

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

FAWZI KHALID ABDULLAH FAHAD AL ODAH,)
et al.,)
Plaintiffs,)
))
v.) **No. CV 02-0828 (CKK)**
))
UNITED STATES OF AMERICA, et al.,)
))
Defendants.)
))

**REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFFS'
MOTION TO COMPEL ISSUANCE OF SECURITY FORMS AND TO
EXPEDITE SECURITY CLEARANCES FOR TWO SUPPORT PERSONNEL**

Now that the Court has ruled today against the “real-time monitoring” proposal by the government and authorized plaintiffs’ counsel to meet with the plaintiff-detainees under the framework for counsel access described by the Court at the hearing on August 16, 2004 (*see* Memorandum Opinion (“Op.”) and Order of October 20, 2004), the issues plaintiffs have raised in this motion are no longer “premature.” *See* Respondents’ Opposition to Plaintiffs’ Motion to Compel Issuance of Security Forms and to Expedite Security Clearances for Two Support Personnel (“Gov’t Opp.”), pp. 2, 4. Rather, they are real and immediate.

Although the Court indicated in today’s opinion that, under its framework, plaintiffs’ counsel meeting with one of the three plaintiff-detainees proposed to be subject to “real-time monitoring” would be prohibited from disclosing any information provided those detainees to anyone, “including law firm colleagues or support staff” (Op., p. 21), plaintiffs assume the Court meant law firm colleagues or support staff *who do not have security clearances*. Four of plaintiffs’ attorneys have been granted security clearances by the government. Thus, although under the Court’s framework only one attorney may meet with one detainee, plaintiffs assume

that if that attorney is one of the four security-cleared attorneys, he or she may discuss information provided by the detainee with one of the other three security-cleared attorneys on a “need-to-know” basis. The attorney would be prohibited from discussing such information with any law firm colleagues who are *not* security-cleared. Similarly, plaintiffs assume that attorneys who have been security-cleared would be allowed to share that information on a “need-to-know” basis with support staff who have been security-cleared.

Indeed, under the terms of a protective order proposed by the government for the storage, handling, and control of classified information, “petitioners’ counsel” who have been (i) determined to have a “need to know,” (ii) have been security-cleared, and (iii) have signed a document agreeing to be bound by the protective order are permitted to have access to classified information. *See* Defendants’ Proposed Protective Order, ¶ 11, annexed as Exhibit A.¹ The term “petitioners’ counsel” is defined to include “an attorney who is employed or retained by or on behalf of a petitioner for purposes of representing the petitioner in habeas corpus or other litigation in federal court in the United States, *as well as co-counsel, interpreters, translators, paralegals, investigators and all other personnel or support staff employed or engaged to assist in the litigation* (emphasis added).” *Id.*, ¶ 15. Thus, the government does not oppose the sharing of classified information by security-cleared attorneys with co-counsel and support staff within their law firm.

Accordingly, it is essential that the Court order the government to furnish plaintiffs with security forms and expedite security clearances for one legal assistant and one secretary. Such

¹ Although the date on the letter transmitting the government’s proposed protective order is “October 20, 2004,” government counsel circulated it to plaintiffs’ counsel and counsel for petitioners in the other pending Guantanamo Bay cases on September 24, 2004. Plaintiffs and petitioners in the other cases object to certain provisions of the proposed protective order but not the provisions in ¶¶ 11 and 15. Today, October 20, Judge Green heard oral argument on those objections and a ruling is expected.

support staff will be needed to process, store, and retrieve information provided by the detainees as counsel's meetings go forward, and to help counsel develop and present the detainees' claims to this Court.

Respectfully submitted,

/s/ Thomas B. Wilner

Thomas B. Wilner (D.C. Bar #173807)

Neil H. Koslowe (D.C. Bar #361792)

Kristine A. Huskey (D.C. Bar #462979)

Jared A. Goldstein (D.C. Bar #478572)

SHEARMAN & STERLING LLP

801 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

Telephone: (202) 508-8000

Facsimile: (202) 508-8100

Attorneys for Plaintiffs

Dated: October 20, 2004