

EXHIBIT A

**THIS EXHIBIT IS FILED UNDER SEAL FOR
THE COURT'S *IN CAMERA* REVIEW**

EXHIBIT B

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EXHIBIT D

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April 13, 2008

VIA FIRST CLASS MAIL

Mr. Paul G. Turner
Federal Public Defender
411 E. Bonneville Avenue, Suite 250
Las Vegas, NV 89101

Re: Mr. Rahim al-Nashiri

Dear Mr. Turner:

I write in response to your April 8, 2008 letter, which I received on Friday, April 11, 2008. Your April 8, 2008 letter presents an incomplete rendition of our communication regarding our legal representation of Mr. Rahim al-Nashiri. While you correctly state that we had spoken in early January regarding your appointment by the Court as Mr. al-Nashiri's legal representative to challenge his Combatant Status Review Tribunal and my proposed withdrawal as his "next friend" in the litigation before the Second Circuit, there are a number of missing details that call for clarification.

My involvement with Mr. al-Nashiri began long before your appointment as his attorney. I filed a lawsuit in the Southern District of New York on behalf of eight Guantánamo Bay detainees as their "next friend" in August of 2005. I amended that petition in September of 2006 to include Mr. al-Nashiri and 13 other detainees whom President Bush had announced in early September of 2006 had been transferred from secret prisons to Guantánamo Bay to face war crimes trials. The goal of the petition and the amended petition was to secure legal counsel for Mr. al-Nashiri and the other detained petitioners who were, according to President Bush, facing imminent criminal charges, but had not yet been appointed counsel while having been detained for years.¹ After the amended petition was dismissed in June of 2007, I immediately began corresponding with the named detainees and informed them that I had initiated a lawsuit as their "next friend" in an effort to secure attorneys for them. Some detainees, including Mr. al-

¹ The lawsuit stemmed from a conversation I had with a staff member of the Office of the Chief Defense Counsel of the Military Commissions during which I offered my legal services. A staff member of that office suggested that such a lawsuit might pressure the government to appoint these detainees attorneys (rather than rely on the detainees to secure their attorneys for themselves from a jail cell in a foreign country under military guard), so that they can begin challenging their prolonged detention and pressure the government into resolving their cases.

Nashiri, returned correspondence to me. All seemed astonished that I was willing to help. None indicated that they already had attorneys representing them. Some never responded.

My amended petition was dismissed by the District Court and the Court's decision was reported in the local legal newspaper. I immediately filed a Notice of Appeal and began making preparations for appeal of that Court's decision to the United States Court of Appeals for the Second Circuit. As a result of the reported decision, I was contacted by two attorneys, J. Wells Dixon of the Center for Constitutional Rights and Candace Hom of the Federal Defenders for the District of New Jersey. Mr. Dixon advised me of his representation of Majid Khan and Ms. Hom advised me of her representation of Ramzi bin Al-Shibh. Mr. Dixon and Ms. Hom asked that I not appeal on their clients' behalf and I followed their request. Principally, I agreed for two reasons. First, these detainees had already secured attorneys, which rendered the purpose of my lawsuit inapplicable to them. Second, I received no correspondence from their clients indicating that they were interested in my representing them. Under these circumstances, I concluded that pursuing the amended petition on their behalf was inappropriate.

Through the assistance of another attorney involved in representing a Guantánamo Bay detainee, I learned the names of other attorneys who had been assigned to represent the detainees in my lawsuit, including you. I immediately contacted you and these other attorneys. In any case where the attorney requested, I withdrew that attorney's client from the suit, so long as I had no instruction to do otherwise from the client. For instance, I have withdrawn the name of Abu Farij al-Libi, who is represented by David McColgin of the Federal Defenders for the Eastern District of Pennsylvania and I will shortly take steps to remove the name of Mustafa bin Ahmed Hawsawi, who is represented by Major Jon Jackson, Esq, USA of the Office of the Chief Defense Counsel of the Military Commissions. Again, in each of those instances, any correspondence I previously received from those detainees apparently did not specifically request that I act as the detainee's legal representative.

As with the other cases, I immediately agreed to withdraw Mr. al-Nashiri's name and myself as his "next friend" from the lawsuit as a result of your Court appointment. The January 10, 2008 letter to the United States Court of Appeals for the Second Circuit you cited in your April 8, 2008 letter to me confirms this act. At the time, my action appeared the only appropriate course of action to me. As with the other cases mentioned above, as of January 10th, although I was corresponding with Mr. al-Nashiri, I had not received a letter from him in which he specifically requested that I represent him.² I had, as of January 10th, no reason to believe that Mr. al-Nashiri was interested in my representing him outside the lawsuit I had filed to secure an attorney for him.

² Although he had requested that I represent him in his August 22, 2007 letter, I had not yet received that letter. I had, in fact, received a subsequently dated October 2007 letter from Mr. al-Nashiri prior to speaking with you. Generally, months would pass between the time the detainee sent their correspondence and the time when I would receive them. I believe this delay is due to the government's review of all outgoing and incoming mail of detainees. Most correspondence, including all correspondence from Mr. al-Nashiri, was written in a foreign language, so that there would be an additional lag time delay for these letters to be translated for me by my translation staff.

On January 30, 2008, I received a letter from Mr. al-Nashiri, dated August 22, 2007, in which I am informed he specifically asked that I represent him and serve as his attorney. I immediately called you to inform you of the change in circumstances and sent you an e-mail, dated February 1, 2008, a copy of which is enclosed herewith. In that email, I attached copies of both letters I received from Mr. al-Nashiri.³ Thus, while you are correct in your most recent letter that I had originally agreed to step aside as his "next friend" and to withdraw his name from the petition, I did so when I had no reason to believe that Mr. al-Nashiri wanted me to act further on his behalf. With his August 22, 2007 letter, received January 30, 2008, however, I cannot and will not withdraw from his case, for it is clearly his choice that I represent him pursuant to his right to choose that attorney.

Nor did it occur to me for a moment, then or now, that a choice had to be made where only one of us could represent him in his matters. I envision a collaborative effort on both our parts in pursuit of justice for Mr. al-Nashiri. While I am certain of my status as his legal representative, I am also equally certain that he is entitled to have both of us act as a team on his behalf, if only you will permit it. As you should have noted by now, I have made no efforts whatsoever to have you relieved of your appointment, notwithstanding Mr. al-Nashiri's clear direction that I act as his attorney. I believe that defending Mr. al-Nashiri will require our combined efforts to make it successful and I look forward to working with you toward this end. The government will make this task uniquely challenging and I can use all of the help I can get. You are obviously a highly skilled and experienced attorney and I welcome your assistance.

I have to admit that I find your response to Mr. al-Nashiri's decision and these events rather bewildering. By my lawsuit, I had hoped to gain attorneys for detainees who appeared to me to be sorely in need of some legal assistance. I had not intended in any way to offend anyone or law office or to discourage anyone from representing them. In my criminal law practice, I am frequently assigned to represent indigent defendants. There have been many instances where my assigned clients have decided to hire a private attorney. In those instances, I immediately turn over the case to the new attorney because I believe that the choice of attorney is a matter to be decided by the client alone. On the other hand, there have also been many instances where I was the private attorney hired by the client who chose to discontinue public defender services. In those cases, the case files are turned over to me without protest or complication. In accordance with that practice, I withdrew my "next friend" representation of detainees who have attorneys assigned and where the detainee did not expressly indicate that I represent them. I initially acted similarly in Mr. al-Nashiri's case when I learned of your appointment. It was not until January 30th, when I received a letter from Mr. al-Nashiri requesting that I act as his legal representative, that I decided not to reject his request. Thus, I cannot meaningfully distinguish this case from a case where a defendant who was assigned a public defender but who then chose to seek the services of a private attorney instead. The only possible distinction here was that Mr. al-Nashiri asked me, as of August 22, 2007 to represent him, but because of the government's delay in providing that correspondence to me, I learned of that fact after speaking with you in early January. In Mr. al-Nashiri's case, I am all the more reluctant to relinquish my relationship

³ I again sent you copies of these letters via First Class mail on Wednesday, April 6, 2008, and invited you to call me regarding those letters. I received no response from you to my invitation.

Paul G. Turner, Esq.
April 13, 2008
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with him simply because I have apparently developed a rapport with him and have gained some trust. For someone like Mr. al-Nashiri, who has been detained for years without due process, providing some constancy also provides hope. I will not ignore Mr. al-Nashiri's desire for me to represent him. I am equally reluctant to ask that you cease and desist from acting as Mr. al-Nashiri's attorney for the reasons I stated above and ask that you contact me so that we may coordinate our efforts.

Your April 8th letter also asserts that I have a conflict of interest because I "assert representation of other so-called 'high value' Guantanamo detainees."⁴ Initially, the term "high value" when used in this context is an arbitrary moniker coined by the United States government which I merely reiterated to identify them in our discussion. Rest assured that should I become aware of a conflict of interest, I will take steps to resolve it appropriately.


In closing, I express hope that we can work together on a professional and collegial basis in our representation of Mr. al-Nashiri, who desperately needs our help. Your April 8, 2008 indicates to me that you will not shrink from a fight on his behalf. He is lucky to have you as one of his attorneys. While I disagree with you on your assessment of our current status, and again decline your invitation to cease my representation of Mr. al-Nashiri, I would gladly work with you and would much rather begin a more collaborative effort at bringing justice to Mr. al-Nashiri.

In addition, please be advised that my office address has changed. Accordingly, all future correspondence should be sent to my attention at 300 Park Avenue, 17th Floor, New York, New York 10022. I look forward to hearing from you.

Very truly yours,

The Law Offices of Scott L. Fenstermaker, P.C.

By:


Scott L. Fenstermaker, Esq.

Enc.

cc: Colonel Steven David, Esq., USA
Mr. John Rizzo
Mr. Fred Fielding

⁴ While you may argue that my representation of multiple "high value" detainees may result in a conflict of interest, the Federal Defenders also represent a number of detainees who have been so designated. Hence, the Federal Defenders may face a similar problem. That is, however, a decision that has to be resolved by your office without input or further comment by me.

EXHIBIT E

Scott Fenstermaker

From: Warden, Andrew (CIV) [Andrew.Warden@usdoj.gov]
Sent: Tuesday, July 01, 2008 11:43 AM
To: scott@fenstermakerlaw.com
Subject: Guantanamo Bay mail

Mr. Fenstermaker:

I am one of the attorneys representing the government in the Guantanamo Bay habeas litigation. We have been informed by Joint Task Force Guantanamo that you recently sent letters to Abd al-Rahim al-Nashiri (ISN 10015) and Ahmed Ghailani (ISN 10012). As you may be aware, there are two systems by which detainees send and receive mail at Guantanamo. First, most mail sent to Guantanamo detainees is processed in a non-privileged fashion. That is, the mail is screened and reviewed by military authorities before delivery to the intended recipient. Second, a system for privileged legal mail between detainees and eligible counsel exists under the auspices of various protective orders entered by the U.S. District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit. That system is available only in cases in which the protective orders have been entered and is subject to requirements and restrictions set out in the orders.

Because you are not authorized to send or receive privileged mail pursuant to any appropriately entered protective orders, the mail you recently sent Messrs. Al-Nashiri and Ghailani would ordinarily be processed in accordance with the procedures established for non-privileged mail unless you request that the mail be returned to you. Because that mail is marked privileged, it has not been reviewed or otherwise processed at this point. Please let me know how you would like to proceed.

Best regards,

Andrew I. Warden
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave, NW
Washington, DC 20530
Tel: 202-616-5084
Fax: 202-616-8470

EXHIBIT F

Scott Fenstermaker

From: Scott Fenstermaker [scott@fenstermakerlaw.com]
Sent: Tuesday, July 01, 2008 2:41 PM
To: 'Warden, Andrew (CIV)'
Subject: RE: Guantanamo Bay mail

Mr. Warden,

Thank you for your July 1st e-mail informing me of the dual-track mail system with respect to Guantanamo Bay detainees. As you are likely aware, I have been corresponding with a number of detainees at Guantanamo Bay since the summer of 2007. You are also likely aware that I am counsel of record for both Mr. Ghailani and Mr. al-Nashiri in pending court matters in the Southern District of New York, 98 CR 1023 (KTD) (Ghailani), United States District Court for the District of Columbia, 08-1085 (al-Nashiri) and docket number unknown (Ghailani), and the United States Court of Appeals for the District of Columbia Circuit, 08-1007 (al-Nashiri) and 08-1209 (Ghailani). In addition, I am counsel of record for Mr. Ghailani in his military commissions matter and will be shortly counsel of record in Mr. al-Nashiri's military commissions' matter.

You are free to process my mail to my clients in whatever fashion you like, so long as they get it. I will reserve my arguments regarding the privileged nature of the correspondence for the appropriate forum. I have sent numerous letters and packages to Messrs al-Nashiri and Ghailani, and a number of the other so-called "high value" detainees in the past in the same fashion as the correspondence to which you refer. Until now, no one has ever objected to my correspondence or its privileged nature. The timing of your objection raises a number of issues, particularly in light of the recent actions of the Office of the Chief Defense Counsel to the military commissions.

Your refusal to process my correspondence to these detainees would raise numerous constitutional issues, including, among others, right to counsel, due process and speedy trial concerns. Furthermore, in light of the Office of the Chief Defense Counsel's interference with my relationship with Mr. Ghailani, I will consider any such interference as a cooperative effort between the Justice Department and the Department of Defense. Such effort would not only raise constitutional concerns, but ethical concerns as well.

In case the above was not clear, I am counsel of record for Mr. Ghailani in a pending criminal indictment in the United States District Court for the Southern District of New York. Should you refuse to forward my mail to him, I will immediately take steps to alert that court and ask for a conference in which I will request permission to file the appropriate motions objecting to your holding my client incommunicado.

Let me know if you have any questions.

Scott L. Fenstermaker, Esq.

From: Warden, Andrew (CIV) [mailto:Andrew.Warden@usdoj.gov]
Sent: Tuesday, July 01, 2008 11:43 AM
To: scott@fenstermakerlaw.com
Subject: Guantanamo Bay mail

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Best regards,

Andrew I. Warden
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave, NW
Washington, DC 20530
Tel: 202-616-5084
Fax: 202-616-8470

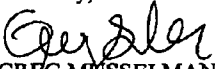
Exhibit G

TO:
THE LAW OFFICES OF
SCOTT L. FENSTERMAKER PC
300 PARK AVENUE, 17TH FLOOR
NEW YORK, NEW YORK 10022

FROM:
OFFICE OF STAFF JUDGE ADVOCATE
JTF GTMO SJA
APO AE 09360

Enclosed are sixteen (16) envelopes which were submitted to our office via regular mail and opened upon receipt for serialization and delivery. These envelopes were opened according to our standard procedure because they were not marked with the required warning statement indicating that their contents were privileged. Once opened, several of the cover letters reflected the words "Privileged and Confidential, Attorney-Client Privilege". Following this discovery, these materials were immediately returned to their respective envelopes and held in our office for safekeeping. Guidance as to what to do with these materials was sought through the Office of General Counsel (OGC), which directed that they be returned to you. The envelopes are enclosed with this letter.

Sincerely,


GREG M. SSELMAN
MAJ, JA, USA
Assistant Staff Judge Advocate
