

[ORAL ARGUMENT NOT SCHEDULED]

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

FARHI SAEED BIN MOHAMMED, et. al.,)	
)	
Petitioners-Appellees,)	
)	Nos. 10-5034
v.)	& 10-5045
)	
BARACK H. OBAMA, et al.,)	
)	
Respondents-Appellants.)	
_____)	

**MOTION TO WITHDRAW DECEMBER 29, 2010 MOTION
REGARDING *EX PARTE* CONSIDERATION**

Pursuant to Rule 27 of Federal Rules of Appellate Procedure, the Government hereby withdraws its prior request to have its December 29, 2010 report filed and considered *ex parte*. A public copy of the December 29 filing, which is no longer classified, is attached.

Respectfully submitted,

/s/ Robert M. Loeb
ROBERT M. LOEB
(202) 514-4332

/s/ Edward Himmelfarb
EDWARD HIMMELFARB
(202) 514-3547
Attorneys, Appellate Staff
Civil Division, Room 7646
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2011, I served the foregoing “MOTION TO WITHDRAW DECEMBER 29, 2010 MOTION REGARDING *EX PARTE* CONSIDERATION,” by causing a copy to be sent by ECF-delivery and by first-class U.S. mail, postage prepaid, to:

Jerry Cohen, Esq.
Burns & Levinson
125 Summer Street
Boston, MA 02110-1624

/s/ Robert M. Loeb
Robert M. Loeb
Attorney for the Appellants

ADDENDUM

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[ORAL ARGUMENT NOT SCHEDULED]

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

FARHI SAEED BIN MOHAMMED, *et al.*,
Petitioners-Appellees/
Cross-Appellants,

v.

BARACK H. OBAMA, *et al.*,
Respondents-Appellants/
Cross-Appellees.

)
)
)
) Nos. 10-5034, 10-5045
)
)
)
)

**MOTION THAT THIS *EX PARTE* FILING
NOT BE NOTED ON THE COURT'S DOCKET AT THIS TIME
AND *EX PARTE* CLASSIFIED STATUS REPORT UPDATE**

1. The Government previously asked this Court to hold these appeals from the district court's release order in abeyance because the Government planned to effect the district court's release order by releasing petitioner from U.S. custody and transferring him to his home country, Algeria. This Court granted that request and, on June 16, 2010, ordered the Government to file status reports every 14 days on "the progress of arrangements to effect the transfer."

As we reported at the time, efforts to transfer petitioner to Algeria were immediately hampered by a district court order barring such transfer. After this Court summarily reversed that district court injunction and after this Court (on July 12) and the Supreme Court (on July 13) denied petitioner's request to stay the mandate, the State Department was able to resume its efforts to expedite petitioner's transfer to

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Algeria. The Government reports since that time have repeated that efforts were continuing, but that there was then no concrete timeframe for the transfer. We stated that once there was a concrete timeframe the Government would "provide the Court with a classified, ex parte filing with the details regarding the timeframe."

In accord with this Court's June 16 order, and consistent with the Government's prior representations to the Court, the Government hereby reports that diplomatic efforts to arrange petitioner's transfer have been successful and that the Government currently plans to effect that transfer no later than January 10, 2011. After that transfer is complete, we will notify the Court and move to dismiss the appeals as moot.

2. We are filing this classified notice *ex parte* because, as this Court has held, there is no right to notice of transfer and the provision of such notice can interfere with the Executive's ability to successfully engage in sensitive diplomatic negotiations. *See Kiyemba v. Obama*, 561 F.3d 509 (D.C. Cir. 2009), *cert. denied*, 130 S.Ct. 1880 (2010).

For those same reasons, we ask that this *ex parte* filing not be noted on the Court's docket at this time. In this context, and given our prior commitments to file an *ex parte* classified update once there was concrete information in regard to the transfer, noting this filing on the docket at this juncture would be to, *de facto*, provide counsel and the public the very information that we are seeking to file *ex parte*.

If this Court's denies the Government's request not to note this filing on the docket at this time, we ask that the Court, rather than accepting this filing and noting it on the docket, simply return this motion/notice to Government counsel unfiled. In

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that event, the next notice appellants would file in this case would be after the transfer is complete.

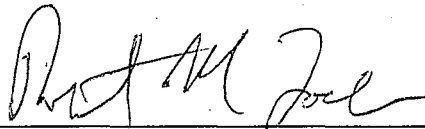
Respectfully submitted,

TONY WEST

Assistant Attorney General

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Deputy Assistant Attorney General



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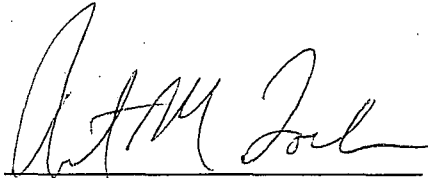
Washington, D.C. 20530-0001

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CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2010, I filed and served the foregoing motion/notice by delivering an original and four copies to the Court. Because the filing is being made *ex parte* and contains classified information, we are not filing via ECF and not serving opposing counsel.

A handwritten signature in black ink, appearing to read "R. M. Loeb", is written over a horizontal line.

Robert M. Loeb
Counsel for Respondents-Appellants

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