

FILED WITH
PAGE 1 of 28
COURT SECURITY OFFICER
John J. Dapell
DATE

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.

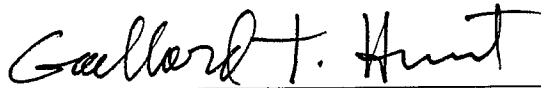
**PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION
ORDERING HIS REMOVAL FROM
PUNITIVE CONDITIONS OF CONFINEMENT**

Petitioner hereby moves this Honorable Court for a preliminary injunction removing petitioner from punitive conditions of confinement, providing that he have access to medical care in an emergency, and/or ameliorating specific burdens of his confinement.

The government will oppose this motion.

Respectfully submitted,

October 7, 2005



GAILLARD T. HUNT

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UNITED STATES OF AMERICA

DISTRICT OF COLUMBIA

GAILLARD T. HUNT deposes and says:

1. I am attorney for petitioner in *Saifullah Paracha v. Hon. George Bush et al.*, 04cv02022-PLF. I make this affidavit in support of petitioner's motion to be released from punitive conditions of confinement, for access to medical attention in emergencies, and/or for amelioration of his confinement.

2. Both petitioner and his wife have told me that he is under treatment for a cardiac problem. Attached hereto is a Discharge Certificate for Mr. Saifullah Paracha from the Akram Medical Complex giving as the diagnosis "Myocardial infarction". This certificate was emailed to me by a PDF image and I have no reason to doubt its accuracy or authenticity.

3. Petitioner has told me that he has no way of summoning medical help in an emergency, as the intercom in his cell communicates only one way, inward. On at least one occasion he has experienced chest pains and was unable to get medical attention.

4. Petitioner is held under tight security in a specially constructed prison located within the U.S. Naval Station at Guantanamo Bay on the southern coast of Cuba. This is about 600 miles from the southern end of Florida and about 1,600 miles from the District of Columbia. Two civilian air services fly small planes from Ft. Lauderdale, Florida, to Guantanamo daily, but the flights often fill up well in advance. (On Friday morning and

Sunday evening there are flights from Kingston, Jamaica.) Thus under the best of circumstances petitioner is remote from this Court and communication would be neither quick nor easy.

5. Civilians may disembark at Guantanamo only with a clearance from the military authorities. Visiting counsel may move about unescorted on the leeward (western) side of the Bay, but on the windward (eastern) side, where the prison is located, they must be accompanied at all times by military escorts. Counsel may confer with prisoners in specially constructed cells grouped around a gravel courtyard. There appear to be about sixteen of these cells, but it is not clear how many are usable. The military authorities do not grant clearance to visit at the convenience of counsel or according to the necessities of the litigation, but according to the availability of this limited space. They have at times shut down all visits for undisclosed "operational" reasons.

6. The "Revised Procedures for Counsel Access to Detainees at the U.S. Naval Base in Guantanamo Bay, Cuba", section VIII.A., says that phone calls will be allowed only under exceptional circumstances. I personally know of no case where a phone call has been allowed.

7. The Revised Procedures allow for mail to and from counsel and a prisoner. But in addition to the substantive restrictions spelled out in the Revised Procedures (which are the subject of many objections and motions to modify elsewhere in this case), the mail is slow and unreliable. This mail takes at least ten days in transit, in addition to whatever time it is held up at either end. It was recently discovered that a whole sack of such mail had been mislaid and sat undelivered for several months in a Department of Homeland Security mailroom at 20 Massachusetts Avenue NW.

8. The Revised Procedures require that any notes taken by counsel while visiting a prisoner be surrendered at the end of the visit, sealed, and sent by mail to the Court Security Office. This is on the theory that the government has a right to, and may decide to, declare this information classified, even though it was learned from a putative enemy alien. This procedure guarantees that counsel does not see his or her notes again till at least two weeks after the interview.

9. All of this is by way of explanation why this motion is not at this time supported by an affidavit of petitioner himself, although one may be available later.

10. I conferred with petitioner Saifullah Paracha in the prison at Guantanamo September 14 and 15, 2005. Petitioner described his confinement as follows:

11. Petitioner's cell is approximately 7 feet by 9 feet. The prisoner controls neither the lighting nor the temperature. The cell has one small translucent opening to the outside. This is about 4 inches by three feet of frosted glass, which admits light but through which nothing can be seen. There is also a one-way glass in the door through which the guards may observe the prisoner without him being able to see out. The door is heavy metal and largely soundproof. There is a slot in the door which the guards can open to push in meals.

12. The cell is air conditioned to what the prisoner estimates as the lower 50s, Fahrenheit. The prisoner must wrap himself in both his blankets at most times to keep warm.

13. Up till about July 2005, the lights were on in the cell at all times. Since then the prisoner may request that the lights be dimmed, but this request is only honored about half the time.

14. The prisoner has had a copy of the Koran and no other reading matter. His requests for a Bible and an English dictionary were refused. (I have delivered several books to the prison authorities for Paracha, but I have no knowledge whether he has been allowed to have them.)

15. The prisoner has no occupation or activity. He has no human contact except incidental exchanges with the guards. Until a few weeks ago, the prisoner was allowed one hour per day (on most but not all days) to exercise in a slightly larger cell, still in solitary with no other persons. A few weeks ago this was upgraded. The prisoner for a while was usually allowed one hour a day in a cell approximately 15 feet by 15 feet, within a larger area where there was another cell containing two other prisoners. They had no common language, so could only try to communicate by gestures and sign language. But recently they have not been seen, so the prisoner's exercise is again solitary.

16. There is a one-way intercom in the cell, but it only transmits messages into the cell. Paracha fears the consequences should he have a serious heart attack when the guards are not watching. He has not seen a doctor since May, 2005.

17. The call to prayer is broadcast five times a day, but to Paracha's knowledge there are no collective religious services. There has been no Islamic chaplain for over a year.

18. The conditions of confinement which I could observe directly were as follows: Guantanamo Bay is an area of great natural beauty, surrounded by mountains and the Caribbean. None of this is visible from the prison. The prison cells are behind chain link fences augmented by green plastic sheeting to shut out any view of the surroundings. The only way a prisoner might be aware that he was privileged, as Vice President Chaney has said, to be "living in the tropics",¹ would be from the high heat and humidity outside the air conditioned areas. At no time did I see a prisoner not shackled or accompanied by guards or both.

I certify under penalty of the laws of perjury that the above statements are true, to the best of my information and belief. Dated: *Oct. 7, 2005, Washington, D.C.*

Gaillard T. Hunt

GAILLARD T. HUNT

¹ June 23, 2005, interview with Wolf Blitzer of CNN.
<http://www.whitehouse.gov/news/releases/2005/06/20050623-8.html>.



Akram Medical Complex (pvt) Ltd.

2-B, MAIN GULBERG LAHORE - 54660 PAKISTAN
TELE: 5710400-07 (8-LINES) TELEFAX: (9242) 5710822 & 5710720

DISCHARGE CERTIFICATE

Dated: 25-09-96 Room No. Ext:

Name: Mr./Mrs./Miss Mr Saifullah Paracha

Age / Sex: 30YS male. Height _____ Weight: _____ Kg.

Date of Admission: 23-09-96 Date of Discharge: 25-09-96

Address: 9-F Gulberg II
Lah.

Diagnosis

1. Ac: Myocardial infarction

2. _____

3. _____

4. _____

5. _____

Consultant

Surgeon _____

Physician Javed Akram & Dr. Gulistan

Anaesthetist Sawar

Obstetrician/Gynaecologist _____

Paediatrician _____

Other (please specify) _____

Attachment to Affidavit
7A

Investigations :

Routine : URINALYSIS.

Hb: _____ gm% PCV: _____ % MCV _____ fL
 ESR: _____ mm TLC: _____ /cc mm
 DLC: N: _____ L: _____ M: _____ %
 Blood Urea: _____ mg% (15 - 40 mg%)
 S. Creatinine: _____ mg% (0.5 - 1.5 mg%)
 Bilirubin Total: _____ mg% (<1 mg%)
 A.L.T.: _____ units/ml (<45 units/ml)
 A.S.T.: _____ units/ml (<40 units/ml)
 Total Proteins: _____ G% (6 - 8.5 G%)
 Albumin: _____ G% (3.5 - 5.5 G%)
 Globulin: _____ G% (1.8 - 3.2 G%)
 Sodium: _____ mEq/L (135 - 154mEq/L)
 Potassium: _____ mEq/L (3.5 - 5.4mEq/L)
 Chloride: _____ mEq/L (95 - 108mEq/L)
 Bicarbonate: _____ mEq/L (24 - 31mEq/L)
 Cardiac Enz.: C.P.K. _____ U/L (24-195)
 A.S.T.: _____ U/ml (<40) L.D.H.: _____ U/L
 CK-MB: _____ %age of CPK (upto 6%)
 EKG : _____
 CXRay _____
 ABGs : _____

Special :

CT Scan _____

 Echo.: _____

 Holter: _____

 Aspiration: _____
 CSF/Pleural/Peritoneal/Pericardial _____

 Others specify _____

Treatment Advised

No.	Drug	Dose	Route	Frequency	Before/after meals	Duration
1.	oj: Isotel 10cc	drops				
2.	oj: Hepasin	2 mic	drops			
3.						
4.	Tab: Lopressor	100mg		1/2 x BD.		
5.	Tab: Ascard.	75mg.		1 x OD.		
6.	Syp: ceccid	2 TSP		2 x QID.		
7.	Propol. Sacel	2 TSP		before meal.		
8.	Tab: Vertresson	30mg		1 x OD.		
9.	Tab: Lexotanil	30mg		1/2 + 1/2 T 1.		
10.	Tab: Disel penic			2 x 75x		

O₂ inhalation

Clinical Presentation :

Severe chest pain radiating to

① arm. associated E Hx.

Clinical Course in Hospital and Summary of Treatment Given :

pt. admitted to above complaint. Necessary investigation done gave in proposed

Allergies Detected:

1. _____
2. _____

Operation Notes :

Condition at the time of Discharge :

empyocis

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SAIFULLAH PARACHA,
Detainee,
Guantanamo Bay Naval Station,
Guantanamo Bay, Cuba,

Petitioner,

v.

Civil Action
1:04cv02022-PLF

Hon . GEORGE W. BUSH
1600 Pennsylvania Avenue NW,
Washington, D.C. 20500,

Hon. DONALD H. RUMSFELD
Secretary of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000,

and

Brigadier General JAY HOOD,
Commander, Joint Task Force-GTMO,
Guantanamo Bay Naval Station
Guantanamo, Cuba

Respondents.

CERTIFICATE OF NOTICE UNDER LOCAL RULE LCvR 65.1

I HEREBY CERTIFY that:

On October 6, 2005, I discussed the within motion for a preliminary injunction with
Andrew Warden, Esq., liaison attorney handling the Guantanamo cases in the Civil

Division, Federal Programs Branch, U.S. Department of Justice. He said the government would oppose all the relief requested.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 7, 2005.



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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.

**POINTS AND AUTHORITIES IN SUPPORT OF
PETITIONER'S MOTION FOR PRELIMINARY INJUNCTION
ORDERING HIS REMOVAL FROM
PUNITIVE CONDITIONS OF CONFINEMENT**

On March 23, 2005, this Court granted the government's motion for a stay of this habeas corpus (docket number 49). On June 16, 2005 (docket number 58), this Court refused petitioner's motion to be released from the isolation, or solitary confinement, in which he said he had been held. That motion rested only on a statement by petitioner to his Combatant Status Review Tribunal that he had been in isolation since his seizure in July 2003, so the Court denied the motion without prejudice, pending further development of the details of petitioner's confinement.

We now have an affidavit explaining what counsel heard and observed during a visit to Guantanamo on September 14-15, 2005, and the motion is therefore renewed. It is also enlarged to ask that petitioner be removed altogether from punitive conditions of confinement, or, alternatively, that specific cruelties be ameliorated.

On the main thrust of his motion, the exact dimensions of the prisoner's cell and the other details are of little legal interest. Petitioner's objection is more basic. If he must be held as an enemy combatant, and if his habeas corpus challenge must be indefinitely postponed by a stay, he requests that he be treated as enemy combatants are traditionally treated, and that he be held in non-punitive conditions with no more restrictions than necessary to prevent him from returning to the field of combat.

Beyond this basic request, petitioner also asks that he be allowed generally to have reading matter, and that he have some way of calling for medical help if he has another heart attack.

I. HOLDING PETITIONER IN SOLITARY CONFINEMENT AND THE BROADER MEASURE OF HOLDING HIM IN PUNITIVE CONDITIONS ARE BOTH WITHOUT WARRANT IN LAW.

a. Enemy combatants are to be held in normal military conditions.

During World War II, as many as 425,871 enemy combatants were held in the United States. In May 1945, the month Germany surrendered, there were 371,683 Germans, 50,273 Italians, and 3,915 Japanese held in the continental U.S. *Nazi Prisoners of War in America*, Arnold Krammer (Chelsea, Michigan: Scarborough House, 1991), pages 272-272. They were kept under military discipline in military barracks (*id.*, 26-36) and treated very much like American draftees. By 1945, "95.6 out of every 100 prisoners of war who could be employed under the terms of the Geneva Convention were

working for private employers or on various military establishments . . . ". *Id.*, 113, citing George G. Lewis and John Mewha, *History of Prisoner of War Utilization by the United States Army, 1776-1945* (Washington: Department of the Army, 1955). Many in the labor program were essentially unguarded while working, and lived on farms or in satellite camps with little security.

There were also several camps for civilians internees, mostly Japanese-Americans removed from the west coast for supposed reasons of security. These camps were controversial at the time and are remembered today as a blot on American honor. They eventually led to reparations for those imprisoned and to many monuments expressing our national shame, including one at Louisiana Avenue and D Street. But a glance at photographs from these camps,² with their open spaces, communal dining halls, and cultural and recreational activities, shows that they provide no precedent for the cruel and mind-breaking isolation cells in which petitioner has been held for the last two years.

In their underlying humanitarian requirements the Geneva Conventions are only declarative of the pre-existing *jus cogens*, the law binding on all nations. The denunciation, or withdrawal, clause of the Third Geneva Convention makes this clear:

Art. 142. . . . The denunciation shall have effect only in respect of the denouncing Power. It shall in no way impair the obligations which the Parties to the conflict shall remain bound to fulfill by virtue of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.

Geneva Convention (III) Relative to the Treatment of Prisoners of War,
6 UST 3316, TIAS 3364, 75 UNTS 135.

² E.g., those in the J. Willard Marriott Library of the University of Utah, <http://www.lib.utah.edu/spec/photo/p144/p144.html>.

This is known as a Martens Clause. 3 Encyclopedia of Public International Law 326-27 (1997). Similar language has been added to most humanitarian treaties to dispel the notion that the humanitarian limitations on war exist only where spelled out in an applicable treaty. Cf. the Hague Convention (II) of 1899, Convention with Respect to the Laws and Customs of War on Land, 32 Stat. 1803, 1805; the Hague Convention of 1907, Convention with Respect to the Laws and Customs of War on Land, 36 Stat. 2277, 2279-2280; etc. (The Martens clauses were partially relied on in the March 12, 2002, decision of the Inter-American Commission on Human Rights raising concerns about the detainees at Guantanamo Bay, http://www.photius.com/rogue_nations/guantanamo.html.) Thus the treaties themselves -- obligations negotiated by the United States, consented to by the Senate, ratified by the President, and therefore "the supreme Law of the Land" under the Constitution, Article VI -- bind the United States to honor the laws and customs of war even in cases not covered by the treaties.

Thus even if not directly binding in all details on the treatment due petitioner, the Third Geneva Convention is nevertheless relevant to show the "ordinary incidents of prison life" for enemy combatants:

Art 21. The Detaining Power may subject prisoners of war to internment. It may impose on them the obligation of not leaving, beyond certain limits, the camp where they are interned, or if the said camp is fenced in, of not going outside its perimeter. Subject to the provisions of the present Convention relative to penal and disciplinary sanctions, prisoners of war may not be held in close confinement except where necessary to safeguard their health and then only during the continuation of the circumstances which make such confinement necessary.

Geneva Convention (III) Relative to the Treatment of Prisoners of War,
6 UST 3316, TIAS 3364, 75 UNTS 135.

The Army Regulation implementing this is AR190-8. Section 3-7.c.(2) of AR190-8 allows "confinement" of a prisoner of war only as a disciplinary measure. This includes both close confinement and solitary confinement. Disciplinary measures require notice of the charges and a chance to defend, 3-7.d., and "The length of a single disciplinary punishment will not exceed 30 days." 3-7.e.(5). Civilian internees are given the same protections. Section 6-12. of AR190-8.

Given the rationale that the prisoners are only held to prevent their taking up arms against the United States and its allies, and given that the government has chosen to hold them on the southern coast of Cuba, it was gratuitous inhumanity to design and construct the prison to invoke the poet's curse, "every prospect pleases, and only man is vile."³ Thus petitioner moves for his release into conditions appropriate for an enemy combatant or a civilian internee: a camp or barracks with other persons, with opportunity for useful activities, and with at least visual contact with the outdoors.

b. In any event, petitioner may not be held in solitary confinement.

Courts have long recognized that solitary confinement is not just a heightened form of imprisonment. In *In re Medley*, 134 U.S. 160, 10 S.Ct. 384, 33 L.Ed. 835 (1890), the Supreme Court reviewed the experience of the Walnut Street Penitentiary in Philadelphia and noted that those subjected to the experiment of being placed in long-term isolation so they could contemplate and repent of their sins generally went mad and "in most cases did not recover sufficient mental activity to be of any subsequent service to the community." 134 U.S. 160, 168. *Medley* held that even where a defendant had been sentenced to hang, the additional requirement that he await his fate in solitary

³ "Missionary Hymn", Reginald Heber, 1783-1826.

confinement was a higher level of punishment and could not be imposed *ex post facto*. As long ago as the statute of 25 George II, c. 37, quoted in *Medley*, solitary confinement was recognized as a "further terror and peculiar mark of infamy," above and beyond being hanged by the neck until dead. The Southern District of Texas, which has been struggling for years to bring Texas prisons up to Constitutional standards, has described administrative segregation units as "virtual incubators of psychoses -- seeding illness in otherwise healthy inmates and exacerbating illness in those already suffering from mental infirmities." *Ruiz v. Johnson*, 154 F. Supp. 2d 975, 984 (S.D. Tex., 2001), quoting *Ruiz v. Johnson*, 37 F. Supp. 2d 855, 907 (S.D. Tex., 1999).

The Supreme Court's recent statement, "Certainly, we agree that indefinite detention for the purpose of interrogation is not authorized," *Hamdi v. Rumsfeld*, 542 U.S. _____, 124 S. Ct. 2633, 2642, 159 L. Ed.2d 578 (2004) implies *a fortiori* that solitary confinement is not allowed for purposes of interrogation. The effects of such total manipulation of a person isolated from contact with anyone except his captors is well-documented in the "Brief of Amici Curiae Human Rights First, Physicians for Human Rights, et al. in Support of Petitioner-Appellee", filed in *Hamdan v. Rumsfeld et al.*, No. 04-5393 in the D.C. Circuit. Petitioner refers the Court to the citations in the physicians' brief which canvass the professional psychological literature. As Judge Posner said in *Davenport v. DeRobertis*, 844 F.2d 1310, 1313 (7th Cir. 1988), "the record shows, what anyway seems pretty obvious, that isolating a human being from other human beings year after year or even month after month can cause substantial psychological damage, even if the isolation is not total."

Researchers who studied prisoners at Walpole, Massachusetts, who had been in isolation from eleven days to ten months, described "a hallucinatory, paranoid, confusional psychosis" resulting from isolation. "Psychopathological Effects of Solitary Confinement, by Stuart Grassian, M.D., 140 *American Journal of Psychiatry* (November, 1983) 1450. Solitary confinement continued to be used in Europe after the early nineteenth century Pennsylvania experiments had been discredited in America, so the German medical literature in the latter half of the nineteenth century has many studies of its effects. "The present observations, coupled with those in the earlier German literature, suggest strongly that the use of solitary confinement carries major psychiatric risks." *Id.*, at 1454.

c. The law requires notice and hearing demonstrating some offense before prisoners may be placed in solitary confinement.

This year's unanimous Supreme Court ruling in *Wilkinson v. Austin*, 545 U.S. _____, 125 S. Ct. 2384, 162 L. Ed.2d 174 (June 13, 2005) reaffirms that some minimal due process is required before an inmate, even one serving a sentence after conviction of crime, is placed in long-term isolation. The Court distinguished *Sandin v. Conner*, 515 U.S. 472, 132 L. Ed. 2d 418, 115 S.Ct. 2293 (1995), where disciplinary confinement for less than 30 days was allowed, and ruled that notice of the charges and a chance to rebut are required before an inmate may be transferred to Ohio's "Supermax" prison. The Court reaffirmed the principle laid out in *Sandin*: Under the basic doctrine of *Wolff v. McDonnell*, 418 U.S. 539, 41 L. Ed. 2d 935, 94 S. Ct. 2963 (1974), some due process is required to take away whatever "liberty interests" may remain after a sentence to imprisonment. These "liberty interests" are implicated whenever prison authorities

impose "atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin*, 515 U.S. 472, 484, quoted with approval in *Wilkinson*, page 11 of the slip opinion, 162 L. Ed.2d 174, 190.

This led to much litigation about where to look for the "ordinary incidents of prison life." These cases are discussed in *Hatch v. D.C.*, 184 F.3d 846, 337 U.S.App. D.C. 266 (1999), the controlling case in this circuit, which tells us to look to the "ordinary incidents" of confinement for other prisoners serving similar sentences for similar crimes. (*Wilkinson* cites *Hatch* without criticism (page 12 of the slip opinion).) In *Hatch*, the prisoner complained of being moved from the general population at Lorton, where he had been confined to his cell only 11 hours each night, to administrative segregation, where he was isolated 23 1/2 hours per day. 184 F.3d 846, 854. The D.C. Circuit held that this isolation could not be summarily dismissed as acceptable as among "the ordinary incidents of prison life," at least not when it continued for more than a brief time.

Paracha's similar isolation, now going into its third year, would therefore require some due process even if he were a convicted felon lawfully sentenced to a penitentiary. But he is not. He is a 58-year-old businessman, with health problems, being held by executive fiat. He is also a citizen of a nation at peace with the United States and cooperating with the United States in the struggle against terrorism, and he had lived in the United States for many years as a lawfully admitted immigrant.

If Paracha were being confined because he were charged with a crime, he would be presumptively entitled to release on bail or other conditions. 18 USC 3142. (If such release were not possible, 18 USC 3142(i) would insure that he would be allowed to

confer with counsel, would be let out to the extent necessary to prepare his defense, and, when practicable, would not be confined with convicted persons.) *Bell v. Wolfish*, 441 U.S. 520, 60 L. Ed. 2d 447, 99 S. Ct. 1861 (1979) affirmed that pre-trial detainees may not be held in punitive conditions, and numerous cases have applied this principle: *Lock v. Jenkins*, 641 F. 2d 488, 492-495 (7th Cir., 1981) prohibited keeping pre-trial detainees in cells 8 feet by 4.66 feet; *Campbell v. Cauthron*, 623 F.2d 503 (8th Cir., 1980) protected pre-trial detainees from overcrowding; etc.

II. IN ANY EVENT, SPECIFIC REMEDIATIONS OF PETITIONER'S CONDITIONS OF CONFINEMENT ARE CALLED FOR.

The fear that petitioner may have another heart attack and will be unable to notify the guards or get relief is well founded. It is no consolation or remedy to say that the government is on notice of this problem and will be duly liable if it happens. This Court must order that he be given some means to communicate in an emergency.

Allowing petitioner a Bible, a dictionary, and other reading matter is simple humanity. It is possible the books his family sent through counsel have been given to petitioner, but the past record makes that unlikely. Because of the distance and the obstacles to communication, the only way to handle this and similar problems that may come up, is for the Court to require respondents to open up a line of communication from petitioner. To this end, the proposed order would require a monthly report from petitioner on his conditions of confinement.

III. THE RELIEF REQUESTED IS WITHIN THE HABEAS CORPUS AUTHORITY, AND OTHER POWERS, OF THIS COURT.

In *Rasul v. Bush*, 542 U.S. 466, 124 S. Ct. 2686 (June 28, 2004), Section V, the Supreme Court reversed dismissal of those claims of Guantanamo petitioners which "deal only with conditions of confinement and do not sound in habeas." The Court made it clear that 28 USC 1331, the Federal Question Statute, and 28 USC 1350, the Alien Tort Statute, are not barred to persons in military custody. Paracha's Amended Petition invokes those provisions and all others that may be relevant. Paragraph 3, Amended Petition.

Further authority to deal with conditions of confinement is found in the habeas corpus statute itself, which says in 28 USC 2243 that the court is to "dispose of the matter as law and justice require." As far back as *In re Bonner*, 151 U.S. 242, 14 S. Ct. 323, 38 L. Ed. 149 (1984) habeas corpus was allowed to challenge the place of confinement, for a petitioner who challenged neither his conviction nor the length of his sentence. In *Johnson v. Avery*, 393 U.S. 483, 89 S. Ct. 747, 21 L. Ed. 2d 718 (1969) the petitioner was demanding law books, a typewriter, and release from disciplinary confinement where he had been sent for the offense of writ writing, but was not challenging the fact of his imprisonment. "The District Court treated this motion as a petition for a writ of habeas corpus and, after a hearing, ordered him released from disciplinary confinement and restored to the status of an ordinary prisoner."

Williams v. U.S., 396 F.3d 412 (D.C. Cir., 2005) cites *Berry v. Funk*, 146 F.3d 1003, 1013, 331 U.S. App. D.C. 62 (1998) for the proposition that Constitutional tort suits, under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), are the federal equivalent of 28 USC 1983 suits against state officials. The bulk of challenges to conditions of confinement are 1983 suits.

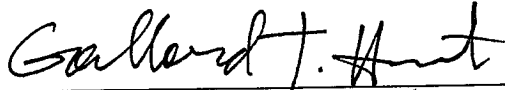
This Court stayed Paracha's case by an expansive reading of 2243's mandate to do what "law and justice require." It would be absurdly inconsistent to doubt the power to put petitioner into more suitable circumstances while that stay is pending.

The only requirements before this Court grants the interim relief requested are the familiar tests of *Virginia Petroleum Jobbers v. FPC*, 104 U.S. App. D.C. 106, 259 F.2d 921 (1958), all of which argue for the injunction: Petitioner is suffering irremediable harm every day he continues under his present conditions. Respondents will suffer no harm if they continue to hold petitioner securely but in more human circumstances. Petitioner has a good chance of success on the merits. (Indeed, if success on the merits means his eventual release, petitioner has a near certainty of success, tempered only by the danger that he will die in captivity.) Most of all, the public interest demands a preliminary injunction. It is time the United States relieved itself, and its military forces, of the embarrassment of the kind of mistreatment of a supposed enemy combatant, or civilian internee, demonstrated in this case.

It is therefore crucial that petitioner Paracha have a way to summon medical attention if he suffers another heart attack, and that he not be held in solitary confinement without reading materials while we wait out the resolution of cases pending in the Court of Appeals. This Court must order him moved into the least onerous conditions of confinement available at Guantanamo, consistent with the purpose for which he is, rightly or wrongly, being held. Submitted herewith is an order calculated to achieve this without disruption to military and government functions.

Respectfully submitted,

October 7, 2005



GAILLARD T. HUNT

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A PROPOSED ORDER FOLLOWS:

IN THE UNITED STATES DISTRICT COURT FOR THE
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SAIFULLAH PARACHA,

Petitioner,

v.

Case No. 04cv02022-PLF

Hon . GEORGE W. BUSH,

et al.,

Respondents.

(PROPOSED) PRELIMINARY INJUNCTION

This Court having considered petitioner's motion for a preliminary injunction and respondents' response thereto, and having considered the entire record, the Court hereby finds that:

1. Petitioner SAIFULLAH PARACHA is detained at the United States Naval Base at Guantanamo Bay, Cuba.

2. Petitioner has petitioned this Court, under the authority of *Rasul v. Bush*, 542 U.S. 466, 124 S. Ct. 2686 (June 28, 2004), for the writ of habeas corpus to inquire into the legitimacy of his detention.

3. This Court has stayed proceedings on that petition pending resolution of certain similar cases now on appeal.

4. Petitioner will suffer continuing and irreparable harm if he must await further action on his petition in punitive conditions of confinement.

5. Respondents will suffer no harm if petitioner is allowed reading matter, exercise, conversation with other persons, religious services, and recreation and other amenities, all consistent with respondents' intention to prevent petitioner from taking up arms or otherwise endangering the security of the United States and its allies.

6. Petitioner has been held largely in solitary confinement, with little or no reading matter, for approximately two years.

7. Petitioner is 58 years old and has a history of cardiac problems.

WHEREFORE, IT IS HEREBY ORDERED that:

A. Respondents will forthwith transfer petitioner to the least onerous conditions of confinement reasonably available at Guantanamo Bay.

B. Respondents will allow petitioner to keep books and reading matter sent to him or will promptly report to this Court, and to counsel, respondents' specific reasons for withholding any specific items.

C. Respondents will arrange that petitioner will have a way speedily to summon medical aid if he needs urgent attention.

D. On or before thirty days from the date of this Order, respondents will report to this Court, and to counsel, the terms, conditions, and circumstances of where petitioner is then held, including his opportunities for exercise, communication, recreation, worship, etc.

E. On or before thirty days from the date of this Order, and monthly thereafter, respondents will transmit to this Court, with copies to counsel, a handwritten communication from petitioner addressed to this Court, commenting on the conditions of his confinement and expressing any requests for amelioration thereof.

IT IS SO ORDERED.

Date

United States District Judge

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