

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

MOHAMMED SULAYMON BARRE,	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 08-CV-1153 (HHK)
	)	
BARACK OBAMA, <i>et al.</i> ,	)	
	)	
Respondents.	)	

**RESPONDENTS’ CROSS-MOTION TO TRANSFER THE CASE TO  
JUDGE HOGAN FOR COORDINATION AND MANAGEMENT, OR  
ALTERNATIVELY, FOR A STAY PENDING JUDGE HOGAN’S DECISION,  
AND OPPOSITION TO PETITIONER’S MOTION FOR A STATUS CONFERENCE**

Respondents respectfully submit this Cross-Motion to transfer this case to Miscellaneous No. 08-0444 (TFH), for the purpose of coordination and management or, in the alternative, for a stay pending Judge Hogan’s decision in that case. Additionally, Respondents submit the following in opposition to Petitioner’s Motion for Status Conference.

The Petitioner was released from U.S. custody and transferred to Somaliland in December 2009. *See* Notice, Dkt. No. 161. As a result, Petitioner’s *habeas* case should be dismissed as moot. *Khan v. Obama*, 2009 WL 4251091 (D.D.C. 2009) (Leon, J.) (dismissing *habeas* petitions of former Guantanamo Bay detainees). However, Petitioner’s Motion for a Status Conference (hereinafter “Petitioner’s Motion” or “Motion”) indicates that he wishes to continue litigating the merits of his case. *See* Petitioner’s Motion, Dkt. No. 165. Therefore, the appropriate course of action is to transfer this case to Misc. No. 08--0444 (TFH) for coordination and management purposes before the Honorable Thomas F. Hogan, pursuant to Local Civil Rules 40.6(a) and 40.5(e), as well as the United States District Court for the District of

Columbia's July 1, 2008 Resolution of Executive Session (hereinafter "Court's Resolution") and Judge Hogan's Order of July 3, 2008, 08-mc-0444, Dkt. No. 1.

Alternatively, Respondents respectfully move the Court for a stay of these proceedings pending Judge Hogan's decision on the legal issue – now fully briefed before him – of whether the Court retains jurisdiction over *habeas* petitions after Respondents have relinquished custody of the petitioners. The legal issue briefed before Judge Hogan is directly on point and applicable to this case. Therefore, if this Court does not wish to transfer the case to Judge Hogan, Respondents respectfully request a stay pending Judge Hogan's decision in that case.

### **BACKGROUND**

Petitioner is a former detainee at Guantanamo Bay, Cuba. On December 22, 2009, Respondents filed a Notice stating that the U.S. had relinquished custody of and transferred the Petitioner to the control of Somaliland. *See* Dkt. No. 161; *see also* Petitioner's Motion at ¶ 5.

Because of Petitioner's release, the parties jointly moved the Court to cancel a previously scheduled status conference (Dkt. No. 162) and, on December 30, 2009, the Court granted the joint motion by minute order. Now Petitioner has filed this Motion indicating that he wishes to continue with his *habeas* case despite the fact that he was released from U.S. custody. *See* Motion at ¶¶ 7-8.<sup>1</sup>

### **ARGUMENT**

#### **I. Because this Case Now Involves a Petitioner Previously Detained at Guantanamo Bay, it Should Be Transferred to Judge Hogan**

This Court "resolved by Executive Session to designate [Judge Thomas F. Hogan] to coordinate and manage proceedings in all cases involving petitioners previously detained at

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<sup>1</sup> Pursuant to LCvR 7(m), Respondents' counsel conferred with Petitioner's counsel prior to filing the instant cross motion. Petitioner opposes the requested relief.

Guantanamo Bay, Cuba, so that these cases can be addressed as expeditiously as possible.” *In re: Petitioners Seeking Habeas Corpus Relief in Relation to Prior Detentions at Guantanamo Bay*, Misc. No. 08-0444, Dkt. No. 1, op. at 2 (July 3, 2008). These ongoing cases involving petitioners previously detained at Guantanamo Bay were transferred to Judge Hogan, Misc. No. 08-0444 (TFH), for the purpose of coordination and management.<sup>2</sup> *Id.*; *see also* LCvR 40.6(a) and 40.5(e).

On January 12, 2009, Judge Hogan ordered Respondents and petitioners in 72 cases to file a consolidated brief addressing whether the Court’s constitutionally-based jurisdiction over a *habeas corpus* petition filed by a foreign national detained at Guantanamo Bay, as recognized in *Boumediene v. Bush*, 128 S.Ct. 2229 (2008), is eliminated by the petitioner’s transfer or release from Guantanamo Bay. This issue has now been fully briefed before Judge Hogan and is ripe for decision.

This jurisdictional issue before Judge Hogan applies directly to the case at hand because the Petitioner seeks to continue this case after release from United States’ custody. It now falls under this Court’s decision by Executive Session, as well as the local rules, which encourage transfer to Judge Hogan for coordination and management. Therefore, the Respondents request that this case be transferred as contemplated by the Executive Session to Judge Hogan’s consolidated case, Misc. No. 08-0444.

**II. Alternatively, this Case Should Be Stayed Pending Judge Hogan’s Decision on Whether the Court’s Constitutional Jurisdiction to Hear the Petitioner’s Habeas Case Is Extinguished upon Petitioner’s Release from U.S. Custody**

Alternatively, Respondents respectfully move the Court for a stay of these proceedings until after Judge Hogan has decided whether jurisdiction exists. As Judge Robertson recognized

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<sup>2</sup> Excluded from reassignment were all of the cases over which Judge Richard J. Leon presides.

in *Mahbub Rahman, v. Obama*, Civ. No. 08-1223, “[i]t is not clear that this Court still has jurisdiction” over the *habeas* petition of a petitioner who had been transferred from Guantanamo Bay. *Mahbub Rahman, v. Obama*, Civ. No. 08-1223, Dkt No. 78 (Aug. 25, 2009). Noting that the question of jurisdiction is pending before Judge Hogan, in his capacity as coordinating judge, the Court stayed the case, stating that “[u]ntil the question is resolved, no further proceedings can be had in this case.” *Id.*

Like in *Rahman*, Petitioner Barre has been transferred from Guantanamo Bay, potentially extinguishing jurisdiction in this case. Accordingly, a stay pending Judge Hogan’s decision on the jurisdictional question is appropriate here.

### **CONCLUSION**

For the foregoing reasons, the Court should deny Petitioner’s Motion at this time and grant Respondents’ Cross-Motion to transfer this case to the Honorable Thomas F. Hogan for coordination and management or, in the alternative stay the proceedings, including Petitioner’s Motion, pending Judge Hogan’s decision on whether jurisdiction exists where *habeas* petitioners have been transferred out of U.S. custody.

Dated: March 15, 2010

Respectfully submitted,

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