

Contemporaneous with this motion for expedited review, Petitioner has filed an Emergency Petition for Writ of Mandamus to the Court of Appeals for the District of Columbia Circuit. That Petition asks this Court to direct the Court of Appeals to rule on Petitioners' Emergency Motion for a Stay of his imminent trial by military commission. This motion is fully briefed and has remained pending for the past four months. Because time is of the essence and because of the very narrow relief Petitioner has requested from this Court, Petitioner asks this Court to consider and issue the requested writ on an expedited basis.

1. Petitioner, Omar Khadr, was captured by U.S. forces at the age of fifteen during combat operations in Afghanistan in 2002. He was thereafter transferred to the detention facility at the U.S. Naval Base at Guantanamo Bay, Cuba, where he has remained. Petitioner was charged before a military commission in November 2005. After a series of delays, the military judge in his case scheduled a critical pretrial hearing on Petitioner's motion to suppress statements for April 28, 2010, and scheduled his trial by military commission to begin on August 10, 2010.

2. On March 23, 2010, Petitioner sought a Petition for Writ of Mandamus and Writ of Prohibition ("Petition") from the Court of Appeals for the District of Columbia Circuit, seeking to enjoin his trial by a military commission system that is irregular, discriminatory and *ultra vires*. On that date petitioner also filed an Emergency Motion for a Stay pending the Court of Appeals final resolution of the Petition ("Emergency Motion"). The Court of Appeals ordered an expedited briefing schedule, and briefing on the Petition and the Emergency Motion was complete by April 19, nine days prior to the start of the suppression hearing.

3. Despite being ripe for decision no later than April 19, the Court of Appeals has yet to rule on the Emergency Motion or the Mandamus Petition, although the suppression hearing is nearly completed and Petitioner's trial is imminent, scheduled to begin on August 10,

2010. Petitioner therefore filed the attached Petition for a Writ of Mandamus in this Court, seeking to compel the Court of Appeals to render a decision on the Emergency Motion so that Petitioner can apply and this Court can take jurisdiction if the motion is denied.

4. Time is of the essence. The right that Petitioner seeks to vindicate is his right not to be put on trial at all, a right that this Court has recognized cannot be vindicated once the trial begins. *See Drope v. Missouri*, 420 U.S. 162 (1975) (right not to be tried while incompetent); *Abney v. United States*, 431 U.S. 651 (1977) (double-jeopardy), *Helstoski v. Meanor*, 442 U.S. 500 (1979) (privileges and immunities); *see also Hamdan v. Rumsfeld*, 548 U.S. 557, 589 (2006) (“Hamdan and the Government both have a compelling interest in knowing in advance whether Hamdan may be tried by a military commission that arguably is without any basis in law”). Petitioner’s trial will begin a week from this date of filing unless the Court acts expeditiously.

5. This Court has taken extraordinary measures before when the legitimacy of a military commissions system came into legal question, including convening during the summer recess. In *Ex parte Quirin*, 317 U. S. 1 (1942), this Court convened a special term and granted expedited pre-trial review during the summer recess precisely because 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; *see also Hamdan v. Rumsfeld*, 548 U.S. 557, 567 (2006) (trial by military commission is an “extraordinary measure raising important questions about the balance of powers in our constitutional structure”). As in *Hamdan* and *Quirin*, the Petition below raises threshold questions of military commission jurisdiction.

6. Petitioner sought relief in the Court of Appeals over four months ago, while this Court was still in session.¹ Had the Court of Appeals ruled expeditiously, Petitioner would not now be forced to seek the intervention of this Court during the summer recess. Trial is now imminent, however. Petitioner has asked this Court for narrow relief and, as is detailed in the attached Petition, the right to that relief is clear. In these circumstances the grant of the petition is suitable for *per curiam* order. See *Mazurek v. Armstrong*, 520 U.S. 968, 975 (1997) (stating that summary disposition was warranted where the action of the lower court was “clearly erroneous” and “produced immediate consequences” for the petitioner).

Wherefore, Petitioner respectfully asks this Court to proceed on an expedited basis and to grant the requested writ of mandamus to the court of appeals, ordering it to decide Petitioner’s Emergency Motion in sufficient time for Petitioner to apply to this Court in the event of denial.

¹ Petitioner has pursued his request for a stay of proceedings as expeditiously as was warranted and as he was able under the circumstances. The Emergency Motion was filed more than a month prior to the scheduled date of the suppression hearing. Briefing was completed on April 19. Petitioner assumed that a ruling on the Emergency Motion would be issued soon thereafter, sufficiently in advance of the hearing that the parties could make a determination how to respond to the decision. As the date of the hearing approached, Petitioner, through counsel, called the clerk’s office in the court of appeals on a regular basis to inquire about the status of the motion. Given that a stay of the suppression hearing was among the specific relief Petitioner requested in his Emergency Motion, he expected, in good faith, that the court would decide the motion prior to the hearing, if only to deny it on the day before it began. After the suppression hearing began, counsel for Petitioner was entirely occupied by the conduct of hearing itself. Shortly after the hearing was continued until August 10, counsel issues developed, the civilian counsel were dismissed by the client, and below-signed military counsel, who to that point had been associate counsel to the lead civilian counsel, became lead counsel. Even so, Petitioner has filed this Petition with sufficient time for the Court to consider the instant Petition and grant the writ, and for the Court of Appeals thereafter to consider and rule on the Emergency Motion, which is neither legally nor factually complex, in time to stay the pending trial.

Dated: August 2, 2010

Respectfully submitted,

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