

**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-1124, 05-CV-1189, 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-1789, 08-CV-1805

**RESPONDENTS' STATUS REPORT REGARDING
THE FILING OF FACTUAL RETURNS FOR NOVEMBER 2008 AND
REQUEST FOR EXCEPTION FROM SEQUENCING**

Consistent with the Court's July 11, 2008 Scheduling Order (Misc. No. 08-0442) (dkt. no. 53), as amended by the Court's September 19, 2008 Order (Misc. No. 08-0442) (dkt. no. 464), respondents filed for the month of November 2008 fifty (50) factual returns in the Guantanamo Bay habeas corpus cases coordinated under Misc. No. 08-0442. Attached Exhibit A contains a list of petitioners for whom factual returns have been filed for the month of November 2008, including the case number, petitioner's name, petitioner's ISN, the type of return (original or amended),¹ and the date of filing of the return.² Thus, since the beginning of August 2008, respondents have filed a total of 175 proposed amended or original factual returns in cases pending before the Judges of this Court, 150 in these coordinated cases, seven (7) in cases before Judge Sullivan, and 18 in cases before Judge Leon; this is in addition to other litigation-related activity in the cases, including continuing work on the production of unclassified versions for over 100 factual returns.

¹ The Court's November 7, 2008 Order (dkt. no. 233) amended the July 11 Scheduling Order so as to eliminate the distinction between amended and original factual returns filed after July 11, 2008, such that respondents are no longer required to seek leave to amend factual returns originally filed prior to July 11, 2008. Thus, the use of the term, "amended," in Exhibit A is merely indicative that respondents originally filed a factual return for the petitioner prior to July 11, 2008; the term is used for the convenience of the Court and the parties.

² In addition to the returns for the petitioners listed in Exhibit A, during November 2008 respondents have also filed an additional five (5) returns in cases pending before Judge Leon, pursuant to his orders in those cases.

While not required by the Court's September 19, 2008 Order, included among the 50 factual returns filed this month are factual returns for certain petitioners who have been approved for transfer or release from Guantanamo Bay. Returns filed for such petitioners are also indicated on the list contained in Exhibit A. Work on some of these returns had previously begun as a result of uncertainty on the part of respondents that was resolved by the Court's September 19, 2008 clarifying order as to whether filing returns for petitioners who have been approved for transfer or release was required. *See* Respondents' Motion for Partial and Temporary Relief from the Court's July 11, 2008 Scheduling Order at 13 n.4 (Misc. No. 08-0442) (filed Aug. 29, 2008) (dkt. no. 317) ("Aug. 29 Motion"). The work on these returns was taken to completion because of delays in the clearance of proposed evidence for use in other factual returns, as more fully described in respondents' Aug. 29 Motion. Similarly, certain other returns for petitioners who have been approved for transfer or release were processed and filed given delays in the clearance of proposed evidence for use in other factual returns.

Additionally, respondents seek to file out of sequence factual returns with respect to three petitioners who otherwise would have included in the normal sequencing for this month under the September 19, 2008 Order.³ Those petitioners are listed in attached Exhibit B.⁴ In place of

³ Counsel for respondents has conferred with counsel for these petitioners. Counsel for petitioner ISN 89 (Al Zaher in No. 05-cv-2386) does not oppose taking the return for that petitioner out of sequence. Counsel for petitioners ISN 728 (Saeed in No. 05-cv-2386) and ISN 170 (Al Sanani in No. 05-cv-2386) oppose respondents' request.

⁴ With respect to respondents' request for out-of-sequence processing of 14 other returns from September and October 2008, *see* Respondents' October 31, 2008 Status Report Regarding The Filing of Factual Returns and Request for Exception from Sequencing at Ex. B, C (Misc. No. 08-0442) (filed Oct. 31, 2008) (dkt. no. 916), as indicated in attached Exhibit C, respondents in November 2008 filed returns for eight of the 14 petitioners, while proceedings with respect to two of the petitioners have been stayed and one petitioner (ISN 743) was released from United

those factual returns, respondents have filed factual returns pertaining to three other petitioners who either have later-filed petitions or are approved for transfer or release. This deviation from sequencing primarily reflects issues related to the clearance of proposed evidence for use in the factual returns, as more fully described in respondents' Aug. 29 motion, and in some cases has resulted from unique issues related to evidence proposed for use in connection with specific returns. Such issues have made completion of factual returns with respect to these petitioners significantly more complicated or time-consuming than returns of others, such that it was not appropriate to delay the processing of returns for other petitioners in order to complete the processing of these more complicated or time-consuming returns. Disclosure of additional detail regarding the issues that have resulted in the deviation from normal sequencing would risk inappropriate disclosure of classified information subject to the clearance issues referenced above or of attorney-client privileged information or attorney work product. Additional detail regarding the circumstances of these cases can be provided by respondents to the Court *ex parte* and *in camera*, should the Court require it, however.

Respondents intend to continue filing factual returns in anticipation of completion and filing of the remaining returns due next month. In addition, respondents continue the processing materials for submission of unclassified versions of factual returns.

States custody (*see* Notice of Transfer of Petitioner (No. 05-cv-2385) (Sept. 2, 2008) (dkt. 59)) thereby making the filing of a factual return justifying the detention of that petitioner unnecessary due to mootness considerations. (It also appears ISN 743 was erroneously included in respondents' October 31 request for exception from sequencing given that the petitioner's U.S. custody ended in early September; respondents apologize for this oversight.) Respondents continue their request for out-of-sequence processing of the returns for the remaining three petitioners, but are making every reasonable effort to file returns for those petitioners during the coming month.

Dated: December 1, 2008

Respectfully submitted,

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