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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FAWZI KHALID ABDULLAH FAHAD AL ODAH,)	
et al.,)	
Plaintiffs-petitioners,)	
)	
v.)	No. CV 02-0828 (CKK)
)	
UNITED STATES OF AMERICA, et al.,)	
)	
Defendants-respondents.)	
)	

**MOTION FOR EMERGENCY HEARING ON FORTHCOMING MOTION
FOR RECONSIDERATION OF ORDER GRANTING STAY PENDING APPEAL**

Plaintiffs-petitioners Fawzi Khalid Abdullah Fahad Al Odah *et al.* (the “Kuwaiti Detainees”), move for an emergency hearing on their forthcoming motion for reconsideration of the Court’s Order staying this and ten other Guantanamo Bay cases pending the conclusion of all appeals, which the Court entered this afternoon, February 3, 2005.¹ The Kuwaiti Detainees propose that this hearing be held on Monday, February 7, 2005, or Tuesday, February 8, 2005, or as soon thereafter as practicable. The grounds for this motion are as follows:

1. At 11:46 A.M. this morning defendants-respondents (the “government”) filed a motion asking the Court to certify the Court’s Memorandum Opinion and Order of January 31, 2005 (the “January 31 Order”), for interlocutory appeal under 28 U.S.C. § 1292(b). The government also moved for a stay of all proceedings in this case pending appeal. Before the Kuwaiti Detainees had any meaningful opportunity to respond to the government’s motions, the Court, at 2:57 P.M. this afternoon, issued an Order certifying the January 31 Order for

¹ The Kuwaiti Detainees have been authorized by counsel in *Hicks v. Bush*, Civil Action No. 02-CV-0299, *O.K. v. Bush*, Civil Action No. 04-CV-1136, *El Banna v. Bush*, Civil Action No. 04-CV-1144, *Anam v. Bush*, Civil Action No. 04-CV-1194, and *Almurbatti v. Bush*, Civil Action No. 04-CV-1227 to state that the petitioners in those cases join in this motion.

interlocutory appeal and granting a stay of all proceedings in this case pending resolution of all appeals. Although the Court made findings regarding its certification of the January 31 Order for interlocutory appeal, the Court made no findings regarding the government's motion for, and the Court's grant of, a stay of all proceedings pending appeal.

2. In recognition of 28 U.S.C. § 1292(b)'s departure from the settled policy against interlocutory appeal in non-injunction civil cases, Congress has expressly provided in that statute that an application for an interlocutory appeal shall not stay proceedings in the district court pending appeal barring a court order to the contrary (“[an] application for an appeal hereunder shall not stay proceedings in the district court unless the district judge or the Court of Appeals or a judge thereof shall so order”). *See, e.g., Reed v. Rhodes*, 549 F.2d 1046 (6th Cir. 1976) (vacating stay pending interlocutory appeal under 28 U.S.C. § 1292(b) because constitutional rights of plaintiffs far outweighed interests of defendants and noting that “Congress could have required but did not require the granting of permission for an interlocutory appeal to be accompanied always by a stay of the lower court proceedings”). Moreover, the District of Columbia Circuit has consistently reaffirmed the difficult standard that must be met for a court to grant a stay pending appeal. *See, e.g., United States v. Judicial Watch, Inc.*, 2003 WL 1089413 at *1 (D.C. Cir. Mar. 6, 2003) (“[a]ppellant has not satisfied the *stringent* standards required for a stay pending appeal”) (emphasis added).

A party seeking a stay must show, among other things, that it will suffer injury “both certain and great” if the stay is not granted. *Wisconsin Gas v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). Conversely, a stay will not be entered if it will cause great harm to the opposing party. *Shays v. FEC*, 340 F.Supp.2d 39, 50 (D.D.C. 2004).

3. The Kuwaiti Detainees urge the Court at least to hear from them on the question of the grant of a stay of these proceedings pending appeal. The Kuwaiti Detainees intend to demonstrate in their forthcoming motion for reconsideration that the serious harm they will suffer if these proceedings are stayed pending appeal far outweighs any claimed harm to the government. The Court has not ordered the release of the Kuwaiti Detainees or any other detainees in its January 31 Order. Therefore, the only harm the government can point to is an abstract harm to its legal position and its ongoing participation in this litigation. Such harms do not justify the extraordinary remedy of a stay pending appeal.

Respectfully submitted,

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