No-_____

IN THE SUPREME COURT OF THE UNITED STATES

In re Abdul Hamid Al-Ghizzawi,

Petitioner.

PETITION FOR ORIGINAL WRIT OF HABEAS CORPUS

H. Candace Gorman
Counsel of Record
542 S. Dearborn
Suite 1060
Chicago Il. 60605
312.427.2313

Counsel for Petitioner

PARTIES TO THE PROCEEDING

Petitioner here and in the United States District Court for the District of Columbia is Abdul Hamid Al-Ghizzawi , Internment Serial Number ("ISN") 654. Respondents here and in the District Court, or their successors, are George W. Bush, President; Robert M. Gates, Secretary of Defense; Rear Admiral Harry B. Harris, Commander, Joint Task Force-GTMO; and Colonel Wade F. Davis (United States Army), Commander, Joint Detention Operations Group.

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JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. 1651(a), 2241(a), 2241 (b) and 2242, and Article[s] I and III of the U.S. Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S Const. art. I, § 9, cl. 2 provides:

> The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

U.S. Const. art. I, § 9, cl. 3 provides:

> "No bill of attainder or ex post facto Law shall be passed."

Section 2241 of Title 28, United States Code, as amended by the Military Commissions Act of 2006, Pub. L. No. 109-366, § 7, 120 Stat. 2600, 2636 (2006), is reproduced at Tab 9 of the Appendix.

Section 1005(e) of the Detainee Treatment Act of 2005, Pub. L. No. 109-148, §1005(e), 119 Stat. 2680 (2005), is reproduced at Tab 10 of the Appendix.

PRELIMINARY STATEMENT

Abdul Hamid Al-Ghizzawi has been held for almost six years at Guantánamo Bay, Cuba after being apprehended by bounty hunters in Afghanistan where he was a shopkeeper living with his Afghani wife and infant child. Petitioner Al-Ghizzawi, like Mr. Ali (*In re Ali*, — S.Ct. —-, 2007 WL 1802098, 75 USLW 3694 (U.S. Jun 25, 2007) (NO. 06-1194), was subject to two Combatant Status Review Tribunals ("CSRT's). However Mr. Al-Ghizzawi's case also brings forth the extraordinary additional fact that a member of his first CSRT panel, the panel that found Mr. Al-Ghizzawi to *not* be an enemy combatant included panel member Lt. Col. Stephan Abraham. Lt. Col. Abraham provided an affidavit to this Court in June 2007 in that Petitioner's successful Motion to Reconsider the denial of Certiorari in *Boumediene v. Bush*, — S.Ct. —-, 2007 WL 1854132, 75 USLW 3705, 75 USLW 3707 (U.S. Jun 29, 2007) (NO. 06-1195). In his affidavit Lt. Col. Abraham described not only the failed CSRT process and the pressure put on the CSRT panels to find the prisoners "enemy combatants" but he also described in detail the only panel that he sat on (panel 23) and the paucity of evidence against that detainee, Mr. Al-Ghizzawi, petitioner herein.

Mr. Al-Ghizzawi asks this Court to step in and provide guidance to the lower courts in this astonishing failure of process and to provide a bright line to guide both the lower courts and the executive. Only then will this ongoing

procedural morass involving the Guantánamo detainees come to an end. Habeas Corpus is, at its core, the most basic process under our Constitution, but for the men at Guantánamo that process has completely melted down, to the point of being nonexistent. The lower courts continue to be confused about their role in the Guantánamo detentions and are hesitant to act because they lack the clarity as to the type of process that is required to move these cases forward. By choosing the extraordinary example of the plight of Mr. Al-Ghizzawi this Court can confirm that there is a bottom line constitutional limit and at the same time guide the lower courts, not only as to the fact that they *must* move on to the merits of these habeas petitions, but how to do it. This is exactly the situation under which both certiorari and the original writ were designed.

STATEMENT OF THE CASE

Petitioner Abdul Hamid Al-Ghizzawi is a prisoner incarcerated at the United States Naval Station at Guantánamo Bay, Cuba since early 2002. Petitioner is a citizen of Libya who was living in Afghanistan when abducted by bounty hunters, sold to the United States military and then imprisoned at Guantánamo. He has been under Respondents' exclusive custody and control since that time. Petitioner's jailers refer to him, and to all other inmates at Guantánamo, by a number, not a name. Mr. Al-Ghizzawi's number is 654.

Mr. Al-Ghizzawi is now in his mid to late forties and had been living in Afghanistan for approximately 10 years (since shortly after the Russians left the

country) prior to his being abducted by Afghani tribesmen and turned over first to the Northern Alliance and then to the US forces in the late fall of 2001, in return for a cash bounty. Mr. Al-Ghizzawi is married to an Afghani woman and has a young daughter who was only a few months old when he was abducted. He and his wife owned and ran a small shop in Jalalabad where they sold honey and spices and later expanded to include a bakery. In the fall of 2001 when the United States military began bombing areas close to their city, Mr. Al-Ghizzawi took his wife and five month old baby and fled their home and shop in Jalalabad, seeking safety in a rural area where his in-laws lived.

Not long after Mr. Al-Ghizzawi and his family arrived at his in-laws (approximately December of 2001) armed men came to the home and told the family to turn over "the Arab" (Al-Ghizzawi). Mr. Al-Ghizzawi cooperated with the bounty hunters to avoid any harm to his family. Mr. Al-Ghizzawi was first turned over to the Northern Alliance, then, in turn, sold to the US forces in return for a bounty under a U.S. program that provided large bounties in return for "terrorist and murderers." (A001) Mr. Al-Ghizzawi is neither a terrorist nor a murderer but was instead the victim of greed in an impoverished nation. He has been held at Guantánamo since the spring of 2002 simply on the basis of being an Arab man in the wrong place at the wrong time, when the United States military indiscriminately provided a financial incentive to round up such men. Since his detention at Guantánamo, Mr. Al-Ghizzawi's health has steadily deteriorated. Mr. Al-Ghizzawi suffers from both hepatitis B and tuberculosis and has not been

treated for either condition while being held at Guantánamo despite repeated requests for medical help. Counsel for Al-Ghizzawi had sought his medical records and medical treatment for his life threatening illnesses, but the District Court has, thus far declined to grant the requested relief. An appeal on these issues has been pending in the DC Circuit since November 28, 2006 (06-5394) No action has been taken by the Circuit Court on that appeal. To this day, Mr. Al-Ghizzawi has not been treated for these life threatening diseases. [1]

Respondent convened two Combat Status Review Tribunals (CSRTs) as to Mr. Al-Ghizzawi, the first time classifying him as a **non-enemy combatant**. (A128-30, 132-34, 138-39)(Full Factual return at A121-A274) As further explained below, after the *first* Combatant Status Review Tribunal ("CSRT") determined on November 23rd 2004 that Al-Ghizzawi was *not* properly classified as an "enemy combatant," Matthew Waxman, the Assistant Secretary of Defense for Detainee Affairs, ordered the Panel to try again, evidently until the panel achieved the desired result, i.e. a finding that Al-Ghizzawi *was* an enemy combatant. (A116-17) Accordingly, in January 2005, a second CSRT panel determined on the identical evidence found insufficient by the first CSRT panel, that Mr. Al-Ghizzawi *was* properly classified as an 'enemy combatant." (A129,131, 135-37) Mr. Al-Ghizzawi is now in his sixth year of incarceration at Guantánamo.

[1] In an abundance of caution Mr. Al-Ghizzawi also filed a petition for habeas and a DTA Petition under the *purported* habeas "substitute" provided in the DTA in the Circuit Court— *Al-Ghizzawi v. Gates*, No. 07-1089 (D.C. Cir. filed April 10, 2007). No action has been taken by the Appellate court on that petition even though its Senate sponsors insisted that it was an appropriate substitute for habeas corpus.

Mr. Al-Ghizzawi has now learned that "Panel 23," the Panel that heard his *first* CSRT, was the panel that included Stephen Abraham, the Lieutenant Colonel in the United States Army Reserve who recently submitted an affidavit regarding the CSRT process that directly contradicts the contentions made in the government's affidavit of Rear Admiral (retired) James M. McGarrah. Lt. Col. Abraham's affidavit was filed in the successful motion to re-hear the denial of cert. in *Boumediene v. Bush*, — S.Ct. —, 2007 WL 1854132, 75 USLW 3705, 75 USLW 3707 (U.S. Jun 29, 2007) (NO. 06-1195). (A 275-81) As Lieutenant Colonel Abraham declared in his affidavit, "On one occasion, I was assigned to a CSRT panel with two other officers, an Air Force Colonel and an Air Force Major, the latter understood by me to be a judge advocate. We reviewed the evidence presented to us regarding the recommended status of a detainee. *All of us found the information presented to lack substance.*" (A280 ¶ 21 *emphasis added*) Lt. Col. Abraham went on to state "On the basis of the paucity and weakness of the information provided both during and after the CSRT hearing, *we determined that there was no factual basis for concluding that the individual should be classified as an enemy combatant.*" (Id. at ¶23, *emphasis supplied*). According to Lt. Col. Abraham's sworn testimony, Panel 23 was expressly ordered to reopen the hearing but the panel refused to reverse its determination that the prisoner was not properly an enemy combatant (and therefore could not be classified as an enemy) because there was absolutely no evidence to support a conclusion that the prisoner was an enemy combatant. (Id at ¶23) That prisoner was Mr. Al-Ghizzawi. (A128)

Al-Ghizzawi was one of the more than 30 detainees who were originally found not to be an enemy combatant in the CSRT process.[2] Declaring that Panel 23's CSRT's determination as to Petitioner was in error, Deputy Assistant Secretary Waxman directed that Al-Ghizzawi's (and other detainees) classification be reconsidered. (A 116-17) In response – and, Petitioner submits, contrary to CSRT procedures for non-enemy combatant designations and now confirmed by the Affidavit of Lt. Col. Stephen Abraham (see, *e.g.*, Wolfowitz Memo A004) – the authorities undertook an "inculplery search "for information that would justify the continued holding of Mr. Al-Ghizzawi(A118-120.) On January 18, 2005, the military officer charged with conducting that search, [redacted], submitted the results of his search (Id.). On January 21, 2005, a new CSRT Panel (32) was convened for the express purpose of reassessing Petitioner's non-enemy combatant status (A126) until it came to the conclusion desired by the Pentagon, and sometime thereafter redesignated Mr. Al-Ghizzawi as an "enemy combatant", again, even though the panel had *no new evidence* (A121-A274).

In an email chain (which included mention of Mr. Al-Ghizzawi's non enemy combatant status) culminating in a message to the Chair of the newly convened CSRT Panel 32, the following text appeared:

> * Please note that I did everything I could to ensure this was new evidence, but in fact the reconciliation

[2] The pressure put on original panels to find prisoners to be enemy combatants, as sworn to by Lt. Col. Abraham, should put all panels' findings into question.

> of the various exhibits on the G drive with the DAB folders and my inculplery search may have duplicated some of the references.
>
> * Inconsistencies will not cast a favorable light on the CSRT process or the work done by OARDEC. This does not justify making a change in and or (sic) itself but is a filter by which to look.....By properly classifying them as EC, then there is an opportunity to (1) further exploit them here in [G] TMO and (2) when they are transferred to a third country, it will be controlled transfer in status.."

(A119-20).

Within weeks of Mr. Al-Ghizzawi's first CSRT determination, the second tribunal panel, number 32[3], which acceded to the Pentagon's desired outcome, was formed in Washington, DC without Petitioner's presence or knowledge and a new personal representative that had never met with Petitioner was assigned as his personal representative.[4] Although Panel 32 claimed it reviewed "new" evidence in overturning panel 23's determination, a review of the classified CSRT confirms that there was, in fact, no new evidence. On the basis of what the panel **claimed** was new evidence (which the government has also "classified" as secret so that counsel cannot release the information publicly), that second tribunal unsurprisingly declared Mr. Al-Ghizzawi to be an enemy combatant. As this Court can see there was nothing new for the second tribunal and the pages that purportedly refer to that evidence should not have been classified.

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[3] This same Panel 32 was used in at least one other do-over CSRT. In *re Ali*. (*In re Ali*, — S.Ct. —, 2007 WL 1802098, 75 USLW 3694 (U.S. Jun 25, 2007) (NO. 06-1194)

[4] In both respects this is illegal under the CSRT process.

Mr. Al-Ghizzawi did not participate in his first CSRT because the notice from the government notified Al-Ghizzawi that his participation was not mandatory and further notified him that by failing to participate he was not waiving *his right to proceed in federal court.*[5] (A23) Al-Ghizzawi was never informed of the result of his first tribunal and was never given the opportunity to participate in the second tribunal.

Mr. Al-Ghizzawi had been desperately seeking legal counsel since early 2005 so that he could pursue his case in federal court and so that he could obtain medical treatment. (A282-85) In December 2005, upon retaining counsel, Mr. Al-Ghizzawi filed a habeas petition in the United States District Court for the District of Columbia (05-cv-2378). Two weeks after Mr. Al-Ghizzawi filed his habeas petition in the District Court, the President signed into law the Detainee Treatment Act of 2005 ("DTA"), Pub. L. No.109-148, 119 Stat. 2739 (2005). The government thereupon asserted and argued in *Boumediene* and *al Odah*, that DTA § 1005(e) deprived the Court of Appeals of jurisdiction over the pending appeals. The government's outrageous position prompted two rounds of supplemental briefing and a second oral argument in that appeal, further extending the litigation quagmire that has plagued these cases.

The District Court immediately stayed Mr. Al-Ghizzawi's case while the

[5] Further, acknowledging the government's own position at the time that the CSRTs were conducted that it was not intended as an adequate substitute for a habeas corpus petition, the notice to Al-Ghizzawi expressly advised that by failing to participate in the CSRT process, he was not waiving his right to proceed in federal court.

Court of Appeals for the District of Columbia Circuit considered the effect of the DTA in ***Boumediene*** and ***al Odah***. From that time until the present, no further action has ever been taken on Mr. Al-Ghizzawi's habeas petition.

The more than five years' incarceration that Mr. Al-Ghizzawi and hundreds of other Guantánamo prisoners have been forced to suffer without so much as a single judicial hearing makes a mockery of habeas corpus as "an effective and speedy instrument by which judicial inquiry may be had into the legality of the detention of a person" *Carafas* v. *LaVallee*, 391 U.S. 234, 238 (1968). Mr. Al-Ghizzawi respectfully asks this Court to use his case to effectively show the lower courts and the executive that that there is a bottom line constitutional limit implicated here and to provide a bright line guide as to how the courts should proceed. Unless this Court provides that guidance the legal limbo that has lasted these many years will continue indefinitely. In the alternative, Mr. Al-Ghizzawi asks this Court to direct the District Court to immediately lift its stay of his case and proceed to the merits of his petition and provide specific guidance to the Court for that relief.

"The primary purpose of a habeas corpus proceeding is to make certain that a man is not unjustly imprisoned." *Price* v. *Johnston*, 334 U.S. 266, 291 (1948)- but habeas review "must be speedy if it is to be effective." *Stack* v. *Boyle*, 342 U.S. 1, 4 (1952).

As these Kafkaesque proceedings drag on below, Petitioner Al-Ghizzawi is being held in isolation in Camp 6 (since December 2006), a "super-max" style

prison, at least 22 hours a day. (A 296¶37-38) Mr. Al-Ghizzawi has not seen or talked to his wife and young daughter in almost six years and he is rapidly losing his mind as he sits in total isolation. A286 ¶ 55) He rarely sees direct sunlight and has no access to fresh air except those times when he is placed in an outdoor cage for "recreation time". A299 ¶47 . During his 2 hours per day of "recreational time" (which, on alternating days, is in the middle of the night), Al-Ghizzawi is placed in a cage where he can sometimes see other prisoners but is punished if he tries to touch or greet them. A300¶52, A296¶39. There is no shade in the "recreation" cage which sits out in the blistering sun of Guantánamo. A300¶52. Mr. Al-Ghizzawi is compelled to complain to get so much as clean clothes. A296¶39. He is denied privacy when he uses the toilet; even female guards can see him. A296¶39. He is always cold in the air conditioned facility as are his food and drinks. A298¶ 44. He has no blanket, only a plastic cover to warm himself. A296¶39. He has no socks and the thermal shirts that are allowed to the detainees are taken away for the least infraction of the "rules". (Mr. Al-Ghizzawi had his thermal shirt taken away when he had toilet paper in his pocket at shower time and did not exit the shower immediately upon the call of the guard) A297-8¶ 44. He eats every cold meal alone. A297 ¶40, A298 ¶44. Like all Guantánamo prisoners, he is not allowed any visitors other than occasional trips by counsel and the Red Cross, and he is not allowed to make phone calls. A296-7 ¶39. He is not allowed access to the news and has a limited selection of books available of which he is only allowed one per week.A296¶ 39As this Court

recently affirmed, even convicted murderers cannot be made to endure conditions like these without first providing them the benefit of due process-*Wilkinson* v. *Austin*, 545 U.S. 209, 224 (2005), let alone a man such as Mr. Al-Ghizzawi who has been charged with no wrongdoing and for whom there is absolutely no evidence that he has ever been a threat to the United States. Until this Court acts Mr. Al-Ghizzawi and the other prisoners are forced to endure conditions that are not permitted for prisoners of war under the Geneva Conventions or army regulations, for convicted criminals in federal prisons, or for caged animals under Humane Society guidelines.

SUMMARY OF ARGUMENT

Petitioner Al-Ghizzawi has been imprisoned for more than five years – without, he asserts, having been afforded due process of law or other fundamental rights – by a government that promises justice and adherence to the rule of law but has delivered him into a penal hell, as British jurist Lord Goldsmith has termed it, a legal black hole. Paralyzed by the stays imposed by the Court of Appeals, and the periodic intervention and interference of Congress, *the* lower courts are unable to provide habeas review that "must be speedy if it is to be effective." *Stack v. Boyle*, 342 U.S. 1, 4 (1952). The lower courts are clearly in need of firm guidance in the procedural morass that has resulted in the illegal detention of Mr. Al-Ghizzawi and hundreds of other men at Guantánamo. There must be a stopping point where the government must be forced to either charge

Mr. Al-Ghizzawi or release him. This Court has the authority to redress this injustice and affront to American values, and this Court should use Mr. Al-Ghizzawi's case as a vehicle to provide a bright line guide to the lower courts, showing them how to move forward on the merits and granting some form of relief to Mr. Al-Ghizzawi and the many men at Guantánamo who are imprisoned in a gross miscarriage of justice.

ARGUMENT

I. HABEAS REVIEW "MUST BE SPEEDY IF IT IS TO BE EFFECTIVE."

"The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless [government] action." *Harris* v. *Nelson*, 394 U.S. 286, 290-91 (1969). As the Court stated:

> The scope and flexibility of the writ — its capacity to reach all manner of illegal detention — its ability to cut through barriers of form and procedural mazes — have always been emphasized and jealously guarded by courts and lawmakers. The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justices *within* its reach are surfaced and corrected.

Id. at 291. "Since habeas is an extraordinary remedy whose operation is to a large extent uninhibited by traditional rules of finality and federalism, its use has been limited to cases of special urgency, leaving more conventional remedies for cases in which the restraints on liberty are neither severe nor immediate." *Hensley* v. *Man. Court*, 411 U.S. 345, 351 (1973). See also *Peyton* v. *Rowe*, 391- U.S. 54, 5860 (1968).

Precisely because the use of habeas is 'limited to cases of special urgency,"

Hensliey, 411 U.S. at 351, and because "a principal aim of the writ is to provide for swift judicial review of alleged unlawful restraints on liberty," *Peyton*, 391 U.S. at 63, see also *Harris*, 394 U.S. at 291 ("the office of the writ is 'to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints'"), the Court has emphasized time and again the writ's demand for "speed, flexibility, and simplicity." *Hensley*, 411 U.S. at 350. Especially pertinent here, the Court has made plain that "a habeas corpus proceeding must not be allowed to flounder in a 'procedural morass." *Harris* 394 U.S. at 291-92 (quoting *Price* v. *Johnston*, 334 U.S. 266, 269 (1948)). Thus far, morass, quagmire, or some similar synonym is the only possible description of proceedings that have languished for over five years, without so much as a single hearing on the merits of a single prisoner's detention.

II. THIS COURT MAY EXERCISE ITS ORIGINAL HABEAS JURISDICTION TO END THE LEGAL LIMBO IN THE COURTS BELOW.

A. This Court Has Jurisdiction To End The Limbo Below.

This Court's jurisdiction is sufficiently broad to remedy the injustice that has befallen Mr. Al-Ghizzawi. In *Rasul* this Court held that Petitioner and other men imprisoned at Guantánamo Bay have the right to habeas corpus. *Rasul*, 542 U.S. at 466. In addition to finding that they have that right under 28 U.S.C. §2241, *Rasul* confirmed that they were entitled to the writ under the common law, and would have been entitled to the writ as of 1789 when the

Constitution was adopted. *Id.* at 479-82. "[A]t the absolute minimum, the Suspension Clause protects the writ as it existed in 1789." *INS v. St Cyr*, 533 U.S. 289, 301 (2001) (internal quotations omitted). Accordingly, Petitioner has a right to the writ "as it existed in 1789." Even if this right exists nowhere else for Mr. Al-Ghizzawi it exists in this Court itself as of 1789 and that right is protected by the Suspension Clause.

Despite this Court's holding in *Rasul* the writ of habeas corpus has not been available to the men at Guantánamo by the lower courts, apparently because of the confusion by the lower courts as to whether they must defer to congress or follow the constitution. The lower courts desperately need guidance from this Court as to whether the Mr. Al-Ghizzawi and the men at Guantánamo can continue to be held without charge, and assuming not, what kind of process these men are entitled to. This court has the power to hear Mr. Al-Ghizzawi's case and to use this case to establish a bright line rule for the processes that should be recognized. (At a minimum this Court can order that the government either charge Mr. Al-Ghizzawi, so that he can defend himself against the charge, or set him free.)

B. The Court's Power Of Habeas Review Extends To This Case.

If this Court determines that it does not want to hear Mr. Al-Ghizzawi's case directly Petitioner asks that this Court send his habeas petition back to the District Court with explicit instructions to hear Mr. Al-Ghizzawi's case immediately. "[T]hat this court is authorized to exercise appellate jurisdiction by

habeas corpus directly is a position sustained by abundant authority." *Ex parte Sieboid,* 100 U.S. 371, 374 (1880). This Court's habeas or habeas-equivalent jurisdiction stems from its jurisdiction over actions originally brought in the District Court (such as the habeas action filed by Petitioner) or the Court of Appeals (such as the DTA review and habeas action filed by Petitioner). See generally U.S. Const. art III, § 2, ci. 2; 28 U.S.C. §~ 1254 and 2241; *Siebold,* 100 U.S. at 374 -375 ("having this general power to issue the writ, the court ... may issue it in the exercise of appellate jurisdiction where it has such jurisdiction").

The District Court and the Court of Appeals have "allowed [this case] to flounder in a procedural morass." *Harris,* 394 U.S. at 292. All the while Petitioner continues, year after year, to be unlawfully and cruelly imprisoned at Guantánamo Bay. This Court therefore has jurisdiction over this matter. This Court has jurisdiction because each lower court has failed to act; and because the exceptional circumstances of this case warrant it (see Rule 204(a)). However, if this Court declines to hear Al-Ghizzawi's habeas petition directly and as a guide for the lower courts on how this process can and should work, one or both of the lower courts must have jurisdiction over Petitioner's action — either the District Court under habeas, or the Court of Appeals under the DTA or habeas (but only under the DTA if its review mechanism affords the *same* relief as habeas, see *Swain* v. *Pressley,* 430 U & 372, 381 (1977) (habeas substitute must be "neither inadequate nor ineffective to test the legality" of the detention)) and therefore this Court, if it declines to hear Mr. Al-Ghizzawi's habeas petition directly,

should direct either the District Court or the Circuit Court, to "relieve the prisoner from the unlawful restraint" that the paralysis of the lower courts force him to endure. *Ex parte Yerger*, 75 U.S. 85, 103 (1869).

Even if the MCA stripped this Court's habeas powers, it is well established that every federal court "retains jurisdiction to review any underlying jurisdictional fact at issue" in determining whether those courts have jurisdiction. *Jobson v. Ashcroft*, 326 F.3d 367, 371 (2d Cir. 2003) (citing *Sui v. INS.*, 250 F.3d 105, 110 (2dCit. 2001)). In this instance, the jurisdictional fact at issue is whether petitioner is "properly detained as an enemy combatant" by the United States. 28 U.S.C. § 2241(e)(l). In order for this Court to determine whether it has jurisdiction, it must be determined whether Petitioner is properly detained as an "enemy combatant." "Thus, the jurisdictional inquiry merges with the question on the merits of the case" requiring this court to evaluate both of these questions, simultaneously, rather than avoid them both. *Jobson*, 326 F.3d at 371.

In the case of a similar jurisdiction-limiting provision, the Courts of Appeals that have considered the issue have unanimously found that a statute that specifically divests a court of jurisdiction does not prevent a court from first evaluating whether that provision applies based on the necessary jurisdictional facts. *Drakes v. Zimski* 240 F. 3d 246, 247 (3d Cir. 2001) (and cases collected therein). In *Drakes*, the Third Circuit found that the jurisdiction-stripping provision of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA") did not prevent the court from first identifying whether the

court had jurisdiction because the questions of jurisdiction and merits were inextricably intertwined.

In *Drakes,* the jurisdictional provision of the JIRIRA provided:[N]o court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense covered in S [18?] U.S.C. §1182(a) (2).

240 F.3d at 247 (internal citations omitted). Here, this Court faces the MCA's jurisdiction stripping provision, which is similar to that under the IIRIRA:

> No court, justice or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant....

28 U.S.C. §2241(e)(1).

In *Drakes,* to determine whether the IIRIRA provision prevented the court from considering the petitioner's claim, the court recognized it first had to determine whether it "had jurisdiction to determine [its] jurisdiction under § 1252(a)(2)(C)." 240 F. 3d at 247. That was so even though the Board of Immigration Appeals had "ordered Brakes deported" and thus had concluded that he *had* committed the requisite criminal offense under S[18?] U.S.C. §1252(a)(2)(C) and was properly deported. The analysis here is the same. This Court cannot be blocked by the MCA's attempted jurisdiction-stripping provision without as a threshold matter determining whether the provisions of the MCA apply to Petitioner in the first place.

III. THE DEFINITION OF "ENEMY COMBATANT" USED IN *HAMDI* SHOULD GOVERN THE DETERMINATION OF THE LAWFULNESS OF PETITIONER'S IMPRISONMENT.

If this Court declines to hear Petitioners Habeas petition directly under 28 U.S.C. §2241(a) then Petitioner respectfully requests, pursuant to 28 U.S.C. §2241(b), that this Court immediately remand and refer Petitioner's application to the District Court for an expedited hearing and determination as to whether Petitioner is an "enemy combatant" under the standard set forth by this Court in *Exparte Quirin*, 317 U.S. 1, 37 (1942) and *Hamdi*, 542 U.S. at 516.

At least six decades of United States and international law define an enemy combatant or "enemy belligerent" as a person who engaged in or intended to engage in hostile acts against the detaining power. As this Court has instructed:

> [Persons] who associate themselves with the military arm of the enemy government [presumably including a terrorist organization], *and* with its aid, guidance and direction [engage in] *hostile acts*, are enemy belligerents within the meaning of the Hague Convention and the law of war.

Quinn, 317 U.S. at 37 (emphasis added). Even very recently, a plurality of the Court has applied this definition in the context of the current war on terror, finding that "one who takes up arms against the United States" is an enemy combatant. *Hamdi*, 542 U.S. at 516 (a case in which the United States itself argued that Hamdi had "engaged in an armed conflict against the United States"). The Fourth Circuit adopted these definitions in the context of the "war on terror" in its recent opinion in *Padilla* v. *Hanft*, 423 F.3d 386 (4th Cir. 2005), holding that because "Padilla associated with the military arm of the enemy, and with its aid,

guidance and direction entered this country bent on committing hostile acts on American soil" he "falls within *Quirin's* definition of enemy belligerent." 423 F.Sd at 392 (emphasis added); see also *In re Territo*, 156 F.2d 142, 145 (9th Cir. 1946) (explaining that "[t]hose who have written texts upon the subject of prisoners of war agree that all persons who are active in opposing an army in war may be captured") (emphasis added, internal citations omitted).

Never before has the term enemy combatant been applied by a United States court to a person, such as Petitioner Al-Ghizzawi, who has committed no hostile act and as to whom no evidence indicates any hostile intent. In the words of the Congressional Research Service

> We are unaware of any U.S. precedent confirming the constitutional power of the President to detain indefinitely a person accused of being an unlawful combatant' due to mere membership in or association with a group that does not qualify as a legitimate belligerent, with or without the authorization of Congress.

CRS Report for Congress, Detention of American Citizens as Enemy Combatants (Updated March 31, 2005) at 11 (emphasis added).

The principles of international law similarly require active hostility in order to be classified as an enemy combatant. As early as the 1700s it was well established that "as long as persons in occupied territory refrain from all violence, and do not show an intention to use force" they are not appropriately considered enemy combatants. Wolff, *Jus Gentium Methodo Scientifica Pertractum* (Translation of the Edition of 1764 by Joseph H. Drake, Carnegie Endowment 1934) at 409-410; *see also* de Vattel, *Law of Nations of the Principles of Natural Law*

(Translation of the Edition of 1758 by Charles G. Fenwick, Carnegie Institution 1916) at 283 (explaining that "[p]rovided the inhabitants of [an occupied country] refrain from acts of hostility, they live in safety as if they were on friendly terms with the enemy"). "The custom of civilized nations ... has therefore exempted...private individuals engaged in the ordinary civil pursuits of life, from the direct effect of military operations *unless actually taken in arms, or guilty of some misconduct* in violation of the usages of war by which they forfeit their immunity." Wheaton, *Elements of International Law* 3d Ed. (Philadelphia 1846) at 394-395 (emphasis added).

Although the laws of war allow a belligerent force to capture and detain "secret participants in hostilities such as banditti, guerillas, spies, &c" (Opinion of James Speed, 11 Op. Atty Get. 297 (July 1865) at 6[)] such enemies must be "[s]ecret, but active participants" (*Id.* at 3-4). There is no evidence that Petitioner Al-Ghizzawi ever was an active participant in hostilities against this country. As Al-Ghizzawi's CSRT confirms "Al-Ghizzawi was a shopkeeper in Afghanistan married to an Afghani woman." Al-Ghizzawi does not represent a threat to the United States or its interests. Not a scintilla of evidence shows that Petitioner Al-Ghizzawi acted or intended to act with hostility towards the United States or its coalition partners.

Consistent with United States and international law, even the MCA contains a definition of enemy combatant which requires a hostile act or material support of a hostile act:

> A person who has engaged in hostilities or who has purposefully and materially supported hostilities against the United States or its cobelligerents who is not a lawful enemy combatant (including a person who is part of the Taliban, Al Qaeda, or associated forces).

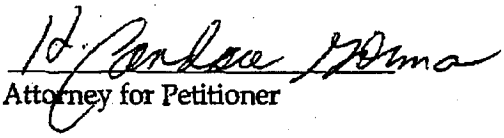
10 U.S.C. §948a(l)(i). In addition to this definition, the MCA contains the list of crimes for which an enemy combatant can be charged and tried under that Act. 10 U.SC. §950v ("[c]rimes triable by military commissions"). Petitioner Al-Ghizzawi maintains that his conduct fails to satisfy the criminal elements of any of these chargeable crimes.

One of the crimes listed in the MCA – "attacking civilians" –actually defines a "civilian" for purposes of the Act's prosecution provisions as a person *"not taking active part in hostilities."* 10 U.S. C. §950v (b)(2) (emphasis added). This definition is consistent with international law; ironically, however, although Petitioner Al-Ghizzawi is being detained as an enemy combatant, one who attacked him on the battlefield could be prosecuted for attacking a civilian. Said differently, Petitioner Al-Ghizzawi is specifically defined as a civilian, and not as a combatant, under the MCA itself.

CONCLUSION

Based on the treatment of Petitioner Al-Ghizzawi, the government's position appears to be that it may detain anyone, *indefinitely*, based solely on unsupported and disputed allegations of "associations," even where it has never produced any evidence that the accused person ever committed a single act of hostility towards the United States or even intended to commit such an act. If the promise of the Great Writ stands for anything, it is that such a proposition cannot be correct. For the reasons stated herein this Court should hear Mr. Al-Ghizzawi's habeas petition directly and use his case as a vehicle to show the lower courts that enough is enough and that the courts must move forward *now* on these petitions and furthermore, this Court should provide the courts with guidance on how to enforce the bottom -line constitutional limits implicated herein. In the alternative, this Court should send Mr. Al-Ghizzawi's case back to the district court with clear instructions to the court on how to proceed to the merits of Mr. Al-Ghizzawi's habeas petition.

Respectfully submitted,



Attorney for Petitioner

Counsel apologizes for the unprofessional look of this petition. It was filed at the "secure facility" because of the "classified" nature of some of the material.

CERTIFICATE OF SERVICE

I, H Candace Gorman, hereby certify that on July 26th, 2007, I filed the PETITION FOR ORIGINAL WRIT OF HABEAS CORPUS, and APPENDIX in the U. S. SUPREME COURT and that the petition and appendix were served upon the following individuals as indicated:

Paul Clement, Solicitor General,
United States Department of Justice,
950 Pennsylvania Avenue, N.W., Room 5614,
Washington, DC 20530-0001

Counsel for Petitioner

H. Candace Gorman Il. Bar # 6184278
Law office of H. Candace Gorman
542 S. Dearborn
Suite 1060
Chicago Il. 60605
312.427.2313

FILED WITH THE

COURT SECURITY OFFICER
CSO
DATE: 7/26/07

No-_____

IN THE SUPREME COURT OF THE UNITED STATES

In re Abdul Hamid Al-Ghizzawi,

Petitioner.

APPENDIX TO
PETITION FOR ORIGINAL
WRIT OF HABEAS CORPUS

H. Candace Gorman
Counsel of Record
542 S. Dearborn
Suite 1060
Chicago Il. 60605
312.427.2313

Counsel for Petitioner

TABLE OF CONTENTS TO APPENDIX

Afghanistan Leaflets

په هغه اندازه پانګه وګټئ چه د ټاسی خوب کی هم نه وی راغلی. د طالبانو

ضد قوا سره مرسته وکړی چه قاتلان او دارده ماران د افغانستان څخه وشړی.

TF11-RP09-1

FRONT

"Get wealth and power beyond your dreams. Help the Anti-Taliban Forces rid Afghanistan of murderers and terrorists"

BACK

TEXT ONLY

"You can receive millions of dollars for helping the Anti-Taliban Force catch Al-Qaeda and Taliban murderers. This is enough money to take care of your family, your village, your tribe for the rest of your life. Pay for livestock and doctors and school books and housing for all your people."

DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

- 7 JUL 2004

MEMORANDUM FOR THE SECRETARY OF THE NAVY

SUBJECT: Order Establishing Combatant Status Review Tribunal

This Order applies only to foreign nationals held as enemy combatants in the control of the Department of Defense at the Guantanamo Bay Naval Base, Cuba ("detainees").

a. Enemy Combatant. For purposes of this Order, the term "enemy combatant" shall mean an individual who was part of or supporting Taliban or al Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. This includes any person who has committed a belligerent act or has directly supported hostilities in aid of enemy armed forces. Each detainee subject to this Order has been determined to be an enemy combatant through multiple levels of review by officers of the Department of Defense.

b. Notice. Within ten days after the date of this Order, all detainees shall be notified of the opportunity to contest designation as an enemy combatant in the proceeding described herein, of the opportunity to consult with and be assisted by a personal representative as described in paragraph (c), and of the right to seek a writ of habeas corpus in the courts of the United States.

c. Personal Representative. Each detainee shall be assigned a military officer, with the appropriate security clearance, as a personal representative for the purpose of assisting the detainee in connection with the review process described herein. The personal representative shall be afforded the opportunity to review any reasonably available information in the possession of the Department of Defense that may be relevant to a determination of the detainee's designation as an enemy combatant, including any records, determinations, or reports generated in connection with earlier determinations or reviews, and to consult with the detainee concerning that designation and any challenge thereto. The personal representative may share any information with the detainee, except for classified information, and may participate in the Tribunal proceedings as provided in paragraph (g)(4).

d. Tribunals. Within 30 days after the detainee's personal representative has been afforded the opportunity to review the reasonably available information in the possession of the Department of Defense and had an opportunity to consult with the detainee, a Tribunal shall be convened to review the detainee's status as an enemy combatant.

e. Composition of Tribunal. A Tribunal shall be composed of three neutral commissioned officers of the U.S. Armed Forces, each of whom possesses the appropriate security clearance and none of whom was involved in the apprehension,

detention, interrogation, or previous determination of status of the detainee. One of the members shall be a judge advocate. The senior member (in the grade of O-5 and above) shall serve as President of the Tribunal. Another non-voting officer, preferably a judge advocate, shall serve as the Recorder and shall not be a member of the Tribunal.

f. Convening Authority. The Convening Authority shall be designated by the Secretary of the Navy. The Convening Authority shall appoint each Tribunal and its members, and a personal representative for each detainee. The Secretary of the Navy, with the concurrence of the General Counsel of the Department of Defense, may issue instructions to implement this Order.

g. Procedures.

(1) The Recorder shall provide the detainee in advance of the proceedings with notice of the unclassified factual basis for the detainee's designation as an enemy combatant.

(2) Members of the Tribunal and the Recorder shall be sworn. The Recorder shall be sworn first by the President of the Tribunal. The Recorder will then administer an oath, to faithfully and impartially perform their duties, to all members of the Tribunal to include the President.

(3) The record in each case shall consist of all the documentary evidence presented to the Tribunal, the Recorder's summary of all witness testimony, a written report of the Tribunal's decision, and a recording of the proceedings (except proceedings involving deliberation and voting by the members), which shall be preserved.

(4) The detainee shall be allowed to attend all proceedings, except for proceedings involving deliberation and voting by the members or testimony and other matters that would compromise national security if held in the presence of the detainee. The detainee's personal representative shall be allowed to attend all proceedings, except for proceedings involving deliberation and voting by the members of the Tribunal.

(5) The detainee shall be provided with an interpreter, if necessary.

(6) The detainee shall be advised at the beginning of the hearing of the nature of the proceedings and of the procedures accorded him in connection with the hearing.

(7) The Tribunal, through its Recorder, shall have access to and consider any reasonably available information generated in connection with the initial determination to hold the detainee as an enemy combatant and in any subsequent reviews of that determination, as well as any reasonably available records, determinations, or reports generated in connection therewith.

(8) The detainee shall be allowed to call witnesses if reasonably available, and to question those witnesses called by the Tribunal. The Tribunal shall determine the

reasonable availability of witnesses. If such witnesses are from within the U.S. Armed Forces, they shall not be considered reasonably available if, as determined by their commanders, their presence at a hearing would affect combat or support operations. In the case of witnesses who are not reasonably available, written statements, preferably sworn, may be submitted and considered as evidence.

(9) The Tribunal is not bound by the rules of evidence such as would apply in a court of law. Instead, the Tribunal shall be free to consider any information it deems relevant and helpful to a resolution of the issue before it. At the discretion of the Tribunal, for example, it may consider hearsay evidence, taking into account the reliability of such evidence in the circumstances. The Tribunal does not have the authority to declassify or change the classification of any national security information it reviews.

(10) The detainee shall have a right to testify or otherwise address the Tribunal in oral or written form, and to introduce relevant documentary evidence.

(11) The detainee may not be compelled to testify before the Tribunal.

(12) Following the hearing of testimony and the review of documents and other evidence, the Tribunal shall determine in closed session by majority vote whether the detainee is properly detained as an enemy combatant. Preponderance of evidence shall be the standard used in reaching this determination, but there shall be a rebuttable presumption in favor of the Government's evidence.

(13) The President of the Tribunal shall, without regard to any other provision of this Order, have authority and the duty to ensure that all proceedings of or in relation to the Tribunal under this Order shall comply with Executive Order 12958 regarding national security information.

h. The Record. The Recorder shall, to the maximum extent practicable, prepare the record of the Tribunal within three working days of the announcement of the Tribunal's decision. The record shall include those items described in paragraph (g)(3) above. The record will then be forwarded to the Staff Judge Advocate for the Convening Authority, who shall review the record for legal sufficiency and make a recommendation to the Convening Authority. The Convening Authority shall review the Tribunal's decision and, in accordance with this Order and any implementing instructions issued by the Secretary of the Navy, may return the record to the Tribunal for further proceedings or approve the decision and take appropriate action.

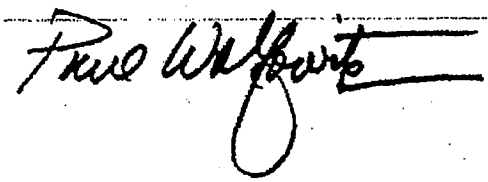
i. Non-Enemy Combatant Determination. If the Tribunal determines that the detainee shall no longer be classified as an enemy combatant, the written report of its decision shall be forwarded directly to the Secretary of Defense or his designee. The Secretary or his designee shall so advise the Secretary of State, in order to permit the Secretary of State to coordinate the transfer of the detainee for release to the detainee's

country of citizenship or other disposition consistent with domestic and international obligations and the foreign policy of the United States.

j. This Order is intended solely to improve management within the Department of Defense concerning its detention of enemy combatants at Guantanamo Bay Naval Base, Cuba, and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law, in equity, or otherwise by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

k. Nothing in this Order shall be construed to limit, impair, or otherwise affect the constitutional authority of the President as Commander in Chief or any authority granted by statute to the President or the Secretary of Defense.

This Order is effective immediately.



Combatant Status Review Tribunal Notice to Detainees*

You are being held as an enemy combatant by the United States Armed Forces. An enemy combatant is an individual who was part of or supporting Taliban or al Qaida forces, or associated forces that are engaged in hostilities against the United States or its coalition partners. The definition includes any person who has committed a belligerent act or has directly supported such hostilities.

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. This is not a criminal trial and the Tribunal will not punish you, but will determine whether you are properly held. The Tribunal will provide you with the following process:

1. You will be assigned a military officer to assist you with the presentation of your case to the Tribunal. This officer will be known as your Personal Representative. Your Personal Representative will review information that may be relevant to a determination of your status. Your Personal Representative will be able to discuss that information with you, except for classified information.

2. Before the Tribunal proceeding, you will be given a written statement of the unclassified factual basis for your classification as an enemy combatant.

3. You will be allowed to attend all Tribunal proceedings, except for proceedings involving deliberation and voting by the members, and testimony or other matters that would compromise U.S. national security if you attended. You will not be forced to attend, but if you choose not to attend, the Tribunal will be held in your absence. Your Personal Representative will attend in either case.

4. You will be provided with an interpreter during the Tribunal hearing if necessary.

5. You will be able to present evidence to the Tribunal, including the testimony of witnesses. If those witnesses you propose are not reasonably available, their written testimony may be sought. You may also present written statements and other documents. You may testify before the Tribunal but will not be compelled to testify or answer questions.

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 should you seek to challenge your detention in U.S. courts. Whether or not you decide to do so, the Combatant Status Review Tribunal will still review your status as an enemy combatant.

If you have any questions about this notice, your Personal Representative will be able to answer them.

[*Text of Notice translated, and delivered to detainees 12-14 July 2004]

DECLARATION OF STEPHEN ABRAHAM

Lieutenant Colonel, United States Army Reserve

I, Stephen Abraham, hereby declare as follows:

1. I am a lieutenant colonel in the United States Army Reserve, having been commissioned in 1981 as an officer in Intelligence Corps. I have served as an intelligence officer from 1982 to the present during periods of both reserve and active duty, including mobilization in 1990 ("Operation Desert Storm") and twice again following 9-11. In my civilian occupation, I am an attorney with the law firm Fink & Abraham LLP in Newport Beach, California.

2. This declaration responds to certain statements in the Declaration of Rear Admiral (Retired) James M. McGarrah ("McGarrah Dec."), filed in *Bismullah v. Gates*, No. 06-1197 (D.C. Cir.). This declaration is limited to unclassified matters specifically related to the procedures employed by Office for the Administrative Review of the Detention of Enemy Combatants ("OARDEC") and the Combatant Status Review Tribunals ("CSRTs") rather than to any specific information gathered or used in a particular case, except as noted herein. The contents of this declaration are based solely on my personal observations and experiences as a member of OARDEC. Nothing in this declaration is intended to reflect or represent the official opinions of the Department of Defense or the Department of the Army.

3. From September 11, 2004 to March 9, 2005, I was on active duty and assigned to OARDEC. Rear Admiral McGarrah served as the Director of OARDEC during the entirety of my assignment.

4. While assigned to OARDEC, in addition to other duties, I worked as an agency liaison, responsible for coordinating with government agencies, including certain Department of Defense ("DoD") and non-DoD organizations, to gather or validate information relating to detainees for

use in CSRTs. I also served as a member of a CSRT, and had the opportunity to observe and participate in the operation of the CSRT process.

5. As stated in the McGarrah Dec., the information comprising the Government Information and the Government Evidence was not compiled personally by the CSRT Recorder, but by other individuals in OARDEC. The vast majority of the personnel assigned to OARDEC were reserve officers from the different branches of service (Army, Navy, Air Force, Marines) of varying grades and levels of general military experience. Few had any experience or training in the legal or intelligence fields.

6. The Recorders of the tribunals were typically relatively junior officers with little training or experience in matters relating to the collection, processing, analyzing, and/or dissemination of intelligence material. In no instances known to me did any of the Recorders have any significant personal experience in the field of military intelligence. Similarly, I was unaware of any Recorder having any significant or relevant experience dealing with the agencies providing information to be used as a part of the CSRT process.

7. The Recorders exercised little control over the process of accumulating information to be presented to the CSRT board members. Rather, the information was typically aggregated by individuals identified as case writers who, in most instances, had the same limited degree of knowledge and experience relating to the intelligence community and intelligence products. The case writers, and not the Recorders, were primarily responsible for accumulating documents, including assembling documents to be used in the drafting of an unclassified summary of the factual basis for the detainee's designation as an enemy combatant.

8. The information used to prepare the files to be used by the Recorders frequently consisted of finished intelligence products of a generalized nature - often outdated, often "generic," rarely

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specifically relating to the individual subjects of the CSRTs or to the circumstances related to those individuals' status.

9. Beyond "generic" information, the case writer would frequently rely upon information contained within the Joint Detainee Information Management System ("JDIMS"). The subset of that system available to the case writers was limited in terms of the scope of information, typically excluding information that was characterized as highly sensitive law enforcement information, highly classified information, or information not voluntarily released by the originating agency. In that regard, JDIMS did not constitute a complete repository, although this limitation was frequently not understood by individuals with access to or who relied upon the system as a source of information. Other databases available to the case writer were similarly deficient. The case writers and Recorders did not have access to numerous information sources generally available within the intelligence community.

10. As one of only a few intelligence-trained and suitably cleared officers, I served as a liaison while assigned to OARDEC, acting as a go-between for OARDEC and various intelligence organizations. In that capacity, I was tasked to review and/or obtain information relating to individual subjects of the CSRTs. More specifically, I was asked to confirm and represent in a statement to be relied upon by the CSRT board members that the organizations did not possess "exculpatory information" relating to the subject of the CSRT.

11. During my trips to the participating organizations, I was allowed only limited access to information, typically prescreened and filtered. I was not permitted to see any information other than that specifically prepared in advance of my visit. I was not permitted to request that further searches be performed. I was given no assurances that the information provided for my examination represented a complete compilation of information or that any summary of

information constituted an accurate distillation of the body of available information relating to the subject.

12. I was specifically told on a number of occasions that the information provided to me was all that I would be shown, but I was never told that the information that was provided constituted all available information. On those occasions when I asked that a representative of the organization provide a written statement that there was no exculpatory evidence, the requests were summarily denied.

13. At one point, following a review of information, I asked the Office of General Counsel of the intelligence organization that I was visiting for a statement that no exculpatory information had been withheld. I explained that I was tasked to review all available materials and to reach a conclusion regarding the non-existence of exculpatory information, and that I could not do so without knowing that I had seen all information.

14. The request was denied, coupled with a refusal even to acknowledge whether there existed additional information that I was not permitted to review. In short, based upon the selective review that I was permitted, I was left to "infer" from the absence of exculpatory information in the materials I was allowed to review that no such information existed in materials I was not allowed to review.

15. Following that exchange, I communicated to Rear Admiral McGarrah and the OARDEC Deputy Director the fundamental limitations imposed upon my review of the organization's files and my inability to state conclusively that no exculpatory information existed relating to the CSRT subjects. It was not possible for me to certify or validate the non-existence of exculpatory evidence as related to any individual undergoing the CSRT process.

16. The content of intelligence products, including databases, made available to case writers, Recorders, or liaison officers, was often left entirely to the discretion of the organizations providing the information. What information was not included in the bodies of intelligence products was typically unknown to the case writers and Recorders, as was the basis for limiting the information. In other words, the person preparing materials for use by the CSRT board members did not know whether they had examined all available information or even why they possessed some pieces of information but not others.

17. Although OARDEC personnel often received large amounts of information, they often had no context for determining whether the information was relevant or probative and no basis for determining what additional information would be necessary to establish a basis for determining the reasonableness of any matter to be offered to the CSRT board members. Often, information that was gathered was discarded by the case writer or the Recorder because it was considered to be ambiguous, confusing, or poorly written. Such a determination was frequently the result of the case writer or Recorder's lack of training or experience with the types of information provided. In my observation, the case writer or Recorder, without proper experience or a basis for giving context to information, often rejected some information arbitrarily while accepting other information without any articulable rationale.

18. The case writer's summaries were reviewed for quality assurance, a process that principally focused on format and grammar. The quality assurance review would not ordinarily check the accuracy of the information underlying the case writer's unclassified summary for the reason that the quality assurance reviewer typically had little more experience than the case writer and, again, no relevant or meaningful intelligence or legal experience, and therefore had no skills by which to critically assess the substantive portions of the summaries.

19. Following the quality assurance process, the unclassified summary and the information assembled by the case writer in support of the summary would then be forwarded to the Recorder. It was very rare that a Recorder or a personal representative would seek additional information beyond that information provided by the case writer.

20. It was not apparent to me how assignments to CSRT panels were made, nor was I personally involved in that process. Nevertheless, I discerned the determinations of who would be assigned to any particular position, whether as a member of a CSRT or to some other position, to be largely the product of ad hoc decisions by a relatively small group of individuals. All CSRT panel members were assigned to OARDEC and reported ultimately to Rear Admiral McGarrah. It was well known by the officers in OARDEC that any time a CSRT panel determined that a detainee was not properly classified as an enemy combatant, the panel members would have to explain their finding to the OARDEC Deputy Director. There would be intensive scrutiny of the finding by Rear Admiral McGarrah who would, in turn, have to explain the finding to his superiors, including the Under Secretary of the Navy.

21. On one occasion, I was assigned to a CSRT panel with two other officers, an Air Force colonel and an Air Force major, the latter understood by me to be a judge advocate. We reviewed evidence presented to us regarding the recommended status of a detainee. All of us found the information presented to lack substance.

22. What were purported to be specific statements of fact lacked even the most fundamental earmarks of objectively credible evidence. Statements allegedly made by percipient witnesses lacked detail. Reports presented generalized statements in indirect and passive forms without stating the source of the information or providing a basis for establishing the reliability or the credibility of the source. Statements of interrogators presented to the panel offered inferences

from which we were expected to draw conclusions favoring a finding of "enemy combatant" but that, upon even limited questioning from the panel, yielded the response from the Recorder, "We'll have to get back to you." The personal representative did not participate in any meaningful way.

23. On the basis of the paucity and weakness of the information provided both during and after the CSRT hearing, we determined that there was no factual basis for concluding that the individual should be classified as an enemy combatant. Rear Admiral McGarrah and the Deputy Director immediately questioned the validity of our findings. They directed us to write out the specific questions that we had raised concerning the evidence to allow the Recorder an opportunity to provide further responses. We were then ordered to reopen the hearing to allow the Recorder to present further argument as to why the detainee should be classified as an enemy combatant. Ultimately, in the absence of any substantive response to the questions and no basis for concluding that additional information would be forthcoming, we did not change our determination that the detainee was not properly classified as an enemy combatant. OARDEC's response to the outcome was consistent with the few other instances in which a finding of "Not an Enemy Combatant" (NEC) had been reached by CSRT boards. In each of the meetings that I attended with OARDEC leadership following a finding of NEC, the focus of inquiry on the part of the leadership was "what went wrong."

24. I was not assigned to another CSRT panel.

I hereby declare under the penalties of perjury based on my personal knowledge that the foregoing is true and accurate.

Dated: June 15, 2007

Stephen Abraham

A281

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AL-GHIZZAWI,
Petitioner,

v.

GEORGE W. BUSH, *et al.*,
Respondents/Defendants.

Civil Action No. 05-cv-2378 (JDB)

DECLARATION OF GITANJALI S. GUTIERREZ

I, Gitanjali S. Gutierrez, declare that the following statements are true to the best of my knowledge, information, and belief:

1. I am an attorney with the Center for Constitutional Rights (CCR), co-counsel for Petitioner Al-Ghizzawi in the above-captioned action. I offer this Declaration in support of Petitioner Al-Ghizzawi's Motion for Entry of the Protective Order.
2. Since December 2001, CCR has been coordinating the assignment of pro bono representation to prisoners in Guantánamo. In this capacity, we have received authorizations from prisoners' family members and directly from prisoners themselves seeking legal representation to challenge the legality of their detention.
3. Petitioner Al-Ghizzawi has been trying repeatedly to secure legal representation since the beginning of 2005 both directly on his own behalf and through fellow prisoners' willing to act as a Next Friend. Petitioner is a citizen of Libya who has expressed concern to fellow prisoners that he will be subject to persecution if transferred to his home country for further imprisonment. Consequently, he has been desperate to secure representation and consult with an attorney. We have received numerous authorizations from Petitioner, described in detail below. Although the phonetic

spelling of his name varies, including being listed as "Al Kasani" on some authorizations, we have confirmed that each request is from the Petitioner Al-Ghizzawi.

4. At the time Petitioner Al-Ghizzawi was seeking counsel, no other attorneys were representing a citizen from Libya and it was difficult to find an attorney willing to accept the burden of providing pro bono representation to Libyan citizens because of the additional expenses and legal issues. The absence of large firms with clients from the same home country precluded cost-effective use of shared translators or travel costs and the Libyan clients face particular risks of further indefinite detention or persecution if transferred to their home country.

5. When Candace Gorman, Esq., contacted CCR to provide pro bono representation to a detainee, she agreed to represent Petitioner Al-Ghizzawi. She filed a Petition for Writ of Habeas Corpus on his behalf on December 12, 2005.

6. On January 23, 2005, Brent Mickum, Esq., received a letter from his client Bisher Al-Rawi, a British resident and prisoner at Guantánamo, informing Mr. Mickum that Petitioner Al-Ghizzawi wanted legal representation. Mr. Mickum submitted this information for classification review by the Privilege Review Team and we received the request for representation at CCR on March 1, 2005.

7. During approximately the same period of time, we also received a request for legal assistance by Petitioner Al-Ghizzawi from Clive Stafford Smith, Esq. We received an undated document, "Request for Legal Assistance," signed directly by Petitioner Al-Ghizzawi requesting legal counsel.

8. On April 26, 2005, Petitioner Al-Ghizzawi executed the "Acknowledgement of Representation" form included in the Amended Counsel Access Procedures and

provided this form and an additional request for counsel to a fellow prisoner who was a client of Allen & Overy, LLP. Habeas counsel from Allen & Overy submitted these documents for classification review and CCR received the authorization for representation and request for counsel on June 29, 2005.

9. On July 1, 2005, Petitioner Al-Ghizzawi executed another request for counsel with Jamal Kiyemba, a British resident and fellow detainee, who had legal representation. Petitioner Al-Ghizzawi instructed Mr. Kiyemba to write an authorization in English communicating Petitioner's direct request for legal representation and authorizing Mr. Kiyemba to act as Petitioner's Next Friend for purposes of filing a habeas petition. Mr. Kiyemba's lawyer, Clive Stafford Smith, Esq., submitted these documents for classification review and CCR received them on July 22, 2005.

10. Mr. Stafford Smith also executed a declaration on July 19, 2005, setting forth the verbal requests for legal representation that other prisoners had conveyed to his client, Bisher Al-Rawi. Petitioner Al-Ghizzawi is listed among those individuals seeking legal representation, although the spelling of his name is "Al Kasani."

11. During the undersigned counsel's meeting with Jamal Kiyemba in December 2005 at Guantánamo, Mr. Kiyemba provided an additional request for authorization from Petitioner Al-Ghizzawi that was translated by Mr. Kiyemba. I submitted this document for classification review and CCR received the request for legal representation on January 6, 2006.

12. The last request for counsel from Petitioner that CCR received was a verbal request conveyed by a fellow prisoner to his attorney during a client visit at Guantánamo in mid-January 2006. The counsel verbally communicated to me that Mr. Al-Ghizzawi was still seeking legal representation.

13. To my knowledge, Mr. Al-Ghizzawi is unaware that he now has legal representation.

14. I have interim secret security clearance and have a client visit with other petitioners at Guantánamo approved for March 8-14, 2006.

15. Pursuant to the Respondents' position, I am unable to communicate with Petitioner Al-Ghizzawi and am prohibited from conducting an attorney-client meeting with him because the Protective Order has not been entered in this case.

16. I declare, under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 26th day of February, 2006 in Ithaca, New York.

/s/
Gitanjali S. Gutierrez

AFFIDAVIT OF ATTORNEY H. CANDACE GORMAN

I, H. CANDACE GORMAN, STATE THE FOLLOWING UNDER OATH, BASED ON MY CONVERSATIONS WITH MR. AL-GHIZZAWI, MY INVESTIGATION INTO HIS CASE AND THE FACTUAL RETURN/CSRT RECORD.

A. GENERAL BACKGROUND

1. That I am counsel for ABDUL HAMID AL-GHIZZAWI. Mr. Al-Ghizzawi is a prisoner at Guantánamo and has been held at Guantánamo since the spring of 2002. His ISN is 654. I have been Counsel for Mr. Al-Ghizzawi since November 2005. I am a solo practitioner in Chicago Illinois and I have taken on his representation, *pro bono*.

2. At the time I took on his representation Mr. Al-Ghizzawi had been trying to get word out of Guantánamo, through other counsel, that he desperately wanted legal representation. (A282-85)

3. On December 9, 2005 I filed a petition for h*abeas corpus* for Mr. Al-Ghizzawi in the District Court for the District of Columbia challenging his detention at Guantánamo. (05-cv-2378) The petition was a "next-friend" petition based on declarations from other prisoners and habeas counsel who stated that Mr. Al-Ghizzawi wanted to be represented.

4. I sent word to Mr. Al-Ghizzawi (through other counsel) that I filed the habeas petition and that I was representing him. Shortly thereafter I received a letter from him thanking me for taking on his representation.

B. BACKGROUND ON MR. AL-GHIZZAWI

5. Mr. Al-Ghizzawi is a citizen of Libya in his mid-forties who had been living in Afghanistan for approximately 10 years(since shortly after the Russians left the country) prior to his being abducted and turned over first to the Northern Alliance and then to the US forces in the late fall of 2001, in return for a bounty. Al-Ghizzawi is married to an Afghani woman and has a young daughter who was only a few months old at the time he was abducted. Although trained in Libya as a meteorologist Mr. Al-Ghizzawi and his wife ran a small shop in Jalalabad where they sold honey and spices and later expanded to include a bakery. In the fall of 2001 when the U.S. began bombing areas close to their city Al-Ghizzawi took his wife and baby and fled their home and shop in Jalalabad, seeking safety in a rural area of Afghanistan where Al-Ghizzawi's in-laws lived.

6. Not long after Al-Ghizzawi and his family arrived at his in-laws (approximately December of 2001) armed men came to the home and told the family to turn over "the Arab" (Al-Ghizzawi). Al-Ghizzawi cooperated in order to avoid any harm to his family. Al-Ghizzawi was sold to the US forces in return for a bounty under a program the U.S. Government

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commenced which provided large sums of money (bounties) in return for "terrorist and murderers." Al-Ghizzawi is neither a terrorist nor a murderer but was instead the victim of greed in an impoverished nation. He has been held at Guantánamo since the spring of 2002.

7. Since his detention at Guantánamo, Mr. Al-Ghizzawi's health has steadily deteriorated. Mr. AL-Ghizzawi suffers from both hepatitis B and tuberculosis. He has not been treated for either life threatening condition while at Guantánamo despite his and my repeated requests for medical treatment.

C. LEGAL PROCEEDINGS

8. As mentioned above Mr. Al-Ghizzawi's habeas petition was filed on December 9, 2005. A general stay was in place at that time.

9. On January 30th 2006 I filed a Motion to have the Protective Order entered, a factual return from the government and Mr. Al-Ghizzawi's medical records. The government challenged my standing to represent Mr. Al-Ghizzawi on the basis of the "next friend" petition (one of the many stall games by the government). The Court did not rule on that Motion until August 2006.

10. Sometime in January or February, 2006 I received direct authority to represent Mr. Al-Ghizzawi in a letter from him and I filed an amended habeas petition on February 24th 2006 changing the habeas petition from a "next friend" petition to a direct representation petition.

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11. On February 27th, 2006 I filed an emergency motion to enter the protective order so that a visit to Mr. Al-Ghizzawi could take place. The underlying reason for the emergency was my concern about Mr. Al-Ghizzawi's health. The district court held the motion in abeyance because of the general stay on the Guantánamo litigation that was in place at the time.

12. On June 2nd 2006 I filed a renewed Emergency Motion to Enter the Protective Order after hearing new information from other counsel of my clients deteriorating health. I learned from that attorney that Mr. Al-Ghizzawi was possibly suffering from some form of liver disease.

13. The District Court granted the motion entering the Protective Order that same day.

14. I had my first visit with Mr. Al-Ghizzawi in July 2006. After visiting with Mr. Al-Ghizzawi at Guantánamo for three days I returned to Chicago and I filed an emergency motion for his medical records and treatment. After extensive briefing that motion was ultimately denied by the District Court on November 2, 2006.

15. I filed an appeal in the Circuit Court for the District of Columbia regarding the medical records and treatment on November 28, 2006 (06-5394). The government moved to dismiss the appeal and there has been no action taken on that appeal to this day.

16. On August 9th 2006 the district court judge ordered the government to provide Petitioner's counsel with records from his CSRT proceedings. The

government was ultimately given 60 days to provide those records and the factual return was filed with the court on October 6th, 2006.

17. The CSRT records demonstrated that Mr. Al-Ghizzawi was given **two CSRT's**. Under the first CSRT, the tribunal unanimously determined that Mr. Al-Ghizzawi was not an enemy combatant. Within weeks of that determination, a second tribunal was formed in Washington, DC without Petitioner's presence or knowledge and a new representative that had never met with Petitioner was assigned as his personal representative. On the basis of purportedly "new" and "classified" evidence, that second tribunal declared Mr. Al-Ghizzawi to be an enemy combatant.

D. MEETINGS WITH MR. AL-GHIZZAWI AT GUANTANAMO

18. On July 16th, 2006 I met with Mr. Al-Ghizzawi for the first time. Our meeting lasted the entire day, except for a break for lunch. We also met for the entire days on July 17th and July 18th.

19. We met at camp echo in a cell that was also used for interrogations. At our meeting, Mr. Al-Ghizzawi told me that his health started to deteriorate during his first year of detention in 2002 and has progressively worsened each year.

20. During our meeting, I discussed with Mr. Al-Ghizzawi his medical condition and symptoms. Mr. Al- Ghizzawi described his symptoms as: weight loss of between 10-15 kilos since his arrest; severe pain in his abdomen, left side and

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back that travels down his legs; that his pain is constant both when walking or standing, and that he is unable to run; his stomach area is bloated with two black lines appearing horizontal across his stomach; digestive problems including vomiting and diarrhea. He was also very noticeably jaundiced. Mr. Al-Ghizzawi also described the increased intensity of the pain in the previous months as being so severe that he had been unable to get up from a lying down position.

21. Mr. Al-Ghizzawi stated when he first arrived at Guantánamo, the drinking water provided to the prisoners was yellow in color and had small particles in it. He stated that the water tasted and smelled bad and that as a consequence he did not drink very much water. Sometime in late 2004, after lawyers were allowed at the base, the prisoners were provided with bottled water that appeared clean and tasted fresh.

22. I observed Mr. Al-Ghizzawi over the three days of meetings. As I mentioned above, Mr. Al-Ghizzawi was very jaundiced. During our meetings he was constantly rubbing his back, his leg and his abdomen. In my opinion, based on my observation during those meetings, Mr. Al-Ghizzawi was in constant pain.

23. I brought in several different items of food for Mr. Al-Ghizzawi and although he was very gracious for the gesture he expressed his inability to eat the various foods. Mr. Al-Ghizzawi stated that his health deteriorated

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even more if he ate off the scheduled mealtimes. He was able to drink the apple juice I provided and was appreciative of receiving that drink.

24. In 2005, some of the prisoners at Guantánamo engaged in a hunger strike. According to Mr. Al-Ghizzawi, he did not join the strike because of his frail health. Nevertheless, the guards put him on the list as being part of the strike and food was withheld from him for 10 days. He stated that every day he would ask the guards to correct the records and bring him food, but it took him 10 days to get the matter cleared up. He stated that the man in the cell next to him was on the hunger strike, but they brought food to him that he wouldn't eat. Mr. Al-Ghizzawi stated that he tried to reach for the other man's tray but it was out of reach. He said his health worsened after those 10 days without food.

25. I spoke to Mr. Al-Ghizzawi about his medical history in an effort to see if his history could point to his current health problems. He stated that prior to getting married he had a blood test that showed positive for hepatitis B. A second blood test was conducted and the result was negative for hepatitis B. He never had any symptoms of hepatitis B prior to being detained at Guantánamo and he stated that he was in good health at the time of his capture.

26. I also spoke to Mr. Al-Ghizzawi about the medical treatment that he received at Guantánamo. He stated that he had been to the medical clinic on several occasions after he complained about his health problems but he was not

treated for those problems nor was he told the results of any tests that were run on him. Mr. Al-Ghizzawi also stated that the guards that would bring him to the clinic often sat and read his medical file and that they would toss the file around for others to read while he sat there.

27. After our meeting in July, I received a letter from Mr. Al-Ghizzawi who described an episode of such severe pain that he passed-out.

28. On September 19 and 20, 2006 I once again visited Mr. Al-Ghizzawi at Guantánamo.

29. During my visits with Mr. Al-Ghizzawi in September, I showed Mr. Al-Ghizzawi Respondent's Opposition to Petitioner's Emergency Motion for Access to Medical Records and Emergency Medical Treatment, along with the declarations attached thereto. The response showed that Mr. Al-Ghizzawi had Hepatitis B and Tuberculosis. Mr. Al-Ghizzawi was unaware that he suffered from those conditions until I told him during that visit and showed him the affidavit from the Guantánamo medical facility. I also went over with Mr. Al-Ghizzawi a list of questions regarding symptoms that Dr. Jensen, a physician and liver specialist that I spoke with had suggested I ask. I posed most of those questions in a letter to Mr. Al-Ghizzawi which was sent through the legal mail on August 21, 2006 but Mr. Al-Ghizzawi never received that letter.

30. Mr. Al-Ghizzawi stated the following in response to my questions about his symptoms: that his skin was very itchy especially in the area of his legs and

chest; that he was forced to wear a larger sized pants because of his bloating stomach and the pain associated with it; that the pain was most severe on the right side right above his ribcage; that his urine was sometimes white in color; that he had difficulty sleeping and wakes up four to five times in the night; that he is always exhausted and sometimes finds it difficult to walk even a short distance; that he is often disoriented and confused; he has difficulty concentrating; that he has been vomiting more often, especially after eating; that his vision is worsening; he feels depressed and anxious because no one will tell him what is wrong with him so he fears it must be because he is dying and they don't want to tell him. He was terribly afraid that whatever is killing him may have infected his wife and child and that perhaps they too are dying.

31. On the second day of our visit Mr. Al-Ghizzawi was overcome with fatigue and very disoriented. He told me that at 2:30 AM he was taken from the temporary cell at Camp Echo where we were meeting and brought to his usual cell block. He explained to the soldiers that he was meeting with me again in the morning and he was not supposed to go back to his cell but they did not listen. At 5:00 am the soldiers came again and brought him back to the temporary cell where we were meeting. They did not give him breakfast and he was very hungry. I asked one of the guards to bring him something to eat and they later brought him some cereal and milk while we were meeting.

32. During the meetings on those days (September 19, 20), we discussed the situation with the legal mail that he had briefly described to me in a postcard. He stated that the normal procedure was that the guards allowed prisoners to have pen and paper to write letters only on Wednesdays and only for half an hour. According to Mr. Al-Ghizzawi this had been the procedure since at least early spring, 2006. Mr. Al-Ghizzawi further stated that when a prisoner was receiving discipline it was up to the guards whether, or when, they could write to their counsel.

33. Also during those meetings, I asked Mr. Al-Ghizzawi about letters I sent to him. I showed him each letter that I sent him since my last visit in July to see if he received the letter. Mr. Al-Ghizzawi stated that he did not receive two of my letters dated August 17 and August 21, 2006. I gave him copies of those letters at that time. Those letters were sent as legal mail through the procedures set up in the protective order.

34. I carefully observed Mr. Al-Ghizzawi during our two day meeting in September and it is my opinion that his health had deteriorated in the two months since my last visit. Mr. Al-Ghizzawi was still obviously jaundiced and in visible pain (constantly rubbing his back and chest). In addition, Mr. Al-Ghizzawi had a difficult time focusing his eyes, at times appeared listless, and had a difficult time concentrating on the topics we were discussing. He also showed me a lump near his rib cage on his right side that was causing him great discomfort.

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35. My next visit with Mr. Al-Ghizzawi was November 17-18 2006.

36. During my meeting with Al-Ghizzawi on November 17, 2006, Mr. Al-Ghizzawi informed me that he continued to suffer from a pain near his ribcage which sometimes moved toward the center of his chest. He also reported that he suffered from depression and continued to experience dryness and itchiness in his skin. He believed his hearing and eyesight were deteriorating. He experienced shooting pains in his legs. I observed that he constantly rubbed his legs and abdoman and appeared to be in considerable pain. He was still very jaundiced.

CAMP SIX

37. On December 7th 2006 Mr. Al-Ghizzawi was moved to the new Camp Six. He sent me a letter telling me this sad news in late December, 2006 and I received the letter in mid January, 2007.

38. Camp Six was Halliburton's latest project at Guantánamo Bay. According to the military, this supermax facility was designed to hold the general population from Guantánamo. Men are held in the Camp 6 conditions of severe isolation despite their status or risk level.

39. At Camp 6, unlike the supermax facilities in the U.S., the men are only allowed one book per week, they are given no newspapers, they are not allowed to watch television, they cannot listen to a radio, and they cannot take classes (they are forbidden from learning English). Mr. Al-Ghizzawi is

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compelled to complain to get so much as clean clothes. He is denied privacy when he uses the toilet; even female guards can see him. Like the rest of Guantánamo the men are not allowed any family visits or phone calls, and most of these men are not allowed to touch another human being...not even thru the mesh link fence of the outdoor "recreation" cages.

40. The cells in camp 6 are constructed entirely of metal. As the camp is air conditioned everything in the cell is cold. The men are not provided blankets but instead are given plastic sheets that are cold and smelly. The cells admit no natural light or air and the men cannot converse with anyone while in their cell unless they kneel on the floor and attempt to shout greetings through the tiny gap where the food is pushed in. Mr. Al-Ghizzawi passes his days in tedium and loneliness.

41. I visited Mr. Al-Ghizzawi on February 12-16, 2007 at camp 6.

42. I was escorted into the new, headache white, facility and brought to the tiny room where my client was waiting for me. The windowless six-by-six closet-size room had two chairs and a table. Mr. Al-Ghizzawi was stooping low to the floor and huddled against the wall when I entered. His arms were wrapped around his body as he tried to warm himself from the chill he has had for over two months, and his feet were shackled to the floor. He was shivering, his teeth were clenched and he wouldn't look at me.

43. When I arrived at Camp 6 I was first told that Mr. Al-Ghizzawi did not want to see me. My escort went and spoke to Mr. Al-Ghizzawi and brought him a note from me, he then agreed to meet with me for a short time.

44. Mr. Al-Ghizzawi told me that I was his guest so he did not want to insult me by not visiting with me, but that he was feeling very ill and he was ashamed to have me see him in orange. Mr. Al-Ghizzawi was in the orange jumpsuit which is worn by prisoners who are being punished. Mr. Al-Ghizzawi explained to me that when he went to take a shower two days earlier he had toilet paper in his pocket. It is forbidden for the prisoners to have anything in their pocket when they go for showers. Mr. Al-Ghizzawi also told me that he was ordered out of the shower almost as soon as he had entered the shower and that he did not exit the shower immediately. Those two infractions landed Mr. Al-Ghizzawi in the orange jumpsuit for two days. Mr. Al-Ghizzawi told me that it made him feel like a criminal and he did not want me to see him in that condition. Being on punishment also meant that Mr. Al-Ghizzawi lost all of his "privileges," which meant that he could not wear the thermal shirt under his jumpsuit that the military gave the men after so many lawyers complained about the cold conditions that their clients were subjected to at Camp 6, so Mr. Al-Ghizzawi was even colder than usual. Mr. Al-Ghizzawi reported that not only was he very cold but that his food, drink, and the temperature of his cell were kept cold. He further explained that they are not given blankets and his only cover is a plastic sheet which is also cold.

45. Mr. Al-Ghizzawi told me (and it was clear to me looking at him) that his health has worsened since his being moved to Camp 6 and that he has asked to see a doctor since mid December but had not seen one yet.

46. Mr. Al-Ghizzawi reported that he now vomited several times each day and that his other symptoms included frequent headaches, soar throat, itchy skin, piercing back pain, pain in his abdomen and other aches, frequent nosebleeds and pains in his gums. He reported that the fluorescent lights were left 24 hours a day in Camp 6 and, although they were somewhat dimmed at night, the lighting made sleep very difficult. I observed that he appeared very mentally distraught, would not look at me and remained huddled against the wall.

47. Mr. Al-Ghizzawi explained that the guards would often offer him outdoor recreation time at eight or nine o'clock in the evening, and sometimes as late as midnight or one o'clock in the morning. However, Al-Ghizzawi often refuses to go outside if the sun is not out. He also reported that during his first month in Camp 6, he was given no recreation time at all.

48. I observed that the total isolation of camp 6 was having a profound effect on Mr. Al-Ghizzawi's mental as well as physical health. Whereas in the past we would often sit together and converse about the nature of the world and various philosophies he was now unresponsive and only answered questions that were asked. We cut our meeting short that first day.

49. In our second day of meeting in February of 2007 Mr. Al-Ghizzawi was a little more interactive as we discussed the legal case and documents that I had prepared. He shook from the cold the entire meeting and his teeth were clenched.

50. My next meeting with Mr. Al-Ghizzawi occurred on May 8–9, 2007, in a different, but similar, shabby little room at Camp 6. Our discussion was often interrupted from loud outbursts outside our meeting room both by military personnel and detainees.

51. During the May meetings Mr. Al-Ghizzawi reported that he was very weak and he continued to suffer from persistent skin irritation. He reported that he could only drink small quantities of water otherwise his stomach would be upset and he would vomit. He reported that his eyesight was continuing to deteriorate. I observed that he was blinking constantly and that his eyes appeared bloodshot and irritated. Mr. Al-Ghizzawi also said that the skin on his back was somehow inflamed and covered in red bumps and scratches. He continues to suffer from pains in his leg and his abdoman.

52. Mr. Al-Ghizzawi reported that he was now being offered some daytime "recreation" time. But there was no shade and no recreation. Recreation time involved standing in a caged pen in the sweltering Cuban heat.

53. My last visit with Al-Ghizzawi was on July 10, 2007. Although Mr. Al-Ghizzawi is still kept in Camp 6 our meeting took place at camp Iguana (one of the other interrogation camps).

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54. Mr. Al-Ghizzawi was supposed to bring with him to our meeting the affidavit that we were preparing together regarding his circumstances. On the day of our meeting when the guards came to his cell they told him he was not going to a meeting with his attorney and that he could not bring any papers with him. Therefore Mr. Al-Ghizzawi came to the meeting without any of his legal papers.

55. During this visit the deterioration of Mr. Al-Ghizzawi's health was alarming. His face was drawn and his skin looked both ashen and jaundiced. He had a difficult time focusing on anything we were discussing. He was in constant visible pain. He reported many of the same symptoms as the past but all of the symptoms were worse. He was very weak and tired. Mr. Al-Ghizzawi told me he could not walk more than a few feet before being overcome with fatigue.

56. Perhaps most distressing to me was my observation that Mr. Al-Ghizzawi's mental health had noticeably deteriorated since my last visit. He confessed that in his total isolation that he had begun talking to himself. He recognized that this was a sign of a fraying mental state and he was very distraught over his condition. He seemed to have great difficulty maintaining focus and concentrating on the conversation. He also seemed to have trouble understanding me, even though he is proficient in English and communication has never been a problem before. He was consumed with

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fears and concerns about the well-being of his wife and daughter and appeared near tears on several occasions when we spoke of his family.

57. On each of my visits we have met together over two days. I spend a great deal of time discussing legal issues and other aspects of his case and I know that Mr. Al-Ghizzawi always looks forward to these visits. On this last visit Mr. Al-Ghizzawi was unable to meet with me on the second day because of his poor health. We were therefore not able to go over the affidavit that we were preparing together or other legal documents that I had sent him.

(LACK OF) MEDICAL CARE

58. The Respondents' opposition to efforts to have Al-Ghizzawi properly tested and treated has largely relied on the declarations of Captain Ronald Sollock, Commander of the Guantánamo Bay Navy Hospital, and Joint-Task Force Surgeon who stated in an affidavit that Mr. Al-Ghizzawi does not want to be treated for his life threatening illness.

59. Capt. Sollock admitted in the affidavit that Mr. Al-Ghizzawi has a history of hepatitis B since he was first tested upon entering the base. Although Guantánamo's medical staff is supposed to involve the prisoners in their healthcare treatment, this diagnosis had never been confirmed to either me or my client until it appeared in Sollock's declaration in September 2006.

60. While Capt. Sollock described the official healthcare protocol at Guantánamo in glowing terms, he did not indicate that he himself had had any personal

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experience with Al-Ghizzawi or that he personally supervised the treatment of my client or for that matter that he had even read the complete file. In fact Capt. Sollock asserted that Al-Ghizzawi had not complained of vomiting or diarrhea and then had to file a supplement to his affidavit conceding that his statement was inaccurate and that, in fact, Al-Ghizzawi had complained of nausea and vomiting.

61. Despite Capt. Sollock's statement that Mr. Al-Ghizzawi does not want to be treated for his life threatening diseases nothing is further from the truth. Mr. Al-Ghizzawi only knows about his medical condition because I brought the Captains affidavit with me to a visit. After reading the affidavit he looked at me in disbelief and asked why they had not told him and why they were not treating him. I had no answer. I have no answer still.

62. In one of our meetings Mr. Al-Ghizzawi described for me the very brutal treatment that he received after being turned over by the afghani warlords to the Northern Alliance for the bounty. While in the hands of the Northern Alliance he heard that the Americans were coming. He had great hope that the Americans would take him from the Northern Alliance and when the Americans arrived he spoke to them in his broken English hoping that would be a positive sign and the Americans would take him away from the brutal Northern Alliance. He thought he would be safe with the Americans. He thought the Americans would treat him with respect. He thought that he would have rights with the Americans that he did not have with the

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Northern Alliance. He said that they Americans were even more brutal than the Northern Alliance and he asked me what happened to America?

FURTHER AFFIANT SAYETH NAUGHT.

Dated July 25, 2007:

H. Candace Gorman

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CERTIFICATE OF SERVICE

I, H Candace Gorman, hereby certify that on July 26th, 2007, I filed the PETITION FOR ORIGINAL WRIT OF HABEAS CORPUS, and APPENDIX in the U. S. SUPREME COURT and that the petition and appendix was served upon the following individuals as indicated:

Paul Clement, Solicitor General,
United States Department of Justice,
950 Pennsylvania Avenue, N.W., Room 5614,
Washington, DC 20530-0001

H. Candace Gorman
Counsel for Petitioner

H. Candace Gorman Il. Bar # 6184278
Law office of H. Candace Gorman
542 S. Dearborn
Suite 1060
Chicago Il. 60605
312.427.2313