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IN RE: GUANTANAMO BAY DETAINEE LITIGATION

LINDA F. FENSTERMAKER, ESQ.

September 20, 2008

**VIA CERTIFIED MAIL, RETURN RECEIPT**

**7008 0150 0002 9044 3520**

Colonel Ralph Kohlmann, USMC  
Office of Military Commissions  
Office of the Trial Judiciary  
1600 Defense Pentagon  
Washington, DC 20301-1600

Re: Notice of Appearance, Affidavit and Agreement by Civilian Defense Counsel  
Mustafa Bin-Ahmad Al-Hawsawi

Dear Colonel Kohlmann:

I write to provide my notice of appearance, Form 4-1, and MC Form 9-2, Affidavit and Agreement by Civilian Defense Counsel to notify you of my representation of Mustafa Bin-Ahmad Al-Hawsawi. Mr. Al-Hawsawi currently has a matter pending before the military commissions. The matter is captioned *United States v. Mustafa Bin-Ahmad Al-Hawsawi*.

I have also filed these documents with the Office of the Trial Judiciary, as directed in the Military Commissions Trial Judiciary Rules of Court, Rule 4.2.b. by e-mailing the same to Lt. Col. William Sowder with copies to Colonels Steve David and Lawrence Morris. Because Lt. Col. Sowder was out of the office at the time of my e-mail to him, I also e-mailed the documents to Mr. Jim Polley of his office, as directed in Lt. Col. Sowder's "out of office" e-mail.

I anticipate that the Office of the Chief Defense Counsel ("OCDC") and its agents will urge the Court to reject my notice of appearance and will likely claim that Mr. Al-Hawsawi does not want me to represent him. I have reason to believe that these representations, if made, will be false or will have resulted from coercive acts of the Chief Defense Counsel and his subordinates. You should be aware that the OCDC is currently being operated for the purpose of depriving a number of detainees at Guantánamo Bay of their fundamental rights, including the right to counsel of their choice. *See* United States Constitution, Amendment VI; *see also United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006) (holding that a trial court's erroneous deprivation of a criminal defendant's choice of counsel entitles the defendant to a reversal of his conviction, irrespective of prejudice or lack thereof). As a result of these concerns, I ask that any rejection of my notice of appearance be done only after you personally notify Mr. Al-Hawsawi, on the

record in open court, of my presence, my availability, and the fact that I filed a notice of appearance on his behalf in his military commissions matter and that I am prepared to serve as his attorney in this matter. I ask that you take care to fully question Mr. Al-Hawsawi on the record regarding this matter before you render any ruling which negates my notice of appearance on his behalf. I also ask that my notice of appearance be made an exhibit in the Court's record in Mr. Al-Hawsawi's matter to preserve his Sixth Amendment rights for appellate review.

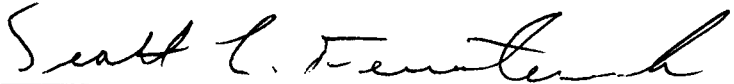
The OCDC, Department of Defense, and the Department of Justice are actively engaged in obstructing Guantánamo Bay detainees' access to counsel of their choice. I have reason to believe that this obstruction, and the detainees' awareness of it, is the reason that a number of detainees have (understandably and wisely) rejected their assigned counsel. If you or your staff would like to discuss this issue with me, I would be glad to come to Washington to do so at your or your staff's convenience. I am a member of the Pool of Qualified Civilian Defense Counsel (the "Pool") and have been a member of the Pool, or its predecessor, since the spring of 2005.

If you or your staff would like to review the basis of my claim of representing Mr. Al-Hawsawi, I would be glad to provide that information, so long as any information I provide is held under seal and that the Court is willing to accept it for the Court's *in camera* review.

I am not sending a client copy of this letter and its enclosures to Mr. Al-Hawsawi because the Department of Defense is currently rejecting all of my mail, whether privileged or non-privileged, sent to detainees at Guantánamo Bay, including mail sent to my clients Rahim al-Nashiri and Ahmed Khalfan Ghailani. All of my mail sent to Guantánamo Bay detainees since the end of May of 2008 has been returned to me by the Office of the Staff Judge Advocate at Guantánamo Bay. I am informed that this action has been taken at the direction of the Office of the General Counsel of the Department of Defense. I have been provided with no explanation for this troubling change of course.

Respectfully submitted,

**The Law Offices of Scott L. Fenstermaker, Esq.**

By:   
Scott L. Fenstermaker, Esq.

Encs.

cc: Lt. Col. William Sowder (via first class mail)  
Colonel Steve David (via first class mail)  
Colonel Lawrence Morris (via first class mail)