

No. 06-_____

IN THE SUPREME COURT OF THE UNITED STATES

LAKHDAR BOUMEDIENE, *et al.*,

Petitioners,

v.

GEORGE W. BUSH, *et al.*,

Respondents,

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit

MOTION FOR EXPEDITED CONSIDERATION OF THE PETITION FOR CERTIORARI,
BRIEFING, AND ORAL ARGUMENT

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RELIEF REQUESTED

Petitioners, citizens and permanent residents of Bosnia and Herzegovina imprisoned at the United States Naval Station at Guantanamo Bay, hereby move pursuant to Supreme Court Rule 21 for expedited consideration of their petition for a writ of certiorari, filed today, to review the judgment of the United States Court of Appeals for the District of Columbia Circuit issued on February 20, 2007 (*see* Pet. App. 1a-50a). Petitioners request that the government be directed to file a response to the petition on or before March 21, 2007, and that the petition be considered at the Court's conference on March 30, 2007. The Solicitor General has authorized Petitioners to inform the Court that Respondents support expedited consideration of the petition for certiorari and will file their brief in opposition on or before March 21.

If this Court grants certiorari, Petitioners also request expedited consideration of the merits to permit the case to be briefed, argued, and decided during the 2006 Term. Urgent consideration is warranted because (1) this case raises fundamental questions regarding the limits imposed by the Suspension Clause on Congress's power to abolish the writ of habeas corpus, as well as the limits of Executive power to detain individuals indefinitely without charge or lawful judicial review; and (2) Petitioners and other Guantanamo prisoners have now been imprisoned for over five years without any judicial determination as to whether that detention is lawful.¹ The case is surely one of surpassing significance to the Nation.

¹ The court of appeals' decision also dismissed the petitions of the Guantanamo prisoners who were appellees/cross-appellants in *Al Odah, et al. v. United States*, Nos. 05-5064 *et al.* (D.C. Cir.), which was heard together with Petitioners' case. Petitioners have conferred with the *Al Odah* appellees/cross-appellants and are informed that they will file a similar motion for expedited consideration proposing the same schedule for consideration of the petitions for certiorari, briefing, and argument.

STATEMENT OF FACTS

Petitioners Lakhdar Boumediene, Mustafa Ait Idir, Belkacem Bensayah, Hadj Boudella, Saber Lahmar, and Mohamed Nechla are six natives of Algeria who emigrated to Bosnia and Herzegovina at various times during the late 1990s. In October 2001, under strong pressure from the United States, Bosnian authorities arrested Petitioners on suspicion of international terrorism. After a three-month international investigation during which Petitioners were kept in pretrial detention, the Supreme Court of the Federation of Bosnia and Herzegovina ordered Petitioners' release for want of incriminating evidence. *See* Pet. 4.

On January 17, 2002, as Petitioners were being released, Bosnian police—acting again at the insistence of U.S. authorities—seized Petitioners and handed them over to U.S. military officials in violation of Bosnian law.² Petitioners were flown to the United States Naval Station at Guantanamo Bay, Cuba, on January 20, 2002, and have been imprisoned there since. The United States has never charged Petitioners with any crime. *See* Pet. 5.

In July and August 2004, Petitioners filed petitions for writs of habeas corpus in the United States District Court for the District of Columbia under 28 U.S.C. §§ 2241(c)(1) and (3).

² The illegality of Petitioners' handover and expulsion was confirmed in three decisions of the Human Rights Chamber for Bosnia and Herzegovina issued after Petitioners were taken to Guantanamo. *See Boudellaa, et al. v. Bosnia and Herzegovina, et al.*, Human Rights Chamber for Bosnia and Herzegovina, Cases Nos. CH/02/8679, CH/02/8689, CH/02/8690, CH/02/8691, Decision on Admissibility and Merits (Oct. 11, 2002) (Ct. App. J.A. 0123-0253); *Bensayah v. Bosnia and Herzegovina, et al.*, Human Rights Chamber for Bosnia and Herzegovina, Case No. CH/02/9499, Decision on Admissibility and Merits (Apr. 4, 2003); *Ait Idir v. Bosnia and Herzegovina, et al.*, Human Rights Chamber for Bosnia and Herzegovina, Case No. CH/02/8961, Decision on Admissibility and Merits (Apr. 4, 2003). The Foreign Minister of Bosnia and Herzegovina has also confirmed that Petitioners were delivered to the United States in an extra-legal "handover" in which "a formal and legal procedure for extradition was not carried out." Letter from Mladen Ivanić, Foreign Minister of Bosnia and Herzegovina, to Terry Davis, Secretary General of Council of Europe, at 8 (Apr. 4, 2006).

On January 19, 2005, the district court (Leon, J.) granted the government's motion to dismiss the case. Pet. App. 51a-79a.

On February 20, 2007—two years after Petitioners noticed their appeal from the district court's decision—a divided panel of the United States Court of Appeals for the District of Columbia Circuit vacated the district court's decision and dismissed Petitioners' habeas petitions for lack of jurisdiction. Pet. App. 1a-50a. The panel majority decision rested on two legal conclusions: (1) the Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 ("MCA"), stripped the federal judiciary of habeas jurisdiction over Petitioners' claims; and (2) the MCA is not unconstitutional because, the majority held, the Suspension Clause does not guarantee the writ to "aliens without presence or property within the United States." *Id.* 13a. In dissent, Judge Rogers concluded that the MCA's abolition of habeas exceeded Congress's power. *See id.* 42a. Judge Rogers would have remanded the case for a hearing on the merits of Petitioners' habeas petitions. *See id.* 49a-50a.

Hundreds of other Guantanamo habeas cases have been stayed in the district court to await the resolution of the jurisdictional and merits questions presented in this case. Until these questions are resolved, those prisoners will remain in an unprecedented legal limbo with no meaningful way to challenge the lawfulness of their indefinite detention.

ARGUMENT

Three circumstances warrant expedited review of this petition and consideration of the merits.

First, the Court has expedited review of cases involving watershed challenges to Executive authority. The Court's reasons for accelerating briefing and argument in *Ex parte Quirin*, 317 U.S. 1 (1942), are especially instructive. In reviewing the military's power to try foreign saboteurs

captured on U.S. soil, the Court held that expedited review was required “[i]n view of the public importance of the questions raised by their petitions and of the duty which rests on the courts, in time of war as well as in time of peace, to preserve unimpaired the constitutional safeguards of civil liberty, and because in our opinion the public interest required that we consider and decide those questions without any avoidable delay.” *Id.* at 19. The Court therefore convened a special Term on July 29, 1942; held oral argument on original petitions for habeas corpus and granted certiorari before judgment to the court of appeals on that day; and issued its decision on the merits two days later. *Id.* at 19-20; *see also Hamdan v. Rumsfeld*, 126 S. Ct. 2749, 2771-2772 (2006) (“Far from abstaining [in *Quirin*] pending the conclusion of military proceedings, which were ongoing, we convened a special Term to hear the case and expedited our review.”).

The *Quirin* precedent fits with the Court’s established practice of granting expedited review in cases presenting comparable questions relating to Executive power. *See, e.g., Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 937 (1952) (granting certiorari before judgment to review President Truman’s nationalization of steel mills). The Court has expedited review, for example, in cases involving Executive Branch assertions of absolute privilege, *United States v. Nixon*, 417 U.S. 927 (1974) (granting certiorari before judgment and scheduling oral argument five-and-a-half weeks later), reviewing the Executive Branch’s effort to prevent the publication of classified information, *New York Times Co. v. United States*, 403 U.S. 713, 753 (1971) (holding oral argument two days after certiorari was granted), and challenging the President’s authority to extinguish the property rights of private individuals in order to comply with the Iranian hostage settlement, *Dames & Moore v. Regan*, 452 U.S. 932, 453 U.S. 654 (1981) (granting certiorari before judgment and holding argument two weeks later).

Similarly, the Court has accelerated briefing where petitioners challenged the constitutionality of an executive agency. *Hannah v. Larche*, 361 U.S. 910, 363 U.S. 420 (1959) (expediting briefing and oral argument to review authorization and constitutionality of Civil Rights Commission); cf. *Mistretta v. United States*, 488 U.S. 361, 371 (granting certiorari before judgment to review nondelegation and separation of powers challenges to the federal Sentencing Commission). Petitioners here raise a serious question about the limits of Government power, including the Executive’s authority to imprison foreign nationals indefinitely and the Legislature’s authority to abolish the writ of habeas corpus through which the Judiciary may review such imprisonment.

Second, this case has progressed at an unusually slow pace in the lower courts. The Court has previously granted expedited review where a case was dramatically prolonged by respondents’ refusal to concede the force of a prior Supreme Court ruling in the same case. See *Insurance Group v. Denver & Rio Grande W. R.R.*, 329 U.S. 607, 611, 614 (1947) (“In sum, the very kinds of changed circumstances which were argued [and rejected] here formerly as reasons for not approving and confirming [a railroad reorganization plan] were presented by the petition now under review to the District Court as reasons why that court should vacate its orders of approval and confirmation.”) (granting certiorari before judgment after more than five years of litigation). That is what has happened here. Two-and-one-half years after this Court stated that Petitioners’ allegations “unquestionably describe ‘custody in violation of the Constitution or laws or treaties of the United States,’” *Rasul v. Bush*, 542 U.S. 466, 483 n.15 (2004), and remanded the case with directions to the District Court to “consider . . . the merits of petitioners’ claims,” *id.* at 484, not one of the hundreds of Guantanamo habeas petitioners has received a judicial hearing on the merits of his petition. Expedited review is especially appropriate here,

since the central purpose of habeas corpus is “to provide an effective and speedy instrument by which judicial inquiry may be had into the legality of the detention of a person.” *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968); *see also Preiser v. Rodriguez*, 411 U.S. 475, 495 (1973) (“[S]peedy review of [a prisoner’s] grievance . . . is so often essential to any effective redress.”); *cf. Felker v. Turpin*, 517 U.S. 1182, 518 U.S. 651 (1996) (ordering expedited briefing and oral argument in habeas case alleging Suspension Clause violation).

Third, the parties have exhaustively explored the issues at stake here during years of lower court proceedings and many successive rounds of briefing. The parties are thus well prepared to undertake an accelerated briefing schedule. As noted above, Respondents support expedited briefing and consideration of the petition for certiorari.

CONCLUSION

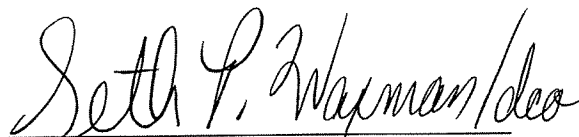
For the reasons stated, Petitioners respectfully request that this Court expedite briefing of the petition for certiorari and the merits of this case and schedule oral argument so that it may be heard and decided during the 2006 Term. Specifically, Petitioners propose that the Court consider their petition for certiorari under the following schedule:

March 5, 2007	Petition for Certiorari
March 21, 2007	Brief in Opposition
March 30, 2007	Conference

In the event that the Court grants certiorari, Petitioners propose that the Court consider the merits of their case under the following schedule:

April 16, 2007	Petitioners’ Brief on the Merits and Joint Appendix
April 27, 2007	Respondents’ Brief on the Merits
May 1, 2007	Petitioners’ Reply Brief
May 7, 2007	Oral Argument

Respectfully submitted.

A handwritten signature in black ink that reads "Seth P. Waxman/dec". The signature is written in a cursive style and is underlined.

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March 5, 2007