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IN RE: GUANTANAMO BAY DETAINEE LITIGATION
OF COUNSEL
LINDA F. FENSTERMAKER, ESQ.

Doc. 1507 Att. 8

October 9, 2008

VIA CERTIFIED MAIL, RETURN RECEIPT
7008 1300 0002 4419 8919

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
Ammar al-Baluchi
My September 20, 2008 Letter

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 appearance as an attorney advisor for Ammar al-Baluchi. Mr. al-Baluchi currently has a matter pending before the military commissions. The matter is captioned *United States v. Ammar al-Baluchi*. Mr. al-Baluchi is also apparently known to your office as Ali Abdul Aziz Ali.

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 a copy to Colonel Lawrence Morris.

In my September 20, 2008 letter to you, I correctly anticipated that the Office of the Chief Defense Counsel ("OCDC") and its agents will urge the Court to reject my notice of appearance on behalf of Mr. Mustafa Bin-Ahmad Al-Hawsawi, based upon a claim that he does not want me to represent him. I also informed you 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 asked 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 that matter. I asked 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 asked 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. Similarly, I ask that my notice of appearance on Mr. al-Baluchi's behalf be made a matter of the Court's record.


I was notified by e-mail from Colonel Lawrence Morris on September 28, 2008 that Colonel Steve David claims to have suspended me from the Pool of Qualified Civilian Defense Counsel (the "Pool"). Apparently Colonel David claims to have sent me notification of my suspension by letter dated August 29, 2008. I did not see a copy of that letter until Colonel David e-mailed it to me on October 2, 2008.

As I alerted you in my September 20th letter, the OCDC, Department of Defense, and the Department of Justice are actively engaged in obstructing Guantánamo Bay detainees' access to counsel of their choice. Colonel David's lawless action of attempting to suspend my membership in the Pool is yet another in a long line of examples of the government's obstruction of these detainees' rights. My status as a member of the Pool should be determined by a neutral arbiter, not a government functionary whose sole apparent responsibility is to deprive my clients of their fundamental rights. Colonel David's illegal action will shortly be the source of litigation in the United States District Courts for the District of Columbia and the Southern District of New York. I urge you to take this matter up as well. This matter also affects Mr. Al-Hawsawi's rights as well.

If you or your staff would like to review the basis of my claim that I serve as one of Mr. al-Baluchi's attorney advisors, 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.

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 Lawrence Morris (via first class mail)
Amanda Lee, Esq. (w/o enclosures)
Jeffrey Robinson, Esq. (w/o enclosures)