

**U.S. Department of Justice**

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BY ECF

December 13, 2013

Mr. Mark J. Langer, Clerk
United States Court of Appeal for the
District of Columbia Circuit
United States Courthouse
333 Constitution Ave., N.W., Room 5205
Washington, DC 20001

Re: Hatim v. Obama, No. 13-5218 (and consolidated cases)

Dear Mr. Langer:

This case was argued on Monday, December 9, 2013, before Chief Judge Garland, and Judges Henderson and Griffith. I am writing in response to the letter dated December 9, 2013, from David H. Remes, co-counsel for the detainees, and to clarify a statement I made at oral argument.

1. At oral argument, I referred to news articles contained in the Joint Appendix, which described the challenged search procedures as being like the procedures used by the Transportation Security Administration at the airport on passengers who choose not to go through the scanner. I would like to clarify that while the search procedures employed at Guantanamo bear some general similarities to patdown procedures employed at airport security checkpoints, the two sets of procedures are not identical. Although the Transportation Security Administration's patdown procedures cannot be publicly disclosed in detail, as they have been designated as "Sensitive Security Information," see 49 U.S.C. 114(r)(1)(C) and 49 C.F.R. 1520.5(b)(9)(i), they differ in certain key respects from the searches conducted at Guantanamo. I regret any confusion my statements may have caused.

2. Mr. Remes's letter, which asserts that the search procedures at Guantanamo are "far worse" than we have described them and characterizes them as "invasive and degrading," inaccurately describes the search procedures. As the district court recognized, the new search procedure involves four steps:

First, the guard gathers and crushes the fabric of the detainee's pants pockets to detect any objects in the pockets. [Col. Bodgan Decl. ¶ 20.] Second, the guard will search the detainee's groin area "by placing the guard's hand as a wedge between the [detainee's] scrotum and thigh . . . and using [a] flat hand to press against the groin to detect anything foreign attached to the body." Id. Third, the guard uses a flat hand to frisk the detainee's buttocks to ensure no contraband is hidden there. Id. Fourth, "a hand-held 'wand' metal detector . . . is passed over the [detainee's] body." Id. ¶ 21.

J.A. 147-48. As Col. Bogdan's declaration makes clear, the challenged search procedures at Guantanamo are "standard Army search procedures" – the "same that are currently used at military detention facilities and prisons." J.A. 112 ¶ 18. Those procedures reflect the considered judgment of military officials regarding the level of acceptable security risk at a military detention facility.

Mr. Remes suggests that the Court should take into account the possibility that different guards conduct the searches differently. This case, however, involves an injunction prohibiting the search protocol entirely. Even if the performance of individual guards at Guantanamo were the proper subject of judicial inquiry, which we do not concede, the record in this case contains no evidence (nor was there an allegation) that individual guards have not followed the uniform search procedure.

Respectfully submitted,

/s/ Edward Himmelfarb

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