

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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SALIM AHMED HAMDAN, <i>et al.</i> ,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 1:04-cv-01519-JR
)	
DONALD RUMSFELD,)	
Secretary, United States Department of)	
Defense, <i>et al.</i> ,)	
)	
Respondents.)	
_____)	

**RESPONDENTS’ MOTION FOR
ENLARGEMENT OF PAGE AND TIME LIMITATIONS**

Respondents, through undersigned counsel, move for a stay of this proceeding pending resolution of *Al Odah, et al. v. United States*, 05-5064 (D.C. Cir.), and *Boumediene v. Bush, et al.*, No. 05-5062 (D.C. Cir.), by the Court of Appeals for the District of Columbia Circuit. In the alternative, respondents move for leave to exceed the 25-page limitation imposed by LCvR 7(e) and for a two-week extension of time from December 1, 2006, to and including December 15, 2006, within which to respond to Petitioner’s Opposition to Motion to Dismiss for Lack of Subject Matter Jurisdiction (“Petr. Opp.”). In support of this motion, respondents inform the Court as follows:

1. In June 2006, this case was remanded to this Court following the Supreme Court’s decision in *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006). That decision held, among other things, that the Detainee Treatment Act (“DTA”) of 2005, Pub. L. No. 109-148, tit. X, 119 Stat. 2680 (10 U.S.C. § 801 note), did not clearly eliminate district court habeas jurisdiction over a habeas petition, such as the one in this case, that was pending at the time of the DTA’s

enactment and that raised certain challenges to petitioner's trial by a military commission (which the Court also determined was inconsistent with statute).

2. On October 17, 2006, Congress enacted the Military Commissions Act of 2006 ("MCA"), Pub. L. No. 109-366, which explicitly divests district courts of jurisdiction to review all habeas petitions (including all pending cases) 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. *See* MCA § 7(a), (b). On the same day, petitioners moved for an order setting briefing schedule on the constitutionality of the MCA.

3. On October 18, 2006, the day after the MCA's enactment, respondents filed a two-page Notice of the Military Commission Act of 2006, notifying this Court of the new legislation and reciting, without any argument, the relevant provisions of the MCA regarding this Court's subject matter jurisdiction. This same notice was filed in approximately 200 Guantanamo detainee cases pending in this Court.

4. On October 27, 2006, before respondents had an opportunity to respond to petitioners' Motion for Order Setting Briefing Schedule on Subject Matter Jurisdiction, *see* LCvR 7(b), this Court issued an order construing respondents' October 18, 2006 notice as a motion to dismiss for want of jurisdiction and setting forth a briefing schedule. On November 17, 2006, petitioners filed their brief challenging the constitutionality of the MCA. Pursuant to this Court's briefing schedule, respondents' reply brief is currently due on December 1, 2006.

5. In the pending appeals of certain habeas corpus petitions of other Guantanamo Bay detainees, *Al Odah, et al. v. United States*, 05-5064 (D.C. Cir.), and *Boumediene v. Bush, et al.*, No. 05-5062 (D.C. Cir.), the Court of Appeals is also considering the effect and constitutionality of the MCA, with briefing having been completed on November 20, 2006 on

those issues in the appeals. The petitioners in those appeals raised a number of arguments similar to those raised by petitioner here, including, for example, that the MCA does not apply to pending cases; that if construed to apply to pending cases, the MCA would violate the Suspension Clause of the Constitution; that the exclusive judicial review scheme provided in the DTA and the MCA is not an adequate substitute for habeas; that the MCA improperly eliminates alien detainees' pre-trial ability to challenge the jurisdiction of any military commission yet to be convened; and that the MCA improperly precludes alien detainees' claims under the Geneva Conventions.

6. Petitioner here, however, has raised additional arguments, including that the MCA unconstitutionally interferes with core functions of the judiciary; that the MCA is an unlawful bill of attainder; and that the MCA's jurisdiction-limiting provision violates equal protection. Furthermore, petitioner in this case has raised various arguments that the existence of this Court's November 8, 2004 injunction respecting military commission proceedings against petitioner impacts the jurisdictional analysis.

7. Respondents respectfully seek leave to enlarge both the page and time limitations with respect to respondents' reply brief currently due December 1, 2006. Because this Court construed respondents' two-page notice of the MCA as a motion to dismiss, respondents did not have an opportunity to present an opening brief, which would have a page limitation of 45 pages instead of the 25-page limit applicable to reply briefs. *See* LCvR 7(e). As petitioner has acknowledged, the issues raised by the MCA "are complex and of outmost importance." *See* Petr. Opp. at 6. Indeed, petitioner has fit a lengthy brief into the otherwise available 45 pages by apparently using line spacing tighter than the double-spacing required in LCvR 5.1(f) and by using a small font size for his many footnotes. Accordingly, respondents request that they be permitted to submit a reply brief of 45 pages.

8. For similar reasons, respondents seek an extension of time to file the reply brief. The scheduled prescribed under the briefing schedule included the Thanksgiving holidays which affected the amount of time respondents have had to complete a reply. Moreover, petitioner's brief raises new arguments respondents have not previously addressed in the MCA briefing in the D.C. Circuit. Given the significance of the issues in this case as well as the fact that respondents' counsel have been in the process of dealing with motions, briefings, and other litigation matters in other detainee habeas cases, respondents anticipate that they will not be able to complete the brief by the current deadline of December 1, 2006. Accordingly, respondents respectfully request that the deadline for filing their reply brief be extended to and including December 15, 2006.

9. The undersigned has conferred with petitioner's counsel regarding this motion, and petitioner's counsel has informed the undersigned that they oppose the motion.

Dated: November 29, 2006

Respectfully submitted,

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ORDER

Upon Respondents' Motion for Enlargement of Page and Time Limitations, it is hereby ORDERED that the motion is GRANTED, it is further ORDERED that respondents shall have up to and including December 15, 2006 to file a reply brief in support of their motion to dismiss; it is further ORDERED that respondents may submit a reply brief of 45 pages.

Dated: _____
UNITED STATES DISTRICT JUDGE