

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

O.K.,¹ et al.,

Petitioners,

v.

GEORGE W. BUSH, et al.,

Respondents.

Civil Action No. 04-1136 (JDB)

ORDER

Currently pending before the Court is [175] petitioner's motion to stay proceedings before the military commission. Petitioner asks the Court to stay his military commission proceedings -- currently scheduled to begin on November 8, 2007 -- at least until the Supreme Court issues a decision in Boumediene v. Bush, 476 F.3d 981 (D.C. Cir. 2007), cert. granted, 127 S. Ct. 3078 (June 29, 2007).

Petitioner sought similar relief in the Court of Appeals on two prior occasions, and the Court of Appeals denied petitioner's requests. First, in May 2007, petitioner filed an emergency motion to stay the military commission proceedings scheduled to begin in June 2007, and the Court of Appeals denied petitioner's motion noting that the court was "without jurisdiction to grant the requested relief." Khadr v. Gates, 07-1156, Order (D.C. Cir. May 30, 2007) (citing 10 U.S.C. § 950j(b)). Second, petitioner filed an emergency motion, similar to the one before this

¹ Because petitioner O.K. was a minor when this case was filed, the Court uses his initials, consistent with the rules of this Court and the practice of the parties throughout this litigation. See L. Civ. R. 5.4(f)(2).

Court, requesting a stay of the November 2007 military commission proceedings, and the Court of Appeals denied petitioner's motion on November 6, 2007. Khadr v. United States, 07-1405, Order (D.C. Cir. Nov. 6, 2007). In denying petitioner's motion, the Court of Appeals determined that petitioner had "not satisfied the stringent standards required for a stay pending court review." Id. (citing Washington Metro. Area Transit Comm'n v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977), and D.C. Circuit Handbook of Practice and Internal Procedures 32-33 (2007)). Petitioner has therefore made multiple unsuccessful attempts to stay his military commission proceedings.

Although petitioner's procedural posture in the Court of Appeals is slightly different from petitioner's procedural posture before this Court, this Court agrees that petitioner has not satisfied the demanding standard for injunctive relief. See Cobell v. Norton, 391 F.3d 251, 258 (D.C. Cir. 2004) ("A preliminary injunction is an extraordinary remedy that should be granted only when the party seeking the relief, by a clear showing, carries the burden of persuasion.") (citing Mazurek v. Armstrong, 520 U.S. 968, 972 (1997)). The standards governing the relief sought from this Court and from the Court of Appeals are the same, and petitioner has not carried his burden.

Moreover, this Court remains bound by Boumediene as circuit precedent despite the Supreme Court's grant of certiorari. See Maxwell v. Snow, 409 F.3d 354, 358 (D.C. Cir. 2005) (explaining that the court "is bound to follow circuit precedent until it is overruled either by an en banc court or the Supreme Court"). Clearly then, this Court is without jurisdiction to grant

petitioner relief on his underlying habeas petition.² And finally, the Court of Appeals, relying on section 3 of the Military Commissions Act of 2006 in denying petitioner's first request for a stay, has concluded that there is no jurisdiction to grant petitioner the relief he currently requests -- a stay of his military commission proceedings. See 10 U.S.C. § 950j(b) ("no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action whatsoever, including any action pending on or filed after the date of the enactment of the Military Commissions Act of 2006, relating to the prosecution, trial, or judgment of a military commission under this chapter").

Accordingly, upon consideration of [175] petitioner's motion to stay proceedings before the military commission, the response thereto, the applicable law, and the entire record, it is hereby

ORDERED that petitioner's motion is **DENIED**.

/s/ John D. Bates
JOHN D. BATES
United States District Judge

Dated: November 7, 2007

²In Al Maqaleh v. Gates, No. 06-1669, 2007 WL 2059128 (D.D.C. July 18, 2007), this Court recognized that it retains the authority to determine its own jurisdiction and the related power "to make orders to preserve the existing conditions and the subject of the petition" until the jurisdictional issues raised by the Military Commissions Act are finally determined by the Supreme Court. Id. at *2 (quoting United States v. United Mine Workers of Am., 330 U.S. 258, 291 (1947)). The Court made that observation in the context of denying without prejudice a motion by the United States to dismiss for lack of jurisdiction a similar habeas petition by a detainee in Afghanistan. Id. That limited exercise of authority to preserve the habeas petition stands in stark contrast to the substantial judicial action requested by petitioner (that would render a significant change to the status quo). Indeed, the Court was cognizant then, as it is now, that "Boumediene remains . . . controlling precedent with respect to the Guantanamo detainees." Id.