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No-07-6827

IN THE SUPREME COURT OF THE UNITED STATES

In re Abdul Hamid A1-Ghizzawi,

Petitioner.

ON PETITION FOR ORIGINAL WRIT OF HABEAS CORPUS

REPLY TO ORIGINAL WRIT

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Petitioner Abdul Hamid Al-Ghizzawi ("Al-Ghizzawi") respectfully replies to the Response to his Petition for Original Writ of Habeas Corpus (“Res.”) filed by Respondent, the United States Government ("the Government").

PRELIMINARY STATEMENT

Al-Ghizzawi filed an Original Petition for habeas corpus with this Court, accepted for filing on or about October 1, 2007. In response, rather than submit a Factual Return, or otherwise contesting the facts attested to in Al-Ghizzawi’s Original Petition, the Government has asked this Court to dismiss the Petition, arguing that this Court not only has no jurisdiction to hear this case but that even if the Court does have jurisdiction there is no “exceptional circumstance” presented by the Petition.

The Government makes the latter assertion even though:

(1) It has held an innocent man without so much as charge let alone trial for almost six years,

(2) It has deliberately failed to treat him for his life threatening diseases[1],

(3) The CSRT process is wholly flawed, as shown by the declarations of Col. Stephen

[1] In mid September, 2007 Al-Ghizzawi was finally seen by a doctor regarding his ill health. As shown by the attached Affidavits Al-Ghizzawi was told he has a severe liver infection and that the doctor wanted to perform a biopsy on his liver. Al-Ghizzawi agreed to the procedure, but shortly before the biopsy was to be conducted the doctor scared Al-Ghizzawi into not going forward with the biopsy by telling him it was a very dangerous procedure and that many times other organs are damaged and cannot be repaired. Not surprisingly, Al-Ghizzawi declined the biopsy. Al-Ghizzawi has still not received medication or treatment for his hepatitis B and severe liver infection but, as attested by Dr. Reichen, treatment should have been provided despite the military’s scare tactics and lack of a biopsy. (Exs. A and B)

Abraham and another as yet undisclosed military officer (believed to be a Major), who were participants in the Combat Status Review Tribunals ("CSRTs") --the process hastily concocted by the Government and the military as a supposed alternative to habeas corpus in order to comply with the mandates of this Court, of Congress, and this nation's laws and treaty obligations.[2]

(4) The participants in the CSRT determination process were not provided with adequate information to make meaningful determinations of "combatant status," and that even when a detainee was "cleared" on the "evidence" presented (as in Al-Ghizzawi's case), such a decision of clearance was subject to arbitrary reversal for political reasons in a process at odds with every principle for which this nation stands. (See Exs. C, D, & E)

To be sure, in this Administration's eyes, holding men in indefinite detention without charge and without proper medical attention is not "exceptional." But in a society that respects the rule of law the circumstances are not only exceptional they are anathema to that rule of law and our Constitution. In sum, the Government's arguments are without merit, indeed offensive to our laws and Constitution. As the facts in Al-Ghizzawi's Original Petition have not been contested by the Government Al-Ghizzawi asks that his petition be granted and his release ordered immediately.

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[2] Col. Abraham also testified before Congress on July 26, 2007. (*Upholding the Principles of Habeas Corpus for Detainees, 2007: Hearing before the House Armed Services Committee*, 110th Cong., 1st Sess. (2007) (statement of Lieutenant Colonel Stephen Abraham, U.S. Army Reserve)

STATEMENT OF THE CASE

As described in Al-Ghizzawi's Original Petition, Al-Ghizzawi has been held for almost six years at the American detention facility, built by the American taxpayer, located at the American Naval Air Station at Guantánamo Bay, Cuba. That facility, this Court has held, is within the jurisdiction of American courts, see *Rasul v. Bush,* 542 U.S. 466, 484 (2004); *Hamdan v. Rumsfeld* , ___ U.S. ___, 126 S. Ct. 2749, 2764-69 (2006). despite the Government's continued insistence that its conduct at Guantanamo Bay need not conform to American law or, indeed, any law. As further explained in Al-Ghizzawi's Original Petition Al-Ghizzawi was a shopkeeper living with his Afghani wife and infant child when apprehended by bounty hunters in Afghanistan shortly after the American invasion of that country.

After this Court's decision in *Rasul,* holding that a hearing should be conducted to determine the status of individuals held prisoner at Guantanamo, the Government hastily put together more than 550 CSRTs in a four month period.[3] Al-Ghizzawi was subjected to two CSRT's. In the first CSRT, the panel unanimously found Al-Ghizzawi *not* to be an enemy combatant. Further, a member of that panel, Lt. Col. Stephan Abraham, provided an affidavit to this Court in June 2007 as part of the petitioning appellant's submission in *Boumediene v. Bush,*--- S.Ct.---, 2007 WL 1854132, 75 USLW 3705, 75 USLW 3707 (U.S. cert. granted Jun 29, 2007; argument held Dec. 5, 2007) (No.

06-1195) (Ex. C),describing the failed CSRT process and the pressure put on the CSRT panels to find the prisoners “enemy combatants” regardless of the evidence. Lt. Col. Abraham also detailed the events pertaining to the panel on which he sat (panel 23, Al-Ghizzawi’s first panel) and the paucity of evidence that Al-Ghizzawi engaged in any activity that could be construed as justifying a determination that he is or was an "enemy combatant". Later Lt. Col. Abraham filed a more detailed affidavit further describing that flawed “process” with the Circuit Court of the District of Columbia. (Ex. D) Lt. Col. Abraham also expanded upon his original statement in sworn Congressional testimony in which he referred to the evidence against Al-Ghizzawi as “garbage”. (*Upholding the Principles of Habeas Corpus for Detainees, 2007: Hearing before the House Armed Services Committee,* 110th Cong., 1st Sess. (July 26, 2007) (statement of Lieutenant Colonel Stephen Abraham, U.S. Army Reserve)) Later, an unnamed major (the military would not allow disclosure of his/her name) provided a sworn statement regarding the CSRT process. That individual, (also a JAG officer) sat on 49 Tribunals and attested to the total failure of the Tribunal system. (Ex. E)

Like every other Libyan national held at Guantanamo Bay, and despite the total lack of any evidence to support the accusation, Al-Ghizzawi was accused of being a member of an organization called the Libyan Islamic Fighting Group (LIFG) and of traveling extensively in the Mideast and his neighboring African States in his younger

[3] The notice attached to Al-Ghizzawi’s Original Petition and given to the prisoners assured them that the CSRT’s were unrelated to their independent right to pursue remedies in Federal Court.

days. However, nothing in the record of Al-Ghizzawi's CSRT or anything else, either classified or unclassified, contained any evidence whatsoever that he was a member of the LIFG or even that the LIFG was affiliated in any way with Al Qaeda, the Taliban, the September 11th plot, or any other act against the United States or its citizens. In addition, traveling is common in many parts of the world, including in North America, and is not a crime. Lastly, publicly available documents demonstrate that on October 5, 2001, just prior to Al-Ghizzawi's capture in Afghanistan, the State Department's List of Foreign Terrorist Organizations released a list that *did not* include the LIFG. However, by December 8, 2004, some two and a half years after Al-Ghizzawi arrived in Guantanamo and just weeks after he was found *not* to be an enemy combatant, the State Department issued a new list of foreign terrorist organizations, and the State Department then designated the LIFG as a "foreign terrorist organization" within the meaning of section 219 of the Immigration and Nationality Act, even though, for nearly three years after September 11th, members of that group could be admitted to the United States! Just over a month later, Al-Ghizzawi's second CSRT found him to be an enemy combatant, even though there was no new evidence submitted for that second tribunal and even though the first CSRT panel, which included an experienced intelligence officer, unanimously found the identical evidence to be wholly insufficient for such a determination.

Al-Ghizzawi has languished in Guantanamo these almost six years suffering from both Hepatitis B and Tuberculosis. He is not being treated for either condition. He

has not seen his wife and now six year old daughter during this entire period nor has he been allowed to talk to either of them on the telephone. He sits in total isolation despite having done nothing to warrant his detention at all, let alone these extreme measures. As a result of this inhumane treatment his physical health is quickly deteriorating as well as his mental health.

ARGUMENT

I. THIS COURT HAS ORIGINAL JURISDICTION UNDER THE CONSTITUTION AND THE SUSPENSION CLAUSE PRECLUDES CONGRESS FROM STRIPPING THIS COURT'S ORIGINAL HABEAS CORPUS JURISDICTION

Al-Ghizzawi filed his Original Habeas Corpus Petition pursuant to the common law, which recognized the writ of habeas corpus as it existed in 1789 when the Constitution was adopted. The right of petitioners to bring such a writ before this Court is explicitly protected by the Suspension Clause. "At the absolute minimum, the Suspension Clause protects the writ as it existed in 1789." *INS v. St Cyr*, 533 U.S. 289, 301 (2001). The Government's attempt to abrogate this Court's original jurisdiction and challenge this Petition on the erroneous contention that the Military Commissions Act of 2006 ("MCA"), Pub. L. No. 109-366, § 7, 120 Stat. 2600, 2636 (2006), strips this Court of all jurisdiction is a clear attempt to have Al-Ghizzawi's Petition held pending the decision in *Boumediene* and not reviewed independently. The MCA does not– and cannot– deprive the Supreme Court of the United States of such original jurisdiction. The Constitution is most explicit on this point: Congress cannot suspend habeas corpus

absent invasion or rebellion (Art. I, Sec. 10). Even if Congress intended to preclude existing pending cases such an enactment would not be permissible pursuant to this Court's holding in *Ex Parte Milligan,* 71 U.S. 2 (1866), that the Great Writ cannot be suspended if the Federal Courts are open and operating. See also, Jordan J. Paust, Beyond the Law: The Bush Administration's unlawful Responses in the "War" on Terror 97-98, 258-61 nn.109, 111, 114 (2007), addressing relevant cases and the fact that this Court has original jurisdiction and that Congress cannot suspend habeas in this instance.

Despite the Government's self-serving arguments to the contrary, if the MCA is constitutional in depriving the district court of jurisdiction, then this Court still has original jurisdiction over this original proceeding, and indeed, this Court's exercise of its original jurisdiction would be Al-Ghizzawi's only remaining meaningful remedy.

If this Court holds that the MCA does not deprive the district court of jurisdiction-- an argument raised by petitioners in *Boumediene*, -- then this Court must still consider whether the Guantanamo Bay situation– and that of Mr. Al-Ghizzawi– to wit, is *per se* "an exceptional circumstance". Having taken the extraordinary step of granting review over Guantanamo Bay related cases at least three times in the last four years, it is imperative that this Court consider the fundamental Constitutional issues raised by Al-Ghizzawi's petition. As argued in Al-Ghizzawi's Petition at 17-18 "even if this right exists nowhere else for Mr. Al-Ghizzawi it exists in this Court itself as of 1789 and that right is protected by the Suspension Clause."

Amongst the "extraordinary circumstances" is the Government's attempt to use

what amounts to bills of attainder against the Guantanamo detainees. The Constitution forbids attainder (Art. I, sec. 9, clause 3), and here respondents have attempted to fabricate a system whereby certain persons are deemed subject to prosecution in *ad hoc* proceedings which deny them virtually all of the protections that a criminal defendant, let alone presumptive prisoner of war, is supposed to enjoy. Indeed, the Government's claim is that these detainees literally have no legal rights at all. A legal penalty imposed without a lawful conviction for a crime is attainder. The Congress acted in violation of the Constitution when it enacted the MCA and DTA. The President has no authority to deprive any person of their legal right by fiat, and the Congress has no power to authorize such a procedure: the MCA and DTA were and are intended to deny habeas, not to suspend or substitute for it, and that too is a criminal violation of law: 18 USC 2441(c) (2) as it refers to Hague IV Annex art. 23[h] expressly provides that it is a criminal offense to deprive an enemy national of any right or action of law.

II. AL-GHIZZAWI HAS EXHAUSTED EVERY OTHER REMEDY AVAILABLE TO HIM DESPITE THE GOVERNMENT'S ATTEMPTS TO CHANGE THE RULES AT EVERY STEP

Al-Ghizzawi has exhausted every remedy available to him under American law. Despite these efforts, he has languished at Guantanamo Bay for almost six years without being charged with a single offense and without a single hearing on the merits of his detention. The Government attempts to blame Al-Ghizzawi for the woeful state of affairs of the Government's own making that has largely rendered

American law and the Constitution a dead-letter with respect to Guantanamo Bay detainees. The Government argues, for example that Al-Ghizzawi's District Court Stay and Abey Motion is "proof" that Al-Ghizzawi is at fault for his case languishing in the lower courts. [4] The Government conveniently fails to note however, that the Stay and Abey Motion, like so many of the other motions filed before the District Court, has never even been ruled on by that Court, because of the perpetual logjam of procedural impediments to proceedings resulting from the Government's litigation position and tactics. [5] The Stay and Abey Motion was filed after the MCA was enacted and the Government's litigation tactics included an aggressive campaign to dismiss every habeas petition then pending in the District Court, including Al-Ghizzawi's. The Stay and Abey Motion was filed in an effort to keep Al-Ghizzawi's habeas petition alive and pending (and more importantly to keep the Protective Order in place so that counsel

[4] Also the Government's argument that Al-Ghizzawi delayed his filing of a DTA petition until April 2007 is misplaced at it ignores the fact that the DTA was only prospective, as held by this Court in *Hamdan*, and that detainees who filed before the MCA was signed into law were filing prematurely because habeas jurisdiction under *Rasul* was still available. Indeed it was not until this Court initially declined to hear *Boumediene* in February, 2007 that it became imperative to file an action under the DTA, which Al-Ghizzawi did. In addition, the first Petition filed after the DTA was signed into law in early 2006 was *In Re Paracha's*. The petition was filed January 24, 2006, (DC Circuit Court docket number 06-1038). Paracha's March 21, 2006, dispositive motion was rejected and Paracha is still awaiting the rehearing in *Parhat* (Circuit Court Doc. 06-1397) the same as everyone else with a DTA petition. So while the Government accuses Al-Ghizzawi of delay, it is the Government itself that has employed at every turn every means of procedural obfuscation and digression to impede a just resolution of this and related cases.

could visit with and ensure that Al-Ghizzawi himself remained alive). In short, the Stay and Abey Motion was filed to maintain the status quo. As the District Court never found the time to rule on the Stay and Abey Motion there was no need for Al-Ghizzawi to withdraw the motion after this Court accepted certiorari review in *Boumediene* and *al-Odah*.

III. RELIEF UNDER THE DTA IS PER SE INADEQUATE AS THE DETAINEE TREATMENT ACT PETITION IS NOT AN ADEQUATE SUBSTITUTE FOR THIS COURT'S ORIGINAL HABEAS CORPUS JURISDICTION NOR INDEED IS IT AN ADEQUATE REMEDY AT ALL AS THE CSRT PROCESS IS A SHAM

A. The DTA Remedy is Not Adequate

The Government offers, as an alternative basis in its Response, that the issues Al-Ghizzawi has raised regarding his CSRT should be considered only by the United States Circuit Court of Appeals for the District of Columbia Circuit (the "Circuit Court") under the Detainee Treatment Act of 2005, Pub. L. No. 109-148, 119 Stat. 2680 (2005), (the "DTA"). This argument, however, conveniently overlooks the extraordinary limitations on the Circuit Court's review pursuant to the DTA. Specifically, the Circuit Court can only review the extremely narrow question of whether the Government followed its own rules in rendering determinations of "enemy combatant status" in the CSRT process. In contrast to a habeas corpus petition, a petitioner cannot challenge the

[5] The district court has declined to rule on several motions filed by Al-Ghizzawi including an emergency motion to enforce the protective order entered in his case which the government has violated during recent base visits by counsel.

legality of the detention, let alone the fairness of the CSRT rules, or introduce evidence of innocence, or indeed, introduce evidence at all.

Arguably, the unique circumstances presented by Al-Ghizzawi here -- that Al-Ghizzawi was adjudged by a CSRT panel to not be an enemy combatant, only to have the procedure changed at the behest of the Government and then to have the Government alter its own rules to permit a self-serving *de novo* CSRT for the sole purpose of finding Mr. Al-Ghizzawi an enemy combatant --, might be a basis for a "successful" DTA challenge in the Circuit Court. However, the DTA "remedy" is not a release of the detainee from custody (as would be the case of a successful habeas petition), but merely would provide *yet another CSRT hearing* for Al-Ghizzawi, clearly showing that the CSRT process is hopelessly flawed, if not outright corrupt.

Further evidence of the insufficiency of the DTA process is that in *Bismullah v. Gates* [Circuit docket 06-1197] and *Parhat v. Gates* [06-1397] (which has come to light since Al-Ghizzawi's present Petition before this Court was first filed) the Government admitted before the Circuit Court that it did not even retain the documents from the original CSRTs that would constitute the appellate record necessary for the Circuit Court to pass on the limited review it could perform pursuant to the DTA. In those cases, the Circuit Court suggested to the Government that it re-do all of the CSRT hearings that it had already completed more than three years earlier. *Bismullah v. Gates*, 503 F.3d 137, 140-3 (D.C. Cir. 2007). (October 3, 2007) Further, in *Al Ginco v. Gates*, No. 07-1090 (D.C. Cir.), (Sept. 13, 2007), the Government itself demonstrated the emptiness

and futility of a CSRT "remedy" insofar as it has argued that the Circuit Court should actually remand the entire DTA petition to the military to conduct yet further CSRTs. *Bismullah v. Gates*, 503 F.3d 137, (ftnt. 5) (D.C. Cir. 2007) Under these circumstances, the Government cannot credibly argue that the CSRTs are an adequate substitute for habeas corpus, though it can, and certainly does, argue it anyway.

B. The CSRTs are a Sham

In *Rasul*, this Court held explicitly that the Government was required to make a determination of the status of those held at Guantanamo Bay. This Court did not intend that such a determination be inconsistent with American laws or treaty obligations, including but not limited to, Article 5 of the third Geneva Convention of 1949, which provides for a hearing before a neutral and competent arbiter; indeed, this Court in *Hamdan* explicitly held that those still detained as prisoners at Guantanamo Bay are entitled to the protections of the Geneva Conventions. Recently Military Judge Allred in the Hamdan military case expressly held that Hamdan's CSRT did not and could not satisfy Article 5 and thus that a new hearing was required to deprive Hamdan of his presumptive prisoner-of-war status. (slip opinion at Ex. F)

Despite the clear intent of this Court and of American law that those detained by our military be given fair and meaningful assessments of their legal status, the CSRTs have been anything but fair and meaningful. Col. Abraham's Affidavits (and the affidavit of the undisclosed Major) say it all: the CSRT process has been marked by

arbitrariness and unfairness at every turn. Article 5 of the Geneva Convention, among other things, gives those captured during hostilities a presumptive entitlement to prisoner of war status duly recognized by this Court in *Hamdan*, despite the Government's continued recalcitrance in accepting this Court's ruling.

As shown by the facts submitted in Al-Ghizzawi's Petition and herein the CSRTs are a sham-- in no sense compliant with Article 5, courts martial, our Constitution or anything resembling accepted American judicial procedure. The CSRTs were comprised of military officers without adequate, if any, legal or intelligence training; they were provided with inadequate records of the prisoners' "guilt" and almost never provided with exculpatory evidence, even if that exculpatory evidence was in the military's own possession, and even in those circumstances where a CSRT panel had personnel competent to make a determination; and if the CSRT's determination was that the prisoner was not an "enemy combatant", a civilian official could, with no basis whatsoever, assign a new CSRT panel to find the prisoner an "enemy combatant", or failing that, simply arbitrarily overturn the original CSRT decision altogether.

The CSRT process is a rigged system designed to find virtually all prisoners "enemy combatants," regardless of any evidentiary or proper legal basis to do so. Under these circumstances, the CSRTs are not an adequate substitute for habeas, and hence, the DTA is a meaningless remedy: All it does is provide an inadequate appeal from an inadequate remedy.

IV. IN THE ALTERNATIVE, AL-GHIZZAWI ASKS THIS COURT

TO EXERCISE ITS MANDAMUS POWER TO COMPEL THE DISTRICT COURT TO GRANT AL-GHIZZAWI AN IMMEDIATE "ON THE MERITS" HEARING

The situation in the courts in these cases is worse than a simple split among the circuits: As shown in Al-Ghizzawi's Original Petition it is general confusion and dysfunction, which the Government has exacerbated with tactics that have been conducted in the worst of bad faith. There can be no higher interest in a republic of laws than that of Liberty, and this Court should act with all possible dispatch to repair the damage the Government's outrageous polices have done to the integrity and honor of our laws.

The Government complains that Al-Ghizzawi is also seeking a mandamus from this Court. Yes, this is true, and nothing could be clearer than this fact: Al-Ghizzawi seeks *as an alternative remedy to this Court's acceptance and granting of his Original Petition***,** a writ of mandamus ordering the District Court to grant him an immediate "on the merits" hearing with respect to his habeas corpus petition that has been pending since December 2005, but is hopelessly stalled through the deliberate actions of the Government. In fact, Al-Ghizzawi is *imploring* this honorable Court to do its sworn duty to administer justice without respect to persons, and do equal right to the poor and to the rich, and to faithfully execute the laws of the United States. None of us would call for anything less if we were in the predicament Al-Ghizzawi is in. Although mandamus is arguably also "extraordinary relief", Al-Ghizzawi has shown in both his Petition and herein that he is entitled to that relief and the Government has not

submitted one fact to contradict Al-Ghizzawi's factual submissions.

In addition, it has now been established to a certainty that at least some Guantanamo detainees have been subjected to coercive methods of interrogation rising to cruel or inhuman treatment and torture; that the Government of the United States has deliberately destroyed and diverted evidence of these crimes; and that even if these coercive methods are somehow held not to be torture that they were nevertheless criminal assaults against the persons of the detainees in question pursuant to 18 USC Section 113.

Respondents have gone to absurd lengths to deprive Al-Ghizzawi and other detainees of every right and action at law. Justice Rutledge once stated in a similar case:

> Wholly apart from the violation of the Articles of War and of the Geneva Convention, I am completely unable to accept or to understand the Court's ruling concerning the applicability of the due process clause of the Fifth Amendment to this case. Not heretofore has it been held that any human being is beyond its universally protecting spread in the guaranty of a fair trial in the most fundamental sense. That door is dangerous to open. I will have no part in opening it. For once it is ajar, even for enemy belligerents, it can be pushed back wider for others, perhaps ultimately for all. The Court does not declare expressly that petitioner as an enemy belligerent has no constitutional rights, a ruling I could understand but not accept. Neither does it affirm that he has some, if but little, constitutional protection. Nor does the Court defend what was done. I think the effect of what it does is in substance to deny him all such safeguards. And this is the great issue in the cause.

Application of Yamashita, 327 U.S. 1; 66 S. Ct. 340; 90 L. Ed. 499 (1946) (Rutledge, J., dissenting).

Yet here is exactly the power that the Government claims: that while in the custody of the United States, potentially for the rest of their lives, Al-Ghizzawi and the other Guantanamo detainees have no legal rights under the United States Constitution

or the other laws of the United States, despite this nation's avowed commitments to universal rights throughout the world (as expressed, and codified by the Senate's ratification of the Geneva and Hague Conventions and all of the other treaties that bear on the subject).

Justice Rutledge concluded his dissent in *Yamashita* by stating:

> It is not necessary to recapitulate. The difference between the Court's view of this proceeding and my own comes down in the end to the view, on the one hand, that there is no law restrictive upon these proceedings other than whatever rules and regulations may be prescribed for their government by the executive authority or the military and, on the other hand, that the provisions of the Articles of War, of the Geneva Convention and the Fifth Amendment apply.
>
> I cannot accept the view that anywhere in our system resides or lurks a power so unrestrained to deal with any human being through any process of trial. What military agencies or authorities may do with our enemies in battle or invasion, apart from proceedings in the nature of trial and some semblance of judicial action, is beside the point. Nor has any human being heretofore been held to be wholly beyond elementary procedural protection by the Fifth Amendment. I cannot consent to even implied departure from that great absolute.

Application of Yamashita, 327 U.S. 1; 66 S. Ct. 340; 90 L. Ed. 499 (1946), Rutledge and Murphy dissenting.

If the Government had evidence that Al Ghizzawi has committed a crime, then it should have charged him with one or submitted those facts into evidence in Response to Al-Ghizzawi's Petition; it is clear that the Government chose not to submit any evidence herein because it has none and therefore Al-Ghizzawi should be released. The United States Constitution does not permit show trials, preventative detention absent a criminal conviction, or kidnappings in lieu of a duly executed arrest warrant. There is a Constitutional right to habeas and due process, and such right applies to all *persons* in

the custody of the United States (regardless of their location or nationality). Although not treated like one, Al-Ghizzawi is a person and must be protected. Al-Ghizzawi asks this Court to hold so without ambiguity or reservation, or further unreasonable delay.

V. CONCLUSION

The Government has not submitted any evidentiary facts in opposition to Al-Ghizzawi's Original Petition instead the Government's position is that the Executive may detain anyone, *indefinitely,* based solely on unsupported and disputed allegations of "associations," even where it has never produced any evidence that the accused person ever committed a single act of hostility towards the United States or even intended to commit such an act. If the promise of the Great Writ stands for anything, it is that the Government's proposition cannot be correct. For the reasons stated above and in Al-Ghizzawi's Original Petition, this Court should grant Al-Ghizzawi's habeas petition directly, in the interests of justice, and provide the lower courts with guidance on how to enforce the bottom-line constitutional limits implicated by his Petition. In the alternative, this Court should remand Mr. Al-Ghizzawi's case to the District Court with instructions to either enter the writ and release Al-Ghizzawi (because the Government has not disputed the facts of his Petition) or to proceed to an immediate hearing on the merits of Mr. Al-Ghizzawi's habeas petition, once and for all.

Respectfully Submitted,

H. Candace Gorman
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CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2007, I filed and served the foregoing Reply to those listed below by causing it to be delivered to the Court Security Office via hand delivery and via email.

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