

FILED WITH
COURT SECURITY OFFICER
10/3/05 J. Campbell
DATE

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

SAIFULLAH PARACHA,

Petitioner,

v.

Case No. 04cv02022-PLF

ORAL ARGUMENT IS REQUESTED

Hon. GEORGE W. BUSH,

et al.,

Respondents.

**PETITIONER'S MOTION
TO ALLOW AND TO ACCELERATE DISCOVERY**

Petitioner moves for an order to allow and to accelerate discovery in this petition for habeas corpus.

In support of this motion petitioner submits the *Brady* material released in a case in the Southern District of New York, *U.S v. Uzair Paracha*, No. 03 Cr. 1197(SHS), which shows that at least two persons in custody of the United States have said that petitioner and his son are innocent of any knowing assistance to terrorists. **EXL.A.**

Petitioner also submits his affidavit showing that he has been told by numerous government officials that the intelligence files fully support his understanding of the actual facts of this case: that petitioner was not aware of any terrorist or otherwise criminal activities, was not in the confidence of anyone planning such, and is being held only because of his innocent and casual acquaintance with two or three persons now accused by the United States of secret terrorist intentions.

Based on these showings of good cause, petitioner respectfully asks for discovery of the documents asked for in the discovery demands attached hereto.

Respondents will oppose this motion.

Respectfully submitted,

October 3, 2005

/s/ Gallard T. Hunt
GAILLARD T. HUNT

Attorney for Petitioner
(D.C. Bar No. 89375)
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ATTACHMENTS:

Proposed discovery demands.

Exhibit A: *Brady* material filed in *U.S v. Uzair Paracha*, No. 03 Cr. 1197(SHS) S.D. N.Y.

Exhibit B: Affidavit of Saifullah Paracha, September ~~15~~ 15, 2005.

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

SAIFULLAH PARACHA,
Petitioner,
and
FARHAT PARACHA,
His Next Friend,

v.

Case No. 04cv02022-PLF

Hon . GEORGE W. BUSH,
et al.,

Respondents.

**PETITIONER'S SECOND REQUEST
FOR DISCOVERY UNDER RULE 34**

Petitioner and his next friend hereby request respondents to respond within thirty days to the following request: that respondents produce copies of, or that respondents produce and permit petitioner to inspect and to copy, each of the following files, documents or records:

1. All files, intelligence files, reports, intelligence reports, documents, transcripts, records of any sort, and papers of any sort, concerning, mentioning, or touching on Saifullah Paracha.

2. All files, intelligence files, reports, intelligence reports, documents, transcripts, records of any sort, and papers of any sort, concerning, mentioning, or touching on Saifullah Paracha's son, Uzair Paracha.

3. All files, intelligence files, reports, intelligence reports, documents, transcripts, records of any sort, and papers of any sort, leading to the Brady material from the person known to the Parachas as "Mustafah" released in case 03 Cr 1197 (SHS) in the Southern District of New York.

4. All files, intelligence files, reports, intelligence reports, documents, transcripts, records of any sort, and papers of any sort, leading to the Brady material from the person known to the Parachas as Majid Khan released in case 03 Cr 1197 (SHS) in the Southern District of New York.

5. All files, intelligence files, reports, intelligence reports, documents, transcripts, records of any sort, and papers of any sort, concerning the person known to the Parachas as "Uzair".

6. All files, intelligence files, reports, intelligence reports, documents, transcripts, records of any sort, and papers of any sort, concerning any interrogations of Saifullah Paracha at Bagram Air Force Base, Afghanistan, at Guantanamo Bay, Cuba, or at any other place.

7. All files, intelligence files, reports, intelligence reports, documents, transcripts, records of any sort, and papers of any sort, available to the persons who interrogated Saifullah Paracha at Bagram Air Force Base, Afghanistan, at Guantanamo Bay, Cuba, or at any other place, and concerning, mentioning, or touching on Saifullah Paracha.

For purposes of the above requests, the material requested includes all written or electronic forms of information, however recorded and wherever located. If the information is not readable in English by ordinary vision, it is also requested that copies be provided that are so readable.

Respectfully submitted,

September 22, 2005

/s/ Gaillard T. Hunt

GAILLARD T. HUNT

Attorney for Petitioner

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I HEREBY CERTIFY that on the 22d day of September, 2005, I served the within "Petitioner's Second Request For Discovery Under Rule 34" on counsel for the respondents by mailing it to:

Andrew Warden, Esq.
Preeya Noronha, Esq.
Department of Justice, Civil Division, Federal
Programs Branch, Room 6118
20 Massachusetts Avenue NW
Washington, D.C. 20530

/s/ Gaillard T. Hunt

GAILLARD T. HUNT
Attorney for Petitioner

IN THE UNITED STATES DISTRICT COURT FOR THE
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SAIFULLAH PARACHA,

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Case No. 04cv02022-PLF
ORAL ARGUMENT IS REQUESTED

Hon. GEORGE W. BUSH,

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Respondents.

**POINT AND AUTHORITIES IN SUPPORT OF
PETITIONER'S MOTION
TO ALLOW AND TO ACCELERATE DISCOVERY**

FRCP Rule 81(a)(2) applies the Federal Rules of Civil Procedure to habeas corpus cases and FRCP Rule 34 allows inspection and copying of documents.

In the Rules for Proceedings Under 28 USC 2254, Rule 6(a) says, "A judge may, for good cause, authorize a party to conduct discovery . . . ". Rule 1(a) says that these Rules are not limited to cases under section 2254 (challenges to state convictions) but can also apply in habeas corpus cases generally. "The last of those Rules, Habeas

Corpus Rule 11, permits application of the Federal Rules of Civil Procedure in habeas cases 'to the extent that [the civil rules] are not inconsistent with any statutory provisions or [the habeas] rules.' " *Mayle v. Felix*, 125 S.Ct. 2562, II. A. (June 23, 2005).

In *Bracy v. Gramley*, 520 US 899, 138 L. Ed. 2d 97, 117 S. Ct. 1793 (1997), Chief Justice Rehnquist, writing for a unanimous Court, reversed denial of discovery in a habeas corpus where the petitioner had shown "good cause". In that case petitioner's theory was that his trial judge, who had been convicted of flagrant corruption, had been biased against the petitioner because the petitioner had not been party to the corruption rampant in that court. This was held to be "good cause" to justify depositions of the trial judge's associates -- a much weaker "good cause" than Paracha offers, where he wants to discover direct evidence of his actual innocence. *Bracy* also discussed the origins the habeas corpus Rules, showing Rule 6 to be essentially a refinement and codification of the principles enunciated in the 1969 case allowing discovery in habeas corpus cases:

There is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus, for it is in such proceedings that a person in custody charges that error, neglect, or evil purpose has resulted in his unlawful confinement and that he is deprived of his freedom contrary to law. This Court has insistently said that the power of the federal courts to conduct inquiry in habeas corpus is equal to the responsibility which the writ involves.
[Citation.]

Harris v. Nelson, 89 S. Ct. 1082, 394 U.S. 286, 22 L. Ed. 2d 281 (1969).

That 1969 case also allowed discovery for much less reason than Paracha offers: The petitioner there wanted to impeach an informant whose tip had led to a search that petitioner wanted to challenge.

The good cause shown for discovery here is the best of good causes: Petitioner reasonably believes, because he has been repeatedly told by officers of the United States, that the documents sought to be discovered will reveal his complete innocence. **Ex. B.** Moreover, the *Brady* materials released in a case in the Southern District of New York show that there are at least two persons, apparently intelligence assets of the government in custody at some undisclosed location, who can testify of their own knowledge to petitioner's non-involvement in any terrorist schemes. **Ex. A.**

Not only is discovery authorized, but without this discovery there is no way this Court can obey the Supreme Court's mandate, "for the District Court to consider in the first instance the merits of petitioners' claims." *Rasul v. Bush*, 524 U.S. , 124 S. Ct. 2686 (2004) (at end of the majority opinion).

The only possible objection to this discovery can be the government's desire for secrecy. Petitioner, however, is concerned only with his own wrongful detention. The protective order entered in this case, together with the laws governing classified materials, are ample to insure that the material discovered will remain behind the veil of secrecy. Petitioner is asking that the intelligence reports touching on his activities be filed in the Secure Facility to be inspected by counsel, who has been cleared and has signed all the requested secrecy agreements. Only those papers useful and relevant to petitioner's case will need to be filed with the Court, and those would be filed under seal. Nothing will be placed in the public record unless and until this Court may order it declassified, after due notice to the government.

Some papers may have to follow an alternative route. Previous secret filings in this case have been so heavily redacted as to be meaningless, or at least confusing.

Petitioner must therefore ask for discovery of the full unredacted text of any parts of any intelligence reports which concern him. If there are parts of these reports that are genuinely irrelevant to petitioner, petitioner has no objection to redacting them, if those redacted portions are submitted directly to the Court, under seal, for the Court's independent determination as to relevancy. The portions found relevant would then be made available to counsel, in the Secure Facility and under the strict bonds of secrecy, like all the other intelligence reports touching on petitioner's activities.

Petitioner is asking that discovery go forward expeditiously. It is extremely unlikely that *Rasul, supra*, will be overturned or eviscerated, so sooner or later this Court is going "to consider in the first instance the merits of petitioners' claims." *Rasul, Supra*. The more time counsel has to investigate and gather evidence, the easier it will be for this Court to reach an accurate decision based on the real facts.

As for the burden on the government to assemble the documents requested, if that was not done long ago it should have been. The cursory nature of the Combatant Status Review Tribunal hearing, where Paracha flatly denied most of the charges but very little discussion followed attempting to resolve the facts, suggests that perhaps the government has never assembled all the intelligence on Paracha in one place and reviewed it. If that is true, it is time they did so or let the prisoner go. But it is also possible that the documents are already assembled, in which case making them available to counsel in the Secure Facility is a minimal burden.

Discovery should proceed despite the pendency of dispositive motions by both sides because of the likelihood that discovery will result in petitioner's complete exoneration. It would be a gross miscarriage of justice if the petition were dismissed

because of decisions in other cases before petitioner could get access to reports showing his complete innocence.

Respectfully submitted,

October 3, 2005

/s/ Gaillard T. Hunt
GAILLARD T. HUNT

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IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

SAIFULLAH PARACHA,

Petitioner,

v.

Case No. 04cv020222-PLF

Hon. GEORGE W. BUSH,

et al.,

Respondents.

CERTIFICATE OF CONFERRING

I hereby certify that on October 3, 2005, I conferred with Andrew Warden, Esq., attorney for respondents, in an attempt to narrow the issues raised by the within motion.

Respondents will oppose this motion.

/s/ Gaillard T. Hunt

October 3, 2005

GAILLARD T. HUNT

Attorney for Petitioner

(D.C. Bar No. 89375)

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A PROPOSED ORDER FOLLOWS:

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

SAIFULLAH PARACHA,

Petitioner,

v.

Case No. 04cv02022-PLF

Hon. GEORGE W. BUSH,

et al.,

Respondents.

(PROPOSED) ORDER ALLOWING DISCOVERY

On consideration of petitioner's motion to require and accelerate discovery, and the opposition thereto, and the entire record,

IT IS HEREBY ORDERED:

That respondents will release to Gaillard T. Hunt within 20 days of the date of this order all the documents requested in petitioner's discovery demands, to wit:

1. All files, intelligence files, reports, intelligence reports, documents, transcripts, records of any sort, and papers of any sort, concerning, mentioning, or touching on Saifullah Paracha.

2. All files, intelligence files, reports, intelligence reports, documents, transcripts, records of any sort, and papers of any sort, concerning, mentioning, or touching on Saifullah Paracha's son, Uzair Paracha.

3. All files, intelligence files, reports, intelligence reports, documents, transcripts, records of any sort, and papers of any sort, leading to the Brady material from the person known to the Parachas as "Mustafah" released in case 03 Cr 1197 (SHS) in the Southern District of New York.

4. All files, intelligence files, reports, intelligence reports, documents, transcripts, records of any sort, and papers of any sort, leading to the Brady material from the person known to the Parachas as Majid Khan released in case 03 Cr 1197 (SHS) in the Southern District of New York.

5. All files, intelligence files, reports, intelligence reports, documents, transcripts, records of any sort, and papers of any sort, concerning the person known to the Parachas as "Uzair".

6. All files, intelligence files, reports, intelligence reports, documents, transcripts, records of any sort, and papers of any sort, concerning any interrogations of Saifullah Paracha at Bagram Air Force Base, Afghanistan, at Guantanamo Bay, Cuba, or at any other place.

7. All files, intelligence files, reports, intelligence reports, documents, transcripts, records of any sort, and papers of any sort, available to the persons who interrogated Saifullah Paracha at Bagram Air Force Base, Afghanistan, at Guantanamo Bay, Cuba, or at any other place, and concerning, mentioning, or touching on Saifullah Paracha.

FURTHER ORDERED:

That the above material is subject to the protective order previously entered in this case

FURTHER ORDERED:

That if any parts of the above material are to be redacted, or obscured or blotted out, respondents will submit to this Court, under seal, within 20 days of the date of this order, unredacted copies with indications of the proposed redactions and the reasons for them.

IT IS SO ORDERED.

Date

United States District Judge

Notify counsel:

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EXHIBIT A

Majid Khan is reported to have stated as follows:

- He did not know of any funding or investment "Mustafa" gave to Saifullah Paracha.
- He had no knowledge of Saifullah Paracha's company, the plan to smuggle chemicals or explosives via the Parachas, or other resources that might be attractive to Al Qaeda.
- No compensation was given to Saifullah Paracha in return for Saifullah Paracha arranging for Uzair Paracha to assist Majid Khan with Majid Khan's immigration matters.
- He had no Al Qaeda contacts in the United States.
- None of his contacts were aware of his gas station attack plan or any other actions he might have taken on behalf of Al Qaeda.
- He assessed Uzair Paracha was willing to help a fellow muslim at his father's request, and that Majid Khan knew of no other motivation for Uzair Paracha's assistance. He did not assess Uzair Paracha as being suitable for any other assistance to Al Qaeda besides helping with Majid Khan's documents at the time. Uzair Paracha volunteered that he wanted to spread Islam through media.
- He thought Uzair Paracha was a good person who was willing to help and that Majid Khan might have been interested in recruiting Uzair Paracha once Majid Khan returned to the US and had time to assess Uzair Paracha. He would only give Uzair Paracha a 5-10% suitability assessment, citing the fact that Uzair Paracha had no extremist views and was not really a practicing muslim.
- Uzair Paracha was to go to the post office, pretend that he (Uzair Paracha) was Majid Khan, and give the post office a change of address for Khan. Uzair Paracha was to deposit money in Majid Khan's account, and later call the INS to inquire about the travel document. All of this was to be done to lead US authorities to believe that Majid Khan was in the US when he was actually in Pakistan. To his knowledge, Uzair Paracha did none of these things.
- If Uzair Paracha claimed that Majid Khan sent something to Uzair Paracha, Uzair Paracha would be lying in making that statement.
- "Mustafa" was known either as Habib or Moin to the Parachas.

It has been reported that the person known to Uzair Paracha as "Uzair" was shown a photograph of Saifullah Paracha, which was taken in the early 1970s. "Uzair" claimed not to recognize the individual in the photo.

UNCLASSIFIED

Exh. A, page 1

Saifullah Paracha is reported to have stated that only he and "Mustafa" knew about "Mustafa's" investment of €240,000 in the Cliftonia real estate project, and that "Mustafa" only met Uzair Paracha once, at the Snoopy Ice Cream in Karachi

UNCLASSIFIED

Exh. A, page 2

The person known to Uzair Paracha as "Mustafa" is reported to have stated as follows:

- "Mustafa" met with Saifullah Paracha's son, Uzair Paracha, a total of four times, all while visiting Saifullah Paracha at Saifullah Paracha's house.
- Uzair Paracha was totally unwitting of "Mustafa's" Al Qaeda affiliation, or of "Mustafa's" intention to use Saifullah Paracha for the broader operational plan involving Majid Khan. Uzair Paracha knows nothing about operations. Neither "Mustafa" nor Majid Khan indicated to Uzair Paracha at any time that they were mujahidin or Al Qaeda. Uzair Paracha did not complete the task involving Majid Khan.
- Saifullah Paracha was unwittingly being used to assist in "Mustafa's" broader plans with Al Qaeda operative Majid Khan. Saifullah Paracha was someone "Mustafa" used for information, but from whom he kept his Al Qaeda connections hidden. There were no operations discussions between "Mustafa" and Saifullah Paracha. "Mustafa" intentionally used cover stories and distorted truths to mask his particular interests with Saifullah Paracha during their discussions.
- Although Saifullah Paracha had a long-standing relationship with "Uzair," Saifullah Paracha did not know "Uzair's" true identity, or any other name for "Uzair." "Mustafa" did not believe that Saifullah Paracha was aware that he and "Uzair" were Al Qaeda, but "Mustafa" believed that Saifullah Paracha likely knew that "Mustafa" and "Uzair" were associated with mujahidin and could be associated with the Taliban or Al Qaeda. Saifullah Paracha did not know that "Uzair" was affiliated with Al Qaeda until the worldwide publicity of "Uzair's" arrest. Mustafa showed Saifullah Paracha the famous picture of "Uzair" after "Uzair's" capture and Saifullah Paracha was surprised to learn that "Uzair" was as important a man as he was. At the time of "Uzair's" arrest, Saifullah Paracha probably knew of "Mustafa's" Al Qaeda affiliation.
- Because Saifullah Paracha had never been properly vetted, he was never tasked by Al Qaeda (i.e. "Uzair" or "Mustafa") to do anything for them. Saifullah Paracha was only a businessman who was sympathetic to the mujahidin. Saifullah Paracha has no relation to this business, i.e. Al Qaeda.
- "Mustafa" was not aware how "Uzair" knew Saifullah Paracha, or if Saifullah Paracha had ever met UBL.

UNCLASSIFIED

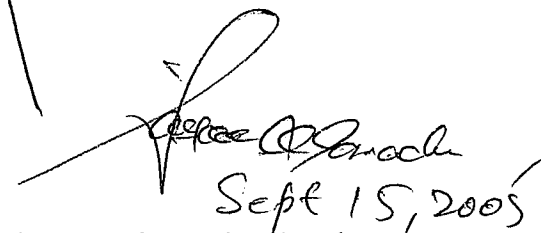
EXHIBIT B

SAIFULLAH PARACHA deposes and says:

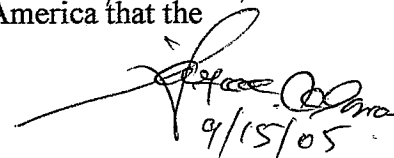
^{been} Since my seizure in July 03 I have ^{been} extensively interrogated by Agents of the FBI and other US Agencies Civilian and military. Many of them have told me at the end of the interrogation that the files show that I am an innocent businessman who did not assist terrorism.

I therefore request to the Court that the Government produce all files and records of any ^{sort} dealing with me and my son

UZAIR PARACHA


Sept 15, 2005

I hereby certify under penalty of the perjury laws of the United States of America that the above statements are true and correct.


9/15/05

EXH. B