

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

ABDAL RAZAK ALI

Petitioners,

vs.

GEORGE W. BUSH, et al,

Respondents.

No. 10-cv- 1020 (RJL)

**PETITIONER'S SECOND SUPPLEMENT TO MOTION (AND RENEWED
MOTION)
FOR ENTRY OF THE WRIT OR,
IN THE ALTERNATIVE A NEW HEARING AND FOR SANCTIONS**

Now comes the Petitioner, by and through his attorney. Counsel for Petitioner wants to emphasize to this Court that she has not read the wikileaks documents that the rest of the world can freely read but that she has nonetheless seen the photograph that the government now contends is of her client in a variety of media, including the New York Times and the Miami Herald Tribune. Petitioner hereby adds the following to his previously filed Supplement to Motions for entry of the writ or, in the alternative a new hearing, (Docket numbers 1447, 1451, 1459, and 1484):

Two additional facts have now come to the attention of counsel for Petitioner, first, the photograph that the government apparently attributes as "the official photo" of the Petitioner on documents associated with Petitioner is not of the same person shown to this Court at the hearing as being the petitioner- a photo which this Court in footnote 3 of its unclassified memorandum found to be a photo of the Petitioner,

notwithstanding the fact that his own counsel could not identify that photo as being her client. Second, and of indescribable importance is an apparent admission by the former chief prosecutor of the military commissions that photo identifications of detainees by other detainees was often rigged, as set forth below.

Counsel has already asserted in argument, as acknowledged in this Court's unclassified Memorandum Decision, that there has been ongoing and systemic problems with photographs and with the photo IDs of detainees by other detainees, particularly of Petitioner.

Further, counsel for Petitioner has just learned that Retired Air Force Col. Morris Davis, a military lawyer for 25 years, and chief prosecutor at the Guantanamo military commission from September, 2005 until October, 2007 – described from personal experience, in a public forum, how detainee “intelligence” reports were concocted by the multiple intelligence agencies that were given free rein at Guantanamo – “intelligence” reports that he described as “untested, unredacted allegations and assertions” that have “evaded meaningful scrutiny of any kind, be it in a court of law, or in any form of Article 5 competent tribunal” or anywhere else. Although the Col. was apparently attempting to be careful about what he was stating, to the point that the elaborate example is described both as an example and as a hypothetical, it is clear from his detailed description that this was a problem that he was fundamentally aware of as chief prosecutor. Rather than further quote and paraphrase what Col. Davis stated counsel for Petitioner hereby states the relevant exchange in full with links to the actual panel discussion at the New America Foundation:

(http://www.newamerica.net/events/2011/nine_years_guantanamo) as Col. Davis

himself characterized the problematic nature of the so-called “photo I.D.” process:

1:10:55 into the 1/11/11 New America Foundation panel discussion, the moderator asked:

“Now, in terms of the evidentiary record that you had for these detainees. What’s your sense of how much – do we even have any documentation for some, for the case load. What’s your sense?”

To which, at 1:11:07 of the recording, **former Guantanamo Military Commission prosecutor Morris Davis replied:**

“I think it varies tremendously. You know – I guess one thing I’ve found is people tend to stereotype when they talk about detainees, like it’s an homogeneous group of people. And the same like with 9/11-victim families. I think everybody has this notion that all of them are just alike – you know, that one size fits all. The detainees are a very diverse group. Ah, you know, there are some, I think, like Hamdan, for instance, struck me as somebody – you know, he made 100 bucks a month driving for Bin Laden, somebody else offered him \$150 to drive for them. But others that were thoroughly committed to jihad – no matter what you do, they’re never going to change their mind. And some, like David Hicks, who I think is just an idiot looking for adventure. There’s a whole range of different types of people, and different – and I guess it depends on what you call evidence.

One of the things that really struck me is the difference in law enforcement and intelligence. And the friction between the FBI and the CIA. And I’ll give you an example – and this is a hypothetical. You know, you’d get a piece of information from the field saying: *‘Hey, we got a picture of this guy, we’re trying to figure out who it is – can you show it to the detainee and get him to identify him?’*

You know, they’d bring the picture, and they’d say – **FBI would say:** *‘Do you recognize this person?’*

And the detainee would go *‘No, I don’t.’*

‘Are you sure?’

‘Yeah, I’m sure – I don’t recognize him.’

Intelligence would come in and go: *‘Do you recognize this guy?’*

And he'd say 'No.'

'Well, wait a minute – now you were at Al Farouq, weren't you, in 2000 and...?'

'Yeah, yeah, I was there.'

'And didn't you meet so-and-so?'

'Yeah, yeah, he was there.'

'Now, didn't he have a brother?'

'Well, yeah.'

'So could this possibly be...?'

And when it got written up in the summary – the intelligence, the IIR, or the SIR [Summary Interrogation Report], the summary report – it says "Detainee identified," you know, this person, and now that's being used as evidence. You know, you can't – the detainee can't go interview this guy who's now identified him and say: *'Do you really know me?'* It is written up as fact that the detainee identified this person as being whoever it is, and that's what's being offered up as evidence. *So intelligence and evidence are not one and the same."*

Counsel submits, for the reasons previously set forth, and based upon the new publicly appearing photograph of a different individual that the government apparently also contends is of her client and upon the characterization by Col. Davis, which he describes both as an example and as a hypothetical, that suggests not only that there is a systemic problem with photographs and with the photo IDs of detainees by other detainees, particularly of Petitioner, but that the purported photo identifications of detainees, and in particular of the Petitioners identifications, were rigged by some of the intelligence agencies so that any association no matter how remote or attenuated would be deemed a "positive photo I.D." in a manner that would be absolutely

inadmissible (if not unconscionable) for use in any legal context, let alone as a basis for effective life imprisonment. Wherefore Petitioner respectfully asks this Court to either enter the writ or give the Petitioner a new hearing so that she can subpoena Col. Davis and present his live testimony at that hearing and this Court can determine exactly how much of the example presented by Col. Davis was hypothetical.

Respectfully Submitted,

/s/ H. Candace Gorman
Counsel for Petitioner

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NOTICE OF FILING

To: Olivia Hussey
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Civil Division, Federal Programs Branch
20 Massachusetts Ave., NW, Room 7144
Washington, DC 20530

PLEASE TAKE NOTICE that on April 28, 2011, I filed with the Court Petitioner's Second Supplement to Motion for Entry of the Writ or, in the Alternative a New Hearing and for Sanctions.

/s/ H. Candace Gorman
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