

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION, as Next Friend, on behalf of  
Unnamed U.S. Citizen in U.S. Military Detention,

*Petitioner,*

No. 17-cv-2069 (TSC)

v.

GEN. JAMES N. MATTIS,  
in his official capacity as SECRETARY OF  
DEFENSE,

*Respondent.*

**DECLARATION OF GABOR RONA**


I, Gabor Rona, hereby declare:

1. I am a Visiting Professor of Law at the Benjamin N. Cardozo School of Law in New York, where I teach courses on international humanitarian law and international human rights law, including in the context of counter-terrorism policies and practices.
2. From 1999 to 2005, I served as a Legal Advisor in the Legal Division of the International Committee of the Red Cross ("ICRC"), at its headquarters in Geneva, Switzerland.
3. Based on my knowledge and experience, I write to describe ICRC practices, including the organization's practices regarding confidentiality, with respect to detainee visits in and outside the context of armed conflict.
4. I have no personal knowledge of the specific facts of the Unnamed U.S. Citizen's detention or of the ICRC's interactions with him.
5. The ICRC is an independent, neutral organization ensuring humanitarian protection and assistance for victims of armed conflict and other situations of violence. The ICRC also aims to secure humane treatment and conditions of detention for all detainees in accordance with International Humanitarian Law (IHL), regardless of the reasons for their arrest and detention.
6. My responsibilities at the ICRC included a focus on the law and humanitarian policies and practices applicable to the terrorism and counter-terrorism activities of nation states, including those activities initiated after the terrorist attacks of September 11, 2001. Since leaving the ICRC, I have continued to work on the application of relevant legal frameworks and protections in the context of terrorism and counter-terrorism.
7. A significant portion of my work at the ICRC addressed the reasons for and need to maintain ICRC confidentiality in policies and practices regarding the conditions of detention and the treatment of detainees.
8. The ICRC operates pursuant to a policy of confidentiality. Detaining authorities rely on the ICRC to communicate its concerns about conditions and treatment of detainees only to the detaining authorities. The ICRC respects the confidentiality of its findings and observations as a condition of access to detainees and places of detention. Confidentiality therefore is essential to the ICRC's work and to its mission of helping people affected by insecurity, violence and armed conflict. Confidentiality enables the ICRC to monitor detention conditions and to ensure that the treatment of detainees comports with states' obligations under IHL. Confidentiality allows the ICRC to build trust and open channels of communication with detainees and detaining authorities.
9. To carry out detention visits, the ICRC must have the opportunity speak in private with detainees.

- 10. The ICRC may facilitate communications between detainees and their families, but only if the detainee so requests. The primary purpose of such communications is to restore and maintain contacts between detainees and their families.
- 11. Based on my knowledge and experience, no assumption can be made about any particular detainee's decision to contact family members through the ICRC or not. Some detainees urgently seek family notification and contact. Other detainees may not wish to contact their families for various reasons. Those reasons can include a fear that their families will ostracize them for activities in which they may have engaged, or a fear that their families themselves might face scrutiny, suspicion, or even retaliation.
- 12. It is also possible that a family, upon notification, may not in fact respond to a detainee's contact.
- 13. The ICRC does not intervene or participate in judicial proceedings and benefits from judicial immunity under international law.
- 14. Because the ICRC's primary purpose is to assure that conditions of detention and treatment of detainees complies with applicable international law, it cannot be assumed in any particular case that the ICRC has advised a detainee about legal representation or judicial remedies, or has offered to facilitate the same. Therefore, there is no basis to assume that the ICRC and any detainee have discussed a potential right to challenge detention, let alone a detainee's possible interest in obtaining legal representation.
- 15. In light of the ICRC's confidential working methods, the detaining authorities cannot be presumed to have any knowledge of the communications between the ICRC and the detainee, including in relation to the availability of judicial remedies and legal assistance.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on November 1,  
2017  
NY



New York,  
Gabor Rona