

[ORAL ARGUMENT SCHEDULED FOR MAY 15, 2007]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

HAJI BISMULLAH, *et al.*,  
Petitioners,

v.

ROBERT M. GATES,  
Secretary of Defense,

Respondent.

Nos. 06-1197 and 06-1397

**MOTION FOR LEAVE TO PARTICIPATE AS AMICI CURIAE  
AND TO FILE THE ATTACHED BRIEF AMICI CURIAE OF  
BAR ASSOCIATIONS, LAWYERS' PROFESSIONAL  
ASSOCIATIONS, AND LEGAL ETHICS SCHOLARS**

Amici curiae, bar associations, lawyers' professional associations, and legal ethics scholars,<sup>1</sup> respectfully move for leave to participate as amici curiae and to file the attached brief amici curiae in support of petitioners in the above-captioned matter, in which oral argument has been scheduled for May 25, 2007.

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<sup>1</sup> Amici are the Association of the Bar of the City of New York, the Boston Bar Association, the Beverly Hills Bar Association, the Association of Professional Responsibility Lawyers, the International Senior Lawyers Project, Stephen Gillers, Emily Kempin Professor of Law at New York University School of Law, and David Luban, University Professor and Professor of Law and Philosophy at the Georgetown University Law Center. The affiliations of Professors Gillers and Luban are provided for identification purposes only.

Amici recognize that this request comes at a very late stage, after briefing by the parties is complete, and that oral argument on these motions is scheduled in a matter of days. Amici did not become aware of the government's pending motion for a protective order until it was reported in the *New York Times* on April 26, 2007. Because the issues raised by that motion so directly affect the professional responsibilities of lawyers and their ability to provide detainees the effective assistance of counsel, so vital not only to the detainees but to this Court, to our adversary system of justice and to the rule of law, amici felt obliged to make every effort to bring to this Court's attention the views of the Bar and scholars of professional responsibility presented in the attached brief amici curiae. We have endeavored to prepare the brief as expeditiously as possible. Amici do not seek to participate in oral argument, and submit that none of the parties will be prejudiced by the filing of the attached brief.

Amici are professional organizations and individuals deeply involved in promoting and interpreting lawyers' professional responsibilities to provide competent and informed representation, preserve the confidences and secrets of their clients, inspire their clients' trust, and represent their clients zealously within the bounds of the law; assuring effective assistance of counsel for persons whose liberty is at stake as a fundamental element of the rule of law; and encouraging lawyers to provide pro bono representation for those in

need, including unpopular persons. The pending motions in this matter will have a profound impact on all of these issues.

The attached brief demonstrates that, contrary to the government's assertion, effective assistance of counsel is a matter of right, not grace, that is implicit in the grant of judicial review by the Detainee Treatment Act. The brief shows, further, that the restrictions proposed by the government would effectively eliminate that right and unreasonably interfere with lawyers' professional responsibilities to their detainee clients. Amici therefore support petitioners in urging the Court to reject the government's proposed protective order, and to adopt instead the standard form protective order that has heretofore governed habeas proceedings from Guantanamo in the district court.

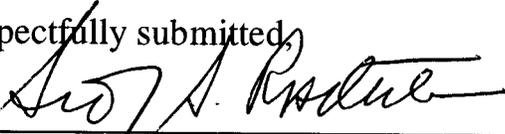
Amici are familiar with the issues at stake in these proceedings and the scope of argument presented by the parties. They are specially positioned to address the issues involved here. Amici seek to submit a brief that will not unduly repeat arguments already presented to the Court and that will provide the Court with legal analysis not fully explored by the parties that will assist the Court in the resolution of the critical issues raised by these motions.

Petitioners consent to this filing. Respondent does not consent.

Amici respectfully request that the Court grant their motion for leave to participate as amici curiae and to file the attached brief amici curiae.

May 9, 2007

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that on May 9, 2007, I caused copies of the foregoing to be served upon the following counsel by causing copies to be sent by e-mail transmission and Federal Express delivery:

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Dated: May 9, 2007



J. Adam Skaggs