

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

**RESPONSE TO NOTICE REGARDING PLAINTIFFS’
MOTION TO COMPEL ISSUANCE OF SECURITY FORMS AND TO
EXPEDITE SECURITY CLEARANCES FOR TWO SUPPORT PERSONNEL**

In its Notice Regarding Plaintiffs’ Motion to Compel Issuance of Security Forms and to Expedite Security Clearances for Two Support Personnel (“Notice”), the government argues that the Kuwaiti Detainees’ pending motion to expedite security clearances for one legal assistant and one secretary is “moot.” The government is wrong.

1. Because the government, for no good reason, denied the Kuwaiti Detainees’ request of August 18, 2004, for security clearance forms for one legal assistant and one secretary, and then refused to change its mind during an informal conference with Senior Judge Joyce Hens Green, the Kuwaiti Detainees were forced to file a motion on September 27, 2004, to compel the government to issue those forms. To ensure that these support personnel could be cleared prior to the time the Kuwaiti Detainees’ counsel went to Guantanamo Bay to meet with their clients, the Kuwaiti Detainees also moved to expedite the security clearances for these individuals.

2. On November 8, 2004, government counsel informed the Kuwaiti Detainees’ counsel that the government had decided to issue the requested security clearance forms for the two support personnel. However, government counsel said the government would not expedite the

security clearances for these support personnel and treat their applications as if they had been submitted on August 18, 2004, when the Kuwaiti Detainees first requested them. Instead, government counsel said these support personnel would have to wait until all other pending applications for security clearances are processed before they could be security-cleared.

Now, in its Notice, the government contends that both the portion of the Kuwaiti Detainees' motion seeking to compel the issuance of security clearance forms for the two support personnel and the portion of the motion seeking to expedite their security clearances are moot. Regarding the portion of the motion seeking expedited security clearances, the government argues it would be "unfair to other counsel and personnel seeking security clearances in these coordinated cases, especially those who, unlike the support personnel in this case, are seeking clearances to facilitate a visit to Guantanamo Bay to meet with detainees they represent or for whom they will translate," to expedite the clearances for the Kuwaiti Detainees' two support personnel. Notice at 2. The government also claims "it is not clear" the government could direct such expedition even if ordered to do so. *Id.*

3. The portion of the Kuwaiti Detainees' motion seeking expedited security clearances for the two support personnel is not moot. As the government knows, counsel for the Kuwaiti Detainees are scheduled to go to Guantanamo Bay to meet with their clients from December 5, 2004, through December 10, 2004. Under the Court's orders dealing with access to the detainees, the notes of those meetings and the other documents that may be generated by them will be treated as classified and sent directly from Guantanamo Bay to the secure facility in Crystal City, Virginia for use by counsel in developing and presenting the Kuwaiti Detainees' claims to this Court. It is essential that the two support personnel be security-cleared to do the necessary word processing and organizing of these classified materials as soon as possible.

Indeed, it was precisely to avoid the problem of not having security-cleared support personnel to perform these important tasks by the time counsel went to Guantanamo Bay that the Kuwaiti Detainees sought the security clearance forms more than *four months ago* and filed a motion to expedite their security clearances more than *two months ago*.

What would be “unfair” would be to allow the government arbitrarily and wrongfully to withhold security clearance forms for *two and a half months* and then make the Kuwaiti Detainees suffer the consequences. The government has presented the Court with no evidence that expediting the security clearances of these two support personnel will prejudice any other counsel in the Guantanamo Bay cases. The government merely expresses its “view” that such expedition would be unfair in the abstract. The government’s speculation about harm to others is a wholly insufficient basis upon which to deny the Kuwaiti Detainees’ motion for expedition, much less to conclude that the motion is moot.

The two support personnel for the Kuwaiti Detainees submitted their security clearance applications to the government on November 23, 2004. The government has previously represented to the Court that it should take approximately two weeks to process security clearance applications related to the Guantanamo Bay cases. Had the application forms been issued on August 18, 2004, when the government should have issued them, these personnel already would have been security-cleared. Because the government’s refusal to issue the forms was arbitrary and wrongful, the Court should grant the Kuwaiti Detainees’ motion to expedite the security clearance applications for these personnel by processing them immediately and ahead of any other applications submitted after August 18, 2004. Contrary to the government’s doubt, the Kuwaiti Detainees are confident that, if this Court orders the government to expedite the security clearances for the two support personnel by placing them in the same position they

would have been in had the government timely issued their security clearance forms, the government will obey the Court's order.

Respectfully submitted,

/s/ Neil H. Koslowe

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: December 2, 2004