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COURT SECURITY OFFICER  
CSO: [Signature]  
DATE: 5/16/06

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA

SAIFULLAH PARACHA,

Petitioner,

v.

Case No. 04cv02022-PLF-AK  
**ORAL ARGUMENT IS REQUESTED**

Hon. GEORGE W. BUSH,

et al.,

Respondents.

**PETITIONER'S MOTION  
FOR RELEASE OF ATTORNEY-DETAINEE CORRESPONDENCE**

This case is a petition for habeas corpus filed eighteen months ago, in November 2004, seeking the release of Saifullah Paracha from Guantanamo. December 16, 2004, docket number 13, Judge Green entered the customary protective order spelling out procedures for communications between petitioner and counsel. Over Paracha's objections, the case has been stayed. <sup>1/</sup> But the protective order remains in effect.

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<sup>1</sup> On March 23, 2005, docket 49, the assigned judge, Hon. Paul L. Friedman, stayed the case, pending resolution of the other Guantanamo cases before the D.C. Circuit. Paracha appealed. The D.C. Circuit heard oral argument on December 8, 2005, but has neither set the stay aside nor rendered an opinion saying it will not do so.

By an order dated November 2, 2005, this case, along with the other Guantanamo cases, has been assigned to Hon. Magistrate Judge Alan Kay for resolution of "all Motions pertaining to interpretation or construction of any protective order which has been entered". This is a motion asking for release under the protective order of certain impounded correspondence.

Saifullah Paracha is a 58-year-old businessman who is pro-American and anti-terrorist. He lived in New York for 16 years and still has a U.S. green card. His English is excellent. He has great faith in the basic fairness of American institutions. His business interests included the exporting of clothing to the United States, so he agreed to go to Bangkok, Thailand, when he was told that he should meet there with buyers from K-Mart. At the Bangkok airport, however, he was set upon and seized by a gang of masked men. He has been imprisoned by the United States for nearly three years now, apparently because of unwitting and innocent contacts with some businessmen the United States now identifies as terrorists. Since September, 2004, he has been at Guantanamo Bay.

After February 17, 2006, when counsel last visited him at Guantanamo, Mr. Paracha has written a number of papers for counsel's consideration. These are not letters from Mr. Paracha to various third parties, they are papers addressed by Mr. Paracha, through the attorney-detainee mail process, to his counsel for review. Some of them may appear on the face to be petitions to various public officials, including Senators and members of Congress, but they were not sent to those persons, they were sent to counsel. Counsel is to use his professional judgment to see 1) if they contain anything improper or

hurtful to Mr. Paracha's case, and 2) if and how they might effectively be put to use. The information in the papers about the cruelties of solitary confinement, to take one example, may be very useful on the aspects of this petition for habeas corpus which challenge the conditions of confinement.

On April 27, 2006, counsel left the letters at the Secure Facility for delivery to the privilege team for classification review. This was not because anything in the papers appeared sensitive. On the contrary, counsel is prepared to state that nothing in the papers suggested the possibility of any classified content at all. Submitting the papers for review was necessary only because of Revised Procedures, IV.A.6.: "Counsel is required to treat all information learned from a detainee, including any oral and written communications with a detainee, as classified information, unless and until . . . . determined to be otherwise by the privilege team."

Counsel separated the papers into two packages: The first consisted of 24 pages; the second is larger, and consisted of approximately 77 pages, about 60 of which were repetitious and nearly identical. See the attached two memoranda from the privilege team dated May 3, 2006. Counsel submitted them in two packages so he could put a note on the second package, the larger one, pointing out that the clearance process would be easier than it might look, since so much of the package was repetitive.

The privilege team "returned unmarked" all but 3 pages of this attorney-detainee material. Those 3 pages have been marked "Unclassified", but the rest of the material has been returned "unmarked", which means that the privilege team declines to look at the material and see that it is not by any stretch of imagination classified, confidential, relating to national security, or otherwise sensitive. Hence it is neither marked with a

classification nor "Unclassified", but must, because of the protective order, be treated as though it were classified. Revised Procedures, IV.A.6., *supra*.

The two packages of the attorney-detainee material (minus the three pages which were marked "Unclassified") are hereby submitted as exhibits or attachments to this motion. Due to their bulk, they will be electronically scanned as several separate documents, if it is possible to scan them at all. Otherwise, they will be submitted as paper. See LCvR 5.4(e), "Exceptions to requirement of electronic filing".

Any similar papers which have come into the Secure Facility between April 27, 2006, and the submission of this motion will be submitted as a third exhibit or attachment. It must be assumed the privilege team will decline to review them on the same grounds as the others.

Petitioner respectfully requests, in descending order of his preference:

1. An order superseding section IV.A.6. of the Revised Procedures and modifying the protective order to provide that no communication from petitioner, an alien and a putative enemy combatant, need be treated as classified or reviewed for possible classification; or,
2. An order requiring the production of the attached documents to this honorable Court *in camera*, so that the Court may take the few minutes (less than five, probably) necessary to see that these communications are of no sensitivity whatsoever, and then pass them on to counsel with an indication that they are not classified; or,
3. An order requiring the privilege team to inspect the attached documents and to pass them on to counsel within five business days with an indication whether any classified or restricted matter was found therein; or

4. An order requiring respondents, and the Department of Justice and the Department of Defense, to show cause within five business days why there is any possibility of the documents containing anything classified, sensitive, or restricted, and why the Court should not release the documents to counsel forthwith.

Respondents will oppose this motion.

Respectfully submitted,

May 15, 2006

/s/ 

GAILLARD T. HUNT

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ATTACHMENTS:

Two memoranda from the privilege team dated May 3, 2006.

Two envelopes of papers, one of approximately 21 pages, the other of approximately 77 pages.

~~Possibly~~ A third envelope of papers arriving after April 27, 2006, *approximately 33 pages.*

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF COLUMBIA

SAIFULLAH PARACHA,

Petitioner,

v.

Case No. 04cv020222-PLF

Hon. GEORGE W. BUSH,

et al.,

Respondents.

**CERTIFICATE OF CONFERRING**

I hereby certify that on May 13, 2006, I conferred with Andrew Warden, Esq., attorney for respondents, in an attempt to narrow the issues raised by the within motion.

Respondents will oppose this motion.

/s/ Gaillard T. Hunt

May 15, 2006

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IN THE UNITED STATES DISTRICT COURT FOR THE  
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Hon. GEORGE W. BUSH,

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Respondents.

**POINTS AND AUTHORITIES IN SUPPORT OF  
PETITIONER'S MOTION  
FOR RELEASE OF ATTORNEY-DETAINEE CORRESPONDENCE**

Attorney-detainee correspondence is governed by the protective order entered in this case December 16, 2004, docket number 13. That includes by reference (in paragraph 6. of the protective order) the "Revised Procedures For Counsel Access to Detainees At the U.S. Naval Base in Guantanamo Bay, Cuba".

It is unclear to what extent prisoners at Guantanamo are allowed access to the US Postal Service and the regular international mails. The prisoners have no personal accounts and are not allowed to keep cash, and they have no way to buy postage stamps even if they had money. Incoming and outgoing mail is subject to censorship and review by military censors. This process appears to be badly backlogged and delays of several months have been reported. *Adem v. Bush*, 04cv00723-RWR-AK, March 14, 2006, ruling, footnotes 5 and 18. The criteria of censorship are unclear. Paracha, for instance, had not received by mid-February, 2006, several non-controversial paperback books

submitted to military censorship for him back in September, 2005. Petitioner's affidavit of October 24, 2005, filed November 4, 2005; counsel's affidavit filed November 1, 2005; counsel's personal observation during his February, 2006, visit to Guantanamo.

It was both to avoid the delays in the non-legal mail procedures and to preserve confidentiality that a process for attorney-detainee communications was set up in the "Revised Procedures". Removing a communication from the attorney-detainee channel and remanding it to the non-legal channel not only submits it to government review, it also guarantees that it will not be delivered within a reasonable time, possibly not for months.

The government proposes to do exactly that to the attached attorney-detainee communications. Nothing in the protective order or the Revised Procedures justifies this arbitrary delay -- the sort of obstructionism this Court has called a "Sisyphian quagmire". *Adem v. Bush*, 05cv00723-RWR-AK, March 14, 2006, opinion, page 12.

The Revised Procedures define the legal mail that may go through the attorney-detainee channel:

II. E. Legal Mail: Letters written between counsel and a detainee that are related to the counsel's representation of the detainee, as well as privileged documents and publicly-filed legal documents relating to that representation.

Revised Procedures, II. E.

It may be that the attorney-detainee channel may not be used for purely personal letters to a prisoner's friends and family, but nothing in this definition or elsewhere is intended to censor or restrict professional correspondence. By trying to limit what is "related to counsel's representation of the detainee" the privilege team arrogates to itself the power to supervise the litigation strategy chosen by the prisoner and his counsel. The privilege



team would veto arguments and submissions before counsel had even considered them thoroughly, much less submitted them to any court.

The papers in question here deal with one subject and one subject only: petitioner's incarceration at Guantanamo. That is the subject of "counsel's representation of the detainee". The papers may well contain statements that counsel will decide, after consideration, to hold as confidential. There is no ground to deprive them of the attorney-client confidentiality, as the privilege team proposes, and certainly no justification to subject them to the delays on the non-legal mail system.

The privilege team may have been put off here by the apparent bulk of the papers. But this is only apparent. The larger package is mostly repetitious copies of one page, and review of one copy will suffice as a review of all. The other package is largely repetitive as well.

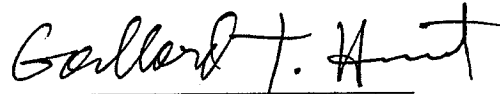
The government will not concede the relevance of *Turner v. Safley*, 482 U.S. 78 (1987), the leading case requiring a "legitimate penological interest" before the communications of convicts be restricted (followed in *Shaw v. Murphy*, 532 U.S.233 (2001)). The government contends that Guantanamo prisoners have no rights under American law, Constitutional or otherwise. If that were true, it might be useful to inquire what rights they have under international law. <sup>2/</sup> But that is not necessary at this point in the litigation, as the protective order is in effect, and the Revised Procedures do allow for attorney-detainee mail, and these communications are squarely within the definition of that channel of communication.

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<sup>2</sup> The Constitution of the Universal Postal Union provides, "Freedom of transit shall be guaranteed throughout the entire territory of the Union." Article 1, [http://www.upu.int/acts/en/1\\_constitution\\_en.pdf](http://www.upu.int/acts/en/1_constitution_en.pdf)

Petitioner's motion lists several possible remedial orders, in descending order of petitioner's preference. The best remedy would be to modify the protective order so future motions such as this will not be necessary. Failing that, the Court should look at these papers, see that there is nothing sensitive in them, and release them to counsel. If that is not possible, the Court must order the privilege team to undertake the review it should have undertaken when first asked to do so, and to release all the papers that do not contain legitimately classifiable information. Failing that, the government should be given five days to show cause why the papers should not be released.

Respectfully submitted,

/s/ 

May 15, 2006

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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) ORDER**

On consideration of petitioner's motion, the opposition thereto, and the entire record:

**IT IS HEREBY ORDERED:**

That the protective order entered in this case be and hereby is modified to remove all obligations to presume that any communications from petitioner or any other person held prisoner at Guantanamo Bay are classified, and to provide that respondents are to transmit promptly and without inspection any written communications from petitioner addressed to his counsel, including the papers submitted with petitioner's motion.

[OR, ALTERNATIVELY]

On consideration of petitioner's motion, the opposition thereto, and the entire record, and after inspection *in camera* of the papers submitted with petitioner's motion:

**IT IS HEREBY ORDERED:**

That the papers contain no classified information, or if they contain any classified information it is hereby declassified, and that the papers be released to petitioner's counsel.

[OR, ALTERNATIVELY]

On consideration of petitioner's motion, the opposition thereto, and the entire record:

**IT IS HEREBY ORDERED:**

That the privilege team is to inspect the papers submitted with petitioner's motion and is to pass them on to counsel within five business days of this order with an indication whether any classified or restricted matter was found therein.

[OR, ALTERNATIVELY]

On consideration of petitioner's motion, the opposition thereto, and the entire record:

**IT IS HEREBY ORDERED:**

That respondents, and the Department of Justice and the Department of Defense, show cause on or before the \_\_\_\_\_ th day of \_\_\_\_\_, 2006, why there is any classified, sensitive, or restricted, information in the documents submitted with petitioner's motion, and why the Court should not release said documents to counsel without restrictions.

**IT IS SO ORDERED.**

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Date

Notify counsel:

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**PRIVILEGED MATERIAL**  
**Attorney/Client Privilege is Retained**

MEMORANDUM FOR: Court Security Officer

May 3, 2006

Fm: Privilege Team

re: Attorney Notes – Third Party Communication, G.T. Hunt

ref: Amended Protective Order and Procedures for Counsel Access

We have reviewed Counsel's submission of 24 pages, submitted on 27 April 2006. The material is composed 3 pages addressed to counsel and 21 pages addressed to the Secretary General of the United Nations, Fidel Castro, the Pakistani government, the Organization of Islamic Countries and the Thai Ambassador to the United States.

The function of the privilege team is not to bypass normal US Postal Service mail handling channels administered by the US military at Guantanamo Bay. The material directed to counsel is marked. All other material is returned unmarked for processing according to the protective order.

Paragraph IV.B.5 of Exhibit A of the Amended Protective Order specifically states "In the event any non-legal correspondence or messages from a detainee to individuals other than his counsel (including family/friends or other attorneys) are sent to counsel as, or included with, legal mail, counsel shall return the documents to military personnel at Guantanamo so they can be processed according to the standard operating procedures for detainee non-legal mail."

Paragraph VI.C of Exhibit A of the Amended Protective Order specifically states "Correspondence or messages from a detainee to individuals other than his counsel (including family/friends or other attorneys) shall not be handled through this process. If the detainee provides these communications to his counsel during a visit, counsel shall give those communications to military personnel at Guantanamo so they can be processed under the standard operating procedures for detainee non-legal mail."

Privilege Team

cc: Privilege Counsel

**PRIVILEGED MATERIAL**  
**Attorney/Client Privilege is Retained**

**PRIVILEGED MATERIAL**  
**Attorney/Client Privilege is Retained**

MEMORANDUM FOR: Court Security Officer ~~Mr. Hunt~~ *Mr. Hunt* May 3, 2006

Fm: Privilege Team

re: Attorney Notes – Third Party Communication, G.T. Hunt

ref: Amended Protective Order and Procedures for Counsel Access

We have reviewed Counsel's submission of 77 pages, submitted on 27 April 2006. The material is composed of a series of letter addressed to US Senators and Congressmen.

The material is returned unmarked for processing according to the protective order. Paragraph IV.B.5 of Exhibit A of the Amended Protective Order specifically states "In the event any non-legal correspondence or messages from a detainee to individuals other than his counsel (including family/friends or other attorneys) are sent to counsel as, or included with, legal mail, counsel shall return the documents to military personnel at Guantanamo so they can be processed according to the standard operating procedures for detainee non-legal mail."

Privilege Team

cc: Privilege Counsel

**PRIVILEGED MATERIAL**  
**Attorney/Client Privilege is Retained**