



No. _____

In The
Supreme Court of the United States

JAMAL KIYEMBA, *et al.*,
Petitioners,

v.

BARACK H. OBAMA, *et al.*,
Respondents.

APPLICATION FOR AN EXTENSION OF TIME WITHIN
WHICH TO FILE A PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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To the Honorable John G. Roberts, Jr., Chief Justice of the Supreme Court of the United States and Circuit Justice for the District of Columbia Circuit:

Petitioners respectfully request that time to file a petition for a writ of certiorari to review the judgment of the D.C. Circuit in *Kiyemba v. Obama*, 555 F.3d 1022 (D.C. Cir. 2009) (“*Kiyemba I*”), be extended fifteen (15) days up to and including November 10, 2009. The judgment of the D.C. Circuit was entered on April 7, 2009, and Petitioners’ timely petition for rehearing and suggestion for rehearing *en banc* was denied on July 27, 2009, making a petition for certiorari for review of the judgment due this Monday, October 26, 2009. Petitioners would invoke this Court’s jurisdiction under 28 U.S.C. § 1254(1). The opinion of the D.C. Circuit and orders denying the petition for rehearing and suggestion for rehearing *en banc* are attached.

As discussed below, Petitioners satisfy the “extraordinary circumstances” requirement for seeking an extension less than ten days before the current deadline because just yesterday the Court granted certiorari in *Kiyemba v. Obama*, 08-1234 (“*Kiyemba I*”), which involves the same Petitioners as those here. *See* Sup. Ct. Rules 13(5), 30(2).

BACKGROUND

Yesterday the Court granted a petition for writ of certiorari in *Kiyemba I*, on the question of whether the federal courts may issue a writ of habeas corpus to compel the release of Petitioners into the United States. Petitioners in *Kiyemba I* sought certiorari to review the D.C. Circuit’s February 18, 2009 decision in *Kiyemba v. Obama*, 555 F.3d 1022 (D.C. Cir. 2009), which held that the district court had no authority under the writ of habeas corpus to compel the release of petitioners into the United States. *See id.* at 1028.

Each petitioner in *Kiyemba II* is also a petitioner in *Kiyemba I*. Petitioners in *Kiyemba II* intend to seek certiorari to review the D.C. Circuit’s April 7, 2009 decision in *Kiyemba v. Obama*, 561 F.3d 509 (D.C. Cir. 2009), which held that district courts may not “ba[r] the transfer

of a Guantanamo detainee on the ground that he is likely to be tortured or subject to further prosecution or detention in the recipient country.” *Id.* at 516.

REASONS WHY AN EXTENSION OF TIME IS JUSTIFIED

The extension of time is sought to provide counsel for Petitioners additional time to address the impact that the Court’s grant of certiorari in *Kiyemba I* may have on the issues to be presented in the petition for certiorari in *Kiyemba II* and to determine whether to seek deferred consideration of the petition for certiorari and confer with Petitioners regarding the same.

EXTRAORDINARY CIRCUMSTANCES ARE PRESENT HERE

Extraordinary circumstances justify the limited extension of time requested here. The petition for writ of certiorari in *Kiyemba I* was filed on April 3, 2009. It was distributed for consideration at conference on four separate occasions between June 2009 and October 2009. Petitioners did not and could not reasonably anticipate that the petition would be granted on October 20, less than one week before the filing deadline in *Kiyemba II*. As noted, the requested fifteen day extension is sought for Petitioners to address the impact of this Court’s recent decision to grant certiorari in *Kiyemba I* and to consider whether to seek deferred consideration of the *Kiyemba II* petition for certiorari.

* * *

CONCLUSION

For the foregoing reasons, the time to file a petition for a writ of certiorari in this matter should be extended fifteen days up to and including November 10, 2009.

Respectfully submitted,



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