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September 2, 2004

BY HAND-DELIVERY

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

Re: *Al Odah v. United States of America*
(D.D.C., Civil Action No. 02-828 (CKK))

Dear Judge Green:

As your Honor is aware, we are counsel for the 12 Kuwaiti detainees in the *Al Odah* case, one of the two Guantanamo Bay cases decided by the Supreme Court. Yesterday we received a copy of the government's letter dated September 1, 2004, to your Honor, in which the government said its proposal to subject conversations between counsel and the detainees at Guantanamo Bay to "real time" monitoring will be applied only to three of the Kuwaiti detainees in this case and not to any other petitioner-detainees in the Guantanamo Bay cases.

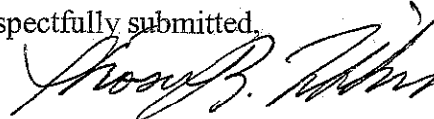
It is now clear that the issue of "real time" monitoring is not common to all the Guantanamo Bay cases but unique to the *Al Odah* case. That issue was fully briefed, argued, and submitted for decision to Judge Kollar-Kotelly on August 16, 2004, along with several related counsel access issues. As is evident from the written submissions on these issues provided to your Honor last Friday, no further compromises on them are possible. Therefore, the issues are ripe for immediate resolution by the Court.

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Immediate resolution of the monitoring and related counsel access issues is a necessary prerequisite to the fulfillment of the mandate of the Supreme Court that this Court "consider in the first instance the merits of petitioners' claims." *Rasul v. Bush*, 124 S. Ct. 2686, 2699 (2004). As Judge Kollar-Kotelly said the day after the Supreme Court announced its decision, access by counsel to the detainees at Guantanamo Bay is the "first order of business" on remand. *See* Transcript of Proceedings, June 29, 2004, p. 4. For over a month attorneys in our office have been security-cleared to travel to Guantanamo Bay and meet with the 12 Kuwaiti detainees for the purpose of ascertaining, developing, and presenting their habeas and non-habeas claims to this Court. We also have available security-cleared interpreters to accompany us. However, because the monitoring and related counsel access issues have not been resolved by the Court, we have been unable to confer with the 12 Kuwaiti detainees. We cannot initiate that vital process until the monitoring and related counsel access issues are resolved.

Accordingly, we urge the Court to decide the previously-submitted monitoring and related counsel access issues as soon as possible. If your Honor has any questions about this matter, or believes it should be discussed at a hearing with government counsel present, we respectfully request that a hearing be scheduled for next Thursday, September 9, 2004.

Respectfully submitted,



Thomas B. Wilner
Neil H. Koslowe

cc: Judge Colleen Kollar-Kotelly (by hand-delivery)
..... Thomas R. Lee (by electronic mail and facsimile transmission)