

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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	)	
ISA ALI ABDULLA ALMURBATI, <i>ET AL.</i> ,	)	
	)	
<b>Petitioners,</b>	)	
	)	
v.	)	Civil Action No. 04-1227 (RBW)
	)	
GEORGE WALKER BUSH, <i>ET AL.</i> ,	)	
	)	
<b>Respondents.</b>	)	<b>DECLARATION OF</b>
	)	<b>JOSHUA COLANGELO-</b>
	)	<b>BRYAN IN SUPPORT OF</b>
	)	<b>MOTION FOR</b>
	)	<b><u>PRELIMINARY INJUNCTION</u></b>
-----	X	

I, JOSHUA COLANGELO-BRYAN, declare that:

1. I am an attorney associated with Dorsey & Whitney LLP and represent the Petitioners in this action. I respectfully submit this declaration in support of Petitioners' Motion for a Preliminary Injunction.
2. Petitioner Jum'ah Al Dossari reported to counsel during client interviews that he was told by U.S. personnel at the U.S. Naval Base at Guantánamo Bay, Cuba ("Guantánamo") that he would be sent to a prison where he would be "raped."
3. Petitioner Abdullah Al Noaimi reported to counsel during client interviews that he was told by U.S. personnel at Guantánamo that he would be sent to a prison that would "turn him into a woman."
4. The statements referred to in paragraphs 2 and 3 above have been deemed "unclassified" by the U.S. Department of Defense.
5. Attached hereto as Exhibit A is a true and correct copy of an e-mail from counsel for Respondents dated March 14, 2005.



Exhibit A

## Colangelo-Bryan, Joshua

---

**From:** Terry.Henry@usdoj.gov  
**Sent:** Monday, March 14, 2005 11:10 AM  
**To:** rob.kirsch@wilmerhale.com; gthunt@mdo.net; zzAaron, Stewart; Colangelo-Bryan, Joshua; katyain@law.georgetown.edu; jmargulies@jmrllaw.com; behr@khlaw.com; mickum@khlaw.com; stephmac@earthlink.net; LMartin@foleyhoag.com; SAItschuller@foleyhoag.com; JMonast@foleyhoag.com; PReichler@Foleyhoag.com; Rob.Kirsch@wilmerhale.com; douglas.curtis@wilmerhale.com; neil.koslowe@shearman.com; Taylor, Ralph; jsherman@fredlaw.com; atareen@fredlaw.com; dfoster@fredlaw.com; dschneider@fredlaw.com; jlundquist@fredlaw.com; jdorsey@fredlaw.com; nmoen@fredlaw.com; jhafetz@gibbonslaw.com; ggutierrez@gibbonslaw.com; clivessgb@aol.com; mgoldman@jenner.com; azmybahe@shu.edu; rwilson@wcl.american.edu; mahmad@wcl.american.edu; marjoriemsmith@verizon.net; beane.law@verizon.net; KCameron@perkinscoie.com; BSharp@perkinscoie.com; JSullivan@perkinscoie.com; CHEMERINSKY@law.duke.edu; Tina.Foster@CliffordChance.com; wesley.powell@cliffordchance.com; dremes@cov.com; mfalkoff@cov.com; pamela.chepiga@newyork.allenoverly.com; karen.lee@newyork.allenoverly.com  
**Cc:** jtarver@paulweiss.com; rrachlin@drm.com; cebuce@venable.com; david.hickerson@weil.com; Anant.Raut@weil.com; jdenbeaux@denbeauxlaw.com; CEBruce@Venable.com; greg.smith@sablaw.com; newman@lnsn.com; wmurphy@murphyshaffer.com; LMarjon@aol.com; buz.e@verizon.net; susan.manning@bingham.com; JKitchel@SCHWABE.com; egreenberg@gsblaw.com; skauffman@gsblaw.com; AGustafson@CMHT.com  
**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.

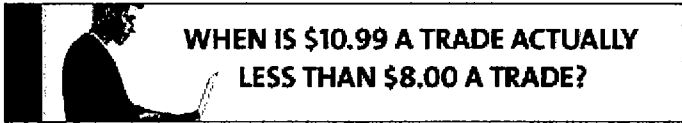
The government's position regarding transfers and prior notice of transfers is reflected in its recent filings in El Mashad, Abdah, and Al Adahi. In any event, however, there is no legitimate factual basis justifying TROs in relation to this matter.

Sincerely,

Terry Henry  
Senior Trial Counsel  
Civil Division, Federal Programs Branch

U.S. Department of Justice  
Ph. 202.514.4107

Exhibit B



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# Pentagon Seeks to Transfer More Detainees From Base in Cuba

By **DOUGLAS JEHL**

Published: March 11, 2005

**W**ASHINGTON, March 10 - The Pentagon is seeking to enlist help from the State Department and other agencies in a plan to cut by more than half the population at its detention facility in Guantánamo Bay, Cuba, in part by transferring hundreds of suspected terrorists to prisons in Saudi Arabia, Afghanistan and Yemen, according to senior administration officials.

The transfers would be similar to the renditions, or transfers of captives to other countries, carried out by the Central Intelligence Agency, but are subject to stricter approval within the government, and face potential opposition from the C.I.A. as well as the State and Justice Departments, the officials said.

Administration officials say those agencies have resisted some previous handovers, out of concern that transferring the prisoners to foreign governments could harm American security or subject the prisoners to mistreatment.

A Feb. 5 memorandum from Defense Secretary Donald H. Rumsfeld calls for broader interagency support for the plan, starting with efforts to work out a significant transfer of prisoners to Afghanistan, the officials said. The proposal is part of a Pentagon effort to cut a Guantánamo population that stands at about 540 detainees by releasing some outright and by transferring others for continued detention elsewhere.

The proposal comes as the Bush administration reviews the future of the naval base at



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Guantánamo as a detention center, after court decisions and shifts in public opinion have raised legal and political questions about the use of the facility.

**Guantánamo**  
Where 65 detainees

The White House first embraced using Guantánamo as a holding place for terrorism suspects taken in Afghanistan, in part because the base was seen as beyond the jurisdiction of United States law. But recent court rulings have held that prisoners there may challenge their detentions in federal court.

Indeed, the Pentagon has halted, for the last six months, the flow of new terrorism suspects into the prison, Defense Department officials said. In January, a senior American official said in an interview that most prisoners at Guantánamo no longer had any intelligence value and were not being regularly interrogated.

The proposed transfers would represent a major acceleration of Pentagon efforts that have transferred 65 prisoners from Guantánamo to foreign countries. The population at Guantánamo includes more than 100 prisoners each from Afghanistan, Saudi Arabia and Yemen, a senior administration official said, and the United States might need to provide money or other logistical support to make possible a large-scale transfer to any of those nations.

Defense Department officials said that the adverse court rulings had contributed to their determination to reduce the population at Guantánamo, in part by persuading other countries to bear some of the burden of detaining terrorism suspects.

Under the administration's approach, the State Department is responsible for negotiating agreements in which receiving countries agree "to detain, investigate, and/or prosecute" the prisoners and to treat them humanely.

"Our top choice would be to win the war on terrorism and declare an end to it and repatriate everybody," a senior Defense Department official said in an interview. "The next best solution would be to work with the home governments of the detainees in order to get them to take the necessary steps to mitigate the threat these individuals pose."

The official, who spoke on condition of anonymity, said that future transfers into Guantánamo remained a "possibility," but made clear that the court decisions and the burdens of detaining prisoners at the American facility had made it seem less attractive to administration policymakers than before.

"It's fair to say that the calculus now is different than it was before, because the legal landscape has changed and those are factors that might be considered," a senior Defense Department official said.

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Exhibit C

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## THE NEW YORKER FACT

### ANNALS OF JUSTICE OUTSOURCING TORTURE

by JANE MAYER

The secret history of America's "extraordinary rendition" program.

Issue of 2005-02-14  
Posted 2005-02-07

On January 27th, President Bush, in an interview with the *Times*, assured the world that "torture is never acceptable, nor do we hand over people to countries that do torture." Maher Arar, a Canadian engineer who was born in Syria, was surprised to learn of Bush's statement. Two and a half years ago, American officials, suspecting Arar of being a terrorist, apprehended him in New York and sent him back to Syria, where he endured months of brutal interrogation, including torture. When Arar described his experience in a phone interview recently, he invoked an Arabic expression. The pain was so unbearable, he said, that "you forget the milk that you have been fed from the breast of your mother."

Arar, a thirty-four-year-old graduate of McGill University whose family emigrated to Canada when he was a teen-ager, was arrested on September 26, 2002, at John F. Kennedy Airport. He was changing planes; he had been on vacation with his family in Tunisia, and was returning to Canada. Arar was detained because his name had been placed on the United States Watch List of terrorist suspects. He was held for the next thirteen days, as American officials questioned him about possible links to another suspected terrorist. Arar said that he barely knew the suspect, although he had worked with the man's brother. Arar, who was not formally charged, was placed in handcuffs and leg irons by plainclothes officials and transferred to an executive jet. The plane flew to Washington, continued to Portland, Maine, stopped in Rome, Italy, then landed in Amman, Jordan.

During the flight, Arar said, he heard the pilots and crew identify themselves in radio communications as members of "the Special Removal Unit." The Americans, he learned, planned to take him next to Syria. Having been told by his parents about the barbaric practices of the police in Syria, Arar begged crew members not to send him there, arguing that he would surely be tortured. His captors did not respond to his request; instead, they invited him to watch a spy thriller that was aired on board.

Ten hours after landing in Jordan, Arar said, he was driven to Syria, where interrogators, after a day of threats, "just began beating on me." They whipped his hands repeatedly with two-inch-thick electrical cables, and kept him in a windowless underground cell that he likened to a grave. "Not even animals could withstand it," he said. Although he initially tried to assert his innocence, he eventually confessed to anything his tormentors wanted him to say. "You just give up," he said. "You become like an animal."

A year later, in October, 2003, Arar was released without charges, after the Canadian government took up his cause. Imad Moustapha, the Syrian Ambassador in Washington, announced that his country had found no links between Arar and terrorism. Arar, it turned out, had been sent to Syria on orders from the U.S. government, under a secretive program known as "extraordinary rendition." This program had been devised as a means of extraditing terrorism suspects from one foreign state to another for interrogation and prosecution. Critics contend that the unstated

purpose of such renditions is to subject the suspects to aggressive methods of persuasion that are illegal in America—including torture.

Arar is suing the U.S. government for his mistreatment. “They are outsourcing torture because they know it’s illegal,” he said. “Why, if they have suspicions, don’t they question people within the boundary of the law?”

Rendition was originally carried out on a limited basis, but after September 11th, when President Bush declared a global war on terrorism, the program expanded beyond recognition—becoming, according to a former C.I.A. official, “an abomination.” What began as a program aimed at a small, discrete set of suspects—people against whom there were outstanding foreign arrest warrants—came to include a wide and ill-defined population that the Administration terms “illegal enemy combatants.” Many of them have never been publicly charged with any crime. Scott Horton, an expert on international law who helped prepare a report on renditions issued by N.Y.U. Law School and the New York City Bar Association, estimates that a hundred and fifty people have been rendered since 2001. Representative Ed Markey, a Democrat from Massachusetts and a member of the Select Committee on Homeland Security, said that a more precise number was impossible to obtain. “I’ve asked people at the C.I.A. for numbers,” he said. “They refuse to answer. All they will say is that they’re in compliance with the law.”

Although the full scope of the extraordinary-rendition program isn’t known, several recent cases have come to light that may well violate U.S. law. In 1998, Congress passed legislation declaring that it is “the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.”

The Bush Administration, however, has argued that the threat posed by stateless terrorists who draw no distinction between military and civilian targets is so dire that it requires tough new rules of engagement. This shift in perspective, labelled the New Paradigm in a memo written by Alberto Gonzales, then the White House counsel, “places a high premium on . . . the ability to quickly obtain information from captured terrorists and their sponsors in order to avoid further atrocities against American civilians,” giving less weight to the rights of suspects. It also questions many international laws of war. Five days after Al Qaeda’s attacks on the World Trade Center and the Pentagon, Vice-President Dick Cheney, reflecting the new outlook, argued, on “Meet the Press,” that the government needed to “work through, sort of, the dark side.” Cheney went on, “A lot of what needs to be done here will have to be done quietly, without any discussion, using sources and methods that are available to our intelligence agencies, if we’re going to be successful. That’s the world these folks operate in. And so it’s going to be vital for us to use any means at our disposal, basically, to achieve our objective.”

The extraordinary-rendition program bears little relation to the system of due process afforded suspects in crimes in America. Terrorism suspects in Europe, Africa, Asia, and the Middle East have often been abducted by hooded or masked American agents, then forced onto a Gulfstream V jet, like the one described by Arar. This jet, which has been registered to a series of dummy American corporations, such as Bayard Foreign Marketing, of Portland, Oregon, has clearance to land at U.S. military bases. Upon arriving in foreign countries, rendered suspects often vanish. Detainees are not provided with lawyers, and many families are not informed of their whereabouts.

The most common destinations for rendered suspects are Egypt, Morocco, Syria, and Jordan, all of which have been cited for human-rights violations by the State Department, and are known to torture suspects. To justify sending detainees to these countries, the Administration appears to be relying on a very fine reading of an imprecise clause in the United Nations Convention Against

