

P. Sabin Willett
Direct Phone: (617) 951-8775
Direct Fax: (617) 951-8736
sabin.willett@bingham.com

[ORAL ARGUMENT TO BE HELD MAY 15, 2007]

May 14, 2007

Via Hand Delivery

Mr. Mark J. Langer
Clerk, United States Court of Appeals
for the District of Columbia Circuit
United States Courthouse
333 Constitution Avenue, N.W., Room 5423
Washington, D.C. 20001

Bingham McCutchen LLP
2020 K Street NW
Washington, DC
20006-1806

202.373.6000
202.373.6001 fax

bingham.com

**Re: Respondent's May 11, 2007 Fed. R. App. Pro. 28(j) letter
Parhat v. Gates, No. 06-1397, *Bismullah v. Gates*, No. 06-119**

Dear Mr. Langer:

On behalf of Petitioners, I reply briefly to Respondent's Rule 28(j) letter to address the relevance of (i) the new regulation to Petitioners' information requests and (ii) Respondent's withdrawal of his proposal to cap attorney-client meetings.¹

The question under the DTA is whether Petitioners' CSRTs were conducted in a lawful manner, consistent with regulations. DTA § 1005(e)(2)(C)(i). The regulations require the Recorder to gather "reasonably available information in the possession of the U.S. Government" regarding status, *see* App.10, and to cull this so-called "Government Information" for exculpatory evidence that "shall" be presented to the hearing panels, *see* App.14, 17. Failure to fulfill these obligations entitles Petitioners to relief. Nothing in the new regulation changes that analysis.

Respondent's last-minute lurch from CSRTs as a "one-time review," *see* App.179, to a *possibility* of new CSRTs does not change the question the statute requires this Court to answer. Nor does it remove the need, in answering it, to compare the material actually presented to the CSRT panel with the Government Information, as supplemented by the narrowly targeted information that Petitioners seek (which should have been included in the Government Information). Even under a limited, "agency review" model, the "agency record" would have to include the Government Information. *See* Petitioners' Corrected Joint Reply Brief at 8-10.

Nor will the *possibility* of new CSRTs obviate statutory questions about whether CSRT panels misapplied the "enemy combatant" definition (*Parhat* Count I), or whether the Pentagon has manipulated the results for public-relations reasons (*Parhat* Count III). As

¹ Faced with a new regulation promulgated on the eve of oral argument, we request that the Court waive the 350-word rule for this response.

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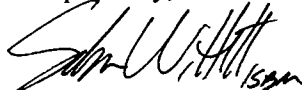
to the latter point, only after the briefing was closed did Respondent disclose that Petitioner Hammad Memet, like the Uighur Ali Mohammed, *was originally determined to be a noncombatant*. See Unclassified Pages from CSRT Administrative Record Vol. G (ISN 328) at 007.²

The new regulation contravenes the DTA by purporting to be beyond this Court's review, is arbitrary, and represents another eleventh-hour effort to forestall judicial review. Justices Stevens and Kennedy warned against such efforts in noting the need for "an effective and speedy instrument by which judicial inquiry may be had to the legality of detention of a person." *Boumediene v. Bush*, 127 S. Ct. 1478, 1479 (2007) (denying certiorari).

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Petitioners obviously have no objection to Respondent's withdrawal of the proposed cap on the number of meetings we can hold with our clients. This change in position—after the proposed protective order has been pending for nine months, in the face of public outcry, and on the eve of this Court's hearing—underscores that there are no real problems with the protective order crafted by the district court. Under the false premise that the existing order is not working and the unsubstantiated argument that unrest is caused by lawyers, Respondent continues to press for the right to read and censor our mail, extend secrecy far beyond classified information, limit legitimate efforts by counsel to cooperate, draft an engagement letter that looks like a confession, and, in violation of the DTA itself, effectively end our representation if clients decline to sign arbitrary forms. The district court's protective order does not suffer from any of those defects and should govern these proceedings.

Respectfully,



P. Sabin Willett

cc: Jeffrey Lang, Esq. (counsel for Bismullah) (via email)
Douglas N. Letter, Esq. (counsel for Respondent) (via email)
Robert M. Loeb, Esq. (counsel for Respondent) (via email)
Sidney S. Rosdeitcher (counsel for amici curiae) (via email)

² Respondent has provided classified information regarding Bismullah and the *Parhat* Petitioners to the Court but not to counsel, although Respondent acknowledges that counsel is entitled to that information and hold the appropriate security clearance.