

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

LAKHDAR BOUMEDIENE, <i>et al.</i> ,)	
)	
Petitioners,)	
)	
v.)	Civil Action No. 04-1166 (RJL)
)	
GEORGE W. BUSH,)	
President of the United States, <i>et al.</i> ,)	
)	
Respondents.)	

**RESPONDENTS' NOTICE OF FILING OF DECLARATIONS
REGARDING THE TELEPHONE CALL BETWEEN THE COURT AND
JOINT-TASK FORCE – GUANTANAMO ON NOVEMBER 6, 2008**

In response to the Court's Order stated on the record on November 6, 2008, Respondents submit the attached three declarations regarding the telephone call between the Court and the Joint Task Force - Guantanamo at Guantanamo Bay, Cuba (JTF-GTMO).

Based on the attached declarations, it appears that the Petitioners were unable to hear the unclassified, opening statements of the merits hearing in this proceeding because of a miscommunication or misunderstanding, which Respondents regret and will seek to avoid in future such proceedings in this or other cases. As instructed by the Court, on November 7, 2008, all of the Petitioners listened to a recording of the opening statements. Moreover, the United States Department of Defense will promptly provide Petitioners with an Arabic translation of the transcript of the opening statements.

In accordance with paragraphs 11 and 48 of the Protective Order, Respondents have redacted from the publicly-filed versions of the declarations the declarants' names who were involved with the telephone call. Paragraph 48 of the Protective Order maintains the

Government's ability to submit protected information to the Court on an *in camera* basis, and Respondents have designated the declarants' names as "protected information" under ¶ 11 of the Protective Order (defining "Protected Information").¹ *See also* Order Addressing Designation Procedures For "Protected Information" (Nov. 10, 2004).

The declarants are enlisted military personnel currently assigned to the Joint Task Force Staff Judge Advocate for JTF-GTMO. Given the sensitivity of issues involving JTF-GTMO, and the nature of the events described in the declarations, the declarants' names have been redacted because of privacy concerns for the declarants. The redaction of the declarants' names from the publicly-filed versions of the declarations is a reasonable measure to protect the declarants' legitimate privacy interests because (1) it does not impact the Court's ability to evaluate the explanations provided by the declarants, and (2) there is no apparent public interest in the disclosure of the names of enlisted military personnel involved with setting up the call. Moreover, Respondents have provided the Court and Petitioners' counsel with the declarants' names in the non-public versions of the declarations, so the Court can be assured that the declarants fully stand behind their declarations.

In addition, out of an abundance of caution, Respondents have redacted the name of the Court personnel involved with the call.

Accordingly, the Court should designate the declarants' names as Protected Information" under the Protective Order in this case. A proposed order is submitted herewith.

¹ Paragraph 11 of the Protective Order defines "Protected Information" as unclassified information worthy of special confidentiality protections. Under paragraphs 35-42 of the Protective Order, "Protected Information" – in this case, the declarants' names – may not be publicly disclosed by Petitioners' counsel and may not be shared with Petitioners.

Dated: November 10, 2008

Respectfully submitted,

GREGORY G. KATSAS
Assistant Attorney General

JOHN C. O'QUINN
Deputy Assistant Attorney General

/s/ Nicholas A. Oldham
JOSEPH H. HUNT (D.C. Bar No. 431134)
TERRY M. HENRY
NICHOLAS A. OLDHAM (D.C. Bar No. 484113)
PAUL E. AHERN
FREDERICK S. YOUNG (D.C. Bar No. 421285)
DAVID C. BLAKE (DC Bar 976977)
Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue N.W.
Washington, DC 20530
Tel: (202) 514-3367
Fax: (202) 616-8470
Email: Nicholas.Oldham@usdoj.gov

Attorneys for Respondents

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

1. I am a Staff Sergeant in the United States Air Force with over 10 years of active duty service. I currently serve as a Paralegal for the Joint Task Force Staff Judge Advocate for the Joint Task Force - Guantanamo (JTF-GTMO) at Guantanamo Bay, Cuba. I am responsible for scheduling visits for habeas attorneys as well as military commissions attorneys. I have served in this position since 23 September 2008. This declaration is based on my first hand knowledge of the phone call which took place on 6 November 2008 between the U.S. District Court in Washington, DC and six detainees currently detained here at Guantanamo Bay, Cuba.

2. On 6 November 2008, at approximately 8:50 A.M., I transported one speaker phone to Building 8, located within the JTF-GTMO detention facility, to be used by Detainee 10002 to listen to the District Court proceedings that were scheduled to take place that morning in Washington, DC. I ensured the phone was connected and working properly. I then proceeded to Brown 11, another building located within the JTF-GTMO detention facility, to deliver and

connect a second speaker phone to be used by Detainees 10001, 10003, 10004, 10005, and 10006 in the company of their attorney, Mr. Paul Winke, and his interpreter, Zach Zacharia.

3. When I arrived at Brown 11, I met with Petty Officer [REDACTED] who also works for the JTF-GTMO Staff Judge Advocate, and gave her instructions concerning Building 8 and her duties with regard to the incoming call. I instructed Petty Officer [REDACTED] to answer the phone once the call came through and listen for instructions from the court clerk to put the phone on the speakerphone setting. I instructed her that once the speakerphone setting was operational, she was to place the phone on the mute setting so that the court could not hear the detainee. Petty Officer [REDACTED] acknowledged that she understood my instructions and she proceeded to Building 8 to sit with Detainee 10002.

4. At approximately 9:55 A.M., I plugged in the speaker phone in Brown 11 and made sure it was ready to be used. At 10:30 A.M., I received a phone call from [REDACTED] from the U.S. District Court who asked if I could hear him. I told him that our connection was clear and then he connected Petty Officer [REDACTED] to the phone call at her location in Building 8. [REDACTED] then asked both of us to hold on the line, which we did. At some point the connection was lost and [REDACTED] called back with the same request to hold the line. He then again connected Petty Officer [REDACTED] to the call and we stayed on the line. During this time, I knew the line was connected because previously when the connection was lost we heard a dial tone; however, this time there was no dial tone and I assumed we were placed on hold until the court was ready to proceed with that portion of the hearing which needed to be heard by the detainees.

5. I remained on the phone, while in the company of Detainees 10001, 10003, 10004, 10005, and 10006, Mr. Winke, and Mr. Zacharia, for approximately the next three hours. At no time was the phone placed on the speaker phone setting because I was not given any instruction

to do so by [REDACTED] nor was I ever told that the court was in session, nor most importantly could I hear any proceedings through the phone. Throughout the time I was on the phone, [REDACTED] [REDACTED] would periodically come on the line to ensure we were still on the phone. At those times both Petty Officer [REDACTED] and I would confirm we were still on the line. At no time were we ever asked whether or not we could hear clearly or if we were able to hear any court proceedings.

6. At approximately 1:30 P.M., [REDACTED] came on the line and thanked us for our patience stating that the session was at an end and that he was hanging up. At this moment, I thought the portion of the session needed to be heard by the detainees was not going to take place. I immediately phoned the JTF-GTMO Deputy Staff Judge Advocate and informed him the sequence of events and that nothing was transmitted from the court over the phone connection. He was taken by complete surprise and said he would call Washington DC to find out what had happened. He later called to ask me specific details about the events of that afternoon so he could convey this information to the Department of Justice.

7. At 2:45 P.M., I briefed Mr. Winke, on what had apparently happened. At approximately, 4:00 P.M., myself, Petty Officer [REDACTED] and Mr. Winke had a conference call with attorneys from the Department of Justice and attorneys from Mr. Winke's law firm to discuss the day's events.

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

Dated: 6 November 2008

[REDACTED]
SSgt, U.S. Air Force

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

1. I am a Petty Officer Third Class in the United States Navy with over 3 years of active duty service. I currently serve as a Habeas Escort for the Joint Task Force Staff Judge Advocate for the Joint Task Force - Guantanamo (JTF-GTMO) at Guantanamo Bay, Cuba. I have served in this position since 30 June 2008. This declaration is based on my experience while coordinating the U.S. District Court phone call for Detainee 10002 on 6 November 2008.

2. On that day, I met with Staff Sergeant [REDACTED] who also works for the JTF-GTMO Staff Judge Advocate, at approximately 9:00 A.M. at the Brown 11 building, located within the JTF-GTMO detention facility. Sergeant [REDACTED] instructed me to proceed to Building 8, another building within the JTF-GTMO detention facility, where I was to coordinate the phone call with Detainee 10002. Sergeant [REDACTED] instructed me to answer the phone once the call came through from the court and to listen for instructions from the court clerk to put the phone on the speakerphone setting. He further instructed me, that once the speakerphone setting was operational, to place the phone on the mute setting so that the court could not hear the detainee. I

acknowledged that I understood my instructions and proceeded to Building 8 to sit with Detainee 10002.

3. I arrived at the Building 8 at approximately 9:10 A.M, to coordinate the phone line setup for Detainee 10002. The phone call from the U.S. District Court in Washington DC was received at approximately 10:40 A.M. The call was later lost but was reconnected at approximately 11:10 A.M. with all parties (including Sergeant [REDACTED] who was on another telephone in Brown 11), confirming that we were connected. After connecting, the phone operator for the court stated that he was going to mute the phone lines coming from Guantanamo which prevented us from communicating with him. He later came on line twice to ensure that we were still holding on the line and said something to the effect of "are you still on the line, can you hear me and are you still holding?"

4. At no point did the operator relay any information to me that the court session had started and I never heard any portion of the court proceedings during the duration of the call. The phone operator for the court never asked me if I could hear the court proceedings.

5. I remained monitoring the phone line with the receiver to my ear from 1040 until 1130 when I was relieved by Petty Officer [REDACTED] for approximately ten minutes. Previous to leaving, I handed the phone directly to Petty Officer [REDACTED] with instructions to listen for any direction from the court to place the phone on the speaker setting. After returning, I relieved LN1 [REDACTED] and immediately and put the phone to my ear. When I returned, Petty Officer [REDACTED] reported to me that while she was on the phone she did not hear any form of communication from the court. I then remained listening on the phone until 1:50 P.M.

6. The phone call ended when the phone operator for the court came on the line at 1:50 P.M. and said that he was ending the call and thanked us for our patience.

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

Dated: 6 November 2008



Ship's Serviceman Third Class, USN

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

1. I am a Petty Officer First Class in the United States Navy with 16 years of active duty service. I currently serve as a paralegal for the Joint Task Force Staff Judge Advocate for the Joint Task Force - Guantanamo (JTF-GTMO) at Guantanamo Bay, Cuba.

2. On 6 November 2008, I went to Building 8, located within JTF-GTMO detention facility, to relieve Petty Officer [REDACTED] who was then connected by telephone to the U.S. District Court in Washington, DC, for a short period. I arrived at Building 8 at 11:30 A.M., and was instructed by Petty Officer [REDACTED] to listen and wait for a representative of the court to tell me when to place the phone on the speaker setting. I listened to the phone for approximately ten minutes and no one from the court talked to me over the line. Petty Officer Perry returned at 11:40 A.M. and resumed her duties.

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

Dated: 6 November 2008

[REDACTED]

Legalman First Class, U.S. Navy

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[PROPOSED] ORDER

Pursuant to paragraph 11 of the Protective Order in this case, 344 F. Supp. 2d 174 (D.D.C. 2004), and for good cause shown, the Court hereby designates as “Protected Information” the names of the declarants in the publicly-filed versions of the declarations submitted with Respondents’ Notice of Filing of Declarations Regarding the Telephone Call Between the Court and Joint-task Force – Guantanamo on November 6, 2008.

RICHARD J. LEON
UNITED STATES DISTRICT JUDGE