IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SUHAIL ABDU ANAM, et al.,	
Petitioners,	**04-CV-1194 (HHK)**
- v -	
GEORGE W. BUSH, et al.,	
Respondents.	

MEMORANDUM OF LAW IN SUPPORT OF PETITIONERS' MOTION TO LIFT THE STAYS AND SCHEDULE A STATUS CONFERENCE

Petitioners respectfully submit this memorandum of law in support of their Motion to Lift the Stays and Schedule a Status Conference.

Petitioners have been incarcerated at Guantanamo for more than six years. None of them has been charged with any crime. Respondents assert that Petitioners—like the other 775 men who have been held at Guantanamo—are "enemy combatants" who may be detained indefinitely until the end of the "War on Terror."

Petitioners challenged the legality of their detention in petitions for writ of *habeas corpus* filed July 14, 2004. Respondents moved to dismiss Petitioners' claims on October 4, 2004. On January 5, 2005, Petitioners filed a Motion for Leave to Take Discovery and for Preservation Order. Judge Joyce Hens Green denied Respondents' motion to dismiss, in part, and ruled that Petitioners stated valid claims under the Fifth Amendment and that the Combat Status Review Tribunal procedures violate Petitioners' right to due process of law. *See In re Guantanamo Detainee Cases*, 355 F. Supp. 2d. 443 (D.D.C. Dist. 2005). Respondents appealed

and on February 3, 2005, Judge Green stayed all proceedings pending the resolution of that appeal.

After significant subsequent litigation, on March 16, 2006, this Court ordered proceedings be stayed and that all outstanding motions be held in abeyance pending a jurisdictional ruling by either the Supreme Court or the D.C. Circuit. On February 15, 2008, Petitioners filed a Motion to Compel Respondents to Report on the Destruction of Relevant Evidence and for Amended Preservation Order. That motion was fully briefed on March 10, 2008.

On June 12, 2008, the Supreme Court ruled in *Boumediene v. Bush*, 553 U.S. ___ (June 12, 2008). The Court held: (i) that detainees at Guantanamo Bay have *habeas corpus* rights protected under the Constitution; (ii) that the review procedures of the Detainee Treatment Act are not an adequate substitute for *habeas corpus*; and (iii) that Section 7 of the Military Commissions Act of 2006—which purports to strip the Court of jurisdiction to hear Petitioners' *habeas* claims—violates the Suspension Clause of the Constitution. The Supreme Court placed special emphasis on the long period of Petitioners' detention without any judicial hearing on the merits: "In some of these cases six years have elapsed without the judicial oversight that habeas corpus or an adequate substitute demands. And there has been no showing that the Executive faces such onerous burdens that it cannot respond to habeas corpus actions . . . . The detainees in these cases are entitled to a prompt habeas corpus hearing." *Boumediene*, 553 U.S. __ , slip op. (majority) at 66 (June 12, 2008).

Courts have long recognized "the need to preserve the writ of habeas corpus as a 'swift and imperative remedy in all cases of illegal restraint or confinement.'" *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 490 (1973) (quoting *Secretary for Home Affairs v. O'Brien*,

A.C. 603, 609 (1923)); *see also Cross v. Harris*, 418 F.2d 1095, 1105 n.64 (D.C. Cir. 1969) ("This is a habeas corpus proceeding, and thus particularly inappropriate for any delay."). Deciding *habeas* cases promptly is never more important than where a petitioner has been afforded no judicial review whatsoever. *See Rasul v. Bush*, 542 U.S. 466, 473-75 (2004); *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) ("At its historical core, the writ of habeas corpus has served as a means of reviewing the legality of Executive detention, and it is in that context that its protections have been strongest."); *Johnson v. Rogers*, 917 F.2d 1283, 1284 (10th Cir. 1990) (recognizing that if delay in deciding a *habeas* petition, absent good reason, were routinely permissible, "the function of the Great Writ would be eviscerated"); *Jones v. Shell*, 572 F.2d 1278, 1280 (8th Cir. 1978) ("The writ of habeas corpus, challenging illegality of detention, is reduced to a sham if the trial courts do not act within a reasonable time."); *Cross*, 418 F.2d at 1105 n.64.

For all the forgoing reasons, Petitioners respectfully request that this Court lift the stays and schedule a status conference, consistent with the Supreme Court's ruling in *Boumediene* for a prompt determination of the merits of Petitioners' claims.

Dated: June 19, 2008

Respectfully submitted,

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