

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID M. HICKS,

Petitioner,

v.

GEORGE WALKER BUSH,

President of the United States,

et al.,

Respondents.

Civil Action No. 1:02-CV-00299 (CKK)

**RESPONDENTS' UNOPPOSED MOTION FOR AN ENLARGEMENT
OF TIME IN WHICH TO RESPOND TO CERTAIN CLAIMS
RAISED IN SECOND AMENDED PETITION**

COME NOW Respondents, by and through their undersigned counsel, and respectfully request that the Court grant them an extension of time, through and including October 14, 2004, in which to respond to certain claims raised in Petitioner David Hicks's Second Amended Petition that challenge the legality of petitioner's impending trial by military commission. Respondents will respond to petitioner's claims that challenge his detention as an enemy combatant by October 4, 2004, and file the factual bases underlying his detention by the week of October 18, 2004, pursuant to the briefing schedule already established by the Court. Counsel for petitioner and respondents have conferred by telephone, and petitioner's counsel does not oppose the schedule requested herein. The parties intend to confer further regarding additional briefing on these issues that may follow respondents' October 14, 2004 filing and submit, if possible, an agreed upon schedule to complete the briefing. As grounds for this unopposed motion, respondents state as follows:

1. This case is a petition for a writ of habeas corpus by an alien detained at Guantanamo Bay as an enemy combatant, and is one of fourteen such cases brought on behalf of alien enemy combatants held at Guantanamo Bay in connection with hostilities involving al Qaeda, the Taliban, and their supporters. Pursuant to an August 17, 2004 Order by the Calendar and Case Management Committee and a September 14, 2004 Resolution of the Executive Session of the United States District Court for the District of Columbia, these cases are transferred to Senior Judge Joyce Hens Green for coordination and management, as well as resolution of common issues where consent is obtained from the transferring Judge. (Docket Nos. 57, 72)

2. On February 19, 2002, petitioner filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241, which he amended on March 18, 2002. These earlier petitions contained claims challenging petitioner's detention as an enemy combatant. (Docket Nos. 1, 22, 23)

3. On September 20, 2004, the Court ordered respondents to file and serve in all coordinated Guantanamo Bay detainee cases by October 4, 2004, responsive pleadings showing why the Writs of Habeas Corpus and the relief sought by petitioners should not be granted. (Docket No. 72) Respondents intend to file a unified response in all of the coordinated cases addressing the petitioners' challenges to their detention as enemy combatants.

4. On September 27, 2004, the Court granted petitioner's Motion for Leave to File His Second Amended Petition for Writ of Habeas Corpus and for Injunctive and other Relief, which contains additional claims challenging the legality of petitioner's impending trial by military commission. The Court ordered that the filing schedule set forth in the Court's

September 20, 2004 Order is applicable to petitioner's Second Amended Petition, thus, respondents' response to petitioner's additional claims must also be filed by October 4, 2004.

(Docket No. 76)

5. Respondents respectfully request that they be granted a ten-day extension of time, until and including October 14, 2004, in which to respond to the additional claims in petitioner's Second Amended Petition. Although there is some overlap between petitioner's challenges to his detention as an enemy combatant and his trial by military commission, there are several legal issues raised by petitioner's additional claims that do not apply to the enemy combatant status claims common to other coordinated cases. These include the authority to create and implement military commissions, the scope of the offenses tried by them, and the legality of military commission trial procedures. (Docket No. 61) These significant issues, and others raised by petitioner's additional claims, cannot be reasonably or fully addressed in respondents' unified brief that is dedicated to the claims challenging enemy combatant status raised in the coordinated cases. Furthermore, the Court has ordered respondents to address claims challenging the legality of trial by military commission in another Guantanamo Bay detainee case, Hamdan v. Rumsfeld, by October 14, 2004. See September 24, 2004 Order Setting Briefing Schedule for Motion to Dismiss and Granting Motion for Leave to File Brief as Amicus Curiae in Hamdan v. Rumsfeld, No. 04-CV-1519 (JR). Thus, respondents seek a short extension of time to coordinate a response with the Hamdan case and fully address petitioner's new claims challenging his trial by military commission in a separate responsive filing.

6. The parties will confer further regarding additional briefing on these issues that may follow respondents' October 14, 2004 filing and submit, if possible, an agreed upon schedule to complete the briefing.

WHEREFORE, for the reasons stated herein, respondents respectfully request that the Court allow them until October 14, 2004 to respond to the additional claims presented in petitioner's Second Amended Petition. A proposed order is attached.

Dated: September 29, 2004

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

KENNETH L. WAINSTEIN
United States Attorney

THOMAS R. LEE
Deputy Assistant Attorney General

DOUGLAS N. LETTER
Terrorism Litigation Counsel

ROBERT D. OKUN
D.C. Bar No. 457-078
Chief, Special Proceedings Section
555 Fourth Street, N.W.
Room 10-435
Washington, D.C. 20530
(202) 514-7280

/s/ Terry M. Henry
JOSEPH H. HUNT (D.C. Bar No. 431134)
VINCENT M. GARVEY (D.C. Bar No. 127191)
TERRY M. HENRY
PREEYA M. NORONHA
ANDREW I. WARDEN
Attorneys
United States Department of Justice

Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W. Room 7144
Washington, DC 20530
Tel.: (202) 514-4107
Fax: (202) 616-8470

Attorneys for Respondents