

[ORAL ARGUMENT NOT SCHEDULED]

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

AHMED BELBACHA,)	
)	
<i>Petitioner/Appellee,</i>)	
)	
v.)	Case No. 08-5350
)	
BARACK OBAMA, <i>et al.</i> ,)	
)	
<i>Respondents/Appellants.</i>)	
)	
)	

**PETITIONER’S OPPOSITION TO THE GOVERNMENT’S
MOTION TO DISMISS ITS APPEAL AS MOOT**

The government’s argument for mootness is that the District Court’s injunction expired by its own terms when *Kiyemba II* became final. Mr. Belbacha, however, has petitioned for initial en banc hearing to overrule *Kiyemba II*. As long as *Kiyemba II* is in play in this Court, the government’s appeal is not moot.

Moreover, dismissing this appeal would not keep the *Kiyemba II* issue at bay. If this appeal is dismissed, Mr. Belbacha will appeal Judge Hogan’s order purporting to dissolve Judge Collyer’s injunction. And he will again petition for initial en banc hearing on the ground that *Kiyemba II* should be overruled.

Mr. Belbacha will also argue that Judge Hogan lacked jurisdiction to dissolve the injunction while the instant appeal was pending. If the Court agrees,

the injunction would continue in force, and the government would then have to appeal the injunction a second time. None of this makes sense.

Mr. Belbacha faces torture if the government returns him to Algeria. The government responds that Mr. Belbacha does not face torture – because the United States does not send individuals to countries where they face torture. The *Kiyemba II* court erroneously concluded that it was bound to accept this circular reasoning, making the courts a rubber stamp when the law requires them to be a guardian of rights. That is why *Kiyemba II* must be overruled.

CONCLUSION

For the foregoing reasons, the Court should deny the motion.

Dated: May 20, 2010

Respectfully,

/s/

Clive A. Stafford Smith
Cori A. Crider
Tara Murray
(all admitted *pro hac vice*)
REPRIEVE
PO Box 52742
London EC4P 4WS
United Kingdom
44 207 353 4640
cori@reprieve.org.uk

David H. Remes
D.C. Bar. No. 370372
APPEAL FOR JUSTICE
1106 Noyes Drive
Silver Spring, MD 20910
(202) 662-5212
remesdh@gmail.com

Counsel for Petitioner