

UNCLASSIFIED//FOR PUBLIC RELEASE  
MILITARY COMMISSIONS TRIAL JUDICIARY  
GUANTANAMO BAY

UNITED STATES OF  
AMERICA

v.

KHALID SHAYKH MOHAMMAD,  
WALID MUHAMMAD SALIH  
MUBARAK BIN 'ATTASH,  
RAMZI BIN AL SHIBH,  
ALI ABDUL AZIZ ALI,  
MUSTAFA AHMED ADAM  
AL HAWSAWI

AE 364(Mohammad et al.)

**Joint Defense Motion to Compel the  
Government to Allow Individual Relief  
During Attorney-Client Meetings**

Filed: 01 July 2015

1. **Timeliness:** This motion is timely filed.
2. **Relief sought.** The Accused jointly move this Commission to order the Government to once again permit Defense teams to bring food and other refreshments to attorney-client meetings, subject to reasonable inspections to ensure no contraband or security hazards are brought into these meetings.
3. **Burden and Standard of Proof.** The Defense bears the burden of persuasion in this motion.
4. **Facts:**

a. Ever since the Accused were first charged in 2008, attorneys have been permitted to bring food and other refreshments to attorney-client meetings.<sup>1</sup> It has become customary for Defense teams to bring refreshments during meetings.

b. On 14 May 2015, commander, JTF-GTMO, issued a memorandum, ordering that “food of any kind, other than that provided by guard force personnel for Detainee consumption, is

---

<sup>1</sup> David Luban, *Lawfare and Legal Ethics in Guantanamo*, 60 Stanford L. Rev. 1981, 1997 (2008) (noting that, in the worst days of the GTMO regime, “[T]he lawyers cannot bring comfort items to their clients, except for food, and only if the client eats it before the end of the interview”).

prohibited within meeting spaces” (att. B).

5. **Argument:**

For over seven years, attorneys have been able to provide food and other refreshments—known in the Law of War as “individual relief”—during attorney-client meetings at Guantanamo,<sup>2</sup> as long as the guard staff screened the items to make sure they contained no contraband or security hazards. The provision of food and other refreshments has allowed attorneys and clients to work through breaks and lunch times, thus increasing the amount of time available for attorney-client meetings and helping to establish rapport among clients and defense staff. The Government’s recent arbitrary decision to prohibit this individual relief violates its obligations under the Law of War and undermines attorney-client relations in this case.

Individual relief is defined as “individual parcels . . . containing, in particular, foodstuffs” which are sent to a prisoner “designated by name,” whether “by post *or by any other means.*”<sup>3</sup> The Law of War requires the Government to permit detainees to receive individual relief regardless of status.

Thus, article 5 of Additional Protocol II to the Geneva Conventions of 1949 requires that “persons deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained . . . be allowed to receive individual or collective relief.”<sup>4</sup> This applies to all persons “whose liberty has been restricted in any way whatsoever for reasons related to the

---

<sup>2</sup> David Luban, *Lawfare and Legal Ethics in Guantanamo*, 60 *Stanford L. Rev.* 1981, 1997 (2008).

<sup>3</sup> 3 Int’l Committee of the Red Cross, *The Geneva Conventions of 12 August 1949, Commentary Published under the General Editorship of Jean S. Pictet* 350, 353 (1960) (Article 72 of the Third Convention and commentary); 4 Int’l Committee of the Red Cross, *The Geneva Conventions of 12 August 1949, Commentary Published under the General Editorship of Jean S. Pictet* 452-54 (1960) (Article 108 of the Fourth Convention and commentary).

<sup>4</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II), Art. 5, § 1, 1(c) (June 8, 1977) [hereinafter AP II].

armed conflict,”<sup>5</sup> and is designed to allow “all possible forms of relief action.”<sup>6</sup> Department of Defense policy requires the Government to abide by the provisions of Article 5.<sup>7</sup>

In addition, the right to receive individual relief is provided by the Third and Fourth Geneva Conventions for prisoners of war and civilian internees, respectively.<sup>8</sup> Until a competent tribunal determines otherwise, the defendants are entitled to the presumption that they are prisoners of war.<sup>9</sup> The Commission has not yet ruled on the Defense motion to compel a properly constituted Article 5 status tribunal,<sup>10</sup> but the presumption of POW status applies until a competent tribunal determines otherwise. If the Accused are not prisoners of war, they are civilian internees and entitled to receive individual relief anyway; and if some other status were to exist, they would still be entitled to receive individual relief under Article 5 of Additional Protocol II and the DoD policy implementing it. Jean Pictet, in his commentary to the Third Convention, notes that the right to receive relief “is a fundamental right, like the right to correspond—one of the inalienable rights established by the Prisoners of War Convention.”<sup>11</sup>

---

<sup>5</sup> AP II, Art. 5, § 3; *see also* Int’l Committee of the Red Cross, *Commentary on the Additional Protocols of 8 June 1987 to the Geneva Conventions of 12 August 1949*, para. 4564 (1987) [hereinafter *ICRC AP II Commentary*]. (“The expression ‘persons whose liberty has been restricted’ was chosen in preference to more specific words such as ‘prisoners’ or ‘detainees’ to take into account the full extent of the article’s scope of application, which covers all detainees and persons whose liberty has been restricted for reasons related to the conflict, without granting them a special status.”).

<sup>6</sup> *ICRC AP Commentary*, para. 4577.

<sup>7</sup> U.S. Dep’t of Defense, Directive Number 2310.01E, *DoD Detainee Program* § 3(a)(2) (Aug. 19, 2014). *See also* U.S. Dep’t of Defense, Off. of Gen. Counsel, *Department of Defense Law of War Manual 500* (2015) (“Subject to security measures, practical considerations, and other military necessities... [d]etainees shall be allowed to receive individual or collective relief.”)

<sup>8</sup> Geneva Convention Relative to the Treatment of Prisoners of War art. 72, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter “GC III”]; Geneva Convention Relative to the Protection of Civilian Persons in Time of War arts. 38, 108, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287 [hereinafter “GC IV”].

<sup>9</sup> GC III, art. 5; *see also* Army Regulation 190-8/OPNAVINST 3461.6/AFJI 31-304/MCO 3461.1 Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees § 1-6(a); Hearing Before the Committee on Foreign Relations, United States Senate, 84th Cong., 1st Sess., Geneva Conventions for the Protection of War Victims 8 (June 3, 1955) (Statement of DOD General Counsel Wilber M. Brucker).

<sup>10</sup> AE 119 (MAH), filed 10 January 2013.

<sup>11</sup> 3 Int’l Committee of the Red Cross, *The Geneva Conventions of 12 August 1949, Commentary Published under the General Editorship of Jean S. Pictet* 352 (1960) (commentary to article 72).

These authorities do not allow arbitrary limitations to be placed on individual relief. The Third Convention provides that “[t]he only limits which may be placed on these shipments shall be those proposed by the Protecting Power in the interest of the prisoners themselves, or by the International Committee of the Red Cross or any other organization giving assistance to the prisoners, in respect of their own shipments only, on account of exceptional strain on transport or communications.”<sup>12</sup> The Fourth Convention contemplates limitations imposed by “military necessity” or “imperative reasons of security” only.<sup>13</sup> The relief requirement of Additional Protocol II is based on the Third and Fourth Conventions, and designed to allow for “all possible form of relief actions.”<sup>14</sup>

The refreshments brought by attorneys to client meetings are “individual relief” and may not properly be withheld.

In addition to relief, the Third and Fourth Conventions require the Government to provide canteens to all prisoners of war and civilian internees.<sup>15</sup> The internment facilities at Guantanamo Bay have never met these requirements.<sup>16</sup> The Fourth Convention allows an exception for civilian internees “where other suitable facilities are available.”<sup>17</sup> While shared refreshments during client visits are no substitute for a canteen, they are far better than nothing, which is what the Government now provides.

---

<sup>12</sup> GC III, art. 72.

<sup>13</sup> GC IV, arts. 62, 108.

<sup>14</sup> *ICRC AP Commentary*, para. 4577.

<sup>15</sup> GC III, art. 28; GC IV, art. 87. These are supposed to be places at which the detainees can purchase “foodstuffs and articles of everyday use” at prices no greater than local market rates, and prisoners and internees are supposed to receive regular allowances that they can spend at these canteens. GC III, art. 60; GC IV, art. 98. All proceeds are supposed to go to “welfare funds” for the benefit of the detainees.

<sup>16</sup> Chris Jenks and Eric Talbot Jensen, *Indefinite Detention Under the Law of War*, 22 *Stanford L. & Pol’y R.* 41, 60-62 (2011) (noting the canteen requirement and the failure of GTMO to fulfill it).

<sup>17</sup> GC IV, art. 98.

Pictet's commentary to the Fourth Convention explains that the canteen requirement "is aimed above all at 'sustaining the morale' of the internees,"<sup>18</sup> illustrating a general point which the Government has been ignoring ever since it captured the Accused. When a government detains persons under the law of war, it assumes responsibility for their morale and mental well-being. Defense counsels have taken over this part of the Government's job, which it persistently neglects; but now the Government is deliberately obstructing it.

The Government's recent changes hark back to the early days at Guantanamo Bay, when Government interrogators attempted to make the detainees dependent on the interrogators for small comforts. Yet even then, attorneys could at least bring refreshments to client meetings:

In addition to sowing mistrust of the habeas lawyers, interrogators take advantage of camp rules to make the lawyers appear as powerless as possible. . . [T]he lawyers cannot bring comfort items to their clients, *except for food, and only if the client eats it before the end of the interview*. Interrogators have no such limitations, and the giving and withholding of news and comfort items is part of their stock in trade. The contrast is strikingly noticeable to the prisoners. . .<sup>19</sup>

Thus, the Government is not only violating both the letter and spirit of its obligations under the Geneva Conventions and the customary Law of War, but is doing so in a way that tends to damage attorney-client relations. It exacerbates the Government's many previous efforts to undermine trust between attorney and client, such as its decision to install listening devices in attorney-client meeting rooms and install Government agents on Defense teams.

The Commission should order JTF-GTMO to fulfill its international law obligations by once again allowing attorneys to bring food and other refreshments to attorney-client meetings,

---

<sup>18</sup> 4 Int'l Committee of the Red Cross, *The Geneva Conventions of 12 August 1949, Commentary Published under the General Editorship of Jean S. Pictet* 389 (1958).

<sup>19</sup> David Luban, *Lawfare and Legal Ethics in Guantanamo*, 60 *Stanford L. Rev.* 1981, 1997 (2008).

subject to reasonable inspections to ensure no contraband or security hazards are brought into these meetings.

6. **Conference Request:** A conference request was sent to the Prosecution at 0754 on 30 June 2015, and they did not reply to the request.

7. **Attachments:**

A. Certificate of Service.

B. Memorandum from RADM K.J. Cozad, Subject: Modification to Rules Regarding Detainee Legal and Periodic Review Board Meetings (14 May 2015).

\_\_\_\_\_  
//s//  
SEAN M. GLEASON  
LtCol, USMC  
Detailed Defense Counsel for  
Mr. al Hawsawi

\_\_\_\_\_  
//s//  
WALTER B. RUIZ  
Learned Defense Counsel for  
Mr. al Hawsawi

\_\_\_\_\_  
//s//  
JENNIFER N. WILLIAMS  
LTC, JA, USAR  
Detailed Defense Counsel for  
Mr. al Hawsawi

\_\_\_\_\_  
//s//  
JAMES G. CONNELL, III  
Learned Defense Counsel for  
Mr. al Baluchi

\_\_\_\_\_  
//s//  
STERLING R. THOMAS  
LtCol, USAF  
Detailed Defense Counsel for  
Mr. al Baluchi

\_\_\_\_\_  
//s//  
DAVID Z. NEVIN  
Learned Defense Counsel for  
Mr. Mohammad

\_\_\_\_\_  
//s//  
GARY D. SOWARDS  
Defense Counsel for  
Mr. Mohammad



**A**



**CERTIFICATE OF SERVICE**

I certify that on 1 July 2015, I caused to be electronically filed **AE 364(Mohammad et al) - Joint Defense Motion to Compel the Government to Allow Individual Relief During Attorney-Client Meetings**, with the Clerk of the Court and caused the same to be served on all counsel of record by e-mail.

*//s//*

\_\_\_\_\_  
WALTER B. RUIZ

Learned Counsel for Mr. Hawsawi

**B**



DEPARTMENT OF DEFENSE  
HEADQUARTERS, JOINT TASK FORCE GUANTANAMO  
APO AE 09522-9998

JTF-GTMO-CDR

14 May 2015

MEMORANDUM FOR

Office of the Chief Prosecutor, 1610 Defense Pentagon,  
Washington, DC 20301-1610  
Office of the Chief Defense Counsel, 1620 Defense Pentagon,  
Washington, DC 20301-1620  
Office of General Counsel, Department of Defense, 1600 Defense Pentagon,  
Washington, DC 20301-1600  
Director, Periodic Review Secretariat, 2521 South Clark Street, NC2/Room 8-02,  
Arlington, VA 22202-9717

SUBJECT: Modification to Rules Regarding Detainee Legal and Periodic Review Board Meetings

1. References:

- a. Commander, Joint Task Force (CJTF) Guantanamo. Order Governing communications and Defense Counsel Access to Detainees Involved in Military Commissions, 3 Mar 14.
- b. Joint Detention Group (JDG) SOP #11.
- c. Habeas Counsel Information Letter, 1 Feb 15.
- d. Periodic Review Secretariat Memorandum Attachment B: Private Counsel Procedures Applicable to the Periodic Review Board Process, 22 Jul 13.

2. This memorandum modifies certain procedures for scheduling and conducting Detainee Legal and Periodic Review Board (PRB) meetings at Joint Task Force Guantanamo (JTF-GTMO). Other than modifications noted herein, all other previously promulgated meeting rules and procedures specified in references (a) through (d) remain in effect. These modifications address health, safety and security concerns applicable to all Detainee meetings conducted in designated Camp Echo and Echo II meeting huts or Camp Delta Gold and Silver buildings, regardless of the purpose of the meeting.

JTF-GTMO-CDR

SUBJECT: Modification to Rules Regarding Detainee Legal and Periodic Review Board Meetings

3. In general: Legal meeting hours change at Daylight Savings Time (DST) to adjust for changes in the Islamic prayer schedules. In 2015, DST begins on 8 March and ends on 1 November at 0200. Legal meetings for 2015 shall be scheduled as follows:

- 8 Mar – 31 Oct (Eastern Daylight Time): 0900 - 1230 & 1330 – 1630
- 1 Nov – 7 Mar (Eastern Standard Time): 0900 - 1130 & 1230 - 1630

4. Scheduling: Habeas counsel and PRB private counsel and personal representatives shall continue to schedule legal meetings and PRB meetings as outlined in references (c) and (d), respectively. Military Commissions defense counsel shall schedule all legal meetings as follows:

a. Requests for legal meetings may be made up to 60 days before the desired meeting date, but no later than 14 days before that date.

b. Special requests received within 14 days of the desired legal meeting date require Commander Joint Detention Group (CJDG) approval.

5. Required personnel at legal meetings: Either an attorney or paralegal must be present at each legal meeting. Requests for Defense Personnel other than an attorney or paralegal to meet with a Detainee alone requires a special request and will not be approved absent justification.

6. Conduct during legal and PRB meetings: The following rules apply to all Detainee meetings conducted in designated Camp Echo and Echo II meeting huts or Camp Delta Gold and Silver buildings, regardless of the purpose of the meeting.

a. Food and Drinks: Bottled water will be made available and may be brought into meeting spaces. Individual containers of coffee, tea, or juice may be brought into meeting spaces. Food of any kind, other than that provided by guard force personnel for Detainee consumption, is prohibited within meeting spaces.

b. Electronic Media: Tapes and other forms of electronic communications, including commercial movies, are not authorized within meeting spaces unless they are properly designated as Lawyer-Client Privileged Communications or Other Case-Related Material or are directly related to a PRB.

JTF-GTMO-CDR

SUBJECT: Modification to Rules Regarding Detainee Legal and Periodic Review Board Meetings

c. Sleeping: No person attending a meeting within a JTF-GTMO meeting space may sleep. If guard force personnel observe any person sleeping during a meeting, the guard force will issue a warning. If anyone is observed sleeping during a meeting after a warning has been issued, the meeting will be terminated.

7. Code of Conduct: Failure to follow this memorandum, JTF-GTMO procedures, or staff instructions may result in termination of meetings and may subject the offending party to administrative action by CJTF, which may include barment from JTF-GTMO.

8. The point of contact for this matter is JTF-GTMO/SJA.

  
K. J. COZAD  
Rear Admiral, U.S. Navy  
Commander