



U.S. Department of Justice

Office of the Solicitor General

Principal Deputy Solicitor General

Washington, D.C. 20530

April 10, 2008

Ms. Patricia S. Connor
Clerk
United States Court of Appeals
for the Fourth Circuit
1100 East Main Street, Suite 501
Richmond, Virginia 23219-3517

Re: *Al-Marri v. Pucciarelli*, No. 06-7427

Dear Ms. Connor:

This letter responds to appellant's letter dated April 7, 2008, pursuant to Federal Rule of Appellate Procedure 28(j), referring to an Office of Legal Counsel memorandum dated March 14, 2003 (which OLC advised the Department of Defense not to rely on for any purpose within 12 months of its issuance). That memorandum has no bearing on this appeal.

The March 14, 2003 OLC memorandum (at 1) is explicitly addressed to "Military Interrogation of Alien Unlawful Combatants Held Outside the United States," and is predicated, *inter alia*, on the conclusion that the Fifth Amendment does "not extend to alien enemy combatants held abroad." (Emphases added.) Mr. Al-Marri, of course, is held *inside* the United States. And this case therefore has been litigated on the assumption that Mr. Al-Marri -- unlike aliens held abroad -- may claim the procedural protections that *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004) (plurality), holds are due under the Fifth Amendment to *citizen* enemy combatants. See Gov't Br. 39-59; *id.* at 28-29 & n.9.

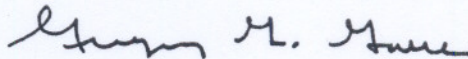
Furthermore, this appeal concerns only (1) whether the President is authorized to detain alien al Qaeda agents who -- like the 9/11 hijackers themselves -- come to this country to wage war, and (2) whether Mr. Al-Marri received the process he was due under the *Hamdi* framework. See Gov't Br. 2. It does not raise any question concerning the treatment of Mr. Al-Marri while he has been detained. Mr. Al-Marri has filed a separate action challenging his conditions of confinement.

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Appellant appears to suggest that the government relied on the March 14, 2003 OLC memorandum as part of the extensive, inter-agency process used to determine whether Mr. Al Marri should be detained as an enemy combatant. That is incorrect. As the government has explained (see Gov't Br. 7 n.1; J.A. 214-215 (Rapp Declaration)), that multi-layered process was focused on whether Mr. Al-Marri qualified as an enemy combatant. And, although that process included -- as one of many steps -- "a formal opinion from [OLC]," that opinion "analyz[ed] whether [Mr. Al-Marri] is appropriately designated an enemy combatant." J.A. 215.

Thank you for your kind assistance in this matter.

Respectfully submitted,



Gregory G. Garre
Counsel for Appellee

cc: Jonathan Hafetz, Esq.
Counsel for Appellant