

return in this case, apparently choosing to file it out of the case number order generally provided for in Judge Hogan's order regarding filing of the returns. As to this particular case, given the circumstances of this case and counsel in this case, this presents two additional issues regarding the scheduling modifications sought in the government's motion and Petitioner's response.

First, the government should be ordered to file the unclassified return and provide it to counsel for Petitioner no later than December 12, 2008. As noted in Petitioner's response to the government's motion, *see* Petitioner's Response, at 2, 15, counsel were only recently appointed, only recently received security clearances, and have specific trips to Guantanamo Bay scheduled on December 2 and December 14 to meet with petitioner and two other clients for the first time. Since counsel have a previously scheduled trip on December 14 (leaving their office in Los Angeles for Florida on December 13), and trips to Guantanamo Bay can be scheduled only on four to six weeks notice, it will be most efficient for the case and effective representation in Petitioner's case, to have an unclassified version of the return available to go over with Petitioner before counsel's second trip to meet with him. Counsel for Petitioner have just made this request to counsel for the government, *see* Exhibit A, and hopes the government will voluntarily comply, but requests an order from this Court to make compliance more likely.

Second, a specific status conference can be set in response to Petitioner's proposal of a status conference to address and set case-specific dates for filing of a traverse and further briefing, *see* Petitioner's Response, at 16. Given counsel's previously scheduled trips to Guantanamo Bay,¹ counsel's schedule during the holiday season, and counsel's schedule in other courts in the Central District of California, counsel request that the Court set a status conference

¹ Counsel's return dates are December 5 and December 18, so the full periods during which counsel will be at Guantanamo Bay are December 2 through December 5 and December 14 through December 18.

on either December 19, 2008, January 9, 2008, or sometime during the week of January 12, 2008.

Counsel further request that they be given the option of appearing telephonically, though they may be able to appear in person depending on the date and time set by the Court.

Respectfully submitted,

SEAN K. KENNEDY
Federal Public Defender

DATED: November 28, 2008


By 
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EXHIBIT A

Carlton Gunn/CACF/09/FDO
11/28/2008 10:44 AM

To terry.henry@usdoj.gov, andrew.warden@usdoj.gov
cc Craig Harbaugh/CACF/09/FDO@FDO
bcc
Subject Return in Balzuhair v. Bush, 08-cv-1238

Dear Mr. Warden and Mr. Henry,

We note that a return was just filed in the above-entitled case this past Wednesday. As you may recall from prior communications and/or reviewing our response to the government's motion for reconsideration, we will be at the Secure Facility on December 1 and have previously scheduled trips planned to visit our client departing December 2 and departing December 13. Given this schedule, we have two requests regarding the Balzuhair return. First, please do everything you can to make sure the classified return is at the Secure Facility by the morning of December 1, so we are able to review it there before departing to visit our client on December 2. Second, please have the unclassified return to us – either by hard copy in our office or by e-mail – no later than December 12, so we have that to review with our client during the second trip on which we are departing December 13.

Thank you in advance for your cooperation.

Carl Gunn

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

IN RE :	:	
GUANTANAMO BAY	:	Misc. No. 08-442 (TFH)
DETAINEE LITIGATION	:	
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SHAWKI AWAD BALZUHAIR	:	
Petitioners/Plaintiffs,	:	
	:	
v.	:	Civil No. 08-CV-1238 (RWR)
	:	
GEORGE W. BUSH, et al.,	:	
Respondents/Defendants.	:	
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MODIFIED PROPOSED ORDER

Upon consideration of the Respondents’ 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 in Any Appeal and Petitioner’s response thereto, it is hereby:

ORDERED that Respondents’ Motion is DENIED in its entirety as to the request to modify the discovery provisions;

ORDERED that Respondents’ Motion in all other respects is DENIED without prejudice to renewal at a later point in the proceedings;;

ORDERED that Respondents shall file the unclassified version of the return required by Judge Hogan’s Case Management Order (hereinafter “CMO”) no later than December 12, 2008;

ORDERED that Section I.D.1 of Judge Hogan’s Case Management Order (hereinafter “CMO”) is modified to apply not just to evidence in the government’s possession but also to evidence the government can obtain through reasonable diligence; and

ORDERED that the dates set for filing of a traverse and further briefing in Sections I.G and III.A of the CMO are vacated and a status conference shall be scheduled on _____, 2008, with dates for filing of a traverse and further briefing to be set at that time, and that counsel for Petitioner shall be permitted to appear telephonically at the status conference if necessary.

Dated: _____

United States District Judge