

Sabin Willett
Direct Phone: 61 7.951.8775
Direct Fax: 617.951.8736
sabin.willett@bingham.com

18 June 2009

Via Federal Express

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

Re: *Kiyemba v. Obama*, No. 08-12345

Dear Mr. Suter:

We returned from Bermuda to find General Kagan's letter of June 11, 2009. It is indeed our deep hope that the June 11, 2009 transfer of four of the seventeen petitioners has mooted the petition for *certiorari* as to those four petitioners, although matters remain quite unsettled in Bermuda. The opposition party has called for a vote of no confidence in the elected Premier who arranged for the transfer, while the governor of Bermuda (who is appointed by the Crown to oversee this overseas territory of the United Kingdom) has expressed his displeasure.

One thing is clear: the petition is not moot as to the thirteen petitioners who remain at Guantanamo. Since October, 2008, when the district court's release order was stayed, the government has actively sought to resettle the men, as it did before that order. No solution has been found for thirteen of them, nor for other Guantanamo prisoners similarly situated. "Kiyemba orders" (in which a district judge directs the executive branch to undertake diplomacy) are given in all Guantanamo habeas cases in which detainees prevail in the district court. They appear to have little impact.

General Kagan's letter frames the question presented in this case as "whether a federal court exercising its *habeas corpus* jurisdiction may order the United States government to bring petitioners into the United States for release, outside of the framework of the federal immigration laws." With respect, we think the question presented is whether, notwithstanding the Court's landmark decision in *Boumediene v. Bush*, 553 U.S. ---, 128 S. Ct. 2229 (2008), an Article III court is powerless to remedy indefinite and illegal Executive detention of prisoners within its *habeas* jurisdiction. If the decision below is allowed to stand, *habeas* relief will continue to be a matter of Executive largesse.

Throughout the long history of the Guantánamo litigation, the court of appeals often has been at odds with this Court's precedents, and the Executive has often sought to avoid judicial review through eleventh-hour transfers.

Boston
Hartford
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London
Los Angeles
New York
Orange County
San Francisco
Santa Monica
Silicon Valley
Tokyo
Washington

Bingham McCutchen LLP
One Federal Street
Boston, MA 02110-1726

T 617.951.8000
F 617.951.8736
bingham.com

A/73066851.1/0999997-0000928762

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Because the singularly important question presented is one that only this Court can resolve, this Court's intervention is urgently needed, and recent events provide no basis for delay. *See Massachusetts Trs. of E. Gas & Fuel Assocs. v. United States*, 377 U.S. 235, 237 (1964) (granting certiorari, in part, "[b]ecause a considerable number of suits are pending in the lower courts which will turn on resolution of these issues").

Very truly yours,



Sabin Willett

cc: Elena Kagan, Solicitor General
Counsel for Petitioners and *Amici*
(each via FedEx)