

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

Kiyemba v. Bush	No. 08-5424
Mamet v. Bush	No. 08-5425
Kabir v. Bush	No. 08-5426
Razakah v. Bush	No. 08-5427
Thabid v. Bush	No. 08-5428
Gaffar v. Bush	No. 08-5429

**EMERGENCY MOTION TO ASSIGN
APPEAL TO PARHAT v. GATES PANEL**

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Pursuant to Fed. R. App. P. 27 and Circuit Rule 27(a), Petitioners-Appellees (“Appellees”) – seventeen Uighur detainees who have been wrongly imprisoned by the United States for nearly 7 years – respectfully request¹ that the government’s appeal and any related request for a stay be heard by the same panel that decided *Parhat v. Gates*, No. 06-1397, 2008 WL 2576977, *1 (D.C. Cir. June 20, 2008).² As grounds for this emergency motion³, Appellees state:

1. *Parhat*. One of the Appellees is Huzaifa Parhat. In January 2008 this Court granted leave to Parhat to pursue a motion for judgment on his then-pending claim for release under the Detainee Treatment Act of 2005 (“DTA”). The case was assigned to a panel. In the spring the matter was briefed and argued.

2. The panel closely studied Parhat’s classified and unclassified record, and on June 20, 2008, issued its unanimous classified decision. (A redacted version is publicly reported at *Parhat v. Gates*, 532 F.3d 834 (D.C. Cir. 2008)). The unanimous decision evidences the panel’s close -- indeed granular -- attention to each item of the record, classified and unclassified, that the government relied on to assert enemy combatant status. As discussed below, *Parhat* later became final, a mandate issued, and it is today the law of the circuit.

3. As will be shown below, the government has now conceded that there is no material difference between the facts and circumstances surrounding Parhat, and those surrounding each of the other Uighur Appellees.

4. In *Parhat*, this Court held that Huzaifa Parhat’s enemy combatant

¹ Counsel for Appellees sent counsel for Appellants an email requesting their assent to this motion but had not received a response as of the filing of this motion.

² Petitioners oppose the government’s Stay Motion and are submitting their written opposition separately.

³ Appellants have filed an emergency motion to stay the district court order and seek an expedited ruling necessitating this request for emergency relief.

designation was not supported by the government's version of the record, and ordered the government to release or transfer Parhat⁴. *Parhat*, 532 F.3d at 851. The Court's careful elocution, repeated in three places in the opinion, distinguished between "release" and "transfer," and it was evident from footnote 19 of the opinion, and otherwise that "transfer" necessarily implied a concept distinct from release. It was also plain that the Court understood that Parhat's homeland is closed to him.

5. The government petitioned for rehearing of the *Parhat* decision, asking the Court to clarify that "release" did not mean release into the United States. This Court promptly denied the petition. Order, No. 06-1397 (D.C. Cir. September 2, 2008).

6. Only when forced by the argument calendar, the government conceded that the *Parhat* judgment should extend as well to the next cases in the pipeline -- involving four additional Uighur Appellees who are identically situated to Parhat. The Court entered judgment accordingly. Judgment, Nos. 07-1509 through 07-1512 (D.C. Cir. Sept. 12, 2008).

7. *The underlying habeas cases.* Eight days before this Court's ruling in *Parhat*, on June 12, 2008, the Supreme Court had held that Guantanamo detainees are entitled to seek release through the writ of habeas corpus. *Boumediene v. Bush*, 553 U.S. __ (2008).

8. In *Parhat*, the Court observed that Parhat had the right "to seek release immediately" in the district court, *Parhat*, 532 F.3d at 851, observing that in a *habeas* proceeding, "*there is no question but that the court will have the power to order him released,*" *id.* (emphasis supplied).

⁴ The court provided a third option: conduct another CSRT. In August, the government abandoned any further CSRT for Parhat, and in September it followed suit for each of the other Uighur Appellees.

9. Parhat and his fellow Appellees proceeded directly to the *habeas* court and, on the basis of the *Parhat* decision, requested immediate release.

10. Judge Urbina did not, however, act hastily. He received substantial briefing from the parties, and held a status conference in August, in which he outlined his serious concerns with the government's position. He then gave the government six additional weeks to attend to the problem.

11. Just last week, the government conceded that none of the seventeen Uighur Appellees are enemy combatants, and that remedy was the only remaining issue as to all of them. Gov't Status Report, *Kiyemba v. Bush, et al.*, Nos. 05-1509, 05-1602, 05-1704, 05-2370, 05-2398, and 08-1310 (D.D.C. Sept. 30, 2008). Once again, the government withheld the concession until the last possible moment under Judge Urbina's earlier procedural order. This concession also permitted the government to avoid making any formal return in the case. As to remedy, the government argued (and argues here), that the courts are powerless to give one. Stay Motion at 6-11.

12. All parties agree that no other suitable country is willing to take the Appellees. Nor is there any dispute that, despite the lapse of four months, the government has not done what *Parhat* ordered it to do. It has neither released nor transferred Parhat. This point was extensively briefed to Judge Urbina.

13. On October 7, 2008, the district court did what precisely what *Boumediene* and *Parhat* prescribed: it decided the *habeas* cases and ordered the military to release Parhat and his fellow Appellees. Minute Order, *Kiyemba v. Bush, et al.*, No. 05-1509, 05-1602, 05-1704, 05-2370, 05-2398, and 08-1310 (D.D.C. October 7, 2008). The district judge directed the government to produce the men in his chambers on Friday October 10, 2008, to be delivered to the care and custody of an established support network in the Washington, D.C. area. *See id.*

14. Almost four months have elapsed since this Court directed Parhat to be transferred or released. Whatever the parties contend as to the meaning of “release,” it is undisputed that the government has not complied with this Court’s order, nor shown any sign that it intends to.

15. *On the contrary, this appeal represents, in part, its refusal to comply with a previous order of this Court; the order issued in Parhat.*

16. One of the Petitioners-Appellees here is Huzaifa Parhat himself. He is directly entitled to the benefit of this Court’s *Parhat* judgment. Four more of the appellees are entitled to the benefit of the follow-on judgments applying the *Parhat* judgment in their cases.

17. For at least five reasons, assignment of this case to any panel other than the *Parhat* panel would seriously undermine this Court’s orderly decision-making. *First*, the Court is asked to make emergency decisions in an extraordinarily important case, on the basis of unsourced and provocative statements (such as, for example, the notion that these appellees “sought to wage terrorism against a foreign government”). Such assertions have never been made in any court before, anywhere. Indeed, there is absolutely nothing in the record to support them, although this Court, asked to rule almost instantly, would have no way to know that but for the *Parhat* panel’s familiarity with the record. No panel of this Court other than the *Parhat* panel is presently informed as to the relevant underlying facts and circumstances.

18. *Second*, the *Parhat* decision is final, and is the law of this Circuit. The issues raised by this appeal cannot be resolved without construing that decision, and should not be resolved in a manner that contradicts *Parhat* itself. Efficiency and judicial economy suggest that only that panel can properly and consistently address the issues.

19. *Third*, five appellees here are directly entitled to the benefit of *Parhat*

and the follow-on judgments. They should not be subject to inconsistent rulings from the same Court, on a matter as fundamental as indefinite imprisonment. The other Appellees are entitled to the benefit of that opinion as Circuit precedent.

20. *Fourth*, regrettably, these cases raise serious questions of contempt. Whatever the government's position as to "release" may be, the government concedes that it is not in compliance with a final, unstayed order of the *Parhat* panel. There may well be further proceedings before that panel to enforce its order, and regardless of whether such proceedings are filed, it would be inappropriate for a new panel, in such circumstances, to risk giving inconsistent orders.

21. *Fifth*, the *Parhat* panel's familiarity with the issues and the underlying factual record would facilitate a prompt, efficient, and fair resolution of the government's appeal and these related issues. Although the facts of the "dual track" litigation here are unique to DTA/habeas, this practicality is reflected in the Court's Handbook of Practice and Internal Procedures (April 4, 2007), in which it is noted that a panel with prior experience over a matter (such as a special panel that has previously heard a motion) may be assigned to the merits when that panel has "considered in great detail a matter that is closely related." X.E.1. The Handbook's discussion of the reasons for the related case rule is similar, noting that the practice is intended to further "judicial economy and consistency of decisions." X.E.2. For these same reasons, after seven years of wrongful imprisonment, and now two separate judicial orders directing the government to release Parhat, the urgency of a prompt, efficient, and fair resolution of this appeal cannot be overstated; the *Parhat* panel should hear this matter.

CONCLUSION

For all of the foregoing reason, the Petitioners-Appellees respectfully request that the Court allow this motion.

DATED: October 8, 2008

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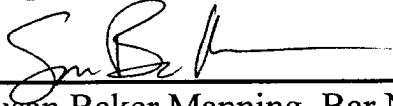
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CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2008, I filed and served the foregoing by causing an original and four copies to be delivered to the Court via hand delivery, and by causing copies to be delivered to the following counsel of record by electronic service simultaneously with the filing of the motion and by hand delivery on October 8, 2008:

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Petitioners-Movants respectfully submit this Certificate as to Parties, Rulings and Related Cases.

(A) Parties and Amici:

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Abdul Semet

Hammad Memet

Huzaifa Parhat

Jalal Jalaldin

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* Each Petitioner incarcerated at Guantanamo Bay has also directly authorized counsel to act in these cases.

(B) Ruling Under Review

On October 7, 2008, the government filed a Notice of Appeal from the minute entry and orders entered orally in open Court on October 7, 2008 in district court case numbers 05-1509; 05-1602; 05-1704; 05-2370; 05-2398; and 08-1310.

(C) Related Cases

Sixteen of the seventeen Uighur Movants are or have been Petitioners in cases seeking review under the Detainee Treatment Act of 2005:

Parhat v. Gates, No. 06-1397 (judgment for Petitioner: June 20, 2008)

Mahnut v. Gates, No. 07-1066

Mahmud v. Gates, No. 07-1110

Abdurahman v. Gates, No. 07-1303

Nasser v. Gates, No. 07-1340

Thabid v. Gates, No. 07-1341

Amhud v. Gates, No. 07-1342

Razakah v. Gates, No. 07-1350

Sabour v. Gates, No. 07-1508

Semet v. Gates, No. 07-1509 (judgment for Petitioner: Sept. 12, 2008)

Jalaldin v. Gates, No. 07-1510 (judgment for Petitioner: Sept. 12, 2008)

Ali v. Gates, No. 07-1511 (judgment for Petitioner: Sept. 12, 2008)

Osman v. Gates, No. 07-1512 (judgment for Petitioner: Sept. 12, 2008)

Memet v. Gates, No. 07-1523

Tourson v. Gates, No. 08-1033

Noori v. Gates, No. 08-1060



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