

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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MUHAMMAD AL-ADAHI, *et al.*, )  
 )  
 Petitioners, )  
 )  
 v. )  
 )  
 GEORGE W. BUSH, )  
 President of the United States, *et al.*, )  
 )  
 Respondents. )

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Civil Action No. 05-CV-0280 (GK)

**EMERGENCY MOTION OF DETAINEES FOR  
TEMPORARY RESTRAINING ORDER**

Pursuant to Federal Rule of Civil Procedure 65, Detainees

Muhammad Al-Adahi, Muhammad Ali Abdullah Bawazir, Fahmi Salem Al-Assani, Suleiman Awadh bin Aqil Al-Nahdi, and Zahir Omar Khamis bin Hamdoon (the “Detainees”) move this Court for a temporary restraining order and/or preliminary injunction prohibiting the Respondents from preventing the undersigned counsel from showing the Detainees brief videotapes, thirteen still photographs, and a letter during counsel’s long scheduled visit with Detainees at Guantanamo Bay beginning on Sunday, September 25, 2005. The Court should issue the requested temporary restraining order because Detainees will suffer irreparable harm if counsel is not permitted to exhibit these items to Detainees.

*See* Fed. R. Civ. P. 65(b). In support of this motion, the Detainees show the following:

Between June 27 and June 29, 2005, several of the undersigned counsel met with each of the Detainees in Guantanamo and offered to represent the Detainees in connection with this proceeding. As a result of the United States Government's interrogation tactics during the almost four years they have been imprisoned, the Detainees were reluctant to accept counsel's representations that they would provide truly independent legal services to the Detainees. Specifically, certain of the Detainees reported that the Government's tactics had included the use of interrogators who identified themselves as attorneys in order to gain the trust of the Detainees. This interrogation tactic, combined with the fact that the Detainees had each been repeatedly interrogated by the Government, caused the Detainees to question whether undersigned counsel are truly independent of the United States Government.

Due to the fears created by the Government, several of the Detainees requested that counsel obtain the blessing of their families. At least one of the Detainees requested that counsel obtain a videotape of his family to show that the family approve of and trust counsel. One Detainee also asked that counsel obtain the approval of Mr. Mohammed Naji Allaw, a lawyer who is Chairman of the

National Organization for Defending Rights and Freedoms, a well respected human rights organization in Yemen.

As soon as they could organize the trip, including making arrangements to meet with the Detainees' families, counsel traveled to Yemen to meet with the Detainees' families. Counsel met with four of the Detainees' families<sup>1</sup> and obtained videotapes of family members introducing counsel and encouraging Detainees to engage counsel to represent them. Additionally, counsel obtained a videotape and one page letter from Mr. Allaw in which Mr. Allaw also encouraged Detainees to engage the undersigned counsel. Counsel returned to the United States on Thursday, September 8, 2005, and arranged to have the videotapes translated and converted into DVDs on Friday, September 9, 2005.

The five videotapes total less than 17 minutes of messages. The videotapes were taken by counsel, who has a security clearance, on equipment brought from the United States. The original videotapes were in the custody of counsel at all times until copies were first delivered to the Government on Monday, September 12, 2005.<sup>2</sup>

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<sup>1</sup> The family of Suleiman Àwadh bin Aqil Al-Nahdi was unable to make the trip (a 12 to 14-hour bus ride) to Sana'a to meet with counsel.

<sup>2</sup> As is described below, the compact discs containing the videotaped messages were ultimately transported to Guantanamo by counsel for other detainees, who also holds a security clearance.

While in Yemen, counsel also obtained still photographs of Detainees' family members. These photographs were taken by counsel who have security clearance on equipment brought from the United States. The photographs were in the custody of counsel at all times until they were developed. Counsel did not request that the Government clear the actual photographs, but instead, requested that the Government clear color copies of the photographs. Counsel submitted color copies in order to eliminate any concern that the Government might have that the pixels in the photographs could be used to surreptitiously transmit information to the Detainees.

As noted above, counsel submitted five DVDs (totaling less than 17 minutes of messages), thirteen color copies of still photographs, and one letter (with translation) to the Government on September 12, 2005. In the letter transmitting these items, counsel reminded the Government of the impending trip to Guantanamo on September 24, 2005, and requested that the Government notify counsel by September 19, 2005, if the items could not be cleared in time to be shown to Detainees during counsel's visit beginning on September 25, 2005. The next morning, September 13, 2005, counsel delivered English and Arabic transcripts of the videos to the Government.

Despite the fact that the Government has individuals in Washington, D.C., who apparently have the ability to make classification determinations and

approve materials for public consumption, the Government has taken the position that only officials at Guantanamo can clear the materials that are to be taken into meetings with prisoners at Guantanamo. On September 13, 2005, the Government notified counsel that it would take two weeks for the items submitted by counsel to even reach Guantanamo, where they would be reviewed. Once informed of the almost unbelievable delay, Counsel contacted counsel for other detainees, who was traveling to Guantanamo to meet with his clients on September 15 and requested that he transport the items to Guantanamo. This lawyer delivered the items to the Judge Advocate General's office at Guantanamo when he arrived on Thursday, September 15, 2005.

On Monday, September 19, 2005, counsel received a call from Master Sergeant James Wells, a non-commissioned officer in the Judge Advocate General's office, asking counsel to identify which of the still photographs would be shown to which Detainee. During the call, counsel asked Master Sergeant Wells to alert him if there were to be any problem with clearing the materials before counsel's arrival at the base. Counsel heard nothing from the Government until 3:12 p.m. on Wednesday, September 21, 2005, when he received the message attached as Exhibit "A." In that message, counsel for the Government indicated that the introductory videos might not be cleared in time for counsel's meeting with the Detainees and notified counsel that if a Detainee, who the Government

might prevent from seeing the introductory video, failed to sign the “Acknowledgement of Representation” form, the Detainee would be denied representation.

By the time counsel arrive at Guantanamo on September 24, 2005, the Government will have had access to five videotapes totaling less than 17 minutes, thirteen still photographs and one letter for a total of 12 days, and those with the power to approve the items will have had the items and English language transcripts for nine days. Nevertheless, two days before counsel is scheduled to leave for Guantanamo, the Government has informed counsel that the items may not be cleared in time for them to be shown to Detainees during counsel’s visit. The Government takes the remarkable position that it may not be able to clear these items, which are necessitated by the Government’s prior actions undermining the attorney-client relationship, at the same time it invokes the provision of the Department of Defense imposed Procedures for Counsel Access that require counsel to obtain acknowledgements of representation from Detainees within ten days after their upcoming visit to Guantanamo. The Government contends that if counsel does not obtain this authorization, despite Government interference, Detainees will no longer have access to counsel.

For the foregoing reasons, Detainees respectfully request that the Court issue a temporary restraining order or preliminary injunction prohibiting the

Government from preventing counsel from showing each of the Detainees the videotape and still photographs of his family and the letter and videotape of Mr. Allaw.

A proposed order is attached.

Dated: September 22, 2005.

Respectfully submitted,

Counsel for Petitioners:

/s/ Richard G. Murphy, Jr.

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**CERTIFICATE OF SERVICE**

I, Richard G. Murphy, Jr., certify that I have caused a true and accurate copy of the foregoing to be served upon the following persons, by first-class United States mail, in addition to the service that automatically occurs by virtue of my electronic filing of this document:

The Honorable Alberto Gonzales  
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This 22nd day of September, 2005.

/s/ Richard G. Murphy, Jr.  
Richard G. Murphy, Jr.