

# Exhibit 4

*Parhat v. Gates*, Order and Memorandum,  
No. 06-1397 (D.C. Cir. Sept. 2, 2008),  
Filed With Classified Coordinated Motion

**United States Court of Appeals**  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**No. 06-1397**

**September Term 2008**

**CSRT-ISN 320**

**Filed On: September 2, 2008**

Huzaifa Parhat,

Petitioner

v.

Robert M. Gates, Secretary of Defense, et al.,

Respondents

**BEFORE:** Sentelle, Chief Judge, and Garland and Griffith, Circuit Judges

**ORDER**

Upon consideration of the renewed motion to designate as "protected information" unclassified information in the record on review and the accompanying declarations and marked copy of petitioner's Combatant Status Review Tribunal (CSRT) record; the response thereto, stating that petitioner does not object to the government's specific proposed designations; and the reply, it is

**ORDERED** that the motion be granted for the reasons stated in the accompanying memorandum. It is

**FURTHER ORDERED** that, within 30 days of the date of this order, respondent submit for public filing the complete unclassified CSRT record and the transcript of the unclassified audio recording of the CSRT hearing, with only the redactions authorized by this order. It is

**FURTHER ORDERED** that, within 30 days of the date of this order, respondent submit for public filing a copy of its renewed motion and the accompanying declarations, with the sealed material deleted.

**Per Curiam**

**FOR THE COURT:**  
Mark J. Langer, Clerk

BY: /s/  
Michael C. McGrail  
Deputy Clerk

No. 06-1397, Parhat v. Gates

### MEMORANDUM

The government has requested that the court designate as "protected information" and thus bar from public disclosure certain nonclassified information in the record on review under the Detainee Treatment Act (DTA). *Classified* information must be withheld from public view and is treated under separate provisions of the protective order governing DTA petitions. See Bismullah v. Gates, 501 F.3d 178 (D.C. Cir. 2007), vacated, 128 S. Ct. 2960 (2008), reinstated, No. 06-1197 (D.C. Cir. Aug. 22, 2008); Protective Order § 5 (as amended Oct. 23, 2007). In evaluating the government's request to protect certain categories of *nonclassified* information, we begin with the presumption that the judicial record is a public record: "It is the court, not the Government, that has discretion to seal a judicial record, which the public ordinarily has the right to inspect and copy." Bismullah, 501 F.3d at 188 (internal citations omitted); Parhat v. Gates, 532 F.3d 834, 836-37 (D.C. Cir. 2008).

We denied the government's original motion without prejudice because we were unable to determine, on the pleadings before us, precisely what information the government believed should be "protected" and whether protection was warranted. See Parhat, 532 F.3d at 836-37, 853. We directed the government to file a renewed motion specifically identifying the information for which it seeks protection and accompanied by pleadings specifically explaining why protected status is required for that information.

Pursuant to our directive, id. at 851-53, the government has now provided the court and counsel with a marked copy of the Combatant Status Review Tribunal (CSRT) record for petitioner Huzaifa Parhat. The markings identify the specific information for which the government seeks protected status: (1) the names of United States government personnel (three CSRT panel members, Parhat's personal representative, the translator, recorder, and reporter) who participated in Parhat's CSRT proceedings and whose association with Guantanamo or detainee operations there has not previously been publicly disclosed; (2) the names and identifying information of United States government personnel (agents, law enforcement officers, and translators) who are involved in law enforcement activities relating to the detention of enemy combatants; and (3) Federal Bureau of Investigation case file numbers. Parhat's counsel does not object to the court's designation of these items as "protected."

In accordance with the court's instruction, see 532 F.3d at 853, the renewed motion also supplies two declarations explaining why protected status is required for the information that has been marked. Although the government makes no claim that Parhat himself poses any threat to the safety or privacy of the individuals who participated in his CSRT proceedings, the declarations explain the risks of releasing the designated names and case file numbers to the public at large, and the government's rationale is "specific to the information actually at issue in this case." Id. at 836. Parhat's counsel has advanced no countervailing factors that suggest that the court should not protect the information from disclosure. See id. at 853.

No. 06-1397, Parhat v. Gates

Based on this showing, the court concludes that the designated information qualifies for treatment as "protected information . . . in order to protect the security of United States Government personnel or facilities, or other significant government interests," as defined in the DTA Protective Order, § 3.F. Accordingly, the court grants the government's renewed motion to designate the above-itemized information as "protected information," which the court will maintain under seal. See Protective Order § 7.A; Parhat, 532 F.3d at 851-52.