

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SAED FARHAN AL-MALIKI,)
by and through his Next Friend NASER)
FARHAN AL-MALIKI,)
Saudi Arabia)

Petitioners,)
v.)

No. 1:06-cv-01768 RWR

GEORGE W. BUSH, DONALD RUMSFELD,)
REAR ADM. HARRY B. HARRIS, JR.,)
ARMY COL. WADE F. DAVIS,)

Respondents.)

PETITIONERS' MOTION FOR ENTRY OF PROTECTIVE ORDER

For the reasons set forth in Petitioners' attached Memorandum of Points and Authorities, Petitioner Saed Farhan Al-Maliki, by and through his next friend, Naser Farhan Al-Maliki and their attorneys, hereby requests entry of the protective orders required for them to have access to counsel. This request is consistent with orders entered by Your Honor in numerous cases involving Guantánamo prisoners.

Dated: November 10, 2006

Respectfully submitted

/s/ Jeffrey D. Colman
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One of the Attorneys for Petitioners

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**PETITIONERS' MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR ENTRY OF PROTECTIVE ORDER**

Petitioner Saed Farhan Al-Maliki, by and through his next friend, Naser Farhan Al-Maliki and their counsel, respectfully requests that the Court enter the Amended Protective Orders (collectively, "Protective Order")¹ first entered by Judge Green, *In re Guantánamo Detainee Cases*, 344 F. Supp. 2d 174 (D.D.C. 2004), and thereafter entered as a matter of procedure by Your Honor and by other judges in cases brought by hundreds of prisoners held at the United States Naval Base at Guantánamo Bay ("Guantánamo").

ARGUMENT

Your Honor has repeatedly granted motions for protective orders that are substantively identical to this one requested here. *E.g., Said, et al. v. Bush, et al.*, Civil Action No. 05-2384 (RWR), Docket No. 15; *Adem v. Bush, et al.*, Civil Action No. 05-

¹ Copies of the orders that collectively constitute the Protective Order are attached as Exhibits 1 through 3. In filing this motion on Petitioners' behalf, undersigned counsel do not waive Petitioners' right to challenge the terms of the protective order in future proceedings as appropriate.

723 (RWR), Docket No. 12; *Feghoul v. Bush, et al.*, Civil Action No. 06-618 (RWR), Docket Nos. 24 & 25. As recently as October 31, 2006 in *Feghoul*, Your Honor rejected the government's contention that this Court lacked jurisdiction to enter a protective order because, in the government's view, the Detainee Treatment Act of 2005, Pub. L. No. 109-148, tit. X, 119 Stat. 2680, divested this Court of jurisdiction to hear these petitions for habeas corpus and other motions by such petitioners. *Feghoul*, Civil Action No. 06-618 (RWR), Docket Nos. 19 (Gov't Opp. Brf.) & 24 (Order). In granting a protective order in *Feghoul*, Your Honor stated:

Whether this Court or another has jurisdiction to determine the legality of petitioner's detention, and what the exact nature and scope of the proceedings by the court with jurisdiction should be, are legal questions that have not yet been resolved by the D.C. Circuit and will not be resolved here. Despite the lack of finality, it is hardly sensible to withhold or frustrate something that no one doubts is petitioner's right -- a meaningful communication with counsel regarding the factual basis of the petitioner's detention.

Id. at Docket No. 24, at 2-3.

Other judges in this district have also granted the requested protective order. In *Al Odah v United States*, 346 F. Supp. 2d 1, 8 (D.D.C. 2004), Judge Kollar-Kotelly held that detainee petitioners "are entitled to counsel, in order to properly litigate the habeas petitions presently before the Court and in the interest of justice." *Id.* at 8. She observed that "this Court's ability to give Petitioners' claims the 'careful consideration and plenary processing' which is their due would be stymied were Petitioners to proceed unrepresented by counsel." *Id.* Accordingly, she crafted a framework that ensured petitioners' access to counsel while addressing "Respondents' legitimate national security concerns." *Id.* at 13, 15. Judge Green later entered a comprehensive protective order

under this framework in *In re Guantánamo Detainee Cases*, 344 F. Supp. 2d at 175, that has been applied in more than 175 detainee habeas cases, including at least eight cases before this Court. *See, e.g., Al-Shamri v. Bush*, No. 05-CV-0551 (D.D.C. April 14, 2005); *Al-Rashaidan v. Bush*, No. 05-CV-586 (D.D.C. April 14, 2005); *Al Daini v. Bush*, No. 05-CV-634 (D.D.C. June 6, 2005); *Ahmed v. Bush*, No. 05-CV-665 (D.D.C. June 24, 2005); *Al-Rubaish v. Bush*, No. 05-CV-1714 (D.D.C. Nov. 1, 2005); *Hamoud v. Bush*, No.05-CV-1894 (D.D.C. Nov. 1, 2005); *Othman v. Bush*, No. 05-CV-2088 (D.D.C. Dec. 1, 2005); and *Zahir v. Bush*, No. 05-CV-1623 (D.D.C. Dec. 14, 2005). *See also Khiali-Gul v. Bush*, No. 05-CV-877 (JR) (D.D.C. Jan. 6, 2006) and *Wahab v. Bush*, 05-886 (EGS) (D.D.C., Jan. 10. 2005).

Pursuant to United States Department of Defense and Department of Justice procedures, undersigned counsel are prohibited from meeting with Petitioner until the Protective Order is entered. In the absence of such an order, counsel are also prohibited from sending or receiving mail to or from Petitioner and are therefore unable to initiate or establish a functioning attorney-client relationship. Entry of the Protective Order will thus ensure that counsel are able to meet and communicate with Petitioners with the appropriate assurances of confidentiality and privilege. At present, counsel are hoping to visit Petitioner the week of January 21, 2007. We ask that this Motion be granted to facilitate written correspondence by counsel to Petitioner followed by the visit early next year.

On October 30, 2006, Petitioners' counsel Jeffrey D. Colman informed Respondents' counsel Andrew I. Warden by voice mail message that Petitioners intended to file this motion, and asked whether Respondents would agree to the relief requested

herein. Mr. Warden informed Mr. Colman by electronic mail that Respondents opposed entry of the Protective Order.

CONCLUSION

For the foregoing reasons, Petitioner Saed Farhan Al-Maliki, by and through his next friend, Naser Farhan Al-Maliki,, requests that the Protective Order entered in *In re Guantánamo Detainee Cases* be entered as soon as is practicable.

Dated: November 10, 2006

Respectfully submitted

/s/ Jeffrey D. Colman
Jeffrey D. Colman
One of the Attorneys for Petitioners

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CERTIFICATE OF SERVICE

I certify that I caused a true and correct copy of the foregoing documents to be served by first-class United States Mail this 10th day of November, 2006, on the following persons:

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