

PENDING CLASSIFICATION

No. 07-1090

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

ABDULRAHIM ABDUL RAZAK AL GINCO,

Prisoner, Guantánamo Bay Naval Station, Guantánamo Bay, Cuba,

Petitioner,

v.

ROBERT M. GATES,

Secretary of Defense of the United States of America,

Respondent.

**SUPPLEMENT TO PETITION FOR IMMEDIATE RELEASE AND
OTHER RELIEF UNDER THE DETAINEE TREATMENT ACT OF 2005**

**Steven T. Wax
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Attorneys for Petitioner

The petitioner, through the attorneys, Steven T. Wax and Stephen R. Sady, supplements the Petition filed on April 11, 2007, to include and to incorporate the second CSRT proceedings concluded on July 11, 2008, according to the Final Status Report filed in this case. Based on the second CSRT record, which is being filed from the Secure Facility, Mr. Ginco is requesting bifurcation of jurisdictional and sufficiency issues based on the four grounds briefed in the Petition at pages 27 to 42, by a separate Motion to Schedule Expedited Briefing and Hearing on Bifurcated Jurisdictional and Sufficiency Issues. This supplement incorporates the grounds for relief asserted in the Petition and adds grounds including but not limited to the following:

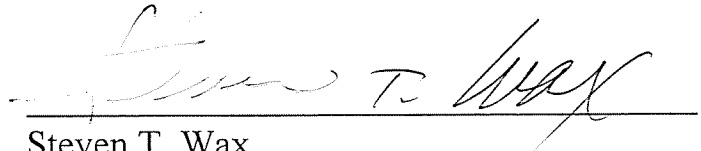
- failure to include in the CSRT record exculpatory material provided to the military in the form of expert testimony in the Appendix at pages 365-418;
- failure to provide the CSRT with the legal arguments regarding the scope of admissible evidence and the CSRT's jurisdiction and authority, in violation of the regulation allowing such consideration upon the presentation of exculpatory extrinsic evidence (§ 4(b) of OARDECINST 5421.1 (May 7, 2007));
- the definition of "enemy combatant" exceeded the authorization that Congress gave the President in the AUMF to reach a non-combatant outside military jurisdiction;
- the incorrect legal advice negating the requirement of belligerent action during the period covered by the Authorization for the Use of Military Force and nexus the 9/11 attacks;

- the use of the products of Taliban and Al Qaida torture in the second CSRT in violation of Article 15 of the Convention Against Torture;
- the failure to protect Mr. Gingo based on his status as a witness who approached the United States to provide evidence of human rights violations, including evidence that Americans were harmed;
- failure to allow the presence of counsel, despite the request to appear as representative, witness, or observer;
- failure to obtain a voluntary, knowing, and intelligent waiver from the prisoner regarding the presence of witnesses;
- failure to apply relevant standards in its acceptance of statements not under oath and resulting from torture, mistreatment, and – later – the rewards of the Guantánamo operant conditioning program;
- failure to provide even the appearance of a neutral fact-finder where, during the hearing, a CSRT member asked Mr. Gingo the mocking question whether he was a “goatherd,” a transparent reference to political controversy in the United States over whether over-inclusive and careless procedures had resulted in the capture and confinement in Guantánamo of innocent goatherds, and despite Mr. Gingo’s confusion, the CSRT member persisted in asking whether Mr. Gingo knew of any “goatherders” at Guantánamo.

On the basis of the foregoing and the initial Petition filed in this matter, this Court should review the do-over CSRT for jurisdiction and sufficiency as soon as possible and vacate the determination based on the four grounds asserted in the accompanying Motion to Schedule Expedited Briefing and Hearing on Bifurcated Jurisdictional and Sufficiency Issues. In the alternative, the Court should set the matter for full review under *Bismullah v. Gates*, 514 F.3d 1291 (D.C. Cir. 2008), and the DTA as soon as

practicable because, separate from the affirmative evidence of innocence that Mr. Gingo will present in the habeas evidentiary hearing, this Court should review and invalidate the sham proceedings that persist in denouncing an innocent man as an enemy combatant.

Dated this 31st day of October, 2008.

A handwritten signature in cursive script, appearing to read "Steven T. Wax", written above a horizontal line.

Steven T. Wax
Federal Public Defender

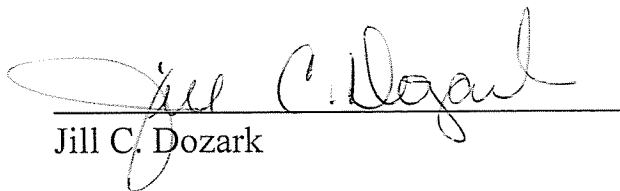
A handwritten signature in cursive script, appearing to read "Stephen R. Sady", written above a horizontal line.

Stephen R. Sady
Chief Deputy Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on October 31, 2008, I filed and served, via overnight delivery, the foregoing Supplement to Petition for Immediate Release and Other Relief Under the Detainee Treatment Act of 2005 by causing the original and four copies to be delivered to the Court and one copy to be conformed and returned to our office and by causing two copies to be delivered to the following counsel of record:

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