

IN THE SUPREME COURT OF THE UNITED STATES

No. 06-1169

SALIM AHMED HAMDAN, PETITIONER

v.

ROBERT M. GATES, SECRETARY OF DEFENSE, et al.

ON PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

RESPONDENTS' OPPOSITION TO MOTION FOR LEAVE TO FILE
PETITION FOR REHEARING OUT OF TIME
AND TO PETITION FOR REHEARING

The Solicitor General, on behalf of respondents Robert M. Gates et al., respectfully opposes petitioner's motion for leave to file a petition for rehearing out of time. Petitioner asks this Court to allow him to file a petition seeking reconsideration of the Court's order denying review of the district court's judgment dismissing his habeas petition for want of jurisdiction. See Hamdan v. Gates, 127 S. Ct. 2133 (2007). Petitioner's request is untimely and should be denied on that ground alone. In any event, rehearing of the Court's denial of certiorari before judgment is not warranted.

1. Petitioner concedes (Reh'g Pet. 1; Mot. for Leave to File Out of Time (Motion) 1) that his petition for rehearing is untimely under this Court's rules. See Sup. Ct. R. 44.2 ("Any petition for the rehearing of an order denying a petition for a writ of certiorari * * * shall be filed within 25 days after the date of the order of denial."). While Rule 44.1, which governs petitions for rehearing of a judgment on the merits, provides that the Court may shorten or extend the time limit for filing, Rule 44.2, applicable here, contains no similar provision. See Boumediene v. Bush, 127 S. Ct. 1725, 1727 (2007) (Roberts, C.J., in chambers) ("[W]hile Rule 44.1 establishes a 25-day period for filing a petition for rehearing of a judgment on the merits 'unless the Court or a Justice shortens or extends the time,' Rule 44.2, articulating a 25-day period for filing a petition for rehearing of an order denying certiorari, contains no such exception, confirming that the Rules do not contemplate granting an extension for such petitions."). For that reason alone, the Court should decline to consider his petition. See Sup. Ct. R. 44.4 ("The Clerk will not file * * * petitions that are out of time under this Rule.").

To the extent that this Court has leeway to do so, there is no reason to excuse petitioner's untimely filing. By petitioner's own admission (Motion 2), he chose, as part of his litigation strategy, not to file a timely rehearing petition, even though the petitioners in Boumediene v. Bush, No. 06-1195, and Al Odah v.

United States, No. 06-1196, had sought rehearing. In any event, as explained below, the very reason for which petitioner alleges that his untimely petition should be considered and granted -- the Court's grant of certiorari in Boumediene and Al Odah --undermines his argument that certiorari before judgment in his case is necessary or appropriate.

2. In any event, the petition plainly lacks merit. Petitioner fails to demonstrate any "intervening circumstances of a substantial or controlling effect" or "other substantial grounds not previously presented" that warrant rehearing of the Court's denial of certiorari before judgment. Sup. Ct. R. 44.2.

Petitioner contends (Reh'g Pet. 1) that the Court's grant of certiorari in Boumediene and Al Odah "represents an intervening circumstance that justifies rehearing of the certiorari petition in this matter." Petitioner is incorrect. For the most part, petitioner seeks to raise the same issues that are presented in Boumediene and Al Odah, and there is no reason to grant rehearing in order to consider the same issues in two cases. See Br. in Opp. at 10-12, Hamdan v. Gates, No. 07-15 (filed July 20, 2007). Although this Court has occasionally granted rehearing petitions when another case pending in this Court raises the same issues, and when "the interests of justice" favor rehearing, see, e.g., United States v. Ohio Power Co., 353 U.S. 98, 99 (1957), that situation is not applicable here. Petitioner has not yet had a final judgment

in the court of appeals; indeed, proceedings in the court of appeals remain stayed at his request. It is unnecessary to grant rehearing, because once this Court decides Boumediene and Al Odah, the court of appeals will be able to apply those rulings to petitioner's case without the need for intervention by this Court.

Conversely, to the extent that petitioner seeks to raise issues other than those presented in Boumediene and Al Odah, the grant of certiorari in Boumediene and Al Odah is hardly an intervening circumstance that would make rehearing appropriate. In any event, those issues lack merit and should be addressed by the court of appeals in the first instance. See Br. in Opp. at 13-16, Hamdan v. Gates, supra (No. 07-15).

CONCLUSION

The motion for leave to file a petition for rehearing out-of-time should be denied.

Respectfully submitted.

PAUL D. CLEMENT
Solicitor General
Counsel of Record

JULY 2007