

06-1196 AL ODAH V. UNITED STATES

DECISION BELOW:476 F3d 981

LOWER COURT CASE NUMBER: 05-5064, 05-5095, 05-5096

QUESTIONS PRESENTED:

1. Did the D.C. Circuit err in relying again on *Johnson v. Eisentrager*, 339 U.S. 763 (1950), to dismiss these petitions and to hold that petitioners have no common law right to habeas protected by the Suspension Clause and no constitutional rights whatsoever, despite this Court's ruling in *Rasul v. Bush*, 542 U.S. 466 (2004), that these petitioners are in a fundamentally different position from those in *Eisentrager*, that their access to the writ is consistent with the historical reach of the writ at common law, and that they are confined within the territorial jurisdiction of the United States?
2. Given that the Court in *Rasul* concluded that the writ at common law would have extended to persons detained at Guantanamo, did the D.C. Circuit err in holding that petitioners' right to the writ was not protected by the Suspension Clause because they supposedly would not have been entitled to the writ at common law?
3. Are petitioners, who have been detained without charge or trial for more than five years in the exclusive custody of the United States at Guantanamo, a territory under the plenary and exclusive jurisdiction of the United States, entitled to the protection of the Fifth Amendment right not to be deprived of liberty without due process of law and of the Geneva Conventions?
4. Should section 7(b) of the Military Commissions Act of 2006, which does not explicitly mention habeas corpus, be construed to eliminate the courts' jurisdiction over petitioners' pending habeas cases, thereby creating serious constitutional issues?

CERT. GRANTED 6/29/2007

THE PETITIONS FOR REHEARING ARE GRANTED. THE ORDERS ENTERED APRIL 2, 2007, DENYING THE PETITIONS FOR WRITS OF CERTIORARI ARE VACATED. THE PETITIONS FOR WRITS OF CERTIORARI ARE GRANTED. THE CASES ARE CONSOLIDATED AND A TOTAL OF ONE HOUR IS ALLOTTED FOR ORAL ARGUMENT. AS IT WOULD BE OF MATERIAL ASSISTANCE TO CONSULT ANY DECISION IN BISMULLAH, ET AL., V. GATES, NO. 06-1197, AND PARHAT, ET AL., V. GATES, NO. 06-1397, CURRENTLY PENDING IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT, SUPPLEMENTAL BRIEFING WILL BE SCHEDULED UPON THE ISSUANCE OF ANY DECISION IN THOSE CASES.