

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
)	
<i>IN RE GUANTÁNAMO DETAINEE</i>)	Misc. No. 08-442 (TFH)
<i>LITIGATION</i>)	
_____)	
)	
MOHAMMED AL-QAHTANI, et al.,)	
<i>Petitioners,</i>)	
)	
v.)	Civil Action No. 05-cv-1971 (RMC)
)	
BARACK H. OBAMA, et al.,)	
<i>Respondents..</i>)	
_____)	

**EXPEDITED MOTION TO COMPEL THE GOVERNMENT’S COMPLIANCE
WITH SECTION I.D.1 OF THE AMENDED CASE MANAGEMENT ORDER,
STRIKE THE GOVERNMENT’S JANUARY 30, 2009 FILING AND HOLD
RESPONDENTS IN CONTEMPT**

Petitioner Mohammed Al Qahtani (“Petitioner al Qahtani” or “al Qahtani”), by and through his undersigned counsel, respectfully submits this motion to compel the Government’s compliance with Section I.D.1 of Judge Thomas F. Hogan’s November 6, 2008 Case Management Order (“CMO”) (dkt. 76), as amended on December 16, 2008 (“Amended CMO”) (dkt. 92). Petitioner al Qahtani further respectfully seeks an order (1) striking the Government’s January 30, 2009 filings¹ styled as “notices” that in substance amounted to a second motion for an extension of time and (2) holding the Government in contempt for its flagrant violation of Section I.D.1 of the Amended CMO and Local Rule 7(m).

¹ Respondents’ Global Notice Regarding Production of Exculpatory Information, filed on Jan. 30, 2009 (dkt. no. 119) and Supplemental Notice Pertaining to Production of Exculpatory Information For Petitioner Mohammed al Qahtani (ISN 063), filed on Jan. 30, 2009 (dkt. 118).

Petitioner al Qahtani has been incarcerated at Guantánamo since February 2002. Throughout his imprisonment, he has consistently maintained that he was repeatedly tortured and threatened with torture by U.S. military and civilian interrogators. And since Petitioner al Qahtani filed his habeas petition in October 2006, he has repeatedly asserted that any alleged “admissions” he made to U.S. personnel were extracted through this torture and threats of torture. Until recently, the Government had adamantly denied that any U.S. personnel engaged in acts of torture during Petitioner al Qahtani’s interrogation. But on January 14, 2009, Military Commission Convening Authority Susan Crawford finally conceded that by subjecting Petitioner al Qahtani to systematic 20-hour interrogations, prolonged sleep deprivation, 160 days of severe isolation, forced nudity, sexual and religious humiliation, and other aggressive interrogation tactics, the Government had engaged in acts of torture so egregious that she was convinced Petitioner al Qahtani should not be subjected to prosecution before a military commission. In light of Ms. Crawford’s admission, the Government can no longer deny that Petitioner al Qahtani was tortured at the hands of U.S. personnel. Yet the Government continues to rely upon his statements before this Court as justification for his seven-year imprisonment.²

At this juncture, Petitioner al Qahtani’s habeas petition has been pending for almost three and a half years. The Government possesses readily available information that documents the torture he endured at the hands of interrogators at Guantánamo. Much of this information reached major media outlets nearly four years ago. Additional exculpatory records regarding Petitioner al Qahtani’s torture have been searched, gathered and provided to Executive and congressional investigatory bodies. These documents are undeniably exculpatory, since they are both “reasonably available” and “tend[] to materially undermine the information presented to support the Government’s justification

² To counsel’s knowledge, the Government has not conceded that any other prisoner at Guantanamo was tortured apart from Petitioner al Qahtani.

for detaining” him. Amended CMO § I.D.1 Inexplicably, the Government still has not relinquished the underlying documents to Petitioner al Qahtani so that he may rebut the Government’s evidence against him.

This is not a case in which the Government must conduct a global search in order to identify those documents that are “exculpatory.” Nor is this a case involving mere allegations of mistreatment, but one in which there is no dispute that the United States tortured Petitioner al Qahtani to procure incriminating evidence that it now relies upon to justify his continued detention. The Government can offer no justification for failing to comply with Section I.D.1 of the Amended CMO. The Government’s failure to comply with court-imposed deadlines has deprived Petitioner al Qahtani of information essential to rebut the Government’s factual return, and has prevented this Court from adjudicating the substance of his challenge to his continued confinement. Accordingly, this Court should grant Petitioner al Qahtani’s motion, order the Government to promptly comply with Section I.D.1 and hold the Government in contempt of Court.

BACKGROUND

In the context of repeated efforts to evade this Court’s orders following *Boumediene v. Bush*, 128 S.Ct. 2229 (June 12, 2008), the Government has now twice delayed its compliance with Section I.D.1 of the Amended CMO – in this instance, by engaging in improper self-help and granting itself an indefinite extension of time. The Government seems to assume that such dilatory conduct will be tolerated by this Court.

In his prior filings, al Qahtani set forth the nature of the exculpatory information at issue and the unique circumstances of this case. *See* Petr’s Notice of Reasonably Available Exculpatory Information (filed with Court Security Office, Dec.11, 2008); Petr’s Opp. to Mot. for Extension of Time to Produce Exculpatory Information (dkt. no. 108). The Government

cannot dispute that its factual return relies heavily upon al Qahtani's own statements to establish a basis for his detention; that multiple Department of Defense ("DOD"), Department of Justice ("DOJ"), and congressional investigations have inquired into the circumstances by which military personnel extracted statements from al Qahtani because of the well-documented torture and abusive treatment he suffered; that a high-ranking Department of Defense official, the Office of Military Commissions Convening Authority Susan Crawford, has conceded that al Qahtani was tortured by U.S. personnel at Guantánamo;³ that the Government has collected exculpatory records detailing al Qahtani's torture and abuse; and that these documents have been readily available to the Government for, in some instances, years. Moreover, al Qahtani's counsel identified at least a portion of these materials in his Notice of Reasonably Available Exculpatory Information filed with the CSO on December 11, 2008.

The Government also does not dispute its obligations under the Amended CMO, which established a timetable for initial disclosures and directed the parties to seek any further modifications of the CMO before the individual Merits Judges. The Amended CMO was the product of extensive litigation following the United States Supreme Court's decision in *Boumediene*. The Court held that "[w]hile some delay in fashioning new procedures is unavoidable, the costs of delay can no longer be borne by those who are held in custody. The detainees in these cases are entitled to a prompt habeas corpus hearing." *Boumediene*, 128 S.Ct. at 2275. The detainee cases are now governed by the Habeas Corpus Statute, 28 U.S.C. § 2241 *et seq.*, which sets forth specific guidelines for prompt resolution of these cases.

In an effort to facilitate the prompt resolution of the Guantánamo habeas cases, this case was transferred to Judge Hogan on July 2, 2008 for coordination and management pursuant to

³ See Bob Woodward, *Detainee Tortured, Says U.S. Official*, Wash. Post, Jan. 14, 2009, at A 01.

the Resolution of the Executive Session (D.D.C. July 1, 2008). On July 11, 2008, Judge Hogan entered a scheduling order requiring the Government to produce factual returns in each detainee case on a rolling basis. The Government failed to comply with that schedule – which it had proposed – and moved to amend the schedule for production of returns. *See In re Guantánamo Bay Detainee Litig.*, Misc. No. 08-442 (TFH) (D.D.C.) (misc. dkt. no. 317). Judge Hogan granted the motion on September 19, 2008, over the Petitioners’ objections, but cautioned that “[g]oing forward . . . the Government cannot claim as a basis for failing to meet deadlines imposed by this Court that it simply did not appreciate the full extent of the challenges posed.” *Id.* (misc. dkt. no. 466, at 6) (internal quotation marks omitted).⁴

Judge Hogan’s July 11, 2008 scheduling order also required the parties to submit briefs addressing the procedural framework to govern these cases. *See, e.g., id.* (misc. dkt. nos. 206, 231) (Petitioner briefs). Those briefs addressed, *inter alia*, issues concerning timing of production of exculpatory evidence and the nature of the evidence that the Government must produce.

On November 6, 2008, Judge Hogan issued the CMO to govern the coordinated detainee cases. The CMO resolved many of the issues addressed in the parties’ procedural framework briefs, and indicated (at p.2 n.1) that the judges to whom the cases are assigned for final resolution “may alter the framework based on the particular facts and circumstances of their individual cases,” and “will address procedural and substantive issues not covered in this [CMO].” Specifically, in cases such as al Qahtani’s, in which the factual return had already been filed, the CMO ordered the Government to disclose “to the petitioner all reasonably available

⁴ Yet the Government soon failed to comply once again, and sought further relief from their proposed schedule on October 31, 2008. *See In re Guantánamo Bay Detainee Litig.*, Misc. No. 08-442 (TFH) (D.D.C.) (misc. dkt. no. 917).

evidence in its possession that tends materially to undermine the information presented to support the Government's justification for detaining the petitioner" and to do so "within 14 days of the date of this Order." CMO § I.D.1. The Government filed its notice of filing of al Qahtani's factual return with the CSO on October 28, 2008; hence the Government was obligated to produce all exculpatory evidence by November 20, 2008 – 14 days after the date of the CMO. On that day, the Government filed its first Notice Pertaining to the Production of Exculpatory Information (dkt. 83), claiming that the Government's factual return submission complied with its understanding of Section I.D.1 of the CMO. On December 11, 2008, al Qahtani filed with the CSO a notice listing relevant, exculpatory documents or categories of documents known to al Qahtani and reasonably available to the Government that had not been produced in the factual return.

On November 18, 2008, the Government filed its omnibus motion for reconsideration, seeking a blanket stay of all detainee cases coordinated before Judge Hogan regardless of the facts and circumstances of the individual cases, and seeking the opportunity to relitigate issues that were addressed before Judge Hogan in the parties' procedural framework briefs. On November 21, 2008, Judge Hogan entered an order staying the deadlines in the CMO pending resolution of the Government's motion for reconsideration. *See In re Guantánamo Bay Detainee Litig.*, Misc. No. 08-442 (TFH) (D.D.C.) (misc. dkt. no. 1026). Judge Hogan issued an Amended CMO on December 16, 2008.

The Amended CMO clarified the scope of the Government's obligations to produce exculpatory information and afforded the Government an additional 14 days by which to comply with Section I.D.1 of the Amended CMO, resetting the deadline for disclosure. The Government concedes that this amended deadline was December 30, 2008. Yet, rather than complying with

the Amended CMO, the Government sought a last-minute extension and failed to consult with Petitioner's counsel as required by Local Rule 7(m) prior to seeking an extension. Petr's Opp. to Mot. for Extension of Time to Produce Exculpatory Information (dkt. no. 108). The Government filed an omnibus Extension Motion on the date their submission was due, December 30, 2008, effectively securing an extension of time without an order from this Court. Judge Hogan dismissed the Government's motion from the Miscellaneous Docket because it violated his order to seek any modifications of the Amended CMO before the individual Merits Judges. Minute Order, Dec. 31, 2008. In its omnibus Extension Motion, the Government stated it would comply with Section I.D.1 of the Amended CMO on January 30, 2009.

As the January 30 deadline approached, al Qahtani's counsel sought to confer with counsel for the Government on January 28, 2009 to determine whether the Government intended to seek an additional extension of time. *See* Email from Gitanjali S. Gutierrez to Kathryn Mason, Jan. 28, 2009, attached hereto as Exhibit A. Petitioner al Qahtani's counsel received no response to this inquiry.

On January 30, 2009, the Government failed to produce any exculpatory disclosures. While on the one hand claiming that no exculpatory documents existed, the Government simultaneously admitted that "[s]ome arguably responsive documents" were still "in the clearance process" and would be produced at some unspecified date in the future. Supp. Notice, at 1. The Government did not address or respond to al Qahtani's December 11, 2008 notice of exculpatory records.

Petitioner's counsel conferred with the Government pursuant to Local Rule 7(m) and the Government opposes the relief request herein. During the discussion, the Government informed Petitioner's counsel that only one document was still in the clearance process, that this document

had not been referred for clearance until the week of January 26, 2009, and that the Government could not provide a date by which the clearance process would be completed and disclosure would be made to Petitioner in compliance with Section I.D.1 of the Amended CMO.

ARGUMENT

I. The Court Should Order The Government to Comply Promptly with Section I.D.1 of the CMO.

Pursuant to the mandate in *Boumediene*, in July 2008 Judge Hogan set a schedule for processing the habeas claims in the consolidated detainee cases and ordered that exceptions to the schedule would be permitted in individual cases “only . . . where the Government establishes *good cause*.” See July Scheduling Order (emphasis added) (dkt. 46). After the Government failed to meet the first deadline under the July Scheduling Order in August 2008 (dkt. 60), Judge Hogan explicitly barred the Government from invoking the logistical burden arising from the scale and the classification of information in these cases as an excuse for seeking last-minute extensions:

Going forward under the revised schedule resulting from the Court’s granting of this motion, consequently, *the Government cannot claim as a basis for failing to meet deadlines imposed by this Court that it ‘simply did not appreciate the full extent of the challenges posed’ . . . Except for good cause shown, therefore, the Court will not tolerate any further delay.*

Mem. Op., Sept. 18, 2008 (emphasis added) (dkt. 65). When Judge Hogan stayed the deadlines of his November CMO, he cautioned the parties that they should continue preparing in compliance with the original deadlines:

Upon resolution of the [Government’s] motion [for reconsideration], however, the Court expects the parties to be prepared to proceed immediately to fulfill the obligations required by paragraphs I.C, I.D, I.F, II.B, II.C. In other words, the parties should not view a stay of the due dates as license to halt all efforts to prepare the materials necessary to comply with the Case Management Order.

Order, Nov. 21, 2008 (dkt. 84).

Despite these admonitions, the Government seeks, in effect, to delay these proceedings again at Petitioner al Qahtani's expense. The Government now claims it needs additional time to complete the clearance process of some unspecified set of relevant records. The Government's actions violate Judge Hogan's previous rulings and fail to establish good cause for further delay.

The "good cause" requirement for extensions has consistently entailed a showing grounded in the specific circumstances of each individual petitioner's case. *See* July Scheduling Order at 4 ("[I]f the [G]overnment believes that an individual factual return is significantly more complicated than others or a particular detainee's circumstances present unique issues that require more time to complete the return . . . , the [G]overnment shall move for an exception"); Minute Order, Jan. 8, 2009, Hogan, J., (ordering that all filings in habeas cases "related to discovery, presumptions, use of hearsay and extension of time" should "only be filed in the individual civil case(s) to which they apply"). The Government makes no attempt to justify its latest delay in the context of al Qahtani's individual case. Inexplicably, the Government does not explain why the pending "clearance" review of a single exculpatory document was not completed promptly after the Government's first motion for an extension of time. Nor does the Government address why production to at least some of his counsel is delayed when three of al Qahtani's counsel hold top secret/sensitive compartmentalized information security clearance as a result of the Guantánamo habeas litigation. The Government could provide exculpatory information to at least some, if not all, of al Qahtani's counsel immediately. The Government's failure to address any of the specific facts in this case, standing alone, precludes the Government from establishing good cause for further delay.

Moreover, the Government's single justification for failing to comply with Section I.D.1 of the CMO is internally inconsistent and inadequate. On the one hand, the Government claims in its "Supplemental Notice" that it has disclosed "all arguably exculpatory evidence consistent with, and as defined by, the [Amended] CMO" as understood by the Government. In the next sentence, the Government declares without explanation that "[s]ome arguably responsive documents have been identified but remain in the clearance process" and that "[t]hese documents will be disclosed to Petitioner as soon as possible." The contradictions in the Government's second motion for an extension of time indicate, at best, that the Government is confused about the nature of its obligations under the CMO; at worst, they are evidence of bad faith.

Because the Government cannot show good cause for failing to meet the Court's amended deadline in this case (or the deadline unilaterally reset by the Government's prior motion for an extension), the Court should order immediate compliance with Section I.D.1 of the Amended CMO and disclosure of exculpatory records, including those enumerated in al Qahtani's December 11, 2008 notice.

II. The Court Should Strike The Government's January 30, 2009 Second Motion for an Extension of Time From the Record and Hold The Government in Contempt.

Notwithstanding the clear orders of this Court and the Government's unambiguous obligation to disclose exculpatory information, the Government failed to produce the exculpatory records for a third time. Moreover, rather than conferring with al Qahtani's counsel pursuant to Rule 7(m) and Judge Hogan's Minute Order of October 28, 2007⁵ and properly moving for an extension

⁵ In his October 28, 2008 Minute Order, Judge Hogan unambiguously directed the parties to Local Civil Rule 7(m), which reads: "Before filing any nondispositive motion in a civil action, counsel shall discuss the anticipated motion with opposing counsel, either in person or by telephone, in a good faith effort to determine whether there is any opposition to the relief sought and, if there is opposition, to narrow the areas of disagreement.... A party shall include in its

of time for issues still in dispute, the Government resorted to self-help tactics that plainly circumvented Orders from this Court. The Government's latest maneuvers arise in the context of repeated delays, failures to comply with prior deadlines, and open defiance of this Court's prior orders. As a result, this Court should strike from the record the Government's January 30, 2009 filings as an improperly submitted second motion for an extension of time and hold the Government in contempt.

This Court has both an "inherent and a statutory power to enforce compliance with its orders through the remedy of civil contempt." *SEC v. Bilzerian*, 112 F. Supp. 2d 12, 16 (D.D.C. 2000) (citing *Shillitani v. United States*, 384 U.S. 364, 370 (1966)); *Lee v. Dep't of Justice*, 401 F. Supp. 2d 123, 130 (D.D.C. 2005). Civil contempt is a remedial device available to the Court to ensure a party's future compliance with court orders. *SEC v. Bankers Alliance Corp.*, 881 F. Supp. 673, 678 (D.D.C. 1995). The principal purpose of civil contempt is vindication of judicial authority. *NLRB v. Blevins Popcorn Co.*, 659 F.2d 1173, 1184 n. 73 (D.C. Cir. 1981).

A party may be held in civil contempt for failure to comply with a court order when it "violates a definite and specific court order requiring [it] to perform or refrain from performing a particular act or acts with knowledge of that order." *SEC v. Bankers Alliance Corp.*, 881 F. Supp. at 678 (citation omitted). The party seeking a finding of contempt has the burden of demonstrating, by clear and convincing evidence, that: (1) the Court's order was reasonably clear and specific; and (2) the alleged contemnor failed to comply with the Court's order. *Lee*, 401 F. Supp.2d at 131; see *Bankers Alliance Corp.*, 881 F. Supp. at 678. "The contemnor's intent is immaterial; the Court need not determine whether a failure to comply with its order was either willful or intentional." *Lee*, 401 F.

motion a statement that the required discussion occurred, and a statement as to whether the motion is opposed."

Supp.2d at 131; *see also Blevins Popcorn Co.*, 659 F.2d at 1184; *Food Lion, Inc. v. United Food & Commercial Workers Int'l Union*, 103 F.3d 1007, 1016-17 (D.C. Cir. 1997).

A. Section I.D.1 of Judge Hogan's December 16, 2008 Amended Case Management Order Was Reasonably Clear And Specific.

In determining whether an order is clear and reasonably specific, courts apply “an objective standard that takes into account both the language of the order and the circumstances surrounding the issuance of the order.” *United States v. Young*, 107 F.3d 903, 907 (D.C. Cir. 1997); *see also Project B.A.S.I.C. v. Kemp*, 947 F.2d 11, 17 (1st Cir. 1991) (finding that “the party enjoined must be able to ascertain from the four corners of the order precisely what acts are forbidden” or what acts are required).

In this case, the Amended CMO was unambiguous: the Government was required to disclose “all reasonably available evidence in its possession that tends materially to undermine the information presented to support the Government’s justification for detaining the petitioner.” § I.D.1 of the Amended CMO. The Government cannot claim to be unfamiliar with this standard; indeed, the obligation is similar to that the Government holds in any criminal proceeding under *Brady v. Maryland*, 373 U.S. 83 (1963). Moreover, as a result of extensive litigation, Judge Hogan provided further clarification of § I.D.1:

The term “reasonably available evidence” means evidence contained in any information reviewed by attorneys preparing factual returns for all detainees; it is not limited to evidence discovered by the attorneys preparing the factual return for the petitioner. The term also includes any other evidence the Government discovers while litigating habeas corpus petitions filed by detainees at Guantánamo Bay.

Id. The Amended CMO also established an unambiguous deadline for the Government’s production of the exculpatory information. The Government has never claimed it was unaware of either the

deadline set by the Amended CMO or the scope of its disclosure obligations;⁶ it has simply and repeatedly refused to make the production.

B. Proof of the Government's Noncompliance is Clear and Convincing.

Petitioner al Qahtani has shown clear and convincing evidence that the Government violated a court order. As set forth *supra*, the Government was on notice of its obligation to produce exculpatory records on December 30, 2008. Rather than produce the records, the Government moved for an extension of time until January 30, 2009 without conferring with al Qahtani's counsel pursuant to Local Rule 7(m) and Judge Hogan's October 28, 2008 Minute Order. The Government stated that it would comply with Section I.D.1 of the Amended CMO on January 30, 2009. The Government failed to do so in this case.

After ignoring al Qahtani's inquiry three days prior to the disclosure deadline, the Government did not request an additional extension of time for good cause pursuant to Federal Rule of Civil Procedure 6(b) and Judge Hogan's September 18, 2008 Memorandum Opinion. Nor did the Government produce the required disclosures. Instead, the Government improperly filed what amounts to a second motion for an extension of time declaring that any responsive records were still undergoing a clearance process and would be produced at the Government's convenience when the records were ready, regardless of any production order established by the Amended CMO or this Court. No exculpatory information was disclosed. Accordingly, proof of the Government's noncompliance with this Court's Case Management Order is clear and convincing.

⁶ Petitioner al Qahtani, however, disagrees with the Government's characterization of the scope of its disclosure obligations under Section I.D.1 of the Amended CMO. After the Government complies with the deadline established by the CMO, Petitioner al Qahtani will determine whether the scope of the Government's disclosures is adequate or if further legal challenge will be required.

C. This Court Should Impose Civil Sanctions Against The Government For Violating the Case Management Order And Obstructing al Qahtani's Right to Habeas Review.

District courts have wide discretion to frame sanctions for civil contempt. *AT&T Corp. v. Petersen*, 2001 U.S. Dist. LEXIS 273, *9 (D.D.C. Jan. 9, 2001). A sanction imposed on a party held in civil contempt serves to ensure future compliance with judicial orders. Here, Petitioner al Qahtani seeks coercive sanctions to facilitate the prompt and fair adjudication of his challenge to his detention.

Petitioner al Qahtani seeks an order requiring the Government to provide one week's notice in advance of any future disclosure or filing deadline if the Government intends to seek an extension of time of more than three days. This will afford the parties a meaningful opportunity to confer pursuant to Rule 7(m) as well as to brief any remaining contested issues in an expedited manner. Petitioner al Qahtani further seeks an order requiring the Government to pay all attorneys' fees and costs associated with Petitioner's efforts to obtain records the Government is required to disclose pursuant to Section I.D.1 in this litigation, including efforts made in connection with this Motion

Conclusion

The Government has failed to produce the exculpatory records in this case and is plainly in contempt of this Court's December 16, 2008 Amended Case Management Order. For these reasons stated above and in his prior filings, Petitioner al Qahtani respectfully requests that this Court:

- (1) consider and resolve this motion on an expedited basis;
- (2) order the Government to comply with Section I.D.1 of the Amended CMO by disclosing to Petitioner within one (1) day a log of "arguably responsive" documents undergoing clearance review; disclosing within three (3) days the classified

- exculpatory information, if any such records are classified; and disclosing with one
- (1) week the unclassified exculpatory information;
- (3) order the Government's January 30, 2009 filing to be stricken from the record as an improperly filed motion for an extension of time;
- (4) order that if the Government seeks more than a three (3) day extension of time for future filings or disclosures, the Government must notify Petitioner's counsel one week prior to the deadline to allow for expedited briefing and resolution of the Government's motion for an extension of time prior to the deadline;
- (5) order the Government to pay all attorneys' fees and costs associated with Petitioner's efforts to obtain responsive records pursuant to Section I.D.1 in this litigation, including efforts made in connection with this Motion; and
- (6) order such other relief as may be just and proper.

Dated: New York, New York
February 4, 2009

Respectfully submitted,

Sandra Babcock (Pursuant to LCvR 83.2(g))
CENTER FOR INTERNATIONAL HUMAN
RIGHTS
Northwestern University School of Law
357 East Chicago Avenue
Chicago, Illinois 60611
s-babcock@law.northwestern.edu
Tel: (312) 503-0114
Fax: (312) 503-2798

/s/ Gitanjali S. Gutierrez
Gitanjali S. Gutierrez (Pursuant to LCvR
83.2(g))
CENTER FOR CONSTITUTIONAL
RIGHTS
666 Broadway, 7th Floor
New York, New York 10012
gutierrez@ccrjustice.org
Tel: (212) 614-6485
Fax: (212) 614-6499

Counsel for Petitioner

Exhibit A

Gitanjali Gutierrez

From: Gitanjali Gutierrez
Sent: Wednesday, January 28, 2009 12:12 PM
To: 'Kathryn.Mason@usdoj.gov'
Cc: 's-babcock@law.northwestern.edu'
Subject: al Qahtani v. Obama, 05-1971 (RMC)

Dear Kathryn,

As you know, January 30, 2009 is the government's deadline for disclosing exculpatory information pursuant to Section I.D of the Amended CMO in the above-captioned matter. Please advise us if the government will meet this deadline and, if possible, whether the disclosures will be classified, unclassified, or a combination of both so that we may make arrangements to review materials at the secure facility if necessary.

I am traveling today and will be most easily reached via email.

Best regards,
Gita

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)	
<i>IN RE</i> GUANTÁNAMO DETAINEE)	
LITIGATION)	Misc. No. 08-442 (TFH)
)	
)	
)	
)	
MOHAMMED AL-QAHTANI, et al.,)	
<i>Petitioners,</i>)	
)	
v.)	Civil Action No. 05-cv-1971 (RMC)
)	
)	
BARACK H. OBAMA, et al.,)	
<i>Respondents..</i>)	
)	

[PROPOSED] ORDER

Upon consideration of the Petitioner’s Expedited Motion to Compel the Government’s Compliance with Section I.D.1 of the Amended Case Management Order, Strike the Government’s January 30, 2009 Filing and Hold Respondents’ in Contempt, it is

ORDERED that the Government comply with Section I.D.1 of the Amended CMO by disclosing to Petitioner within one (1) day a log of documents undergoing clearance review; disclosing within three (3) days the classified exculpatory information, if any such records are classified; and disclosing with one (1) week the unclassified exculpatory information;

ORDERED that the Government’s January 30, 2009 filing is hereby stricken from the record as an improperly filed motion for an extension of time;

ORDERED that if the Government seeks more than a three (3) day extension of time for future filings or disclosures, the Government must notify Petitioner’s counsel one week

prior to the deadline to allow for expedited briefing and resolution of the Government's motion for an extension of time prior to the deadline; and further,

ORDERED that the Government pay all attorneys' fees and costs associated with Petitioner's efforts to obtain responsive records pursuant to Section I.D.1 in this litigation, including efforts made in connection with this Motion.

DATED: _____

Rosemary M. Collyer
United States District Judge