

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

Case No. 07-5042

SALIM AHMED HAMDAN,

Petitioner,

v.

ROBERT GATES, et al.,

Respondents.

**PETITIONER'S MOTION TO STAY
MILITARY COMMISSION PROCEEDINGS**

Salim Hamdan faces imminent criminal trial before a military commission at Guantanamo Bay convened pursuant to the Military Commissions Act of 2006 ("MCA"), Pub. L. No. 109-366, 120 Stat. 2600 (2006), codified at 10 U.S.C. §§ 948a-950w. Absent an order from this Court, he will be tried by this commission beginning on May 28, 2008. *See App. A.* Mr. Hamdan's habeas appeal, which has been pending before this Court since February 5, 2007, presents a constitutional challenge to the MCA and to the legality of that criminal process. *See Hamdan v. Gates*, No. 07-5042 (D.C. Cir. July 24, 2007) (per curiam order), **App. B.** The Supreme Court has now heard oral argument in two cases closely related to Mr. Hamdan's to consider the constitutionality of portions of the MCA and whether the detainees at Guantanamo Bay have rights under the Constitution. The Court is expected to release its opinion in those cases within a month of

Mr. Hamdan's trial. See *Boumediene v. Bush* and *Al Odah v. United States*, 476 F.3d 981 (D.C. Cir.), *cert. granted*, 127 S. Ct. 3067 and 127 S. Ct. 3078 (2007) (Nos. 06-1195 & 06-1196).¹

In order to preserve the relative positions of the parties in this challenge and to preserve this Court's jurisdiction over his pending appeal, Mr. Hamdan asks this Court to issue a stay (or other appropriate relief) pursuant to Circuit Rules 8 and 27 to suspend any further proceedings before a commission until this Court has an opportunity to consider the final decision by the Court in *Boumediene*. Such a course of action will not only promote judicial efficiency and avoid prejudice to Mr. Hamdan, it will also track this Court's decision to await resolution of *Boumediene* before considering whether to consider Mr. Hamdan's appeal en banc.

Every relevant entity in this litigation has signaled that a short stay to await the Supreme Court's decision in *Boumediene* is the prudent course of action. *First*, this Court has already suspended consideration of this case in light of the Court's decision to grant certiorari in *Boumediene*. See *Hamdan v. Gates*, No. 07-5042 (D.C. Cir. July 24, 2007) (per curiam order). **App. B.**

Second, the Solicitor General has written that Mr. Hamdan's case "raises the same legal issues" as *Boumediene* and has argued that *Boumediene* will almost certainly control Mr. Hamdan's habeas case. See Br. in Opposition to Certiorari,

¹ Petitioner will refer to these cases collectively as "*Boumediene*."

