IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SALIM AHMED HAMDAN, Petitioner, v. DONALD H. RUMSFELD, Respondent.	Civil Action No. 04-CV-1519 (JR)

RESPONDENT'S OPPOSITION TO PETITIONER'S MOTION TO COMPEL AND FOR WRIT IN AID OF JURISDICTION

Respondent's hereby opposes petitioner's Motion to Compel and for Writ in Aid of Jurisdiction (dkt. no. 64) ("Petr's Mot.). In his motion, petitioner, a detainee at the U.S. Naval Base at Guantanamo Bay, Cuba, and defendant before a now-enjoined military commission for alleged violations of the law of war, claims that his recent, temporary move to the "Tango" cell block at Guantanamo Bay violated the Court's November 8, 2004 Order[1] that petitioner be "released from the pre-Commission wing of Camp Delta and returned to the general population of Guantanamo detainees, unless some reason other than the pending charges against him requires different treatment." Petitioner's counsel further argues the move was intended to thwart counsel's relationship with petitioner and, ultimately, the jurisdiction of the Supreme Court to review the merits decision in this case on *certiorari*.

As explained below, petitioner's contentions have no merit. Petitioner's temporary move to Tango Block was the culmination of a series of disciplinary problems exhibited by petitioner

[1] See Dkt. Nos. 55-56; Hamdan v. Rumsfeld, 344 F. Supp. 2d 152 (D.D.C. 2004), rev'd, 415 F.3d 33 (D.C. Cir. 2005), cert. granted.

over the last several months, even after petitioner had been accorded space in the facility with the most liberal conditions, including communal living arrangements, for enemy combatants at Guantanamo. The move to Tango Block was not based on petitioner's status as a military commission candidate or on the pending charges against him, and it was not a return of petitioner to any pre-commission segregation. Rather, petitioner was placed in the block, which houses three of the nine military commission defendants at Guantanamo, based on the assessment that the three detainees there had personalities that would not likely be influenced by petitioner's recent disruptive behavior and attempts to instigate protests and hunger strikes among other detainees. Accordingly, no violation of the Court's Order has occurred.

Furthermore, petitioner's counsel's allegations that the move was calculated to sour the relationship between counsel and petitioner, so that petitioner would withdraw his habeas petition and thereby thwart Supreme Court review of the issues decided by the Court and the D.C. Circuit in this case, are far-fetched and, in any event, completely baseless. Additionally, petitioner's allegations that respondent is attempting to place petitioner in "isolation" allegedly in violation of the November 8, 2004 Order, are not only similarly baseless, but reflect an attempt to stretch the November 8, 2004 Order to address conditions of confinement going beyond the terms of the Order.

In sum, respondent has not violated the Court's Order, and petitioner's request for relief, which seeks to inject the Court into the day-to-day management of petitioner's confinement on the basis of unfounded allegations, should be denied.

BACKGROUND

1. Most of the detainees at Guantanamo Bay are housed by the Department of Defense ("DoD") in general population cell blocks within Camp Delta. On this type of block, detainees are housed in individual cells. See Declaration of Colonel Michael I. Bumgarner ¶ 5 (attached as Exhibit A) ("Bumgarner Decl.").[2] The cells in these blocks are all the same size, and they each have a bunk, a sink, and an Asian-style toilet. Id. Cells are of an open steel mesh construction, and at the end of each block is an exercise yard and four shower stalls. Id. Detainees receive regular opportunities for recreation and personal hygiene, and they receive, among other things, adequate food and drinking water, including three nutritionally sound meals daily, prepared in compliance with the detainees' specific religious, cultural, and, where applicable, medical dietary requirements. Id. ¶ 3. Further, in general population blocks, detainees have the ability to talk to each other between cells, see each other, exercise with or around each other, pray with each other, and interact with Guantanamo personnel. Id. ¶¶ 3, 5.

As appropriate, custody and control measures are in place at Guantanamo to maintain good order and discipline in the detention facility and to protect the safety and welfare of security personnel and detainees alike. Id. ¶ 4. The detention facilities use a status classification system for detainees, with various levels of incentives or rewards, such as recreation time and access to library items and comfort items above basic issue. Id. Under this system, a detainee's behavior determines any extra privileges permitted the detainee, as well as the cell block within Camp Delta where he is to be housed. Thus, a detainee, by good behavior and compliance with camp

[2] Colonel Bumgarner is the Commander fo the Joint Detention Group for the Joint Task Force-Guantanamo Bay, Cuba ("JTF-GTMO"), and is responsible for detention operations for JTF-GTMO. See Bumgarner Decl. ¶ 1.

rules and guard force instructions, earns, by his conduct, changes in location, i.e., cell blocks, moving from maximum security locations with fewer privileges to medium security with greater privileges. See id. Likewise, a detainee's misbehavior and lack of compliance with camp rules and instructions result in fewer privileges and can result in movement to cell blocks involving higher security. Id. In order to be effective, such discipline-related moves must be prompt and consistent; any significant delay in such moves would serve to undermine the effectiveness of the disciplinary scheme, both with respect to a detainee who is subject to the disciplinary move and with respect to any deterrent effect the scheme would otherwise have upon other detainees. Id.

In addition, within any particular cell block, the location of a detainee within the block, as well as the proximity of a detainee's cell to other detainees and the arrangements for a detainee's exercise time, is based on a variety of factors, including operational-, discipline-, and intelligence-related considerations. Id.

2. Prior to this Court's November 8, 2004 decision,[3] petitioner was housed in Camp Echo at Guantanamo.[4] During the week of October 18, 2004, petitioner was moved to Tango Block, a general population-type cell block within Camp Delta then-reserved for military commission detainees. See Bumgarner Decl. ¶ 6; Respondents' Notice of Change of Circumstances (filed Oct. 22, 2004).

In its November 8, 2004 opinion, the Court noted that while the move to Tango Block in Camp Delta, where military commission detainees could "communicate with each other,

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[3] See Hamdan v. Rumsfeld, 344 F. Supp. 2d 152 (D.D.C. 2004), rev'd, 415 F.3d 33 (D.C. Cir. 2005), cert. granted.

[4] That facility was subsequently converted to a meeting place for detainees and their counsel.

exercise, and practice their religion," did not entirely moot Hamdan's claim regarding his previous situation in Camp Echo, "[t]he treatment Hamdan may or may not be afforded in the future, however, is not susceptible to review on a writ of habeas corpus." 344 F. Supp. 2d at 172. The Court ordered that "petitioner be released from the pre-Commission detention wing of Camp Delta and returned to the general population of Guantanamo detainees, unless some reason other than the pending charges against him requires different treatment." Id. at 174.

In accordance with the Court's directive, petitioner was moved to a general population block in Camp Delta. Bumgarner Decl. ¶ 5. He was moved to another general population block in January 2005, see id. ¶¶ 5, 7, and then on August 30, 2005, petitioner was admitted to Camp Four, the medium security facility reserved for detainees who are most compliant with camp rules, id. ¶ 8. Camp Four differs from other individual-cell, general population blocks in that detainees are permitted to live communally together and are able to be outside at tables or in the soccer, volleyball, or basketball recreation yards for up to eight hours per day. Id. Each detainee has his own bed in an indoor, open 10-bed bay. Id. The open environment of Camp Four requires that the detainees who live there consistently follow camp rules and comply with the orders and instructions of the guards. Id.

After just over one month in Camp Four, on the evening of October 5, 2005, petitioner incited a disturbance in the camp. See id. ¶ 9. He failed to follow instructions of the guards and attempted to incite other detainees in Camp Four to disobey instructions of guards and refuse to return to their sleeping bays for the evening. Id. Petitioner also became verbally abusive towards a senior non-commissioned officer. Id. In response, and in accordance with camp disciplinary

measures, the next morning petitioner was moved out of Camp Four back to a general population block with individual detainee cells. Id.

Petitioner's disciplinary issues continued, however. After the move out of Camp Four, on November 13, 2005, he damaged property in his cell. Id. ¶ 10. Accordingly, petitioner was moved to a discipline block. Once on that block, petitioner began refusing meals and attempted to incite other detainees on the block to do the same. Id. ¶ 10. Because of his continued intransigence, Guantanamo authorities, on November 21, 2005, moved petitioner again, this time to Tango Block, the general population-type block currently housing three of the nine military commission candidates.[5] Id. ¶¶ 10-12. The decision to move petitioner to Tango Block was not based on petitioner's status as a military commission candidate or the pending charges against him, and it was not a move to place petitioner in any pre-commission segregation. Id. ¶ 13. Rather, it was based on the assessment that the three other detainees on Tango Block had personalities that would not likely be influenced by petitioner's desire to be disruptive and to instigate hunger strikes. See id. During his brief stay there, petitioner was not isolated or segregated, but could talk to the other detainees between cells and pray and exercise with them. Id. ¶ 15. In fact, the other detainees on Tango Block welcomed Hamdan, and, as hoped, his efforts to encourage them to join him in disruptive behavior did not succeed. Id. ¶ 13.

Upon being made aware of petitioner's December 6, 2005 motion, with its unfounded accusations that the move to Tango Block was intended somehow to thwart petitioner's

[5] The five remaining military commission candidates aside from petitioner are in other areas of the Guantanamo facility. Bumgarner Decl. ¶ 12. As explained infra, petitioner also is no longer on Tango Block.

relationship with his counsel,[6] and in order to avoid any perception or appearance of an attempt at such interference, Guantanamo authorities decided to move petitioner to another general population block. Petitioner was moved on December 7, 2005, and remains in the general population block today with other detainees. See id. ¶ 14. Indeed, all of the moves of petitioner since the Court's November 8, 2004 Order, including the move to Tango, have been based on petitioner's compliance with, or disregard for, camp rules or on other operational or intelligence issues, and were in no way intended, planned, designed, or even considered as an action that would interfere with petitioner's relationship with counsel. Id. ¶ 16.

ARGUMENT

Petitioner's motion is based on several different premises. Petitioner's counsel claims that the move of petitioner to Tango Block violated the Court's November 8, 2004 Order that petitioner be "returned to the general population of Guantanamo detainees, unless some reason other than the pending charges against him requires different treatment." Petitioner's counsel also complains that the move was intended to thwart counsel's relationship with petitioner and, ultimately, the jurisdiction of the Supreme Court, which has granted *certiorari* in this case. Finally, petitioner's counsel claims that the move resulted in petitioner's "isolation," which he asserts is contrary to the Court's November 8, 2004 Order. As explained below, however, each of these premises is baseless, false, or otherwise faulty, and petitioner's motion should be denied.

[6] See infra § B.

A. Petitioner's Temporary Move to Tango Block Did Not Violate the Court's Order.

Petitioner describes his move to Tango Block as a return to "pre-commission" segregation, i.e., segregation based on his status as a military commission defendant or candidate, in violation of the November 8, 2004 Order. See Petr's Mot. ¶¶ 2, 5, 10. In fact, however, as explained by Col. Bumgarner, the decision to move petitioner to Tango Block "was not based on Petitioner's status as a [military] commission candidate" or on the pending charges against him. Bumgarner Decl. ¶ 13. Nor was it intended as a placement of petitioner in "pre-commission" segregation. Id. Rather, the move was made as a corrective, disciplinary measure, based on the assessment that the three other detainees on Tango Block had personalities that would not likely be influenced by petitioner's desire to be disruptive and to instigate hunger strikes. See id.

The Court's Order requires that petitioner be kept in the general detainee population, "unless some reason other than the pending charges against him requires different treatment." Here, such a reason prompted such treatment, i.e., petitioner's continued disruptive behavior and the fact that the detainees on Tango Block by reason of their unique personalities, including their likely refusal to be taken in by petitioner's attempts to rabble-rouse, made the block, though not a disciplinary block itself, an appropriate temporary disciplinary housing arrangement to insulate other detainees more likely to be influenced by petitioner's attempts at incitement and to render petitioner's attempts ineffective. As explained by Col. Bumgarner, the move was purely disciplinary in nature and not part of any segregation for military commission purposes or due to Hamdan's status as a military commission candidate.[7] Bumgarner Decl. ¶ 13.

[7] Petitioner's counsel relies upon petitioner's alleged conversations with a Sergeant Major to assign motives and a rationale to petitioner's move to Tango Block. Those assertions, which

While petitioner's counsel argues that transfer to Tango Block appears to be placement of petitioner in pre-commission detention because of the charges pending against him, that mere appearance cannot overcome the sworn testimony of Col. Bumgarner, the Commander of the Joint Detention Group responsible for detention operations at Guantanamo, as to the reasons for the move, which were for "reason[s] other than the pending charges against" Hamdan. Indeed, until petitioner's persistent disciplinary problems in recent weeks, petitioner, in accordance with standard discipline policy and procedure, had been permitted to progressively improve his housing situation in the general detainee population through compliance with camp rules until he had attained and been moved to the communal living arrangements in Camp Four, the most liberal conditions for enemy combatant housing at Guantanamo. See Bumgarner Decl. ¶¶ 5, 7-8. Those actions are hardly consistent with petitioner's counsel's accusation of a desire by authorities to thwart or make a "mockery" of the Court's Order, see Petr's Mot. at 6. Likewise, it is simply incredible to believe that respondent would intentionally flout this Court's Order and move petitioner improperly, when petitioner's counsel or his representatives regularly visit petitioner at Guantanamo and, accordingly, would be, and in fact were, informed of such a move relatively promptly. In any event, petitioner has been moved from Tango Block and is currently residing in a general population block, so to the extent any violation of the Court's Order could be argued, the situation no longer exists.[8]

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involve multiple levels of hearsay, however, are refuted by the declaration of Col. Bumgarner specifically addressing the disciplinary reasons for the move.

[8] Petitioner's allegation that "[t]his is not the first time that Respondents have violated this Court's Order," see Petr's Mot. ¶¶ 12-13, is untrue and unfair, being based on events of almost a year ago, and on nothing more than petitioner's counsel's bare allegations regarding conditions of petitioner's confinement on a general population block. Petitioner's counsel fails

B. Petitioner's Move Was Not Intended to Interfere With Petitioner's Relationship With His Counsel.

Petitioner's counsel devotes most of his motion to accusations that the government has concocted and is carrying out an elaborate plan to thwart the jurisdiction of the Supreme Court to review the merits decision in this case. According to petitioner's counsel, the government's plan was to move petitioner to Tango Block and house him next to a detainee (Al Bahlul) who has eschewed lawyers in his military commission proceeding in the hope that that detainee's attitude towards lawyers would rub off on petitioner, so that petitioner would come to feel that his counsel was impotent to prevent the move to Tango and thus useless to petitioner, so that petitioner would further come to believe that his habeas action was hopeless, so that, then, petitioner would fire his counsel and somehow "withdraw" his habeas action, thereby undermining the Supreme Court's review on *certiorari* of the Court of Appeals decision in this case, ultimately insulating the Court of Appeals decision from review. See Petr's Mot. ¶¶ 6-8, 10, 11, 14.

Apart from the incredibly far-fetched nature of petitioner's counsel's theory, the accusations founder upon the actual facts. As an initial matter, Col. Bumgarner specifically refutes that any move of petitioner was ever intended to interfere with petitioner's relationship with his counsel. Bumgarner Decl. ¶ 16 (moves "were in no way intended, planned, designed, or even considered as an action that would interfere with counsel's relationship with Petitioner").

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to include respondent's letter responding to his complaint, in which the government denies any wrong doing. See January 28, 2005 Letter from Jonathan Marcus, Esq., to LCDR Charles Swift (attached as Exhibit B). Moreover, petitioner's complaint from that time period erroneously sought, and seeks, to push the Court's November 8, 2004 Order beyond its terms and improperly expand it into a directive reaching the details of petitioner's confinement conditions in the general detainee population. See infra § C.

Indeed, Guantanamo authorities were sensitive enough to counsel's allegations of potential interference to move petitioner off of Tango Block when those allegations were made, so as to avoid any appearance or perception of an attempt somehow to interfere with petitioner's relationship with counsel.[9] Id. ¶ 14.

In addition, petitioner's accusation that the government tried to use detainee Al Bahlul to inflame petitioner against his counsel is specious. Petitioner was never "in a cell with . . . Mr. al Bahlul," Petr's Mot. ¶ 8. In fact, the detainee closest to petitioner on Tango Block, i.e., one cell away, was David Hicks, who works with his habeas and commission counsel. See Bumgarner Decl. ¶ 15. Thus, contrary to petitioner's counsel's allegation, petitioner was closest in proximity on Tango Block to a detainee supportive of counsel and the habeas corpus process.

Furthermore, petitioner's counsel's conspiracy theory fails to account for the fact that even if this case were somehow to be "withdrawn," as opposed to, for example, petitioner just dismissing one of his multiple counsel, several other detainees, including detainee Hicks, have habeas cases raising essentially the same challenges to the military commission process as Hamdan has raised. See, e.g., Hicks v. Bush, No. 02-CV-0299(CKK); Al Qosi v. Bush, No. 04-CV-1937 (PLF). Further, the challenge in Hicks had been fully briefed and was ready for decision when the Supreme Court granted *certiorari* in this case, leading Judge Kollar-Kotelly to enjoin the Hicks' military commission and stay her decision pending the Supreme Court's decision. See, e.g., Hicks v. Bush, No. 02-CV-0299(CKK) (Nov. 14, 2005 Order; dkt. no. 198).

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[9] Also, that petitioner complained about his move to Tango to petitioner's counsel's representative on December 3, 2005, see Petr's Mot. Ex. A, and was moved out of Tango on December 7, 2005, if anything, would lead petitioner to some level of confidence in his counsel.

Presumably, if this case were not to go forward, the Hicks matter could proceed and be prepared for the Supreme Court in relatively expeditious fashion.

Accordingly, petitioner's counsel's conspiracy theory should be rejected as a basis for any relief in this case.[10]

C. Petitioner Improperly Seeks to Extend the Court's Order to Conditions of Confinement Not Addressed in the Order.

Petitioner asserts that the Court's November 8, 2004 Order was meant "[i]n substantial part" to "alleviate the psychological trauma that [petitioner] experienced as a result of his semi-isolation at Tango and his solitary isolation at Echo." Petr's Mot. ¶ 9. Petitioner complains that his move to Tango "and his consequent isolation" threatens further psychological trauma. Id. ¶¶ 9, 12 & p. 7. Petitioner thus seeks to transform the November 8, 2004 Order into a vehicle to address alleged isolation, and presumably any other condition of confinement that petitioner may challenge, respecting petitioner's detention.

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[10] Because petitioner's conspiracy theory lacks any factual basis whatsoever, petitioner's citation to the All Writs Act, which authorizes a court to issue writs "in aid of their respective jurisdictions", 28 U.S.C. § 1651, as a legal basis for their requested relief, see Petr's Mot. at p. 1, is unavailing. The All Writs Act is only available "to fashion extraordinary remedies when the need arises." Pennsylvania Bureau of Correction v. U.S. Marshals Service, 474 U.S. 34, 43 (1985). It does not provide the authority to issue "ad hoc writs," id., nor is it a "blank check which district courts may use whenever they deem it advisable." See In re Agent Orange Product Liability Litigation, 996 F.2d 1425, 1431 (2d Cir. 1993); cf. Reynolds Metals Co. v. F.E.R.C., 777 F.2d 760, 762 (D.C. Cir. 1985).

Likewise, petitioner's reliance on FED. R. APP. P. 23, presumably Rule 23(a), is meritless. That rule requires the permission of the court to transfer a "prisoner" from one custodian to another custodian. Even assuming a Guantanamo military detainee could be considered a "prisoner" within the meaning of the Rule, the Rule has no application to disciplinary or other transfers within the same detention facility while held by the same custodian. See FED. R. APP. P. 23(a).

In its November 8 Order, however, the Court did not purport to address petitioner's conditions of confinement other than that petitioner be detained in "the general population of Guantanamo detainees, unless some reason other than the pending charges against him requires different treatment." The portion of the Court's Memorandum Opinion addressing the detention issue explains:

> 4. Hamdan's detention claim appears to be moot, and his speedy trial and equal protection claims need not be ruled upon at this time.
>
> Until a few days before the oral argument on Hamdan's petition, his most urgent and striking claim was that he had been unlawfully and inhumanely held in isolation since December 2003 and that such treatment was affecting his mental and psychological health as well as his ability to assist in the preparation of his defense. Late on the Friday afternoon before the oral argument held on Monday, October 25, 2004, the government filed its "notice of a change in circumstances," advising the court that Hamdan had been moved back to Camp Delta – a separate wing of Camp Delta, to be sure, but nevertheless an open-air part of Camp Delta where pre-commission detainees can communicate with each other, exercise, and practice their religion. 10/25/04 Tr. at 11-12. That change in status may not exactly moot Hamdan's claim about his confinement in isolation, which the government is capable of repeating and which has evaded review. The treatment Hamdan may or may not be afforded in the future, however, is not susceptible to review on a writ of habeas corpus.

344 F. Supp. 2d at 172 (footnote omitted).

Thus, not only did the Court not address general conditions of confinement, it noted that "[t]he treatment Hamdan may or may not be afforded in the future . . . is not susceptible to

review on a writ of habeas corpus."[11] Petitioner, thus, should not be permitted to use the Court's November 8 Order in such a fashion.[12]

As a practical matter, however, petitioner was not in "isolation," Petr's Mot. ¶ 9, as a result of his temporary move to Tango Block. Rather, the cells on that block are the same size and construction as those on other individual cell blocks in Camp Delta. In addition, because there are fewer cells on the block, the detainees who reside there are often actually closer to each other. Currently, there is only one open mesh cell between each detainee. As noted by Col. Bumgarner, detainees on Tango Block can talk freely with each other and read books to each other, pray together, and have the opportunity to exercise together. See Bumgarner Decl. ¶ 15.

Accordingly, to the extent petitioner's request for relief in this matter is based on conditions of confinement going beyond something based on "the pending charges against him," it should be rejected.

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[11] Indeed, courts in other jurisdictions that have squarely addressed the issue of whether challenges to conditions of confinement may be brought under habeas proceedings have affirmatively held that conditions of confinement claims that do not seek accelerated release from custody are not within the scope of the writ of habeas corpus. See, e.g., Cochran v. Buss, 381 F.3d 637, 639 (7th Cir. 2004); Carson v. Johnson, 112 F.3d 818, 820-21 (5th Cir.1997); McIntosh v. United States Parole Commission, 115 F.3d 809, 811-12 (10th Cir. 1997); Badea v. Cox, 931 F.2d 573, 574 (9th Cir. 1991); see also Brown v. Plaut, 131 F.3d 163, 168-69 (D.C. Cir. 1997) (acknowledging that habeas corpus might conceivably be used to challenge prison conditions, but indicating that requiring use of habeas corpus in such cases would extend the writ beyond its core).

[12] For these same reasons, the situation raised in petitioner's counsel's January 2005 letter, see Petr's Mot. ¶¶ 12-13; supra at note 8, did not violate the November 8 Order.

D. Petitioner's Request for 30-Days' Advance Notice of Transfer of Petitioner from the General Population is Burdensome and Inappropriate.

While all the relief requested by petitioner should be rejected, petitioner's request for 30-day's notice of any movement of petitioner within Guantanamo from the general population (other than for medical reasons) is especially burdensome, overbroad, and inappropriate and should be denied. Petitioner's counsel argues that such notice is needed to prevent damage to his relationship with petitioner, and he apparently envisions being able to travel to Guantanamo to confer with petitioner prior to any, and possibly every, such move. See Petr's Mot. ¶ 14.

Such an arrangement is unworkable, burdensome, and an inappropriate intrusion into the day-to-day operations of Guantanamo, and, as such, should be rejected. As noted in the declaration of Col. Bumgarner, it is imperative that discipline-related moves, whether between general detainee population blocks or out of the general population to a discipline block, be prompt and consistent in order to be effective as a disciplinary measure. Bumgarner Decl. ¶ 4. Any more than a brief delay in such moves would serve to undermine the effectiveness of the measure, both with respect to a particular detainee that is subject to the move, and with respect to the deterrence effect of the measure upon other detainees. Id.

Petitioner's requested 30-days' advance notice of moves, thus, would serve to undermine the effectiveness of Guantanamo's disciplinary system, including with respect to disciplinary measures that may be appropriate in petitioner's situation in the future. Such a requirement would essentially immunize petitioner from disciplinary moves out of the general detainee population for at least a 30-day period. Even as a matter of common sense, such an arrangement could undermine camp discipline both with respect to petitioner and with respect to other

detainees that may observe petitioner's behavior and Guantanamo's response (or, if petitioner has his way, lack of timely response) thereto. For example, had petitioner's requested requirement been in place recently, petitioner could not have been moved to a discipline cell block for some 30 days after he damaged his pillow cases and clothing on November 13, 2005. Such an arrangement, simply put, would be unacceptable and counterproductive from the standpoint of maintaining discipline and good order among the detainee population. See Bumgarner Decl. ¶ 14.

Further, in the correctional facility context, the Supreme Court has directed courts to refrain from interfering in the day-to-day operations of such facilities, including avoiding becoming "enmeshed in the minutiae of prison operations." See, e.g., Bell v. Wolfish, 441 U.S. 520, 548, 562 (1979) (explaining that the operation of even domestic "correctional facilities is peculiarly the province of the Legislative and Executive Branches of our Government, not the Judicial"); Thornburgh v. Abbott, 490 U.S. 401, 408 (1989) ("Acknowledging the expertise of these officials and that the judiciary is 'ill equipped' to deal with the difficult and delicate problems of prison management, this Court has afforded considerable deference to the determinations of prison administrators who, in the interest of security, regulate the relations between prisoners and the outside world."); Inmates of Occoquan v. Barry, 844 F.2d 828, 841 (D.C. Cir. 1988) (noting that "courts are not to be in the business of running prisons" and that "questions of prison administration are to be left to the discretion of prison administrators").

This admonishment should apply with all the more force in the context of the administration of a military detention facility for enemy combatants in a time of war.[13]

Petitioner's requested relief, however, would enmesh the Court in the details of the day-to-day operations of Guantanamo. That relief would be improper under Bell, unnecessary in light of counsel's ability to visit petitioner regularly, and, as explained above, is without any factual or legal justification. Nothing in this Court's Order purported to prevent or constrain respondent from taking disciplinary action against petitioner for misconduct unrelated to the military commission proceedings. Because that is all the Guantanamo authorities have done, petitioner is not entitled to any relief under the November 8, 2004 Order.

CONCLUSION

For the foregoing reasons, petitioner's motion to compel and for writ in aid of jurisdiction should be denied.

Dated: December 16, 2005

Respectfully submitted,

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[13] See, e.g., Hamdi v. Rumsfeld, 124 S. Ct. 2633, 2647 (2004) (plurality opinion) (stating that "[w]ithout doubt, our Constitution recognizes that core strategic matters of warmaking belong in the hands of those who are best positioned and most politically accountable for making them"); Almurbati v. Bush, 366 F. Supp. 2d 72, 81 (D.D.C. 2005) (indicating that "it is a fundamental principle under our Constitution that deference to the Executive Branch must be afforded in matters concerning the military and national security matters."); Khalid v. Bush, 355 F. Supp. 2d 311, 328 (D.D.C. 2005) (explaining that management of wartime detainees' confinement conditions is the province of the Executive and Legislative branches, thus precluding judicial scrutiny of such conditions), appeal pending.

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EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SALIM AHMED HAMDAN, Petitioner, v. DONALD H. RUMSFELD, et. al., Respondents.	)	Civil Action No. 1:04-CV-01519 (JR)

Pursuant to 28 U.S.C.§ 1746, I, Michael I. Bumgarner, hereby declare that to the best of my knowledge, information, and belief, the following is true, accurate, and correct:

1. I am a Colonel in the United States Army with over twenty-four (24) years of active duty service. I currently serve as the Commander of the Joint Detention Group (JDG) for the Joint Task Force - Guantanamo Bay, Cuba (JTF-GTMO). I am responsible for all aspects of detention operations for JTF-GTMO. I have served in this position since April 2005. The information provided in this declaration is based on my personal knowledge or information supplied to me or learned by me in my official capacity.

2. It is my responsibility, among others, to see that the detention mission is performed in a humane manner that protects the safety and security of the detainees, and the safety of security personnel at JTF-GTMO. I am completely familiar with all of the detention areas within the Joint Task Force, including the actual structure and conditions within each area, and the policies and procedures for detention operations in each of these areas.

3. Every detainee at JTF-GTMO is housed in an area that provides adequate shelter and ventilation. Every detainee at JTF-GTMO has access to potable drinking

water, a toilet, and a sleeping area. Detainees receive three nutritionally sound meals prepared in compliance with their specific religious, cultural, and, where applicable, medical dietary requirements. Detainees in each detention area within JTF-GTMO receive regular opportunities for recreation and regular opportunities to maintain adequate personal hygiene. There are no detention areas at JTF-GTMO that can be defined as solitary confinement; in all detention areas detainees have regular contact at least with guards, medical corpsmen who conduct sick call several times a week, and other personnel involved in the delivery of other services to detainees. As explained below, detainees also typically are able to communicate with other detainees either face-to-face or by spoken word.

4. As with any custodial or correctional institution, custody and control measures are in place to maintain good order and discipline and protect the welfare of all security personnel and detainees alike. The detention facilities at JTF-GTMO use a detainee status classification system with levels of rewards (e.g., recreation time, library items, comfort items above basic issue). This is a system based on the premise that a detainee's behavior determines the extra privileges allowed and the cellblock (location) within Camp Delta where the detainee is housed. Based on this sound correctional principle, moves within Camp Delta, and ultimately from maximum security to medium security, are earned by good behavior and compliance with camp rules and guard force instructions. Likewise, moves the other way, will result from bad behavior, indiscipline, or lack of compliance with camp rules and instructions. In order to be effective, such discipline-related moves must be prompt and consistent; any delay of more than a few days in such moves would serve to undermine the effectiveness of the corrective

discipline, both with respect to the detainee who is moved and with respect to the deterrent effect upon other detainees. Also, within any particular block, the location of a detainee within the block, as well as the proximity of a detainee's cell to other detainees and the arrangements for a detainee's exercise time, is based on a variety of factors, including operational, discipline, and intelligence-related considerations.

5. I am personally familiar with the Petitioner in this case, Salim Ahmed Hamdan. I can determine from the official detention records that from approximately 17 November 2004 to 30 August 2005, the Petitioner was residing on a general population block. On this type of block, a detainee is housed in an individual cell. The cells are all the same size; they each have a bunk, a sink, and an Asian-style toilet. The cell walls have an open steel mesh construction and each cell has a window. Most of the blocks have 48 cells per block. There are four blocks that have fewer cells per block. At the end of each block is an exercise yard and four shower stalls. With the exceptions of the mental health block and the discipline blocks, the other cellblocks in Camps 1, 2, 3 and 4 are considered general population cellblocks. Detainees can talk to each other between cells, see each other, exercise with or around each other, and pray with each other.

6. From approximately the week of 18 October 2004 until 17 November 2004, petitioner resided on "Tango Block," a block that is considered a general population type cellblock except that it was reserved for detainees involved in the military commission process.

7. On or about 21 January 2005 Petitioner's counsel complained to the Department of Justice about petitioner's conditions of confinement. On 22 January 2005 Petitioner was moved for operational and intelligence reasons to another general

population block. Other detainees occupied several cells in the immediate vicinity of petitioner's new cell.

8. On 30 August 2005, Petitioner was admitted into Camp Four, a medium security detention facility. Camp Four differs from other individual-cell, general population blocks because the detainees live communally together in open bays with 10 beds per bay. There are four bays per building. The detainees in Camp Four are able to be outside at tables or in the soccer, volleyball, or basketball recreation yards for up to eight hours per day. Vetting into Camp Four is limited only to the most compliant detainees in the Camp. The structure of the Camp Four operation requires that the detainees who live there consistently follow the rules and comply with the orders and instructions of the guards.

9. On the evening of 5 October 2005, the Petitioner incited a disturbance in Camp Four. He failed to follow instructions of the guards and attempted to have the other detainees in two bays refuse to follow guard instructions to return inside their bays. Petitioner then became verbally abusive to a block Non-Commissioned Officer. As a disciplinary response to this misconduct, Petitioner was moved out of Camp Four the next morning back to a general population block with individual detainee cells.

10. After the move to the new block, Petitioner had more disciplinary problems. On 13 November 2005 he damaged property (he altered pillow cases and his T-shirt which had to be confiscated and replaced) and, in response, he was then moved for his indiscipline to a discipline cellblock on 16 November 2005. Once on that cellblock, Petitioner refused meals and was encouraging other detainees on the cellblock not to eat.

11. After having refused several meals while on the discipline block, and because of his continued encouragement for other detainees to participate in a hunger strike, on 21 November 2005, Petitioner was moved out of the discipline block to back to the block from which he had just previously been moved (which was in the process of being closed) and then to Tango Block, both of which are general population, non-discipline cellblocks.

12. At the time of Petitioner's recent move to Tango Block, it was populated by three of the nine military commissions candidates in the Camp (Ali Hamaz Ahmed Sulayman Al Bahlul, David M. Hicks, and Ibrahim Ahmed Mahmoud Al Qosi). The six other commissions candidates are spread throughout other areas of the Camps based on, among other things, their level of compliance with camp rules.

13. Petitioner's move to Tango Block was sound and appropriate from a detention standpoint. Petitioner was moved to Tango Block because the other detainees on Tango have personalities that would not likely be influenced by petitioner's disruptive behavior; specifically, they would not follow his instructions to not eat or to participate in a hunger strike. Petitioner's move to Tango Block was not based on Petitioner's status as a commission candidate. Tango Block was considered appropriate in deciding on petitioner's move as it houses other detainees who have personalities that are not likely to be influenced by Petitioner's disruptive behavior. The decision to move Petitioner to Tango Block was not intended to place Petitioner in pre-commissions segregation or the like. After his move to Tango Block, the other detainees on the block welcomed him, but were not influenced by him.

14. I am unaware of any attempt by Petitioner's counsel to contact any leader in the JTF to attempt to resolve the issue he has raised concerning the move to Tango Block. After being made aware of Petitioner's emergency motion, I directed Petitioner to be moved from Tango Block to another general population non-discipline block. This move was directed so as to avoid the perception or even the appearance of an attempt to interfere with Petitioner's relationship with his attorney. Currently, petitioner is housed on a standard, compliant level, general population block with other detainees. The petitioner is not isolated or segregated and can see and speak with other detainees. He is also permitted to go to recreation with other detainees

15. Petitioner's counsel's characterization of Tango Block is inaccurate. Contrary to the insinuations of counsel, Tango Block is not isolated. While the block does have fewer cells than some other larger blocks, all of the cells are the exact same size and construction as those on other individual cell blocks in Camp Delta. In addition, because there are fewer cells on the block, the detainees who reside there are often actually closer to each other. Currently, there is only one open mesh cell between each detainee. All of the detainees can talk freely with each other. For the few days that he was on Tango Block, Petitioner was neither isolated by language or culture. The detainees on Tango read books to each other, pray together, have almost an unlimited opportunity to exercise together, and converse with each other on a regular basis. While Tango Block has a dedicated guard force (rather than one which rotates daily), contrary to the allegation of Petitioner's counsel, the chain of command for Tango Block follows the normal structure of the remainder of the Camp Delta. Also, while detainee Al Bahlul has not been receptive to efforts of counsel, both detainee Hicks and detainee Al Qosi are

represented by counsel. Petitioner was never housed in the same cell as detainee Al Bahlul. Detainee Hicks, the person who was housed in the cell closest to Petitioner, routinely meets and works with his attorneys and has been provided an additional cell for library books and attorney client mail that he can access at any time. The argument that Petitioner was placed in Tango Block as part of a plan to influence Petitioner against his counsel or otherwise undermine Petitioner's relationship with his counsel is patently false.

16. Since my arrival as the Commander of the Joint Detention Group, all of the moves of Petitioner within the Camp have been considered to be, and were routine, based on disciplinary concerns, and were in no way intended, planned, designed, or even considered as an action that would interfere with counsel's relationship with Petitioner. Petitioner was not singled out for disparate treatment, but rather was moved for sound operational considerations based on his compliance with camp rules.

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

Dated: December 15, 2005

Michael I. Bumgarner
Colonel, U.S. Army

EXHIBIT B

U.S. Department of Justice

Office of the Solicitor General

Washington, D.C. 20530

January 28, 2005

Charles D. Swift
Lieutenant Commander,
Judge Advocate General Corps
United States Navy
Detailed Defense Counsel
Department of Defense
1620 Defense Pentagon
Washington, D.C. 20301-1620

Re: Hamdan v. Rumsfeld, No. 04-1519(JR)

Dear Mr. Swift:

I am writing on behalf of respondents in the above-referenced action in response to your letter dated January 21, 2005, regarding the conditions of your client's confinement in Camp Delta at the Guantanamo Naval Base. On November 8, 2004, the district court ordered that Hamdan "be released from the pre-Commission detention wing of Camp Delta and returned to the general population of Guantanamo detainees, unless some reason other than the pending charges against him requires different treatment." In compliance with that order, your client was moved to a general population block in Camp Delta on November 17, 2004. His conditions of confinement there did not violate the court's order. Hamdan was moved for operational and intelligence reasons on January 22, 2005, to another cell block in the general population. It is our understanding that several cells in his immediate vicinity are occupied.

As with all detainees housed in the general population of Camp Delta, your client is able to communicate with other detainees. Contrary to the contentions in your letter, Hamdan has not been singled out for adverse treatment, but rather, his

treatment has been based on the neutral application of operational and intelligence considerations applicable to the general detainee population.

Sincerely,

Jonathan L. Marcus
Assistant to the Solicitor General

cc: Karen L. Hecker, Office of the DoD General Counsel