



***AL ODAH/BOUMEDIENE* LEGAL ARGUMENT AND IMPLICATIONS**

Boumediene v. Bush:

1. Whether the Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600, validly stripped federal court jurisdiction over habeas corpus petitions filed by foreign citizens imprisoned indefinitely at the United States Naval Station at Guantanamo Bay.
2. Whether Petitioners' habeas corpus petitions, which establish that the United States government has imprisoned Petitioners for over five years, demonstrate unlawful confinement requiring the grant of habeas relief or, at least, a hearing on the merits.

Al Odah v. United States:

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?

The Center for Constitutional Rights Argument:

Petitioners in *Al Odah* argue that the precedent set by the Supreme Court itself in *Rasul v. Bush* in 2004 precludes the D.C. Circuit Court of Appeals' conclusion that Guantanamo detainees have no common law right to habeas corpus protected by the Suspension Clause. The Suspension Clause, Article 1, Section 9, Clause 2 of the United States Constitution, provides that habeas corpus, such as it existed at common law, may be suspended by Congress only in cases of "rebellion or invasion."

Furthermore, petitioners challenge the D.C. Circuit's reliance on *Johnson v. Eisentrager* to dismiss the detainee habeas corpus petitions, given that in *Rasul*, the U.S. Supreme Court ruled that the petitioners are differently situated to those in *Eisentrager*, and are confined within an area in the exclusive territorial jurisdiction of the United States. Petitioners argue further that they are entitled to the writ of habeas corpus at common law, such as it existed historically, outside the definitions of the federal habeas statute, and thus are protected from any unlawful suspension of habeas by the Suspension Clause.

In addition, petitioners argue that they are entitled to Fifth Amendment rights under the U.S. Constitution to not be deprived of liberty without due process of law, and, in addition, to the protections of the Geneva Conventions. The petitioners have been detained without a judicial hearing for well over five years, within an area under the exclusive control and jurisdiction of the United States. Petitioners further argue that any substitute procedures – and the review of those substitute procedures by the D.C. Circuit Court – that have been created are so limited and narrowly defined, as well as fraught with error - are no substitute for habeas corpus and due process.

Thus, Petitioners argue, the Military Commissions Act of 2006, cannot have validly and Constitutionally stripped petitioners of their right to the writ of habeas corpus at common law.

In response, the Executive argues that “as aliens held outside the sovereign territory of the United States, [the detainees] enjoy no rights under the Suspension Clause. Second, even if they could invoke the Suspension Clause, it would not entitle them to relief because they seek an expansion of the writ well beyond its historic scope. And third, the [Detainee Treatment Act] in any event provides an adequate alternative to any habeas rights [these detainees] may have.” In reality, Petitioners have been held for nearly six years at a U.S. Naval Base, in a territory under the exclusive control and jurisdiction of the United States, without any judicial process or hearing, despite the clear mandate of the *Rasul* court. They are not citizens of enemy nations, but citizens of our closest allies who maintain that they are innocent of any wrongdoing. Furthermore, they have been denied any meaningful process for a period that now stretches to six years – and threatens to continue indefinitely. Affidavits by military participants in the Detainee Treatment Act process (the CSRT process) reveal its shoddy, error-laden character – no substitute for habeas corpus at law.