

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

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

PLAINTIFFS-PETITIONERS' MOTION FOR WRIT OF INJUNCTION

Introduction and Summary

Six months ago this Court held that plaintiffs-petitioners (the “Kuwaiti Detainees”) “are entitled to be represented by counsel” and that “the Government is not entitled to unilaterally impose procedures that abrogate the attorney-client relationship and its concomitant attorney-client privilege covering communications between them” or that “inappropriately burden that relationship.” Memorandum Opinion of October 20, 2004, at 6-7, 13. In a series of recent events, however, the Court’s Order has been violated by defendants-respondents (the “government”).

First, military interrogators, spouting vile religious slurs and other deprecating remarks, have embarked on a deliberate campaign to abrogate trust and confidence between the Kuwaiti Detainees and their counsel. Second, the government refused to allow counsel to communicate expeditiously with the Kuwaiti Detainees regarding the imminent commencement of Administrative Review Board (“ARB”) hearings, whether in person, by telephone, or by express mail delivery. Third, the government suspended the processing of counsel’s request to visit the Kuwaiti Detainees at Guantanamo, pretextually demanding explanations from counsel about their permissible activities during prior visits.

It is essential that the Court put a stop to the government's violations of its Order by writ of injunction under the All Writs Act, 28 U.S.C. § 1651(a). The injunction would prevent the government from interfering with the attorney-client relationship between counsel and the Kuwaiti Detainees, compel the government to establish a telephone link between counsel and the Kuwaiti Detainees for monthly and emergency calls, and prevent the government from unilaterally suspending or denying counsel requests to visit the Kuwaiti Detainees.

STATEMENT

1. Military interrogators have deliberately sought to abrogate the attorney-client relationship between counsel and the Kuwaiti Detainees.

(a) The government, through its military interrogators at Guantanamo, deliberately has sought to undermine the trust and confidence the Kuwaiti Detainees have placed in their counsel and to abrogate the attorney-client relationship between them. One of the Kuwaiti Detainees, Fayiz Al Kandari, reported to his counsel that his interrogator, a woman who uses the name "Megan," repeatedly told him not to trust his lawyers. *See Declaration of Thomas Wilner ("Wilner Decl.")* ¶ 4, annexed as Exhibit A. Mr. Al Kandari reported that the interrogator told him he would be tortured if he went back to Kuwait. When Mr. Al Kandari told her that his lawyers had assured him otherwise, she laughed and said, "Don't trust your lawyers." She added, "Did you know your lawyers are Jews?" *Id.* ¶ 7.

Another Kuwaiti Detainee, Fouad Mahmoud Al Rabiah, has reported that his interrogator, a man, told him: "Don't trust these lawyers." *Id.* ¶ 9. The interrogator told him that, if he signed the attorney representation form, he would be kept in Guantanamo forever. *Id.* Mr. Al Rabiah further reported that the interrogator made many comments that he should not trust his lawyers because they are Jewish. For instance, the interrogator said: "Your lawyers are

Jews. How could you trust Jews? Throughout history, Jews have betrayed Muslims. Don't you think your lawyers, who are Jews, will betray you? *Id.* ¶ 11. The interrogator also said to him: "Don't ever believe that a Jew will help a Muslim unless he gets more out of it than he gives." *Id.* ¶ 12. The interrogator further stated to Mr. Al Rabiah: "Your lawyers are Jews. They are from one of the world's biggest law firms, which is Jewish and represents the Government of Israel." *Id.* ¶ 13. On another occasion, the interrogator said to Mr. Al Rabiah: "What will other Arabs and Muslims think of you Kuwaitis when they know the only help you can get is from Jews?" *Id.* ¶ 14.

These incidents cannot be attributed to a single rogue military officer. They are the product of a concerted campaign implemented on a variety of occasions by different military interrogators. *See Wilner Decl.* ¶¶ 5, 15.

(b) The government also has attempted to vitiate the attorney-client relationship by punishing the Kuwaiti Detainees in retaliation for public statements by their counsel. For example, Mr. Al Kandari at the time was the only Kuwaiti Detainee who had been allowed to possess a book other than the Koran. After counsel made public the appalling conditions of confinement imposed on the Kuwaiti Detainees at Guantanamo, including the lack of reading materials, Mr. Al Kandari's interrogator took away his book, telling him: "Your lawyer said you don't have books so I am taking away your book. Tell your lawyers that is why I am taking the book. Tell your lawyer to get you a book." *Wilner Decl.* ¶ 6. Of course, the government refuses to allow Kuwait Detainees' counsel to provide books to them. *Id.*

(c) Recently, the government sought to weaken the Kuwaiti Detainees' confidence in counsel by initially processing family DVDs for display to the Kuwaiti Detainees saying that counsel would be able to show those DVDs and, then, after knowing counsel had promised to

show the DVDs to the Kuwaiti Detainees, prohibiting counsel from doing so. Under ¶ V.A of the Revised Procedures for Counsel Access to Detainees at the U.S. Naval Base in Guantanamo Bay, Cuba (the “Counsel Access Procedures”), annexed as Exhibit B, counsel are permitted to present introductory materials to the Kuwaiti Detainees unless the government determines the materials would “threaten the security of the United States.” In accordance with this provision, counsel, during their first two trips to Guantanamo, displayed DVDs to the Kuwaiti Detainees that were made by their families and that introduced counsel and urged the Kuwaiti Detainees to cooperate with them. Wilner Decl. ¶ 17. These DVDs were provided by counsel in advance to the government, accompanied by English-language transcripts, and were security-cleared by the military at Guantanamo for display to the Kuwaiti Detainees.

Family members of the Kuwaiti Detainees prepared additional short DVDs for counsel to display to the Kuwaiti Detainees prior to counsel’s trip to Guantanamo in February 2005. Consistent with prior practice, counsel offered to provide the DVDs to the government in Washington, accompanied by English-language transcripts, for security clearance. Wilner Decl. ¶ 27. The government instructed counsel to bring the DVDs with them directly to Guantanamo for security review. *Id.* Counsel complied with this instruction and handed the DVDs to military personnel on arrival at Guantanamo for security review and clearance. *Id.* Each day, counsel checked with the military on the progress of the review, and each day they were told the review was continuing. *Id.* Finally, on the last day of the trip, the military apologetically informed counsel that, due to other assignments, the military review team had not been able to complete processing all the DVDs, although it had processed, and in some cases edited, most of them. Wilner Decl. ¶ 28. Counsel informed the Navy Commander in charge that they had promised to show the DVDs during the visit and that the detainees would be extremely disappointed if they

were not allowed to do so. The Navy Commander said that all of the DVDs would be ready in time for the next trip in March and that, in the future, counsel should give the military more advance time to do the security review of the DVDs. Accordingly, counsel, as the government knew they would, informed the Kuwaiti Detainees that they would be unable to display the DVDs to them during the February trip but promised to do so during their forthcoming March trip to Guantanamo. *Id.*

However, three days before counsel's March trip to Guantanamo, the government informed counsel that they would be prohibited from displaying these security-cleared DVDs to the Kuwaiti Detainees. Letter from Terry M. Henry to Neil H. Koslowe, dated March 11, 2005, annexed as Exhibit C. The government made no claim that the DVDs posed any security problems. Instead, the government denigrated the DVDs as nothing more than "home movies" and declared that counsel did not need to present any additional introductory materials to the Kuwaiti Detainees. *Id.*

The government's action plainly was designed to humiliate counsel and show the Kuwaiti Detainees that counsel were powerless and unable to keep their promises. Thus, it was part of the government's effort to abrogate the attorney-client relationship.

2. *The government denied counsel effective means of communicating expeditiously with the Kuwaiti Detainees news about their imminent ARB hearings.* When counsel were leaving Guantanamo the evening of March 17, 2005, after completing their last scheduled interview with their clients, counsel were informed that the Kuwaiti Detainees' ARB hearings were scheduled to begin the week of March 28. Wilner Decl. ¶ 17. These hearings are part of the military's once-a-year review of the detainees at Guantanamo for the putative purpose of determining whether the detainees pose a danger to the United States and its allies or may be returned to their home

countries. Obviously, the Kuwaiti Detainees needed legal advice about participating in the ARB hearings. For that reason, counsel immediately requested that their visit be extended so they could inform the Kuwaiti Detainees about the imminent ARB hearings and provide them with legal advice. *Id.*

The government refused to extend counsel's March stay without giving any reason other than "logistics." *Id.* Counsel then requested that they be allowed to return to Guantanamo the following week. E-mail message from Neil H. Koslowe to Andrew I. Warden, dated March 20, 2005, annexed as Exhibit D. That request, too, was denied due to the "logistics of coordinating clearances, lodging, escorts, transportation, and detainee movements." E-mail message from Andrew I. Warden to Neil H. Koslowe, dated March 21, 2005, annexed as Exhibit E. Given the emergency situation, counsel requested, in the alternative, to advise the Kuwaiti Detainees by telephone about the ARB hearings. E-mail message from Neil H. Koslowe to Andrew I. Warden, dated March 21, 2005, annexed as Exhibit D. Telephone communications between counsel and the detainees at Guantanamo are specifically authorized on a case-by-case basis by ¶ VIII of the Counsel Access Procedures. Exhibit B. The government denied this request as well, citing "similar logistical reasons." Exhibit E. Counsel also requested that, at the very least, the government make available an expedited means of delivering a letter to the Kuwaiti Detainees about the ARB hearings. Exhibit D. This request, too, was denied. Exhibit E.

As a result of these denials, counsel were unable to inform the Kuwaiti Detainees on a timely basis that their ARB hearings were scheduled to begin soon and to advise them about those hearings. Indeed, on the night of March 17, 2005, counsel wrote a letter to one of the Kuwaiti Detainees who understands English, Mr. Al Rabiah, advising him about the upcoming ARB hearings. Wilner Decl. ¶ 19. Counsel had met with Mr. Al Rabiah the day before and had

expected to meet with him again on the morning of March 17, but were unable to do so because Mr. Rabiah mistakenly had been returned to his permanent cell. On their way to the Guantanamo airstrip the morning of March 18, counsel gave the hand-written letter to their military escort and asked him to deliver it to Mr. Al Rabiah as soon as possible. Although the escort said he would do so, the letter was not delivered to Mr. Al Rabiah but instead was mailed by the military to the secure facility in Crystal City, Virginia, where it arrived almost three weeks later, on April 6, 2005. Wilner Decl. ¶ 20. By the time the letter is sent back to and received by Mr. Al Rabiah, his ARB hearing likely will have been long completed.

3. *The government unilaterally suspended the processing of counsel's most recent request to visit their clients at Guantanamo, in violation of the court orders.* On March 31, 2005, after counsel notified the government of their plans to visit the Kuwaiti Detainees at Guantanamo during the first week of May 2005, the government informed counsel that it was suspending the grant of approval for any further visits by counsel to their clients pending "appropriate explanations and assurances" about three "matters" that arose in prior counsel visits to Guantanamo. Letter from Terry M. Henry to Neil H. Koslowe, dated March 31, 2005, annexed as Exhibit F. The three "matters" involved spurious accusations of misconduct based either on fictitious accounts or ignorance of the applicable provisions of the Counsel Access Procedures, and counsel for the Kuwaiti Detainees immediately and comprehensively addressed and refuted each of them. Letter from Neil H. Koslowe to Terry M. Henry, dated April 4, 2005 annexed as Exhibit G.

Despite this refutation, the government refused to lift its suspension of the processing of counsel's visitation plans and persisted in demanding "assurances" of counsel's compliance with the Counsel Access Procedures. Letter from Terry M. Henry to Neil H. Koslowe, dated April 8,

annexed as Exhibit H. The government relented only after counsel spoke by telephone with government counsel and said they would go to Court unless their visitation plans were processed and approved immediately. *See* E-mail message from Neil H. Koslowe to Terry M. Henry, dated April 11, annexed as Exhibit I. As a result of the government's delay, counsel had to re-schedule their trip for the second week of May.

Under ¶ 49 of the Amended Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantanamo Bay, Cuba, dated November 8, 2004, (the "Amended Protective Order"), attached as Exhibit J, all claimed violations of the Counsel Access Procedures must be reported to the Court, which alone is empowered to take designated action if the violations are confirmed. The government has no power unilaterally to suspend or prevent counsel visits to the detainees at Guantanamo, and such action by the government violates both the Amended Protective Order and this Court's Order of October 20, 2004. Plainly, the government's violative suspension of the processing of counsel's planned visit to Guantanamo in May 2005 was intended to intimidate counsel and disrupt their relationship with the Kuwaiti Detainees.

ARGUMENT

This Court is empowered under the All Writs Act, 28 U.S.C. § 1651(a) to issue "all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." The Act "empowers a district court to issue injunctions to protect its jurisdiction ...," *SEC v. Vision Communications, Inc.*, 74 F.3d 287, 291 (D.C.Cir. 1996), and a court may issue a writ under the Act whenever it determines such action is necessary "to achieve the ends of justice entrusted to it." *Adams v. United States*, 317 U.S. 269, 273 (1942). Where "alternative remedies" are unavailable, *Clinton v. Goldsmith*, 526 U.S. 529, 537 (1999), or "the

traditional requirements of an injunction” inapplicable, *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1101 n. 13 (11th Cir. 2004), a court may employ the Act to order appropriate relief. Indeed, that was one of the bases of this Court’s Order of October 20, 2004. *See* Memorandum Opinion of October 20, 2004, at 7, 8, 9, 24. For the reasons given below, the Court should issue the injunction requested by the Kuwaiti Detainees.

A. Government Attempts to Undermine the Kuwaiti Detainees’ Trust in Their Counsel Infringe the Kuwaiti Detainees’ Right to Counsel and Must be Stopped by a Writ of Injunction

It has long been recognized that trust and confidence between lawyer and client is a fundamental component of the attorney-client relationship. As the District of Columbia Circuit has stated, “the relationship between attorney and client is highly confidential, demanding personal faith and confidence in order that they may work together harmoniously.” *Lee v. United States*, 235 F.2d 219, 221 n. 5 (D.C. Cir. 1956); *see also Linton v. Perini*, 656 F.2d 207, 212 (6th Cir. 1981) (“[b]asic trust between counsel and defendant is the cornerstone of the adversary system and effective assistance of counsel.”); American Bar Association Standards for Criminal Justice, commentary to § 4.29 (2d ed. 1980) (“[n]othing is more fundamental to the lawyer-client relationship than the establishment of trust and confidence.”).

Government attempts to undermine a client’s trust of his lawyer, like those undertaken by the government here, not only are outrageous but also unquestionably violate the right to counsel. As the Ninth Circuit has stated: “The effects of disparaging comments about counsel, particularly when coupled with a warning that reliance on counsel’s judgment will not keep the defendant out of jail, can be detrimental to the attorney-client relationship and are not easily dispelled. Under such circumstances, a defendant may be deprived of the right to counsel.” *United States v. Glover*, 596 F.2d 857, 861 (9th Cir. 1979); *see also United States v. Irwin*, 612

F.2d 1182, 1188-1199 (9th Cir.1980) (noting that the right to counsel may be violated if the government deliberately attempts to undermine a client's trust in his lawyer).

Courts have not hesitated to impose stringent sanctions on the government when it has attempted to undermine the attorney-client relationship. For instance, in *Commonwealth v. Manning*, 373 Mass. 438, 367 N.E.2d 635 (1977), the Massachusetts high court dismissed a criminal indictment when it was revealed that government agents had engaged in a deliberate and intentional attack on the relationship between a defendant and his counsel. In that case, as here, government agents had made disparaging remarks concerning the defendant's counsel and had indicated that the tactics of defense counsel would not ensure that the defendant would stay out of jail.

The government's tactics here – religious slurs and deprecating remarks about counsel, retaliation against a Kuwaiti Detainee for public statements by counsel and threatening to keep the Kuwaiti Detainees imprisoned if they agree to representation by counsel, and disabling counsel from keeping their promises to display family DVDs to the Kuwaiti Detainees – far exceed the bounds of permissible government behavior. Such tactics abrogate the attorney-client relationship in violation of the Court's Order of October 20, 2004. Accordingly, the Court should issue a writ of injunction to prevent the government from continuing to undermine the attorney-client relationship between counsel and the Kuwaiti Detainees, and to direct the government to allow counsel to display to the Kuwaiti Detainees on their next trip to Guantanamo the family DVDs counsel brought to Guantanamo in February 2005.

B. The Denial of Counsel's Ability Timely to Advise the Kuwaiti Detainees About Their ARB Hearings Violated this Court's Order and the Kuwaiti Detainees' Right to Counsel and Should be Remedied by A Writ Directing Monthly Telephonic Communications Between Counsel and Their Clients

The government continues to behave, contrary to this Court's decision of October 20, 2004, as if the Kuwaiti Detainees' access to counsel were a matter of grace rather than right. The military's ARB process, whatever its legal and other infirmities, is one means by which the Kuwaiti Detainees may be able to gain their release from Guantanamo. Unquestionably the Kuwaiti Detainees were entitled, under this Court's Order of October 20, 2004, to timely advice from counsel about their participation in the ARB hearings, which were scheduled to begin eleven days after counsel's visit to Guantanamo ended on March 17, 2005. But the government cavalierly denied all requests by counsel to communicate in a timely manner with the Kuwaiti Detainees about their forthcoming ARB hearings, whether in person, by telephone, or by expedited legal mail (regular mail takes three weeks to reach the Kuwaiti Detainees).

The Counsel Access Procedures allow counsel to communicate by telephone with their detainee-clients at Guantanamo in special circumstances. Paragraph VIII.A. of the Counsel Access Procedures provides that, although counsel are not entitled to routine access by telephone to the detainees, requests for telephonic access "may be considered on a case-by-case basis due to special circumstances." Exhibit B. Rather than considering counsel's request to speak by telephone to the Kuwaiti Detainees about their ARB hearings, as specified by the rules, the government denied the request, citing "logistical" concerns that are generic and categorical. Exhibit E. If ever there were a "special circumstances" mandating communication by telephone, this was it. The government's cursory denial of counsel's request for telephonic access, or any other means of expedited communication with the Kuwaiti Detainees, demonstrates that the

government is determined to prevent the Kuwaiti Detainees from having appropriate access to counsel, in defiance of the Court's Order of October 20, 2004.

The government effectively prevented counsel from providing timely legal advice to the Kuwaiti Detainees about the important matter of their ARB hearings. The Court should exercise its power under the All Writs Act to remedy this by ordering the government to allow counsel to have monthly telephonic communications with the Kuwaiti Detainees, as well as additional telephonic communication with them when special circumstances warrant.

C. The Government May Not Unilaterally Suspend the Processing of, or Deny, Counsel Requests to Visit the Kuwaiti Detainees at Guantanamo, and Should be Prevented from Doing So by a Writ of Injunction.

In light of the Court's Order of October 20, 2004, and ¶ 49 of the Amended Protective Order, the government has no power unilaterally to suspend the processing of, or deny, counsel requests to visit the Kuwaiti Detainees at Guantanamo.¹ The government's pretextual suspension of counsel's request to visit the Kuwaiti Detainees during the first week of May 2005, violated the Court's Order. Even if the government believed counsel previously had violated the Counsel Access Procedures, it was required under ¶ 49 of the Amended Protective Order to bring those suspected violations to the attention of the Court. The Court alone is empowered to order corrective measures. Accordingly, the Court should enjoin the government from unilaterally suspending the processing of, or denying, future counsel requests to visit the Kuwaiti Detainees.

¹ Of course, the Kuwaiti Detainees do not challenge the authority of military personnel at Guantanamo to prevent actions by anyone at Guantanamo, including counsel, that threaten their security or the orderly operations of the detention facility.

CONCLUSION

For these reasons the Court should issue a writ of injunction under the All Writs Act, 28 U.S.C. § 1651(a) that: (i) enjoins the government from permitting military personnel, including interrogators, from making remarks or taking actions that undermine the attorney-client relationship between counsel and the Kuwaiti Detainees, (ii) directs the government to allow counsel to display the family DVDs for the Kuwaiti Detainees that counsel brought to Guantanamo in February 2005, (iii) directs the government to allow counsel to have monthly telephonic communications with the Kuwaiti Detainees, as well as additional telephonic communications with them in special circumstances, and (iv) enjoins the government from unilaterally suspending the processing of, or denying, counsel requests to visit the Kuwaiti Detainees at Guantanamo.

Respectfully submitted,

/s/ Neil H. Koslowe

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Dated: April 20, 2005

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
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)	
UNITED STATES OF AMERICA, et al.,)	
)	
Defendants-Respondents.)	
)	

DECLARATION OF THOMAS WILNER

1. My name is Thomas Wilner. I am a partner of Shearman & Sterling LLP and am a member of the Bar of this Court as well as of the Bars of the State of New York, the Commonwealth of Pennsylvania and the Supreme Court of the United States.

2. I, and my colleagues at Shearman & Sterling LLP, represent 12 Kuwaiti nationals, 11 of whom continue to be imprisoned by the United States at the Guantanamo Bay Naval Station.

3. I have now met with the Kuwaiti nationals incarcerated at Guantanamo Bay four times. It has become clear in the course of those visits that U.S. government officials have engaged in practices to destroy the trust of the Kuwaiti nationals in us as their lawyers.

4. On February 15, 2005, I met with one of the Kuwaiti nationals, Fayiz Al Kandari. Mr. Al Kandari told me that his interrogator had told him many times not to trust his lawyers.

5. Mr. Al Kandari described his interrogator as a young, white attractive woman with blonde hair to her shoulders, which Mr. Al Kandari described as a “lion’s cut,” who is of medium height and wears tight civilian clothing. She calls herself “Megan” in the interrogations.
6. Mr. Al Kandari had previously been the only one of the Kuwaiti detainees at Guantanamo who had been allowed a book. He told me that his interrogator had recently taken away his book. He said the interrogator told him “your lawyer said you don’t have books so I am taking away your book. Tell your lawyers that is why I am taking the book. Tell your lawyer to give you a book.” We, of course, are not allowed by the U.S. government to provide books to the detainees.
7. Mr. Al Kandari reported that his interrogator also said to him that he would be tortured if he went back to Kuwait. When he said that his lawyers had assured him otherwise, the interrogator laughed and said “don’t trust your lawyers.” She also said “did you know your lawyers are Jews?”
8. During my last visit to Guantanamo, I again met with Mr. Al Kandari on March 16, 2005. He said that his interrogator, Megan, had come in after my last visit and told him that she was very angry at him because of what he had told his lawyers, and that she would no longer visit him but would send another interrogator.
9. During my last trip, I also met on March 16 with Fouad Mahmoud Al Rabiah, another of the Kuwaiti nationals imprisoned at Guantanamo. Mr. Al Rabiah reported that his interrogator, specifically said, “don’t trust these lawyers.” He said that his

interrogator “told me that if I signed the form to be represented by you, I would be kept here forever.”

10. Mr. Al Rabiah then asked me very politely: “By the way, may I ask what religion you are?” I answered that I am Jewish.
11. Mr. Al Rabiah reported that his interrogator had made numerous comments that he should not trust his lawyers because they are Jewish. At one point, the interrogator said: “Your lawyers are Jews. How could you trust Jews? Throughout history, Jews have betrayed Muslims. Don’t you think your lawyers, who are Jews, will betray you?”
12. Mr. Al Rabiah reported that the interrogator also said to him: “Don’t ever believe that a Jew will help a Muslim unless he gets more out of it than he gives.”
13. Mr. Al Rabiah reported that, at another time, the interrogator said to him: “Your lawyers are Jews. They are from one of the world’s biggest law firms, which is Jewish and represents the Government of Israel.” (Shearman & Sterling LLP is a law firm of diverse membership which represented the State of Israel on a very small trade dispute 15 years ago and has not represented the State of Israel since.)
14. Mr. Al Rabiah reported that, at another time, the interrogator said to him: “What will other Arabs and Muslims think of you Kuwaitis when they know the only help you can get is from Jews?”

15. I asked Mr. Al Rabiah whether the interrogator who said these things to him is a woman using the name Megan. He answered that his interrogator is not a woman, but a man.
16. During my most recent trip to Guantanamo, I met with another of the Kuwaiti detainees, Saad Al-Azmi, and asked whether the government had suggested to him that he should not trust his lawyers. Mr. Al-Azmi grew very embarrassed and refused to answer the question.
17. At approximately 5:30 p.m. on Thursday, March 17, as I was leaving the prison at Guantanamo having completed my scheduled interviews, I was informed that the Administrative Review Board (“ARB”) hearings for the Kuwaiti Detainees were scheduled to begin on March 28. I immediately asked the military escorts to extend my visit to Guantanamo for a few days so that I could meet again with the Kuwaiti Detainees to inform them that their ARB hearings were scheduled and to advise them regarding those hearings. I was put in touch with the Navy Commander who we understand is in charge of logistics at the prison. He said that he was not able to agree to an extension of my visit and that I would need to go through our normal contact at the Justice Department who schedules visits to Guantanamo. I called that person from Guantanamo and spoke to him that evening. He told me that, for logistical reasons, he would not be able to extend my visit at Guantanamo. I then asked him to consider allowing me and others from my firm to come down the following week to meet with the Kuwaiti Detainees to advise them about the ARB hearings. He said that he would consider that request. The following week that request was also denied.

18. After our requests to visit Guantanamo were denied, we requested to speak with the Detainees by telephone. The government denied this request for logistical reasons. We then requested that the government make available a means of sending legal mail on an expedited basis. This request was also denied.
19. During the night of March 17, I wrote a hand-written letter to Mr. Al Rabiah. As mentioned, I had met with Mr. Al Rabiah on Wednesday, March 16, and had expected to meet with him again the following morning of March 17. Mr. Al Rabiah had wanted to discuss his possible ARB hearing during that morning's meeting. When I arrived to meet with Mr. Al Rabiah on the morning of March 17, however, he had been mistakenly returned to his permanent cell the night before, and I therefore could not meet with him. When I learned that Mr. Al Rabiah's ARB hearing would begin on March 28 or soon thereafter, and that I would not be able to extend my visit to meet with him before then, I decided to write him a letter regarding the ARB hearing, which I did the night of March 17.
20. On leaving Guantanamo on the morning of March 18, I gave the letter to the sergeant who escorted us to the airport and asked the sergeant to deliver the letter to Mr. Al Rabiah as soon as possible. Although the sergeant said that he would do so, the letter was not delivered to Mr. Al Rabiah but, instead, was sent to the secure facility outside Washington, where it arrived 20 days later, on April 6. We asked that the letter immediately be sent back to Mr. Al Rabiah at Guantanamo. Given the time required for mail delivery to and from Guantanamo, however, it is likely that Mr. Al Rabiah will not receive that letter until well after his ARB hearing has been completed.

21. On March 25, we submitted a formal written request to the Department of Justice to visit our clients at Guantanamo the first week in May. On March 31, Terry Henry, the Justice Department trial attorney, wrote Neil Koslowe of our office a letter “demand[ing]” explanations of our conduct during prior visits to Guantanamo. In the last paragraph of that letter, Mr. Henry demanded “appropriate explanations . . . prior to scheduling additional visits to GTMO by members of your law firm.”
22. On April 4, 2005, Mr. Koslowe responded to that letter.
23. Mr. Henry responded on April 8, 2005. Mr. Henry made clear in his April 8 letter that the Justice Department would refuse to schedule additional visits by Shearman & Sterling attorneys to Guantanamo until it received additional assurances.
24. On April 11, Mr. Koslowe and I spoke with Mr. Henry by telephone and explained to him that (i) under Paragraph 49 of the Amended Protective Order entered by the Court a party is required to raise with the Court any alleged violations of the Amended Protective Order or the Revised Counsel Access Procedures and to seek appropriate sanctions from the Court; (ii) a party has no right unilaterally to determine that violations have occurred or unilaterally to impose sanctions for those alleged violations; (iii) the government, in other words, has no right unilaterally to determine that the terms of the Amended Protective Order have been violated or unilaterally to deny Detainees access to their counsel on the basis of such allegations.
25. As a result of the government’s refusal to schedule a trip during the first week of May, we were unable to make arrangements to travel to Guantanamo that week, and

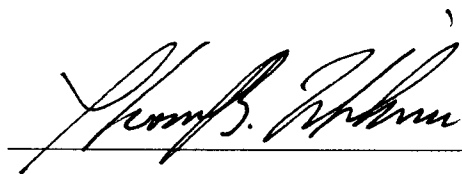
have now requested that we be allowed to visit our clients in Guantanamo the second week of May.

26. On our two initial trips to Guantanamo we had brought with us DVDs from family members of the Kuwaiti nationals which we were allowed to show them. The detainees uniformly told us that they greatly valued these DVDs from their families and that they were very thankful to us as their lawyers for bringing them.
27. The family members also prepared short DVDs to show each of the Kuwaiti detainees during our trip in February 2005. We offered to provide the DVDs to the Justice Department representative in Washington shortly prior to that trip, but he advised us to take the DVDs directly to the military at Guantanamo for security review. We did so and provided the DVDs to the military at Guantanamo when we arrived Monday morning, February 14, 2005, and waited during that trip for the DVDs to be cleared by the military so that we could show them to our clients. Each day during the trip we checked with the military on the progress of their review and were told it was continuing.
28. On the last day of the February trip, the Navy Commander who we understand is in charge of these matters told us that the military had edited some of the DVDs but had not finished reviewing all of them. We told him that we had promised our clients that we would show them the DVDs during this trip and that they would be extremely disappointed if we did not. The Navy Commander said that all of the DVDs would be ready in time for our next trip and that, in the future, we should give the military more advance time to do the security review. We informed our clients that we would

not be able to show the DVDs during the February trip but would do so when we returned in the middle of March.

29. On March 11, three days before our departure for our most recent trip, and after the government knew that we had promised the detainees that we would show them the DVDs on that trip and that they were looking forward to seeing the DVDs on the trip, Terry Henry, the Justice Department trial attorney, told us that we would not be allowed to show the DVDs. The government made no claim that the DVDs posed any security problems. Rather, Mr. Henry said that they were nothing more than "home movies" and that we would not be allowed to show them. We told our clients on the March trip that, despite our earlier promises, we were not able to show them the DVDs from their families. They were extremely disappointed.

I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "Thomas Wilner", is written over a horizontal line.

Thomas Wilner

Executed on April 20, 2005 in Washington, DC

Exhibit B

EXHIBIT A

**REVISED PROCEDURES FOR COUNSEL ACCESS TO DETAINEES
AT THE U.S. NAVAL BASE IN GUANTANAMO BAY, CUBA**

I. Applicability

Except as otherwise stated herein or by other Order issued in the United States District Court for the District of Columbia, the following procedures shall govern counsel access to all detainees in the control of the Department of Defense ("DoD") at the U.S. Naval Base in Guantanamo Bay, Cuba ("GTMO") by counsel for purposes of litigating the cases in which this Order is issued.

These procedures do not apply to counsel who are retained solely to assist in the defense of a detainee in a trial by military commission. Access by that counsel is covered by the Procedures for Monitoring Communications Between Detainees Subject to Trial by Military Commission and their Defense Counsel Pursuant to Military Commission Order No. 3.

II. Definitions

A. Communications: All forms of communication between counsel and a detainee, including oral, written, electronic, or by any other means.

B. Counsel: An attorney who is employed or retained by or on behalf of a detainee for purposes of representing the detainee in the United States District Court for the District of Columbia and who is admitted, either generally or pro hac vice, in this Court. Unless otherwise stated, "counsel" also includes co-counsel, interpreters, translators, paralegals, investigators and all other personnel or support staff employed or engaged to assist in the litigation.

C. Detainee: An individual detained by DoD as an alleged enemy combatant at the U.S. Naval Base in Guantanamo Bay, Cuba.

D. Privilege Team: A team comprised of one or more DoD attorneys and one or more intelligence or law enforcement personnel who have not taken part in, and, in the future, will not take part in, any domestic or foreign court, military commission or combatant status tribunal proceedings involving the detainee. If required, the privilege team may include interpreters/translators, provided that such personnel meet these same criteria.

E. Legal Mail: Letters written between counsel and a detainee that are related to the counsel's representation of the detainee, as well as privileged documents and publicly-filed legal documents relating to that representation.

EXHIBIT A

III. Requirements for Access to and Communication with Detainees

A. Security Clearance:

1. Counsel must hold a valid current United States security clearance at the Secret level or higher, or its equivalent (as determined by appropriate DoD intelligence personnel).
2. Counsel who possess a valid security clearance shall provide, in writing, the date of their background investigation, the date such clearance was granted, the level of the clearance, and the agency who granted the clearance. Access will be granted only after DoD verification of the security clearance.
3. Counsel who does not currently possess a Secret clearance will be required to submit to an application for clearance to the Department of Justice, Litigation Security Division.

B. Acknowledgment of and Compliance with Access Procedures

1. Before being granted access to the detainee, counsel will receive a copy of these procedures. To have access to the detainee, counsel must agree to comply fully with these procedures and must sign an affirmation acknowledging his/her agreement to comply with them.
2. This affirmation will not be considered an acknowledgment by counsel that the procedures are legally permissible. Even if counsel elects to challenge these procedures, counsel may not knowingly disobey an obligation imposed by these procedures.
3. The DoD expects that counsel, counsel's staff, and anyone acting on the behalf of the attorney will fully abide by the requirements of this document. Counsel is required to provide the DoD with signed affirmations from interpreters, translators, paralegals, investigators and all other personnel or support staff employed or engaged to assist in the litigation, upon utilization of those individuals by counsel in a manner that implicates these procedures.
4. Should counsel fail to comply with the procedures set forth in this document, access to or communication with the detainee will not be permitted.

C. Verification of Representation

1. Prior to being permitted access to the detainee, counsel must provide DoD with a *Notification of Representation*. This Notification must include the counsel's licensing information, business and email addresses and phone number, as well as

EXHIBIT A

the name of the detainee being represented by the counsel. Additionally, counsel shall provide evidence of his or her authority to represent the detainee.

2. Counsel shall provide evidence of his or her authority to represent the detainee as soon as practicable and in any event no later than ten (10) days after the conclusion of a second visit with the detainee. The Court recognizes that counsel may not be in a position to present such evidence after the initial meeting with a detainee. Counsel for detainees and counsel for respondents shall cooperate to the fullest extent possible to reach a reasonable agreement on the number of counsel visits allowed. Should counsel for a detainee believe that the government is unreasonably limiting the number of visits with a detainee, counsel may petition the Court at the appropriate time for relief.
3. If the counsel withdraws from representation of the detainee or if the representation is otherwise terminated, counsel is required to inform DoD immediately of that change in circumstances.
4. Counsel must provide DoD with a signed representation stating that to the best of counsel's knowledge after reasonable inquiry, the source of funds to pay counsel any fees or reimbursement of expenses are not funded directly or indirectly by persons or entities the counsel believes are connected to terrorism or the product of terrorist activities, including "Specially Designated Global Terrorists," identified pursuant to Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001) or Exec. Order No. 12,947, 60 Fed. Reg. 5079 (Jan. 23, 1995), and (b) counsel has complied with ABA Model Rule 1.8(f).

D. Logistics of Counsel Visits

1. Counsel shall submit to the Department of Justice (DoJ) any request to meet with a detainee. This request shall specify date(s) of availability for the meeting, the desired duration of the meeting and the language that will be utilized during the meeting with the detainee. Reasonable efforts will be made to accommodate the counsel's request regarding the scheduling of a meeting. Once the request has been approved, DoJ will contact counsel with the date and duration of the meeting.
2. Legal visits shall take place in a room designated by JTF-Guantanamo. No more than two attorneys (or one attorney and one assistant) plus one interpreter/translator shall visit with a detainee at one time, unless approved in advance by the Commander, JTF-Guantanamo. Such approval shall not be unreasonably withheld.
3. Due to the mission and location of the US Naval Base at Guantanamo Bay, Cuba, certain logistical details will need to be coordinated by counsel prior to arrival. This includes arrangements for travel and lodging. Specific information regarding these issues will be provided by DoJ.

EXHIBIT A

4. In order to travel to GTMO, all counsel must have a country and theater clearance for that specific visit. In order to begin processing country and theater clearances, counsel must have confirmed flight information for travel to GTMO and a valid current United States security clearance at the Secret level or higher, or its equivalent (as determined by appropriate DoD intelligence personnel). Country and theater clearances require twenty (20) days to process. Accordingly, counsel shall provide DoD, through DoJ, with the required information no later than 20 days prior to the GTMO visit date, or as soon as a visit is scheduled. Requests for visits made inside of 20 days will not normally be granted.

IV. Procedures for Correspondence Between Counsel and Detainee

A. Mail Sent by Counsel to Detainee ("Incoming Mail")

1. Counsel shall send incoming legal mail for a detainee to the privilege team at the appropriate address provided by government counsel. Each envelope or mailer shall be labeled with the name of the detainee and shall include a return address for counsel sending the materials. The outside of the envelope or mailer for incoming legal mail shall be labeled clearly with the following annotation: "Attorney-Detainee Materials-For Mail Delivery to Detainee."
2. Each page of legal mail shall be labeled "Attorney-Detainee Materials." No staples, paper clips or any non-paper items shall be included with the documents.
3. Upon receiving legal mail from counsel for delivery to the detainee, the privilege team shall open the envelope or mailer to search the contents for prohibited physical contraband. Within two (2) business days of receipt of legal mail, and assuming no physical contraband is present, the privilege team shall forward the mail to military personnel at GTMO in a sealed envelope marked "Legal Mail Approved by Privilege Team" and clearly indicating the identity of the detainee to which the legal mail is to be delivered. The privilege team shall return to the sender any incoming mail that does not comply with the terms of paragraphs IV.A.1., 2.
4. Within two (2) business days of receipt of legal mail from the privilege team, personnel at GTMO shall deliver the envelope or mailer marked by the privilege team as "Legal Mail Approved by the Privilege Team" to the detainee without opening the envelope or mailer. If counsel desires confirmation that the documents were delivered to the detainee, counsel is responsible for providing a stamped, self-addressed envelope for that purpose. The detainee shall be responsible for mailing any confirmation of delivery to counsel as outgoing legal mail. This method shall be the sole and exclusive means by which confirmation of delivery is provided to counsel.

EXHIBIT A

5. Written correspondence to a detainee not falling within the definition of legal mail shall be sent through the United States Postal Service to the appropriate address provided by government counsel. Non-legal mail includes, but is not limited to, letters from persons other than counsel, including family and friends of the detainee. These non-privileged communications will be reviewed by military personnel at GTMO under the standard operating procedures for detainee non-legal mail.
6. Counsel is required to treat all information learned from a detainee, including any oral and written communications with a detainee, as classified information, unless and until the information is submitted to the privilege team and determined to be otherwise by the privilege team or by this Court or another court. Accordingly, if a counsel's correspondence contains any summary or recitation of or reference to a communication with a detainee that has not been previously determined to be unclassified, the correspondence shall be prepared, marked, transported and handled as classified material as required by Executive Order 12958, DOD Regulation 5200.1-R and AI 26, OSD Information and Security Supplement to DOD Regulation 5200.1R.
7. Written and oral communications with a detainee, including all incoming legal mail, shall not include information relating to any ongoing or completed military, intelligence, security, or law enforcement operations, investigations, or arrests, or the results of such activities, by any nation or agency or current political events in any country that are not directly related to counsel's representation of that detainee; or security procedures at GTMO (including names of U.S. Government personnel and the layout of camp facilities) or the status of other detainees, not directly related to counsel's representation.

B. Mail Sent by Detainee to Counsel ("Outgoing Mail")

1. Detainees will be provided with paper to prepare communications to counsel. In the presence of military personnel, the detainee will seal the written communication into an envelope and it will be annotated as "Attorney-Detainee Materials-For Mail Delivery To Counsel." Each envelope shall be labeled with the name of the detainee and the counsel. Envelopes annotated with the name of persons other than the detainee's counsel (including family/friends or other attorneys) shall be processed according to the standard operating procedures for detainee non-legal mail.
2. Military personnel will collect the outgoing legal mail within one (1) business day of being notified by the detainee that the communication is prepared for sealing and mailing.
3. After the outgoing legal mail is collected from the detainee, the envelope will be sealed into a larger envelope by military personnel at Guantanamo which will be marked as "Attorney-Detainee Materials-For Mail Delivery To Counsel" and will

EXHIBIT A

be annotated with the name of the detainee and the counsel. The envelope will be sealed and mailed in the manner required for classified materials. Within two (2) business days of receipt from the detainee, the communication will be mailed to the appropriate address as provided by government counsel.

4. Detainees also are permitted to send non-legal mail, including written communications to persons other than counsel, through the United States Postal Service. These communications shall be reviewed by military personnel at Guantanamo under the standard operating procedures for detainee non-legal mail.
5. In the event any non-legal correspondence or messages from a detainee to individuals other than his counsel (including family/friends or other attorneys) are sent to counsel as, or included with, legal mail, counsel shall return the documents to military personnel at GTMO for processing according to the standard operating procedures for detainee non-legal mail.

V. Materials Brought Into A Meeting With Detainee And Counsel

- A. Counsel shall bring only legal mail, writing utensils and paper into any meeting with a detainee unless counsel has received prior approval from the Commander, JTF-GTMO. The Commander shall not unreasonably withhold approval for counsel to bring into a meeting with a detainee letters, tapes, or other communications introducing counsel to the detainee, if the government has first reviewed the communication and determined that sharing the communication with the detainee would not threaten the security of the United States.
- B. Written and oral communications with a detainee, including all documents brought into a meeting with a detainee, shall not include information relating to any ongoing or completed military, intelligence, security, or law enforcement operations, investigations, or arrests, or the results of such activities, by any nation or agency or current political events in any country that are not directly related to counsel's representation of that detainee; or security procedures at GTMO (including names of U.S. Government personnel and the layout of camp facilities) or the status of other detainees, not directly related to counsel's representation.

VI. Materials Brought Out Of A Meeting With Detainee and Counsel

- A. Upon the completion of each meeting with a detainee or during any break in a meeting session, counsel will give the notes or documents used or produced during the meeting to a designated individual at Guantanamo. These materials will be sealed in the presence of counsel and will be handled as classified material as required by Executive Order 12958, DOD Regulation 5200.1-R and AI 26, OSD Information Security Supplement to DOD Regulation 5200.1R.
- B. Upon the completion of the counsel's visit to Guantanamo, the notes or documents used or produced during the visit shall be sealed in the presence of

EXHIBIT A

counsel and placed in an envelope labeled as "Attorney-Detainee Meeting Documents-For Delivery to Counsel." The envelope shall be sealed into a larger envelope by military personnel at Guantanamo which shall be marked as "Attorney-Detainee Meeting Documents-For Mail Delivery To Counsel" and shall be annotated with the name of the detainee and the counsel. The envelope shall be sealed and mailed in the manner required for classified materials. Within two (2) business days following the completion of the counsel's visit to Guantanamo, the package shall be mailed to the appropriate address provided by government counsel.

- C. Correspondence or messages from a detainee to individuals other than his counsel (including family/friends or other attorneys) shall not be handled through this process. If a detainee provides these communications to his counsel during a visit, counsel shall give those communications to military personnel at Guantanamo so they can be processed under the standard operating procedures for detainee non-legal mail.

VII. Classification Determination of Detainee Communications

- A. Counsel may submit information learned from a detainee to the privilege team for a determination of its appropriate security classification. Counsel shall memorialize the information submitted for classification review into a written memorandum outlining as specifically as possible the information for which counsel requests a classification determination. All documents submitted for classification review shall be prepared, handled and treated in the manner required for classified materials, as provided by as required by Executive Order 12958, DOD Regulation 5200.1-R and AI 26, OSD Information Security Supplement to DOD Regulation 5200.1R. No information derived from these submissions shall be disclosed outside the privilege team pursuant to these procedures until after the privilege team has reviewed it for security and intelligence purposes. Absent express consent given by the Court, or except as otherwise provided in this document, the submissions shall not be disclosed to any person involved in the interrogation of a detainee, and no such individual may make any use of those communications whatsoever, nor shall the submissions be disclosed to any Government personnel involved in any domestic or foreign court, military commission or combatant status tribunal proceedings involving the detainee.
- B. Counsel shall send all materials submitted for classification review to the appropriate address to be provided by government counsel. The outside of the envelope or mailer shall be clearly labeled "Attorney-Detainee Meeting Documents-For Classification Review By Privilege Team." Each envelope or mailer shall be annotated with the name of the detainee and the counsel. Each page of the document submitted for classification review shall be marked "Attorney-Detainee Materials" and "Classified." The envelope or mailer will be sealed and mailed in the manner required for classified materials.

EXHIBIT A

- C. As soon as possible after conducting the classification review, the privilege team shall advise counsel of the classification levels of the information contained in the materials submitted for review. The privilege team shall forward its classification determination directly to counsel after a review and analysis period not to exceed, from the time of receipt by the privilege team:
 - 1. Seven (7) business days for information that is written in the English language;
 - 2. Fourteen (14) business days for any information that includes writing in any language other than English, to allow for translations by the privilege team;
 - 3. Twenty (20) business days for any information where the privilege team has reason to believe that a code was used, to allow for further analysis.
- D. While conducting classification review, the privilege team shall promptly report any information that reasonably could be expected to result in immediate and substantial harm to the national security to the Commander, JTF-Guantanamo. In his discretion, the Commander, JTF-Guantanamo may disseminate the relevant portions of the information to law enforcement, military and intelligence officials as appropriate.
- E. If, at any time, the privilege team determines that information in the documents submitted for classification review relate to imminent acts of violence, the privilege team shall report the contents of those documents to Commander, JTF-Guantanamo. In his discretion, the Commander, JTF-Guantanamo may disseminate the relevant portions of the information to law enforcement, military and intelligence officials.
- F. The privilege team shall not disclose any information submitted by counsel for classification review outside the privilege team, except as provided by these procedures or as permitted by counsel submitting the information.

VIII. Telephonic Access to Detainee

- A. Requests for telephonic access to the detainee by counsel or other persons will not normally be approved. Such requests may be considered on a case-by-case basis due to special circumstances and must be submitted to Commander, JTF-Guantanamo.
- B. Any telephonic access by counsel will be subject to appropriate security procedures, but shall not include contemporaneous monitoring or recording.
- C. Any telephonic access by persons other than counsel will be subject to appropriate security procedures, including contemporaneous monitoring and recording.

EXHIBIT A

IX. Counsel's Handling And Dissemination Of Information From Detainee

- A. Subject to the terms of any applicable protective order, counsel may disseminate the unclassified contents of the detainee's communications for purposes reasonably related to their representation of that detainee.
- B. Counsel is required to treat all information learned from a detainee, including any oral and written communications with a detainee, as classified information, unless and until the information is submitted to the privilege team and determined to be otherwise. All classified material must be handled, transported and stored in a secure manner, as provided by Executive Order 12958, DOD Regulation 5200.1-R and AI 26, OSD Information Security Supplement to DOD Regulation 5200.1R.
- C. Counsel shall disclose to DoJ or Commander, JTF-Guantanamo any information learned from a detainee involving future events that threaten national security or involve imminent violence.
- D. Counsel may not divulge classified information not learned from the detainee to the detainee. Counsel may not otherwise divulge classified information related to a detainee's case to anyone except those with the requisite security clearance and need to know using a secure means of communication. Counsel for detainees in the coordinated cases pending in the United States District Court for the District of Columbia are presumed to have a "need to know" information in related cases pending before this Court. Counsel for respondents in those cases may challenge this presumption on a case-by-case basis for good cause shown.

X. JTF-Guantanamo Security Procedures

- A. Counsel and translators/interpreters shall comply with the following security procedures and force protection safeguards applicable to the US Naval Base in Guantanamo Bay, Cuba, JTF-Guantanamo and the personnel assigned to or visiting these locations, as well as any supplemental procedures implemented by JTF-Guantanamo personnel.
- B. Contraband is not permitted in JTF-Guantanamo and all visitors are subject to search upon arrival and departure. Examples of contraband include, but are not limited to, weapons, chemicals, drugs, and materials that may be used in an escape attempt. Contraband also includes money, stamps, cigarettes, writing instruments, etc. No items of any kind may be provided to the detainee without the advance approval of the Commander, JTF-Guantanamo.
- C. Photography or recording of any type is prohibited without the prior approval of the Commander, JTF-Guantanamo. No electronic communication devices are permitted. All recording devices, cameras, pagers, cellular phones, PDAs, laptops, portable electronic devices and related equipment are prohibited in or near JTF-Guantanamo. Should any of these devices be inadvertently taken into a

EXHIBIT A

prohibited area, the device must be surrendered to JTF-Guantanamo staff and purged of all information.

- D. Upon arrival at JTF-Guantanamo, security personnel will perform a contraband inspection of counsel and translators/interpreters using metal detectors as well as a physical inspection of counsel's bags and briefcases and, if determined necessary, a physical inspection of his/her person.
- E. Counsel shall not be permitted to interview or question members of the Joint Task Force about their duties or interactions with detainees without first obtaining permission from the Commander, Joint Task Force Guantanamo. Should permission be unreasonably denied, counsel may seek an Order from this Court granting permission for good cause shown.
- F. Counsel will meet with a detainee in conference facilities provided by GTMO. These facilities are subject to visual monitoring by closed circuit TV for safety and security reasons. (The only other method of visual observation available is for the door to remain open with military police sitting outside the door.). No oral communications between counsel and detainee will be heard.
- G. At the conclusion of a meeting with a detainee, counsel and translators/interpreters will again be inspected using a metal detector and, if deemed necessary, by physical inspection of their persons.

Exhibit C



U.S. Department of Justice
Civil Division
Federal Programs Branch
P.O. Box 883
Washington, D.C. 20044

Terry M. Henry
Senior Trial Counsel

Tel: (202) 514-4107
Fax: (202) 616-8470

March 11, 2005

By Electronic Mail

Neil H. Koslowe, Esq.
Shearman & Sterling, LLP
801 Pennsylvania Ave., NW
Washington, DC 20004-2604

Re: Al-Odah v United States, Civil Action No. 02-828 (CKK) (D.D.C.)

Dear Neil:

I am writing in response to your letter dated March 9, 2005, in which you request information concerning: (1) whether military personnel at GTMO have completed reviewing the eleven DVDs containing video messages from the detainees' respective family members that you requested to show the detainees during your upcoming visit to GTMO; and (2) whether GTMO has approved for release a four-volume Koran with commentary to petitioner Abdullah Al-Ajmi.

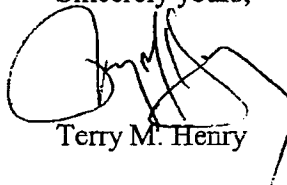
With respect to the DVDs, GTMO has determined that only the DVD for petitioner Khalid Abdullah Mishal Al-Mutairi is approved for release. The remaining DVDs intended for the 10 other detainees are not approved for release. As you are aware, this is the third set of DVDs you have submitted to show the detainees. The first two sets were approved by GTMO pursuant to § V.A of the *Revised Procedures for Counsel Access to Detainees At the U.S. Naval Base in Guantanamo Bay, Cuba*. This section provides that the Commander JTF-GTMO "shall not unreasonably withhold approval for counsel to bring into a meeting with a detainee letters, tapes, or other communications introducing counsel to the detainee." These DVDs were shown during your initial visits to GTMO in order for you to introduce yourself to the detainees and inform them that you have been retained by their family members to pursue litigation on their behalf. Presently, all the detainees in your case, except Mr. Al-Mutairi, have signed an "Acknowledgment of Representation" form, or its equivalent, indicating that they want to be represented by you in this litigation. See Revised Procedures for Counsel Access § III.C.2. (requiring counsel to submit evidence of authority to represent the detainee no later than ten days after the conclusion of a second visit with the detainee). In light of this fact, and the fact that your upcoming visit is now your fifth to GTMO, this most recent set of DVDs no longer serves the purpose of "introducing counsel." Indeed, five of the DVDs do not even mention lawyers. Moreover, the DVDs are simply home movies conveying messages from family members and friends that are not approved for any other GTMO detainees.

- 2 -

Because you consider your upcoming visit with Mr. Al-Mutairi to be your second visit with him, and because Mr. Al-Mutairi not yet signed an "Acknowledgment of Representation" form, GTMO has approved his DVD for release as an appropriate means of "introducing counsel." As Andrew Warden explained in his e-mail to you on March 9, 2005, however, we anticipate receiving from you an Acknowledgment form signed by Mr. Al-Mutairi no later than ten days after the conclusion of your visit. If we do not, we reserve all our rights to take appropriate action with respect to this matter.

With respect to release of the four-volume Koran with commentary to Mr. Al-Ajmi, you initially informed Mr. Warden that Mr. Al-Ajmi's government-issued Koran was "lost." After the matter was investigated, we informed you that Mr. Al-Ajmi's Koran was not lost. Instead, he voluntarily turned it over to military personnel as part of a protest. If Mr. Al-Ajmi asks for his Koran back, it will be returned to him. Because Mr. Al-Ajmi, like all detainees at GTMO, have access to a Koran, it is unnecessary to provide him with the four-volume Koran you submitted as a replacement and GTMO has not approved the set for release.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Terry M. Henry", is written over a horizontal line. The signature is stylized with a large initial "T" and "H".

Terry M. Henry

Exhibit D

Neil H Koslowe

03/20/2005 01:56 PM

To: Andrew.Warden@usdoj.gov

cc: Thomas Wilner/DC/NA/ShS@ShSDOMAIN, Kristine
Huskey/DC/NA/ShS@ShSDOMAIN, Jared A
Goldstein/DC/NA/ShS@ShSDOMAIN

Subject: Communication with Kuwaiti Detainees re ARBs

Andrew -- As I explained when we talked two days ago on Friday, we have been advised by the Government of Kuwait that it was informed by the Government of the United States that the ARB hearings for all the Kuwaiti citizens detained at Guantanamo and who we represent will be held during the week of March 28. Unfortunately, the Government of the United States did not inform us of this prior to or during our trip to Guantanamo last week, and the military would not permit us to extend that trip after we learned about it. Therefore, I requested the opportunity for us to return to Guantanamo during the week of March 21 to advise our clients about the upcoming ARBs. You said you doubted that could be arranged but you would look into it on Monday, March 21. If a return trip by us to Guantanamo cannot be arranged for the week of March 21, I request that you look into the possibility of arranging for us to have telephone conversations with our clients during the week of March 21, as permitted under the Amended Protective Order and accompanying counsel access procedures, or arranging for an expedited means by which we can transmit letters that will be received by our detainee clients during the week of March 21. Please let me know tomorrow, March 21, what you are able to do. Thank you for your assistance. --- Neil.

Exhibit E



"Andrew.Warden@usd
oj.gov"
<Andrew.Warden
03/21/2005 10:08 AM

To: "neil.koslowe@shearman.com"
<neil.koslowe@shearman.com>(Receipt Notification Requested) (IPM
Return Requested)
cc: "TWilner@Shearman.com" <TWilner@Shearman.com>(Receipt
Notification Requested) (IPM Return Requested),
"KHuskey@Shearman.com" <KHuskey@Shearman.com>(Receipt
Notification Requested) (IPM Return Requested),
"JGoldstein@shearman.com" <JGoldstein@shearman.com>(Receipt
Notification Requested) (IPM Return Requested)
Subject: RE: Communication with Kuwaiti Detainees re ARBs

Neil,

GTMO is unable to accommodate a visit on such short notice. The logistics of coordinating clearances, lodging, escorts, transportation, and detainee movements is not feasible this week. For similar logistical reasons, GTMO has declined your request for telephone access to the detainees. Finally, we cannot create for you a special expedited mail system to communicate with the detainees. Any communications you wish to send to the detainees may be directed to the CSOs for immediate delivery to GTMO, pursuant to the legal mail procedures in the revised counsel access procedures.

Regarding the basis for your requests, all habeas counsel have been on notice since early January that the detainees' ARBs may occur any time after February 1, 2005. Since that time, you have made four visits to GTMO to meet with your clients. Consequently, we do not view this an emergency situation that justifies the burdensome measures you request.

Regards,

Andrew

Andrew I. Warden
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., NW, Room 6120
Washington, DC 20530
Tel: 202.616.5084
Fax: 202.616.8460

-----Original Message-----

From: neil.koslowe@shearman.com [mailto:neil.koslowe@shearman.com]
Sent: Sunday, March 20, 2005 1:57 PM
To: Warden, Andrew (CIV)
Cc: TWilner@Shearman.com; KHuskey@Shearman.com; JGoldstein@shearman.com
Subject: Communication with Kuwaiti Detainees re ARBs

Exhibit F



U.S. Department of Justice
Civil Division
Federal Programs Branch
P.O. Box 883
Washington, D.C. 20044

Terry M. Henry
Senior Trial Counsel

Tel: (202) 514-4107
Fax: (202) 616-8470

March 31, 2005

By Electronic Mail

Neil H. Koslowe, Esq.
Shearman & Sterling, LLP
801 Pennsylvania Ave., NW
Washington, DC 20004-2604

Re: Al-Odah v United States, Civil Action No. 02-828 (CKK) (D.D.C.)

Dear Neil:

I am writing because several incidents have occurred during your recent visits to GTMO that concern us. First, during your February 13-18, 2005 visit, GTMO personnel conducted a contraband search of Jared Goldstein, one of the attorneys in your firm, after he had met with detainees, and discovered a detailed hand-drawn map of Camp Echo. The map includes the locations of buildings within Camp Echo, including the position of the guard towers. We are obviously concerned about widespread dissemination of such information in light of its potential ramifications on force security at GTMO. As you know, the Revised Procedures For Counsel Access to Detainees at the U.S. Naval Base in Guantanamo Bay, Cuba provide that "communications with a detainee, including all documents brought into a meeting with a detainee, shall not include information relating to . . . security procedures at GTMO (including the names of U.S. Government personnel and the layout of camp facilities) . . . not directly related to counsel's representation." See Revised Procedures For Counsel Access to Detainees at the U.S. Naval Base in Guantanamo Bay, Cuba at ¶ V.B. In short, we fail to see how the map Mr. Goldstein had in his possession is "directly related" to your representation in this matter. Accordingly, please provide us with an adequate explanation of this situation.

Second, in the course of observing and responding to a gathering of detainees in the camp, military personnel at GTMO observed and then confiscated from a Kuwaiti detainee documents from a web site entitled "Project Kuwaiti Freedom." These documents include various biographies and photographs of the Kuwaiti detainees as well as news articles. Pursuant to the Revised Counsel Access Procedures, "[c]ounsel shall bring only legal mail . . . into any meeting with a detainee unless counsel has received prior approval from the Commander, JTF-GTMO." See id. at ¶ V.A. The materials from the Project Kuwaiti Freedom web site are not legal mail as defined by the Revised Counsel Access Procedures, see id. at ¶ II.E, and you did not receive advance authorization from the Commander, JTF-GTMO to bring these documents into

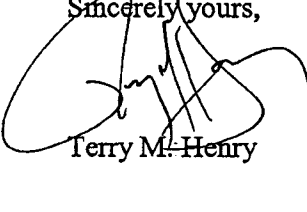
- 2 -

your meetings with the detainees. See also id. at ¶ V.B. (prohibiting habeas counsel from sharing with the detainees any communications concerning “the status of other detainees, not directly related to counsel’s representation”). We consider this incident also a serious violation of the counsel access procedures. Consequently, please provide us with an adequate explanation of this situation and with assurances that this behavior will not be repeated and that, in the future, you will submit all non-legal mail that you intend to bring into your meetings with the detainees to GTMO personnel in advance of your visit.

Third, we are concerned that you may be facilitating the delivery of non-legal mail between the detainees and their families. The Revised Counsel Access Procedures provide that mail from “family and friends of the detainee” – non-legal mail – must be sent through the United States Postal Service. See id. at ¶ IV.A.5. Counsel are not permitted to act as de facto couriers bringing family mail to the detainees during counsel visits, absent consent from the Commander JTF-Guantanamo. See id. at ¶ V.A. Similarly, counsel are prohibited from delivering mail written by the detainees to their families. See id. at ¶ IV.B.5 (stating that in the event counsel receives non-legal correspondence from a detainee, including letters addressed to family or friends, counsel shall return the documents to military personnel at GTMO). Our concerns that you may be facilitating non-legal mail deliveries are based on the fact that GTMO received through the CSOs a large package of letters written by the Kuwaiti detainees to their families that appear to have been improperly submitted to the privilege team. We can only assume that you intended to pass these letters on to the detainees’ families had classification review been completed. In light of these incidents, we seek assurances from you that: (1) you will not submit to the privilege team non-legal mail written by the detainees to their families and friends; (2) in the event you receive such non-legal mail from the detainees, you will return the documents to military personnel at GTMO; and (3) you will not deliver to the detainees during your visits to GTMO non-legal mail from the detainees’ family and friends absent authorization from the Commander JTF-Guantanamo.

The counsel access procedures are designed to balance access by you to the detainees for purposes of habeas representation with the government’s need to maintain force and institutional security at GTMO. We believe that these incidents that have occurred during previous counsel visits place that security at risk. Accordingly, we demand appropriate explanations and assurances regarding these matters prior to scheduling additional visits to GTMO by members of your law firm.

Sincerely yours,



Terry M. Henry

Exhibit G

SHEARMAN & STERLING LLP

FAX: 202 508-8100
WWW.SHEARMAN.COM

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WASHINGTON, DC 20004-2604
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WRITER'S DIRECT NUMBER:

(202) 508-8118

WRITER'S EMAIL ADDRESS:
neil.koslowe@shearman.com

April 4, 2005

By Electronic Mail

Terry M. Henry
Senior Trial Counsel
Civil Division – Federal Programs Branch
Department of Justice
20 Massachusetts Avenue, N.W.
Washington, D.C. 20530

Re: *Al Odah v. United States of America*
(D.D.C., Civil Action No. 02-828 (CKK))

Dear Terry:

Your letter of March 31, 2005, in which you “demand” explanations of counsel conduct during visits at Guantanamo, is replete with misstatements of fact, groundless speculation, and one-sided or pointless references to the counsel access procedures, and includes an unsubtle threat to deny us access to the Kuwaiti Detainees. Moreover, we suspect from what you say in your letter that military personnel at Guantanamo have violated the Court’s Order of October 20, 2004, prohibiting the government from invading the confidential attorney-client relationship between this Firm and the Kuwaiti Detainees.

1. You claim that, during our February 13-18, 2005, visit to Guantanamo, military personnel “conducted a contraband search of Jared Goldstein, one of the attorneys in [our] firm, after he had met with detainees, and discovered a detained hand-drawn map of Camp Echo. The map includes the locations of buildings within Camp Echo, including the position of the guard towers.” You say the military is concerned about “widespread dissemination of such information,” and you cite ¶ V.B of the Revised Procedures for Counsel Access to Detainees at the U.S. Naval Base in Guantanamo Bay, Cuba (“Counsel Access Procedures”), to the effect that counsel may not communicate to detainees information about “the layout of camp facilities.”

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Someone has misinformed you. Military personnel did not conduct any contraband search of Jared Goldstein after he met with detainees during his February 13-18, 2005, visit to Guantanamo. During one of the days of this visit, Mr. Goldstein was waiting outside in the quadrangle of Camp Echo in between interviews of client detainees housed in the surrounding two-cell shacks in which detainees are held. Detainees must be removed from their cells by guards and shackled to the floor before each interview and then unshackled and returned to their cells by guards after each interview. This process can take 20-30 minutes. While Mr. Goldstein was waiting for the completion of this unshackling and shackling process, he took out his notepad in full view of the two glass-enclosed guard stations located in the middle of the quadrangle and began to doodle a sketch of the quadrangle. Two female military personnel, perhaps interrogators, were in one of the guard stations while Mr. Goldstein doodled. Shortly thereafter, Sergeant Michael Shuman, who was the Firm's military escort during that trip and was in one of the guard stations, approached Mr. Goldstein, told him that he had been observed drawing something on his notepad, and asked him to hand him the notepad. Mr. Goldstein handed the page of the notepad on which the sketch appeared to Sergeant Shuman, he pointed out to Sergeant Shuman that he had done nothing wrong and Sergeant Shuman did not accuse him of doing anything wrong. That was the end of the matter.

The Counsel Access Procedures do not prohibit counsel from drawing or keeping for themselves a sketch of Camp Echo, and you cite no such prohibition. Mr. Goldstein never showed his sketch to any detainee nor did Sergeant Shuman or any other military personnel at Guantanamo claim he had done so. Thus, there is no basis for your invocation of ¶ V.B of the Counsel Access Procedures. Moreover, the detainees who are transported to Camp Echo for counsel visits and are permitted to walk around in an outdoor cage in the middle of the quadrangle while they are held there see and are familiar with the quadrangle that Mr. Goldstein sketched, including the location of the two guard stations in the middle of the quadrangle. (There are no "guard towers" in or near the quadrangle at Camp Echo.)

Finally, had Mr. Goldstein retained the sketch, it would have been included in the notes he would have deposited with military personnel at Guantanamo at the conclusion of his visit, and the sketch would have been sent by the military to the secure facility in Crystal City, Virginia. If we had desired to disseminate the sketch, we would have had to submit it to the "privilege team" for review, and it could have been disseminated only if the "privilege team" determined it was not classified.

2. You claim that, "in the course of observing and responding to a gathering of detainees in the camp, military personnel at GTMO observed and then confiscated from a Kuwaiti detainee documents from a web sit entitled "Project Kuwaiti Freedom." These documents include various biographies and photographs of the Kuwaiti detainees as well as news articles." You assert that these documents, which you assume came from counsel, are not "legal mail" within the meaning of ¶ V.A of the Counsel Access Procedures and were not approved for delivery to the detainees. On this basis you say that "a serious violation of the counsel access procedures" occurred.

Without waiving attorney-client privilege, I advise you that we, as counsel for the Kuwaiti Detainees, are entitled to send to our clients documents consisting of or describing

publicly-filed motions, briefs, and court orders, as well as our efforts to publicize this case, including such documents that have been collected and are available on a website created by the Kuwaiti Detainees' families exclusively about this case. These documents are "legal mail" within the meaning of ¶ II.E of the Counsel Access Procedures, which defines "legal mail" as "[l]etters written between counsel and detainee that are related to the counsel's representation of the detainee as well as privileged documents and publicly-filed legal documents related to that representation." The Counsel Access Procedures, at ¶ V.A. also permit us to hand-deliver such legal mail to our detainee-clients. On the other hand, in accordance with ¶ V.A we have frequently sent to Andrew Warden for pre-clearance by military personnel at Guantanamo documents or other materials that are not "legal mail" but that we wish to share with the detainees. We will continue to do so.

The real issue is how military personnel at Guantanamo got their hands on the confidential legal mail you describe in the second paragraph of your letter. Your assertion that they "confiscated it" while "observing and responding to a gathering of detainees in the camp" is not credible. We have repeatedly instructed the Kuwaiti Detainees to keep all legal mail in the special, confidential attorney-client envelopes we gave them for that purpose. We have no reason to believe any of the Kuwaiti Detainees would have been taken such legal mail with them anywhere in the camp outside the confines of their cells. The Court's Order of October 20, 2004, strictly forbids government monitoring of confidential attorney-client communications. *See also* ¶¶ IV.A.4 and X.F of the Counsel Access Procedures. Therefore, we request – or to use your terminology, "demand" – a detailed accounting of how military personnel at Guantanamo came into possession of the materials you describe in this paragraph of your letter.

3. Finally, you say that military personnel at Guantanamo received "a large package" of letters from the "privilege team" that we had submitted to that team and that turned out to be letters from the Kuwaiti Detainees to their families. You "assume" that we "intended" to pass these letters on to the detainees' families in violation of ¶¶ IV.A.5 and V.A. of the Counsel Access Procedures.

Your assumption is baseless. During the visit to Guantanamo some of the Kuwaiti Detainees gave us documents written in Arabic. We have advised the Kuwaiti Detainees during our visits that we are not permitted to and will not forward family correspondence from them to their families or from their families to them. But we do not speak, read, or understand Arabic, and we did not read or understand those documents. Rather, in accordance with ¶¶ VI.A, B of the Counsel Access Procedures, we gave those documents to military personnel at Guantanamo, who sealed them and mailed them to the secure facility in Crystal City, Virginia. After they arrived at the secure facility, we submitted these documents to the "privilege team" for classification review, in accordance with ¶ VII.A of the Counsel Access Procedures. A member of the "privilege team" called me after this review was completed and informed me that some of the Arabic language documents were determined to be letters by the Kuwaiti Detainees to their families, and that the "privilege team" would return those to Guantanamo for processing as regular family mail. The other documents – that you conspicuously do not mention – were determined by the "privilege team" to be letters by the Kuwaiti Detainees to counsel, and those were released to us. Thus, contrary to your claim we acted fully in accordance with the Counsel Access Procedures.

In the last sentence of your letter you say that you “demand” from us “appropriate explanations” regarding your accusations “prior to scheduling additional visits to GTMO by members of your law firm.” As you know, we have requested that our next trip be scheduled for the first week of May 2005. If you have any intention of delaying that trip, we “demand” that you let us know by the end of this week so we may take the matter up with the Court. We will not be intimidated. Meanwhile, we look forward to your early response to our request for a full accounting of how the military came into possession of our clients’ legal mail.

Sincerely,

Handwritten signature of Neil H. Koslowe in cursive script, followed by a forward slash and the initials 'NH'.

Neil H. Koslowe

Exhibit H



U.S. Department of Justice
Civil Division
Federal Programs Branch
P.O. Box 883
Washington, D.C. 20044

Terry M. Henry
Senior Trial Counsel

Tel: (202) 514-4107
Fax: (202) 616-8470

April 8, 2005

By Electronic Mail

Neil H. Koslowe, Esq.
Shearman & Sterling, LLP
801 Pennsylvania Ave., NW
Washington, DC 20004-2604

Re: Al-Odah v United States, Civil Action No. 02-828 (CKK) (D.D.C.)

Dear Neil:

I am writing concerning your April 4, 2005 response to my letter of March 31, 2005.

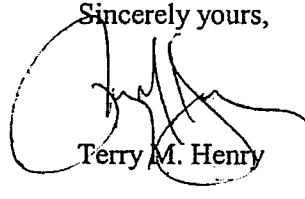
1. Thank you for your assurance that Mr. Goldstein did not share his hand-drawn map of the camp layout with detainees.
2. Regarding the website materials, you fail to explain adequately how such materials do not run afoul of the prohibitions in ¶¶ IV.A.7. and V.B. of the governing counsel access procedures in this case, even if, as you assert, the materials were included along with "legal mail." In addition, my March 31 letter explains how the website materials came into the possession of military personnel at GTMO; your client(s) apparently failed to heed your alleged instruction.
3. Your attempt to justify your submission of family mail to the privilege team is not credible and, in any event, reflects conduct inappropriate under the protective order and counsel access regime. You have your own translator present with you during visits with detainees; it is beyond belief that you would accept materials from a detainee without learning what those materials are, either by asking the detainee what the materials are or having the translator ascertain what the materials are. Further, that you would submit materials to the privilege team when you have no idea what those materials are is an abuse of the privilege team process. The privilege team is not intended to serve as a free translation service for you.

Finally, with regard to the penultimate sentence of your April 4 letter, we do not expect you to be "intimidated;" what we expect is your good faith compliance with the governing protective order and counsel access regime in this case. As stated in my March 31 letter, we seek appropriate assurances that matters such as those raised in my letter will not be repeated. We

- 2 -

continue to await such assurances – your April 4 letter does not provide them – prior to scheduling additional visits to GTMO by members of your law firm.

Sincerely yours,

A handwritten signature in black ink, appearing to be "Terry M. Henry", written over a printed name.

Terry M. Henry

Exhibit I

Neil H Koslowe

04/11/2005 06:35 PM

To: "Terry.Henry@usdoj.gov" <Terry.Henry@usdoj.gov>
cc: (bcc: Thomas Wilner/DC/NA/ShS)
Subject: Re: Letter []

Terry -- In response to your letter to me of April 8, 2005, and as Tom Wilner and I discussed with you this morning, we believe that, in accordance with paragraph 49 of the Amended Protective Order, the government is required to raise with the Court any issues it has regarding our compliance with the Amended Protective Order and the Revised Counsel Access Procedures, rather than unilaterally determining to suspend the processing of or cut off our visits with the Kuwaiti Detainees in Guantanamo if it thinks we are not in compliance. By the same token, we agree with you that the parties should attempt to work out compliance issues among themselves and avoid unnecessary and contentious litigation. Thus, as we told you, although we strongly disagree with the government's suggestions that we have violated any of the Revised Counsel Access Procedures, we assure the government we are committed fully to complying with them, specifically including those prohibiting counsel from delivering family correspondence and those limiting "legal mail" to documents that bear directly on the representation of our client-detainees. Accordingly, we ask that you or Andrew Warden inform us by the close of business tomorrow whether our requested trip to Guantanamo for the week of May 9-13, 2005. has been approved.

-- Neil.

"Terry.Henry@usdoj.gov" <Terry.Henry

Exhibit J

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

In re Guantanamo Detainee Cases

Civil Action Nos.

**02-CV-0299 (CKK), 02-CV-0828 (CKK),
02-CV-1130 (CKK), 04-CV-1135 (ESH),
04-CV-1136 (JDB), 04-CV-1137 (RMC),
04-CV-1142 (RJL), 04-CV-1144 (RWR),
04-CV-1164 (RBW), 04-CV-1166 (RJL),
04-CV-1194 (HHK), 04-CV-1227 (RBW),
04-CV-1254 (HHK), 04-CV-1519 (JR)**

**AMENDED PROTECTIVE ORDER AND PROCEDURES FOR COUNSEL ACCESS
TO DETAINEES AT THE UNITED STATES NAVAL BASE
IN GUANTANAMO BAY, CUBA**

This matter comes before the Court upon Respondents' Motion for Protective Order to prevent the unauthorized disclosure or dissemination of classified national security information and other protected information that may be reviewed by, made available to, or are otherwise in the possession of, the petitioners and/or petitioners' counsel in these coordinated cases. Pursuant to the general supervisory authority of the Court, in order to protect the national security, and for good cause shown,

IT IS ORDERED:

1. The Court finds that these cases involve classified national security information or documents, the storage, handling and control of which require special security precautions, and access to which requires a security clearance and a “need to know.” These cases may also involve other protected information or documents, the storage, handling and control of which may require special precautions in order to protect the security of United States government personnel and facilities, and other significant government interests.

2. The purpose of this Protective Order is to establish the procedures that must be followed by all petitioners' counsel, their respective petitioner(s), all other counsel involved in

these cases, translators for the parties, and all other individuals who receive access to classified national security information or documents, or other protected information or documents, in connection with these cases, including the privilege team as defined in Exhibit A.

3. The procedures set forth in this Protective Order will apply to all aspects of these cases, and may be modified by further order of the Court *sua sponte* or upon application by any party. The Court will retain continuing jurisdiction to enforce or modify the terms of this Order.

4. Nothing in this Order is intended to or does preclude the use of classified information by the government as otherwise authorized by law outside of these actions.

5. Petitioners' counsel shall be responsible for advising their employees, the petitioners, and others of the contents of this Protective Order, as appropriate or needed.

6. Petitioners' counsel are bound by the terms and conditions set forth in the "Revised Procedures For Counsel Access To Detainees At the U.S. Naval Base In Guantanamo Bay, Cuba," and the procedures for handling mail and documents brought into and out of counsel meetings, attached hereto as Exhibit A. This Protective Order specifically incorporates by reference all terms and conditions established in the procedures contained in Exhibit A to the extent they place limitations on petitioners' counsel in their access to and interaction with petitioners or handling of information. Any violation of the terms and conditions of those procedures will also be deemed a violation of this Protective Order. This paragraph does not apply with respect to provisions in the procedures contained in Exhibit A that are or have been overridden by the Court.

7. The privilege team shall not disclose to any person any information provided by counsel for a petitioner or by a petitioner, other than information provided in a filing with the Court, unless such information, if it were monitored information, could be disclosed under Section X of Exhibit A. Such disclosure shall be consistent with the provisions of Section X of Exhibit A.

Definitions

8. As used herein, the words “documents” or “information” shall include, but are not limited to, all written or printed matter of any kind, formal or informal, including originals, conforming copies and non-conforming copies (whether different from the original by reason of notation made on such copies or otherwise), and further include, but are not limited to:

a. papers, correspondence, memoranda, notes, letters, reports, summaries, photographs, maps, charts, graphs, interoffice and intra-office communications, notations of any sort concerning conversations, meetings, or other communications, bulletins, teletypes, telegrams, telefacsimiles, invoices, worksheets, and drafts, alterations, modifications, changes and amendments of any kind to the foregoing;

b. graphic or oral records or representations of any kind, including, but not limited to, photographs, charts, graphs, microfiche, microfilm, videotapes, sound recordings of any kind, and motion pictures;

c. electronic, mechanical or electric records of any kind, including, but not limited to, tapes, cassettes, disks, recordings, electronic mail, films, typewriter ribbons, word processing or other computer tapes or disks, and all manner of electronic data processing storage; and

d. information acquired orally.

9. The terms “classified national security information and/or documents,” “classified information” and “classified documents” refer to:

a. any classified document or information that has been classified by any Executive Branch agency in the interests of national security or pursuant to Executive Order, including Executive Order 12958, as amended, or its predecessor Orders as “CONFIDENTIAL,” “SECRET,” or “TOP SECRET,” or additionally controlled as “SENSITIVE

COMPARTMENTED INFORMATION (SCI),” or any classified information contained in such document;

b. any document or information, regardless of its physical form or characteristics, now or formerly in the possession of a private party that has been derived from United States government information that was classified, regardless of whether such document or information has subsequently been classified by the government pursuant to Executive Order, including Executive Order 12958, as amended, or its predecessor Orders as “CONFIDENTIAL,” “SECRET,” or “TOP SECRET,” or additionally controlled as “SENSITIVE COMPARTMENTED INFORMATION (SCI)”;

c. verbal or non-documentary classified information known to the petitioner or petitioners’ counsel; or

d. any document and information as to which the petitioner or petitioners’ counsel have been notified orally or in writing that such documents or information contains classified information.

10. All classified documents, and information contained therein, shall remain classified unless the documents bear a clear indication that they have been declassified by the agency or department that is the original classification authority of the document or the information contained therein (hereinafter, the “original classification authority”).

11. The terms “protected information and/or documents,” “protected information” and “protected documents” refer to any document or information deemed by the Court, either upon application by counsel or *sua sponte*, as worthy of special treatment as if the document or information were classified, even if the document or information has not been formally deemed to be classified.

12. For purposes of this Protective Order, “petitioners’ counsel” shall be 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.

13. “Access to classified information” or “access to protected information” shall mean having access to, reviewing, reading, learning, or otherwise coming to know in any manner any classified information or protected information.

14. “Secure area” shall mean a physical facility accredited or approved for the storage, handling, and control of classified information.

15. “Unauthorized disclosure of classified information” shall mean any knowing, willful or negligent action that could reasonably be expected to result in a communication or physical transfer of classified information to an unauthorized recipient.

Designation of Court Security Officer

16. The Court designates Christine E. Gunning as Court Security Officer for these cases, and Joan B. Kendrall, Michael P. Macisso, James P. Londergan, Mary M. Cradlin, Daniel O. Hartenstine, John P. Molinard, Jennifer Campbell, and Barbara J. Russell as Alternate Court Security Officers, for the purpose of providing security arrangements necessary to protect from unauthorized disclosure of any classified documents or information, or protected documents or information, to be made available in connection with these cases. Petitioners’ counsel shall seek guidance from the Court Security Officer with regard to appropriate storage, handling, transmittal, and use of classified documents or information.

Access to Classified Information and Documents

17. Without authorization from the government, no petitioner or petitioners' counsel shall have access to any classified information involved in these cases unless that person shall first have:

- a. made a written submission to the Court Security Officer precisely stating the reasons why counsel has a need to know the classified information requested; and
- b. received the necessary security clearance as determined by the Department of Justice Security Officer; and
- c. signed the Memorandum of Understanding ("MOU"), attached hereto as Exhibit B, agreeing to comply with the terms of this Protective Order.

The written submissions that are made by counsel to the Court Security Officer stating the reasons why counsel has a need to know the classified information requested shall be kept confidential by the Court Security Officer and shall not be disclosed to any other counsel or party to these cases unless the Court specifically orders such disclosure.

18. Petitioners' counsel to be provided access to classified information shall execute the MOU appended to this Protective Order, and shall file executed originals with the Court and submit copies to the Court Security Officer and counsel for the government. The execution and submission of the MOU is a condition precedent for petitioners' counsel to have access to, or continued access to, classified information for the purposes of this proceeding.

19. The substitution, departure, or removal of petitioners' counsel from these cases for any reason shall not release that person from the provisions of this Protective Order or the MOU executed in connection with this Order.

20. The government shall arrange for one appropriately approved secure area for the use of petitioners' counsel. The secure area shall contain a working area that will be supplied with secure office equipment reasonable and necessary to the preparation of the petitioners' case. Expenses for the secure area and its equipment shall be borne by the government.

21. The Court Security Officer shall establish procedures to ensure that the secure area is accessible to the petitioners' counsel during normal business hours and at other times on reasonable request as approved by the Court Security Officer. The Court Security Officer shall establish procedures to ensure that the secure area may be maintained and operated in the most efficient manner consistent with the protection of classified information. The Court Security Officer or Court Security Officer designee may place reasonable and necessary restrictions on the schedule of use of the secure area in order to accommodate appropriate access to all petitioners' counsel in this and other proceedings.

22. All classified information provided by the government to counsel for petitioners, and all classified information otherwise possessed or maintained by petitioners' counsel, shall be stored, maintained, and used only in the secure area.

23. No documents containing classified information may be removed from the secure area unless authorized by the Court Security Officer or Court Security Officer designee supervising the area.

24. Consistent with other provisions of this Protective Order, petitioners' counsel shall have access to the classified information made available to them in the secure area, and shall be allowed to take notes and prepare documents with respect to those materials.

25. Petitioners' counsel shall not copy or reproduce any classified information in any form, except with the approval of the Court Security Officer or in accordance with the procedures established by the Court Security Officer for the operation of the secure area.

26. All documents prepared by petitioners or petitioners' counsel that do or may contain classified information (including without limitation, notes taken or memoranda prepared by counsel and pleadings or other documents intended for filing with the Court) shall be transcribed, recorded, typed, duplicated, copied, or otherwise prepared only by persons who have received an appropriate approval for access to classified information. Such activities shall take place in the secure area on approved word processing equipment and in accordance with the procedures approved by the Court Security Officer. All such documents and any associated materials containing classified information (such as notes, memoranda, drafts, copies, typewriter ribbons, magnetic recordings, exhibits) shall be maintained in the secure area unless and until the Court Security Officer advises that those documents or associated materials are unclassified in their entirety. None of these materials shall be disclosed to counsel for the government unless authorized by the Court, by petitioners' counsel or as otherwise provided in this Protective Order.

27. Petitioners' counsel shall discuss classified information only within the secure area or in another area authorized by the Court Security Officer, shall not discuss classified information over any standard commercial telephone instrument or office intercommunication system, and shall not transmit or discuss classified information in electronic mail communications of any kind.

28. The Court Security Officer or Court Security Officer designee shall not reveal to any person the content of any conversations she or he may hear by or among petitioners' counsel, nor reveal the nature of documents being reviewed by them, or the work generated by them, except as necessary to report violations of this Protective Order to the Court or to carry out their duties pursuant to this Order. In addition, the presence of the Court Security Officer or Court Security Officer designee shall not operate as a waiver of, limit, or otherwise render inapplicable, the attorney-client privilege or work product protections.

29. Petitioners' counsel shall not disclose the contents of any classified documents or information to any person, including counsel in related cases brought by Guantanamo Bay detainees in this or other courts, except those authorized pursuant to this Protective Order, the Court, and counsel for the government with the appropriate clearances and the need to know that information. Except as otherwise specifically provided by Judge Colleen Kollar-Kotelly in her well-reasoned opinion addressing counsel access procedures regarding petitioners Mohammed Ahmed al Kandari, Fawzi Khalid Abdullah Fahad al Odah, and Khalid Abdullah Mishal al Mutairi in Al Odah v. United States, 02-CV-0828 (CKK), counsel for petitioners in these cases are presumed to have a "need to know" information both in their own cases and in related cases pending before this Court. Therefore, and except as provided with respect to the three petitioners in Al Odah mentioned above, counsel for all petitioners in these cases who have satisfied all necessary prerequisites and follow all procedures set forth herein may share and discuss among themselves classified information to the extent necessary for the effective representation of their clients. Counsel for respondents may challenge the "need to know" presumption on a case-by-case basis for good cause shown.

30. Petitioners' counsel shall not disclose classified information not provided by petitioner-detainee to that petitioner-detainee. Should petitioners' counsel desire to disclose classified information not provided by petitioner-detainee to that petitioner-detainee, petitioners' counsel will provide in writing to the privilege review team (See Exhibit A) a request for release clearly stating the classified information they seek to release. The privilege review team will forward the petitioner counsel's request to the appropriate government agency authorized to declassify the classified information for a determination. The privilege review team will inform petitioners' counsel of the determination once it is made.

31. No petitioner or counsel for petitioner shall disclose or cause to be disclosed any information known or believed to be classified in connection with any hearing or proceeding in these cases except as otherwise provided herein.

32. Except as otherwise stated in this paragraph and to ensure the security of the United States of America, at no time, including any period subsequent to the conclusion of the proceedings, shall petitioners' counsel make any public or private statements disclosing any classified information or documents accessed pursuant to this Protective Order, including the fact that any such information or documents are classified. In the event that classified information enters the public domain, however, counsel is not precluded from making private or public statements about the information already in the public domain, but only to the extent that the information is in fact in the public domain. Counsel may not make any public or private statements revealing personal knowledge from non-public sources regarding the classified or protected status of the information or disclosing that counsel had personal access to classified or protected information confirming, contradicting, or otherwise relating to the information already in the public domain. In an abundance of caution and to help ensure clarity on this matter, the Court emphasizes that counsel shall not be the source of any classified or protected information entering the public domain.

As stated in more detail in paragraph 49 below, failure to comply with these rules may result in the revocation of counsel's security clearance as well as civil and/or criminal liability.

33. The foregoing shall not prohibit petitioners' counsel from citing or repeating information in the public domain that petitioners' counsel does not know to be classified information or a classified document, or derived from classified information or a classified document.

34. All documents containing classified information prepared, possessed or maintained by, or provided to, petitioners' counsel (except filings submitted to the Court and

served on counsel for the government), shall remain at all times in the control of the Court Security Officer for the duration of these cases. Upon final resolution of these cases, including all appeals, all such documents shall be destroyed by the Court Security Officer.

Access to Protected Information and Documents

35. Without authorization from the government or the Court, protected information shall not be disclosed or distributed to any person or entity other than the following:

- a. petitioners' counsel, provided such individuals have signed the Acknowledgment, attached hereto as Exhibit C, attesting to the fact that they have read this Protective Order and agree to be bound by its terms; and
- b. the Court and its support personnel.

36. The execution of the Acknowledgment is a condition precedent for petitioners' counsel to have access to, or continued access to, protected information for the purposes of this proceeding. A copy of each executed Acknowledgment shall be kept by counsel making the disclosure until thirty (30) days after the termination of this action, including appeals.

37. The substitution, departure, or removal of petitioners' counsel from these cases for any reason shall not release that person from the provisions of this Protective Order or the Acknowledgment executed in connection with this Protective Order.

38. Petitioners' counsel shall not disclose the contents of any protected documents or information to any person, to include counsel in related cases brought by Guantanamo Bay detainees in this or other courts, except those authorized pursuant to this Protective Order, the Court, or counsel for the government. Except as otherwise specifically provided by Judge Colleen Kollar-Kotelly with respect to counsel for petitioners Mohammed Ahmed al Kandari, Fawzi Khalid Abdullah Fahad al Odah, and Khalid Abdullah Mishal al Mutairi in Al Odah v. United States, 02-CV-0828 (CKK), counsel for petitioners in these coordinated cases may share protected information with each other but only to the extent that counsel have appropriate

security clearances and that all other procedures set forth in this Protective Order are complied with. Petitioners' counsel shall maintain all protected information and documents received through this proceeding in a confidential manner.

39. Petitioners' counsel shall not disclose protected information not provided by petitioner-detainee to that petitioner-detainee without prior concurrence of counsel for the government or express permission of the Court.

40. No petitioner or counsel for petitioner shall disclose or cause to be disclosed any information known or believed to be protected in connection with any hearing or proceeding in these cases except as otherwise provided herein.

41. At no time, including any period subsequent to the conclusion of the proceedings, will petitioners' counsel make any public or private statements disclosing any protected information or documents accessed pursuant to this Protective Order, including the fact that any such information or documents are protected.

42. Protected information shall be used only for purposes directly related to these cases and not for any other litigation or proceeding, except by leave of the Court. Photocopies of documents containing such information shall be made only to the extent necessary to facilitate the permitted use hereunder.

43. Nothing in this Protective Order shall prevent the government from using for any purpose protected information it provides a party. Nothing in this Protective Order shall entitle another party to protected information.

44. Supplying protected information to another party does not waive privilege with respect to any person or use outside that permitted by this Protective Order.

45. Within sixty (60) days of the resolution of these actions, and the termination of any appeals therefrom, all protected documents or information, and any copies thereof, shall be promptly destroyed, provided that the party to whom protected information is disclosed certifies

in writing that all designated documents and materials have been destroyed, and further provided that counsel for the government may retain one complete set of any such materials that were presented in any form to the Court. Any such retained materials shall be placed in an envelope or envelopes marked "Protected Information Subject to Protective Order." In any subsequent or collateral proceeding, a party may seek discovery of such materials from the government, without prejudice to the government's right to oppose such discovery or its ability to dispose of the materials pursuant to its general document retention policies.

Procedures for Filing Documents

46. Until further order of this Court, any pleadings or other document filed by a petitioner shall be filed under seal with the Court through the Court Security Officer unless the petitioner has obtained from the Court Security Officer permission, specific to a particular, non-substantive pleading or document (e.g., motions for extensions of time, continuances, scheduling matters, etc.) not containing information that is or may be classified or protected, to file the pleading or document not under seal. The date and time of physical submission to the Court Security Officer shall be considered the date and time of filing with the Court. The Court Security Officer shall promptly examine the pleading or document and forward it to the appropriate agencies for their determination whether the pleading or document contains classified information. If it is determined that the pleading or document contains classified information, the Court Security Officer shall ensure that portion of the document, and only that portion, is marked with the appropriate classification marking and that the document remains under seal. If it is determined that the pleading or document contains protected information, the Court Security Officer shall ensure that portion of the document, and only that portion, remains under seal. Any document filed by petitioner that is determined not to contain classified information or protected information, and is not subject to any other restrictions on disclosure, shall immediately be unsealed by the Court Security Officer and placed in the public record. The Court Security

Officer shall immediately deliver under seal to the Court and counsel for the government any pleading or document to be filed by petitioners that contains classified information or protected information. The Court shall then direct the clerk to enter on the docket sheet the title of the pleading or document, the date it was filed, and the fact that it has been filed under seal with the Court Security Officer.

47. Any pleading or other document filed by the government containing classified information shall be filed under seal with the Court through the Court Security Officer. The date and time of physical submission to the Court Security Officer shall be considered the date and time of filing with the Court. The Court Security Officer shall serve a copy of any classified pleadings by the government upon the Petitioner at the secure facility.

48. Nothing herein shall require the government to disclose classified or protected information. Nor shall anything herein prohibit the government from submitting classified information or protected information to the Court *in camera* or *ex parte* in these proceedings, or entitle petitioners or petitioners' counsel access to such submissions or information. Except for good cause shown in the filing, the government shall provide counsel for the petitioner or petitioners with notice served on such counsel on the date of the filing.

Penalties for Unauthorized Disclosure

49. Any unauthorized disclosure of classified information may constitute violations of United States criminal laws. In addition, any violation of the terms of this Protective Order shall be immediately brought to the attention of the Court and may result in a charge of contempt of Court and possible referral for criminal prosecution. See e.g., Executive Order 12958, as amended. Any breach of this Protective Order may also result in the termination of access to classified information and protected information. Persons subject to this Protective Order are advised that direct or indirect unauthorized disclosure, retention, or negligent handling of classified documents or information could cause damage to the national security of the United

States or may be used to the advantage of an adversary of the United States or against the interests of the United States. Persons subject to this Protective Order are also advised that direct or indirect unauthorized disclosure, retention, or negligent handling of protected documents or information could risk the security of United States government personnel and facilities, and other significant government interests. This Protective Order is to ensure that those authorized to receive classified information and protected information will not divulge this information to anyone who is not authorized to receive it, without prior written authorization from the original classification authority and in conformity with this Protective Order.

50. The termination of these proceedings shall not relieve any person or party provided classified information or protected information of his, her, or its obligations under this Protective Order.

IT IS SO ORDERED.

November 8, 2004

/s/

JOYCE HENS GREEN
United States District Judge