

Case No. _____

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

In re RAMZI BIN AL SHIBH,
Petitioner.

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) *United States of America v. Khalid*
) *Sheikh Mohammed, et al.*
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) Military Commissions
) Guantanamo Bay, Cuba
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PETITIONER'S MOTION FOR STAY OF ALL PROCEEDINGS
PENDING REVIEW OF PETITION FOR WRIT OF MANDAMUS
AND WRIT OF PROHIBITION

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**PETITIONER'S MOTION FOR STAY OF ALL PROCEEDINGS
PENDING RESOLUTION OF PETITION FOR WRIT OF
MANDAMUS**

1. Relief Sought

Pursuant to Fed. R. App. Pro. 8, Petitioner Mr. Ramzi bin al Shibh, by his attorneys, respectfully moves this Court for stay of all proceedings in the military commission, including the competency hearing presently scheduled to begin on September 21, 2009, pending resolution of the Petition for Writ of Mandamus (filed herewith and incorporated herein).

Relief has not been sought in the District Court, as that court lacks jurisdiction over Petitioner. *See* 10 U.S.C. § 950g (resting appellate jurisdiction with this Court).

2. Grounds for Relief Sought

This is a capital case. Concerns about Petitioner's competency to stand trial are uncontested. Petitioner has been in U.S. custody since September 2002. He has been in Department of Defense ("DoD") custody at GTMO since September 2006, and diagnosed there, by DoD psychiatrists, with a psychotic disorder.

On 1 July 2008, the Military Judge ordered that a mental health evaluation be conducted on Petitioner. Petitioner's efforts to prepare for the competency hearing have been blocked back by the government's refusal to

turn over critical evidence and witnesses relevant to the competency process. Nevertheless, the Military Judge has scheduled a hearing for September 21, to pursue the competency process, take evidence, and ultimately make a competency determination.

This stay is sought to maintain the status quo while this Court reviews the Petition for Writ of Mandamus and Prohibition. The harm that Petitioner stands to suffer if proceedings in this case are not halted is significant. As this Court has previously found, “setting aside the judgment after trial and conviction insufficiently redresses the defendant’s right not to be tried by a tribunal that has no jurisdiction.” *Hamdan v. Rumsfeld*, 415 F.3d 33, 36 (D.C. Cir. 2005), *rev’d on other grounds*, 548 U.S. 557 (2006). Requiring an individual to submit to a procedure that may be facially unlawful will cause him “a significant and irreparable injury.” *Rafeedie v. INS*, 880 F.2d 506, 517-18 (D.C. Cir. 1989). In *Rafeedie*, this Court affirmed a preliminary injunction that prevented an alien from having to participate in a summary exclusion proceeding, holding that Rafeedie “would be irreparably and seriously injured” merely by being forced to participate in this possibly inapplicable procedure. *Id.* Along with that harm, Mr. bin al Shibh will be forced to disclose trial strategy and witnesses to the government as well.

Mr. bin al Shibh's claims go to the facial legality of the statute used to prosecute him, the Military Commissions Act. 10 U.S.C. § 948a, *et seq.*

Without an opportunity to resolve his challenges before the pending hearing, Mr. bin al Shibh will be irreparably harmed. His right not to be tried by an unlawful commission will be lost if he is forced to proceed. He will, moreover, be compelled to defend himself in a system in which the Military Commission Judge himself found "uncertainty is the norm and where the rules appear random and indiscriminate." Mr. bin al Shibh seeks merely to prevent the irreparable harm to him that would result from continued proceedings in his case, until this Court has reviewed his Petition.

3. Conclusion

Petitioner, through counsel, respectfully requests a stay of all proceedings of his pending military commission hearing, including the competency hearing scheduled to begin on September 21, 2009, so as to afford this Court an opportunity to review his Petition.

Respectfully submitted,



Suzanne M. Lachelier



Richard E.N. Federico

CERTIFICATE OF SERVICE

I, the undersigned, declare that I am a United States citizen and over 18 years of age, that I am the attorney of record for the Petitioner in this case, and that I am a member of the Bar of the State of Virginia, having been admitted before the Supreme Court of that State. My business address is 1099 14th St., NW, 2nd Fl., Washington, DC 20005.

On September 7, 2009, I caused to be electronically delivered the document described herein to:

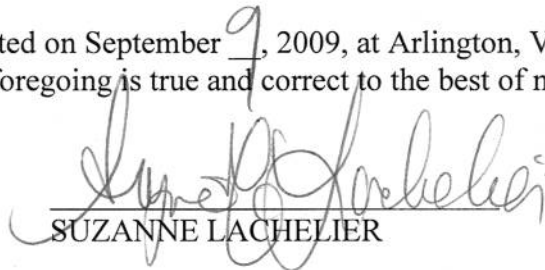
Clerk, Military Commissions
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A copy of: MOTION FOR STAY PENDING CIRCUIT REVIEW OF PETITION FOR WRIT OF MANDAMUS AND WRIT OF PROHIBITION

This certification is executed on September 7, 2009, at Arlington, Virginia. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.


SUZANNE LACHELIER