

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

ACHRAF SALIM ABDESSALAM,

Petitioner,

v.

GEORGE W. BUSH *et al.*,

Defendants.

) Civil Action No. 06-cv-1761 (ESH)

ORDER

Upon consideration of the parties' December 11, 2008 Joint Status Report [79], and for the reasons stated in open court during the status hearing in the above-captioned action held on December 18, 2008, it is hereby **ORDERED**:

1. Unclassified Factual Return:

The government shall file an unclassified factual return on or before January 9, 2009.

2. Discovery:

The government shall file on or before January 16, 2009, a numbered statement of material facts upon which it intends to rely in making its case-in-chief and it shall identify all evidence it expects to elicit in support of those facts and how it intends to present that evidence, including the names of any witnesses it intends to call. If the government intends to rely on any statements, it shall disclose on or before January 16, 2009: (1) the identity of the speaker; (2) the content of the statement; (3) the person(s) to whom the statement was made; (4) the date and time the statement was made or adopted; and (5) the circumstances under which such statement was made or

adopted (including the location where the statement was made). If the government cannot identify the original source or any later source of the information, it must so indicate. If the government intends to rely on any documents (including 302 reports), the documents shall be produced to petitioner's counsel by January 16, 2009, unless they have already been produced, and the relevant portions of the documents shall be identified (by page and paragraph number) if the government does not intend to rely on the entire document. The government is not precluded from relying on evidence not contained in its statement of facts to rebut petitioner's arguments on the merits. No other automatic discovery obligations under Judge Hogan's November 6, 2008 Case Management Order ("CMO") shall apply at this time.

3. Exculpatory Evidence:

The government shall disclose on or before January 16, 2009, all reasonably available evidence in its possession or any evidence within its actual knowledge that tends to materially undermine the evidence that the government intends to rely on in its case-in-chief, including any evidence or information that undercuts the reliability and/or credibility of the government's evidence (*i.e.*, such as evidence that casts doubt on a speaker's credibility, evidence that undermines the reliability of a witness's identification of the petitioner, or evidence that indicates a statement is unreliable because it is the product of abuse, torture, or mental or physical incapacity). No other exculpatory evidence disclosure obligation under ¶ I.D.1 of Judge Hogan's CMO shall apply at this time.

4. On or before January 22, 2009, petitioner shall file a proposed plan that specifies whether petitioner intends to proceed by seeking additional discovery, filing a

traverse, or briefing a summary judgment motion. If petitioner seeks to move for additional discovery pursuant to ¶ I.E.2 of Judge Hogan's CMO, petitioner must confer with opposing counsel before submitting any such motion. Petitioner shall not have waived his right to request further discovery if petitioner elects to proceed by first submitting a traverse or summary judgment motion.

5. The next status hearing is scheduled for January 27, 2009, at 2:00 p.m. in Courtroom 14.
6. Issues relating to ¶¶ I.F, II.A – II.C, and III.A – III.B of Judge Hogan's CMO, as amended by Judge Hogan's December 16, 2008 Order, will be held in abeyance pending further order of this Court.
7. Petitioner's emergency motion for an order enjoining transfer of petitioner to Libya [83] is hereby **DENIED AS MOOT**, since it is agreed by respondents that petitioner is covered by Judge Hogan's July 10, 2008 Order [32-2].

SO ORDERED.

/s/
ELLEN SEGAL HUVELLE
United States District Judge

Date: December 19, 2008