

No. 06-1196

IN THE
Supreme Court of the United States

KHALED A.F. AL ODAH, *et al.*
Petitioners,

v.

UNITED STATES OF AMERICA, *et al.*,
Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the District of Columbia Circuit

MOTION FOR LEAVE TO FILE BRIEF OF
JUVENILE LAW CENTER, *et. al.* AS *AMICI CURIAE*,
AND BRIEF OF JUVENILE LAW CENTER *et. al.*
IN SUPPORT OF RESPONDENT OMAR KHADR

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**MOTION FOR LEAVE TO FILE BRIEF OF JUVENILE
LAW CENTER, *et. al.*
AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENT OMAR KHADR**

Pursuant to Rule 37.3(b) of the Rules of the Supreme Court of the United States Juvenile Law Center, *et. al.* hereby requests leave to file the accompanying *amicus curiae* brief. This brief is submitted in support of the petition for writ of certiorari to the U.S. Court of Appeals for the District of Columbia Circuit. Petitioners and Respondents Khadr and Khalid have consented to the filing of this brief. Counsel for Respondent President Bush has also consented to our request for consent.

1. Juvenile Law Center (JLC), one of the oldest public interest law firms for children in the United States, was founded in 1975 to advance the rights and well-being of children in jeopardy. JLC pays particular attention to the needs of children who come within the purview of public agencies: for example, abused or neglected children placed in foster homes, delinquent youth sent to residential treatment facilities or adult prisons, or children in placement with specialized services needs. More detailed information about JLC is available at www.jlc.org.
2. JLC works to integrate juvenile justice practice and policy with knowledge of adolescent development. JLC has edited several publications on this topic, including *Understanding Adolescents: A Juvenile Court Training Curriculum* (L. Rosado, American Bar Association Juvenile Justice Center, Juvenile Law Center, Youth Law Center 2000); *Youth on Trial: A Developmental Perspective on Juvenile Justice*, an examination of the impact of the legal

system on adolescent development and psychology published in 2000 (Thomas Grisso and Robert G. Schwartz, University of Chicago Press). JLC has also used knowledge of adolescent development to inform its contributions in two recent amicus briefs to this Court: *Roper v. Simmons*, 543 U.S. 551 (2005) (regarding the constitutionality of the death penalty for minors aged sixteen and seventeen at the time of their crimes) and *Yarborough v. Alvarado*, 124 S.Ct. 1706 (2004) (regarding whether a minor's age was properly considered when determining if the minor was in custody during a police interrogation).

3. JLC is particularly concerned with juvenile and criminal justice systems and their effect on children's emotional and psychological health. JLC is an active participant in the John D. and Catherine T. MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, addressing the effects of juvenile and adult incarceration on juvenile offenders.
4. JLC helps to facilitate a national dialogue on juvenile justice issues both by participating as *amici* in cases across the country and conducting trainings at national conferences hosted by organizations such as the American Bar Association, National Council of Juvenile and Family Court Judges, Office of Juvenile Justice and Delinquency Prevention, and the National Association of Council for Children. JLC is also a co-founder, with the American Bar Association and the Youth Law Center, of the National Juvenile Defender Center (NJDC). NJDC offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

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5. JLC is deeply concerned by the possibility that the alternative process to *habeas corpus* provided for under the Military Commission Act (MCA) may be applied to a juvenile. Congress' silence regarding juveniles in the MCA indicates that Congress never intended for military commissions to have jurisdiction over child soldiers. JLC seeks to establish that federal law consistently differentiates between juveniles and adults. Therefore, it would be illogical to read jurisdiction into a silent statute when juveniles are routinely treated differently by federal law.

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Respectfully submitted,

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INTEREST OF *AMICI*¹

The organizations submitting this brief work with, and on behalf of, adolescents in a variety of settings, from day care to foster care, substance abuse to homelessness, and at every stage of the juvenile and criminal justice process. *Amici* are advocates and researchers who bring a unique perspective and a wealth of experience in providing for the care, treatment, and rehabilitation of youth in the child welfare and juvenile justice systems. *Amici* know from first hand experience that youth who enter these systems need extra protection and special care, clearly necessitated by their status as youth. *Amici* also know from their collective experience that adolescent immaturity often manifests itself in numerous ways that implicate culpability, including diminished ability to assess risks, make good decisions, and control impulses. It is precisely for these reasons that *Amici* believe that the status of childhood and adolescence separates youth from adults in categorical and distinct ways and that child soldiers cannot be held to the same standards of blameworthiness and culpability as their adult counterparts.

IDENTITY OF *AMICI*

See Appendix A for a list and brief description of all *Amici*.

¹ *Amici* file this brief with the consent of Petitioners and Respondents Khadr and Khalid. Counsel for Respondent President Bush has also consented. No counsel for a party authored this brief in whole or in part. No person or entity, other than *Amici*, their members, or their counsel made a monetary contribution for the preparation or submission of this brief.

STATEMENT OF FACTS

Amici adopt the statement of facts as articulated in the brief of Respondent O.K.

SUMMARY OF ARGUMENT

Amici support Respondent O.K.'s argument that military commissions convened pursuant to the Military Commissions Act (MCA) lack jurisdiction over O.K. The MCA is silent as to the issue of personal jurisdiction over minors and the military commissions do not provide for a distinct process for juveniles. It would be absurd to impute personal jurisdiction into a silent statute particularly given that federal law consistently accounts for the developmental differences between adults and youth.

It is widely understood that adolescents are categorically different than adults. Both United States Supreme Court jurisprudence and federal legislation reflect this understanding. Moreover, this federal law is complemented by an emerging body of social science research attesting to the developmental differences between adolescents and adults. This scholarship shows that adolescents are more likely than adults to engage in risky behavior; are more likely to consider only the immediate effects of their acts rather than the long-term consequences; and are far more susceptible to being overcome by external pressure from peers and authority figures than are adults, both in terms of how they evaluate their own behavior and in conforming their conduct. The scholarship also shows that because they live in the moment, adolescents feel that they have less of a stake in the future. All told, this recent research illustrates that juveniles as a class are less capable of controlling their impulses than adults, and thus are less culpable than adults.

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