

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

|                                  |   |                                |
|----------------------------------|---|--------------------------------|
| SAEED MOHAMMED SALEH             | ) |                                |
| HATIM, <i>et al.</i> ,           | ) |                                |
| <i>Petitioners-Appellees,</i>    | ) |                                |
| v.                               | ) | No. 13-5218 (consolidated with |
|                                  | ) | with Nos. 13-5220 and 13-5221) |
| BARACK H. OBAMA, <i>et al.</i> , | ) |                                |
| <i>Respondents-Appellants.</i>   | ) |                                |

**APPELLEES' OPPOSITION TO APPELLANTS' MOTION FOR  
AN EXTENSION OF TIME WITHIN WHICH TO FILE  
THEIR REPLY BRIEF IN LIGHT OF THE LAPSE IN APPROPRIATIONS**

Appellees oppose the motion for an extension of time, for the reasons stated below.

1. The Court previously established an expedited briefing schedule for this case at the urgent request of appellees. The request was made because the district court's order enjoining genital-area searches in connection with counsel visits and calls with detainees has been stayed pending appeal. The longer the Court's stay is in place, the longer the Guantanamo detainees with habeas petitions will continue to be forced either to forgo meeting or talking with counsel, on the one hand, or to submit to religiously offensive genital-area searches as precondition to meeting with counsel, on the other. Some detainees have decided

not to submit to these searches, and thus do not have access to counsel. For instance, a detainee whose name appears in the caption of this appeal, Saeed Hatim, is refusing telephone calls and meetings with counsel, evidently because of the genital-area search policy. His habeas hearing is scheduled for December, and it is essential that counsel have access to him prior to the hearing. The stay may already force counsel to seek a postponement of the hearing, but the sooner the appeal is decided, the sooner his habeas hearing might occur.

2. The Government argues that it needs the extension because the current Government shutdown prevents its counsel from working on this case “even on a voluntary basis.” However, if the Court denies the requested extension, DOJ will then consider itself authorized to work on this appeal, and presumably appellants’ counsel would be brought back on the DOJ payroll to write the reply brief. *See* U.S. Department of Justice FY 2014 Contingency Plan at 3 (Oct. 11, 2013) (“If a court denies such a request [for postponement] and orders a case to continue, the Government will comply with the court’s order, which would constitute express legal authorization for the activity to continue.”), *available at* <http://www.justice.gov/jmd/publications/doj-contingency-plan.pdf>. Accordingly, a denial of the motion will benefit both parties and allow the case to stay on track.

3. The Government’s reply brief is currently due on October 22. However, because the Government has already lost the benefit of the first few days

after the appellees' brief was filed on October 11, appellees agree to an extension to October 25.

4. The current schedule calls for filing of "public" versions of the briefs and the appendix between October 18 and November 19. *See* Order of Aug. 26, 2013. The briefs, however, have so far been filed in entirely public form, and the only items in the appendix that were being treated as confidential by the Government have since been made public, so the Government is in a position today to file the appendix and its reply brief on the Court's public record. Accordingly, once the reply brief is filed, the case will be ready for argument. Appellees request an oral argument at the earliest possible date.

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### **CERTIFICATE OF SERVICE**

I certify that true and correct copies of the foregoing opposition were served today, October 15, 2013, upon counsel of record for the appellants via the CM/ECF system.

*Brian E. Foster*

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