

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14-1203

September Term, 2014

Filed On: November 12, 2014

In re: Abd Al-Rahim Hussein Muhammed
Al-Nashiri,

Petitioner

BEFORE: Rogers, Kavanaugh,* and Pillard, Circuit Judges

ORDER

Upon consideration of the petition for a writ of mandamus; the motion for leave to proceed in forma pauperis; and the motion for stay, the opposition thereto, the reply, and the notice filed by petitioner, it is

ORDERED that the motion for leave to proceed in forma pauperis be granted. It is

FURTHER ORDERED that motion for stay be granted. Proceedings before the United States Court of Military Commission Review in CMCR Case No. 14-001 are hereby stayed pending further order of the court. The purpose of this stay is to give the court sufficient opportunity to consider the mandamus petition and should not be construed as a ruling either on the jurisdictional question presented by the petition or on the merits of the petition. It is

FURTHER ORDERED, on the court's own motion, that this case be expedited. It is

FURTHER ORDERED, on the court's own motion, that the United States file an answer to the mandamus petition, not to exceed 30 pages, within 21 days of the date of this order. See D.C. Cir. Rule 21(a). Petitioner may file a reply, not to exceed 15 pages, within 10 days after the answer is filed. The parties are directed to file 8 paper copies of their submissions (including 8 additional copies of the petition) and to follow the form for brief covers. See Fed. R. App. P. 32. The parties are directed to hand deliver the paper copies of their submissions to the Clerk's office on the date due.

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The Clerk is instructed to calendar the petition for oral argument on an appropriate date after the completion of briefing. The parties will be notified separately of the oral argument date and composition of the merits panel.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Scott H. Atchue

Deputy Clerk

* A statement by Circuit Judge Kavanaugh, dissenting from the granting of the motion for stay, is attached.

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Kavanaugh, Circuit Judge, dissenting:

This Court has no authority to grant a stay in this case. Al-Nashiri is a defendant in a pending military commission trial at Guantanamo. One issue relating to that trial is now on interlocutory appeal to the Court of Military Commission Review. Al-Nashiri has filed a petition for mandamus in this Court, raising constitutional challenges to the composition of the Court of Military Commission Review. He asks this Court to stay the proceedings before the Court of Military Commission Review pending resolution of his petition for mandamus. The problem for Al-Nashiri's argument is that this Court has jurisdiction only over "a final judgment" rendered by a military commission. 10 U.S.C. § 950g(a); *Khadr v. United States*, 529 F.3d 1112, 1115-17 (D.C. Cir. 2008). There is no final judgment in this case. And except where there is a final judgment, "no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to *any* aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination." 28 U.S.C. § 2241(e)(2) (emphasis added). That language could hardly be clearer. If Al-Nashiri is convicted and exhausts his remedies in the military justice system, he then may raise in this Court his constitutional challenges to the composition of the Court of Military Commission Review. See 10 U.S.C. § 950g(a)-(b); see *also* 28 U.S.C. § 2241(e)(2). But not now.

In short, we have no authority to grant a stay in this case. I respectfully dissent.