

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)	
)	Civil Action Nos.
)	02-CV-0299 (CKK), 02-CV-0828 (CKK)
<i>In re</i> Guantanamo Detainee Cases)	02-CV-1130 (CKK), 04-CV-1135 (ESH),
)	04-CV-1136 (JDB), 04-CV-1137 (RMC),
)	04-CV-1144 (RWR), 04-CV-1164 (RBW),
)	04-CV-1194 (HHK), 04-CV-1227 (RBW),
)	04-CV-1254 (HHK)
)	

NOTICE OF FILING

Pursuant to the request of the Court made at the December 1, 2004 argument concerning respondents' motion to dismiss or for judgment as a matter of law in these cases, respondents submit herewith a September 14, 2004 memorandum regarding "Implementation of Administrative Review Procedures for Enemy Combatants Detained at U.S. Naval Base Guantanamo Bay, Cuba." *See* Exhibit D (available at <http://www.defenselink.mil/news/Sep2004/d20040914adminreview.pdf>). As explained in respondents' motion and at the December 1, 2004 hearing, the Administrative Review Procedures result in the periodic (at least annual) assessment of whether each enemy combatant at Guantanamo Bay (not subject to charge or under sentence from a military commission) should be released, transferred, or continue to be detained. *See* Respondents' Motion to Dismiss or for Judgment as a Matter of Law (filed Oct. 4, 2004) at 17-18 & n.20.

In addition, counsel believe it necessary to correct two misstatements made by counsel for respondents at the December 1 hearing. First, in response to a question from the Court regarding the timing of a Combatant Status Review Tribunal ("CSRT") hearing in relation to the first meeting of the Personal Representative with the detainee in the CSRT process, counsel stated

that the hearing would be no sooner than 30 days following the meeting with the Personal Representative. The CSRT Implementing Order, however, provides that the CSRT hearing is normally scheduled within 30 days of the detainee's meeting with the Personal Representative, but the hearing may be postponed to provide a reasonable time for the detainee or the Personal Representative to acquire evidence requested by the detainee and deemed to be relevant and necessary to the Tribunal's decision. *See* July 29, 2004 Memorandum re Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba (Exhibit B to Respondents' Motion to Dismiss or for Judgment as a Matter of Law) at ¶ G.

Second, the Court inquired whether it had all the evidence considered by the CSRTs with respect to petitioners, and counsel stated that it did. However, in the CSRT proceeding pertaining to one petitioner, Adnan Farhan Abdul Latif in the *Abdah* case, the CSRT considered a document classified as "Top Secret / Sensitive Compartmented Information (SCI)."¹ This document was not included in the full CSRT record provided to the Court, although the absence of the document from the CSRT record is noted in that record.² Arrangements can be made for the Court to view this material, if needed, under appropriate security arrangements.

¹ SCI material is subject to special clearance, access, storage, and handling requirements that precluded the inclusion of such material within the non-SCI CSRT record.

² In the CSRT proceeding pertaining to petitioner Fawzi Khalid Abdullah Fahad Al Odah in the *Al Odah* case, the CSRT similarly considered a document classified "TS/SCI." In order to maintain the CSRT record's "Secret" level of classification, the document was not included by the Tribunal in the record, but the record otherwise included an intelligence report classified "Secret" that contains the substantive information reflected in the document classified "TS/SCI." An e-mail from one of the Tribunal members included in the CSRT record confirms the substantive equality of the two documents.

Dated: December 3, 2004

Respectfully submitted,

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