

[ORAL ARGUMENT SCHEDULED SEPTEMBER 8, 2008]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

ABDUSEMET,)
Petitioner,)
) No. 07-1509
v.)
)

ROBERT M. GATES, et al.,)
Respondents.)

JALAL JALALDIN,)
Petitioner,)
) No. 07-1510
v.)
)

ROBERT M. GATES, et al.,)
Respondents.)

KHALID ALI,)
Petitioner,)
) No. 07-1511
v.)
)

ROBERT M. GATES, et al.,)
Respondents.)

SABIR OSMAN,)
Petitioner,)
) No. 07-1512
v.)
)

ROBERT M. GATES, et al.,)
Respondents.)

GOVERNMENT'S MOTION TO ENTER JUDGMENT FROM *PARHAT v. GATES* IN THESE ACTIONS, WITH MODIFICATION, AND TO REMOVE CASES FROM ORAL ARGUMENT CALENDAR

For the reasons set forth below, the Government respectfully requests that this Court enter the judgment from *Parhat v. Gates* in each of these actions, with the clarifications requested in the Government's petition for rehearing in that case, and that this Court remove these cases (now set for argument on September 8, 2008) from its oral argument calendar.

1. In its June 20 order, in *Parhat v. Gates*, No. 06-1397, this Court vacated the determination of a Combatant Status Review Tribunal (CSRT) regarding petitioner Huzaifa Parhat's status as an enemy combatant. The Court concluded that the CSRT had failed to make appropriate findings regarding the reliability of the documents it cited and that the Court could not determine whether the documents were, on their face, sufficiently reliable to support the CSRT's enemy combatant determination. "Having concluded that the evidence before the CSRT was insufficient to sustain its determination that Parhat is an enemy combatant," the Court remanded the matter, stating that the government should "expeditiously convene a new CSRT to consider evidence submitted in a manner consistent with this opinion." Slip op. 33. The Court further stated that, as an alternative to conducting a CSRT proceeding, the government could "release" Parhat. *Ibid.*

On August 4, 2008, the Government filed a petition for rehearing in *Parhat*. That petition stated, given that Parhat had already been approved for release, “the government has determined that it would serve no useful purpose to engage in further litigation over his status,” and that it “will concentrate its limited litigation resources on the many other pending habeas cases.” Petition for Rehearing at 1-2. Consequently, the Government has determined that it will house Parhat as if he is no longer an enemy combatant, while it uses its “best efforts to place him in a foreign country.” *Ibid.* The filing explained that in the past, all those treated as no longer enemy combatants were released, once a foreign country where they could be transferred was identified. It further explained that while awaiting release, those held as “no longer enemy combatants” were held in a “special, separate camp facility, at which detainees have significantly more privileges” -- including a communal living arrangement, access to all areas of the camp (including a recreation yard, their own bunk house, and an activity room), access to entertainment (including a television set equipped with a VCR and DVD, a stereo system, and equipment for soccer, volleyball, and table tennis), air conditioning in all living areas (which they control), special food items, and expanded access to shower facilities and library materials. *Id.* at 2 n.1.¹

¹ The process of moving Parhat to this new housing is ongoing and we expect the new housing will be ready this week. In our rehearing petition, we explained that,

The rehearing petition filed in *Parhat* requested that this Court modify its opinion to clarify that it did not purport to resolve the scope of a district court's authority to order Parhat's release into the United States. That question remains unresolved in this Circuit, having been briefed, but not decided, in *Qassim v. Bush*, 466 F.3d 1073 (D.C. Cir. 2006) (dismissing appeal as moot after petitioners were released into another country). Moreover, the petition noted, the question of whether a court can order release into the United States has been raised in and is more appropriately addressed by the district court as part of Parhat's habeas case.

2. The Government concedes that the rationale (noting the lack of findings by the tribunals regarding the reliability of evidence, and concluding that it could not determine that the material was on its face reliable) supporting this Court's ruling in *Parhat* applies equally to these appeals. Therefore, the Government requests that this Court enter the same order as it did in *Parhat*, subject to the clarifications requested in the Government's petition for rehearing in that case (described above).²

absent any behavior jeopardizing operational security, Parhat would remain in such special housing until he is placed in another country. In the meantime, Parhat committed a disciplinary infraction (assaulting another Uigher detainee) and is temporarily being held in Camp 6, based on security concerns. When he is moved to the special housing, that has been used for those designated as no longer enemy combatants, Parhat will be given a clear warning that the new housing arrangements are contingent upon his adhering the base security and disciplinary rules.

² As in *Parhat*, the order entered should include a further opportunity to designate and support the designation of protected information.

As noted in that petition, the question of whether a court has the authority to order alien detainees released into the United States is a significant question of first impression in this Circuit, and it should be addressed in the first instance by the district court in habeas corpus proceedings.³ Consequently, the Government further requests that this Court remove the arguments (scheduled for September 8, 2008) from its oral argument calendar.

3. In light of its determination not to expend its limited resources to continue litigating the enemy combatant status of these detainees, the Government will now treat these petitioners, like Parhat, as if they are no longer enemy combatants. Thus, they will soon be housed in the aforementioned facility together with Parhat, while the Government uses its best efforts to place them in a foreign country. Like Parhat, petitioners here, absent any behavior jeopardizing operational security, will remain in such special housing until they are placed in another country.

³ By urging that the issue be decided in the first instance by the district court, the Government does not in any way suggest that its position on this question has changed or that any intervening court decision compels a different conclusion than that reached by the district court when it first decided the question in *Qassim*.

CONCLUSION

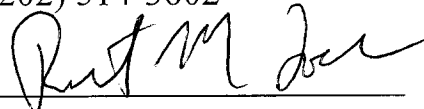
In light of the foregoing, the Government respectfully requests that this Court enter the judgment from *Parhat v. Gates* in each of these actions, with the clarifications requested in the Government's petition for rehearing in that case, and that this Court remove these cases from its oral argument calendar.

Respectfully Submitted,

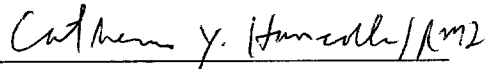
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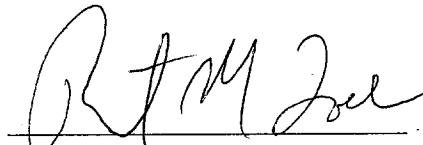
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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of August, 2008, I served the foregoing “Government’s Motion to Enter Judgment from *Parhat v. Gates* in These Actions, with Modification, and to Remove Cases from Oral Argument Calendar,” by causing an original and four copies to be served on the Court via hand delivery and one copy to be sent to the following counsel via e-mail and first-class U.S. mail:

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