

**In the Supreme Court of the United States**

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KHALED A. F. AL ODAH, *ET AL.*,

*Petitioners,*

v.

UNITED STATES OF AMERICA, *ET AL.*,

*Respondents.*

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**On Petition For Writ Of Certiorari To The United States Court of Appeals for the  
District of Columbia Circuit**

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**REPLY IN SUPPORT OF MOTION TO EXPEDITE  
BRIEFING SCHEDULE AND ORAL ARGUMENT**

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In reply to respondents' opposition to the motion to expedite briefing and oral argument, petitioners state as follows:

1. Respondents do not dispute that petitioners have been detained for more than five years without any meaningful judicial review. Their habeas corpus cases have been stalled in the courts for nearly three years since this Court ordered the district court "to consider in the first instance the merits of petitioners' claims." *Rasul*, 542 U.S. at 485; *see also Stack v. Boyle*, 342 U.S. 1, 4 (1952) ("[habeas corpus relief] must be speedy if it is to be effective"). Nor do respondents contest that this case raises issues of the highest importance – both for petitioners and the nation. *See Ex parte Quirin*, 317 U.S. 1, 19 (1942).

2. Instead, respondents principally oppose expedited consideration on the ground that petitioners have not sought review of their Combatant Status Review Tribunal ("CSRT") decisions in the United States Court of Appeals for the District of Columbia Circuit pursuant to Section 1005(e)(2) of the Detainee Treatment Act of 2005 ("DTA").<sup>1</sup> Petitioners will address respondents' arguments concerning exhaustion of remedies more fully in their reply to the opposition to the petition for certiorari. But the DTA provides no reason for this Court to wait to address the sufficiency of the DTA procedures.

3. As Judge Rogers recognized in her dissent, "Far from merely adjusting the mechanism for vindicating the habeas right, the DTA imposes a series of hurdles while saddling each Guantanamo detainee with an assortment of handicaps that make the obstacles insurmountable."

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<sup>1</sup> There is substantial doubt as to whether such review is even available to the petitioners. Pursuant to § 1005(e)(2)(B)(ii) of the DTA, review in the Court of Appeals is available only to detainees "for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specified by the Secretary of Defense." The Secretary of Defense did not promulgate such procedures until July 14, 2006. Petitioners' CSRT proceedings were completed long before those procedures were promulgated. This substantial doubt about the availability of D.C. Circuit review for the CSRT decisions is a further reason why the Court should not defer review of this petition.

(App. 41).<sup>2</sup> Respondents may disagree with Judge Rogers, but the issue is squarely presented in this case and is ripe for a decision.

4. Respondents argue that the Court should await resolution of DTA § 1005(e)(2) cases now pending in the Court of Appeals. They claim that the Court of Appeals “has already begun expedited consideration of petitions properly filed under the DTA” (Respondents’ Opposition to Motions to Expedite Briefing and Oral Argument, at 4), but this is incorrect. *Parhat v. Gates*, No. 06-1397 (D.C. Cir.), and *Bismullah v. Gates*, No. 06-1197 (D.C. Cir.) have not been expedited. The petitioner in *Parhat* moved to expedite two and a half months ago, but respondents opposed the motion and moved to stay the case pending resolution of *Boumediene v. Bush* and *Al Odah v. United States*. The Court of Appeals granted respondents’ motion to stay and never ruled on the motion to expedite. Following its decision in *Boumediene* and *Al Odah*, the court dissolved the stay, issued a briefing schedule, and set an oral argument for May 15, 2007, on pending procedural motions, but the parties have been ordered not to brief the merits of their cases.

5. Respondents similarly argued in *Hamdan v. Gates* and *Khadr v. Bush* that the Court should not expedite review in those cases because the issues could be considered in *Boumediene*

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<sup>2</sup> The CSRTs themselves do not provide a meaningful opportunity for the detainees to challenge the grounds for their detentions. Among other defects, the CSRTs (a) provide no opportunity to see or challenge classified allegations or evidence, (b) lack a neutral decisionmaker, (c) may rely on statements obtained through torture or coercion, and (d) are far removed from the time and place of capture with no process to compel attendance of witnesses or production of evidence. Petitioners were allowed no assistance of counsel in their CSRT proceedings, but instead were assigned “personal representatives” who were not their advocates and were required to report their communications with petitioners to military superiors. Moreover, like the DTA § 1005(e)(2) review, the CSRTs cannot order a release. In at least three occasions when a CSRT found detainees not to be enemy combatants, their cases were heard by new CSRTs, without the detainees’ presence or knowledge, until the CSRTs returned findings that the detainees were enemy combatants. See Mark Denbeaux, No-Hearing Hearings: CSRT: The Modern Habeas Corpus?, at 37-39 (2006), [http://law.shu.edu/news/final\\_no\\_hearing\\_hearings\\_report](http://law.shu.edu/news/final_no_hearing_hearings_report).

and *Al Odah*. See *Hamdan v. Gates*, No. 06-1169, Respondents' Opposition to Motion to Expedite, at 5. Now that *Boumediene* and *Al Odah* are before the Court, respondents are asking the Court to wait for the D.C. Circuit to decide *Parhat* and *Bismullah*. In respondents' view, no case is ready for a decision while any other case remains undecided. The issues are squarely before the Court now. There is no need to require petitioners to wait any longer.

6. Finally, respondents complain that petitioners' proposed schedule leaves them insufficient time to brief their case. There is no reason why more time should be required. Respondents are already familiar with the issues, having gone through a full round of briefing and three rounds of supplemental briefing in the D.C. Circuit during the two years the case was pending there.<sup>3</sup> Therefore, petitioners believe that their proposed schedule is appropriate. Nevertheless, petitioners do not oppose respondents' proposed schedule for briefing and argument, if acceptable to the Court:

April 16	Petitioners' brief and joint appendix
May 3	Respondents' brief
May 10	Petitioners' reply brief
May 21	Oral argument

See Respondents' Opposition to Motions to Expedite Briefing and Oral Argument, at 7.

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<sup>3</sup> In *Felker v. Turpin*, 517 U.S. 651 (1996), cited in respondents' opposition to the motion to expedite, this Court expedited review over the dissent of Justices Souter, Ginsberg, and Breyer, who would not have disposed of the case on an expedited basis. One of the principal issues in *Felker* was whether 28 U.S.C. § 2244(b)(3)(E) validly stripped the Supreme Court of jurisdiction to review the gate keeping function of the courts of appeals over second and subsequent habeas petitions (see 517 U.S. at 661), an issue that, by its nature, would not have been briefed before the court of appeals. Unlike in *Felker*, all of the significant issues in this case have been thoroughly briefed in the court below.

**Conclusion**

For the reasons stated above, petitioners respectfully request this Court to grant their motion to expedite briefing and oral argument, and to order either the schedule proposed in their motion, or the schedule proposed by the respondents and not opposed by petitioners in this reply.

Respectfully submitted,



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MARCH, 2007

**CERTIFICATE OF SERVICE**

I certify that all parties required to be served in this matter have been served with Petitioners' Motion to Expedite Briefing Schedule and Oral Argument. On March 22, 2006, I caused the foregoing motion to be served by hand delivery upon the following:

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