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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

HANI SALEH RASHID ABDULLAH, <i>et al.</i> ,	)	
	)	
<i>Petitioners,</i>	)	
	)	
v.	)	No. 05-00023 (RWR)
	)	
GEORGE W. BUSH, <i>et al.</i> ,	)	
	)	
<i>Respondents.</i>	)	

**MOTION TO MODIFY STAY ORDER OF APRIL 8, 2005**

In *Hamdan v. Rumsfeld*, 548 U.S. ---, 126 S. Ct. 2749 (2006), the Supreme Court exercised *habeas* jurisdiction over a prisoner at Guantanamo and affirmed the order of Judge Robertson enjoining proceedings before a military tribunal convened to try Hamdan on the grounds that the proceedings violated the UCMJ, the Geneva Conventions, and the law of war. The Court also determined that the Detainee Treatment Act (“DTA”) did not apply to divest jurisdiction over pre-existing *habeas* cases (at 2763). The underpinning of this Court’s stay of this proceeding almost eighteen months ago has thereby been removed.

As this Court noted in its April 8, 2005 Order, the stay had been requested “pending resolution of the appeals in *In Re Guantanamo Detainee Cases*, 355 F. Supp. 2d 443, (D.D.C. 2005) appeal pending, consolidated with *Boumedienne v. Bush* (04-CV-1166 (RJL).” These cases dealt with issue of the district court’s power to frame relief in habeas actions as to prisoners held at Guantanamo. *Hamdan* has settled that question. *Hamdan* framed its relief in the *habeas* context. The pendency of the *Al Odah* and *Boumedienne* appeals, then, no longer affords the slightest justification for continuing the stay. Judge Leon’s opinion finding the *habeas* remedy unavailable to Guantanamo prisoners cannot possibly be affirmed after *Hamdan*.

There is no reason then to await the Court of Appeals resolution of the appeals which were the sole basis of this court's stay. Moreover, the stay was a discretionary remedy under *Landis* and a remedy, so far as our research discloses, which has never previously been applied to a *habeas* case. Liberty ought not be a matter of housekeeping judicial entries.

The *habeas* statute contemplates a prompt hearing. 28 U.S.C. 2243. Eighteen months have passed with no appellate ruling which was expected to have clarified which approach – that of Judge Greene or that of Judge Leon – was correct. Two facts stand out. First, the *Hamdan* decision applied *habeas* to a present petition. Second, the Congress, in whatever legislation it is considering, cannot suspend that writ absent findings which it cannot make: rebellion or invasion threatening the public safety. It follows that continuing the stay is perverse and works a denial of justice to petitioner.

Judge Kennedy has accepted this reasoning in lifting the stay in two cases: *Zakrijan v. Bush*, 05-2053 (HHK) and *Al-Asadi v. Bush*, 05-2197 (HHK) (copies annexed hereto as Exhibits A and B).

The immediate use of the lifting of the stay that Mr. Abdullah intends is the filing of a discovery request (attached hereto as Exhibit C) relevant to both his *habeas* and his non-*habeas* claims. The materials sought will also be needed even if, contrary to our expectation, this case in its entirety were transferred to the Circuit.

Respectfully submitted,

/s/ Stephen M. Truitt

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