamo Bay Naval Base sounds in mandamus. However, the petition clearly does seek release for Hamdan not only regarding his status as a pretrial detainee, but also from his status as an enemy combatant. See Petition at 25 ("In the absence of adequate justification, [Petitioner requests that the Court] order Mr. Hamdan's release").

The Court finds that the question of whether this action may proceed as a petition for writ of mandamus or must be considered exclusively a petition for writ of habeas corpus need not be resolved here because, even if mandamus is available, the habeas corpus element of the petition requires that it be heard in the District of Columbia. Additionally, it would make little sense to transfer only the habeas elements of this action and retain the mandamus portion. See Continental Grain Co. v. The Barge FBL-585, 364 U.S. 19, 25-26 (1960) ("To permit a situation in which two cases involving precisely the same issues are simultaneously pending in different District Courts leads to the wastefulness of time, energy and money that § 1404(a) was designed

to prevent.").

Petitioner contends the Court should not reach this result because, as this action seeks primarily mandamus relief, the Court should hear the habeas claims pursuant to the doctrine of pendent venue. (Response at 17.) Under the pendent venue doctrine, "if venue is proper for the 'principal cause of action' . . . a plaintiff [may] add other claims for which venue would not individually be proper." Burnett v. Al Baraka Inv., 274 F. Supp. 2d 86, 98 (D.D.C. 2003). This doctrine is an exception to the general rule that venue must be established for each separate claim in a complaint. See Lamont v. Haig, 590 F.2d 1124, 1135 (D.C. Cir. 1978). The Court does not find application of the pendent venue doctrine to be appropriate here. The Supreme Court recently observed that "[t]he plain language of the habeas statute . . . confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district." Padilla, 124 S. Ct. at 2722. Given that the petition challenges Hamdan's physical confinement at Guantanamo Bay, the Court declines to apply the pendent venue doctrine.

There are many valid reasons for this Court to retain both the mandamus and habeas corpus actions in the Western District of Washington. This Court has a hearing date set, a briefing schedule under way, and is not burdened by a deluge of similar suits brought by Guantanamo Bay detainees. Additionally, Hamdan and Swift have a very significant connection to this District through the presence of their counsel. See Response at 23. However, there is no getting around the fact that both the United States Supreme Court and the Ninth Circuit Court of Appeals have indicated that it is appropriate to have all of these challenges from Guantanamo Bay detainees heard in one district court – the District Court of the District of Columbia.[1]

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[1]All of the cases cited by Petitioner, with the exception of Holmes v. United States Bd. of Parole, 541 F.2d 1243 (7th Cir. 1976), involve situations where the decisionmaker was in the district and the only issue was whether the action should proceed in mandamus or as a habeas corpus claim. Here, the habeas corpus and mandamus claims can co-exist, but only in the district in which habeas is appropriate – the District of Columbia.

Should that court find itself overburdened by this sudden deluge of habeas corpus petitioners and pendent lawsuits (such as the Bivens claim in Gherebi or the Alien Tort Statute action in Rasul), this Court stands ready, willing, and able to accept the return of this case and to conduct an expedited hearing on the merits.[2] See Eisel v. Secretary of the Army, 477 F.2d 1251, 1256 (D.C. Cir. 1973) (expressing concern that "such an influx could seriously overburden an already busy court system"); Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 498 n.13 (1973) (stating that Congress was "not motivated solely by a desire to insure that the disputes could be resolved in the most convenient forum. It was also a critical part of the congressional purpose to avoid the vastly disproportionate burden of handling habeas corpus petitions which had fallen, prior to the amendments, on those districts in which large numbers of prisoners are confined.").

3. Next Friend Status.

Because the Court finds that under Padilla, Gherebi II, and other relevant law, this action must be transferred to the United States District Court for the District of Columbia, the Court declines to determine whether Commander Swift may proceed as Hamdan's next friend.

III. CONCLUSION

This Court must accept the guidance of the two higher appellate courts, both of which have expressed a clear preference for consolidating all Guantanamo Bay detainee habeas corpus challenges and related claims within one district only – the District of Columbia District Court. For the foregoing reasons, the Court GRANTS IN PART Respondents' motion (Dkt. # 34). The

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Petitioner has not acknowledged one obvious aspect of these Guantanamo Bay detainee cases: These are not typical cases whether called mandamus or habeas corpus, and the United States Supreme Court rightly wants them decided in one district, not all of the nearly 100 district courts in the United States.

[2]Other enemy combatants held in foreign locations would also seek relief in the District of Columbia Court. However, those enemy combatants held in the United States will have their cases heard in the districts in which they are confined.

Court STRIKES the deadlines for Petitioner's reply and TRANSFERS this case to the United States District Court for the District of Columbia.[3]

DATED this 9th day of August, 2004.

Robert S. Lasnik
United States District Judge

[3]On July 23, 2004, Professor Arthur R. Miller filed a motion for leave to appear as *amicus curiae* (Dkt. # 39). Professor Miller filed a memorandum in opposition to Respondents' motion. The Court considered Professor Miller's memorandum to be helpful in resolving the issues presented by Respondents' motion. The Court grants Professor Miller's motion for leave to appear as *amicus curiae* (Dkt. # 39). The Court also grants Professor Miller's motion for leave to file sur-reply (Dkt. # 41).