



PRIVATE AND CONFIDENTIAL

May 7, 2008

The Honorable Robert M. Gates
Secretary of Defense
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Washington, DC 20301-1000

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ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

RICHARD ZACKS
TREASURER

Dear Secretary Gates:

As you may have read in recent articles in the *Wall Street Journal* and *New York Times*, which I enclose, the ACLU has offered legal assistance to several of the so-called "high value" detainees currently held at Guantánamo Bay. As part of this effort, we have identified David Nevin and Scott McKay to work with Captain Prescott Prince in the defense of Khalid Sheikh Mohammed.

I understand from news reports and from conversations with Captain Prince that he already has had the opportunity to meet with his client. Mr. Nevin and Mr. McKay would also have done so by now, had their security clearances been finalized, which is the reason why I am directly writing to you. By way of background, Mr. Nevin and Mr. McKay received comparable security clearances when they worked on the case of Sami Omar Al-Hussayen, and they are unclear as to what may be holding up the clearances they need for representing Mr. Mohammed.

From my meetings with Captain Prince, I am impressed by the energy and vigor with which he is pursuing the interests of his client. However, both he and Col. Steven David readily admit that the military defense team would greatly benefit from the involvement of civilian lawyers with death penalty expertise and experience with national security issues. In fact, Col. David is quoted in the enclosed *Wall Street Journal* article as saying that the government hasn't provided sufficient resources to adequately contest a death penalty trial and that although he intends to follow the American Bar Association guidelines, his office is too small and does not have the expertise to provide each defendant with at least two qualified attorneys, an investigator and a mitigation specialist. The *New York Times* quoted Col. David as saying that he welcomed our involvement as "a huge development in terms of the resources that might be available to the accused."

If indeed the final charges against Mr. Mohammed are expected in the near future and if he is asked to appear before a military commission 30 days after the charges are filed, it would truly be unfortunate if civilian organizations like

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the ACLU and expert civilian lawyers like Scott McKay and David Nevin are impeded from providing legal assistance and consulting with Mr. Mohammed before he first appears before the commissions. We can both imagine that some critics would say that the backlog of pending paperwork at the Department of Defense was yet another way to ensure an unfair proceeding.

Mr. Secretary, I trust you can see that ensuring these security clearances are expedited and processed as quickly as possible is one area where our interests coincide.

I would be glad to speak with you or a top member of your staff. Please contact me directly at (212) 549-2501. Thank you for giving this letter your attention.

AMERICAN CIVIL
LIBERTIES UNION

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony D. Romero". The signature is written in a cursive style with a large, looped initial "A".

Anthony D. Romero

Enclosures