

No. _____

In the Supreme Court of the United States

KHALED A. F. AL ODAH, *ET AL.*,

Petitioners,

v.

UNITED STATES OF AMERICA, *ET AL.*,

Respondents.

**On Petition For Writ Of Certiorari To The United States Court of Appeals for the District
of Columbia Circuit**

**MOTION TO EXPEDITE BRIEFING
SCHEDULE AND ORAL ARGUMENT**

DAVID J. CYNAMON
MATTHEW J. MACLEAN
OSMAN HANDOO
PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, DC 20037
Telephone: 202-663-8000

GITANJALI GUTIERREZ
J. WELLS DIXON
SHAYANA KADIDAL
CENTER FOR
CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, NY 10012
Telephone: 212-614-6438

THOMAS B. WILNER
Counsel of Record
NEIL H. KOSLOWE
AMANDA E. SHAFER
SHERI L. SHEPHERD
SHEARMAN & STERLING LLP
801 Pennsylvania Ave., N.W.
Washington, DC 20004
Telephone: 202-508-8000

GEORGE BRENT MICKUM IV
SPRIGGS & HOLLINGSWORTH
1350 "I" Street N.W.
Washington, DC 20005
Telephone: 202-898-5800

Counsel for Petitioners
Additional Counsel Listed on Inside Cover

JOHN J. GIBBONS
LAWRENCE S. LUSTBERG
GIBBONS P.C.
One Gateway Center
Newark, NJ 07102
Telephone: 973-596-4500

MARK S. SULLIVAN
CHRISTOPHER G. KARAGHEUZOFF
JOSHUA COLANGELO-BRYAN
DORSEY & WHITNEY LLP
250 Park Avenue
New York, NY 10177
Telephone: 212-415-9200

MARC D. FALKOFF
COLLEGE OF LAW
NORTHERN ILLINOIS
UNIVERSITY
DeKalb, IL 60115
Telephone: 815-753-0660

PAMELA CHEPIGA
ANDREW MATHESON
KAREN LEE
SARAH HAVENS
ALLEN & OVERY LLP
1221 Avenue of the Americas
New York, NY 10020
Telephone: 212-610-6300

ANDREW A. JACOBSON
JENNER & BLOCK LLP
330 N. Wabash Avenue
Chicago, IL 60611-7603
Telephone: 312-923-2923

JOSEPH MARGULIES
MACARTHUR JUSTICE CENTER
NORTHWESTERN UNIVERSITY
LAW SCHOOL
357 East Chicago Avenue
Chicago, IL 60611
Telephone: 312-503-0890

BAHER AZMY
SETON HALL LAW SCHOOL
CENTER FOR SOCIAL JUSTICE
833 McCarter Highway
Newark, NJ 07102
Telephone: 973-642-8700

DAVID H. REMES
COVINGTON & BURLING
1201 Pennsylvania Avenue, NW
Washington, DC 20004
Telephone: 202-662-5212

SCOTT SULLIVAN
DEREK JINKS
UNIVERSITY OF TEXAS
SCHOOL OF LAW
RULE OF LAW IN WARTIME
PROGRAM
727 E. Dean Keeton Street
Austin, TX 78705
Telephone: 512-471-5151

MARC A. GOLDMAN
JENNER & BLOCK LLP
601 13th Street, N.W.
Suite 1200 South
Washington, DC 20005-3823
Telephone: 202-609-6087

CLIVE STAFFORD SMITH
JUSTICE IN EXILE
636 Baronne Street
New Orleans, LA 70113
Telephone: 504-558-9867

DOUGLAS J. BEHR
KELLER AND HECKMAN LLP
1001 G Street, NW, Ste 500W Washington,
DC 20001
Telephone: 202-434-4100

MICHAEL D. MORI
MAJOR, U.S. MARINE CORPS
Office Of Military Commissions
Office Of The Chief Defense Counsel
1099 14th Street, NW, Ste 2000E
Washington, DC 20005
Telephone: 202-761-0133 x116

ERWIN CHEMERINSKY
STEPHEN YAGMAN
DUKE LAW SCHOOL
Science Drive &
Towerview Rd.
Durham, NC 27708
Telephone: 919-613-7173

Petitioners, foreign nationals held in the custody of the United States at Guantanamo Bay Naval Station, Cuba, respectfully move pursuant to Supreme Court Rule 21 for expedited consideration of their petition for certiorari to review the decision of the United States Court of Appeals for the District of Columbia Circuit issued in the above-captioned cases on February 20, 2007. *See* Petition for Writ of Certiorari, Appendix A, App. 1-54.¹ The Petition for Writ of Certiorari is submitted along with this motion. Petitioners seek expedited consideration to allow the case, if certiorari is granted, to be decided during the 2006 Term. The urgency and importance of the questions presented warrant such expedited consideration.

The Solicitor General's Office has agreed that the Respondents will file their response to the petition on March 21, 2007, and will address any further scheduling issues in the response to the petition. Petitioners respectfully request that the Court consider the petition at its conference on March 30, 2007; and, if review is granted, that the case be set for briefing and argument on the schedule described below, or otherwise as may suit the Court.

Petitioners waive the 10-day period provided for in Supreme Court Rule 15.5 from the filing of an opposition to a petition for certiorari and the distribution of the petition and other papers to the Court.

The grounds for this motion are as follows:

1. Petitioners are foreign nationals imprisoned by the United States at Guantanamo Bay Naval Station, Cuba. Most have been imprisoned at Guantanamo for more than five years and have not been charged with any offense. Each is being held as an "enemy combatant," under

¹ The Court of Appeals' decision also dismissed the petitions of the Guantanamo detainees who were appellants in *Boumediene v. Bush*, Nos. 05-5062 and 5063 (D.C. Cir.), which were heard together with Petitioners' cases. Petitioners have conferred with the *Boumediene* petitioners and are proposing the same expedited schedule for briefing and argument. The Solicitor General's Office has agreed to file its response to both petitions for certiorari on March 21, 2007.

an extraordinarily elastic definition of that term. Each was designated an “enemy combatant” by the Executive in the first instance. The Executive’s designations were later ratified by “Combatant Status Review Tribunals,” which the United States hastily convened in the wake of this Court’s decision in *Rasul v. Bush*, 542 U.S. 466 (2004). Those tribunals lacked the most basic elements of due process and blocked Petitioners’ claims of innocence and wrongful imprisonment from judicial review.

2. Petitioners filed habeas petitions in the United States District Court for the District of Columbia. On February 20, 2007, nearly two years after the initial round of briefing, three rounds of supplemental briefing, and two oral arguments, a divided panel of the United States Court of Appeals for the District of Columbia Circuit dismissed their habeas petitions, holding that (1) Section 7 of the Military Commissions Act of 2006 withdrew the jurisdiction of the federal courts to entertain Petitioners’ habeas claims, and (2) Petitioners cannot challenge Congress’s withdrawal of habeas jurisdiction under the Suspension Clause because Petitioners are foreign nationals held outside the sovereign territory of the United States. *See Boumediene v. Bush*, No. 05-5062, at 12 and 18 (Feb. 20, 2007) (slip op.).

3. Petitioners who were the plaintiffs in *Al Odah v. United States*, No. 05-5064 (D.C. Cir.), filed their habeas petition May 1, 2002. Others filed their petitions after this Court’s decision in *Rasul* that the federal courts have jurisdiction under 28 U.S.C. § 2241 to entertain habeas actions brought by foreign nationals imprisoned at Guantanamo, finding Guantanamo to be United States territory “for all practical purposes.” *See id.* at 487 (Kennedy, J., concurring). But two-and-one-half years after this Court stated in *Rasul* that Petitioners’ allegations “unquestionably describe ‘custody in violation of the laws of the United States,’” *id.* at 483 n.15, and remanded the case with directions to the District Court to “consider . . . the merits of

petitioners' claims," *id.* at 485, none of the Petitioners, nor any of the hundreds of other prisoners who have filed habeas petitions, has had a lawful hearing to test the factual and legal bases of his detention.

4. The United States asserts that the prisoners may be detained for the rest of their lives without any such judicial hearing. The prolonged detention and isolation of the detainees, with no end in sight and no hope of a fair hearing, have left many of the detainees in complete despair. Many detainees have given up hope of ever being released; most have abandoned their faith that the American legal system will ever bring them justice.²

5. Petitioners and hundreds of other prisoners will be directly affected by the timing of this Court's disposition of this case. In the two years during which appeals in Petitioners' habeas cases were pending before the Court of Appeals, all of the Guantanamo habeas cases, including those of Petitioners, were stayed in the District Court. As Senior District Judge Gladys Kessler recently observed: "The longer those appellate proceedings drag on, the more problematic it becomes as to whether a stay serves the interest of justice. It is often said that 'justice delayed is justice denied.' Nothing could be closer to the truth with reference to the Guantanamo Bay cases." *Al Razak v. Bush*, Mem. Order, Civ. No. 05-1601 (GK) (D.D.C. Dec. 1, 2006).

6. This Court has repeatedly held that habeas review "must be speedy if it is to be effective." *Stack v. Boyle*, 342 U.S. 1, 4 (1952); *see also Preiser v. Rodriguez*, 411 U.S. 475, 495 (1973); *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968). The protracted proceedings in the

² Details of life at Guantanamo, and the severe adverse impact it has had on detainees, is described in the Brief of Amici Curiae of More Than 300 Detainees Incarcerated at U.S. Naval Station, Guantanamo Bay, Cuba, filed in support of the petition for writ of certiorari in *Qassim v. Bush*, No. 05-892. A more recent description of the detainees' current situation can be found in the Declaration of Sabin Willett, filed in *Parhat v. Gates*, D.C. Cir. Case No. 06-1397.

lower courts have been anything but speedy and effective. If the case were considered in the regular course, and assuming it were granted, argument would not be scheduled until the fall, and a decision might not issue until the end of 2007, or later. If Petitioners prevail in this Court, the District Court will then have to hear their petitions on the merits. Review of the decision below cannot come too soon.

7. These cases present issues of exceptional national importance and urgency similar to other cases in which the Court has expedited review. In *Ex parte Quirin*, for example, the Court held that expedited review was required “[i]n view of the public importance of the questions raised by their petitions and of the duty which rests on the courts, in time of war as well as in time of peace, to preserve unimpaired the constitutional safeguards of civil liberty, and because in our opinion the public interest required that we consider and decide those questions without any avoidable delay,” and the Court heard oral argument on the same day that prisoners submitted their petitions. *Ex parte Quirin*, 317 U.S. 1, 19 (1942); see also *Hamdan v. Rumsfeld*, 126 S. Ct. 2749, 2772 (2006) (quoting *Quirin*); *Felker v. Turpin*, 517 U.S. 1182, 518 U.S. 651 (1996) (expediting review of availability of Supreme Court review in certain habeas corpus cases); *Lurk v. United States*, 365 U.S. 832, 366 U.S. 712 (1961) (expediting review of constitutionality of criminal sentence by Article I judge).

8. Similarly, the question at the heart of this case – whether the Executive may imprison foreign nationals at Guantanamo indefinitely and without meaningful judicial review – is an urgent question of constitutional law. Worse, the indefinite detention of the citizens of our country’s closest allies without so much as the semblance of lawful review is a self-inflicted national wound. It is in the interests of the Nation for this Court speedily to resolve the issues presented in this extraordinary case.

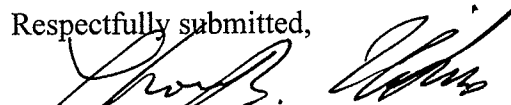
9. This case is particularly suited to expedited review because the Court and the government are familiar with the factual and legal background as a result of the prior proceedings in *Rasul*. Accordingly, Petitioners propose the following expedited schedule for the Court's consideration if review is granted:

| | |
|----------------|---------------------------------------|
| March 30, 2007 | Conference |
| April 16, 2007 | Petitioners' Brief and Joint Appendix |
| April 27, 2007 | Respondents' Brief |
| May 1, 2007 | Petitioners' Reply Brief |
| May 7, 2007 | Argument |

CONCLUSION

For the reasons stated, Petitioners respectfully request that this Court expedite briefing and oral argument in this case so that it may be decided this Term.

Respectfully submitted,



DAVID J. CYNAMON
MATTHEW J. MACLEAN
OSMAN HANDOO
PILLSBURY WINTHROP
SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, DC 20037
Telephone: 202-663-8000

THOMAS B. WILNER
Counsel of Record
NEIL H. KOSLOWE
AMANDA E. SHAFER
SHERI L. SHEPHERD
SHEARMAN & STERLING LLP
801 Pennsylvania Ave., N.W.
Washington, DC 20004
Telephone: 202-508-8000

GITANJALI GUTIERREZ
J. WELLS DIXON
SHAYANA KADIDAL
CENTER FOR
CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, NY 10012
Telephone: 212-614-6438

GEORGE BRENT MICKUM IV
SPRIGGS & HOLLINGSWORTH
1350 "I" Street N.W.
Washington, DC 20005
Telephone: 202-898-5800

Counsel for Petitioners

MARCH, 2007