

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

SAIFULLAH PARACHA,

Petitioner,

v.

Case No. 04cv02022-PLF

ORAL ARGUMENT IS REQUESTED

Hon. GEORGE W. BUSH,

et al.,

Respondents.

**PETITIONER'S MOTION FOR
RELEASE OF PAPERS AND TO COMPEL DISCOVERY**

Petitioner moves for an order compelling respondents to obtain and submit responses to interrogatories served in this case, and to deliver those responses to counsel for petitioner. (Interrogatory 7. is hereby withdrawn because the Combatant Status Review Tribunal record asked for in that interrogatory has already been filed with the Court.) Petitioner also moves for an order requiring respondents to release to petitioner's counsel an envelope of communications from petitioner to his counsel now being unlawfully withheld by respondents at the Secure Facility.

One of the papers in the envelope may be the answers to the interrogatories. If so, and if they are delivered to counsel, then the order to compel answers will be moot.

In support of this motion petitioner submits Exhibit A, an affidavit of counsel Gaillard T. Hunt dated February 14, 2005, detailing the service of these interrogatories and his other efforts to communicate with his putative client, Saifullah Paracha, who is imprisoned and held virtually incommunicado by respondents. The interrogatories themselves are filed as Attachment 1 to that affidavit (in the same PDF file as the affidavit).

Respondents will oppose this motion.

Respectfully submitted,

February 14, 2005

_____/s/_____
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Approval to file this filing directly through the ECF system was granted

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**POINT AND AUTHORITIES IN SUPPORT OF
PETITIONER'S MOTION FOR
RELEASE OF PAPERS AND TO COMPEL DISCOVERY**

The undersigned's affidavit dated February 14, 2005 (filed in ECF as Exhibit A to this motion), shows that on December 23, 2004, the undersigned, in his role as counsel to the next friend, Farhat Paracha, served a set of interrogatories, attached to the affidavit as Attachment 1. These interrogatories were addressed to the petitioner, Saifullah Paracha.

One copy was sent to petitioner through the procedures outlined in "Revised Procedures for Counsel Access to Detainees at the U.S. Naval Base in Guantanamo, Cuba", with a cover letter attached to the affidavit as Attachment 2. Another copy of the interrogatories was sent by mail to the attorneys for respondents, with a cover letter explaining that respondents, having complete control over petitioner and all his communications, were obliged to get the interrogatories to petitioner, to give him a chance to answer them, and to return the answers to the undersigned within 30 days. The cover letter transmitting the interrogatories to attorneys for respondents is attached to the affidavit as Attachment 3.

Approximately 50 days have passed and no answers to the interrogatories have been served on counsel or filed with the Court. Accordingly, petitioner moves for an order requiring respondents to give petitioner a chance to answer the interrogatories and to deliver his answers to counsel.

Counsel's affidavit also details some of his other extensive efforts to communicate with the petitioner. Suffice to say that counsel has been trying Since October 29, 2004, to get messages to the prisoner, and that to this day the government has allowed no response to get through back to counsel.

The Court Security Office has said they received an envelope from the prisoner addressed to counsel. Since counsel was unknown to the prisoner before this case, and we have no other common interest except this case, this envelope must contain information about this case. It probably contains the answer to the interrogatories.

But respondents will not let counsel have the envelope.

The envelope is mail belonging to counsel and the Court should order it handed over to him. Authority for this is the All Writs Act, 28 USC 1651, giving the district

courts power to issue all writs necessary in aid of their jurisdiction. Technically, the writ involved would be the writ of replevin.

If the envelope is from petitioner, it cannot contain classified information, because detainees such as petitioner are not allowed access to classified information. There is nowhere in American law any authority for treating information as classified, or presuming that it is classified, before a classifying officer or authority reviews it and legitimately classifies it under Executive Order 13,292 (68 FR 15315, March 28, 2003, amending E.O. 12,958 of 1995). The only exception to this is atomic energy information which is "born classified" under the Atomic Energy Act of 1946, 42 USC 2014(y), 2274, 2275, 2277.

Deferring to the government's notions of the dangerousness of all Guantanamo prisoners, even those who have been held virtually incommunicado for more than a year, counsel has consented to allow the privilege team to examine these materials and to certify them as not classified, not containing contraband, and not containing illegal matter in furtherance of conspiracy, before handing them over to counsel (reserving, however, the right to claim attorney-client privilege on all future communications, and to request more direct and confidential channels of communication in the future). This would comply to the letter with the terms of the present protective order in this case, the order entered in this case by Judge Green on December 16, 2004 (without notice or hearing).

Therefore the Court should order release of the envelope to counsel, either with or without inspection by the privilege team, within ten days; and also should order that respondents deliver the interrogatories to petitioner, that they give petitioner opportunity and materials necessary answer the interrogatories, and that they deliver petitioner's

IN THE UNITED STATES DISTRICT COURT FOR THE
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SAIFULLAH PARACHA,

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v.

Case No. 04cv020222-PLF

Hon. GEORGE W. BUSH,

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Respondents.

CERTIFICATE OF CONFERRING

I hereby certify that I conferred with Andrew Warden, Esq., attorney for respondents, in an attempt to narrow the issues raised by the within motion. Respondents will oppose the motion.

_____/s/_____
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February 14, 2005

Cleared for public filing by the CSO.

A PROPOSED ORDER FOLLOWS:

IN THE UNITED STATES DISTRICT COURT FOR THE
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SAIFULLAH PARACHA,

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v.

Case No. 04cv02022-PLF

Hon. GEORGE W. BUSH,

et al.,

Respondents.

**ORDER REQUIRING RELEASE OF A COMMUNICATION
AND COMPELLING DELIVERY OF INTERROGATORIES**

On consideration of petitioner's motion for release of papers and to compel discovery,
and the opposition thereto, and the entire record,

IT IS HEREBY ORDERED:

That respondents will release to Gaillard T. Hunt the entire communication they are
holding addressed to counsel from Saifullah Paracha, either with or without review by the
Privilege Team, within ten days of the date of this order, or will show cause to this Court
within that time why they must withhold any portion of that communication;

FURTHER ORDERED:

That on or before 20 days from the date of this order, respondents will obtain and deliver to Gaillard T. Hunt answers to the interrogatories addressed to Saifullah Paracha dated December 23, 2004, and that if Mr. Hunt receives those answers before that time he will inform counsel for the respondents.

IT IS SO ORDERED.

Date

United States District Judge

Notify counsel:

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