[ORAL ARGUMENT NOT SCHEDULED]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

HUZAIFA PARHAT, *et al.*,
Petitioners/Plaintiffs

v.

ROBERT M. GATES, *et al.,*
Respondents/Defendants.

Case No: 06-1397

PETITIONERS' MOTION FOR ENTRY OF PROTECTIVE ORDER

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I. INTRODUCTION

Petitioners are in their fifth year of imprisonment at Guantanamo Bay. They are not now, nor have they ever been, "enemy combatants." They have never been members, supporters or sympathizers of the Taliban, Al Qaeda or any other enemy organization. Petitioners never participated in military activity of any kind. Rather, Petitioners are ethnic Uighur refugees swept up in the aftermath of the Afghanistan war, apparently by mistake.

But their continued imprisonment is not a mere mistake; it is a travesty. Petitioners are seven of eighteen Uighurs currently or formerly imprisoned at Guantanamo whose circumstances were—*as Respondents have conceded*—the same in every material way. Combatant Status Review Tribunals ("CSRTs") determined that five of the eighteen were not enemy combatants. A CSRT found that a sixth was a noncombatant—until Washington ordered the result changed. Petitioners, however, were classified as "enemy combatants." The CSRTs made this classification despite the military's acknowledgement that, in every particular, Petitioners were situated *precisely* the same as those whom the CSRTs exonerated. In short, Petitioners' CSRTs were a sham.

On December 4, 2006, Petitioners therefore filed an original action in this Court seeking prompt release upon review of the CSRTs' mis-classification of them as "enemy combatants." Petitioners brought suit under the Detainee Treatment Act of 2005, Pub. L. No. 109-148, 119 Stat. 2680, 2739 (the "DTA"), and in the alternative brought an original habeas corpus action. In the DTA, Congress created a novel procedure under which this Court has "exclusive jurisdiction

to determine the validity of any final decision of a Combatant Status Review Tribunal that an alien is properly detained as an enemy combatant." DTA § 1005(e)(2)(A).

This motion address an important procedural issue that will help allow the parties and this Court to move quickly to the merits hearing envisioned by Congress. As the Court is well aware, there are several hundred Guantanamo habeas cases pending in the United States District Court for the District of Columbia. In the overwhelming majority of those cases, the lower court has entered the same detailed protective order to addresses the profound complexities of litigation involving men held by the military in one of the most isolated and restrictive prisons in the world, and whom the government contends are both dangerous and have possible intelligence value.[1]

Strictly speaking, the lower court protective order does not control in this case. Although it has been the general practice of both the government and counsel for the detainees to continue to adhere to the protective order in appeals from the district court cases in which it has been entered, this case is not an appeal. However, this original action presents the same complex client access and security issues as those cases pending in the lower court. In the interest of

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[1] It is appropriate for the standard protective order to address the military's security concerns. It is important to note, however, that the government's repeated characterization of the Guantanamo detainees as terrorists and combatants is highly suspect, at least as to the vast majority of the detainees. Seton Hall Law School Professor Mark Denbeaux has analyzed several hundred publicly available CSRT records showing the military's charges against the detainees. The records show that only five percent of the Guantanamo prisoners are even *alleged* to have been captured on a battlefield. Mark Denbeaux, *et al*., *The Guantanamo Detainees: the Government's Story* at 2-3 (2006), *available at* http://law.shu.edu/news/guantanamo_report_final_2_08_06.pdf. The military does not accuse the majority of the Guantanamo population of having participated in a single hostile act against anyone. *Id*. at 2. Only eight percent of the detainees are accused of being either Al Qaeda or Taliban fighters. *Id*. at 9-10. Rather, up to eighty-six percent of the men in Guantanamo may have been sold to U.S. forces for a bounty by either Pakistan or the Northern Alliance. *Id*. at 3. *See also, e.g.,* Petition for Immediate Release and Other Relief Under Detainee Treatment Act of 2005, and, in the Alternative, for Writ of Habeas Corpus (the "Petition") at ¶¶52 & 153.

proceeding to the merits quickly and efficiently, Petitioners respectfully urge this Court to enter the standard protective order in this case that has been entered in hundreds of lower court Guantanamo detainee cases.

II. STATEMENT OF FACTS

A. Petitioners are Not Enemy Combatants.

The Uighurs are a Turkic Muslim minority group from the Xinjiang Uyghur Autonomous Region of western China. They have been brutally oppressed by the Chinese government. "Because the Government authorities in Xinjiang regularly grouped together those involved in 'ethnic separatism, illegal religious activities, and violent terrorism,' it was often unclear whether particular raids, detentions, or judicial punishments targeted those peacefully seeking to express their political or religious views or those engaged in violence." U.S. Dep't of State, *Country Reports on Human Rights Practices—2004—China* (2005) at 36, *available at* http://www.state.gov/g/drl/rls/hrrpt/ 2004/41640.htm. China "continues to brutally suppress any peaceful political, religious, and cultural activities of Uighurs, and enforce a birth control policy that compels minority Uighur women to undergo forced abortions and sterilizations." Amnesty International, China Report 2005, *available at* http://web.amnesty.org/report2005/chn-summary-eng.

All Petitioners left China to escape the oppression of their people, and to make a better life. All eventually made their way to a Uighur village located in the White Mountains of Afghanistan, near Jalalabad and the Pakistan border. There were no Afghans or Arabs in the village. The village itself was no more than a handful of run down houses bisected by dirt tracks. In return for food and shelter, the Uighur men did odd construction jobs and manual labor, helping to build houses and a mosque. In the village there was a single AK-47 Kalashnikov rifle

and a pistol. One day, Petitioners—like the non-enemy combatant Uighurs—were shown the Kalashnikov, and how to assemble and disassemble the weapon. Some of the men shot a few bullets at a target. *See* Petition at ¶ 48.

In mid-October 2001, U.S. air strikes flattened the Uighur village. Amid the chaos and confusion, eighteen unarmed Uighur men fled together to caves in the mountains. None of them fought against the United States or coalition forces, none carried or shot a gun, none supported forces hostile to or engaged in armed conflict with the United States. In December, after weeks of hiding in caves in the mountains, amid the bombardment and near starvation, they crossed into Pakistan. *See id.* at ¶ 51.

When the Uighurs crossed the Pakistani border they were taken in by local villagers who initially fed them and gave them shelter, but eventually handed them over to Pakistani officials for arrest. The Uighurs were then turned over to the U.S. military in return for a bounty *See, e.g.,* Combatant Status Review Tribunal document 01236 *available at* http://www.dod.mil/pubs/foi/detainees/csrt/index.html; *Guantanamo detainees say Arabs, Muslims sold for U.S. bounties*, USA TODAY, May 31, 2005 (reporting that certain Guantanamo detainees testified to CSRT that they had been sold to American forces for bounties ranging from $3,000 to $25,000). They have been in U.S. custody ever since. *See* Petition at ¶¶ 52-54.

The brutal murders of September 11, 2001, and the subsequent U.S. led "war on terror," changed the relationship between the United States and China. Before September 11, the U.S. had been deeply skeptical of China's efforts to legitimize its oppression of the Uighur people by labeling Uighur political dissidents "terrorists." After September 11, however, the United States required an ally for its "war on terror"—and in particular for its Iraq campaign—and China was a critical regional power. In late August, 2002, U.S. Deputy Secretary of State Richard Armitage

sought Chinese support for U.S. plans to invade Iraq. The Chinese demanded concessions. China wanted the Uighurs at Guantanamo Bay—including Petitioners here—branded by the U.S. as "terrorists." *See id.* at ¶¶ 76-77.

On August 26, 2002, in a conference room in Beijing, Mr. Armitage agreed. One month later Chinese President Jiang Zemin assured President Bush the Chinese would acquiesce in American war plans. China, in turn, used the "war on terror" as a pretext for further persecution of the Uighurs. *See id.* at ¶¶ 75-77. *See also, e.g.,* Joshua Kurlantzik, "Unnecessary Evil: China's Muslims aren't terrorists. So why did the Bush administration give Beijing the green light to oppress them?" WASH. MONTHLY (Dec. 1, 2002) ("More than 3,000 Uighurs reportedly have been secretly jailed since 9/11, and many have been executed for no given reason."). Petitioners are victims of this realpolitik, brutal negotiations to secure support for a war in exchange for a lie.

B. Petitioners Have Never Had a Hearing on the Merits of Their Detention

1. The CSRTs

On June 28, 2004, the Supreme Court determined that Guantanamo prisoners have the right to challenge the legality of their detention in federal court. *Rasul v. Bush*, 542 U.S. 466 (2004). *See also Hamdi v. Rumsfeld*, 542 U.S. 507 (2004). The Government hastily created the CSRTs. The CSRT procedures promulgated by the Department of Defense establish a "non-adversarial proceeding," purportedly "to determine whether each detainee" at Guantanamo "meets the criteria to be designated as an enemy combatant." *See* Gordon England, Secretary of Navy, Memorandum re Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at Guantanamo Bay Naval Base, Cuba (July 29, 2004) ("CSRT

Procedures") at Encl. 1(B), *available at* http://defenselink.mil.news/Jul2004/d20040730 comb.pdf (also attached as Exhibit 2 to Petition).[2]

But CSRTs were never intended to determine status. They were created to lend the appearance of legitimacy to the de facto imprisonments that already existed. To that end, prisoners were denied counsel, denied the opportunity to confront their accusers or see the evidence against them, denied a neutral fact-finder, and subject to a presumption of guilt. *See* CSRT Procedures at Encl. 1(F)(5) (prisoner may not be represented by counsel); Encl. 1(F)(8) (prisoner "may" be given access only to unclassified evidence); Encl. 1(C) (Tribunal composed entirely of military officers); Encl. 1(G)(11) (rebuttable presumption that evidence supporting the enemy combatant classification "is genuine and accurate"). *See also* Petition ¶¶ 100-124.

In the overwhelming majority of cases, the CSRT worked as intended, and classified the prisoner as an enemy combatant. In numerous cases where the CSRT did not reach the predetermined enemy combatant result, Respondents put intense pressure on the panel to reverse its finding, convened another CSRT to declare the prisoner in question to be an enemy combatant, or simply ignored the result by continuing the imprisonment anyway. *See* Petition at ¶¶ 135-36.

The Government's public-relations need to stage CSRTs in order to create the impression of "enemy combatant" status created a special problem as to the group of eighteen Uighurs, all of whom previously had already been cleared of "enemy combatant" status. *See* Petition ¶¶ 95-96; U.S. Dep't of Defense News Transcript—Defense Department Special Briefing on Combatant

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[2] Before each CSRT was convened, the prisoner was advised that his status review was *not* a substitute for his habeas rights. The following notice was read to each Petitioner: "The U.S. Government will give you an opportunity to contest your status as an enemy combatant. Your case will go before a Combatant Status Review Tribunal, composed of military officers. . . . *As a matter separate from these Tribunals, United States courts have jurisdiction to consider petitions brought by enemy combatants held at this facility that challenge the legality of their detention.* You will be notified in the near future what procedures are available to challenge your detention in the U.S. courts." CSRT Procedures, Encl. 4 (emphasis added). Respondents thus conceded that the CSRTs were a substitute for habeas corpus review, and each Guantanamo prisoner was entitled to, and did, rely on this notice.

Status Review Tribunals at 3 (Mar. 29, 2005), *available at* http://www.defenselink.mil/transcripts/2005/tr20050329-2382.html (Navy Secretary Gordon England: "I think it has been reported we have Uighurs from China that we have not returned to China, *even though, you know, some of those have been deemed, even before these [CSRT] hearings, to be non-enemy combatants* because of concerns and issues about returning them to their country.") (emphasis added). A CSRT was convened for each Uighur, and the evidence was the same as to each man. Five of the CSRTs found that the Uighur in question was not an "enemy combatant." A sixth CSRT found that the prisoner was not an "enemy combatant" but this decision was reversed when Respondent convened a second CSRT panel to overturn this unacceptable outcome. The remaining Uighurs—including all Petitioners—were classified as "enemy combatants." *See* Petition at ¶¶ 133-35.

2. *Kiyemba v. Bush*

In the summer of 2005, Petitioners and other Uighurs filed a petition for a writ of habeas corpus and a complaint for additional relief in the District Court for the District of Columbia. *Kiyemba v. Bush*, no. 05-1509 (RMU) (D.D.C. filed July 29, 2005). On September 13, 2005, the district court granted the government's request stay the case pending resolution of certain legal issues being considered by this Court in *Al Odah v. United States* and *Boumediene v. Bush*, consolidated appeals *sub judice* before this Court, Nos. 05-5064, *et al.* and Nos. 05-5062, *et al.* (oral argument held on March 22, 2006). The district court also entered the Protective Order, which continues to govern counsel's communications with Petitioners, counsel's visits to the base,[3] counsel's handling of information learned from Petitioners, and filings in *Kiyemba*.

The *Kiyemba* petitioners appealed the stay as an abuse of the district court's discretion and an illegal continuation of the very harm complained of—unlawful detention without a

[3] To date, counsel have been to the base a total of six times, and have met with five of the seven Petitioners. Counsel are scheduled to go to Guantanamo again in January 2007.

hearing. *Kiyemba v. Bush*, consolidated appeals *sub judice*, nos. 05-5487-92, 06-5042 (oral argument held on September 11, 2006). This Court has yet to rule on that appeal.

Most, but not all, of the lower court Guantanamo habeas cases have been stayed pending resolution of *Al Odah* and *Boumediene*. Those cases have been pending in this Court for nearly two years. The Court has held multiple oral arguments, and required a third round of briefing this fall. The most recently briefed issue is whether the federal courts have jurisdiction over Guantanamo detainee's habeas claims in light of the Military Commissions Act of 2006.[4]

As discussed in detail in the *Al Odah* and *Boumediene* Petitioners' briefs, the MCA does not deprive the federal courts of jurisdiction over Guantanamo habeas claims, and if it did it would be an unconstitutional suspension of the writ. *See* Petitioner's Classified Brief of Guantanamo Detainees, *Al Odah v. United States,* No 05-5064 (D.C. Cir. Mar. 31, 2005); Supplemental Brief of Petitioners at 6-24, *Boumediene v. United States*, Nos. 05-5062 and 05-5063 (D.C. Cir. Mar. 2, 2005). But Petitioners are innocent men who are in cages at Guantanamo. They are entitled to habeas, but they simply cannot wait for endless rounds of briefing, and repeated appeals to the Supreme Court and back. Petitioners therefore filed this action under the Detainee Treatment Act—the one type of action it is absolutely certain this Court may hear *now.*

3. This DTA action

Under the DTA this Court has "exclusive jurisdiction to determine the validity of any final decision of a Combatant Status Review Tribunal that an alien is properly detained as an enemy combatant." DTA § 1005(e)(2)(A). DTA claims may be brought only by individuals currently incarcerated at Guantanamo Bay after completion of the CSRT. *Id*. § 1005(e)(2)(B). Congress specified that this Court is to consider both legal and factual issues:

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[4] The government contends that the Military Commissions Act of 2006 deprives the federal courts of jurisdiction over all actions by aliens detained as "enemy combatants" except for actions like this one under the DTA.

> (i) whether the status determination of the Combatant Status Review Tribunal . . . was consistent with the standards and procedures specified by the Secretary of Defense for Combatant Status Review Tribunals (including the requirement that the conclusion of the Tribunal be supported by a preponderance of the evidence and allowing a rebuttable presumption in favor of the Government's evidence); and
>
> (ii) to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to make the determination is consistent with the Constitution and laws of the United States.

Id. § 1005(e)(2)(C). Petitioners challenge their CSRTs on all fronts. As a factual matter, their classification as enemy combatants was *not* supported by a preponderance of the evidence, and was *not* consistent with the applicable standards and procedures. As a legal matter, the standards and procedures used were illegal and unconstitutional.

C. The Guantanamo Protective Order

In the fall of 2004, in the immediate wake of the Supreme Court's *Rasul* and *Hamdi* decisions, the judges of the United States District Court for the District of Colombia transferred all of the then-pending Guantanamo habeas cases to Senior Judge Joyce Hens Green for coordination and management, including rulings on all common procedural issues. After several months of negotiation, briefing and argument, Judge Green promulgated what would become the standard protective order in all Guantanamo cases. *See generally Adem v. Bush*, 425 F.Supp.2d 7, 10-12 (D.D.C. 2006) (Kay, Mag.) (describing the lengthy process by which the standard protective order was created); *Qasim v. Bush*, no. 05-1779 (D.D.C. Aug. 2, 2006) (describing the protective order as "painstakingly negotiated by the parties").

On November 8, 2004, Judge Green entered an Amended Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantanamo Bay, Cuba (attached as Exhibit 1). *See In re Guantanamo Detainee Cases*, 344 F. Supp. 2d 174 (D.D.C. Nov. 8, 2004). Among other things, this order included detailed procedures for

counsel's access to prisoners at Guantanamo. A few weeks later, Judge Green entered two additional orders supplementing and clarifying certain matters in the November 8, 2004 order. *See* Order Supplementing and Amending Filing Procedures Contained in November 8, 2004 Amended Protective Order in *In re Guantanamo Detainee Cases*, No. 02-0299, *et al*., (D.D.C. Dec. 13, 2004) (attached as Exhibit 2); Order Addressing Designation Procedures for "Protected Information" in *In re Guantanamo Detainee Cases*, No. 02-0299, *et al*., (D.D.C. Nov. 10, 2004) (attached as Exhibit 3). We refer to these three orders collectively as the "Protective Order."

The government has previously described the Protective Order this way:

> The regime established by the Protective Order addresses the unique context of these cases, involving litigation on behalf of individuals detained at a military facility in wartime. Among other things, the regime provides procedures for litigation filings and other matters in order to protect legitimate government security interests. The Revised Procedures for Counsel Access to Detainees at the U.S. Naval Base in Guantanamo Bay, Cuba, annexed to the Protective Order as Exhibit A ("Access Procedures"), in turn, provide procedures regarding habeas counsel's access to properly represented detainees and for the handling of information obtained from and delivered to detainees.
>
> For example, the Access Procedures provide a system for privileged legal correspondence and face-to-face communication between counsel and represented detainees. In recognition of the unique, wartime setting of these cases and detentions, including that information possessed by detainees could have national security or base and personnel security implications warranting potential treatment of the information as classified, however, the Access Procedures require that counsel and interpreters involved with detainees obtain security clearances and that information learned from detainees be treated as classified pending review by a Privilege team. Access Procedures §§ III.A., IV.A.6., VI., VII. The Privilege Team reviews information habeas counsel wish to treat as other than classified and determines whether the information is classified or otherwise protected. *Id.* § VII. The Team is composed of DoD personnel who are prohibited from participation in litigation concerning detainees and cannot disclose information learned from their review activities, except upon discovery indicating an "immediate and substantial harm to national security" or "imminent acts of violence."(1) *See id*. § II.D., VII.A., VII.D.-F. Furthermore, for common-sense security purposes, the Access Procedures provide that packages of legal mail sent to detainees undergo an inspection for non-legal mail

> contraband. *Id*. § IV.A. The Access Procedures also provide procedures for the handling of information pending classification review. *Id*. §§ IV.A.6., VI.A., VI.B.
>
> In addition, the Access Procedures address the logistics of habeas counsel visits to represented detainees at Guantanamo, including with respect to requesting visits, numbers of counsel participating in visits, and procedures related to certain clearances needed to visit a foreign military base such as Guantanamo. *See id*. § III.D. The Access Procedures also recognize the fact that the detention setting is that of a secure military base and acknowledge the role of the military with respect to the detentions by reserving to military authorities prerogatives related to security and management of the detention facility. *See, e.g.,* §§ III.D., X.
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> The regime established by the Protective Order has been in place for over a year while the Guantanamo detainee cases have been pending. The regime was developed after extensive negotiations between counsel for the government and for petitioners in the habeas cases pending at the time, and after both briefing and a hearing before Judge Green.

Respondents' Opposition to Petitioner's [sic] Motion for an Order Amending Access Procedures Pertaining to Non-Enemy Combatants at 2-4, *Kiyemba v. Bush*, no. 05-1509 (RMU) (D.D.C. Nov. 14, 2005).

Guantanamo prisoners have filed over 200 habeas corpus actions in the United States District Court for the District of Columbia. The Protective Order has been entered in nearly all of them.[5] The lower court has also developed expertise in handling any disputes that arise under the protective order. *See* Order, Kiyemba v. Bush, no. 05-1509 (RMU) (Nov. 2, 2005) (order of Calendar and Case Management Committee entered in all then-pending Guantanamo habeas cases referring all motions regarding the Protective Order to Magistrate Judge Alan Kay).

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[5] Prior to the passage of the Detainee Treatment Act of 2005, the government routinely moved for entry of the Protective Order or stipulated to such a request by the detainees. After the passage of the DTA, the government took the position that the Protective Order should not be entered on the ground that the DTA stripped the court of jurisdiction over the habeas action. *But see Hamdan v. Rumsfeld*, 126 S.Ct. 2749, 2769 (2006) (holding that the DTA did not strip the courts of jurisdiction over pending habeas corpus claims). Despite the government's post-DTA jurisdictional objections, the United States District Court for the District of Columbia has nevertheless entered the protective order at least 44 more habeas cases.

III. THE STANDARD DISTRICT COURT PROTECTIVE ORDER SHOULD BE ENTERED IN THIS ACTION

There can be no doubt that a protective order will be necessary in this case. In order to fully prepare their case, Petitioners will, obviously, need to continue to meet and communicate with their counsel. Counsel will also need to continue to visit their clients at Guantánamo, a secure military installation. Petitioners and counsel are already able to communicate with their counsel under the auspices of the Protective Order in *Kiyemba*, and will, of course, continue to strictly adhere to the requirements of that Protective Order. The Protective Order should be entered in this case as well, lest there be any dispute or confusion about when and where it applies, and so that it will govern the handling of classified information unique to this action.

Respondents' have never made a factual return in Petitioners' lower court habeas case. In other habeas cases where Respondents have been required to make a factual return, it has been Respondents' practice to provide documents related to the CSRT. Respondents have filed unclassified CSRT documents with the district court on the public record, while also making classified CSRT documents available to detainees' counsel at a secure government facility, as provided in the Protective Order. Petitioners anticipate that some of the relevant documents in this case will be classified. There is no reason to deviate from the well-established procedures of the Protective Order for the proper handling of such information, including procedures for filing such information with the Court.

Entry of the Protective Order here will ensure uniformity, and provide familiar and efficient procedures in this case. The Protective Order has been in place for over two years while the Guantánamo detainee habeas cases have been pending. Hundreds of attorney visits, not to mention innumerable letters and pages of presumptively-classified attorney notes, have all been handled under its provisions. All parties are familiar with the system. Certainly, there is no need

to repeat time consuming negotiations while seven men wait behind bars for the resolution of their case and their fate. There implementation of the Protective Order here will provide for a uniform set of rules that are familiar and efficient.

The government has previously strenuously argued for uniform counsel access procedures as to all detainees at Guantanamo. As noted above, the facts of Petitioners' case are materially identical to those of other Uighur men who the CSRTs found were not enemy combatants. The government continued to imprison even those admittedly innocent men for over a year—until one day before this Court was to hear oral argument on the legality of their continued imprisonment. During that time, the non-enemy combatants moved for modification of the protective order so that they could more effectively communicate with their attorneys. The government opposed, arguing that—in the interest of a uniform Protective Order regime—even innocent men should be treated as enemy combatants. As the government itself urged, "multiple counsel access regimes . . . among these cases involving [non-enemy combatants] *or among the Guantanamo detainee case in general*, could create a burdensome, confusing, and unmanageable system." Respondents' Opposition to Petitioner's Motion for an Order Amending Access Procedures Pertaining to Non-Enemy Combatants at 9, *Qassim v. Bush*, no. 05-0497 (JR) (D.D.C. Nov. 14, 2005) (emphasis added).[6]

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[6] Despite having previously argued vigorously for a uniform approach to the Guantanamo detainee cases, Respondents now refuse to agree to entry of the Protective Order in this case. On December 14, 2006, Respondents indicated that they intend to move the Court for entry of the new—and frankly draconian—protective order proposed by them in one of the two other Detainee Treatment Act cases pending in this Court. *See* Motion for Entry of Protective Order, *Bismullah v. Rumsfeld*, no. 06-1197 (D.C. Cir. Aug. 25, 2006). If Respondents do in fact make such a motion, Petitioners will vigorously oppose it.

Petitioners do not move for entry of the Protective Order because it is perfect. On the contrary, experience has shown that the Protective Order leaves the government—which, before *Rasul*, strenuously argued that the detainees should not have access to counsel at all—ample opportunity to burden the attorney-client relationship, and to unnecessarily maximize the difficulty of litigating these cases. However, as the government itself has previously argued, implementing a second, separate set of rules in this Court for client communications would be unnecessarily burdensome and complex. That is particularly true where, as here, the Protective Order already governs Petitioners' communication with their attorneys because it has been entered in Petitioners' lower court habeas case. We agree that a single Protective Order and counsel access system for the Guantanamo detainee cases, even an imperfect one, is vastly more efficient than multiple regimes. Certainly Petitioners should not be left to rot in a cell while the parties and Court debate the issue. The best should not be the enemy of the good.

IV. CONCLUSION

The Protective Order already governs Petitioners' communication with their attorneys, and counsel's handling of possibly-sensitive information. It addresses the government's oft-professed security concerns, and the District Court has already implemented a uniform process for resolving any disputes that may arise under the Protective Order. It is both sensible and efficient to enter that same Protective Order here. Petitioners therefore respectfully request that the Court issue an order adopting the Protective Order as if originally entered herein.

Dated: December 18, 2006

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CERTIFICATE OF SERVICE

I, Erika Tillery, have this 18th day of December, 2006, served copies of the **Petitioners' Motion For Entry Of Protective Order** by hand on:

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