

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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| SAIFULLAH PARACHA, et al., |) | |
| |) | |
| Petitioners, |) | |
| |) | |
| v. |) | No. 04-CV-2204 (PLF) |
| |) | |
| BARACK OBAMA, et al., |) | |
| |) | |
| Respondents. |) | |
| _____ |) | |

**EMERGENCY APPLICATION FOR IMMEDIATE ACCESS TO ALL
PUBLICLY AVAILABLE WIKILEAKS DOCUMENTS RELEVANT TO
PETITIONER’S CASE TO COUNTER THE GOVERNMENT’S FALSE AND
OUTRAGEOUS ACCUSATIONS AGAINST HIM**

The undersigned, counsel for Petitioner, Saifullah Paracha, respectfully requests, on an emergency basis, an order requiring that the government (1) allow David H. Remes, a lawyer for the petitioner, full and unfettered access to all publicly available classified Wikileaks documents relevant to Mr. Paracha’s case, including access on computers at Mr. Remes’ home or office; and (2) represent to this Court that Mr. Remes may publicly view, download, print, copy, disseminate, and discuss the documents and their contents, without fear of any sanctions, legal or otherwise. Alternatively, the Court should hold a hearing on the emergency application at its earliest convenience.¹

BACKGROUND

1. Beginning Sunday morning, April 24, 2011, newspapers and other media outlets around the world began publishing stories reporting that Wikileaks had leaked,

¹ Counsel has requested and awaits the government’s position on this application and files it now because of the urgency of this matter, as discussed herein.

directly or indirectly, hundreds of pages of classified government files regarding current or former Guantánamo detainees, including Mr. Paracha.² The documents themselves have been widely disseminated. Mr. Paracha's file, like the files of other current and former Guantánamo detainees, is available to the public online, and is already the subject of widespread public scrutiny and discussion. Any member of the general public can view these files, download them, print them, circulate them, and comment on them. Undersigned counsel, however, fears that he will face potential sanctions, legal or otherwise, if he does exactly the same things without express government permission.³

For example, because the government considers the documents classified, and counsel holds a "secret" security clearance, he is concerned that if he views the documents online, the government might revoke his clearance. Losing his clearance will disable him from continuing to represent his current or future detainee clients and jeopardize his ability to obtain further clearances. Counsel is concerned that the government may even prosecute him. To avoid any potential sanctions, undersigned counsel errs on the side of extreme caution and refrains from viewing the documents.

The only place undersigned counsel can view these documents and fear no potential sanctions is at a Secure Facility the Justice Department has provided in the

² *E.g.*, Charlie Savage, William Glaberson and Andrew W. Lehren, "The Guantánamo Files: Classified Files Offer New Insights Into Detainees," N.Y. Times, Apr. 24, 2011," <http://www.nytimes.com/2011/04/25/world/guantanamo-files-lives-in-an-american-limbo.html?scp=3&sq=limbo&st=cse>; Peter Finn, "WikiLeaks discloses new details on whereabouts of al-Qaeda leaders on 9/11," Wash. Post, Apr. 24, 2011, http://www.washingtonpost.com/world/wikileaks-discloses-new-details-on-whereabouts-of-al-qaeda-leaders-on-911/2011/04/24/AFvzleE_story.html; Carol Rosenberg and Tom Lasseter, "WikiLeaks reveal prison secrets," Miami Herald, April 24, 2011, <http://www.miamiherald.com/2011/04/24/2183741/us-intelligence-summaries-detail.html>.

³ This is not to suggest that doing those any of these things is sanctionable. Undersigned counsel speaks only for himself in this application.

Washington area for counsel with “secret” level clearances. To the best of counsel’s knowledge, the Secure Facility contains no secure computer onto which the Wikileaks documents can be downloaded. Moreover, counsel is confident that the Justice Department will not ferry the documents to the Secure Facility for viewing and use by counsel. Even if the leaked documents were made available for viewing and use by counsel at the Secure Facility, counsel located far from the Facility – some thousands of miles away – would have to journey to the Facility to view and use them.

In this regard, on Monday, April 25, 2011, the conscientious Court Security Officer (CSO) cautioned habeas counsel to follow standard operating procedure in making court filings containing the information in the leaked documents. This procedure includes preparing and making court filings in secret:

As many of you have undoubtedly heard or read, government documents that may contain classified information have been released via the news media. As a reminder, information that is marked as classified, or that a person with access to classified information knows to be classified, remains as such despite a potential public disclosure by unauthorized means. Classified National Security Information only becomes declassified when the appropriate original classification authority makes their determination that the information may no longer cause damage to national security and may be declassified. Accordingly, consistent with your Classified Information Nondisclosure Agreements and Memorandum of Understanding that you signed as a participant in the Guantanamo Habeas proceedings, *counsel are hereby cautioned that this presumptively classified information must be handled in accordance with all relevant security precautions and safeguards, including but not limited to, use and preparation in the Secure Facility and filing under seal with the Court Security Officer.* (Emphasis added.)

2. On Monday afternoon, April 25, 2011, a *New York Times* reporter called undersigned counsel seeking comment on leaked files pertaining to Mr. Paracha. The reporter indicated that *The Times* was preparing a story on Mr. Paracha’s case based on the files. Having refrained from viewing the leaked documents pertaining to Mr. Paracha,

counsel could offer the reporter only a general statement asserting Mr. Paracha's innocence. Counsel could not rebut the government's accusations. For that matter, the government has generally crippled counsel's ability to respond to its accusations against Mr. Paracha in public by treating nearly all of the information favorable to him as classified or otherwise not to be publicly disclosed. Meanwhile, the government publicly discloses information in its possession that casts Mr. Paracha in the worst possible light. The government holds all the cards.

On Tuesday morning, April 25, 2011, *The Times* published its story about Mr. Paracha under the headline "In Dossier, Portrait of Push for Post-9/11 Attacks." The paper could scarcely have given the story more prominent play, spreading it over three columns above the fold on the front page of the newspaper. Directly under the headline were color head shots of Mr. Paracha and his son Uzair. The story also on the paper's online edition, showing a gigantic head shot of Mr. Paracha. The story reads in full:

WASHINGTON — He peers out from the photo in the classified file through heavy-framed spectacles, an owl-like face with a graying beard and a half-smile. Saifullah Paracha, a successful businessman and for years a New York travel agent, appears to be the oldest of the 172 prisoners still held at the Guantánamo Bay prison. His dossier is among the most chilling.

In the months after the Sept. 11 attacks, Mr. Paracha, 63, was one of a small circle of Al Qaeda operatives who explored ways to follow up on the hijackings with new attacks, according to the classified Guantánamo files made available to The New York Times.

Working with Khalid Shaikh Mohammed, the 9/11 planner who in early 2002 gave him \$500,000 to \$600,000 "for safekeeping," Mr. Paracha offered his long experience in the shipping business for a scheme to move plastic explosives into the United States inside containers of women's and children's clothing, the files assert.

"Detainee desired to help Al Qaeda 'do something big against the U.S.," one of his co-conspirators, Ammar al-Baluchi, told Guantánamo interrogators, the files say. Mr. Paracha discussed obtaining biological or

nuclear weapons as well, though he was concerned that detectors at ports “would make it difficult to smuggle radioactive materials into the country,” the file says.

Mr. Paracha’s assessment is among more than 700 classified documents that fill in new details of Al Qaeda’s efforts to make 9/11 just the first in a series of attacks to cripple the United States, intentions thwarted as the Central Intelligence Agency captured Mr. Mohammed and other leaders of the terrorist network.

The plots reportedly discussed by Mr. Mohammed and various operatives, none of them acted upon, included plans for a new wave of aircraft attacks on the West Coast, filling an apartment with leaked natural gas and detonating it, blowing up gas stations and even cutting the cables holding up the Brooklyn Bridge.

For the small circle of Qaeda operatives described in the December 2008 assessment of Mr. Paracha, terrorism appears to have been a family affair. There was Mr. Mohammed, the terrorist network’s top plotter, and his nephew, Mr. Baluchi, who was married to another militant, an American-trained neuroscientist, Aafia Siddiqui. And there was Mr. Paracha and his son, Uzair.

The newly revealed assessments, obtained last year by the group WikiLeaks and provided by another source to The Times, have revived the dispute, nearly as old as the prison, over whether mistreatment of some prisoners there and the prison’s operation outside the criminal justice system invalidate the government’s conclusions about the detainees.

Hina Shamsi, director of the national security project at the American Civil Liberties Union, said the assessments “are rife with uncorroborated evidence, information obtained through torture, speculation, errors and allegations that have been proven false.”

Likewise, David H. Remes, a lawyer who represents the elder Mr. Paracha, said in an interview on Monday that while he had not seen the assessment, its conclusion that Mr. Paracha posed a “high risk” to American interests was without foundation.

“The notion that he ever did anything that justified his detention, or ever was or is any kind of threat to the United States, is preposterous,” Mr. Remes said. “He is a 63-year-old man with a serious heart condition and severe diabetes, and he has been nothing but cooperative with the authorities.”

What Mr. Paracha wants, Mr. Remes added, is either a transfer back to his native country, Pakistan, or “a definitive adjudication of his case.”

Jay Carney, the White House spokesman, condemned on Monday the publication of what he called “documents obtained illegally” and noted the military’s findings about some detainees had been changed by a new review under President Obama. The detailed results of that review, however, remain secret.

Mr. Carney said the president remained committed to closing the Guantánamo prison someday. But Mr. Obama’s review identified about 50 detainees his advisers said could not be tried and were too dangerous to release, and Congress has imposed restrictions on bringing prisoners to the United States.

The portrait of Mr. Paracha is one of the striking ones to emerge from the files. The documents say he attended the New York Institute of Technology in the early 1970s and worked as a travel agent in New York for 13 years.

He was arrested in Bangkok in July 2003 after Uzair, who was already in F.B.I. custody in New York, “acknowledged” his father was a militant, the assessment says. Uzair Paracha was convicted in a 2005 trial on charges including material support for terrorism and is serving a 30-year sentence in federal prison.

According to his Guantánamo assessment, Saifullah Paracha had “provided useful information concerning senior Al Qaeda members” but “attempted to deceive and misinform intelligence and law enforcement personnel about his own activities.” As a result, the assessment draws heavily on statements by others, notably Mr. Mohammed, who was subjected to waterboarding and other brutal treatment during his interrogation by the C.I.A.

But Mr. Paracha’s assessment suggests that he did not deny militant connections at the highest level. “Detainee claimed he met UBL on a trip to Afghanistan in December 1999 or January 2000,” the documents say, using the government’s initials for Osama bin Laden. It says he offered to let Mr. bin Laden use his broadcasting business in Pakistan to generate propaganda films for Al Qaeda.

Later, Mr. bin Laden dispatched Mr. Mohammed to talk further about the idea, and Mr. Paracha explained “his vision of dedicating a program on his broadcasting network depicting UBL quoting Koranic verses.”

After 9/11, Mr. Paracha’s discussions focused on new plots, the files say. A Casio digital diary he was carrying when he was arrested “contained references to military chemical warfare agents, and their effects on humans,” according to the classified assessment. The document says Mr. Paracha told interrogators he had worked with Abdul Qadeer Khan,

considered to be the father of Pakistan's nuclear weapons program and a major proliferator of nuclear technology.

Edward D. Wilford, a lawyer who represented the son at his 2005 trial, said his client had played no "witting" role in his father's arrest.

"He was not a part of it in any way," he said. "He didn't make any calls. He didn't make any contact. In fact, he was being held incommunicado. He didn't have any way of knowing what was going on." The son had been jailed in Manhattan on a material-witness warrant after his questioning by the F.B.I. in March 2003. He was charged criminally in August 2003, after his father's arrest.

The relationship between father and son is only hinted at in the assessment report. It says that analysts concluded that Saifullah Paracha was "hiding aspects of his son's extremist activities." The son, though, talked about his father and his father's relationship with Mr. bin Laden while testifying in his own defense.

A prosecutor asked whether Uzair Paracha had told F.B.I. agents that his father admired Mr. bin Laden. "I don't remember if my father actually said that he admired bin Laden," the son testified. "He said that bin Laden was a humble person and he had a simple way of life."

CONCLUSION

The Court should grant the instant emergency application. Alternatively, the Court should hold a hearing on the application at its earliest convenience.⁴

Respectfully submitted,

/s/

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⁴ Counsel does not at this stage request the right to share this information with Mr. Paracha or other detainees at Guantánamo.