

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAKHDAR BOUMEDIENE, et al.,)	
)	
Petitioners,)	Docket No. CV04-1166
)	
v.)	
)	
GEORGE WALKER BUSH, et al.,)	Washington, D.C.
)	Tuesday, August 3, 2004
Respondents.)	10:00 a.m.

*TRANSCRIPT OF TEMPORARY RESTRAINING ORDER PROCEEDINGS
BEFORE THE HONORABLE RICHARD J. LEON,
UNITED STATES DISTRICT JUDGE*

APPEARANCES:

For the Petitioners and Moving Parties:	WILMER, CUTLER, PICKERING, HALE and DORR, LLP. Stephen H. Oleskey, Esq. 60 State Street Boston, MA 02109 617.526.6544
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For the Respondents:	U.S. DEPARTMENT OF JUSTICE David B. Salmons, Asstistant to the Solicitor General 950 Pennsylvania Avenue, NW Room 5252 Washington, D.C. 20530 202.514.1030
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by computer-aided transcription.

P R O C E E D I N G S

1
2 (10:07 a.m.)

3 THE COURT: Good morning, everyone.

4 MR. OLESKEY: Good morning, Your Honor.

5 THE DEPUTY CLERK: Let me call the case for the record,
6 Your Honor.

7 THE COURT: That's fine, go right ahead.

8 THE DEPUTY CLERK: Lakhdar Boumediene, et al., versus
9 George Walker Bush, et al., civil action 04-1166.

10 Would counsels come forward and state your appearance for
11 the record, please.

12 MR. OLESKEY: Good morning, Your Honor, Steven Oleskey,
13 Wilmer, Cutler, Pickering, Hale and Dorr for the petitioners.

14 THE COURT: Good morning.

15 MR. HENRY: Good morning, Your Honor. My name is Terry
16 Henry with the Department of Justice on behalf of the
17 respondents, but presenting arguments today will be Mr. David
18 Salmons, also with the Department of Justice.

19 THE COURT: What was that person's name again?

20 MR. HENRY: David Salmons.

21 THE COURT: David -- spell that last name, please.

22 MR. HENRY: S-A-L-M-O-N-S.

23 THE COURT: All right. Thank you. Good morning. All
24 right, Mr. Oleskey, I believe I've granted the motion for your
25 admission *pro hac vice*.

1 doing a very fine job under rather short notice and difficult
2 circumstances. I must say I'm inclined to deny the TRO, but I'm
3 not going to issue a ruling right off the top of my head. I'm
4 going to do some follow-up research, look at some of these cases
5 Mr. Oleskey has given me.

6 I am not going to require the government to submit an
7 additional brief, I'm going to issue a ruling at 2:00 today. If
8 you can be back in the courtroom at 2:00, you can get my ruling.
9 Between now and then, I'm going to do some follow-up and research
10 and take a look at Judge Walton's order and just take a closer
11 look at this thing. So, that's where the court is at the moment.
12 Gentlemen, I appreciate all your efforts and I'll talk to you at
13 2:00.

14 MR. OLESKEY: Thank you, Your Honor.

15 MR. SALMONS: Thank you, Your Honor.

16 (Break taken.)

17 **AFTERNOON SESSION, TUESDAY, AUGUST 3, 2004**

18 THE DEPUTY CLERK: Continuing the matter of Lakhdar
19 Boumediene versus George Walker Bush, et al., 04-1166. The case
20 is called, Your Honor. Judge, the case is called.

21 THE COURT: I couldn't hear. I didn't hear what you said,
22 but if you just called the case, that's fine.

23 THE DEPUTY CLERK: Counsel are here, are present.

24 THE COURT: Very good. Welcome back, counsel. Over the
25 recess, the Court has had the opportunity to do some follow-up

1 research and to reflect on this morning's arguments, which again
2 I want to compliment both counsel on for a fine job. And the
3 Court concludes, based upon reviewing the evidence and reflecting
4 on the arguments this morning, and reviewing the case law that's
5 been cited here, that the temporary restraining order should be
6 denied.

7 The Court believes there is a serious question with regard
8 to jurisdiction in this case, but in light of the fact that the
9 government hasn't really had an opportunity to research it, at
10 length, the Court is not going to rule directly or base its
11 denial of the TRO on the grounds of a lack of jurisdiction,
12 although I still think there is a substantial question here with
13 regard to jurisdiction.

14 The Court is going to rule, nevertheless, that the TRO
15 should not be granted based on a -- it's review of the
16 traditional elements that constitute the necessary elements for a
17 TRO, and in particular, the Court has concluded that the
18 irreparable harm element has not been sufficiently satisfied in
19 this particular case for the following reasons: First, because
20 the Court is satisfied that the procedures set forth in this --
21 for this particular type of review hearing are at least equal to
22 those required under *Hamdi* for citizens, and assuming these
23 detainees are treated equally as citizens, that these procedures
24 are at least accessible equivalent to citizens as set forth in
25 *Hamdi*.

1 Second of all, of course the Supreme Court has not in any
2 way given us any direct, either in the past or recently, given us
3 any direct basis to believe that there's any rights that the
4 detainees or noncitizens have with regards to rights to counsel
5 and the right of self-incrimination in any way equal to U.S.
6 citizens.

7 Third, the interrogations that are ongoing right now and
8 could continue to be ongoing, and any questioning or statements
9 that would be made at any hearing conducted as a part of this
10 process, this administrative process that the Department of
11 Defense is conducting in reviewing the combatant status of these
12 detainees, is all excludable, and the Court ultimately is going
13 to be in a position and will retain, as Judge Walton has
14 indicated in his case, this Court would retain the option as a
15 part of the *habeas corpus* review that it will conduct pertaining
16 to the option of excluding the statements, if any, that are made
17 by these six detainees, if excludable, and not allow the
18 government to rely on them for the purposes of descending the
19 custody of these individuals.

20 And finally, the facts, as the Court understands them are
21 such that it is too speculative on a number of fronts as to
22 whether or not the individuals in question will participate in
23 any of these voluntary hearings, procedures, I should say,
24 whether or not, if they participate they will say anything that
25 would be in any way harmful to their cause and finally, it's even

1 speculative as to whether or not there will be a ruling
2 ultimately that will not find them -- not find a sufficient basis
3 to conclude that they no longer deserve combatant status and they
4 may in fact be released. It's just too speculative to know
5 whether or not they will speak at all and if they speak what they
6 will say, and let alone what will be concluded if they retain
7 their combatant status. So, for all of these reasons the Court
8 does not believe there is sufficient basis to conclude that there
9 is an irreparable harm, the kind of irreparable harm necessary to
10 grant the extraordinary request that's being made here to
11 interfere with the executive branches conducting these
12 administrative proceedings and the Court, for that reason, will
13 deny the TRO.

14 So, that's the ruling of the Court, counsel. Again, I
15 want to thank you for your hard work and your fine oral arguments
16 and we'll see where we go in the future with this particular
17 case. It's not clear at the moment what the next step will be,
18 but the *habeas corpus* cases are outstanding as to these six
19 detainees and the Court is retaining its full panoply of powers
20 to assess the propriety of the custody they're being held in.
21 Thank you very much, counsel.

22 MR. OLESKEY: Thank you, Your Honor.

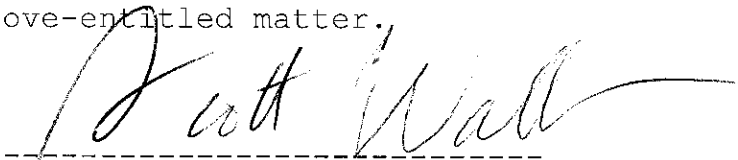
23 MR. SALMONS: Thank you, Your Honor.

24 THE COURT: That's it for today, Mr. Burwell. I'll sign
25 off.

(Proceedings adjourned at 2:18 p.m.)

C E R T I F I C A T E

I, Scott L. Wallace, RDR-CRR, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.



Scott L. Wallace, RDR, CRR
Official Court Reporter

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