

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAIFULLAH PARACHA, <i>et al.</i> ,)	
)	
Petitioners,)	
)	
v.)	Civil Action No. 04-CV-2022 (PLF)
)	
GEORGE W. BUSH,)	
President of the United States,)	
<i>et al.</i> ,)	
)	
Respondents.)	

**RESPONDENTS’ REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
OR FOR JUDGMENT AS A MATTER OF LAW, REPLY MEMORANDUM IN
SUPPORT OF MOTION FOR STAY OF PROCEEDINGS PENDING APPEAL,
RESPONSE TO PETITIONER’S MOTION FOR SUMMARY JUDGMENT, AND
RESPONSE TO PETITIONER’S MOTION TO SUPPRESS THE CLASSIFIED RETURN**

Petitioner Saifullah Paracha has filed a response to respondents’ motion to dismiss or for judgment as a matter of law (“Pet’s Dismiss Resp.”) (Docket No. 27), a response to respondents’ motion for stay of proceedings pending appeal (“Pet’s Stay Resp.”) (Docket No. 29), a motion for summary judgment (“Pet’s SJ Mot.”) (Docket No. 28), and a motion to suppress the classified portions of the factual return submitted to the Court as a response to petitioner’s petition for writ of habeas corpus (“Pet’s Mot. to Suppress”) (Docket No. 32). All of petitioner’s filings raise issues that have been briefed and argued by the parties in the coordinated Guantanamo Bay detainee cases, and have been addressed by Judge Leon in the Khalid and Boumediene cases,¹

¹ See Khalid v. Bush, No. 04-CV-1142 (RJL), Boumediene v. Bush, No. 04-CV-1166 (RJL), 2005 WL 100924 (D.D.C. Jan. 19, 2005).

and by Judge Green in eleven of the pending coordinated cases.² In the interest of economy, respondents accordingly hereby incorporate respondents' Reply Memorandum in Support of Motion to Dismiss or for Judgment as Matter of Law filed in In Re Guantanamo Detainee Cases ("Nov. 16 Reply Mem.") on November 16, 2004, attached as Exhibit A. Petitioner's argument that these common issues are not dispositive of his case because he has "an American green card and extensive contacts in America," see Pet's Dismiss Resp. at 2, is unpersuasive. Consistent with relevant and controlling case law, petitioner's actions clearly demonstrate that he has abandoned his status as a lawful permanent resident ("LPR") of the United States. The analysis of his claims, like the assessment of similar claims brought by other Guantanamo Bay habeas petitioners, should proceed on the basis that petitioner is an alien. As explained in respondents' Motion for Stay of Proceedings Pending Appeal ("Mot. for Stay") (Docket No. 26), because petitioner's claims have already been addressed in two conflicting opinions of this Court that will be appealed to the D.C. Circuit, all proceedings in this case should be stayed pending the resolution of all appeals of those opinions. Further proceedings in this case prior to receiving guidance from the D.C. Circuit would be contrary to the interests of judicial efficiency and the economy of litigation resources.

² See In Re Guantanamo Detainee Cases, No. 02-CV-0299 (CKK), *et al.*, 2005 WL 195356 (D.D.C. Jan. 31, 2005).

ARGUMENT

I. The Analysis of Petitioner’s Habeas Petition Is Identical to the Analysis of the Petitions Filed by Other Aliens Detained at Guantanamo Bay Because Petitioner Has Abandoned His LPR Status.

Based on controlling law and undisputed facts, petitioner has abandoned his LPR status and is an alien to the United States. As such, petitioner is not entitled to any rights under our Constitution.³ See Nov. 16 Reply Mem. at 1-9. Petitioner has failed to demonstrate otherwise. The D.C. Circuit has clearly determined that an LPR’s status changes at the point he engages in an abandoning act, “like departing the United States for more than a ‘temporary visit abroad,’ 8 U.S.C. § 1101(a)(27)(A),” and that a formal adjudication of his status by the Board of Immigration Appeals or a voluntary termination of LPR status is not necessary. United States v. Yakou, 393 F.3d 231, 239-42 (D.C. Cir. 2005).⁴ The key inquiry is whether the alien’s activities are “consistent with an intent to return to the United States as soon as practicable . . . Factors to be considered in evaluating the alien’s intent include the alien’s family ties, property holdings, and business affiliations within the United States, and the alien’s family, property, and business

³ Even if petitioner is determined to enjoy constitutional rights, respondents maintain that his claims should be dismissed because he has received adequate due process through the Combatant Status Review Tribunal (“CSRT”) review of his enemy combatant status. See Nov. 16 Reply Mem. at 13-20.

⁴ Petitioner’s belief that Yakou “shows the opposite” because the case is “entangled with the problem of extraterritorial power to regulate the trade of other nations” is misguided. Pet’s Dismiss Resp. at 6. The D.C. Circuit based its decision on authority “aris[ing] directly from the regulatory scheme for recognizing LPR status derived from the immigration laws and indirectly from Congress’s decision to terminate United States citizenship automatically in certain instances without concern for the regulatory implications of an undocumented change of status.” Yakou, 393 F.3d at 241. Thus, there is no reason the Court of Appeals’ reasoning and determination that LPR status can change outside formal administrative action would change or be inapplicable in this case, where the objective factors demonstrating abandonment of LPR status are clear.

ties in the foreign country.” Katebi v. Ashcroft, No. 03-2550, 2005 WL 247986, at *2-3 (1st Cir. Feb. 3, 2005) (citations omitted).

In this case, petitioner’s actions manifesting his abandonment of residency in the United States are undisputed. Petitioner left the United States in 1986 with his wife and children to live in Pakistan with no intention of returning to this country. See Respondents’ Motion to Dismiss or for Judgment as a Matter of Law (“Mot. to Dismiss”), Ex. 2 at ¶ 4 (Docket No. 23); Pet’s Dismiss Resp., Ex. 1 at ¶ 5 (Petitioner and his wife “return[ed] to Pakistan in or around 1986”). At that time, he sold his U.S. residence and bought a house in Karachi, Pakistan, where he lived with his family until his detention by government authorities. See Mot. to Dismiss, Ex. 2 at ¶ 6. Petitioner owns businesses in Pakistan, and does not have an ownership interest in any U.S. business or property.⁵ See id. He has not filed a U.S. tax return since 1999-2000. See id. He made brief visits to the United States until 1999, and has not returned since then. See id. at ¶¶ 4-5; Pet’s Dismiss Resp., Ex. 1 at ¶ 6 (Petitioner and his wife “visited the United States together about once a year from 1986 to 1999 or thereabouts.”).

Petitioner’s “many contacts and relatives” in the United States whom he has visited using his green card, see Pet’s Dismiss Resp. at 8, are insufficient to establish that petitioner remains a permanent resident of the United States. The D.C. Circuit addressed similar circumstances in Yakou:

⁵ Petitioner’s statement that he is a “partner in a purchasing business based in New York” is misleading. Pet’s Dismiss Resp. at 4. The evidence is undisputed that petitioner does not maintain an ownership interest in any U.S. business. See id., Ex. 2 at ¶ 2 (petitioner founded a company with three American citizens that was incorporated with the government of Pakistan); id. at ¶ 8 (petitioner was Chief Executive of “International Merchandise (Pvt.) Ltd., Karachi”). See also id. at 8 (petitioner “had an international partnership with an American partner in New York”).

The inquiry into whether Yakou left the United States for only a “temporary visit abroad” is relatively easy. Yakou departed the United States in 1993 with the intent to never live here again. He moved to London, where he resided until 1998, and then returned to his native Iraq where he has lived ever since. Although during the past eleven years he has traveled to the United States approximately nine times to visit his family, he has stayed for only a few weeks during each visit. *These infrequent and short stays in the United States are insufficient, as a matter of law, to support retention of his LPR status.* See, e.g., Singh, 113 F.3d 1512; Matter of Huang, 19 I. & N. Dec. 749; Matter of Kane, 15 I. & N. Dec. 258; cf. Aleem v. Perryman, 114 F.3d 672, 677 (7th Cir. 1977). The fact that Yakou used his “green card” on several of these occasions to enter the United States prior to 2000 is immaterial; *the relevant inquiry is not whether he may have wanted to retain his LPR status, but whether his actions show that he has abandoned that status.* See Matter of Kane, 15 I. & N. Dec. at 265.

Yakou, 393 F.3d at 241-42 (emphasis added). See also Singh v. Reno, 113 F.3d 1512, 1515 (9th Cir. 1997) (“An alien’s desire to retain his status as a permanent resident, without more, is not sufficient; his actions must support his professed intent.”). Thus, petitioner’s brief, periodic visits to the United States do not compensate for the fact that he sold his U.S. residence and moved his family to Pakistan nearly twenty years ago, and continued to live and work in Pakistan since that time without any intention of moving back to the United States. Furthermore, petitioner’s alleged “large contributions to the American economy” see Pet’s Dismiss Resp. at 2, do not outweigh his lack of ownership in any U.S. business and the establishment of substantial commercial connections to Pakistan through the incorporation of his textile company in that country. All of petitioner’s actions demonstrate that he abandoned his residency in the United States and has been living and working in Pakistan for nearly two decades. Petitioner is an alien to the United States, and his petition for writ of habeas corpus should be treated similarly to the petitions filed by other aliens detained at Guantanamo Bay.

II. This Case Should Be Stayed Pending the Resolution of the Appeals of Decisions in the Other Guantanamo Bay Detainee Cases Adjudicating Common Issues.

Although petitioner believes that the issues he raised in his motion for summary judgment and other filings are “unique to his own case,” see Pet’s Stay Resp. at 2, these issues have been briefed, argued, and adjudicated by Judges of this Court in other Guantanamo Bay detainee cases, and are being (or will be) appealed to the D.C. Circuit. In addition to adopting the Petitioners’ Memorandum in Opposition to Respondents’ Motion to Dismiss filed in In Re Guantanamo Detainee Cases on November 5, 2004, as well as “those portions of Judge Green’s January 31, 2005, opinion in the consolidated Guantanamo cases that reject respondents’ arguments,” Pet’s Dismiss Resp. at 2, petitioner briefs other issues common to all of the Guantanamo Bay detainee cases. These include: (1) the scope of the definition of “enemy combatant,” see Pet’s SJ Mot. at 4-11; Nov. 16 Reply Mem. at 9-13; (2) whether the CSRT procedures satisfy the requisite standards of due process, see Pet’s SJ Mot. at 11-17; Nov. 16 Reply Mem. at 13-19; and (3) whether the government may rely on classified evidence to detain an enemy combatant without sharing that information with the detainee, see Pet’s Mot. to Suppress at 3-5; Nov. 16 Reply Mem. at 16-18.⁶

As explained in respondents’ motion to stay, on January 31, 2005, Judge Green entered an order (and memorandum opinion) in eleven of the pending Guantanamo Bay detainee cases denying in part and granting in part respondents’ motion to dismiss or for judgment as a matter of

⁶ Petitioner’s argument that the CSRT “refused to consider available and relevant evidence Paracha proffered,” see Pet’s SJ Mot. at 18, is premature at this stage of the proceedings. The appeals of the other Guantanamo cases will determine whether all of these cases should go forward at all, and if so, on what basis. If the outcome of the appeals requires further proceedings in this case, and the Court, after reviewing the factual return for petitioner, finds that issues remain to be litigated regarding his individual CSRT record, such issues could be addressed, if at all, in individualized petitioner-specific briefing at that time.

law. See 2005 WL 195356. Contrary to Judge Leon’s decision in Khalid and Boumediene, Judge Green determined, *inter alia*, that constitutional “due process” protections apply to aliens detained at Guantanamo Bay and that the CSRT proceedings do not satisfy these due process requirements. See id. at *8-31. Judge Green found that due process requires each detainee be permitted access, if not directly, at least through counsel, to all material evidence (including classified evidence) upon which the CSRT relies in affirming the detainee’s status as enemy combatant. See id. at *22-26. Judge Green also believed that the definition of “enemy combatant” as used in the CSRT proceedings was susceptible to overbroad application. See id. at *28-31. Further, Judge Green agreed with the decision of Judge Robertson in Hamdan v. Rumsfeld, 344 F. Supp. 2d 152, 165 (D.D.C. 2004), and concluded that the Third Geneva Convention is “self-executing” and can provide petitioners with a claim in a habeas action. 2005 WL 195356 at *31-33. Judge Green, however, certified her January 31, 2005 decision and stayed proceedings in the eleven cases in which the January 31, 2005 order was entered, “for all purposes pending resolution of all appeals.” While Judge Green left the decision whether to stay cases other than the eleven (including this case) to the individual judges in those cases, see Order Granting in Part and Denying in Part Respondents’ Motion for Certification of Jan. 31, 2005 Orders and for Stay (Feb. 3, 2005) (Green, J.), she denied a motion for reconsideration of the stay in the eleven cases

in light of the substantial resources that would be expended and the significant burdens that would be incurred should this litigation go forward, and . . . [in] recognition that a reversal of the Court’s January 31, 2005 rulings would avoid the expenditure of such resources and incurrence of such burdens

See Order Denying Motion for Reconsideration of Order Granting Stay Pending Appeal (Feb. 7, 2005) (Green, J.).

On February 9, 2005, respondents filed a petition for interlocutory appeal of Judge Green's January 31, 2005 decision with the D.C. Circuit, see 28 U.S.C. § 1292(b), and requested that the appeal proceed on an expedited basis. Further, petitioners in Al Odah, No. 02-CV-0828 (CKK), have appealed the stay order. In addition, respondents' counsel understands that Judge Leon's decision in Khalid and Boumediene will be appealed by petitioners in those cases. And Judge Robertson's decision in Hamdan is already on appeal to the D.C. Circuit, with oral argument currently scheduled for March 8, 2005. See Hamdan, No. 04-5393 (D.C. Cir.).

As Judge Green recognized, her January 31, 2005 order "addresses issues common" to this case. See 2005 WL 195356, at *7. Judge Leon's decision in Khalid and Boumediene and Judge Robertson's decision in Hamdan also address some or all of the same issues. Appellate proceedings are pending or will soon be filed in each of these matters. Furthermore, as Judge Green also recognized, further proceedings consistent with her January 31, 2005 rulings promise to impose "significant burdens" that may be avoided, depending on the outcome of the appeals. See Feb. 7, 2005 Order. In addition, the government is seeking to have the various appeals in this matter expedited. It would be a needless expenditure of judicial and litigation resources to proceed in this case prior to receiving guidance from the D.C. Circuit through these appeals regarding the issues in this case, including whether and how to proceed. Thus, the Court should hold respondents' motion to dismiss or for judgment as a matter of law, petitioner's motion for summary judgment, and petitioner's motion to suppress the classified return in abeyance pending

the outcome of the appeals of the decisions by Judges of this Court in the other Guantanamo Bay detainee cases.

CONCLUSION

For the reasons stated, respondents respectfully request that their motion for stay of proceedings pending appeal be granted, and that all proceedings in this case be stayed pending the outcome of the appeals of the decisions by Judges of this Court in the other Guantanamo Bay detainee cases.

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Respectfully submitted,

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