

THE LEGAL ADVISER
DEPARTMENT OF STATE
WASHINGTON

August 21, 2008

Daniel Bethlehem, QC
Foreign & Commonwealth Office
King Charles Street
London, SW1A 2AH

Dear Mr. Bethlehem,

I write with respect to proceedings in your courts regarding Mr. Binyam Mohamed.

We note the classified documents identified in your letters of June 16 and August 1, 2008 to the Acting General Counsel of the Department of Defense. We want to affirm in the clearest terms that the public disclosure of these documents or of the information contained therein is likely to result in serious damage to U.S. national security and could harm existing intelligence information-sharing arrangements between our two governments.

Without prejudice to this assessment, the Office of the Chief Prosecutor (OMC-P) in the Office of Military Commissions informs me that OMC-P has reviewed the 44 documents in question and has agreed to provide these documents as described herein. First, the documents will be provided to the Convening Authority at any time upon her request, subject only to the condition that the names of American and British government officials and the locations of intelligence facilities will be redacted from the documents prior to their being provided. Counsel for Mr. Mohamed are free to suggest to the Convening Authority that she make such a request. Under this framework, the Convening Authority would have every opportunity to consider these documents.

Second, the documents, as redacted, will be produced to Mr. Mohamed's detailed military counsel within the military commission proceedings at the normal discovery phase of the process once the standard military commissions protective order has been entered. This agreement ensures that the information will be available to defense counsel when the adversarial trial to adjudicate guilt or innocence commences, should the convening authority refer charges to a military commission.

I understand that Mr. Mohamed's counsel have sought disclosure of the documents to them in advance of any decision by the Convening Authority. In this regard, I note that the role of the Convening Authority at this stage of the process is limited to the decision to refer charges to a military commission. This is not the adversarial phase of military commission proceedings where the Government's allegations are tested by counsel for the accused. The procedures for protecting

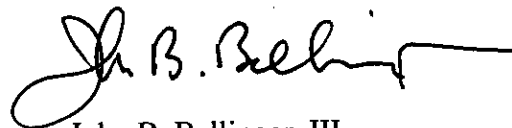
information disclosed by the Government to lawyers for the accused are conferred to the military judge, who will not be assigned prior to the referral of charges by the Convening Authority. It would therefore be inappropriate for these documents to be disclosed to Mr. Mohamed's defense counsel in advance of the normal discovery phase of the proceedings.

I note further that disclosure of the documents in question to Mr. Mohamed's detailed military counsel does not preclude the possibility of disclosure of the documents to Mr. Mohamed's civilian counsel upon application to the military commission in the normal way.

The agreement of the OMC-P to disclosure of the documents as set forth above is subject to the understanding that the documents will not otherwise be released or disclosed as part of the proceedings in your courts.

We understand that your courts have been concerned that the Convening Authority and Mr. Mohamed's counsel have assured and timely access to the documents at issue in the proceedings in your courts and to all exculpatory evidence in connection with any charges that Mr. Mohamed may face in the military commission process. The arrangements that we have identified above guarantee such access with respect to the documents in question. The Military Commissions Act of 2006 (see, for example, 10 U.S.C. 949j(d)) ensures such access with respect to exculpatory evidence. The United States, accordingly, believes that the concerns that have arisen in your courts can be appropriately addressed in the U.S. proceedings as set forth above.

Sincerely,

A handwritten signature in black ink, appearing to read "John B. Bellinger, III". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John B. Bellinger, III