

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

In the Matter of the Application of	)	
	)	
COMMITTEE ON FINANCE	)	Misc. No: 07-0134 (TFH)
WASHINGTON, D.C. 20510	)	
	)	
For a Writ of Habeas Corpus	)	
Ad Testificandum.	)	
_____	)	

**EMERGENCY MOTION TO QUASH**

The Federal Bureau of Prisons, through undersigned counsel, respectfully files this motion to quash the Writ of Habeas Corpus As Testificandum issued by this Court on April 4, 2007.

**BACKGROUND**

From the process received by undersigned counsel, it appears that on an unknown date, Kolan Davis, Republican Chief Counsel for the Senate Committee on Finance, and William Wynne, Tax Counsel for the Senate Committee on Finance, submitted to this Court an Application for Writ of Habeas Corpus Ad Testificandum. See Exhibit 1 (Application for Writ of Habeas Corpus Ad Testificandum). This Application requested that the Court issue a Writ requiring the Honorable John Clark, Director, United States Marshals Service, and Adam M. Torres, United States Marshal for the Central District of California, produce Evangelos Dimitrios Soukas before the Committee on Finance on April 11, 2007 and April 12, 2007. See Ex. 1 p.2.

On April 4, 2007, this Court issued a Writ of Habeas Corpus As Testificandum. See Exhibit 2 (Apr. 4, 2007 Writ of Habeas Corpus As Testificandum). As requested by Messrs. Davis and Wynne, this Writ ordered Messrs. Clark and Torres to produce Soukas for

interrogation by the Committee on Finance until such Committee no longer requires his presence. See Ex. 2.

Inmate Soukas has been committed to the custody of the Federal Bureau of Prisons to serve a term of imprisonment. See Declaration of John M. Vanyur ("Vanyur Decl.") (attached as Exhibit 3). Mr. Soukas is currently housed at the Federal Transfer Center, Oklahoma City (FTC) a facility owned and operated by the Federal Bureau of Prisons. Vanyur Decl. Mr. Soukas was transported to FTC Oklahoma from his designated facility, the Federal Correctional Institution (FCI) Victorville, California, by the United States Marshals Service. Vanyur Decl.

Inmate Soukas is currently serving a sentence of more than 8 years and is classified as medium security due to the nature of the offense (involved a loss of more than \$1 million) and a criminal history that includes serious offenses. Vanyur Decl. As explained in the Vanyur Declaration, the Bureau of Prisons believes that allowing inmate Soukas to testify will create security concerns at the institution to which Soukas will return (FCI Victorville). Vanyur Decl. The concern of the BOP is based on one of the fundamental principles in managing safe and secure correctional institutions: to the greatest extent possible, inmates should have a similar status; none should be allowed to have elevated status over the others. Vanyur Decl. This is because with elevated status comes a sense of power for the inmate. Vanyur Decl. This power allows the inmate to take advantage of, direct and/or manipulate other inmates, thereby creating a dangerous environment for staff and inmates. Vanyur Decl. Additionally, after a time other inmates begin to resent the inmate with the elevated status and he or she becomes a target, creating another dangerous situation for staff and inmates. Vanyur Decl.

The concern described above has been critical to many of the decisions made over the past few years by the Bureau of Prisons to deny requests to interview inmates on national television. Vanyur Decl. While each interview request is considered by the warden of the facility where the inmate is housed, and may be denied based on specific security concerns present in that case, very often the concerns relate to the inmate gaining elevated status as a result of appearing on television. Vanyur Decl. In fact, in some instances the concerns relate more directly to the inmate describing behaviors that other inmates would find offensive and would make the interviewee a target among the inmate population. Vanyur Decl. Thus, based upon the foregoing, the Bureau of Prisons has concerns about permitting Soukas to testify before the Committee on Finance under the current writ.

Moreover, BOP is also concerned about allowing Soukas to appear on national television, testifying before a Senate committee alongside high level government officials poses safety and security concerns for the BOP. Vanyur Decl.

### ARGUMENT

#### **I. THE MARSHALS SERVICE DOES NOT HAVE CUSTODY OF SOUKAS**

It is well accepted that a Court issuing a writ of habeas corpus must do so to the person with custody of the inmate. Braden v. 30th Judicial Cir. Ct. of Ky., 410 U.S. 484, 494 (1973) ("A writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in . . . custody."). Inmate Soukas has been committed to the custody of the Federal Bureau of Prisons to serve a term of imprisonment. Presently Mr. Soukas is housed at the Federal Transfer Center, Oklahoma City (FTC) a facility owned and operated by the Federal Bureau of Prisons. Mr. Soukas transported to FTC Oklahoma from his designated facility, the

Federal Correctional Institution (FCI) Victorville, California by the United States Marshals Service. Because the writ was issued to the Marshals Service, not the person with custody over the inmate (BOP Warden), it is ineffective as a matter of law.

**II. A WRIT OF HABEAS CORPUS AD TESTIFICANDUM IS UNAVAILABLE TO COMPEL TESTIMONY BEFORE CONGRESS**

Federal Courts are courts of limited jurisdiction. A writ of habeas corpus ad testificandum is used to secure the presence of a prisoner for testimony in court. The specific authority for a Court to issue a writ of habeas corpus ad testificandum arises from 28 U.S.C. § 2241(c), which states, "The writ of habeas corpus shall not extend to a prisoner unless . . . (c) it is necessary to bring him *into court* to testify or for trial." 28 U.S.C. § 2241 (emphasis added). Pursuant to the plain language of this statute, this Court should quash the writ at issue because the issuance of the writ is not authorized by statute – the statute authorizing the writ states that such writs may be issued when necessary to bring the prison "into court," not before Congress. Bell Atlantic Tel. Cos v. FCC, 131 F.3d 1044, 1047 (D.C. Cir. 1997) ("The first traditional tool of statutory construction focuses on the language of the statute." citing Bailey v. United States, 516 U.S. 137 (1995)).

Counsel for the Senate Committee on Finance applied for the writ at issue in this action to compel interrogation by, and testimony before, the Committee on Finance. The application does not state the legal authority upon which the application is based. There can be no dispute that the application did not request that Soukas be brought before a Court – the Committee on Finance is *not* a Court. Similar to the application for the writ, the writ issued by this Court on April 4 commanded that Soukas be brought before the Committee on Finance for purposes of interrogation and testimony, not before a Court.

Accordingly, the writ at issue is beyond the authority of this Court, as this Court is authorized to issue writs to compel an inmate to testify before a court, not before a Congressional Committee.

Although courts may also issue a writ pursuant to the All Writs Act, 28 U.S.C. § 1652, writs issued under that section may be issued only as “necessary or appropriate in aid of [the court’s] respective jurisdictions and agreeable to the usages and principles of law.” See 28 U.S.C. § 1652(a). The application filed by Messrs. Davis and Wynne is devoid of any explanation as to why the writ at issue is necessary or appropriate to aid in this Court’s jurisdiction. See Exhibit 1. In fact, the application filed by Messrs. Davis and Wynne is devoid of any legal support, or even a citation to any legal authority. Thus, the writ at issue is also inappropriate pursuant to 28 U.S.C. § 1652(a) and should be quashed.<sup>1</sup>

### III. THIS COURT ISSUED THE WRIT ON THE BASIS OF A FAULTY APPLICATION

Pursuant to the Rules of Procedure adopted by the Committee on Finance on January 17, 2007, see Exhibit 3 (also available at: <http://www.senate.gov/~finance/rules.pdf>), the Committee

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<sup>1</sup> Although this Court has subject matter jurisdiction to hear a civil action by the Senate or any authorized committee or subcommittee thereof to enforce a subpoena or order of the Senate, committee or subcommittee thereof, see 28 U.S.C. § 1365, that section is inapplicable to this matter. The filing by the Committee on Finance was not a subpoena or order of the Committee, it was, instead, an application for a Writ of Habeas Corpus Ad Testificandum. Thus, 28 U.S.C. § 1365 is inapplicable to this matter and does not provide this Court jurisdiction to issue the writ at issue. This statutory provision is also inapplicable because the provision, on its face, “shall not apply to an action to enforce, to secure a declaratory judgment concerning the validity of, or to prevent a threatened refusal to comply with, any subpoena or order issued to an officer or employee of the executive branch of the Federal Government acting within his or her official capacity.” Id. § 1363(a).

is authorized to compel testimony by Subpoena only. See Exhibit 3 p.3, Rule 10. Specifically, Rule 10, titled Subpoenas, states

Witnesses and memoranda, documents, and records may be subpoenaed by the chairman of the committee with the agreement of the ranking minority member or by a majority vote of the committee. Subpoenas for attendance of witnesses and the production of memoranda, documents, and records shall be issued by the chairman, or by any other member of the committee designated by him.

Exhibit 4 (also available at: <http://www.senate.gov/~finance/rules.pdf>).

The plain language of the Committee on Finance's Rules do *not* permit the Committee or its Staff to request testimony through an application for a writ of habeas corpus ad testificandum.<sup>2</sup> Because the application was filed without proper authority, this Court should quash the April 4, 2007 Writ.

**IV. THE FACTORS AFFECTING THE PROPRIETY OF THE ISSUANCE OF A WRIT SUGGEST THAT THE WRIT SHOULD BE QUASHED**

One factor that is to be weighed in issuing a writ of habeas corpus ad testificandum is any potential danger or security risks. See *In re Larson*, 232 B.R. 396 (Bankr. D. Wis. 1999) (citing eight factors). In this matter, permitting Soukas to testify before Congress pursuant to the current writ raises serious security concerns.

Inmate Soukas is currently serving a sentence of more than 8 years and is classified as medium security due to the nature of the offense (involved a loss of more than \$1 million) and a criminal history that includes serious offenses. Vanyur Decl. As explained in the Vanyur Declaration, the Bureau of Prisons believes that allowing inmate Soukas to testify will create

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<sup>2</sup> As set forth previously, the likely reason the Rules are devoid of this authority is that the Statute authorizing the Court to issue such a writ do so for testimony in court, not before Congress.

security concerns at the institution to which Soukas will return (FCI Victorville). Vanyur Decl. The concern of the BOP is based on one of the fundamental principles in managing safe and secure correctional institutions: to the greatest extent possible, inmates should have a similar status; none should be allowed to have elevated status over the others. Vanyur Decl. This is because with elevated status comes a sense of power for the inmate. Vanyur Decl. This power allows the inmate to take advantage of, direct and/or manipulate other inmates, thereby creating a dangerous environment for staff and inmates. Vanyur Decl. Additionally, after a time other inmates begin to resent the inmate with the elevated status and he or she becomes a target, creating another dangerous situation for staff and inmates. Vanyur Decl.

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Moreover, BOP is also concerned about allowing Soukas to appear on national television, testifying before a Senate committee alongside high level government officials poses safety and security concerns for the BOP. Vanyur Decl.

Based upon the real and likely security concerns in permitting Soukas to testify pursuant to the current writ, this Court should quash the writ.

**CONCLUSION**

For the reasons set forth herein, the Bureau of Prisons respectfully requests that this Court quash its April 4, 2007 Writ of Habeas Corpus Ad Testificandum. Likewise, the Bureau of Prisons requests that the Court hold a hearing in this matter.