

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

<p><b>ABDUL HAMID AL-GHIZZAWI, ISN 654</b></p> <p style="text-align: center;"><b>Petitioners,</b></p> <p style="text-align: center;"><b>vs.</b></p> <p><b>Barrack Obama, <i>et al</i>,</b></p> <p style="text-align: center;"><b>Respondents.</b></p>	<p><b>No. 08-442 (TFH) 05-2378 (JBD)</b></p>
<p><b>MOHAMMED ABDULLAH TAHA MATTAN, <i>et al</i>,</b> <b>(ABDAL RAZAK ALI, ISN 685)</b></p> <p style="text-align: center;"><b>Petitioners,</b></p> <p style="text-align: center;"><b>vs.</b></p> <p><b>Barrack Obama, <i>et al</i>,</b></p> <p style="text-align: center;"><b>Respondents.</b></p>	<p><b>No. 08-442 (TFH) 09-745 (RCL)</b></p>

**REPLY TO RULE TO SHOW CAUSE**

Now come the Petitioners Abdul Hamid Al-Ghizzawi and Razak Ali and Reply to the Government's response to the Rule to Show Cause against Respondents for violation of this Court's Order ("Order") of June 1, 2009, as set forth below;

**THE GOVERNMENT'S POSITION IS THAT IT CAN UNILATERALLY REWRITE  
THIS COURTS ORDER AS IT SEES FIT**

As set forth in the Rule to Show Cause, this Court has already flatly rejected the Government's attempt to make itself the arbiter of all things that should have

“protected” status in Government filings. In its Order, this Court held that “the ultimate decision to deem information protected is left to the Court” (Order at 2) and set up the following procedures for the Government to follow if it wanted to ask the Court to keep non-classified information blocked from public view:

On or before July 29, 2009, for each petitioner in the above-captioned cases, the government is directed to either (i) publicly file a declassified or unclassified factual return or (ii) file under seal with the petitioner’s counsel and the appropriate Merits Judge an unclassified factual return highlighting with a colored marker the exact words or lines the government seeks to be deemed protected, as well as a memorandum explaining why each word or line should be protected. If the government chooses to file a highlighted factual return under seal, the parties must first meet and confer pursuant to Local Rule of Civil Procedure 7(m); if an agreement cannot be reached, the government must file with the appropriate Merits Judge a motion to designate as protected each highlighted portion of the return. Until July 29, 2009, the unclassified factual returns are to remain protected, except that each petitioner shall have access to the unclassified factual return pertaining to himself, and counsel may disclose the unclassified factual return to the petitioner’s witnesses and experts who have signed the Acknowledgment. If the government does not file an unprotected or highlighted factual return for a petitioner by July 29, 2009, that petitioner’s unclassified factual return will be treated as unprotected, unless the appropriate Merits Judge rules to the contrary. In cases in which the government has not yet provided petitioner’s counsel with an unclassified factual return, the government shall comply with this opinion within sixty days of the date on which the government provides the unclassified return. (Order 9-10)

Although in the prior motion practice that led to the Order, the Government argued strongly for this Court to give it a free hand in designating material as “protected” this Court refused to allow the Government such a luxury. The Government did not appeal this Court’s Order nor did it seek to have this Court reconsider its Order. And yet the Government freely admits (as further described below) that it has redacted information that the Government and the Government

alone designated “protected.” Somehow, despite this Court’s Order admonishing the Government that it is the Court’s prerogative to seal judicial records including designating protected material, and not the Government’s, that language in the Court’s Order outlining the procedure for designating information “protected” was apparently considered by the Government to be precatory and surplusage.

The Government also continues its inexplicable rant of claiming overwork in its attempt to deflect the issues surrounding its noncompliance. Despite its purportedly crushing work load, the Government nonetheless found the time to delete nearly every objective fact (including most if not all exculpatory material) from the publicly available returns. The fact is that this Court gave the Government two months to properly prepare these documents for public filing (not to mention the previous six months that the Government had available to work on these documents from the time it originally designated the documents “protected” because it ostensibly needed more *time to prepare the documents for public filings*).

Despite all of the time allotted to the Government to abide by this Court’s Order it continues to defy this Court. The fact that the Government still insists on redacting information that it seeks to assert “protected” status, with absolutely no attempt to highlight those materials, to meet and confer, or to explain to the Court (and counsel) why the material (most of which is already in the public domain) should be given “protected” status, can only be called what it is: a brazen contempt of this Court and its orders.

## THE GOVERNMENT ADMITS IT DID NOT COMPLY WITH THE ORDER

The Government's Response is nothing short of extraordinary in that it has outright admitted that it has not complied with this Court's Order but nonetheless boldly continues to ignore the Order and even attempts to justify its contempt of this Court by vaguely claiming that public information it redacted was not public enough. The Government confirmed its own non-compliance in its Response when it admitted that the "declassified returns redact not merely properly classified information, but also " *information designated as "protected" which, while not classified, implicates significant security or other interests.*" (Response at pg. 4, *emphasis added*)

The casualness in which the Government disregards this Court's Order is a remarkable sign of the continuing contempt by the Government of the authority of the judiciary. This Court's unambiguous Order set up clear procedures for information that the Government wanted to seek "protective" status and further ordered: "If the government does not file *an unprotected or highlighted factual return* for a petitioner by July 29, 2009, that petitioner's unclassified factual return will be treated as unprotected, unless the appropriate Merits Judge rules to the contrary." (Order at 10, *emphasis added*) As of this filing the Government is utterly out of compliance and in contempt of this Court's ruling because it has not filed either an unprotected or a highlighted factual return in any of the "approximately 190 Returns" it has filed. In addition, no merits Judge ruled that the original unclassified returns are still protected, nor has the Government even asked them to do so.

Apparently the Government is quite content with its flagrant violation of the Order because, in addition to ignoring the Order, the Government artfully obfuscates the fact that virtually everything it has redacted in the Returns<sup>1</sup> is available in public sources by asserting that those sources have a "lack of official acknowledgment." (This is a most peculiar position considering that much of the information at issue is derived from information originally supplied by the United States Department of Defense ("DOD"), whether "officially acknowledged" or not.) The Government could only take such an astonishing position by simply ignoring Petitioner's Motion (not to mention this Court's Order) and disregarding the fact that Petitioners rely primarily on the CSRT and ARB records released by the DOD in support of their present motion. For good measure, the Government then asserts that the "Petitioners *do not* claim that these specific, previously officially disclosed materials are contained in the factual returns and redacted from the publicly filed version of the Returns." (*emphasis added*) As the Government knows, (if it read Petitioners' Motion) that is exactly what the Petitioners are claiming. Remarkably the Government also asserts that even information that has already appeared on the Court's public docket can effectively be yanked back from public disclosure, and apparently not on proper

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<sup>1</sup> This includes both the previously "protected" Returns and the publicly filed Returns.

application for a sealing order to the Court, but solely by Justice Department fiat.

(Response at 8-10 )<sup>2</sup>

**PUBLIC INFORMATION CANNOT BE REDACTED BY THE  
GOVERNMENT**

We are really back to square one. Ten months ago the Government was expressly ordered to file declassified Returns by December 29, 2008. It filed the Returns but then claimed that it was so much work that the documents had to remain "protected" because there might have been some "mistakes." The Government made no apparent attempt over the months that followed to review those documents and to file public versions on the record. When this Court Ordered on June 1, 2009 that the Government had to file public returns and to specifically designate materials that it sought to "protect" no later than July 29, 2009 the Government refused to follow the procedures Order by this Court but instead continued to file Returns that redact vast amount of unclassified information. Now lo these months later during which Petitioners continue to languish in harsh, maximum security prison conditions without charge as they have

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<sup>2</sup> These last two issues should really not be at issue and are only mentioned here because the Government raised them as excuses for its ongoing and willful refusal to obey this Court's Order to highlight the material it wanted to assert as having "protected" status and to provide the reasons for that status. If the Government had not refused to comply with the Order it would have provided an explanation for seeking to "protect" the otherwise unclassified material that it instead unilaterally redacted. The Government's position that the Court and Petitioners have no right to so much as an explanation as to why all of the unclassified and public information has been redacted, save for the meaningless and self-serving assertion that the information "*implicates significant security or other interest*" not only fails to comply with this Court's Order but appears to disregard even the existence of the Order.

for more than seven years despite the pendency of these cases, we still have no declassified returns on the public docket. In the face of this contemptuous behavior, the Government continues to protest about just how darned difficult it is to present a lawful basis on the public record for the Petitioners' continued detention (response at 2-4) leaving the Petitioners with Returns on the public docket redacting large swatches of public information including most, if not all, exculpatory information.

Despite the Government's protestations, Petitioners made a detailed and fact specific Motion setting forth facts in the Return that were redacted but that were already fully disclosed by the Government itself for the politically self-serving reason of justifying its detention program in the public arena. Most of those facts came directly from the DOD and others came from the public filings on the Court record. The Government now attempts to gloss over all of this and make bald assertions that some information that is on the public docket should still be given "protected" status, notwithstanding that it was the Government's burden to comply with this Court's Order and to show a basis for such a protected designation, a burden that the Government does not even contest that it has failed to meet.

#### **PETITIONERS HAVE BEEN HARMED**

The fact that the Government claims that the Petitioners have not been harmed by its refusal to obey this Court's Order is not only nonsense as to the Petitioners individually but ignores the systemic harm that occurs when the Government takes the position that it can willfully and brazenly disobey Court Orders. As argued in the Motion for Rule to Show Cause, the improperly redacted Returns now available

publicly harm the Petitioners in the most profound way by having significant exculpatory information and other data which would, if fully put forth before the public, begin to demonstrate that the Government has no real case against the Petitioners, notwithstanding any embarrassment the Government might suffer. As foreign governments are or will be reviewing the backgrounds of various Petitioners for possible return or admission into their countries it is imperative that the full and complete facts regarding the Government's position for detention of Petitioners be made available.

### **CONCLUSION**

Given the audacious response by the Government this Court should enter the Rule to Show Cause and hold the Government in contempt of court, order that the original "declassified returns" be filed on the public docket and allow counsel and any Petitioner who so desires to submit to this Court for public filing Returns that include the publicly available information that the Government has improperly redacted<sup>3</sup>. Given the Government's continued non-compliance with, if not outright contempt of, this Court's Order and the delays that have already occurred, Respondents should be given a very short time to respond to Petitioners' submissions. In the event the Government continues to seek protected status of any information then it should be required to submit specific reasons to the Court and counsel for each and every fact that

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<sup>3</sup> This remains necessary because the Government has admitted that the declassified but protected Returns originally "filed" also improperly redacted "protected" information. (See Order at 7-8 )



it seek protective status as the Government was already required to do under this Court's June 1, 2009 Order. Under these circumstances, the Government simply must not be allowed to drag this out any longer. Petitioner asks this Court to give the Government no longer than seven (7) days to file its response/memorandum to Petitioners' proposed declassified Returns and for such other and further relief as this Court deems just and proper.

Respectfully Submitted,

/S/ H. Candace Gorman

Counsel for Petitioners

CERTIFICATE OF SERVICE

I, H. Candace Gorman, certify that I today caused a true and accurate copy of Petitioners Reply to Rule to Show Cause to be served upon the following persons by virtue of filing the above under seal with the Clerk's office.

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September 2, 2009

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