

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
ALMURBATI, <i>et. al.</i> ,)	
)	
Petitioners,)	
)	
v.)	Civil Action No. 04-CV-1227 (RBW)
)	
GEORGE W. BUSH,)	
<i>et al.</i> ,)	
)	
Respondents.)	
_____)	

**RESPONDENTS REPLY TO PETITIONERS’
OPPOSITION TO MOTION TO DISMISS**

In this case, as in the nearly 200 other cases involving Guantanamo Bay detainees pending in this Court, respondents have moved to dismiss on the ground that the Court of Appeals determined that this Court lacks subject matter jurisdiction over this proceeding. *See Boumediene v. Bush*, 476 F.3d 981, 984-85, 994 (D.C. Cir.), *cert. denied*, ___ U.S. ___, 127 S. Ct. 1478 (2007) (deciding that district court lacked jurisdiction over cases of this type, and determining that this specific case, *al Odah*, must be dismissed). Petitioners have filed a short opposition to the dismissal motion, pointing out that the mandate of the Court of Appeals has not yet issued. But that fact – which constitutes the only basis for petitioners’ opposition to the dismissal motion – provides no basis whatsoever for denying the motion to dismiss.

Although the filing of an appeal generally divests a district court of jurisdiction to take action in connection with the aspects of a case that are involved in the appeal, a district court *always* retains jurisdiction to determine its jurisdiction. *Consolidated Edison Co. of New York v. Bodman*, 449 F.3d 1254, 1257 (D.C. Cir. 2006) (“A court has jurisdiction to determine its jurisdiction”); *Nestor v. Hershey*, 425 F.2d 504, 511 (D.C. Cir. 1969) (“we always have

jurisdiction to determine our jurisdiction”). In this case (as in most litigation), this Court is faced with only two possible answers to the jurisdictional question: it either has jurisdiction or it does not. In light of the Court of Appeals' decision that this Court does not have jurisdiction over any aspect of this proceeding, this Court can hardly conclude that it does have jurisdiction. In the absence of jurisdiction, the only thing for a federal court to do is to announce that fact and dismiss the proceeding. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998).

Therefore, the Motion to Dismiss should be granted on the basis of the law of the circuit, as announced in this very case.

Because petitioners have provided no other reason to deny the government's motion than the incorrect legal theory addressed above, the motion should be granted.

Dated: May 14, 2007

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

DOUGLAS N. LETTER
Terrorism Litigation Counsel

/s/ Judry L. Subar

JOSEPH H. HUNT (D.C. Bar No. 431134)
VINCENT M. GARVEY (D.C. Bar No. 127191)
JUDRY L. SUBAR (D.C. Bar 347518)
TERRY M. HENRY
JEAN LIN
JAMES J. SCHWARTZ
ROBERT J. KATERBERG
NICHOLAS J. PATTERSON
ANDREW I. WARDEN
EDWARD H. WHITE
NICHOLAS A. OLDHAM
JAMES C. LUH
Attorneys
United States Department of Justice

Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W.
Washington, DC 20530
Tel: (202) 514-4107
Fax: (202) 616-8470

Attorneys for Respondents