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October 17, 2006

Mr. Mark J. Langer  
Clerk, United States Court of Appeals  
for the District of Columbia Circuit  
United States Courthouse  
333 Constitution Avenue, N.W., Room 5423  
Washington, D.C. 20001

Re: Al Odah v. United States, Nos. 05-5064, 05-5095 through 05-5116  
Boumediene v. Bush, Nos. 05-5062, 05-5063 (Oral argument held  
on September 8, 2005 and March 22, 2006)

Dear Mr. Langer:


The United States submits this letter, pursuant to Federal Rule of Civil Procedure 28(j), to advise the Court that on October 17, 2006, the President signed into law the Military Commissions Act of 2006, Pub. L. No. 109-\_\_\_ (a copy of which is attached).

Section 7(a) of that Act amends 28 U.S.C. § 2241, eliminating federal court jurisdiction over two categories of cases: (1) habeas corpus actions “filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination” and (2) “any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States” as an enemy combatant, except as provided in section 1005(e)(2) and (e)(3) of the Detainee Treatment Act. Section 7(b) further provides that this amendment “shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001.” Accordingly, the Act unambiguously eliminates district court jurisdiction over petitioners’ claims.

Although petitioners have argued that such a withdrawal of habeas jurisdiction would be unconstitutional, that issue was raised and fully addressed at the March 22 argument, as well as in the prior rounds of supplemental briefing. The Court should therefore decide that issue and the merits of these appeals forthwith, based on the existing briefing.

The Military Commissions Act also makes explicit that the Geneva Conventions are not judicially enforceable. Id. § 5(a) (“No person may invoke the Geneva Conventions or any protocols thereto in any habeas corpus or other civil action proceeding to which the United States \* \* \* is a party as a source of rights in any court \* \* \* .”). The Act, therefore, supports the Government’s argument that petitioners’ treaty claims should be dismissed.

Sincerely,



Catherine Y. Hancock  
Attorney, Appellate Staff  
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