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December 14, 2006

Mr. Mark J. Langer
Clerk, United States Court of Appeals
for the District of Columbia Circuit
United States Courthouse
333 Constitution Avenue, N.W., Room 5423
Washington, D.C. 20001

Re: Al Odah v. United States, Nos. 05-5064, 05-5095 through 05-5116
Boumediene v. Bush, Nos. 05-5062, 05-5063 (Oral argument held
on September 8, 2005 and March 22, 2006)

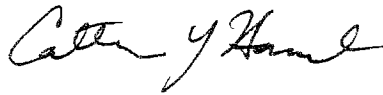
Dear Mr. Langer:

The United States submits this letter, pursuant to Federal Rule of Appellate Procedure 28(j), to advise the Court of supplemental authority. On December 13, 2006, the United States District Court for the District of Columbia, "relying on the jurisdiction-stripping provisions of the Military Commissions Act of 2006," dismissed for want of subject matter jurisdiction a petition for habeas corpus filed by a Guantanamo Bay detainee. See Slip Op. at 1 in Hamdan v. Bush, No. 04-1519 (D.D.C. Dec. 13, 2006) (opinion attached).

The district court held that section 7 of the Military Commissions Act ("MCA") eliminates the district court's jurisdiction over two categories of cases that were pending on the date of the Act's enactment: (1) habeas cases filed by aliens detained as enemy combatants, and (2) any other actions relating to any aspect of detention. Slip Op. at 6. The court squarely rejected the argument raised by petitioners in these cases (see, e.g., Al Odah Br. re: MCA at 4-5), that section 7's elimination of jurisdiction applies only to the second category of cases, thereby preserving federal court jurisdiction over pending habeas cases. Slip Op. at 6-7. (We note, however, that it is incorrect to characterize application of section 7 to pending cases as "retroactive," Slip Op. at 6. Because section 7 concerns the availability of prospective relief, its application to pending cases is not retroactive. See e.g., Landgraf v. USI Film Products, 511 U.S. 244, 273-74 (1994).)

In addition, the court agreed with the Government's position (see, e.g., U.S. Br. re: MCA at 13-16) that aliens detained as enemy combatants outside the sovereign territory of the United States have no constitutional habeas rights protected by the Suspension Clause. Slip Op. at 19-21 & n.15. Thus, consistent with the Government's argument to this Court (see, e.g., U.S. Br. re: MCA at 29), the court held that the MCA does not unconstitutionally "suspend" the writ of habeas corpus as to Hamdan or other "non-resident enemy aliens captured and detained outside the United States." Slip Op. at 21 n.15.

Sincerely,



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