

No. 06-1195

IN THE SUPREME COURT OF THE UNITED STATES

LAKHDAR BOUMEDIENE, *et al.*,

Petitioners,

v.

GEORGE W. BUSH, *et al.*,

Respondents,

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the District of Columbia Circuit

REPLY IN SUPPORT OF MOTION FOR EXPEDITED CONSIDERATION OF THE
PETITION FOR CERTIORARI, BRIEFING, AND ORAL ARGUMENT

Stephen H. Oleskey
Robert C. Kirsch
Mark C. Fleming
Joseph J. Mueller
Pratik A. Shah
Lynne Campbell Soutter
Jeffrey S. Gleason
Lauren G. Brunswick
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000

Seth P. Waxman
Counsel of Record
Paul R.Q. Wolfson
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 663-6000

Douglas F. Curtis
Paul M. Winke
Julian Davis Mortenson
WILMER CUTLER PICKERING
HALE AND DORR LLP
399 Park Avenue
New York, NY 10022
(212) 230-8800

Petitioners Lakhdar Boumediene, *et al.*, respectfully submit this reply in support of their Motion for Expedited Consideration of the Petition for Certiorari, Briefing, and Oral Argument.

ARGUMENT

The government does not seriously contest any of the reasons proffered by Petitioners for expedited review. *First*, Petitioners have been detained for more than five years without any meaningful opportunity for judicial review. This extended detention is contrary to the Great Writ’s purpose of “provid[ing] an effective and speedy instrument by which judicial inquiry may be had into the legality of the detention of a person.” *Carafas v. LaVallee*, 391 U.S. 234, 238 (1968). Moreover, Petitioners have consistently pressed for a speedy resolution of this case, including asking the D.C. Circuit for expedition on appeal.

Second, this case involves a watershed challenge to Executive authority, and it is important that this Court settle the questions surrounding the government’s authority to detain persons such as Petitioners without charge. Mot. for Expedited Consideration (“MTE”) 3-4. Indeed, the government concedes that the issues raised in this case are “important.” Br. in Opp. 7-8; *see also Ex parte Quirin*, 317 U.S. 1, 19 (1942).

Petitioners therefore respectfully request that the Court grant their motion to expedite. Petitioners do not object to the government’s proposed schedule for expedited briefing and argument.

1. Respondents’ principal argument against expedition is that cases brought by *other* Guantanamo detainees under section 1005(e)(2) of the Detainee Treatment Act of 2005, Pub. L. No. 109-148, 119 Stat. 2680, 2739 (“DTA”), are pending in the court of appeals. Resps.’ Opp. to Mots. to Expedite Briefing and Oral Argument (“Opp. to MTE”) 4-5. But this Court has granted expedited review in compelling cases even when the very petitioner before the Court has

been the subject of ongoing proceedings. *See, e.g., Quirin*, 317 U.S. 1 (granting expedited review while military tribunal proceedings still pending); *United States v. Nixon*, 417 U.S. 927 (1974) (granting certiorari before judgment and expediting briefing schedule and oral argument despite proceedings pending in lower court); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 584 (1952) (same). The fact that other detainees are involved in other litigation does not detract from the urgency of this case.

Nor does the fact that Petitioners have not separately filed a petition under the DTA argue against expedited review of the court of appeals' dismissal of their habeas case. Opp. to MTE 3-6. The government's suggestion that Petitioners were obligated to "exhaust" DTA review—a procedure that did not even exist when their habeas petitions were filed—is erroneous and will be addressed more fully in Petitioners' reply brief in support of certiorari. For present purposes, it is enough to recognize that the government's argument *against expedition* of the Court's review amounts to nothing more than the government's argument *against granting certiorari at all*. *See* Br. in Opp. 12-19; (arguing that this Court should wait for a resolution of DTA § 1005(e)(2) cases now pending in the D.C. Circuit); Opp. to MTE 3-6 (same). The government does not suggest why, if the Court grants certiorari, the DTA would counsel against hearing the case this Term.

Moreover, awaiting resolution of the DTA cases in the D.C. Circuit will create further significant and unnecessary delay in the disposition of Petitioners' challenges to their detention. The government's claim that the D.C. Circuit "has already begun expedited consideration of petitions properly filed under the DTA," Opp. to MTE 4, is misleadingly incomplete. Although one of the DTA petitioners moved to expedite the case two and a half months ago, the government *opposed* that motion and cross-moved for a stay of proceedings. *See* Opp. to Mots.

for Entry of Protective Order & for Order Setting Procedures & Cross Mot. to Enter Proposed Protective Order & to Stay Proceedings, *Parhat v. Gates*, No. 06-1397 (D.C. Cir. Dec. 29, 2006). The D.C. Circuit then deferred consideration of the petition and motions pending its resolution of *Boumediene v. Bush* and *Al Odah v. United States*. Order, *Parhat v. Gates*, No. 06-1397, at 1 (D.C. Cir. Feb. 5, 2007). Proceedings in *Bismullah v. Gates*, No. 06-1197 (D.C. Cir.), were likewise deferred pending the decision in *Boumediene* and *Al Odah*. And although the D.C. Circuit recently issued a briefing schedule and set an oral argument for May 15, 2007, the orders applied to procedural motions only and expressly forbade the parties from briefing the merits of their cases. Order, *Parhat v. Gates*, No. 06-1397, at 2 (D.C. Cir. Mar. 14, 2007); Order, *Bismullah v. Gates*, No. 06-1197, at 2 (D.C. Cir. Mar, 14, 2007).

2. The government also complains that Petitioners' proposed expedited schedule leaves it insufficient time to brief their case, but there is no reason why more time should be required. The Court is already familiar with the substantive issues of the case, having addressed similar (and, in some cases, virtually identical) arguments three years ago in *Rasul v. Bush*, 542 U.S. 466 (2004). And the parties are well prepared to undertake an accelerated briefing schedule, having exhaustively explored the issues at stake here during years of lower court proceedings and many successive rounds of briefing. The government's ability to file a detailed Brief in Opposition to Certiorari 16 days after the filing of the petition attests to its readiness.

3. In the interest of minimizing the disputed issues before the Court, Petitioners consent to the government's proposed briefing and argument schedule. Accordingly, Petitioners respectfully request that the Court order briefing as follows:

April 16	Petitioners' brief and joint appendix
May 3	Respondents' brief

May 10 Petitioners' reply brief

May 21 Oral argument

See Opp. to MTE 7.

CONCLUSION

The Court should grant Petitioners' Motion to Expedite for Expedited Consideration of the Petition for Certiorari, Briefing, and Oral Argument, as modified by the briefing schedule proposed by Respondents and agreed to above by Petitioners.

Respectfully submitted.



Stephen H. Oleskey
Robert C. Kirsch
Mark C. Fleming
Joseph J. Mueller
Pratik A. Shah
Lynne Campbell Soutter
Jeffrey S. Gleason
Lauren G. Brunswick
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
(617) 526-6000

Seth P. Waxman
Counsel of Record
Paul R.Q. Wolfson
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Ave., N.W.
Washington, DC 20006
(202) 663-6000

Douglas F. Curtis
Paul M. Winke
Julian Davis Mortenson
WILMER CUTLER PICKERING
HALE AND DORR LLP
399 Park Avenue
New York, NY 10022
(212) 230-8800

March 2007