

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ABU WA'EL (JIHAD) DHIAB, :
 :
 Petitioner, :
 :
 v. : Civil Action No. 05-1457 (GK)
 :
 BARACK OBAMA, *et al.*, :
 :
 Defendants. :

ORDER

Petitioner has filed a Motion for Reconsideration of this Court's Order of July 8, 2013 [Dkt. No. 185], the Government has filed an Opposition [Dkt. No. 188], and Petitioner has filed a Reply [Dkt. No. 189]. The Motion shall be **denied** for the following reasons.

1. Although Petitioner does not identify the Federal Rule of Civil Procedure Motion under which he is proceeding, there is no question that the Motion is made pursuant to Federal Rule of Civil Procedure 54(b), which governs the reconsideration of interlocutory orders. However, Petitioner has failed to satisfy the well-known requirements of that rule. Petitioner has not presented evidence that "the Court patently misunderstood the parties, [or] made a decision beyond the adversarial issues presented, [or] made an error in failing to consider controlling decisions or data, [or] whether a controlling or significant change in the law has occurred." Negley v. Federal Bureau of Investigation, 825 F. Supp. 2d 58, 60 (D.D.C. 2011).

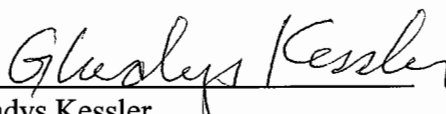
2. As to the merits, Petitioner offers a brand new rationale in his Motion. He suggests that 28 U.S.C. § 2241(e)(2) bars only non-habeas relief, and therefore habeas relief is the only remedy available to Petitioners for challenging conditions of confinement that deprive them of

substantial rights. Petitioner also argues that force feeding is clearly to be considered a “substantial right.” Pet.’s Mot. at 2.

The Government is correct that numerous Judges in this District have also held, as this Judge did, that § 2241(e)(2) is a bar to jurisdiction of conditions of treatment cases, and cites many cases in support of that argument. Petitioner cites no case of any recent vintage, which would support his interpretation of 28 U.S.C. § 2241(e).

3. Our Court of Appeals will have an opportunity in the very near future to address the important issues that Petitioner has raised. In Deghayes, et al. v. Obama, et al., Case No. 04-cv-2215, Hadjarab, et al. v. Obama, et al., Case No. 05-cv-1504, and Belbacha, et al. v. Obama, et al., Case No. 05-cv-2349, cases very similar to the one presently before this Court, three other Petitioners did not prevail before Judge Collyer, They then filed an emergency motion for injunction pending appeal with the Court of Appeals. That motion was denied, but the Court of Appeals adopted an expedited briefing schedule, which will be completed by September 11, 2013. Oral argument has been scheduled for October 18, 2013. Given the time frame set forth by the Court of Appeals, it is probable that a decision will issue in the near future.

August 29, 2013



Gladys Kessler
United States District Judge

Copies via ECF to all counsel of record