

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:
GUANTANAMO BAY
DETAINEE LITIGATION

Misc. No. 08-442 (TFH)

Civil Action Nos.

02-cv-0828, 04-cv-1136, 04-cv-1164, 04-cv-1194, 04-cv-1254,
04-cv-1937, 04-cv-2022, 04-cv-2046, 04-cv-2215, 05-cv-0023,
05-cv-0247, 05-cv-0270, 05-cv-0280, 05-cv-0329, 05-cv-0359,
05-cv-0392, 05-cv-0492, 05-cv-0520, 05-cv-0526, 05-cv-0569,
05-cv-0634, 05-cv-0748, 05-cv-0763, 05-cv-0764, 05-cv-0877,
05-cv-0883, 05-cv-0889, 05-cv-0892, 05-cv-0993, 05-cv-0994,
05-cv-0998, 05-cv-0999, 05-cv-1048, 05-cv-1189, 05-cv-1124,
05-cv-1220, 05-cv-1244, 05-cv-1347, 05-cv-1353, 05-cv-1429,
05-cv-1457, 05-cv-1458, 05-cv-1487, 05-cv-1490, 05-cv-1497,
05-cv-1504, 05-cv-1505, 05-cv-1506, 05-cv-1555, 05-cv-1592,
05-cv-1601, 05-cv-1607, 05-cv-1623, 05-cv-1638, 05-cv-1645,
05-cv-1646, 05-cv-1678, 05-cv-1971, 05-cv-1983, 05-cv-2010,
05-cv-2088, 05-cv-2104, 05-cv-2185, 05-cv-2186, 05-cv-2199,
05-cv-2249, 05-cv-2349, 05-cv-2367, 05-cv-2371, 05-cv-2378,
05-cv-2379, 05-cv-2380, 05-cv-2384, 05-cv-2385, 05-cv-2386,
05-cv-2387, 05-cv-2444, 05-cv-2479, 06-cv-0618, 06-cv-1668,
06-cv-1684, 06-cv-1690, 06-cv-1758, 06-cv-1761, 06-cv-1765,
06-cv-1766, 06-cv-1767, 07-cv-1710, 07-cv-2337, 07-cv-2338,
08-cv-0987, 08-cv-1085, 08-cv-1101, 08-cv-1104, 08-cv-1153,
08-cv-1185, 08-cv-1207, 08-cv-1221, 08-cv-1223, 08-cv-1224,
08-cv-1227, 08-cv-1228, 08-cv-1230, 08-cv-1232, 08-cv-1233,
08-cv-1235, 08-cv-1236, 08-cv-1237, 08-cv-1238, 08-cv-1360,
08-cv-1440, 08-cv-1733, 08-cv-1805

[FIRST PROPOSED] ORDER

Upon consideration of the Government's Motion for Clarification and Reconsideration of this Court's November 6, 2008 Case Management Order and Supplemental Amended Orders or, in the Alternative, Motion for Certification for Appeal Pursuant to 28 U.S.C. § 1292(b) and to Stay Certain Obligations Pending Resolution of the Motion and any Appeal, it is this ___ day of November, 2008 hereby

ORDERED that the Respondents' obligations under ¶¶ I.C, I.D, I.E, I.F, II.B, II.C, and III.A of the Court's November 6, 2008 Case Management Order are stayed pending resolution of the Motion.

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08-cv-0987, 08-cv-1085, 08-cv-1101, 08-cv-1104, 08-cv-1153,
08-cv-1185, 08-cv-1207, 08-cv-1221, 08-cv-1223, 08-cv-1224,
08-cv-1227, 08-cv-1228, 08-cv-1230, 08-cv-1232, 08-cv-1233,
08-cv-1235, 08-cv-1236, 08-cv-1237, 08-cv-1238, 08-cv-1360,
08-cv-1440, 08-cv-1733, 08-cv-1805

[SECOND PROPOSED] ORDER

Upon consideration of the Government's Motion for Clarification and Reconsideration of this Court's November 6, 2008 Case Management Order ("CMO") and Supplemental Amended Orders or, in the Alternative, Motion for Certification for Appeal Pursuant to 28 U.S.C. § 1292(b) and to Stay Certain Obligations Pending Resolution of the Motion and any Appeal, it is this ___ day of November, 2008 hereby:

ORDERED that ¶ I.D.1 of the CMO is clarified to require only the disclosure of exculpatory material discovered by the Government's attorneys preparing the factual returns. It is further

ORDERED that ¶ I.E.1 of the CMO is reconsidered. Respondents' disclosure obligations are limited to those arising pursuant to ¶¶ I.D and I.E.2. It is further

ORDERED that ¶ I.F of the CMO is reconsidered. The need for disclosure of classified information to Petitioners' counsel or a substitute for classified information for a Petitioner will be addressed with respect to specific information as necessary. It is further

ORDERED that ¶¶ II.B and II.C of the CMO are reconsidered. Respondents may file motions seeking categorical rulings on the issues of the presumption afforded Government evidence and the use of hearsay, which the Court will resolve expeditiously. It is further

ORDERED that ¶ III.B.1 of the CMO is clarified such that a Petitioner's mere denial of the facts raised by the Government to justify detention is not sufficient to entitle such Petitioner to an evidentiary hearing. It is finally

ORDERED that the schedules set forth in the CMO are reconsidered as follows:

- A. Respondents shall produce unclassified returns no later than four weeks after the filing of the corresponding classified return or December 12, 2008, whichever is later.
- B. Petitioners shall submit a preliminary traverse four weeks from the filing of the unclassified version of the corresponding return or two weeks from the date the Court initiates the scheduled reflected below, whichever is later.
- C. Within one week after the filing of a traverse, the parties shall submit any proposed discovery, to which the opposing party may respond as to the propriety of the proposal within one week thereafter. The Court will consider proposed discovery under the standards contained in ¶ I.E.2 of the CMO, and will set a reasonable date for completion of any such permitted discovery.
- D. Upon the close of any discovery, the Court will hold a status conference to address necessary matters and to establish a schedule for merits briefing, which would typically provide for two weeks for opening briefs and two weeks for response (or two weeks for an opening brief by the Government, two weeks for a response, and one week for the Government's reply).
- E. The schedule reflected in ¶¶ B-D above will be applied to sets of 25 cases per month (coordinated among the various Judges of the Court) in which factual returns have been filed.

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08-cv-1440, 08-cv-1733, 08-cv-1805**

[ALTERNATIVE SECOND PROPOSED] ORDER

Upon consideration of the Government's Motion for Clarification and Reconsideration of this Court's November 6, 2008 Case Management Order and Supplemental Amended Orders or, in the Alternative, Motion for Certification for Appeal Pursuant to 28 U.S.C. § 1292(b) and to Stay Certain Obligations Pending Resolution of the Motion and any Appeal, it is this ___ day of November, 2008 hereby:

ORDERED that the Government's Motion for Clarification and Reconsideration is **DENIED**. It is further

ORDERED that the Court finds that the Court's November 6, 2008 Case Management Order (CMO) involves controlling questions of law as to which there is substantial ground for difference of opinion, including with respect to whether the deadline for unclassified versions of factual returns, CMO ¶ I.C, should be extended in deference to the appropriate management of classified information; whether the exculpatory evidence provision, CMO ¶ I.D.1, should be limited to exculpatory material located during preparation of the Government's factual returns; whether the automatic discovery provisions, CMO ¶ I.E.1, are appropriate; whether the requirements of CMO ¶ I.F regarding treatment of classified information are appropriate; whether issues such as the appropriateness of deciding on a categorical basis in these cases whether a rebuttable presumption in favor of the Government's evidence, CMO ¶¶ II.B, and the use of hearsay, see CMO ¶ II.C, is appropriate; and whether the CMO sets an appropriate standard by which evidentiary hearings will be permitted, see CMO ¶ III.B.1. It is further

ORDERED that the Court finds that an immediate appeal of the CMO may materially advance the ultimate termination of this litigation. It is further

ORDERED that the CMO is hereby CERTIFIED for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). It is further

ORDERED that, pursuant to 28 U.S.C. § 1292(b), the CMO shall be deemed amended to include and reflect the findings in this Order. It is finally

ORDERED that the Respondents' obligations under ¶¶ I.C, I.D, I.E, I.F, II.B, II.C, and III.A of the CMO are stayed pending resolution of appeal.