

December 15, 2006

Ms. Patricia S. Connor
Clerk, United States Court of Appeals
for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, VA 23219-3517

Re: *Al-Marri v. Wright*, No. 06-7427

Dear Ms. Connor:

Appellant al-Marri submits this letter, pursuant to Federal Rule of Appellate Procedure 28(j), to advise the Court of supplemental authority. On December 13, 2006, the United States District Court for the District of Columbia ruled that section 7 of the Military Commissions Act of 2006 (“MCA”) deprived it of subject matter jurisdiction over the habeas petition of a Guantanamo detainee. Slip. Op. in *Hamdan v. Bush*, No. 04-1519 (D.D.C. Dec. 13, 2006) (opinion attached).

The district court’s decision directly supports al-Marri’s argument (Response at 3-10, 28-33) that the MCA would violate the Suspension Clause if construed to eliminate habeas jurisdiction here. The court determined: “[T]he Great Writ [protected by the Suspension Clause] has survived the Military Commissions Act. If and to the extent that the MCA operates to make the writ unavailable to a person who is constitutionally entitled to it, it must be unconstitutional.” Slip. Op. at 15; *see also id.* at 7-15.

The district court found that Guantanamo detainees are not constitutionally entitled to habeas relief because they are aliens captured and detained outside the sovereign territory of the United States. In its view, *Johnson v. Eisentrager*, 339 U.S. 763 (1950), “appears to provide the controlling authority on the availability of constitutional habeas to enemy aliens.” Slip Op. at 19. The petitioners in *Eisentrager*, it stated, “had no constitutional entitlement to habeas relief in U.S. Courts because ‘at no relevant time were [they] within any territory over which the United States is sovereign, and the scenes of their offense, their capture, their trial, and their punishment were all beyond the territorial jurisdiction of any court of the United States.’” *Id.* at 19 (quoting *Eisentrager*, 339 U.S. at 778); *see also id.* at 21 (“[Hamdan] ... does not enjoy the ‘implied protection’ that accompanies presence on American soil.”) (quoting *Eisentrager*, 339 U.S. at 777-79). The district court, however, expressly agreed with al-Marri’s position that, by contrast, an alien arrested and detained in this country, like al-Marri, is constitutionally entitled to habeas relief, and that the MCA would impermissibly suspend the Writ if construed to eliminate jurisdiction over his appeal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jonathan Hafetz". The signature is written in a cursive style with a large initial "J".

Jonathan Hafetz

cc: Gregory G. Garre, Esq.
David B. Salmons, Esq.
Kevin F. McDonald, Esq