



U.S. Department of Justice

Civil Division

COPY

Washington, D.C. 20530

September 1, 2004

By Hand-Delivery

The Honorable Joyce Hens Green
Senior United States District Judge
United States Courthouse
Room 2315
333 Constitution Ave., N.W.
Washington, D.C. 20001

Re: Guantanamo Bay Detainee Cases

Dear Judge Green:

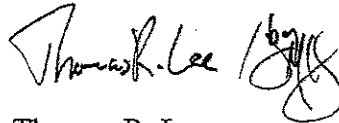
Pursuant to your request, I am writing to inform the Court that the military has completed its evaluation whether national security interests would require the monitoring of meetings and communications between petitioners' counsel and petitioner-detainees in these cases. The military previously determined that such real-time monitoring would be necessary with respect to three of the petitioner-detainees in *Al Odah v. Bush*, Civil No. 02-0828 (CKK). The procedures and justification for monitoring of the three petitioner-detainees in *Al Odah* was the subject of briefing and a hearing before Judge Kollar-Kotelly. The military has since determined that no monitoring of any other petitioner-detainees in these cases will be required.

For the Court's information, and pursuant to your request, I am attaching a copy of the "Procedures for Counsel Access to Detainees at the US Naval Base in Guantanamo Bay, Cuba" ("Procedures"). As explained in Respondent's Statement on Restrictions on Attorney Access to Petitioner-Detainees provided to the Court at the August 27, 2004 conference, the Procedures outline the general rules governing counsel access to detainees, including monitoring. The Procedures also address other aspects of counsel access, including the need for a security clearance for counsel, various logistical and security precautions, as well as the need for classification review of communications exchanged between counsel and a petitioner-detainee.¹

¹ In addition, counsel visiting Guantanamo Bay will be provided a document such as the attached "Procedures for Visits with Detainees for the Week of August 29, 2004," which addresses additional logistical and security matters in a more detailed fashion. The Court was

The purpose of classification review is to ensure the proper handling, storage, and transportation of classified information. Such classification review will be conducted only by a Department of Defense "privilege team," *i.e.*, DoD personnel who are and will continue to be walled off from participation in any court or military proceedings concerning the detainee. See Procedures §§ II.D, VI., VII. Classification review will be implemented with respect to all petitioner-detainees in these cases, regardless of whether real-time monitoring is also required.

Respectfully submitted,



Thomas R. Lee
Deputy Assistant Attorney General

On Behalf of Respondents

cc: Counsel for petitioners in: (by electronic mail)

Rasul v. Bush, No. 02-CV-0299;
Al Odah v. United States, No. 02-CV-0828;
Habib v. Bush, No. 02-CV-1130;
Kurnaz v. Bush, No. 04-CV-1135;
O.K. v. Bush, No. 04-CV-1136;
Begg v. Bush, No. 04-CV-1137;
Benchellali v. Bush, No. 04-CV-1142;
El-Banna v. Bush, No. 04-CV-1144;
Gherebi v. Bush, No. 04-CV-1164;
Boumediene v. Bush, No. 04-CV-1166;
Anam v. Bush, No. 04-CV-1194;
Almurbati v. Bush, 04-CV-1227;
Abdah v. Bush, No. 04-CV-1254.

provided a copy of this document at the August 27, 2004 conference.

**PROCEDURES FOR COUNSEL ACCESS TO DETAINEES
AT THE US NAVAL BASE IN GUANTANAMO BAY, CUBA**

I. Applicability

The following procedures shall govern access to all detainees in the control of the Department of Defense (DoD) at the US Naval Base in Guantanamo Bay, Cuba by counsel for purposes of habeas corpus or other litigation in federal court.

These procedures do not apply to counsel who are retained solely to assist in the defense of a detainee whom the President has determined to be subject to trial by military commission. Access by that counsel is covered by the Procedures for Monitoring Communications Between Detainees Subject to Trial by Military Commission and their Defense Counsel Pursuant to Military Commission Order No. 3.

II. Definitions

A. Communications: All forms of communication between counsel and a detainee, including oral, written, electronic, or by any other means.

B. Counsel: An attorney who is employed or retained by or on behalf of a detainee for purposes of representing the detainee in habeas corpus or other litigation in federal court in the United States and who is admitted, either generally or pro hac vice, in the jurisdiction where the habeas petition or other litigation is pending. Unless otherwise stated, "counsel" also includes co-counsel, interpreters, translators, paralegals, investigators and all other personnel or support staff employed or engaged to assist in the litigation. Neither the references herein to "counsel," nor any other part of these procedures reflect any determination about, or an acknowledgement of, an attorney-detainee relationship between counsel and the detainee.

C. Detainee: An individual detained by DoD as an enemy combatant at U.S. Naval Base, Guantanamo Bay, Cuba.

D. Privilege Team: A team comprised of one or more DoD attorneys and one or more intelligence or law enforcement personnel who have not taken part in, and, in the future, will not take part in, any court, military commission or combatant status tribunal proceedings concerning the detainee. If required, the privilege team may include interpreters/translators, provided that such personnel meet these same criteria.

III. Requirements for Access to and Communication with Detainees

A. Security Clearance:

1. Counsel must hold a valid current United States security clearance at the Secret level or higher, or its equivalent (as determined by appropriate DoD intelligence personnel).
2. Counsel who possess a valid security clearance shall provide, in writing, the date of their background investigation, the date such clearance was granted, the level of the clearance, and the agency who granted the clearance. Access will be granted only after DoD verification of the security clearance.
3. Counsel who does not currently possess a Secret clearance will be required to submit to a background investigation and to pay any actual costs associated with the processing of the same.

B. Acknowledgement of and Compliance with Access Procedures

1. Before being granted access to the detainee, counsel will receive a copy of these procedures. To have access to the detainee, counsel must agree to comply fully with these procedures and must sign an affirmation acknowledging his/her agreement to comply with them.
2. This affirmation will not be considered an acknowledgement by counsel that the procedures are legally permissible. Even if counsel elects to challenge these procedures, counsel may not knowingly disobey an obligation imposed by these procedures.
3. The DoD expects that counsel, counsel's staff, and anyone acting on the behalf of the attorney will fully abide by the requirements of this document. The attorney is required to provide the DoD with signed affirmations from interpreters, translators, paralegals, investigators and all other personnel or support staff employed or engaged to assist in the litigation, prior to those individuals being utilized by the attorney.
4. Should counsel fail to comply with the procedures set forth in this document, access to or communication with the detainee will not be permitted.

C. Verification of Representation

1. Prior to being permitted access to the detainee, counsel must provide DoD with a *Notification of Representation*. This Notification must include the counsel's licensing information, business and email addresses and phone number, as well as the name of the detainee being represented by the counsel. Furthermore, the counsel must provide sufficient details regarding the circumstances of his/her retention to demonstrate the

counsel's authority or standing to bring a habeas or other federal court action on the detainee's behalf.

2. After meeting with the detainee, counsel must provide DoD with an *Acknowledgement of Representation*. This document must be signed by the detainee and must specifically state that the detainee is being represented in habeas or other federal litigation by counsel named in the Acknowledgement.
3. If the counsel withdraws from representation of the detainee or if the representation is otherwise terminated, counsel is required to inform DoD immediately of that change in circumstances.
4. Counsel must provide DoD with a signed representation stating that (a) to the best of counsel's knowledge after reasonable inquiry, the source of funds to pay counsel any fees or reimbursement of expenses are not funded directly or indirectly by persons or entities the counsel believes are connected to terrorism or the product of terrorist activities, including "Specially Designated Global Terrorists," identified pursuant to Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (Sept. 23, 2001) or Exec. Order No. 12,947, 60 Fed. Reg. 5079 (Jan. 23, 1995), and (b) counsel has complied with ABA Model Rule 1.8(f).

D. Logistics of Counsel Visits

1. Counsel shall submit to the Commander or Acting Commander, JTF-Guantanamo (hereinafter Commander), any request to meet with a detainee. This request shall specify date(s) of availability for the meeting, the desired duration of the meeting and the language that will be utilized during the meeting with the detainee. Reasonable efforts will be made to accommodate the counsel's request regarding the scheduling of a meeting. Once the request has been approved, DoD will contact counsel with the date and duration of the meeting.
2. Legal visits shall take place in a room designated by JTF-Guantanamo. No more than one attorney and one interpreter/translator shall visit with a detainee at one time, unless approved in advance by the Commander, JTF-Guantanamo.
3. Due to the mission and location of the US Naval Base at Guantanamo Bay, Cuba, certain logistical details will need to be coordinated by counsel prior to arrival. This includes arrangements for travel and lodging. Specific information regarding these issues will be provided by JTF-Guantanamo.

IV. Decision to Monitor Counsel Visits And Communications

- A. When appropriate, DoD will monitor communications between the detainee and counsel to protect U.S. national security interests without compromising attorney-detainee privileged communications. Communications solely between counsel and/or translators/interpreters will not be monitored.

- B. Only the Commander, JTF-GTMO may approve monitoring communications pursuant to these procedures.
- C. Monitoring shall only be approved following an individualized assessment of the national security implications of unmonitored communications between a detainee and his counsel or agents.
- D. Prior to ordering monitoring of the attorney-detainee communications, the approval authority must conclude that it is reasonably necessary to protect against the disclosure of information that reasonably could be expected to result in immediate and substantial harm to the national security, including communications regarding:
 - 1. The facilitation of terrorist operations or future terrorist acts;
 - 2. Military plans, weapons systems, or operations;
 - 3. Foreign government information;
 - 4. Foreign relations or foreign activities of the United States, including confidential sources;
 - 5. Intelligence activities (including special activities), intelligence sources or methods, or cryptology;
 - 6. Vulnerabilities or capabilities of systems, installations, infrastructures, projects, plans or protection services relating to national security, which includes defense against transnational terrorism;
 - 7. Matters that are classified above the clearance level of the counsel.
- E. The Commander's written determination will remain valid, unless otherwise noted in the determination, for all subsequent communications between a given detainee and his counsel, unless and until it is rescinded by the Commander, JTF-Guantanamo or higher authority.
- F. To ensure that any attorney-detainee privileged communications are not compromised, monitoring will be conducted by a DoD privilege team. Except as provided herein, the privilege team shall not disseminate information derived from monitored communications.

V. Monitoring of Counsel Visits And Communications

- A. When authorized under these procedures, the privilege team will monitor oral communications in real time between counsel and the detainee during any meetings.

1. These communications will be recorded in their entirety by audio and/or video recording devices.
 2. Video recordings may be retained by JTF-Guantanamo—notwithstanding the prohibition against non-privilege team members having access to records of monitored conversations—provided that the recordings do not include audio.
 3. Audio recordings may be retained by JTF-Guantanamo only as provided for herein.
- B. The privilege team may terminate the meeting immediately if, at any time, the team determines that the detainee or counsel are:
1. Attempting to defeat or frustrate the monitoring of communications through the use of low-volume conversation, codes or discussions in a language other than previously agreed upon; or
 2. Conveying information in furtherance of terrorist or other criminal operations or that reasonably could be expected to result in immediate and substantial harm to the national security, as determined by the Commander, JTF-Guantanamo under these procedures.
- C. To the extent the detainee divulges information to counsel that the privilege team identifies as classified, the privilege team may immediately terminate the meeting if:
1. Any discussion of such classified information is outside counsel's pre-cleared classification level, or is not related to counsel's representation of the detainee.
 2. Counsel discloses any classified information to the detainee (other than information that the counsel obtained from the detainee), or if counsel discloses to the detainee that the Government has classified any information at any particular classification level.
- D. The privilege team may monitor all written materials brought into or out of the meeting by counsel or counsel's staff, including notes, drawings or other writings created by counsel and/or the detainee during or prior to meetings to determine whether any such communications convey information that reasonably could be expected to result in immediate and substantial harm to the national security, as determined by the Commander, JTF-Guantanamo under these procedures.
- E. The privilege team may also monitor mail between the counsel and the detainee to determine whether any monitored communications convey information that reasonably could be expected to result in immediate and substantial harm to the national security, as determined by the Commander, JTF-Guantanamo under these procedures.

VI. Classification Review of Legal Mail

- A. In order to ensure the proper handling of classified information, the privilege team may review mail between counsel and the detainee to determine its appropriate security classification.
- B. The cover sheet or envelope of any such mail shall include the annotation "Attorney-Detainee materials."
- C. After analysis and approval, if appropriate, the detainee's incoming legal mail will be sealed and forwarded to the appropriate JTF-Guantanamo staff section for delivery to the detainee, and the detainee's outgoing legal mail will be sealed and forwarded to the detainee's counsel.
- D. The privilege team will forward the detainee's legal mail after a review and analysis period not to exceed:
 - a. Five (5) business days for legal mail that is written in the English language;
 - b. Ten (10) business days for any legal mail that includes writing in any language other than English, to allow for translation;
 - c. Thirty (30) business days for any legal mail where the privilege team has reason to believe that a code was used, to allow for further analysis.
- E. Legal mail may be retained by JTF-Guantanamo only as provided for herein.

VII. Classification Review of Materials Brought Into or Out of the Meeting by Counsel

- A. In order to ensure the proper handling of classified information, the privilege team may review all written materials brought into or out of the meeting by counsel or counsel's staff, including notes, drawings or other writings created by counsel and/or the detainee during or prior to meetings to determine their appropriate security classification.
- B. After review by the privilege team, counsel may provide the detainee with court papers or other legal or related documents pertaining to his case, provided they do not contain any classified information.
- C. Security personnel will directly receive and distribute all materials passed between counsel and the detainee during their meeting.
- D. Copies of any documents counsel desires to leave with the detainee following the meeting must be provided to the Commander, JTF-Guantanamo at least three business days in advance. Counsel shall annotate on the cover sheet or forwarding envelope the words "Attorney-Detainee Documents."

- E. These materials may be retained by JTF-Guantanamo only as provided for herein.

VIII. Telephonic Access to Detainee

- A. Requests for telephonic access to the detainee by counsel or other persons will not normally be approved. Such requests may be considered on a case-by-case basis due to special circumstances and must be submitted to Commander, JTF-Guantanamo.
- B. Any telephonic access will be subject to appropriate security procedures, including contemporaneous monitoring and recording by the privilege team, under the same conditions as in-person counsel visits.

IX. Retention of Monitored Communication Materials

- A. The privilege team will retain custody of any monitored communications that conveys information that reasonably could be expected to result in immediate and substantial harm to the national security, as determined by the Commander, JTF-Guantanamo under these procedures.
- B. No copies of any other portions of monitored communications will be retained.

X. Disclosure of Monitored Communications

- A. No information derived from monitored communications will be disclosed outside the privilege team until after the privilege team has reviewed it for security and intelligence purposes.
- B. If the privilege team determines that monitored communications convey information that reasonably could be expected to result in immediate and substantial harm to the national security, as determined by the Commander, JTF-Guantanamo under these procedures, it will promptly report that information to the Commander, JTF-Guantanamo. If Commander, JTF-Guantanamo concurs in that assessment, he may disseminate the relevant portions of the monitored communications to law enforcement, military and intelligence officials as appropriate.
- C. If, at any time, the Commander, JTF-Guantanamo determines that monitored communications relate to imminent acts of violence, the contents of those communications may be disclosed immediately to law enforcement, military and intelligence officials.
- D. Monitored communications will not be disclosed to any Government personnel involved in court, military commission or enemy combatant status proceedings involving the detainee.

XI. Counsel's Handling and Dissemination of Information from the Detainee

- a. Counsel may disseminate the unclassified contents of the detainee's communications for the purpose of preparing for or conducting litigation involving the detainee.
- b. Counsel may not divulge classified information provided by the detainee or related to his case to anyone except United States government personnel with the requisite security clearance and need to know, using a secure means of communication. As soon as possible after reviewing monitored communications or conducting classification review of materials, the DoD privilege team will advise counsel of the classification levels of any classified information disclosed during the communication. All classified material must be handled, transported and stored in a secure manner in accordance with US government requirements for handling, transporting and storing such information. Any information not subject to classification review by the privilege team, including oral communications with the detainee, must be treated as classified information unless otherwise determined by the privilege team.

XII. JTF-Guantanamo Security Procedures

- a. Counsel and translators/interpreters shall comply with the following security procedures and force protection safeguards applicable to the US Naval Base in Guantanamo Bay, Cuba, JTF-Guantanamo and the personnel assigned to or visiting these locations, as well as any supplemental procedures implemented by JTF-Guantanamo personnel.
- b. Contraband is not permitted in JTF-Guantanamo and all visitors are subject to search upon arrival and departure. Examples of contraband include, but are not limited to, weapons, chemicals, drugs, and materials that may be used in an escape attempt. Contraband also includes money, stamps, cigarettes, writing instruments, etc. No items of any kind may be provided to the detainee without the advance approval of the Commander, JTF-Guantanamo.
- c. Photography or recording of any type is prohibited without the prior approval of the Commander, JTF-Guantanamo. No electronic communication devices are permitted. All recording devices, cameras, pagers, cellular phones, PDAs, laptops and related equipment are prohibited in or near JTF-Guantanamo. Should any of these devices be inadvertently taken into a prohibited area, the device must be surrendered to JTF-Guantanamo staff and purged of all information.
- d. Upon arrival at JTF-Guantanamo, security personnel will perform a contraband inspection of counsel and translators/interpreters using metal detectors as well as a physical inspection of counsel's bags and briefcases and, if determined necessary, a physical inspection of his/her person.

- e. Following the meeting, counsel and translators/interpreters will again be inspected using a metal detector and, if deemed necessary, by physical inspection of their persons. Counsel will then meet with the privilege team to discuss the classification levels of information disclosed during the meeting and to turn over any written materials created during the meeting for screening.

Agreement to Comply with Access Procedures

The undersigned hereby acknowledges receipt of these procedures and agrees, by his/her signature, to comply fully with all such procedures. This agreement will not be considered an acknowledgement by the counsel that the procedures are legally permissible. This signed acknowledgement will be provided at least five business days prior to the first scheduled meeting or communication with the detainee. The Commander, JTF-Guantanamo will maintain the original of the signed acknowledgement and agreement.

Acknowledged and Agreed:

_____	_____
Signature	Date
_____	_____
Print Name	Position

Business Address: _____

Business Phone: _____

Business Fax: _____

E-mail Address: _____

Detainee: _____

PROCEDURES FOR VISITS WITH DETAINEES
FOR THE WEEK OF AUGUST 29, 2004

PRIOR TO DEPARTING

1. Security Clearance. Prior to scheduling a visit to the Naval Station Guantanamo Bay, Cuba (GTMO), the attorney must contact the Department of Justice in order to obtain the required security clearance. ALL PARTIES TRAVELING TO GTMO, TO INCLUDE INTERPRETERS NEED SECURITY CLEARANCES. To begin your security clearance process, contact: Andrew Warden, (202) 616-5084.
2. Country and Theatre Clearance. Once you receive your required security clearance, you may begin coordinating your travel to GTMO. The space and security measures at GTMO limit the number of counsel who may visit and the number of detainees who can be seen during the visit. In order to have the correct clearances to enter GTMO, you must have a country and theatre clearance for that specific visit. EACH VISIT WILL REQUIRE A COUNTRY AND THEATRE CLEARANCE. To begin your country and theatre clearance process, contact: Andrew Warden, (202) 616-5084.
3. Lodging and Flight Information. Once you have your security, country and theatre clearance, you may travel to GTMO. RECOMMEND YOU MAKE YOUR FLIGHT RESERVATIONS AT THE SAME TIME YOU ARE WORKING YOUR COUNTRY AND THEATRE CLEARANCES. For lodging and to report your arrival information, contact: Andrew Warden, (202) 616-5084.
4. Review of Materials. If you wish to bring written materials into a meeting with a detainee, please submit these materials no less than 3 business days prior to your visit. In the event the written materials contain privileged information, arrangements will be made to protect the information contained therein. To submit documents prior to your visit, please contract: Andrew Warden, (202) 616-5084.
5. Travel Information.
 - a. Recommend you pack appropriate supplies and clothing for this tropical climate, to include a head covering. YOU MAY NOT WEAR SLEEVELESS SHIRTS, TIGHT-FITTING CLOTHING AND OPEN-TOED SHOES ON THE NAVAL BASE.
 - b. You must travel with your passport. You will go through customs.
 - c. You are encouraged to travel with spare cash, credit cards and shot records. All meals must be paid for in cash. Your lodging may be paid with credit card. Be aware that ATMs are very limited.
 - d. Cell phones and PDA's will not receive coverage at Guantanamo. Phones for personal use are available but are subject to tolls which will be charged to the user.

e. You must follow the "Procedures for Counsel Access to Detainees at the US Navel Base in Guantanamo Bay, Cuba" (Procedures). In accordance with Section III, B. 4, should you fail to comply with the procedures set forth in the document, access to or communication with the detainee will not be permitted. Specifically recommend you review paragraph XII, JTF-Guantanamo Security Procedures before you travel.

ONCE YOU ARRIVE AT GTMO

1. You will be provided a briefing concerning the security measures at the Naval base. Understand that there will be restrictions on your movement and activities during your visit. You are subject to search upon entering the Naval base and each time you move between controlled areas. You will not be permitted to interview or question members of the Joint Task Force about their duties or interactions with detainees without first obtaining permission from the Commander, Joint Task Force Guantanamo. You will be provided a military escort.
2. You will meet with the detainee in a conference facilities provided by GTMO. These facilities are subject to visual monitoring by closed circuit TV for safety and security reasons. (Note: There is no other method of visual observation available short of having the door open with a Military Policemen sitting outside). However, no verbal communications between counsel and detainee will be heard unless a real time monitoring decision has been made under the Procedures.
3. You will only be permitted to meet with a detainee you are represent. You may also only meet with one detainee at a time. Discussions with the detainees should not include information relating to any ongoing or completed military, intelligence, security, or law enforcement operations, investigations, or arrests, or the results of such activities, by any nation or agency or current political events in any country that are not relevant or reasonably related to counsel's representation of the detainee; or security procedures at GTMO (including names of U.S. Government personnel and the layout of camp facilities)
4. You should be aware a detainee may at times be shackled about the arms and legs. You or the detainee will be permitted to interrupt or end any meeting for use of the restroom facilities which will be convenient to the conference facility or for breaks as necessary. Your meetings may also be briefly interrupted for daily activities such as meals. However, except for escort to and from the conference facility, restroom use and as otherwise allowed by the military command authority, the detainee shall remain within the conference room reserved for your use.
5. Upon conclusion of your meeting, your notes and any other documents you bring out of your meeting will handled as outlined in Section VII and XI of the Procedures. The privilege team will take possession of these documents. The documents will be treated as classified information pending classification review. The documents will be handled,

transported, and stored in a secure manner in accordance with U.S. Government regulations for handling, transporting, and storing classified information. Following classification review of the documents, the privilege team will advise you of the classification level of any classified information contained in the documents.