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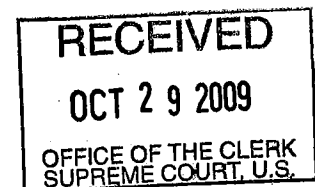
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October 27, 2009

Honorable William K. Suter
Clerk, United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543



Re: *Basardh v. Gates, et al.*
No. 08-10982

Dear Mr. Suter:

This letter is to advise the Court of the attached Order entered by the Court of Appeals for the District of Columbia holding the petitioner's cross-appeal in abeyance pending this Court's disposition of *Kiyemba v. Obama*, No. 08-1234.

On June 22, 2009, the petitioner filed for a writ of certiorari before judgment in this Court that incorporated by reference the filings in *Kiyemba*. In the district court proceedings, the court granted the writ of habeas corpus but denied the remedy of release, ordering only that the government "take all appropriate diplomatic steps to facilitate petitioner's release forthwith." The government appealed, and the petitioner cross-appealed. On July 17, 2009, the government moved to stay the appellate briefing schedule in the court of appeals, which had called for the opening brief to be filed on July 30, 2009, pending disposition of the petitioner's appeal in *Bihani v. Obama*. The petitioner filed an opposition in which he objected to treatment of *Bihani* as a related case, did not oppose the government's request for additional time for its appeal, and requested that the cross-appeal be maintained on the previous briefing schedule because Mr. Basardh is suffering immediate and irreparable harm from the unavailability of release as a remedy for his unlawful detention.

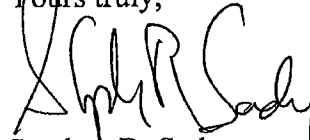
The court of appeals, by the Order of October 14, 2009, agreed that the *Bihani* case is unrelated but stayed the briefing schedule pending the outcome of *Kiyemba*. The Order

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supports the petitioner's request for grant of the writ as providing the appropriate recourse to address the immediate harm from the Court of Appeals ruling in *Kiyemba* that forecloses immediate conditional release.

Yours truly,

A handwritten signature in black ink, appearing to read "Stephen R. Sady". The signature is written in a cursive style with a large initial "S".

Stephen R. Sady
Chief Deputy Federal Public Defender

SRS/jcd

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enclosure

cc: Elena Kagan, Solicitor General
Tony West, Assistant Attorney General
Robert M. Loeb, Attorney
August E. Flentje, Attorney
Daniel M. Barish, Attorney
Patrick D. Davis, Attorney

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 09-5200

September Term 2009

1:05-cv-00889-UNA

Filed On: October 14, 2009

Yasin Muhammed Basardh, Detainee,
Guantanamo Bay, Cuba,

Appellee

v.

Robert M. Gates, Secretary, United States
Department of Defense, et al.,

Appellants

Consolidated with 09-5203

BEFORE: Henderson, Rogers, and Tatel, Circuit Judges

ORDER

Upon consideration of the motion to hold the appeals in abeyance, the opposition thereto, and the reply, it is

ORDERED that the motion be granted in part, and the consolidated appeals are hereby held in abeyance pending the Supreme Court's disposition of the petition for a writ of certiorari in Kiyemba v. Obama, 555 F.3d 1022 (D.C. Cir. 2009), petition for cert. filed (U.S. Apr. 3, 2009) (No. 08-1234). The court declines the government's request to hold these appeals in abeyance pending this court's disposition of Al Bihani v. Obama, No. 09-5051, because the government has not demonstrated a sufficient connection between the two cases. The parties are directed to file motions to govern further proceedings in this case within 30 days of the resolution of Kiyemba.

Per Curiam