

No.

IN THE

Supreme Court of the United States

MOATH HAMZA AHMED AL-ALWI,

Petitioner

v.

DONALD J. TRUMP, et al.,

Respondents

On Petition For Writ Of Certiorari
To The United States Court of Appeals for the District of Columbia Circuit

**APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR WRIT
OF CERTIORARI**

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INTRODUCTION

To the Honorable John G. Roberts, Chief Justice of the Supreme Court of the United States and Circuit Justice for the District of Columbia Circuit:

Petitioner Moath al-Alwi prays for a 30-day extension of time to file his petition for writ of certiorari in this Court, up to and including December 5, 2018. The final judgment of the Court of Appeals for the District of Columbia Circuit was entered on August 7, 2018, and Petitioner's time to petition for certiorari in this Court expires on November 5, 2018. This application is being filed more than 10 days before that date. *See* SUP. CT. R. 13.5. A copy of the opinion and judgment below is attached hereto. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

BACKGROUND

Moath Hamza Ahmed al-Alwi, a Yemeni citizen imprisoned at the United States Naval Base at Guantánamo Bay, Cuba since 2002, was denied habeas corpus relief by the United States District Court for the District of Columbia in 2017. 236 F. Supp. 3d (D.D.C. 2017). The court of appeals affirmed that decision this year. 901 F.3d 294 (D.C. Cir. 2018). Mr. al-Alwi intends to ask this Court to review the court of appeals' decision and hold that the government's statutory authority to detain him has unraveled or, in the alternative, that it has ended along with the conflict from which his capture arose.

Mr. al-Alwi was captured shortly after the United States initiated a bombing campaign in Afghanistan in October 2001, pursuant to the Authorization for Use of

Military Force (“AUMF”). Pub. L. No. 107-40, § 2(a), 115 Stat. 224 (2001). Three years later, a plurality of this Court, invoking traditional law-of-war principles, found that the “necessary and appropriate force” authorized by the AUMF included the detention of enemy combatants “for the duration of the relevant conflict.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 521 (2004). Mr. al-Alwi initially petitioned for a writ of habeas corpus in 2005, challenging his classification as an enemy combatant. The district court denied that first petition in 2008, *Al Alwi v. Bush*, 593 F. Supp. 2d 24 (D.D.C. 2008), and the court of appeals affirmed in 2011. *Al Alwi v. Obama*, 653 F.3d 11 (D.C. Cir. 2011), *cert. denied*, 567 U.S. 907 (2012). Still, no court has ever found that Mr. al-Alwi used arms against the United States or its allies and, after sixteen years, he is one of twenty-six men who remain imprisoned indefinitely at Guantánamo Bay without charge or trial.¹ Mr. al-Alwi now challenges the continued lawfulness of his detention at this unprecedented juncture.

This case presents important questions of law, including whether the Court’s understanding of “longstanding law-of-war principles” that undergird the government’s authority to detain Mr. al-Alwi under the AUMF has “unravelled” because the practical circumstances of the conflict—even assuming it is the same conflict that began in 2001—are “entirely unlike those of the conflicts that informed the development of the law of war,” as this Court has suggested. *Hamdi*, 542 U.S. at 521. Indeed, in a later statement accompanying denial of certiorari in *Hussain v. Obama*, 572 U.S. 1079 (2014), Justice Stephen Breyer acknowledged that this Court

¹ See *The Guantánamo Docket: Current Detainees*, N.Y. TIMES, <https://www.nytimes.com/interactive/projects/guantanamo/detainees/current> (last visited Oct. 15, 2018).

has yet to consider whether “either the AUMF or the Constitution limits the duration of detention.” Mr. al-Alwi will ask the Court to resolve these open questions in the context of his indefinite, potentially lifelong detention. His imprisonment for over sixteen years without charge or trial, while other Guantánamo prisoners tried and convicted of war crimes live free after completing their sentences, is a test of the executive’s lawful detention authority.

In the alternative, even if the government’s AUMF detention authority has not unraveled, the “relevant conflict” out of which Mr. al-Alwi’s capture arose has itself ended. For example, the conflict in Afghanistan today is led by an Afghan government that did not exist in 2002 while the United States, by express agreement, takes a subordinate and supportive role. This Court has held that the AUMF authorizes detention “for the duration of the relevant conflict,” *see Hamdi*, 542 U.S. at 521, but the court of appeals simply deferred to the executive branch’s assessment of whether the “relevant” conflict endures. The meaning of the “relevant conflict” for purposes of detention authority is an important issue for *judicial* review.

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a Petition for Writ of Certiorari should be extended for 30 days for these reasons:

1. Oral argument in this case was heard by the Court of Appeals on March 20, 2018. The Court of Appeals issued its opinion on August 7, 2018. By the end of the five month period between argument and decision, Mr. al-Alwi’s legal

team at Main Street Legal Services had changed, with new counsel not joining until late August of 2018. Because of this change in Mr. al-Alwi's legal team, additional time is necessary for new members of the legal team to become familiar with the voluminous record below and the complex issues involved in this matter.


2. Mr. al-Alwi's incarceration at Guantánamo and his inability to speak or write English make communications with him difficult. (Mr. al-Alwi's lead counsel speaks Arabic but his other counsel do not.) Visits to Guantánamo are expensive and must be scheduled long in advance. Because flights to Guantánamo are scarce, visits require counsel to set aside several days and to attempt to coordinate meetings with other clients when possible. These factors prolong the process of preparing legal submissions, including the Petition for Writ of Certiorari, in accordance with the client's wishes. For example, counsel was unable to schedule a meeting with Mr. al-Alwi in Cuba until September 20, 2018, more than six weeks after the Court of Appeals issued its opinion on August 7, 2018, leaving only half of the 90-day appeal period remaining to file a petition for Certiorari.

3. The case at hand presents fundamental questions that require the Court to clarify past decisions bearing on the unprecedented and indefinite imprisonment of Mr. al-Alwi. Given the weighty issues and the liberty interest at stake for Mr. al-Alwi, it is imperative that counsel have sufficient time to prepare his Petition seeking review by this Court.

CONCLUSION

For the foregoing reasons, Mr. al-Alwi respectfully requests that an order be entered extending his time to file a Petition for Writ of Certiorari to and including December 5, 2018.

Respectfully submitted,



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October 15, 2018

CERTIFICATE OF SERVICE

I, Ramzi Kassem, counsel for Petitioner Moath al-Alwi and a member of the Bar of this Court, hereby certify that on October 15, 2018, a copy of this Application for Extension of Time to File a Petition for Writ of Certiorari in the above-entitled case was mailed, first class postage prepaid to Noel Francisco, the Solicitor General of the United States, counsel for the respondents herein at the following address:

Noel Francisco
Solicitor General of the United States
Room 5616
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

I further certify that all parties required to be served have been served.



RAMZI KASSEM