

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAHMOAD ABDAH, <i>et al.</i>)	
)	
Petitioners,)	
)	
v.)	Civil Action No. 04-CV-1254 (HHK)
)	
GEORGE W. BUSH, <i>et al.</i> ,)	
)	
Respondents.)	

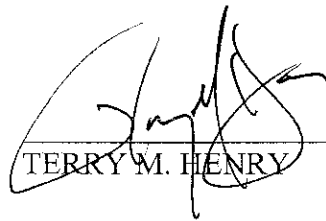
DECLARATION OF TERRY M. HENRY

Pursuant to 28 U.S.C. § 1746, I, Terry M. Henry, hereby declare:

1. I serve as Senior Trial Counsel in the United States Department of Justice, Civil Division, Federal Programs Branch. I serve as one of the counsel for respondents in the Guantanamo Bay habeas litigation, including in this case.
2. Attached is a true copy of an electronic mail communication I sent to counsel for petitioners in this case, Marc Falkoff and David Remes, and various other counsel for petitioners in the Guantanamo Bay habeas cases on Monday, March 14, 2005.

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

Dated: March 16, 2005



TERRY M. HENRY

Henry, Terry (CIV)

From: Henry, Terry (CIV)
Sent: Monday, March 14, 2005 11:05 AM
To: 'mfalkoff@cov.com'; 'dremes@cov.com'; 'taylor.ralph@dorseylaw.com'; 'neil.koslowe@shearman.com'; 'karen.lee@newyork.allenoverly.com'; 'pamela.chepiga@newyork.allenoverly.com'; 'ggutierrez@gibbonslaw.com'; 'jhafetz@gibbonslaw.com'; 'wesley.powell@cliffordchance.com'; 'Tina.Foster@CliffordChance.com'; 'Rob.Kirsch@wilmerhale.com'; 'douglas.curtis@wilmerhale.com'; 'mickum@khlaw.com'; 'behr@khlaw.com'; 'jmargulies@jmrllaw.com'; 'mahmad@wcl.american.edu'; 'rwilson@wcl.american.edu'; 'azmybahe@shu.edu'; 'mgoldman@jenner.com'; 'CHEMERINSKY@law.duke.edu'; 'Colangelo.Bryan.Joshua@dorsey.com'; 'aaron.stewart@dorsey.com'; 'rob.kirsch@wilmerhale.com'; 'katyain@law.georgetown.edu'; 'JSullivan@perkinscoie.com'; 'BSharp@perkinscoie.com'; 'KCameron@perkinscoie.com'; 'clivessgb@aol.com'; 'beane.law@verizon.net'; 'nmoen@fredlaw.com'; 'jdorsey@fredlaw.com'; 'jlundquist@fredlaw.com'; 'dschneider@fredlaw.com'; 'dfoster@fredlaw.com'; 'atareen@fredlaw.com'; 'jsherman@fredlaw.com'; 'gthunt@mdo.net'; 'PREichler@Foleyhoag.com'; 'JMonast@foleyhoag.com'; 'SAltschuller@foleyhoag.com'; 'LMartin@foleyhoag.com'; 'stephmac@earthlink.net'; 'marjoriemsmith@verizon.net'
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Subject: Guantanamo Bay Detainee Cases

Dear Counsel:

A number of you have inquired regarding or stated your intention to seek TROs either restraining any transfer of petitioners from Guantanamo Bay (GTMO) or conditioning such transfer on notice being given to you beforehand. These inquiries appear to have been based on an article in the Friday New York Times, as well as a TRO sought by counsel in Abdah, after hours on Friday and without the notice to the government contemplated under the Local Rules. The TRO was granted on Saturday afternoon, again without prior notice of any kind to the government.

I am writing to inform you that, while the government will not consent to motions for TRO or PI seeking to restrain transfers or condition them upon notice, there is no legitimate factual basis or need for TROs in this matter. The impression counsel have drawn from the NY Times article that the Department of Defense (DoD) intends to immediately transfer or begin transferring hundreds of GTMO detainees to various countries is erroneous. It is likewise erroneous that DoD is undertaking any transfer of GTMO detainees in order to defeat the court's jurisdiction. Further, the transfer of three detainees on Saturday involved the transfer, for release, of detainees determined no longer to be enemy combatants.

No transfer of any current, individual habeas petitioner, not already publicly announced and effected, has been scheduled. Without commenting with respect to any particular individual petitioner, any such transfer, even if approved, would be weeks away. Had counsel in Abdah complied with the Local Rules by affording the government notice of the TRO motion in that case prior to its filing or entry of the TRO, we could have provided this same information to counsel and the Court.

The government's position regarding transfers and prior notice of transfers is reflected in its recent filings in El Mashad, Abdah, and Al Adahi. In any event, however, there is no legitimate factual basis justifying TROs in relation to this matter.

Sincerely,

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