

SUPREME COURT OF THE UNITED STATES

Boumediene v. Bush

550 U.S. ____ (2007) · No. 06A1001, 06A1002; 06-1195, 06-1196 · Decided April 26, 2007

SUMMARY

The Supreme Court denied applications for a 122-day extension to seek rehearing of an order denying certiorari and for suspension of that order. The Court held that its Rules do not authorize an extension for rehearing an order denying certiorari and that the applicants did not meet the demanding standard for suspending such an order.

CASE DETAILS

COURT	Supreme Court of the United States
WRITING FOR THE COURT	Chief Justice Roberts
JURISDICTION	Federal
DECIDED	April 26, 2007
DOCKET	06A1001, 06A1002; 06-1195, 06-1196
DISPOSITION	other
PROCEDURAL POSTURE	Applicants sought a 122-day extension of time to file petitions for rehearing of orders denying certiorari and sought suspension of those orders pending disposition of the rehearing petitions.
STANDARD OF REVIEW	For suspension of an order denying certiorari under Supreme Court Rule 16.3, relief requires a reasonable likelihood that the Court will reverse its prior position and grant certiorari.
PRECEDENTIAL VALUE	Precedential Supreme Court opinion in chambers concerning the application of the Supreme Court Rules to rehearing and suspension of orders denying certiorari.
PARTIES	Lakhdar Boumediene et al., Khaled A. F. Al Odah, next friend of Fawzi Khalid Abdullah Fahad Al Odah, et al. v. George W. Bush, President of the United States, et al., United States et al.

TOPICS

appellate procedure

writ of certiorari

military law

civil rights

PRACTICE AREAS

appellate procedure

military law

civil rights

QUESTIONS PRESENTED

1. Whether the Supreme Court's rules authorize an extension of time to file a petition for rehearing of an order denying certiorari.
2. Whether the applicants met the rigorous standard for suspending an order denying certiorari under Supreme Court Rule 16.3.

HOLDINGS

1. The Court's rules do not authorize an extension of time to file a petition for rehearing of an order denying certiorari because Rule 44.2 provides a fixed 25-day period without an exception allowing the Court or a Justice to extend it.
2. Suspension of an order denying certiorari was unwarranted because the applicants did not demonstrate a reasonable likelihood that the Court would reverse its prior position and grant certiorari.

KEY QUOTATIONS

“Such an order is plainly not a “judgment or decision . . . on the merits.”” (at 1)

“This most extraordinary relief will not be granted unless there is a “reasonable likelihood of this Court’s reversing its previous position and granting certiorari.”” (at 2)

FACTUAL BACKGROUND

Applicants' petitions for certiorari had been denied. They sought additional time to file petitions for rehearing of those orders and argued that ongoing proceedings below, including a Government motion and possible future lower-court actions, could adversely affect review available under the Detainee Treatment Act of 2005.

PROCEDURAL HISTORY

The Supreme Court had denied applicants' petitions for certiorari, citing the orders as 549 U.S. _____. Applicants then filed two applications in chambers for an extension of time to seek rehearing and for suspension of the orders denying certiorari. The Chief Justice, acting as Circuit Justice, denied both applications.

DISPOSITION

other

CASES CITED

- Richmond v. Arizona, 434 U.S. 1323 (1977) (Rehnquist, J., in chambers)

OPINION

PER CURIAM.

Cite as: 550 U. S. ____ (2007) 1 Opinion in Chambers SUPREME COURT OF THE UNITED STATES _____ Nos. 06A1001 and 06A1002 (06–1195 and 06–1196) _____ LAKHDAR BOUMEDIENE ET AL. 06–1195 v. GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, ET AL. KHALED A. F. AL ODAH, NEXT FRIEND OF FAWZI KHALID ABDULLAH FAHAD AL ODAH, ET AL. 06–1196 v. UNITED STATES ET AL. ON APPLICATIONS FOR EXTENSION OF TIME AND SUSPENSION OF ORDER DENYING CERTIORARI [April 26, 2007] CHIEF JUSTICE ROBERTS, Circuit Justice.

We denied applicants’ petitions for certiorari, 549 U. S. ____ (2007), and they now bring two requests: first, a 122 day extension of time in which to file a petition for rehear ing of the order denying certiorari, and second, suspension of the order denying certiorari. Both applications are denied. 1. This Court’s Rules expressly provide for extensions of time in which to file a petition for writ of certiorari, Rule 13.5, or a petition for rehearing of a “judgment or decision... on the merits,” Rule 44.1, but they do not provide for any extension of time in which to file a petition for rehear ing of an order denying certiorari.

Such an order is plainly not a “judgment or decision... on the merits.” Indeed, while Rule 44.1 establishes a 25-day period for filing a petition for rehearing of a judgment on the merits “unless the Court or a Justice shortens or extends the time,” Rule 2 BOUMEDIENE v. BUSH Opinion in Chambers 44.2, articulating a 25-day period for filing a petition for rehearing of an order denying certiorari, contains no such exception, confirming that the Rules do not contemplate granting an extension for such petitions.

2. An order denying certiorari “will not be suspended pending disposition of a petition for rehearing except by order of the Court or a Justice.” Rule 16.3. This most extraordinary relief will not be granted unless there is a “reasonable likelihood of this Court’s reversing its previ ous position and granting certiorari.” *Richmond v. Ari zona*, 434 U. S. 1323 (1977) (Rehnquist, J., in chambers).

In arguing for suspension, applicants point to a motion filed by the Government in the District Court as part of ongoing proceedings below. They contend that, if the motion is granted, or if certain other actions are taken by the lower courts, there will be an adverse effect on the review available to them under the Detainee Treatment Act of 2005, Tit. X, 119 Stat. 2739.

This does not satisfy the rigorous standard we have established for Rule 16.3 relief. Applicants do not even point to any action by the lower courts as prompting their request for extraordinary relief—only the filing of motions and possible court action. Such grounds can hardly provide a basis for believing this Court would reverse course and grant certiorari.

Accord ingly, suspension of the order is not warranted.

