

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

AHMED BELBACHA (ISN 290),)	
)	
<i>Petitioner,</i>)	Misc. No. 08-442 (TFH)
)	
v.)	Civil Action No. 05-2349 (RMC)
)	
BARACK H. OBAMA, <i>et al.</i> ,)	
)	
<i>Respondents.</i>)	
)	

**EMERGENCY MOTION FOR ADMINISTRATIVE STAY
PENDING RESOLUTION OF PETITIONER’S EMERGENCY
MOTION OF MARCH 7, 2010 ON THE MERITS**

Petitioner, Ahmed Belbacha (ISN 290), respectfully renews his request for an administrative stay of its order of February 4, 2010,¹ pending its resolution on the merits of his Emergency Motion of March 7, 2010.²

With respect, the Court seriously misapprehended Mr. Belbacha’s earlier request for an administrative stay. In addition, a fresh development – an announcement on Friday that the Attorney General will meet this week with the Algerian Minister of Justice³ – underscores the need for an administrative stay. As this Court recently recognized, the “potential harm” that Mr. Belbacha faces if he is transferred to Algeria is “significant” and “substantial.”⁴ The case for an

¹ Dkt. No. 167, 05-cv-2349 (“February 4 Order”). The Court filed its order under seal.

² Dkt. No. 168 (“Emergency Motion.”).

³ DOJ Media Advisory, April 2, 2010, reproduced as Exhibit A.

⁴ Order of March 9, 2010, Dkt. No. 171 (“March 9 Order”), at 3, 2.

administrative stay is especially strong because there is substantial question as to the Court's jurisdiction to issue the February 4 Order.⁵

The government opposes this motion.⁶ It maintains that an administrative stay is "unnecessary" because "Mr. Belbacha's transfer is not imminent" (whatever that means) and the government has "represented" that the Emergency Motion "can be adjudicated on a normal preliminary injunction schedule." (April 4 Email.) Suspiciously, however, the government will not represent outright that it will not attempt to transfer Mr. Belbacha to Algeria before the Court decides the Emergency Motion. Such a representation by the government would obviate the need for an administrative stay. That the government will not make such a representation is a red flag for Mr. Belbacha and should be a red flag for the Court.

1. The Court Seriously Misapprehended Mr. Belbacha's Earlier Request for an Administrative Stay.

In his Emergency Motion, Mr. Belbacha asked for two things. First, he asked the Court to reconsider and vacate its February 4 Order dissolving Judge Collyer's preliminary injunction, or, alternatively, to grant a stay pending appeal if the Court denies reconsideration and vacatur. (Mot., at 1, 7.) Mr. Belbacha also asked the Court to enter an administrative stay of its February 4 order "pending a hearing" on his Emergency Motion. (*Id.*)

On March 9, 2010, the Court denied Mr. Belbacha's request for an administrative stay, finding "no reason to rule on the reconsideration request before Respondents have had an opportunity to respond." (March 9 Order, at 1.) The Court stated: "There is no evidence before

⁵ Petitioner's Reply to Respondents' Opposition to Emergency Motion To Reconsider and Vacate, filed March 24, 2010, Dkt. 179 ("March 24 Reply").

⁶ Email from Andrew I. Warden dated April 4, 2010 (April 4 Email"), reproduced as Exhibit B. Mr. Warden's email responds to an email from Mr. Balbacha's counsel dated April 3, 2010, reproduced as Exhibit C.

the Court that Petitioner is likely to be transferred to Algeria before Respondents have had the opportunity to respond to Petitioner’s motion for reconsideration.” (March 9 Order, at 3.)⁷ Mr. Belbacha, however, did not seek an administrative stay until the government filed its response. He sought an administrative stay “pending a hearing” on his Emergency Motion. He now seeks an administrative stay pending a ruling on his Emergency Motion on the merits.

In addition, the Court misconstrued Mr. Belbacha’s request for an administrative request as a request for an immediate ruling on the merits, *before* the government had filed its response. (*Id.* at 1.)⁸ Mr. Belbacha made no such request. If he had, an administrative stay would have been unnecessary. The Court likewise misconstrued Mr. Belbacha’s request for an administrative stay as a request for a stay pending appeal, erroneously applying the four-part test for stays pending appeal. (*Id.* at 1-3.)⁹ Finally, the Court misunderstood Mr. Belbacha as “alleg[ing] that Respondents will not provide 30-day advance notice in the event that Petitioner is to be transferred.” (*Id.* at 1). That is not what Mr. Belbacha alleged. This is an injunction case, not a 30-day notice case. Mr. Belbacha sought an administrative stay on the ground that, putting the substantial jurisdictional question aside,¹⁰ the Court’s dissolution of Judge Collyer’s

⁷ The government filed its opposition, under seal, on March 15, 2010. (Dkt. 173.) Mr. Belbacha filed his reply on March 24, 2010. (Dkt. 179.) The Court has not yet scheduled a hearing on the Emergency Motion.

⁸ This misunderstanding would explain the Court’s conclusion that Mr. Belbacha failed to demonstrate that he will suffer injury “if the Court denies the stay before ruling on his motion for reconsideration” (March 7 Order, at 2), or that “such injury will occur before the Court rules on his motion for reconsideration (*id.* at 3).

⁹ The D.C. Circuit routinely grants administrative stays without applying the four-part test. *See, e.g.,* Order, *Belbacha v. Bush*, No. 07-5258 (D.C. Cir. Dec. 31, 2007) (“Upon the court’s own motion, it is ORDERED, that the federal appellees be enjoined from transferring appellant Ahmed Belbacha is solely to protect the court’s jurisdiction under 28 U.S.C. § 1292(a) and should not be construed in any way as a ruling on the merits of Mr. Belbacha’s appeal.”)

¹⁰ Mr. Belbacha discusses the jurisdictional issue in detail in his March 24 Reply.

June 13 Order enables the government to transfer Mr. Belbacha to Algeria before his Emergency Motion is decided.

In short, and with respect, the Court denied Mr. Belbacha's request for an administrative stay based on a misapprehension of what he was requesting.

2. The Attorney General's Impending Meeting with the Algerian Minister of Justice Is Legitimate Cause for Concern.

On Friday, April 2, 2010, the Justice Department announced in a Media Advisory:

Attorney General Eric Holder will travel to Algiers and Madrid next week to discuss cooperation on combating terrorism and enhancing law enforcement coordination. The Attorney General will meet with the Algerian Minister of Justice to sign a mutual legal assistance treaty and will participate in the biannual European Union Justice and Home Affairs Ministerial Conference in Madrid.

(DOJ Media Advisory, reproduced as Exhibit A.) Attorney General Holder is scheduled to meet with the Algerian Minister of Justice two days from now – on Wednesday, April 7, 2010. (*Id.*)

Mr. Belbacha fears that the Attorney General's meeting with the Algerian Minister of Justice may presage his early transfer to Algeria. The government dismisses Mr. Belbacha's concern as "unfounded speculation" (*see* April 4 Email), but the government does not *deny* that Mr. Belbacha's transfer to Algeria will be considered at the meeting, or has been or will be considered in connection with the meeting. Admittedly, Mr. Belbacha can only raise a concern, because only the government knows. But for Mr. Belbacha, the impending meeting is ominous. Where there is smoke, there may be fire. Mr. Belbacha cannot afford to wait to see how it all turns out.

CONCLUSION

This motion for an administrative stay should be granted. An outright representation by the government that it will not attempt to transfer Mr. Belbacha to Algeria before the Court decides the Emergency Motion would obviate the need for an administrative stay.

Dated: April 5, 2010

Respectfully,

/s/

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