

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
MOHAMMED AL-QAHTANI,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 05-1971 (RMC)
)	
BARACK H. OBAMA,)	
President of the United States, <i>et al.</i> ,)	
)	
Respondents.)	
_____)	

DECLARATION OF CAPTAIN DON A. MARTIN

Pursuant to 28 U.S.C. §1746, I, Captain Don A. Martin, declare as follows:

1. I am a Captain in the United States Navy, with 18 years of active duty service. I currently serve as the Staff Judge Advocate (SJA) of Joint Task Force - Guantanamo (JTF-GTMO), at Naval Station Guantanamo Bay, Cuba. I have held this position since 25 July 2008. As such, I am the principal legal advisor to the JTF-GTMO Commander and his subordinate commanders.

2. This declaration is based on my own personal knowledge and information made available to me through my official duties.

3. JTF-GTMO takes very seriously the matter of counsel communication with detainees. In person meetings and phone calls occur on a daily basis in the context of habeas and Military Commissions cases. In 2009, JTF-GTMO facilitated 2,163 counsel visits and 396 phone calls with their detainee-clients. It is JTF-GTMO policy to allow counsel access to their clients, consistent with our established standard operating procedures, and the terms of the various

protective orders issued by the courts. Additionally, during visits with detainees at JTF-GTMO, counsel are provided with accommodations and appropriate facilities to meet with their clients.

4. JTF-GTMO has established specific procedures to facilitate habeas counsel phone calls and meetings with clients. In every instance, the detainee escort personnel advise the detainee that counsel has requested to speak or meet with him, generally 15 to 30 minutes prior to the commencement of the scheduled phone call or in person meeting. In most cases, detainees are provided up to 24-hours notice of a legal appointment or phone call.

5. Should the detainee refuse to participate in the phone call with counsel, a military attorney from the JTF-GTMO Office of the Staff Judge Advocate will, as appropriate, notify any Privilege Review Team member monitoring the call or the Department of Defense Office of General Counsel, so that the telephone call can be cancelled.

6. Should the detainee refuse to go to an in person visit, a military attorney from the JTF-GTMO Office of the Staff Judge Advocate, will then meet with counsel and advise him or her of the detainee's refusal to meet with counsel. At that time, counsel is provided the opportunity to write a note to the detainee, which is promptly delivered to the detainee by the SJA attorney. To deliver the note, the SJA attorney ensures an appropriate interpreter is present (if required), and then immediately goes to the detainee's physical location, which may be the cell-block in which he is housed or recreation area of the camp in which he is located. Upon locating the detainee, the SJA attorney informs him that his counsel has written a note and asks the detainee if he wants it. If requested by the detainee, the SJA attorney will read the letter aloud to the detainee (through the interpreter, if appropriate). If the detainee has a verbal or written response to the letter, that will be relayed to the counsel by the SJA attorney. If the detainee wishes to read the letter himself, the SJA attorney will wait for the detainee to finish reading the letter and for the

detainee's response. If the detainee refuses to take possession of the letter or if he continues to decline to attend the counsel meeting, those actions are considered a full and final refusal by the detainee to meet with counsel.

7. Alternatively, if the detainee elects to meet with counsel, the detainee is transported from his current location to the meeting place. Normally, counsel/detainee meetings take place at Camp Echo, a location specifically designated to facilitate such meetings in a secure and safe environment. Because of security and safety concerns for both JTF-GTMO personnel and the detainee, transportation of detainees between camps at JTF-GTMO requires substantial logistical coordination. Each movement requires at least two guards for any one detainee; two are necessary for an intra-camp move, while four are needed for an inter-camp move. The detainee is then promptly transported to the meeting place.

8. Detainee escorts are trained on general escort and operational security procedures which emphasize that verbal interaction between the detainee escort and detainees shall be limited to only that which is necessary to accomplish the performance of the escort's official duty to move the detainee. JTF-GTMO personnel are not permitted to discourage detainees from participating in phone calls or meetings with their counsel. Detainee escorts specifically are not allowed to discuss the phone call or visit or the ramifications of participating or not participating in these events with the detainee. The Department of Defense simply does not permit personnel to interfere with the relationship between a detainee and his counsel. This includes a prohibition on insulting counsel, on making disparaging comments about counsel, and on retaliating against a detainee for having communicated with counsel, or for being involved in habeas litigation. Detainees are not granted or denied privileges, disciplined, or otherwise discriminated against on the basis of involvement in habeas litigation or communicating with counsel.

9. Personnel at JTF-GTMO have continually followed our rules and procedures, providing detainees and their counsel every reasonable effort to ensure they are able to communicate.

ATTEMPTED PHONE CALLS WITH ISN 063

10. On 26 August 2010, the Petitioner, Mohammed al-Qahtani (ISN 063), had a 90 minute phone call scheduled with his counsel (from 10:00 a.m. until 11:30 a.m.). The phone call lasted for 30 minutes, at which time ISN 063 terminated the phone call. ISN 063 then asked to speak to an attorney from the SJA's office and informed the detainee escorts that he would not return to his camp until he spoke with someone from "SJA." The Detainee Operation Center then contacted my office and relayed the above information to one of my Assistant SJAs.

11. Approximately 10 minutes after ISN 063 terminated the phone call, an Assistant SJA from my office arrived at the building where ISN 063 was located to meet with ISN 063. The Assistant SJA was alone, without an interpreter. Two guards showed him to the specific room where ISN 063 was located and the guards left the room. The Assistant SJA introduced himself as a representative from SJA and asked if ISN 063 wanted an interpreter. ISN 063 declined. ISN 063 proceeded to tell the Assistant SJA that moments before he arrived, ISN 063 had been on the phone with his lawyer. ISN 063 did not disclose his lawyer's name and the Assistant SJA did not ask ISN 063 to reveal the name of his lawyer. ISN 063 stated that his lawyer has been working with him for years on his habeas corpus case, but that ISN 063 no longer trusted his lawyer and wanted to terminate his attorney-client relationship. ISN 063 also informed the Assistant SJA that he wanted to withdraw his habeas case. ISN 063 stated that he informed his lawyer over the phone that he was fired and that he no longer wanted his lawyer to represent him. ISN 063 also told the Assistant SJA that he informed his lawyer that he wanted to

withdraw his habeas case. ISN 063 repeated this information to the Assistant SJA multiple times, emphasizing that he wanted to "cancel" his lawyer and "cancel" his habeas case. ISN 063 also asked the Assistant SJA to make sure his lawyer and his case were "cancelled." In response, the Assistant SJA stated that ISN 063 could write a letter to his lawyer if he felt that way and that the Assistant SJA would pass this information on to the Department of Justice. ISN 063 requested that the Assistant SJA return to the camp where ISN 063 resides later that day to tell him whether he had communicated ISN 063's request to the Department of Justice. ISN 063 went so far as to ask the Assistant SJA to twice repeat back to ISN 063 the two things he wanted -- to cancel his lawyer and cancel his case. ISN 063 said that in the future he would try to obtain new legal counsel, but for now he just wanted to terminate everything.

12. Pursuant to ISN 063's request, the Assistant SJA visited ISN 063 in his camp later that same day and told him that he had passed on (to the Department of Defense Office of General Counsel) the information ISN 063 provided. The Assistant SJA asked ISN 063 if he was still sure that he wanted to fire his lawyer and withdraw his case. ISN 063 again stated that he wanted to fire his lawyer and withdraw his case. The Assistant SJA then left.

13. ISN 063 again requested, through guard personnel, to speak with "SJA" on 2 September 2010, though he did not provide a reason for his request. ISN 063's request was relayed to my office on 7 September 2010. The Assistant SJA spoke with ISN 063 on the morning of 9 September 2010 concerning this request, as described below.

14. ISN 063's counsel scheduled another 90 minute call with ISN 063 on 9 September 2010 (from 11:00 a.m. until 12:30 p.m.). In the morning, guard personnel notified ISN 063 that he had a phone call scheduled later that day. Later that morning, around 8:30 a.m., the Assistant SJA spoke with ISN 063 to discover why he had requested to speak with him on 2 September

2010. ISN 063 complained to the Assistant SJA for taking so long to respond to his request. ISN 063 said he had made the request to receive a status update on his case. ISN 063 also expressed frustration and anger at the fact that a call had been scheduled when he had notified the Assistant SJA previously that he did not want his attorney or case to continue. ISN 063 refused to participate in the phone call, and repeated his statement to the Assistant SJA, that he wanted to “cancel” his lawyer and “cancel” his case.

COUNSEL VISITS WITH ISN 063

15. ISN 063’s counsel scheduled two full day meetings with ISN 063 on 13-14 September 2010. On the morning of 13 September 2010, the detainee escorts notified ISN 063 that a meeting with his counsel was scheduled. ISN 063 initially refused to meet with his counsel. Per our standard operating procedures, ISN 063’s counsel was given the opportunity to write a letter to ISN 063, which counsel did. The letter was delivered to ISN 063 who had initially indicated he would write a response, but then instead decided to meet with his counsel. ISN 063 met with his counsel on 13 September 2010. After the conclusion of the meeting, counsel cancelled the meeting scheduled for 14 September 2010.

SUBSEQUENT COMMUNICATION FROM ISN 063

16. On 14 September 2010, while the Assistant SJA discussed above was delivering a letter to another detainee in the same camp in which ISN 063 resides, ISN 063 approached the Assistant SJA and informed him that he still wanted to “fire” his lawyer, and that he (ISN 063) told his lawyer this in the meeting he had with his counsel on 13 September 2010. However, ISN 063 also stated that he no longer wanted to “cancel” his habeas case. Instead, he now would like to “freeze” his case until he gets a new lawyer. ISN 063 was adamant and explained this

information to the Assistant SJA several times and requested that this information be passed along to “the Attorney General.”

17. On 15 September 2010, a different Assistant SJA went to deliver documents to ISN 063 that his counsel left for him after their 13 September 2010 meeting. When the Assistant SJA delivered the documents to ISN 063, ISN 063 repeated the same message: “I want to fire my lawyer, and ‘freeze’ my case.”

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date: 16 September 2010



DON A. MARTIN
Captain, JAGC, U.S. Navy
Staff Judge Advocate, JTF-GTMO