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November 24, 2003

Hon. George W. Bush
Commander in Chief
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Re: *Captain James J. Yee, U.S. Army*

Dear Mr. President:

I am writing to you in your constitutional capacity as Commander in Chief.

I represent Chaplain James Yee. Chaplain Yee, a commissioned officer and a graduate of West Point, is one of the armed forces' few Muslim chaplains. He has been in pretrial confinement at the Naval Consolidated Brig in Charleston, South Carolina, since mid-September. He is charged with two violations of a general order on classified information.

Chaplain Yee's parents live in New Jersey. He has two brothers who are active duty officers in the Army. One is—like him—a graduate of West Point. The other is an Army doctor. Chaplain Yee's wife and daughter (age 3) live in Olympia, Washington.

From September 10 to October 24, Chaplain Yee was held in maximum security. This meant that he was kept in isolation in a small cell for about twenty-three hours a day, with only one hour of solitary exercise. He was required to wear hand- and leg-irons when leaving his cell, although the hand-irons were eventually removed for meetings with counsel. He was forced to endure several other harsh and illegal conditions of confinement. For example, brig personnel refused to recognize his status as an officer and instead directed that he identify himself as an E-1, which, as you know from your own military service, is the lowest enlisted rank. They also refused to

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provide him with a liturgical calendar or prayer rug and refused to tell him the time of day or the direction of Mecca, thereby needlessly interfering with his daily prayers and religious practices. He was also not allowed to send or receive mail, watch television, or have any reading materials other than a copy of the Koran and the brig's manual of standard operating procedures. He was not allowed to have visitors or contact with anyone other than brig personnel and his attorneys. This no-contact order was relaxed only after we objected and demanded the legal authority on which it was based.

Chaplain Yee's former commanding officer was refused permission to pay him a humanitarian visit.

After our repeated requests to release Chaplain Yee and critical media coverage concerning his conditions of confinement, your subordinates downgraded his custody status to medium security. Even now, however, he is only allowed to read a censored newspaper, watch movies and make two 15-minute phone calls per day to immediate family members or counsel.

These conditions are far more onerous than would be required to assure his presence at a trial on the charges on which he is being held in pretrial confinement. More to the point, those charges simply do not warrant pretrial confinement of any kind. While military sources originally reported a wild laundry list of suspected offenses—such as spying and aiding the enemy—those have now been reduced to two relatively minor specifications under Article 92, UCMJ. Nonetheless, he is being treated as if the original laundry list of charges was the legal basis for his confinement. This is totally wrong and unfair.

Offenses involving the mishandling of classified information—if proven (which is not the case here)—are typically handled nonjudicially and result in a reprimand or the suspension, reduction or revocation of a security clearance. If everyone who failed to safeguard classified information according to the letter of the regulation were imprisoned, the brigs would be at capacity and then some.

I respectfully invite your attention to the case of *United States v. Grow*, 3 U.S.C.M.A. 77, 11 C.M.R. 77 (1953). At the height of the Cold War, Major General Grow was convicted of compromising classified information. His total sentence for violating security regulations, two specifications of dereliction,

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and an additional security violation based on Article 96 of the Articles of War, was a reprimand and suspension from command for six months. In the end, even that minor sentence was remitted in its entirety when the case was mandatorily reviewed by President Eisenhower in 1957. See George F. Hofmann, *Cold War Casualty: The Court-Martial of Major General Robert W. Grow* 191 (1993). I do not believe President Eisenhower, were he alive and in office today, would permit Chaplain Yee to be held in pretrial confinement.

More recently, there was the widely publicized case of John Deutch, the former Director of Central Intelligence. While he was a civilian and not subject to the Uniform Code of Military Justice, it is fair to recall that his only penalty for knowingly breaching security regulations was a reprimand and loss of his security clearance.

Given the current highly-charged atmosphere, precipitous public allegations such as those originally voiced about Chaplain Yee not only cause irreparable harm to the individual's reputation and career, but are likely to needlessly embarrass the government, as occurred with Dr. Wen Ho Lee, Richard Jewell and Petty Officer Daniel King. Public confidence in the government suffered in each of those cases. Information from military sources has already prejudicially linked Chaplain Yee's case to those of others. This prejudice is only magnified by the fact that the military has elected to confine him in the same brig in which Messrs. Hamdi, Padilla and al-Marri are being held incommunicado.

The case of Chaplain Yee is of grave concern to the Asian American community, whose memory of the Dr. Wen Ho Lee case is still fresh. Chaplain Yee's continuing confinement is also deeply troubling to the Muslim community, to clergy of all faiths, to his fellow alumni of the United States Military Academy, and to the military bar, whose members are well aware of the fact that allegations such as those on which he is being held simply do not result in either pretrial confinement or, if proven, sentences that include confinement. Chaplain Yee's pretrial confinement already far exceeds any confinement the government could reasonably hope to secure in the event of conviction.

Chaplain Yee is a United States citizen and service-member. He is entitled to the full panoply of constitutional protections, including the right to a fair and speedy trial. This case, however, is moving at a glacial pace and he


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is being treated as if he were an enemy combatant rather than a commissioned officer. No date has been set for an Article 32 investigation and it has taken the Army an inordinate amount of time to complete the process for issuing security clearances to me and my co-civilian defense counsel. Against this background, and because Chaplain Yee does not present a flight risk or a risk to national security, he should be restored to normal duty status pending a resolution of this matter. Doing so would not only serve to protect his rights, but would allow him to spend Thanksgiving with his family and celebrate his daughter's upcoming birthday. I cannot believe it is consistent with your policy as Commander in Chief as well as your personal compassion to prevent him from doing so.

Because the Commanding General at Joint Task Force Guantanamo Bay, Major General Geoffrey D. Miller, has been unresponsive to our requests to release Chaplain Yee from pretrial confinement (and indeed has extended the speedy trial period for reasons that include an absurd claim that there were insufficient prosecutorial resources at Guantanamo Bay), and because I believe decisions on this matter are in fact being made at higher levels, I have reluctantly concluded that this request should be addressed to you, since you are ultimately in charge.

Thursday is Thanksgiving Day. Please do the right thing and order Chaplain Yee's immediate release.

Very truly yours,


Eugene R. Fidell

cc: Chaplain James J. Yee, U.S. Army

Advance Copy by Fax, (202) 456-6279, Office of White House Counsel