

ORIGINAL

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

SAIFULLAH PARACHA, )  
)  
Petitioner, )  
)  
v. )  
)  
GEORGE W. BUSH, )  
President of the United States, *et al.*, )  
)  
Respondents. )  
\_\_\_\_\_ )

Civil Action No. 04-2022 (PLF)(AK)

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DISTRICT OF COLUMBIA  
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**PRIVILEGE TEAM'S RESPONSE TO PETITIONER'S MOTIONS**

By Order filed February 28, 2007 [136], Magistrate Judge Kay ordered that the Special Litigation Team, on behalf of the Privilege Team, respond to Petitioner's Motion for Release of Attorney-Detainee Correspondence [88] and Petitioner's Motion to Review and Release Confidential Attorney-Detainee Correspondence [95] (hereafter collectively referred to as "Petitioner's Motions"). The following response is submitted pursuant to that Order.

1. Petitioner's Motions were filed on May 16, 2006, and July 18, 2006, respectively, and concern materials that the Privilege Team declined to review on the ground that those materials were outside the scope of the Amended Protective Order entered in this case. Petitioner's motions were served on Respondents and, except for certain attachments consisting of material submitted to but not processed by the Privilege Team, have been filed on the public record. Respondents have in turn publicly filed an opposition to each motion, and those oppositions are also currently pending before the Court. Upon review of these publicly-filed materials, the Special Litigation Team has concluded that Petitioner's Motions can be resolved based upon the information that appears on the public record. Consequently, the Special

Litigation Team has not reviewed or otherwise become privy to any of Petitioner's privileged attorney-client communications, and has prepared this response using only publicly available information.<sup>1</sup>

2. The Privilege Team concurs with the arguments advanced by Respondents in their oppositions to Petitioner's Motions, and hereby adopts those arguments as the Privilege Team's response to the motions. The particular materials at issue here consist of messages from the Petitioner to individuals other than his counsel. The Access Procedures that are attached to and incorporated in the Amended Protective Order expressly provide that such communications may not be submitted to the Privilege Team, but must instead be processed by the military authorities at Guantanamo Bay. *See* Amended Protective Order, Exhibit A, §§ IV.5 & VI.C. Furthermore, the Court of Appeals has held that recent amendments to the habeas corpus statute precluding jurisdiction over habeas petitions filed by aliens detained as enemy combatants (1) are applicable to habeas petitions of aliens detained as enemy combatants at Guantanamo Bay which were pending on the date of enactment of those amendments, and (2) do not violate the Suspension Clause of the United States Constitution. *See Boumediene v. Bush*, \_\_\_ F.3d \_\_\_, 2007 WL 506581 (D.C. Cir. February 20, 2007). Thus, "Federal courts have no jurisdiction in these cases." *Id.* \*9.

3. On September 25, 2006, subsequent to the filing of Respondents' oppositions to Petitioner's Motions, Magistrate Judge Kay issued an *Order Addressing Privilege Review*

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<sup>1</sup> Because this response does not contain any privileged or otherwise protected information, the Special Litigation Team believes that it may properly be filed in unredacted form on the public record. Nevertheless, out of an abundance of caution, the Special Litigation Team has consulted with Petitioner's counsel (Gaillard T. Hunt, Esq.) about the appropriate manner for filing this response. Petitioner's counsel did not object to public filing.

*Team's Responsibilities Under the Protective Order in Abdullah Thani Faris Al-Anazi, v. Bush*, Civ. No. 05-CV-345 (JDB)(AK), and 14 other habeas cases brought by aliens detained as enemy combatants at Guantanamo Bay. In this Order, Magistrate Judge Kay ruled that the Privilege Team "may not engage in self-help in policing what it believes to be the proper interpretation of the Protective Order." The above-captioned case was not included in the cases in which this Order was entered, however, so the Order is not directly applicable here. Moreover, the Order was entered in the context of cases where the Privilege Team could not express its concerns about possible violations of the Protective Order to Respondents because of the Privilege Team's obligation to maintain the confidentiality of a petitioner's privileged attorney-client communications. In the instant case, by contrast, the Privilege Team's concerns were revealed to Respondents in Petitioner's Motions, and the Respondents then filed opposition papers which, in effect, seek to bar Privilege Team review of the materials at issue. If the Privilege Team had proceeded to process those materials in accordance with the ruling in the September 25, 2006 Order, such action could have rendered Respondents' oppositions to Petitioner's Motions moot before Respondents' arguments had been adjudicated by the Court. *Cf., e.g., Providence Journal Co. v. FBI*, 595 F.2d 889 (1st Cir. 1979) (holding that failure to defer release of records in Freedom of Information Act case would result in irreparable harm by frustrating government's right to appeal). Consequently, the Privilege Team took no further action with respect to the materials at issue here pending resolution of Petitioner's Motions and Respondents' oppositions thereto.

Dated: March 9, 2007

Respectfully submitted,

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*/s/ Daniel F. Van Horn*

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**CERTIFICATE OF SERVICE**


I hereby certify that, on March 9, 2007, a copy of the foregoing *Privilege Team's Response to Petitioner's Motions* was sent by mail, first-class postage prepaid, and by e-mail to the following counsel:

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