

ORAL ARGUMENT HELD ON SEPTEMBER 11, 2006

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

JAMAL KIYEMBA, ET AL.,)	
Petitioners-Appellees,)	
)	
v.	)	Nos. 05-5487, 05-5488 (consolidated)
	)	(Civ. No. 05-1509)
GEORGE W. BUSH, ET AL.,)	
Respondents-Appellants)	
)	
EDHAM MAMET, ET AL.,)	
)	
v.	)	Nos. 05-5489, 05-5490 (consolidated)
	)	(Civ. No. 05-1602)
GEORGE W. BUSH, ET AL.,)	
Respondents-Appellants)	
)	
ALLADEEN, ET AL.,)	
)	
v.	)	No. 05-5491
	)	(Civ. No. 05-0833)
GEORGE W. BUSH, ET AL.,)	
Respondents-Appellants)	
)	
EL MASHAD, ET AL.,)	
)	
v.	)	No. 05-5492
	)	(Civ. No. 05-270)
GEORGE W. BUSH, ET AL.,)	
Respondents-Appellants)	
)	
ZAKIRJAN,)	
)	
v.	)	Nos. 06-5042, 06-5234
	)	(Civ. No. 05-2053)
GEORGE W. BUSH, ET AL.,)	
Respondents-Appellants)	
)	

MOTION TO GOVERN FURTHER PROCEEDINGS

The above-captioned appeals have effectively been stayed pending the Supreme Court's decision in Boumediene v. Bush, No. 06-1195. That decision was issued on June 12, 2008. Accordingly, this motion requests that the Court accept supplemental briefing and oral argument to facilitate its decision.

These consolidated appeals relate to injunctions issued by the district court in different habeas corpus actions brought by (or on behalf of) aliens detained by the Department of Defense at Guantanamo Bay, Cuba. The district courts entered orders in these actions restricting the Government's transfer or removal of petitioners from Guantanamo Bay, and the government timely appealed. The government argued both that the injunctions should be vacated because the district courts lacked subject matter jurisdiction under the Detainee Treatment Act (and, later, the Military Commissions Act), and, alternatively, that the injunctions should be reversed because they violate the constitutional separation of powers and lack a legal basis.

The issues were fully briefed, and this Court heard oral argument on September 11, 2006. On March 22, 2007, this Court issued a judgment holding that the petitions for habeas corpus filed by the enemy combatants in the above-captioned consolidated appeals had to be dismissed for lack of subject matter jurisdiction under this Court's

decision in Boumediene v. Bush, 476 F.3d 981 (D.C. Cir.).¹ Thus disposing of these cases, the Judgment did not address the government's alternative arguments. The mandate was issued on May 10, 2007 but recalled on September 7, 2007 in light of the Supreme Court's grant of certiorari to review the Boumediene decision. Most recently, on June 12, 2008, the Supreme Court issued its opinion in Boumediene v. Bush, No. 06-1195, reversing this Court's decision.

Because this Court recalled its mandate, it retains jurisdiction over these appeals. It is now appropriate for this Court to exercise that jurisdiction in accordance with the Supreme Court's Boumediene decision. That decision holds that the Military Commissions Act is not a bar to subject matter jurisdiction in these habeas corpus cases, and therefore dictates that this Court should withdraw its previous judgment to the extent that it held that these cases must be dismissed for lack of subject matter jurisdiction.

The government's alternative contentions on appeal – that the district court injunctions should be reversed because they violate the constitutional separation of powers and lack legal basis – are unaffected by the Supreme Court's action in

¹ The judgment also noted that all of the non-enemy combatant petitioners had already been transferred to other countries and released from United States custody, and that certain cases and claims were moot as a result. That aspect of the judgment should remain undisturbed.

Boumediene and remains pending before this Court. It is therefore appropriate for the Court to reach those arguments, which it did not previously have to address because it had concluded that subject matter jurisdiction was lacking. As noted above, those arguments have already been fully briefed and argued. In order to conserve judicial resources and facilitate the expeditious resolution of these appeals, respondents suggest that the Court order simultaneous supplemental briefing (within 21 days of the Court's order) to allow the parties to address any pertinent developments that have taken place in the almost two years since the original briefing was completed – most notably the Supreme Court's decision in Munaf v. Geren, No. 06-1666 (June 12, 2008), which vacated a similar injunction involving a United States citizen being held in Iraq by members of the United States armed forces. If the Court concludes that additional oral argument should be held, respondents ask that such argument take place during the Court's first fall sitting, allowing the Court to resolve these issues without delay.

CONCLUSION

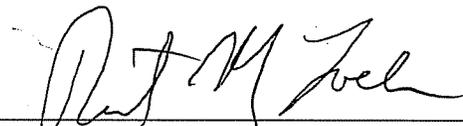
For the foregoing reasons, we respectfully request that the Court set a deadline for supplemental briefing and, if it deems further oral argument necessary, schedule such oral argument for its first fall sitting.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2008, I filed and served the foregoing Motion to Govern Further Proceedings by causing an original and four copies to be delivered to the Court via hand delivery, and by causing one paper copy to be delivered to lead counsel of record by first class mail and email to:

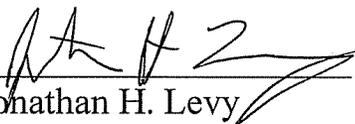
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