

prejudice to any request for other or additional relief that may be subsequently sought.

As an initial matter, the factual returns for ISNs 10016, 10020, 10025, and 10027 have proven significantly complicated and time-consuming; thus, Respondents must seek an extension of the January 30, 2009 deadline. Specifically, these factual returns involve unique issues related to the evidence proposed for use in those returns and/or the clearance of that proposed evidence for use in these proceedings.³ Disclosure of additional detail regarding these 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. Respondents can provide additional detail regarding the circumstances of these cases to the Court *ex parte* and *in camera*, should the Court require it.

Respondents recognized the difficulty inherent in the preparation of factual returns for ISNs 10016, 10020, 10025, and 10027, and previously submitted a Request for Exception from Sequencing explaining that the complexity of these factual returns would prevent the Government from completing them by the date on which they were originally due. *See* Respondents' Status Report Regarding the Filing of Factual Returns for December 2008 and Request for Exception from Sequencing (Misc. No. 08-0442) (filed Dec. 31, 2008) (dkt. no. 1444). On January 2, 2009, the Court granted the Respondents' request, and ordered Respondents to file these factual returns by January 30, 2009. *See* Minute Order (Misc. No. 08-0442) (Jan. 2, 2009). Since the Court entered that Order, Respondents have been working

Petitioner ISN 10016 (No. 08-cv-1360) indicated that they did not object to the requested extension. Counsel for Petitioners ISN 22 (No. 08-cv-1221), ISN 10020 (06-cv-1690), ISN 10025 (No. 08-cv-1440), and ISN 10027 (No. 08-cv-1789) oppose the requested extension. Counsel for petitioners ISN 259 (No. 06-cv-1766) intend to provide a position on Monday, February 2, 2009. Counsel for Petitioners ISN 49 (No. 05-cv-2386) and ISN 335 (No. 06-cv-1766) did not reply to Respondents' inquiry as of the filing of this Motion.

³ That clearance process is more fully described in Respondents' Motion for Partial and Temporary Relief from the Court's July 11, 2008 Scheduling Order (Misc. No. 08-0442) (filed Aug. 29, 2008) (dkt. no. 317).

to complete these and other tasks related to this litigation, including producing unclassified returns and discovery under the Court's November 6, 2008 Case Management Order, as amended by the Court's December 16, 2008 Order. The issues surrounding the factual returns, however, compel Respondents to seek additional time for their completion.

An extension of time to complete the factual returns for ISNs 10016, 10020, 10025, and 10027, as well as the legal justification statement required to be submitted with the factual returns for ISNs 22, 49, 259, and 335, is also warranted for another reason. On January 22, 2009, the President signed an Executive Order pertaining to the "Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities." *See* Exec. Order No. 13,492, 74 Fed. Reg. 4897 (Jan. 22, 2009) (hereinafter "Executive Order"). The President found, among other things, that "[i]t is in the best interests of the United States that the executive branch undertake a prompt and thorough review of the factual and legal bases for the continued detention of all individuals currently held at Guantanamo." Executive Order § 2(d). The Executive Order also established a framework for expeditiously conducting such a review. *See id.* § 4.

The Government is now assessing how it will proceed in the above-captioned Guantanamo Bay detainee *habeas corpus* cases, in light of the change in Administrations and the requirements of the Executive Order. Time is needed to make that assessment and determination. Accordingly, the Government requests a continuance of its obligations to file the required submissions for the Petitioners enumerated above, to allow the new Administration to assess the Government's position in these matters.⁴

⁴ In light of the unique status of petitioners ISN 22, 49, 259, and 335 as approved by Respondents for transfer or release, Respondents submitted factual returns for these petitioners, but without the legal justification statement called for under the Case Management Order. Indeed, the Government has sought a temporary continuance of other, various merits-related

For all of these reasons, the Government respectfully requests that the deadline for filing the factual returns for ISNs 10016, 10020, 10025 and 10027 and for the legal justification statements for ISNs 22, 49, 259, and 335 be extended by four weeks, until Friday, February 27, 2009. This request is without prejudice to any request for other or additional relief that may be subsequently sought.

Dated: January 30, 2009

Respectfully submitted,

MICHAEL F. HERTZ
Acting Assistant Attorney General

/s/ Julia A. Berman
JOSEPH H. HUNT (D.C. Bar No. 431134)
TERRY M. HENRY
ANDREW I. WARDEN
PAUL E. AHERN
JULIA A. BERMAN
Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W.
Washington, D.C. 20530
Tel: (202) 616-8480
Fax: (202) 616-8470
Email: julia.berman@usdoj.gov
Attorneys for Respondents

filings or proceedings in several Guantanamo cases in order to permit its assessment of how to proceed in the cases to move forward.