

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:)	
)	
)	Misc. No. 08-CV-442 (TFH)
GUANTANAMO BAY)	
DETAINEE LITIGATION)	Civil Action No. 05-CV-359 (GK)
)	

**RESPONDENTS' MOTION TO STAY AS TO
TO PETITIONERS' MOTION FOR SUMMARY JUDGMENT**

Respondents hereby move for a stay of any obligation to respond to Petitioners Rafiq Bin Bashir Bin Jallul Alhami's and Mohammed Abdul Rahman's (petitioners) motion for summary judgment. As discussed below, the instant proceeding is currently subject to a stay, with exceptions not applicable here, which has yet to be lifted. In support of this motion, respondents submit the following:

1. On June 9, 2005, Judge Gladys Kessler (Judge Kessler) stayed proceedings in the instant case, pending, inter alia, resolution of all appeals in In re Guantanamo Detainees Cases, 355 F. Supp. 2d 433 (D.D.C. 2005). *See* dkt. no. 20.
2. On July 1, 2008, this Court's executive committee passed a resolution appointing Judge Thomas F. Hogan (Judge Hogan), coordinator and manager of specifically designated Guantanamo Bay cases, including the instant case. On July 2, 2008, pursuant to the executive committee's resolution, Judge Kessler transferred the instant case to Judge Hogan for coordination and management and Judge Hogan scheduled a July 8, 2008 conference to address administrative matters pertaining to designated cases, such as this one. *See* dkt. nos. 71 and 72. On July 11, 2008, Judge Hogan issued a scheduling order, pertaining to the Guantanamo Bay cases he is coordinating and managing, in which he ruled, *inter alia*, that respondents would not

be required to file factual returns until August 29, 2008 at the rate of fifty per month on a “rolling basis . . . beginning with the earliest filed petitions [for habeas corpus]”.

See dkt. no. 77.

3. On July 8, 2008, petitioners filed a motion for summary judgment with the Court Security Office, thereby, theoretically triggering a July 22, 2008 due date for respondents’ summary judgment response. *See* D.C. Cir. Rule 7(b).

4. At this juncture, it would be premature to require respondents to file a response to petitioners’ motion for summary judgment. Proceedings in the instant case are currently stayed, pursuant to Judge Kessler’s June 9, 2005 order. *See* dkt. no. 20. While respondents do not oppose the lifting of the stay, requiring respondents to provide a basis at this time for the Court to evaluate the question of whether or not there are factual issues in dispute in the instant case would be premature. Imposition of such a requirement, at this juncture, would be inconsistent with Judge Hogan’s scheduling order, setting the commencement of the rolling, sequential, fifty-per-month factual return process (which is properly seen as a predicate for litigation of the merits of these cases) for August 29, 2008, *i.e.*, more than one month after the theoretical D.C. Cir. Rule 7(b) July 22, 2008 due date for respondents’ summary judgment response. *See* dkt. no. 77. Petitioners, moreover, make no showing that they should be excepted either from the controlling stay order or from the controlling factual return sequencing order, where in their motion for summary judgment they do not show a need for “emergency relief” (a potentially pertinent exception to the stay order). *See* dkt. no. 20.

5. For the aforementioned reasons, respondents respectfully request that, at this juncture, the Court stay respondents' obligation to file a response to petitioners' motion for summary judgment, until after the filing of a factual return comes due under Judge Hogan's scheduling order and further merits related proceedings are scheduled.

6. Respondents' counsel has conferred with petitioners' counsel, regarding the instant motion. At the time of this writing, petitioners' counsel has not articulated a position vis à vis the motion.

Dated: July 22, 2008

Respectfully Submitted,

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