

[NOT SCHEDULED FOR ORAL ARGUMENT]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CHAMAN)	
Appellant,)	
)	No. 10-5130
v.)	
)	
BARACK OBAMA, et al.,)	
Appellees.)	
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AMINULLAH)	
Appellant,)	
)	No. 10-5131
v.)	
)	
BARACK OBAMA, et al.,)	
Appellees.)	
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MUSTAFA AHMED HAMLILY)	
Appellant,)	
)	No. 10-5179
v.)	
)	
LEON E. PANETTA, et al.,)	
Appellees.)	
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BENJAMIN HABASHI, et al.,)	
Appellants,)	
)	No. 10-5182
v.)	
)	
BARACK OBAMA, et al.,)	
Appellees.)	
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AHMED ZAID SALEM ZUHAIR)	
Appellant,)	
)	No. 10-5183
v.)	
)	
BARACK OBAMA, et al.,)	
Appellees.)	
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MOHAMMED SULAYMON BARRE)	
Appellant,)	
)	No. 10-5203
v.)	
)	
BARACK OBAMA, et al.,)	
Appellees.)	
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APPELLEES’ OPPOSITION TO PETITIONERS’ MOTION TO CONTINUE ABEYANCE OR REMAND

Appellees respectfully oppose petitioners’ motion to continue abeyance, and Hamlily’s (No. 10-5179), Zuhair’s (No. 10-5183), and Barre’s (No. 10-5203) alternative motion to remand these cases to the district court.¹

1. The procedural and factual background of these cases is set out in our motion for summary affirmance filed on August 29, 2011.

2. Petitioners have each moved for this Court to continue to hold their cases in abeyance, on the grounds that petitioners in *Gul* have filed a petition for rehearing

¹ One petitioner in these consolidated cases, Benjamin Habashi (No. 10-5182), filed no motion to govern.

and suggestion for rehearing en banc with this Court, and may file a petition for certiorari to the Supreme Court if their rehearing petition is denied.

As explained in our motion for summary affirmance, this Court in *Gul* held that Gul and Hamad had suffered no injury redressable in a habeas action against the United States government. In so doing, this Court rejected every argument any of the remaining petitioners made in the district courts about injury, and did so for reasons that are generally applicable to all former detainees in these cases. The reasoning of *Gul* is now law of the circuit and fully controls the remaining cases of former Guantanamo detainees who have been transferred from United States custody and control. *See Maxwell v. Snow*, 409 F.3d 354, 358 (D.C. Cir. 2005) (“[T]his Court is bound to follow circuit precedent until it is overruled either by an en banc court or the Supreme Court.”).

Gul petitioners’ petition for rehearing is not by itself a sufficient basis on which to continue to hold these cases in abeyance. *See In Vo Van Chau v. U.S. Dept. of State*, 891 F.Supp. 650, 654 (D.D.C. 1995) (holding that the court “is bound by the principle of stare decisis to ‘abide by a recent decision of one panel of [the Court of Appeals] unless the panel has withdrawn the opinion or the court en banc has overruled it.’ The fact that a party has petitioned for rehearing, automatically resulting in the stay of the mandate under Rule 41, Fed. R. App. P., is irrelevant”); *see*

also *Chambers v. United States*, 22 F.3d 939, 942 n.3 (9th Cir.1994) (rejecting the argument “that *X-Citement Video* is not binding precedent until the mandate issues in that case. In this circuit, once a published opinion is filed, it becomes the law of the circuit until withdrawn or reversed by the Supreme Court or an en banc court”), *vacated on other grounds*, 47 F.3d 1015 (9th Cir.1995); *United States v. Gomez-Lopez*, 62 F.3d 304, 306 (9th Cir. 1995).

Delaying disposition of the Government’s motion for summary affirmance is not warranted here where the petition for rehearing en banc in *Gul* plainly lacks merit. The decision in *Gul* rejecting petitioners’ various allegedly redressable harms was clearly correct under precedent of the Supreme Court and this Court, including *Spencer v. Kemna*, 523 U.S. 1 (1998), *Lane v. Williams*, 455 U.S. 624 (1982), *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), *Kiyemba v. Obama*, 561 F.3d 509 (D.C. Cir. 2009), and *McBryde v. Committee to Review Circuit Council Conduct*, 264 F.3d 52 (D.C. 2001). The basic holding of *Gul*—that former detainees who have been transferred from custody at Guantanamo are subject to no continuing injury redressable in a habeas action against the United States government—is required by this precedent.

3. In the alternative, some petitioners (Hamlily, Zuhair, and Barre) have asked this Court to remand their cases to the district court for proceedings consistent with

this Court's opinion in *Gul*. They note that *Gul* assumed that the collateral consequences doctrine applies to habeas petitions of former Guantanamo detainees, and contend that they have been subject to collateral consequences that are unique to them and that were never considered by the district court.

Remand is both unnecessary and inappropriate. As we described in our motion for summary affirmance, this Court's holdings in *Gul* are broad, and are not based on the particular facts of any individual case. They can be applied to petitioners' cases here without further factual development. Moreover, in considering and dismissing petitioners' cases, the district court, like this Court in *Gul*, assumed the application of the collateral consequences doctrine. There is nothing for the district court to further do on remand.

Finally, in any event, remand to consider the collateral consequences doctrine would be inappropriate, as this Court only assumed without deciding that the collateral consequences doctrine applied in *Gul*. This Court has not decided that this doctrine applies, because it had no need to do so in *Gul*. That assumption for the purposes of argument is not a proper basis for a remand, particularly when the district court made exactly the same assumption below.

CONCLUSION

For the foregoing reasons, the government respectfully requests that petitioners' motion to hold in abeyance, or, in the alternative, remand, be denied.

s/ Robert Mark Loeb

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s/ Benjamin S. Kingsley

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES**(A) PARTIES AND AMICI**

Chaman v. Obama et al. (No. 10-5130):

Petitioners-appellants:

Chaman

Respondents-appellees:

Barack Obama, President of the United States

Leon E. Panetta, Secretary of Defense

Jeffrey Harbeson, Navy Rear Admiral

Donnie Thomas, Army Colonel

Aminullah v. Obama et al. (No. 10-5131):

Petitioners-appellants:

Aminullah

Respondents-appellees:

Barack Obama, President of the United States

Leon E. Panetta, Secretary of Defense

Jeffrey Harbeson, Navy Rear Admiral

Donnie Thomas, Army Colonel

Hamli v. Panetta et al. (No. 10-5179):

Petitioner-appellant:

Mustafa Ahmed Hamli

Respondents-appellees:

Leon E. Panetta, Secretary of Defense

Jeffrey Harbeson, Navy Rear Admiral

Donnie Thomas, Army Colonel

Habashi et al. v. Obama et al. (No. 10-5182):

Petitioners-appellants:

Benjamin Mohammed Al Habashi

Shaker Amer, as next friend of Benjamin Mohammed al Habashi

Respondents-appellees:

Barack Obama, President of the United States

Leon E. Panetta, Secretary of Defense

Jeffrey Harbeson, Navy Rear Admiral

Donnie Thomas, Army Colonel

Zuhair v. Obama et al. (No. 10-5183):

Petitioners-appellants:

Ahmed Zaid Salem Zuhair

Respondents-appellees:

Barack Obama, President of the United States

Leon E. Panetta, Secretary of Defense

Jeffrey Harbeson, Navy Rear Admiral

Donnie Thomas, Army Colonel

Barre v. Obama et al. (No. 10-5203):Petitioners-appellants:

Mohammed Sulaymon Barre

Respondents-appellees:

Barack Obama, President of the United States

Leon E. Panetta, Secretary of Defense

Jeffrey Harbeson, Navy Rear Admiral

Donnie Thomas, Army Colonel

(B) RULINGS UNDER REVIEW

Orders of the district court:

No. 05-1237 (D.D.C.), docket #112 (Chaman)

No. 05-0887 (D.D.C.), docket #71 (Aminullah)

No. 08-01628 (D.D.C.), docket # 35 (Hamlily)

No. 05-0765 (D.D.C.), docket # 200 (Habashi)

No. 08-0864 (D.D.C.), docket # 231 (Zuhair)

No. 08-01153 (D.D.C.), docket # 174 (Barre).

(C) RELATED CASES

These cases have not previously been before this Court or any other court.

There are thirteen public appeals that are or were pending before this Court and that present the same legal issues as these cases:

Gul v. Obama, et al., No. 10-5117 (D.C. Cir.);

Adel Hamad v. Obama, et al., No. 10-5118 (D.C. Cir.);

Khan v. Obama, et al., No. 10-5019 (D.C. Cir.);

Rimi v. Obama, et al., No. 10-5021 (D.C. Cir.);

Hamoodah, et al. v. Obama, et al., No. 10-5023 (D.C. Cir.);

Al Hajji, et al. v. Obama, et al., No. 10-5024 (D.C. Cir.);

Chaman v. Obama, et al., No. 10-5130 (D.C. Cir.);

Aminullah v. Obama, et al., No. 10-5131 (D.C. Cir.);

Hamlily v. Panetta, et al., No. 10-5179 (D.C. Cir.);

Habashi et al. v. Obama, et al., No. 10-5182 (D.C. Cir.);

Zuhair v. Obama, et al., No. 10-5183 (D.C. Cir.);

Barre v. Obama, et al., No. 10-5203 (D.C. Cir.);

El-Mashad, et al. v. Obama, et al., No. 10-5232 (D.C. Cir.).

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CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2011, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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