IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE: GUANTANAMO BAY DETAINEE LITIGATION	Misc. No. 08-442 (TFH) Civil Action Nos. 04-cv-1194, 05-cv-1487, 05-cv-2384, 05-cv-2386, 05-cv-2387, 06-cv-1690, 06-cv-1761

DECLARATION OF JOSEPH R. GUERRA

I, Joseph R. Guerra, for my declaration pursuant to 28 U.S.C. § 1746, depose and say as follows:

1. I am the Principal Deputy Associate Attorney General of the United States. My duties and responsibilities include assisting the Associate Attorney General, the third ranking official at the Department of Justice, with oversight of litigation handled by the principal civil

litigating divisions of the U.S. Department of Justice, including the Civil Division, which is handling the Guantanamo Bay Detainee litigation. This litigation comprises a collection of more than 150 *habeas corpus* cases, now pending before this Court, brought by more than 200 individuals currently or formerly detained by the United States Government at the Guantanamo Bay Naval Base.

2. I submit this declaration in response to orders from a number of judges of this Court either directing or seeking information concerning the possibility of additional discovery of information being gathered by the Guantanamo Review Task Force ("Task Force"). The purpose of this Declaration is to provide information to the Court to assist it in evaluating (1) the significant trade-offs involved in directing additional discovery into the information collected by the Task Force and (2) the benefits of the Government's proposal for governing such additional discovery.

3. The statements made herein are based on information made available to me in the course of carrying out my duties and responsibilities as Principal Deputy Associate Attorney General.

4. The Attorney General is committed to the prompt and appropriate transfer, release, or other lawful disposition of the individuals detained at Guantanamo Bay, as directed by the President pursuant to Exec. Order. No. 13,492, 74 Fed. Reg. 4897 (Jan. 22, 2009)), and at the same time is committed to the just and expeditious resolution of the detainees' *habeas* cases. This Declaration provides information in support of Respondents' proposal for moving forward with the *habeas* cases in a manner consistent with both commitments. Specifically, this

Declaration provides information in support of the Government's contention that its proposal appropriately balances the legitimate desire of the Executive Branch, the Court, and detainees for a rapid resolution to these matters with the reality that more expansive discovery of information and documents from the Task Force will inevitably delay resolution of these cases.

Comprehensive Searches of Information Compiled by the Task Force Will Necessarily Entail Significant Delays

5. Estimating the time required to conduct a search of the detainee information to which the Task Force has access, to locate exculpatory material and other information subject to disclosure or discovery in more than 200 detainees' cases, and then to produce any such material that has not already been made available in these cases, involves a number of variables that cannot be accounted for with precision. Nevertheless, the Justice Department estimates that the time required to conduct a search of the Task Force's principal database (known as the TF Network database) for exculpatory material for all 200 of the petitioners would take four to twelve months to complete, including the time required after completion of the search to clear classified information for production (or produce it in an alternative form).

6. In arriving at this estimate, we assumed that litigation would continue in each of the *habeas* cases and, as such, the existing *habeas* litigation team would need additional resources to undertake a search of this magnitude. In the coming weeks and months, the attorneys litigating the petitions still pending before this Court must complete responses to hundreds of outstanding discovery requests and orders; file an estimated 100 briefs or more on

pending or soon-to-be-filed motions; assist in the process of declassifying information from approximately 50 factual returns (including petitioners' statements); prepare for and attend dozens of hearings, including approximately 25 merits hearings; and respond to multiple requests regarding counsel access, among others.

7. At the direction of the Associate Attorney General, a member of the *habeas* litigation team conducted test searches of information that the Task Force has collected for information pertaining to several detainees (whose *habeas* petitions have already been favorably adjudicated and whose information the Task Force has already collected). Those test searches yielded between several hundred and tens of thousands of "hits" (documents) each. Searches for credibility information on the hundreds of witnesses the Government is relying on would take more time and effort. Given the multitude of other responsibilities placed on members of the *habeas* team, if the Court were to determine that comprehensive discovery into the material in the Task Force's principal database would need to be conducted, such discovery would need to be completed by additional attorneys in order to ensure that the *habeas* team could continue to devote the time and effort required to discharge its myriad other responsibilities in these cases. The Justice Department has estimated, therefore, that, to conduct a review of the Task Force's principal database for exculpatory information alone will require the assignment of an additional 10-20 attorneys, with appropriate security clearances, to the task.

8. Based on recent experience, we estimate that it could take up to three to four weeks to assemble the attorneys needed for this task. I have been advised that assembling the current *habeas* litigation team required various outreach efforts by the Justice Department to identify attorneys who could be assigned for a detail to the Guantanamo *habeas* litigation. All

told the process took approximately six weeks; assembling a team of 10-20 attorneys to conduct searches of the Task Force's database may require a similar amount of time, especially considering that each attorney would have to possess, or obtain, a security clearance at the TOP SECRET/SENSITIVE COMPARTMENTED INFORMATION level simply to gain access to the Task Force's secure facility, much less access to the highly classified information in its principal database.

9. Generally speaking, once the necessary team of attorneys is assembled, the process of searching the Task Force's principal database for exculpatory information would involve assignment of a particular petitioner's case to a search attorney, who would have to spend at least one day reviewing the factual return, and consulting with the litigating attorneys assigned to the case, to familiarize himself or herself sufficiently with the facts of the case, and the witnesses involved, to recognize potentially exculpatory evidence if he or she encountered it. The search attorney (in consultation with litigating attorneys) would also have to develop one or more appropriate sets of search terms, run the search, and then spend several days at the Task Force's facility reviewing the hundreds or thousands of documents retrieved. Once the review is complete, further consultation with the litigating attorneys would likely be necessary for the search attorney to determine whether particular documents contain exculpatory information or not, and whether it constitutes new evidence that the Government has not already disclosed.

10. All told, based on prior experience in several cases in which searches for exculpatory information were ordered that were significantly broader in scope than those initially required under the Amended Case Management Order (CMO), the Civil Division estimates that a search for exculpatory information in the Task Force's principal database for a typical

petitioner's case would require a week (five working days) of attorney time. Including searches for credibility evidence regarding the Government's witnesses in each case could raise the time required to two weeks, depending on the factual complexity of the case and the number of witnesses the Government is relying on. This time could increase to the extent the search extended beyond exculpatory information to other categories of information responsive to discovery orders. Hence, the time required to complete searches of the Task Force's principal database for exculpatory evidence in each of 200 petitioners' cases would take approximately 200-400 weeks of attorney time. Assuming between 10 and 20 attorneys could be dedicated full-time to the task, the search of the database, once begun, could take an estimated 10-40 weeks to complete for all 200 petitioners.

11. Once exculpatory information is identified, it must then be forwarded to the agency from which it originated for that agency to determine whether the information may be released consistent with national security. As explained in declarations filed by various intelligence agencies, responsive documents must be reviewed line-by-line to ensure that the information contained therein can be disclosed to properly cleared counsel and the Court, or must be produced in some alternative form. Documents that contain information from multiple sources require separate reviews by each agency that may have equities in the information the document contains.

12. The time required to clear any particular document will thus depend on the sensitivity of the classified information it contains and the number of agencies that must authorize its release before it can be produced. Based on experience in these cases, documents containing information of a particularly sensitive nature, such as intelligence information

obtained from a foreign government, whose permission to disclose the document must be secured, may take from 30 to 60 days to clear. Documents containing information of a less sensitive nature may be cleared for release in as little as a week. Although the clearance process can move forward on a rolling basis as exculpatory information from the Task Force's database is identified, we estimate that it would take another 30-60 days, after searches in the database for exculpatory information have been completed, before all documents containing exculpatory material could be cleared for production.

13. Although Department lawyers have not performed test searches on the additional databases that are available to the Task Force, I am advised that the amount of time needed to search for, identify, and clear responsive documents from these other databases will likely significantly increase all of the foregoing time estimates.

The Intersection Between the *Habeas* Cases and the Review Panel

14. In light of the foregoing considerations, the Government has a strong interest in having the Task Force and its Review Panel complete their decision-making before Respondents must undertake wide-ranging discovery of information in the TF Network and before the Court issues merits determinations on individual detainees. The Government believes that, in many cases, this interest will be shared by the Court and detainees as well.

15. The Task Force process can have the effect of obviating the need to reach the merits of a detainee's *habeas* petition. Depending upon the success of the diplomatic efforts that are being conducted in tandem with the Task Force's activities, a Review Panel determination

that a detainee should be transferred or released could eliminate any need to litigate issues arising out of the detainee's detention. In such circumstances, there is little benefit to petitioners if the Government were forced to undertake the burdens of expansive discovery into Task Force information, and the Court, Respondents and petitioners' counsel can conserve their resources for other *habeas* cases.

16. The United States Government remains committed to the prompt and appropriate transfer, release, in some cases prosecution, but in all events lawful disposition of the individuals detained at Guantanamo Bay, for which reason the President constituted the Task Force in the first place. The Government remains equally committed to the just and expeditious resolution of the detainees' *habeas corpus* petitions, which is why it has devoted and will continue to devote enormous resources to this litigation. We continue to believe, in light of the tremendous efforts that the *habeas* litigation team, the Department of Defense, and other affected agencies have already undertaken to make exculpatory information and other evidence called for by the Court available, that comprehensive discovery of information also gathered by the Task Force will impose significant delays and burdens that are not justified by the prospect of significant benefits to petitioners and the Court. In all events, the Government urges that in light of its significant costs and unclear benefits, such discovery from the Task Force should not be compelled, if ever, until after the Task Force Review Panel determines that it does not intend to transfer, release or prosecute a particular detainee. This ensures that the Government, the Court and counsel for the detainee do not expend scarce resources on discovery for a case in which it may be unnecessary to proceed to the merits. This provision also advances the Government's strong interest in sequencing cases in a manner consistent with its diplomatic objectives.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 12, 2009.

JOSEPH R. GUERRA
PRINCIPAL DEPUTY ASSOCIATE
ATTORNEY GENERAL