

order to keep the Court apprised of the course of the military court proceedings. Req. at 4. The Request also stated that, if the Court believes it must consider formal stay and abeyance of these proceedings, Petitioner would brief that issue at the Court's direction. *See id.* at 4 n.4 (citing non-AEDPA capital cases where proceedings were stayed pending exhaustion). Petitioner therefore will continue on that path and will only address the propriety of a formal abeyance if the Court denies the pending Request and/or so directs.¹

3. Petitioner additionally responds to three of the Army's contentions. First, the Army claims that Petitioner's recent filing in the military courts amounts to "his own concession that those seven claims have not been exhausted." Opp. at 13; *accord id.* at 15, 16. That is untrue. Petitioner's filing was prompted by the Army's *assertion* of a non-exhaustion defense as to various claims and sub-claims in the amended habeas petition. Petitioner concedes only that the Army has raised the issue and that the military courts should be given the first opportunity to address it. *See* Req. Ex. 1 at 8-9. Indeed, Petitioner believes that some of the Army's non-exhaustion assertions are "specious" and "groundless," but nonetheless pled all of the purportedly unexhausted claims in his coram nobis petition so that the military courts could review them "to the extent" that those courts agree with the Army's assertion of non-exhaustion. *See id.* at 40, 57, 119-20.

4. Second, and relatedly, the Army ignores the fact that it has asserted non-exhaustion in vague and general terms, and only as to certain *parts* of some claims. *See, e.g.,* Opp. Pet'r's Mot. Am. (Doc. 44) at 5, 8. The Army thus mischaracterizes Petitioner's military court filing as containing "seven of the twenty-one claims pending before this Court." Opp. 1-2; *see id.* at 11-12.

¹ As expected, the military courts are moving expeditiously in this matter and have already set a briefing schedule, which is attached hereto for the Court's information.

Even a cursory reading of the coram nobis petition, however, reveals that Petitioner erred on the side of over-inclusiveness and that the line between which claims, and which claim-parts, have and have not been exhausted is unclear. *See* Req. Ex. 1 at 60, 119 (explaining that Petitioner has submitted claims to the military courts in “an abundance of caution”). It is neither practical nor necessary for this Court to attempt to draw that line before the military courts have the opportunity to do so.

5. Finally, the Army’s seventeen-page Opposition, in which it invokes different, conflicting lines of case law to argue against a stay, underscores the significant uncertainty and additional litigation that could result from the Court’s consideration of formal stay and abeyance. *Compare* Opp. at 10 (arguing that “federal district courts must dismiss mixed habeas petitions”) *with id.* at 16 (arguing that a “federal district court has discretion to stay a mixed petition”) (citations omitted). While Petitioner believes that this Court can exercise its discretion to stay these proceedings, *see* Req. at 4 n.4 (citing cases), the better course would be to maintain this case on the Court’s active docket so that the parties can continue briefing relevant matters and so that this litigation can proceed promptly, as necessary, upon completion of the military court proceedings.

WHEREFORE, Petitioner respectfully requests that this Court maintain this matter on its active docket and await final action by the military courts before taking dispositive action in this case. Further, Petitioner requests leave to brief the propriety of formal abeyance if the Court decides to address that issue.

Respectfully Submitted,

/s/ Billy Nolas

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Dated: March 7, 2011

CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2011, the foregoing *Petitioner's Reply in Support of His Request that the Court Await the Action of the Military Courts Before Taking Dispositive Action in This Case* was served through the Court's electronic delivery system upon the following:

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UNITED STATES ARMY COURT OF CRIMINAL APPEALS

Before
TOZZI, JOHNSON, and BURTON
Appellate Military Judges

Inmate RONALD GRAY
United States Army, Petitioner

v.

Colonel ERIC BELCHER,
United States Army, Commandant,
United States Disciplinary Barracks,
Fort Leavenworth, Kansas, Respondent

ARMY MISC 20110093

ORDER


On 11 February 2011, Petitioner filed with this court a Petition for Extraordinary Relief in the Nature of a Writ of Coram Nobis.

NOW, THEREFORE, IT IS ORDERED:

1. That the Government Appellate Division shall answer the pleadings which have been filed by counsel for Petitioner within thirty (30) days of this order;
2. That Petitioner may file a reply to the Government's answer within thirty (30) days of receipt of the Government's answer to this order.

DATE: 17 February 2011

FOR THE COURT:



MALCOLM H. SQUIRES, JR.
Clerk of Court

CF: JALS-DA	JALS-GA
JALS-CR3	JALS-TJ
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