



Guantanamo.<sup>1</sup> Petitioners sought to reach agreement with the government about their request, which the government opposes. In support of their motion, Petitioners state the following:

1. Petitioners are Guantanamo detainees who filed identical Motions for Order Granting Writ of Habeas Corpus in their individual habeas cases on January 11, 2018, challenging the duration of their ongoing detention under the Due Process Clause and the 2001 Authorization for Use of Military Force. Petitioners' motions were referred to this Court for resolution. *See* Minute Order of Jan. 18, 2018, *Nasser v. Trump*, No. 05-cv-764 (CKK). On May 15, 2018, the Court granted Petitioners' request for oral argument on the motion and scheduled argument for July 11, 2018. *See id.* Order of May 15, 2018 (dkt. no. 296).<sup>2</sup>

2. It is well established that Petitioners' ability to participate in their habeas challenges to the legality of their detention at Guantanamo must be effective and meaningful. *See Boumediene v. Bush*, 553 U.S. 723, 779 (2008); *Bounds v. Smith*, 430 U.S. 817, 822 (1977). "Courts are inherently empowered to require additional measures to assure meaningful access to the courts." *In re Guantanamo Bay Continued Access to Counsel*, 892 F. Supp. 2d 8, 20 (2012) (citing *Bounds*, 430 U.S. at 824) (internal citations omitted).

---

<sup>1</sup> Petitioners do not seek to make any statement or otherwise to participate, but only to listen to the oral argument, which they presume will be entirely public.

<sup>2</sup> Identical Motions for Order Granting Writ of Habeas Corpus were also filed by Hani Saleh Rashid Abdullah (ISN 841), No. 05-cv-23 (EGS), and Abu Zubaydah (ISN 10016), No. 08-cv-1360 (EGS), whose motions remain before District Judge Emmet G. Sullivan. Oral argument has not been scheduled on those motions. The instant motion requests live audio access to the oral argument before this Court for above-named Petitioners as well as the petitioners whose motions are pending before Judge Sullivan.

3. Petitioners' Motion for Order Granting Writ of Habeas Corpus is the most consequential challenge Petitioners have brought to the legality of their ongoing detention in years, given that it will determine whether Petitioners may lawfully remain in Guantanamo indefinitely and potentially for the rest of their lives. Petitioners' ability to listen to the oral argument on the complex issues in their motion is critical to their ability to understand its resolution and make informed litigation decisions going forward. Their ability to engage in this aspect of the process is all the more important given the multiple factors that already impede their ability to comprehend and have faith in their habeas proceedings. *See, e.g., In re Guantanamo Bay Continued Access to Counsel*, 892 F.Supp. 2d at 20 (recognizing the unique challenges to meaningful access to the courts by Guantanamo detainees, including the prolonged and virtually incommunicado nature of their detention).

4. Petitioners' request is also entirely modest under the circumstances— simply to be permitted to listen remotely to the oral argument in open court on July 11, 2018.<sup>3</sup> Remote access by detainees to the unclassified portions of their habeas proceedings has been ordered and accommodated throughout the history of the Guantanamo habeas litigation, *see* Case Management Order, Part III.B.3, *In Re: Guantanamo Bay Detainee* Litigation, Misc. No. 08-cv-442 (TFH) (D.D.C. Nov. 6, 2008) (dkt. no. 940), including during periods of much greater activity than the present, when

---

<sup>3</sup> Petitioners, all native Arabic speakers, will require English-Arabic interpreting of the oral argument should their motion be granted. Because Petitioners request the opportunity only to listen and not to speak, interpreting could simply occur from the courtroom, as in prior Guantanamo habeas cases, which further lessens any burden on the government. *See* Habeas Hearing, Nov. 6, 2008, in *Boumediene v. Bush*, No. 04-cv-1166 (RJL) (where a court-appointed interpreter sitting in the courtroom interpreted unclassified opening statements for the six petitioners listening from Guantanamo).

fewer than 40 detainees are engaged in any sort of habeas litigation.<sup>4</sup> While the government typically has arranged for individual detainees to listen to and participate in their merits hearings, it has also previously arranged for multiple detainees to listen to the same hearing at the same time.<sup>5</sup> Petitioners' request would require little more.

5. Given that the usual time allowed for the government's response to Petitioners' motion would not allow for a decision before the oral argument date, Petitioners respectfully request that the Court set an expedited briefing schedule so that their motion may be resolved in time for Petitioners to be able to listen remotely on July 11. In lieu of briefing, Petitioners would also be amenable to a conference call with government counsel and the Court to attempt to resolve this matter more expeditiously.

### CONCLUSION

For the foregoing reasons, the Court should grant Petitioners' motion for live audio access to the oral argument scheduled on July 11, 2018, on their Motion for Order Granting the Writ of Habeas Corpus, including for the petitioners whose motions are pending before Judge Sullivan.

Dated: New York, New York  
June 26, 2018

Respectfully submitted,

---

<sup>4</sup> This Court specifically has accommodated detainee participation in habeas hearings, including observation of opening and closing statements via secure live video and audio streaming, as well as detainee testimony on his own behalf. *See* Merits Hearing of Oct. 26, 2009, in *Musa'ab Omar al-Madhwani v. Obama*, No. 04-cv-1194 (TFH) (D.D.C.).

<sup>5</sup> In *Boumediene v. Bush*, Case No. 04-cv-1166 (RJL) (D.D.C.), the district court ordered and the government agreed to arrange live telephonic access to the unclassified portion of the habeas hearing for a group of six petitioners.

/s/ Pardiss Kebriaei

Baher Azmy (Pursuant to LCvR 83.2(g))  
Pardiss Kebriaei (Pursuant to LCvR 83.2(g))  
J. Wells Dixon (Pursuant to LCvR 83.2(g))  
Shayana D. Kadidal (D.D.C. Bar No.  
454248)

Omar A. Farah (Pursuant to LCvR 83.2(g))  
CENTER FOR CONSTITUTIONAL  
RIGHTS

666 Broadway, 7th Floor  
New York, New York 10012  
Tel: (212) 614-6452  
Fax: (212) 614-6499

[pkebriaei@ccrjustice.org](mailto:pkebriaei@ccrjustice.org)

[bazmy@ccrjustice.org](mailto:bazmy@ccrjustice.org)

[skadidal@ccrjustice.org](mailto:skadidal@ccrjustice.org)

[wdixon@ccrjustice.org](mailto:wdixon@ccrjustice.org)

[ofarah@ccrjustice.org](mailto:ofarah@ccrjustice.org)

*Counsel for Petitioner Sharqawi Abdu Ali  
Al-Hajj (ISN 1457), Case No. 09-cv-745  
(RCL)*

/s/ George M. Clarke III

George M. Clarke III, DC Bar No. 480073  
815 Connecticut Avenue, N.W.  
Washington, DC 20006  
Phone: (202) 835-6184  
Fax: (202) 416-7184

Email: [george.clarke@bakermckenzie.com](mailto:george.clarke@bakermckenzie.com)

REPRIEVE

Clive Stafford Smith, LA Bar No. 14444  
PO Box 72054  
London EC3P 3BZ  
United Kingdom

Telephone: +44 207 553 8140

E-mail: [clive@reprieve.org.uk](mailto:clive@reprieve.org.uk)

REPRIEVE U.S.

Shelby Sullivan-Bennis, NY Bar No.  
5364278  
405 Lexington Ave., Fl. 64  
New York, NY 10174  
(401) 835-4214

[shelby.sullivan-bennis@reprieve.org](mailto:shelby.sullivan-bennis@reprieve.org)

*Counsel for Petitioner Tofiq Nasser Awad  
Al Bihani (ISN 893), Case No. 05-cv-2386  
(RBW)*

/s/ Thomas A. Durkin

Thomas Anthony Durkin (IL. Bar No.  
697966)

Robin V. Waters (IL. Bar No. 6317340)

DURKIN & ROBERTS

2446 N. Clark St.

Chicago, IL 60614

(312) 913-9300

[tdurkin@durkinroberts.com](mailto:tdurkin@durkinroberts.com)

[rwaters@durkinroberts.com](mailto:rwaters@durkinroberts.com)

REPRIEVE

Clive Stafford Smith, LA Bar No. 14444

PO Box 72054

London EC3P 3BZ

United Kingdom

Telephone: +44 207 553 8140

E-mail: [clive@reprieve.org.uk](mailto:clive@reprieve.org.uk)

REPRIEVE U.S.

Shelby Sullivan-Bennis, NY Bar No.

5364278

405 Lexington Ave., Fl. 64

New York, NY 10174

(401) 835-4214

[shelby.sullivan-bennis@reprieve.org](mailto:shelby.sullivan-bennis@reprieve.org)

*Counsel for Petitioner Abdul Latif*

*Mohammed Nasser (ISN 244), Case No. 05-  
cv-764 (CKK)*

/s/ Martha Rayner

Martha Rayner

Clinical Associate Professor of Law

Fordham University School of Law

150 West 62nd Street, 9th Floor

New York, New York 10023

[mrayner@lsis.fordham.edu](mailto:mrayner@lsis.fordham.edu)

212-636-6941

*Counsel for Petitioner Sanad Ali Yislam Al-Kazimi (ISN 1453), Case No. 05-cv-2386 (RBW)*

/s/ Mari Newman

Darold W. Killmer  
Mari Newman  
KILLMER, LANE & NEWMAN, LLP  
1543 Champa Street  
Suite 400  
Denver, CO 80202  
(303) 571-1000  
Fax: (303) 571-1001  
[dkillmer@killmerlane.com](mailto:dkillmer@killmerlane.com)  
[mnewman@killmerlane.com](mailto:mnewman@killmerlane.com)

*Counsel for Petitioner Suhail Abdu Anam Sharabi (ISN 569), Case No. 04-cv-1194 (UNA)*

/s/ Agnieszka M. Fryszman

John R. Holland  
Anna Holland Edwards  
Erica T. Grossman  
HOLLAND, HOLLAND EDWARDS &  
GROSSMAN, P.C.  
1437 High Street  
Denver, CO 80218  
Tel: (303) 860-1331  
[john@hheglaw.com](mailto:john@hheglaw.com)  
[anna@hheglaw.com](mailto:anna@hheglaw.com)  
[erica@hheglaw.com](mailto:erica@hheglaw.com)

Agnieszka M. Fryszman, DC Bar No.  
459208  
COHEN MILSTEIN SELLERS & TOLL  
PLLC  
1100 New York Ave., N.W.  
East Tower, Suite 500  
Washington, DC 20005  
Tel: (202) 408-4600  
Fax: (202) 408-4699  
[afryszman@cohenmilstein.com](mailto:afryszman@cohenmilstein.com)

*Counsel for Petitioner Abdul Raheem  
Rabbani (ISN 1460), Case No. 05-cv-1607  
(RCL)*

/s/ Shelby Sullivan-Bennis

Shelby Sullivan-Bennis, NY Bar No.  
5364278  
REPRIEVE U.S.  
405 Lexington Ave., Fl. 64  
New York, NY 10174  
(401) 835-4214  
[shelby.sullivan-bennis@reprieve.org](mailto:shelby.sullivan-bennis@reprieve.org)

REPRIEVE  
Clive Stafford Smith, LA Bar No. 14444  
PO Box 72054  
London EC3P 3BZ  
United Kingdom  
Telephone: +44 207 553 8140  
E-mail: [clive@reprieve.org.uk](mailto:clive@reprieve.org.uk)

*Counsel for Petitioner Ahmed Ghulam  
Rabbani (ISN 1461), Case No. 05-cv-1607  
(RCL)*

/s/ Darin Thompson

Darin Thompson  
Assistant Federal Public Defender  
Office of the Federal Public Defender  
Skylight Office Tower, Ste 750  
1660 W. 2nd St., NW  
Cleveland, Ohio 44113  
(216) 522-4856  
Fax: (216) 522-4321

REPRIEVE  
Clive Stafford Smith, LA Bar No. 14444  
PO Box 72054  
London EC3P 3BZ  
United Kingdom  
Telephone: +44 207 553 8140  
E-mail: [clive@reprieve.org.uk](mailto:clive@reprieve.org.uk)

REPRIEVE U.S.  
Shelby Sullivan-Bennis, NY Bar No.  
5364278



405 Lexington Ave., Fl. 64  
New York, NY 10174  
(401) 835-4214  
[shelby.sullivan-bennis@reprieve.org](mailto:shelby.sullivan-bennis@reprieve.org)

*Counsel for Petitioner Mohammed  
Abdulmalik (ISN 10025), Case No. 08-cv-  
1440 (CKK)*