

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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SHAFIQ RASUL, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,  
President of the United States,  
*et al.*,

Respondents.

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Civil Action No. 02-CV-0299 (CKK)

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FAWZI KHALID ABDULLAH FAHAD  
AL ODAH, *et al.*

Plaintiffs,

v.

UNITED STATES OF AMERICA,  
*et al.*,

Defendants.

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Civil Action No. 02-CV-0828 (CKK)

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MAMDOUH HABIB, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,  
President of the United States,  
*et al.*,

Respondents.

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Civil Action No. 02-CV-1130 (CKK)

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MURAT KURNAZ, *et al.*

Petitioners,

v.

GEORGE W. BUSH,  
President of the United States,  
*et al.*,

Respondents.

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Civil Action No. 04-CV-1135 (ESH)

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OMAR KHADR, *et al.*

Petitioners,

v.

GEORGE W. BUSH,  
President of the United States,  
*et al.*,

Respondents.

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Civil Action No. 04-CV-1136 (JDB)

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MOAZZAM BEGG, *et al.*

Petitioners,

v.

GEORGE W. BUSH,  
President of the United States,  
*et al.*,

Respondents.

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Civil Action No. 04-CV-1137 (RMC)

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MOURAD BECHELLALI, *et al.*

Petitioners,

v.

GEORGE W. BUSH,  
President of the United States,  
*et al.*,

Respondents.

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Civil Action No. 04-CV-1142 (RJL)

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JAMIL EL-BANNA, *et al.*

Petitioners,

v.

GEORGE W. BUSH,  
President of the United States,  
*et al.*,

Respondents.

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Civil Action No. 04-CV-1144 (RWR)

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FALEN GHEREBI, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,  
  
*et al.*,

Respondents.

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Civil Action No. 04-CV-1164 (RBW)

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LAKHDAR BOUMEDIENE, <i>et al.</i>	)	
	)	
Petitioners,	)	
	)	
v.	)	Civil Action No. 04-CV-1166 (RJL)
	)	
GEORGE WALKER BUSH,	)	
President of the United States,	)	
<i>et al.</i> ,	)	
	)	
Respondents.	)	
_____	)	
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.	)	
_____	)	

**RESPONDENTS' MOTION TO CONSOLIDATE  
AND MEMORANDUM IN SUPPORT THEREOF**

Currently pending before various judges of this Court are a number of petitions for writs of habeas corpus, as styled above, brought on behalf of foreign nationals detained or taken into custody by United States authorities as enemy combatants in connection with hostilities involving al Qaeda, the Taliban, and their supporters, and held at the United States Naval Base at Guantanamo Bay, Cuba. For the reasons explained below, these cases – as well as any after-filed actions of the same nature – should be consolidated under FED. R. CIV. P. 42. The cases present

common questions of law and fact, and consolidation will promote judicial economy and convenience for the parties. Absent such consolidations, all parties will be prejudiced, both by the potential for inconsistent rulings on similar issues pertaining to Guantanamo Bay detainees, as well as by the practical and logistical difficulties presented by multiple cases, many, if not all, of which may involve the presentation of highly classified materials, proceeding before different judges on possibly divergent schedules.

By local rule, this motion is submitted to Judge Kollar-Kotelly, as the judge presiding over the “earlier numbered” of the Guantanamo Bay detainee cases, *Rasul v. United States*, No. 02-CV-0299. See LCvR 40.5(d) (“Motions to consolidate cases assigned to different judges of this court shall be heard and determined by the judge to whom the earlier-numbered case is assigned.”). Notification of this motion, along with a copy of the motion, is being submitted to each of the judges in the related cases. See Notice of Filing of Motion to Consolidate in *Rasul v. Bush*, No. 02-CV-0299 (CKK) (filed July 23, 2004, in each of the related cases).

Counsel for respondents have conferred or attempted to confer by telephone with counsel for petitioners in the related cases regarding this motion. Counsel for petitioners in *Kurnaz v. Bush*, No. 04-CV-1135 (ESH), opposes the motion. Counsel for petitioners in *Al Odah v. United States*, No. 02-CV-0828 (CKK); *Habib v. Bush*, No. 02-CV-1130 (CKK); *Khdar v. Bush*, No. 04-CV-1136 (JDB); *Benchellali v. Bush*, No. 04-CV-1142 (RJL); and *Boumediene v. Bush*, No. 04-CV-1166 (RJL), believe the motion is premature, pending access to their clients, and either oppose the motion or are not in a position to consent to the motion. As of the filing of this motion, counsel for petitioners in the other cases have not informed counsel for respondents of their final position regarding the motion.

### **BACKGROUND**

On September 11, 2001, the al Qaeda terrorist network launched a vicious, coordinated attack on the United States, killing approximately 3,000 persons. In response, the President, as Commander-in-Chief and with Congressional authorization for the use of force, took steps to protect the Nation and prevent additional threats. Among these steps, the President dispatched the armed forces of the United States to Afghanistan to seek out and subdue the al Qaeda terrorist network and the Taliban regime that had supported and protected that network. In the course of that campaign – which remains ongoing – the United States and its allies have captured or taken control of a large number of individuals, many of whom are foreign nationals. As authorized by, *inter alia*, a Military Order of November 13, 2001 issued by the President,<sup>1</sup> the United States military has transferred a number of these alien enemy combatants for detention at the United States Naval Base at Guantanamo Bay, Cuba, an area within the sovereign territory of Cuba leased for an indefinite term by the United States, and over which the United States exercises exclusive control.<sup>2</sup> Approximately 600 such aliens are currently detained at Guantanamo Bay.

Pending before this Court are a number of cases brought on behalf of aliens detainees in the control of the Department of Defense and held at Guantanamo Bay. The cases commonly challenge the legality and conditions of the detention and confinement of the aliens on whose behalf the cases are brought. Of the cases of which respondents are now aware, before Judge Kollar-Kotelly are *Rasul v. Bush*, No. 02-CV-0299; *Al Odah v. United States*, No. 02-CV-0828;

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<sup>1</sup> See 66 Fed. Reg. 57,831 (Nov. 16, 2001).

<sup>2</sup> See *Rasul v. Bush*, \_\_\_ U.S. \_\_\_, 124 S. Ct. 2686, 2690-93 (2004).

and *Habib v. Bush*, No. 02-CV-1130.<sup>3</sup> Before Judge Huvelle is *Kurnaz v. Bush*, No. 04-CV-1135. Before Judge Bates is *Khadr v. Bush*, No. 04-CV-1136.<sup>4</sup> Before Judge Collyer is *Begg v. Bush*, No. 04-CV-1137. Pending before Judge Leon are *Benchellali, v. Bush*, No. 04-CV-1142, and *Boumediene v. Bush*, No. 04-CV-1166. Before Judge Roberts is *El-Banna v. Bush*, No. 04-CV-1144. Before Judge Walton is *Gherebi v. Bush*, No. 04-CV-1164.<sup>5</sup> And before Judge Kennedy is *Anam v. Bush*, No. 04-CV-1194.

Each of these cases is a petition for habeas corpus, or, in one case, a complaint essentially constituting a habeas petition,<sup>6</sup> filed by “next friends” on behalf of alien detainees at Guantanamo Bay. The cases include as respondents the President, the Secretary of Defense, the commander of Joint Task Force-GTMO responsible for Guantanamo Bay, and the commander of the particular

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<sup>3</sup> The Court initially dismissed these cases on jurisdictional grounds, *Rasul v. Bush*, 215 F. Supp. 2d 55 (D.D.C. 2002), and subsequent appeals led to the Supreme Court’s *Rasul* decision.

<sup>4</sup> A Guantanamo Bay detainee case dismissed by Judge Bates prior to the Supreme Court’s decision in *Rasul* is, *Sassi v. Bush*, No. 04-CV-0547. An appeal is presently pending in that case. The petitioners in that case are petitioners in either the *Benchellali* case before Judge Leon or the *Khadr* case before Judge Bates.

<sup>5</sup> *Gherebi* was recently transferred to this District from the Ninth Circuit. Unlike the petitions in the other pending cases, the *Gherebi* petition is not yet posted on the Court’s ECF system; accordingly, a copy of the operative habeas petition in the case is attached as Exhibit A. The petition was initially filed by petitioners in the Ninth Circuit Court of Appeals, which transferred the petition for disposition by the district court for the Central District of California. *See Gherebi v Bush*, 262 F. Supp. 2d 1064 (C.D. Cal. 2003). After the case was appealed, decided, then vacated by the Supreme Court, the Ninth Circuit transferred the case to the District of Columbia. *See Gherebi v. Bush*, \_\_\_ F.3d \_\_\_, 2004 WL 1534166 (July 8, 2004).

<sup>6</sup> *See Rasul v. Bush*, 215 F. Supp. 2d 55, 62-64 (D.D.C. 2002) (noting that claims asserted in *Al Odah* case are “within the exclusive province of the writ of habeas corpus”).

camp housing the detainees in Guantanamo Bay, and/or other government officials.<sup>7</sup> Allegations in the petitions typically include that petitioners were apprehended in connection with hostilities involving al Qaeda, the Taliban, and their supporters or otherwise and were taken involuntarily to Guantanamo Bay;<sup>8</sup> that petitioners are not enemy combatants and have not been informed of charges against them;<sup>9</sup> that petitioners have been housed in inadequate housing, without meaningful access to families or counsel, and without opportunity to fully exercise their religious beliefs;<sup>10</sup> and that petitioners have been forced to provide involuntary statements to interrogators.<sup>11</sup> Petitioners challenge their confinement, as well as the Military Order of

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<sup>7</sup> The *Gherebi* petition names the President, the Secretary of Defense, and “1,000 Unknown Named United States Military Personnel and Government Officers and/or Officials.” The *Al Odah* complaint also includes the United States as respondent-defendant.

<sup>8</sup> See *Rasul* First Amended Petition ¶¶ 23-24, 27, 32; *Al Odah* Amend. Compl. ¶ 16; *Habib* Pet. ¶¶ 16-19, 21-22; *Kurnaz* Pet. ¶¶ 6, 16-17, 19, 23-24; *Khadr* Pet. ¶¶ 16, 21-22; *Begg* Pet. ¶¶ 22-26; *Bechellali* Pet. ¶¶ 28, 30, 32; *El-Banna* First Amend. Pet. ¶¶ 19-26, 27-28; *Gherebi* Amend. Pet. ¶ 2; *Boumediene* Pet. ¶¶ 16-18, 20; *Anam* Pet. ¶¶ 26, 31, 36, 40-41, 44, 46, 52, 58, 61.

<sup>9</sup> See *Rasul* First Amended Petition ¶¶ 22, 29-30, 47; *Al Odah* Amend. Compl. ¶¶ 15, 18; *Habib* Pet. ¶¶ 15, 23-24, 44; *Kurnaz* Pet. ¶¶ 13-15, 34; *Khadr* Pet. ¶¶ 13, 30; *Begg* Pet. ¶¶ 17-18, 47, 52; *Bechellali* Pet. ¶¶ 25-26, 48; *El-Banna* First Amend. Pet. ¶¶ 15-16, 43; *Boumediene* Pet. ¶¶ 13-14, 25; *Anam* Pet. ¶¶ 23, 28, 33, 37, 59, 71, 73, 78.

<sup>10</sup> See *Rasul* First Amended Petition ¶¶ 33, 49; *Al Odah* Amend. Compl. ¶¶ 28-29; *Habib* Pet. ¶¶ 27, 44-45; *Kurnaz* Pet. ¶¶ 8, 34-35; *Khadr* Pet. ¶ 31; *Begg* Pet. ¶¶ 47-48; *Bechellali* Pet. ¶¶ 48-49; *El-Banna* First Amend. Pet. ¶¶ 43-44; *Gherebi* Amend. Pet. ¶ 3; *Boumediene* Pet. ¶ 25; *Anam* Pet. ¶¶ 73-74.

<sup>11</sup> See *Rasul* First Amended Petition ¶ 32; *Habib* Pet. ¶¶ 26, 44; *Kurnaz* Pet. ¶¶ 34-35; *Khadr* Pet. ¶¶ 30-31; *Begg* Pet. ¶ 48; *Bechellali* Pet. ¶ 49; *El-Banna* First Amend. Pet. ¶ 44; *Boumediene* Pet. ¶ 25; *Anam* Pet. ¶ 73-74.



November 13, 2001, as contrary to the Constitution<sup>12</sup> and international treaties, including the Third and Fourth Geneva Conventions,<sup>13</sup> the International Covenant on Civil and Political Rights and the American Declaration on the Rights and Duties of Man,<sup>14</sup> as well as customary international law.<sup>15</sup> Some of the petitions additionally assert claims under the Alien Tort Statute, 28 U.S.C. § 1350, and the Administrative Procedure Act (APA), 5 U.S.C. § 702-706.<sup>16</sup> Petitioners commonly seek relief in the form of release,<sup>17</sup> orders permitting access to counsel and barring interrogations, and declarations that petitioners' detention and the November 13, 2001 military order violate the Constitution, treaties, and laws of the United States, as well as

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<sup>12</sup> Constitutional provisions relied upon typically include the Due Process Clause of the Fifth Amendment, the War Powers Clause, and Article I, section 9, regarding suspension of the Privilege of the Writ of Habeas Corpus. *See Rasul* First Amended Petition ¶¶ 52-54, 62-64; *Al Odah* Amend. Compl. ¶ 37; *Habib* Pet. ¶¶ 48-51, 59-61; *Kurnaz* Pet. ¶¶ 39-41, 63-65; *Khadr* Pet. ¶¶ 35-37, 59-61; *Begg* Pet. ¶¶ 54-56, 64-66, 71; *Bechellali* Pet. ¶¶ 53-56, 77-79; *El-Banna* First Amend. Pet. ¶¶ 48-50, 72-74; *Gherebi* Amend. Pet. ¶ 3; *Boumediene* Pet. ¶¶ 33-35, 43-45; *Anam* Pet. ¶¶ 80-82, 90-92, 97.

<sup>13</sup> *See Habib* Pet. ¶¶ 56-57; *Kurnaz* Pet. ¶ 61; *Khadr* Pet. ¶ 57; *Begg* Pet. ¶¶ 22, 73; *Bechellali* Pet. ¶ 75; *El-Banna* First Amend. Pet. ¶ 70; *Gherebi* Amend. Pet. ¶ 3; *Boumediene* Pet. ¶ 41; *Anam* Pet. ¶ 88.

<sup>14</sup> *See Kurnaz* Pet. ¶¶ 43-45; *Khadr* Pet. ¶¶ 39, 41; *Begg* Pet. ¶¶ 58, 60; *Bechellali* Pet. ¶¶ 57, 59; *El-Banna* First Amend. Pet. ¶¶ 52-54; *Boumediene* Pet. ¶¶ 37, 39; *Anam* Pet. ¶¶ 84-86.

<sup>15</sup> *See Rasul* First Amended Petition ¶¶ 56-60; *Habib* Pet. ¶¶ 52-55; *Kurnaz* Pet. ¶¶ 43-45; *Khadr* Pet. ¶¶ 39, 41; *Begg* Pet. ¶¶ 58, 60; *Bechellali* Pet. ¶¶ 57, 59; *El-Banna* First Amend. Pet. ¶¶ 52-54; *Boumediene* Pet. ¶ 37; *Anam* Pet. ¶¶ 84-86.

<sup>16</sup> *See Al Odah* Amend. Compl. ¶¶ 38-39; *Kurnaz* Pet. ¶¶ 48, 53, 57, 67; *Khadr* Pet. ¶¶ 44, 49, 53, 63; *Begg* Pet. ¶ 68; *Bechellali* Pet. ¶¶ 62, 67, 71, 81; *El-Banna* First Amend. Pet. ¶¶ 57, 62, 66, 76; *Anam* Pet. ¶ 94.

<sup>17</sup> In *Al Odah*, plaintiffs previously disclaimed seeking release, but the Court determined that plaintiffs "plainly challenge the lawfulness of their custody." *Rasul*, 215 F. Supp. 2d at 62.

international law.<sup>18</sup> Indeed, except with regard to averments concerning the circumstances of petitioners' capture, attempts by family or friends to contact a detainee, and the occasional additional legal theory, the petitions in these cases are essentially the same. Furthermore, many of the cases involve the same litigation counsel or coordinating counsel.<sup>19</sup>

### ARGUMENT

Federal Rule of Civil Procedure 42(a) provides that “[w]hen actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.”<sup>20</sup> The Rule encourages consolidation where cases present questions of law or fact in common; thus, consolidation is appropriate “[i]f two cases appear to be of like nature and relative to the same question” and consolidation would promote judicial economy. *See Midwest Community Council, Inc. v. Chicago Park Dist.*, 98 F.R.D. 491, 499 (C.D. Ill. 1983); *Judicial Watch, Inc. v.*

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<sup>18</sup> *See Rasul* First Amended Petition § VI; *Al Odah* Amend. Compl. (Prayer for Relief); *Habib* Pet. § V; *Kurnaz* Pet. § V; *Khadr* Pet. § V; *Begg* Pet. § V; *Bechellali* Pet. § V; *El-Banna* First Amend. Pet. § V; *Gherebi* Amend. Pet. ¶¶ 5-6; *Boumediene* Pet. § VI; *Anam* Pet. (Prayer for Relief).

<sup>19</sup> For example, in a significant number of the cases petitioners are represented by counsel from the Center for Constitutional Rights. And the *Kurnaz*, *Khadr*, and *Begg* cases were filed by the same law firm.

<sup>20</sup> Of course, petitions for a writ of habeas corpus are civil in nature, *see Hilton v. Braunskill*, 481 U.S. 770, 775-76 (1987), and, though different in respects from general civil litigation, habeas petitions are subject to the Federal Rules of Civil Procedure to the extent not inconsistent with statute. *See* FED. R. CIV. P. 81(a)(2); *see also Hilton*, 481 U.S. at 776 (“[w]here . . . the need is evident for principles to guide the conduct of habeas proceedings, it is entirely appropriate to use . . . [general civil] rules by analogy or otherwise.”) (internal quotation marks and citation omitted). Thus, FED. R. CIV. P. 42 applies with respect to these cases.

*United States Dep't of Energy*, 207 F.R.D. 8, 8 (D.D.C. 2002) (Friedman, J.). A court has discretion to consolidate cases when it will “help it manage its caseload with economy of time and effort for itself, for counsel, and for litigants.” *Mylan Pharmaceuticals Inc. v. Henney*, 94 F. Supp. 2d 36, 43 (D.D.C. 2000) (Urbina, J.) (internal quotation marks and citation omitted), *vacated on other grounds sub nom., Pharmachemie B.V. v. Barr Labs., Inc.*, 276 F.3d 627 (D.C. Cir. 2002). Consolidation relieves the Court and parties of the burden of duplicative filings and orders. *See New York v. Microsoft Corp.*, 209 F. Supp. 2d 132, 147-48 (D.D.C. 2002) (Kollar-Kotelly, J.). It does not, however, ““merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another.”” *Id.* (quoting *Johnson v. Manhattan Ry. Co.*, 289 U.S. 479, 496-97 (1933)); *see also Midwest Community Council*, 98 F.R.D. at 499 (consolidation can economize time and effort “without circumscribing the opportunity for full litigation of all relevant claims”).

The pending habeas petitions by Guantanamo Bay detainees involve not just “a common question of law or fact” as required by FED. R. CIV. P. 42; they involve a number of common questions of law and fact. Of course, the cases present common fact scenarios in that each and every petitioner is an alien who was apprehended in some manner overseas in connection with hostilities involving al Qaeda, the Taliban, and their supporters; is considered an enemy combatant; and is held outside of the United States and the territorial jurisdiction of United States courts at Guantanamo Bay, an area over which the government exercises exclusive jurisdiction but not ultimate sovereignty. Further, each and every petitioner challenges the nature of his confinement, allegedly without access to counsel or family and without a statement of charges against him.

Moreover, the cases present a number of common legal questions or issues, including whether petitioners' detention violates the Constitution, laws, or treaties cited in the petitions; whether the November 13, 2001 Military Order pursuant to which petitioners are detained violates the Constitution, laws, or treaties cited in the petitions; whether the treaties and international law principles cited by petitioners are enforceable in a habeas proceeding; potential challenges to and the significance of the Combatant Status Review Tribunal process to be afforded Guantanamo Bay detainees for review of their status as enemy combatants;<sup>21</sup> and the nature and scope of judicial review of the military's determination of a detainee's status. In addition, the cases will share common questions on procedural matters such as the nature and extent of detainees' access to counsel; the scope and method of any inquiry, if appropriate, into confinement conditions; or the need, if any, for the physical presence of petitioners in court for their case.

Because these cases share such issues in common, consolidation will promote interests of efficiency and economy for both the Court and the parties. Judicial resources will be conserved with one judge considering and resolving, presumably once, the various common issues; multiple judges of the Court should not duplicate their efforts by dealing with common issues of this nature in multiple cases, thus devoting resources of multiple chambers to the same issues. Indeed, this Court initially consolidated, on motion of plaintiffs, the *Rasul* and *Al Odah* cases for the limited purpose of considering the Court's jurisdiction, an issue subsequently addressed by

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<sup>21</sup> The Department of Defense recently created a such a process for alien detainees at Guantanamo Bay. See Department of Defense website at:

<http://www.defenselink.mil/releases/2004/nr20040707-0992.html>

the Supreme Court. *See* Order of July 30, 2002 (in *Rasul* and *Al Odah*). As noted above, a number of common issues still must be resolved in these and the other cases, and consolidation is accordingly warranted.<sup>22</sup>

Consolidation will also promote efficiency and economy to the extent the cases require the Court to have access to classified information. The fewer the number of Court chambers needing such access, the more quickly and efficiently appropriate security arrangements can be made for access to and storage of such information by or for the Court.

Furthermore, consolidation would serve to avoid the very real risk of inconsistent adjudications in these cases. *See International Paving Systems v. Van-Tulco, Inc.*, 806 F. Supp. 17, 22 (E.D.N.Y. 1992) (a primary purpose of consolidation is to avoid inconsistent results in separate actions). This factor takes on special significance given the serious Constitutional issues involving the President's war powers raised in these cases, as well as the possibility that these cases may ultimately require the presentation of highly classified materials. Even with respect to other common procedural or merits-related issues, inconsistent adjudications on such issues could result in the administration of conflicting rulings with respect to the Guantanamo Bay detainees, such that the detainees would be subject to inconsistent treatment that might be occasioned by such rulings. Consolidation would avoid such difficulties. In addition, consolidation similarly would avoid the potential for multiple interlocutory appeals that might

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<sup>22</sup> Also, to the extent that only certain cases involve certain claims, *e.g.*, claims under the Alien Tort Statute, 28 U.S.C. § 1350, issues pertaining to those claims, such as whether such claims can be properly asserted in the cases, can be jointly resolved in the cases to which they pertain, as needed. The existence of such claims in some cases should not be a barrier to consolidation given the economies and conservation of judicial resources that consolidation would promote with respect to the common questions in those and the other cases.

arise from multiple rulings on the same issues from different judges, to the extent such appeals might be appropriate.

Consolidation also would not prejudice the parties.<sup>23</sup> With respect to respondents, consolidation would help alleviate the logistical burdens respondents face in responding to multiple habeas petitions before different judges on potentially divergent schedules. Efficiencies gained by consolidation would promote the speediest and most efficient resolution of these cases overall, and, thus, would be in the interest of all concerned, including petitioners. Further, should the cases reach a stage that might call for consideration of the circumstances of individual detainees or their separate claims, the Court can consider an appropriate response, including potential de-consolidation, at that time. *See New York v. Microsoft*, 209 F. Supp. 2d at 147-48; FED. R. CIV. P. 42(b).

Finally, the cases that are the subject of this motion are those of which respondents' counsel are now aware. Respondents request that the Court exercise its power to consolidate, *sua sponte*, any subsequently filed petitions with the pending cases. *See Mylan*, 94 F. Supp. 2d at 43 (noting the court's power to consolidate *sua sponte*); *Midwest Community Council*, 98 F.R.D. at 499-500 (same). For the reasons explained above, consolidation of future-filed similar petitions by Guantanamo Bay detainees is warranted.

### **CONCLUSION**

For the reasons set forth above, the Court should grant respondents' motion and consolidate these cases and similar cases filed in the future.

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<sup>23</sup> While prejudice to a party is a factor to be taken into account in considering consolidation, *see Judicial Watch*, 207 F. Supp. 2d at 8, a court can order consolidation over the objection of one, or even all, parties. *See Midwest Community Council*, 98 F.R.D. at 499-500.

Dated: July 23, 2004

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