

EXHIBIT 1

1 UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF COLUMBIA

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 3 JAMAL KIYEMBA, ET AL Docket No. 05-1509
 4 Petitioners,

4 v. Washington, D.C.
 5 **October 7, 2008**
 6 10:20 a.m.

6 GEORGE W. BUSH, ET AL
 7 Respondents.

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 8 **MOTIONS/STATUS HEARING - UIGHURS CASES**
 8 BEFORE THE HONORABLE RICARDO M. URBINA
 9 UNITED STATES DISTRICT JUDGE

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1 in *Boumediene* itself, the Court separately referred to the
2 idea of conditional release. But even if that's what
3 *Boumediene* meant when it said that release might not always be
4 available, you can't avoid what the Supreme Court said in
5 *Munaf*. It's -- it is particularly clear in *Munaf* where it
6 says habeas corpus is governed by equitable principles and the
7 Supreme Court has recognized that prudential concerns such as
8 comity may require a federal court to forego the exercise of
9 its habeas power.

10 So, even if the Court concluded that it had power
11 here, and we would say that *Mezei* demonstrates that the Court
12 simply does not have the power here to order release into the
13 United States, but even if the Court concluded that it did
14 have such power, for the same reasons that Judge Robertson
15 recognized in *Qassim*, this court should forego the exercise of
16 that power.

17 And let me just turn to --

18 THE COURT: Of course, Judge Robertson decided
19 *Qassim* before *Parhat* and before *Boumediene* and before the
20 guidance of those cases were provided by our circuit and the
21 Supreme Court.

22 MR. O'QUINN: That's correct, Your Honor. And in
23 fact, the point that I was next going to make is that
24 nothing -- no intervening decision changes the rationale or
25 the result that should -- that should come from Judge

1 Robertson's decision. And what I mean by that is if you look
2 at what happened between *Qassim* and today, Congress enacted
3 the Military Commission's Act that removed habeas jurisdiction
4 from Guantanamo Bay.

5 Now, at the time *Qassim* was decided, the Supreme
6 Court had decided *Rasul*. It predated the decision by Congress
7 to enact the MCA, and so the situation then was exactly the
8 same as the situation today in terms of Supreme Court
9 precedent. That is, the writ ran to Guantanamo Bay and Judge
10 Robertson was faced with exactly the question that the Court
11 is faced with. The MCA was then adopted. *Boumediene* simply
12 restored the status quo ante in terms of finding that the
13 jurisdiction strip was invalid as applied to Petitioners at
14 Guantanamo Bay seeking to challenge their status as enemy
15 combatants.

16 So, there's nothing about the intervening Supreme
17 Court decision in *Boumediene* that makes any difference
18 whatsoever in terms of affecting or upsetting Judge
19 Robertson's analysis in *Qassim*.

20 And the same is true of the *Parhat* decision. Again,
21 *Parhat* turned on the fact that the D.C. Circuit concluded that
22 the evidence that the Government had presented was
23 insufficient to show not that petitioner wasn't a member of
24 ETIM, not that petitioner wasn't potentially dangerous if
25 released into the United States, but -- and not that

1 petitioner wasn't a threat potentially to other countries such
2 as China, and I'll come back to that point in a moment, but
3 simply that the Government had not provided sufficient
4 evidence -- sufficient reliable evidence to show that ETIM was
5 affiliated with al Qaida and thus didn't satisfy the
6 requirement for enemy combatancy, a very narrow and limited
7 question as compared to the question of whether or not there
8 would be any security risks from releasing a person into this
9 country from Guantanamo Bay.

10 And that brings me back to one of the points that
11 Judge Robertson made in *Qassim*. One of the points that he
12 recognized --

13 THE COURT: Well, let's not forget that Judge
14 Robertson also concluded that the detention was illegal.

15 MR. O'QUINN: Well, he did --

16 THE COURT: Yes, he did decide it was an illegal
17 detention. He said regrettably he did not want to interfere
18 with the functions usually delegated the Executive Branch at
19 that time.

20 MR. O'QUINN: Well, I think he actually concluded
21 that he could not interfere with the functions that the
22 Constitution gives to the Executive Branch and the Legislative
23 Branch.

24 I know that Judge Robertson found the detention was
25 unlawful, and with all due respect, I would have to disagree