



U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

April 13, 2011

Honorable William K. Suter
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: Kiyemba v. Obama, No. 10-775

Dear Mr. Suter:

I am writing in response to the supplemental brief filed by petitioners on April 11, 2011, in the above-captioned case.

The question presented in this case is whether petitioners have a habeas corpus right to be brought into the United States and released, outside the framework of the federal immigration laws and in contravention of specific statutory restrictions on their transfer to the United States, when they have been granted habeas corpus relief and received appropriate offers of resettlement from two different countries but have declined to accept those offers.

In their supplemental filing, petitioners call the Court's attention to a concurring opinion from a recent D.C. Circuit decision that affirmed a denial of a non-Uighur detainee's habeas corpus petition. See Abdah (Esmail) v. Obama, No. 10-5282, 2011 WL 1327701 (D.C. Cir. Apr. 8, 2011) (Silberman, J., concurring). Petitioners contend that "the habeas jurisdiction recognized by this Court in Boumediene [v. Bush, 553 U.S. 723 (2008)], has essentially been nullified" and that "no court can remedy unjustified detention." Supp. Br. 1-2. Petitioners are wrong.

As the government has explained (Br. in Opp. 14-15), aside from petitioners in this case, every Guantanamo Bay detainee with a final, non-appealable order granting a habeas petition has been released from United States custody and sent to his home country or another appropriate country. Since this Court's ruling in Boumediene, 14 non-Uighur detainees have been released from Guantanamo Bay pursuant to orders granting their habeas petitions. Contrary to petitioners' contention, the writ of habeas corpus is effective at Guantanamo Bay.

That is true with respect to the Uighur detainees as well. Twenty-two Uighur detainees were brought to Guantanamo Bay and held in military detention. The Uighur detainees have opposed return to their home country, the People's Republic of China. Consistent with the longstanding policy of the United States not to transfer an individual to a country where he more likely than not would be tortured, the government has committed not to return petitioners there. The government has engaged in sustained and successful diplomatic efforts to arrange with other countries for the resettlement of the Uighur detainees. As a result of those efforts, five of the Uighur detainees were resettled in Albania in May 2006; four of them were resettled in Bermuda in June 2009; six were resettled in Palau in October 2009; and two were resettled in Switzerland in March 2010.

Petitioners are the five Uighur detainees remaining at Guantanamo Bay. The United States secured appropriate offers of resettlement for them from two different countries as well, but petitioners declined to accept those offers. The United States continues its efforts to arrange petitioners' resettlement in other countries, and also stands ready to reapproach one of the countries (Palau) that previously offered resettlement to petitioners should they be willing to be resettled in that country. See Br. in Opp. 13 n.7.

The government has made consistent and good-faith efforts to resettle petitioners. In all Guantanamo detainee cases the habeas right recognized by this Court has proven to be meaningful in both process and remedy.

Sincerely,

A handwritten signature in blue ink that reads "Edwin S. Kneedler" followed by a stylized flourish that appears to be "es".

Edwin S. Kneedler
Deputy Solicitor General*

* The Acting Solicitor General is recused in this case.

cc: See Attached Service List