

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

**IN RE:
GUANTANAMO BAY
DETAINEE LITIGATION**

Misc. No. 08-442 (TFH)

**04-cv-1194, 05-cv-1487, 05-cv-2384, 05-cv-2386, 05-cv-
2387, 06-cv-1690, 06-cv-1761**

**RESPONDENTS' MOTION FOR RECONSIDERATION OF ORDERS REGARDING
DISCOVERY FROM THE GUANTANAMO REVIEW TASK FORCE
AND
MOTION FOR CONSOLIDATED ORDER REGARDING TASK FORCE DISCOVERY**

Respondents respectfully move for reconsideration of recent Court orders regarding discovery from the Guantanamo Review Task Force. Some of the Court's orders require that information "collected," "compiled," or "obtained" by the Task Force must be reviewed for exculpatory evidence or other information subject to Respondents' discovery and disclosure obligations under the Amended Case Management Order (CMO); or, to the same effect, must be presumed or considered "reasonably available" for purposes of automatic disclosure or discovery under §§ I.D.1 and/or I.E.1 of the CMO, or as otherwise ordered by individual Members of the Court.^{1/} Others appear to require, in effect, that the Task Force pass on to Respondents for review and production any exculpatory material or other discoverable evidence that is "identified" or "discovered" by the Task Force staff as they conduct their reviews.^{2/}

For the reasons stated in the accompanying Memorandum, Respondents respectfully submit that, insofar as these orders address discovery of Task Force information, the orders should be withdrawn. Respondents further move the Court to

^{1/} See, e.g., *Dokhan v. Obama*, 08-987 (JDB), Mar. 4, 2009 (Dkt. No. 89); *Khan v. Obama*, 08-1101 (JDB), Mar. 4, 2009 (Dkt. No. 85); *Zaid v. Obama*, 05-1646 (JDB), Feb. 9, 2009 (Dkt. No. 146); *Hamlily v. Obama*, 05-763 (JDB), Feb. 27, 2009 (Sealed Order); *Alhami v. Obama*, 05-359 (GK), May 11, 2009 (Dkt. No. 189); *Razak v. Obama*, 05-1601 (GK), May 11, 2009 (Dkt. No. 209); *Abdah v. Obama*, 04-1254 (HHK), April 8, 2009 (Dkt. No. 477); *Alsawam v. Obama* 05-1244 (CKK), April 6, 2009 (Dkt. No. 158); *Alsawam v. United States*, 05-1244 (CKK), April 17 (Dkt. No. 156) *Al Odah v. United States*, 02-828 (CKK), April 7, 2009 (Dkt. No. 531); Omnibus Order (05-520, 05-526, 05-993, 05-1220, 05-1429, 05-1607, 05-1983) (RMU), April 23, 2009 (Dkt. No. 144 in 05-1983); Amended Omnibus Order (06-1767, 08, 1237, 08-1805, 08-1828) (RMU), April 23, 2009 (Dkt. No. 145 in 05-1983).

^{2/} See, e.g., *Al Halmandy v. Obama*, 05-2385 (ESH), April 27, 2009 (Dkt. No. 238) (ISN 900); *Ameziane v. Obama*, 05-392 (ESH), April 30, 2009 (Dkt. No. 198); *Al Halmandy v. Obama*, 05-2385 (ESH), April 30, 2009 (Dkt. No. 242) (ISN 570) and *Al Halmandy v. Obama*, 05-2385 (ESH), April 30, 2009 (Dkt. No. 243) (ISN 078); *Al Halmandy v. Obama*, 05-2385 (ESH), May 4, 2009 (Dkt. No. 245) (ISN 510); *Zuhair v. Bush*, 08-864 (EGS), May 1, 2009 (Dkt. No. 179); Omnibus Order, (04-1164, 05-883, 05-891, 05-999, 05-1493, 05-1667, 05-2104, 05-2386, 06-1675, 06-1690, 07-1710, 08-2019) (RBW), April 27, 2009 (Dkt. No. 221 in 04-1164).

enter a consolidated order, in the form attached herewith, regarding discovery of Task Force information in the Guantanamo *habeas* cases.^{3/3}

Dated: May 12, 2009

Respectfully submitted,

MICHAEL F. HERTZ
Principal Deputy Assistant Attorney General

JOSEPH H. HUNT (D.C. Bar No. 431134)
Director, Federal Programs Branch

/s/ James J. Gilligan

/s/ Terry M. Henry

JAMES J. GILLIGAN
TERRY M. HENRY
Assistant Branch Directors
United States Department of Justice
Civil Division, Federal Programs Branch
P.O. Box 883, Washington, DC 20044
Phone: (202) 305-0037
Fax: (202) 616-8470

Attorneys for Respondents

^{3/} Given the unique circumstances of this filing — including the substantial number of counsel involved — Respondents respectfully request leave to pursue a modified procedure for with respect to Local Rule 7(m). Until the date of this filing, Respondents were not in a position to meaningfully confer with each of Petitioners' counsel regarding the relief sought by Respondents or Respondents' proposal regarding discovery. Likewise, Respondents were not in a position to share information in many of the accompanying declarations. Given these circumstances, Respondents request leave to confer with counsel pursuant to Rule 7(m) and report back to the Court within one week of this filing as to the results. In the meantime, Respondents would agree that Petitioners' time to respond to this motion be tolled. This requested procedure is outlined in an accompanying Proposed Order Regarding Local Rule 7(m) Procedure.