

**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 DECEMBER 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 December 2008 fifteen 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, 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

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 An Order entered by Judge Walton amending Judge Hogan's Amended Case Management Order, *see* Order, Nos. 04-cv-1164, 05-cv-0879, 05-cv-0883, 05-cv-0891, 05-cv-0999, 05-cv-1493, 05-cv-1667, 05-cv-1697, 05-cv-2104, 05-cv-2386, 06-cv-1675, 06-cv-1690, 07-cv-1710, 08-cv-1360, 08-cv-2019 (RBW) (D.D.C. Dec. 19, 2008), requires that upon the filing of a factual return in a Judge Walton case, respondents notify the Court whether the petitioner is approved for transfer or release and whether petitioner's petition should be consolidated with other petitions before the Court. In response to that Order, respondents note that none of the factual returns filed for petitioners in Judge Walton cases this month involve petitioners who are approved for transfer or release. Further, respondents' preliminary recommendation is that the petition for ISN 728 in No. 05-cv-2386 (RBW) (factual return filed December 31, 2008) be transferred or consolidated before one Judge for appropriate proceedings with certain other petitions pending before Judge Walton or other Judges of the Court. On December 17, 2008, Judge Hogan ordered respondents to confer with petitioners' counsel in *In Re Guantanamo Bay Detainee Litigation*, No. 08-mc-0442, and submit a joint filing by January 5, 2009, identifying petitions that may be consolidated for merits proceedings. *See* Order of Dec. 17, 2008 (No. 08-mc-0442, dkt. no. 1323). Respondents will present an updated

190 proposed amended or original factual returns in cases pending before the Judges of this Court, 165 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, among other things, processing of unclassified versions of approximately 100 factual returns, exculpatory evidence searches pursuant to Judge Hogan's Amended Case Management Order ("CMO"), and processing of responses to discovery requests under ¶ I.E.1 of the CMO.

Respondents seek additional time to file factual returns with respect to four 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 This deviation reflects issues related to the clearance of proposed evidence for use in the factual returns, as more fully described in 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),

recommendation for consolidation, including with respect to ISN 728, in that filing.

³ Counsel for respondents has conferred or attempted to confer with counsel for these petitioners. Counsel for petitioner ISN 10016 (No. 08-cv-1360) consents to an extension through January 2009. Counsel for petitioner ISN 10020 (No. 06-cv-1690) consents to an extension until February 2, 2009, but only if the Government provides the "complete return" to counsel on or before that date. (Counsel's reference to providing the return to counsel appears to allude to the fact that an appropriate protective order governing the management and handling of classified information, which is necessary for respondents to disclose classified information to petitioner's counsel in that case, has not been entered in the case. See Respondents' Motion To Reconsider Application Of Standard Habeas Protective Order And Request For Entry Of Proposed Protective Order Pertaining To TS/SCI Information [dkt. no. 63 in No. 06-cv-1690, dkt. no. 264 in No. 08-mc-0442], which remains pending. See Order [dkt. no. 66 in No. 06-cv-1690, dkt. no. 268 in No. 08-mc-0442].) Counsel for petitioners ISN 10025 (No. 08-cv-1440) and ISN 10027 (No. 08-cv-1789) did not respond to respondents' counsel's inquiry as of the filing of this Report.

⁴ Respondents have now filed returns for petitioners with respect to whom respondents had previously requested out-of-sequence processing.

and also 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 additional time is needed to complete the processing of these more complicated and time-consuming returns. Disclosure of additional detail regarding the issues 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 processing factual returns in anticipation of completion and filing of the remaining four returns due next month.

Dated: December 31, 2008

Respectfully submitted,

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