

No. _____

In the Supreme Court of the United States

In re Petitioner Ali,

Petitioner.

MOTION FOR LEAVE TO FILE
NON-CONFORMING PAPERS UNDER SEAL

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Petitioner Ali, a Uyghur, is a prisoner of the United States held at Guantánamo Bay Naval Station, Cuba.¹ Ali is filing the instant Petition because of the prolonged inaction by the lower courts on his pending petition for habeas review, which review “must be speedy if it is to be effective.” *Stack v. Boyle*, 342 U.S. 1, 4 (1952). Ali respectfully files the instant Motion in aid of his filing of the instant Petition.

Background. On December 14, 2005, Ali filed a habeas petition in the United States District Court for the District of Columbia. *Thabid et al. v. Bush*, Civ. A. No. 05-2398(ESH). Based on factual returns ordered by the District Court, Ali filed a motion for summary judgment. That motion was denied pending resolution of certain jurisdictional issues by the United States Court of Appeals for the District of Columbia Circuit in *Boumediene v. Bush*, Nos. 05-5062, 05-5063, and *Al Odah v. United States*, Nos. 05-5064, *et al.* Those appeals were argued on the merits in September 2005, but jurisdictional issues raised by the enactment of the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006 have delayed the Court of Appeals’ issuance of a decision. However, nearly three months have now passed since the completion of supplemental briefing on the effect of the Military Commissions Act, and the Court of Appeals still has not issued a decision. Counsel in those appeals filed a motion on February 2, 2007 asking the Court of Appeals to expedite the issuance of its opinion and lift the stays entered in those cases.

¹ Petitioner’s name is Anwar Hassan. “Ali” is a pseudonym initially used to shield his identity from the authorities in China, his home country, where Uyghurs are a persecuted ethnic minority. Mr. Hassan’s name is now a matter of public record.

Filing under seal. Under the protective order issued in actions brought by Guantánamo prisoners, all information in this case that the government deems to be classified must be kept in a Secure Facility. Counsel is required to prepare and produce the instant Petition in the Secure Facility. Only individuals with “secret” security clearances are permitted in the Secure Facility, meaning that court filings may be prepared and produced only by counsel with security clearances, without the assistance of clerical staff or outside service providers. Once a document has been readied for filing, counsel must deliver the document to a Court Security Officer, who then delivers the document to the court in which it is to be filed, where it may be viewed only by persons with the requisite security clearance and a need to know.

Pursuant to the District Court’s order, the government provided counsel with factual returns. The returns included information designated as classified. That information, which is highly relevant to the habeas petition, is referenced in the instant Petition and Appendix. Although it is not evident why much of the information is designated as classified, filings such as the instant Petition – including pure legal analysis – are treated as presumptively classified in their entirety, except to the extent that the government permits the public filing of a redacted version. Counsel therefore must request leave to file the Petition and Appendix under seal.²

² Counsel have submitted the papers to the government for classification review and hope that the government will soon permit the public filing of a redacted version. Counsel reserve the right to move for relief in this Court depending on the outcome of the government’s review.

Non-conforming format. The restrictions imposed by the protective order preclude counsel from preparing the Petition and Appendix in booklet format in conformity with Rule 33.1. Accordingly, pursuant to discussions with the Clerk's office, counsel have prepared the Petition in 8½ x 11-inch paper format in conformity with Rule 33.2, except that counsel have spiral-bound the Petition and Appendix because the restrictions imposed by the protective order left counsel with no alternative. Moreover, because of limitations on the copying and production of documents at the Secure Facility, and to avoid an extraordinary physical burden on the Court Security Officer and Court personnel, Petitioner is filing only ten copies of the Petition and Appendix, also pursuant to discussions with the Clerk's office.

CONCLUSION

The motion should be granted.

Respectfully submitted,



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