

FILED WITH
COURT SECURITY OFFICER

7/13/06
DATE *J. Campbell*

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 RESPONSE TO
RESPONDENTS' MOTION FOR PROCEDURES RELATED TO CERTAIN
DETAINEE MATERIALS
AND TO THEIR REQUEST FOR EXPEDITED BRIEFING,
AND PETITIONER'S MOTION FOR MORE INFORMATION**

Respondents have confessed that they seized and possibly read petitioner's privileged attorney-client correspondence. An email from respondents' counsel Terry M. Henry, Esq., dated June 30, 2006, says, "on or about June 14, 2006, documents of all detainees classified as enemy combatants, including legal mail, were impounded for purposes of the investigation [of the June 10, 2006, suicides at Guantanamo]."¹

Respondents on July 7, 2005, moved in this case and most of the other Guantanamo cases for the appointment of a "filter team", to carry out the extraordinary task of further reviewing the

¹ This email is attached as Exhibit B. It was submitted to the Court in *Abdullah v. Bush*, 05cv00023-RWR as an exhibit to petitioner Abdullah's motion for release of his papers.

written and confidential attorney-client communications belonging to most of the prisoners at Guantanamo. Respondents also asked for expedited briefing on that request.

The "filter team" respondents request is wildly inappropriate, and the seizure of privileged communications was grossly improper, but the problem respondents bring to the Court's attention is pressing and real: Three prisoners at Guantanamo have committed suicide, an undetermined number of others have made serious attempts at suicide, and numerous prisoners have taken part in hunger strikes. Many of the hunger strikers would have died had they not been forcibly fed. We must assume other suicides may follow, whatever the efforts of the authorities to prevent them.

Those of us who do not approve of suicide² may condemn this activity, and even complain that the embarrassment it causes the United States is in some sense morally unfair.³ But the government is right to approach the U.S. District Court which has habeas jurisdiction over Guantanamo⁴ and ask that the stays in these cases be lifted or set aside *pro tanto* so the Court can take appropriate action.⁵

² This includes petitioner Paracha, who interprets his Islamic faith to forbid both suicide and terrorism.

³ This was probably the thought behind the much-ridiculed statement of Rear Admiral Harry Harris, "I believe this was not an act of desperation but an act of asymmetrical warfare waged against us." *The Washington Post*, June 16, 2006, A25.

⁴ The recent decision in *Hamdan v. Rumsfeld*, No. 05-184, June 29, 2006, considered the effect of the Detainee Treatment Act and held that it did not cut off jurisdiction over pending cases such as this one.

⁵ Appropriate action should begin with a ruling on Paracha's long-pending motion for summary judgment, as he moved for on July 6, 2006. It is time to abandon the impious fiction that *Rasul v. Bush*, 542 U.S. 466, 124 S. Ct. 2686, 159 L. Ed. 2d 548 (2004) may have conferred meaningless jurisdiction for people with no rights. Footnote 15 of *Rasul* said that petitioners had "unquestionably describe[d] 'custody in violation of the Constitution or laws or treaties of the United States.'" 28 U. S. C. §2241(c)(3)."

Counsel visited petitioner Paracha the week of June 19, 2006. (Counsel's affidavit is attached hereto, Exhibit C.) He found Paracha deprived of all amenities. (An affidavit from Paracha dated June 20, 2006, is attached, Exhibit A.) We do not know what happened to petitioner's privileged papers. We know that they were not available to petitioner at the start of counsel's visit. Were they reviewed by some government person? Were they merely inspected for contraband, or were they read for substance? We do not know.⁶

Then on June 21, 2006, some government persons intervened and restored some amenities to Paracha. (Counsel's affidavit, Exhibit C, paragraph 4.) Did this include the privileged papers? Counsel did not confirm this one way or the other, and even if he had, we still would not know if Paracha has the papers now.

Thus it is possible that Paracha was not affected at all by the general violation of the prisoners' attorney-client privilege, and has no standing to complain of it. Or it is equally possible that his rights were flagrantly violated. It is therefore requested that Paracha's time to respond to the government's motion of July 7, 2006, be extended to ten days after the government provides counsel and the Court with a full account of what happened to Paracha's papers. This should include, at a minimum: 1) An affidavit based on personal knowledge listing all persons who examined the papers or discussed the contents of the papers, and explaining the extent of each such person's knowledge; 2) Full copies of any notes, memoranda, analyses, or lists dealing with Paracha's papers; 3) Affidavits based on personal knowledge giving any reasonable cause the government has to think there may be any material in Paracha's papers subject to search and seizure and not covered by the attorney-client privilege; 4) A statement

⁶ The July 7, 2006, affidavit of Carol Kisthardt, submitted with the government's motion of that date, speaks in general terms of a seizure of papers "throughout the Guantanamo detention facility." Paragraph 4. Nothing in that affidavit connects any suspicion or reasonable cause for suspicion to Paracha or anyone near him.

describing with particularity the papers to be seized or inspected; 5) A schedule giving precise dates of when and details of how the proposed "filter team" would inspect Paracha's papers.⁷

Only when we have this information can we assess the damage done to Paracha by respondents' breach of the attorney-client privilege and begin to fashion an appropriate remedy. Petitioner's time to respond to the motion of July 7, 2006, should be extended to ten days after such time as respondents file the information needed.

Respectfully submitted,

July 12, 2006

/s/ 

GAILLARD T. HUNT

Attorney for Petitioner

(D.C. Bar No. 89375)

1409 Gleason Street

Silver Spring, Maryland 20902

(Not admitted in Maryland)

301-530-2807

gthunt@mdo.net

(Fax: 301-564-6059)

⁷ Paracha speaks and writes fluent English. Materials from counsel to Paracha, and copies of court filings, should be readily identifiable because they are typewritten or printed. There is no argument for inspecting these any more than necessary to see that there are no handwritten notes on them. Where there are handwritten notes, and with handwriting in general, the highest considerations of attorney-client privilege come into play, as these are most likely to be confidential and of strategic importance. But these are also the materials most likely to be held up for a long time if the filter team is inadequately staffed.

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

SAIFULLAH PARACHA,

Petitioner,

v.

Case No. 04cv02022-PLF

Hon . GEORGE W. BUSH,

et al.,

Respondents.

(PROPOSED) ORDER

Upon consideration of petitioner's motion for more time to respond to respondents' motion of July 7, 2006,

Petitioner is hereby granted an extension of time to respond to ten days after respondents serve and file the following:

- 1) An affidavit based on personal knowledge listing all persons who examined any papers taken from Saifullah Paracha or discussed the contents of his papers, and explaining the extent of each such person's knowledge;
- 2) Full copies of any notes, memoranda, analyses, or lists dealing with Paracha's papers;
- 3) Affidavits based on personal knowledge giving any reasonable cause the government has to think there may be any material in Paracha's papers subject to search and seizure and not covered by the attorney-client privilege;

- 4) A statement describing with particularity the papers seized or inspected or proposed to be seized or inspected;
- 5) A schedule giving precise dates of when and details of how the proposed "filter team" would inspect Paracha's papers.

IT IS SO ORDERED.

Date

United States District Judge

Notify counsel:

GAILLARD T. HUNT
 Attorney for Petitioner
 (D.C. Bar No. 89375)
 1409 Gleason Street
 Silver Spring, Maryland 20902
 (Not admitted in Maryland)
 301-530-2807
 gthunt@mdo.net
 (Fax: 301-564-6059)

ANDREW WARDEN, ESQ.
 Attorney for Respondents
 20 Massachusetts Avenue NW
 Room 6118
 Washington, D.C. 20530
 202-514-5633
 Tel: 202-514-4107
 Fax: 202-616-8470

I HEREBY CERTIFY that on July 12, 2006, I left a copy of the within petitioner's response and motion for more information with the Court Security Office for clearance under the protective order.

Gallard T. Hunt

July 12, 2006

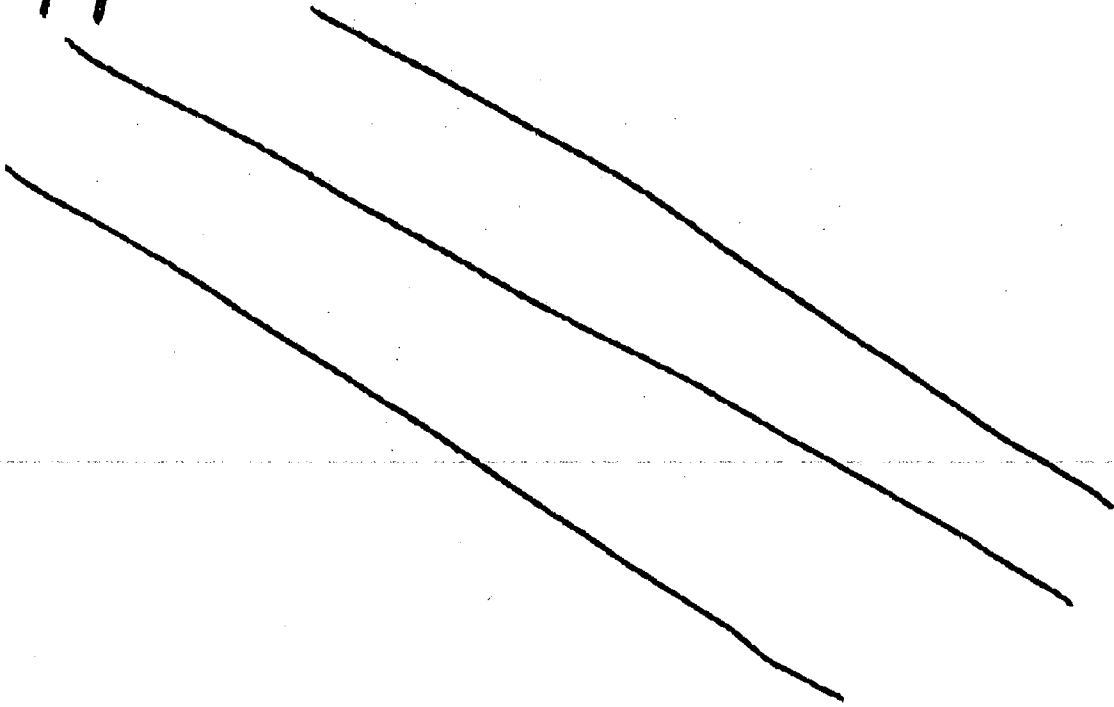
SAIFULLAH PARACE deposes and says:

UNCLASSIFIED

In the last few days, I and all other prisoners to my knowledge, have been deprived of all the necessities of normal existence. We have in our cells nothing more than:

- a prayer mat
- a Koran
- Small Soap
- Hand Towel
- Shirt, pant & shower shoe
- Tooth paste and finger tooth brush

I am not allowed pen or any papers. Consequently I could not effectively confer with my lawyer when he visited June 19, 2006, and the following days. I have none of the notes and legal papers I wanted to discuss with him.



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: June 2, 2006

UNCLASSIFIED

Exhibit A

Carpenter, Charles

From: Terry.Henry@usdoj.gov [mailto:Terry.Henry@usdoj.gov]
Sent: Fri 6/30/2006 5:27 PM
To: Barbara Olshansky
Cc: Andrew.Warden@usdoj.gov; Gitanjali Gutierrez
Subject: Information for counsel

Barbara,

The information below is for the information of all counsel in Guantanamo habeas cases. Would you be so kind as to post it on your listserv? Thanks very much.

Terry

Dear Counsel:

I am writing to inform you regarding certain matters related to documents kept by detainees purportedly as privileged legal materials. First, as you are aware, late last month an incident involving a coordinated violent assault of Guantanamo guard personnel occurred in Camp 4. During the attack and ensuing melee between detainees and guard personnel, a number of bins used for storage of personal items of detainees, including legal mail materials, were disrupted and their contents scattered in the affected bay(s) of Camp 4. During the clean-up after the incident by Guantanamo personnel, materials, including some legal mail, were found to have been contaminated with biologically hazardous matter, such as feces and bodily fluids, that were used by detainees in the attack. These contaminated materials were destroyed for health and safety reasons. In addition, other materials gathered in the clean-up were not readily associable with a particular detainee and, thus, were not able to be properly returned to a particular detainee's storage bin.

Second, as a result of the ongoing Naval Criminal Investigative Service investigation pertaining to the recent suicides at Guantanamo, on or about June 14, 2006, documents of all detainees classified as enemy combatants, including legal mail, were impounded for purposes of the investigation. Respondents anticipate filing a motion regarding the disposition of legal mail materials in the next several days. In the meantime, legal mail deliveries to detainees post-June 14, 2006, are continuing.

Finally, on a separate note, Guantanamo will no longer schedule habeas detainee interviews on Saturday and Sunday. Interviews will be conducted only Monday-Friday. Weekend arrivals to the base will be permitted and counsel may, if necessary, stay at the base over the weekend to conclude interviews the following week. Nonetheless, absent logistical or operational conflicts, previously-approved visits for July and August will remain as presently scheduled.

Regards,

Terry M. Henry
Senior Trial Counsel
Civil Division, Federal Programs Branch
U.S. Department of Justice
Tel. 202.514.4107

The information in this transmittal (including attachments, if any) is intended only for the recipient(s) listed above and may contain information that is privileged and confidential. Any review, use, disclosure, distribution, or copying of this transmittal is prohibited except by or on behalf of the intended recipient. If you have received this transmittal in error, please notify me immediately and destroy all copies of the transmittal. Your cooperation is appreciated.

UNITED STATES OF AMERICA

DISTRICT OF COLUMBIA

GAILLARD T. HUNT deposes and says:

1. I am over 21 years of age and am admitted to practice law in the State of New York and the District of Columbia. My address is 1409 Gleason Street, Silver Spring, Maryland 20902, phone (USA) 301-530-2807. I am fully competent to make this affidavit.
2. Since November 2004 I have been representing Saifullah A. Paracha in his attempts to win his freedom from the U.S. prison at Guantanamo, Cuba. During that time I have sent him numerous letters covered by the attorney-client privilege. I have sent him copies of numerous documents filed with this Court and the D.C. Circuit. I sent him approximately 2000 pages of transcript from the trial of his son, Uzair Paracha, in the Southern District of New York, on charges involving the same transactions that have caused the incarceration of Saifullah Paracha. I would estimate that the legal papers Saifullah Paracha had in his cell, all necessary to follow and help with his case, must be about 3000 pages in all.
3. I have visited Guantanamo and conferred with Paracha four times, for a total of about 15 days. My most recent visit was June 19 to 22, 2006. Prisoners are moved to "Camp Echo" when they are scheduled for counsel visits. When I first saw Paracha on June 19 in Camp Echo he had no legal papers accessible to him. The next day, June 20, 2006, he executed an affidavit saying he had been deprived of all necessities, including pen and paper, for several days. For my visit he was given the flexible style ball point pen prisoners are allowed, and I gave him some paper, but we assumed he would not be allowed to keep it.
4. On June 22, 2006, the last day of my visit, Paracha told me he had been visited by two government persons the evening before, June 21. He said they had restored some of his personal effects. My impression was that this included his legal papers, but I am not sure of this.
5. The protective order does not allow phone calls, and letters take several weeks, so I have no way of asking Saifullah Paracha if he has his legal papers now. I have asked the respondents' attorney, Mr. Andrew Warden, to find out if Paracha is subject to the proposed seizure and scrutiny of papers, but he has been unable to give me an answer to date.
6. Reason and logic would exclude Paracha from any scrutiny of his papers. He is not in the area of the prison where the suicides took place. He is a 58 year old pro-American,

anti-terrorist businessman, with little in common with the other prisoners. He is a devout practitioner of Islam and disapproves of suicide.

7. Thus I have no way of knowing at this time how Paracha would be affected by the government's proposed screening of legal papers. I respectfully ask for more time to investigate and respond to the government's motion of July 7, 2006.

I state under penalty of the perjury laws of the United States that the above statements are true and accurate.

Gaillard T. Hunt

GAILLARD T. HUNT

July 12, 2006