Exhibit C

Part 1 of 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE: GUANTANAMO BAY
DETAINEE LITIGATION

MS No. 08-442
Washington, DC
March 26, 2009
2:00 P.M.

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE THOMAS F. HOGAN
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

COURTROOM DEPUTY: This is In Re: The Guantanamo Bay Detainee Litigation. Miscellaneous Number 08-442. I'd ask the parties to step forward and identify themselves for the record, please.

THE COURT: All right. Let's go ahead while we're waiting for the connection to be established.

MR. AHERN: Good afternoon, Your Honor, Paul Ahern on behalf of the United States. With me at counsel table is Terry Henry.

THE COURT: Thank you.

MR. SCHULZ: Good afternoon, Your Honor. Dave Schulz, I'm here on behalf of the press applicants.

THE COURT: All right. Thank you, Mr. Schulz.

MR. REMES: Good afternoon, Your Honor. My name is David Remes, I'm here on behalf of the petitioners. With me at counsel table is Brian Foster and Alan Pemberton of Covington and Burling.

THE COURT: All right. Thank you. The Court has convened this afternoon to hear argument on the respondent's motion to confirm designation of unclassified factual returns as protected. The opposition to that and the press applicant's motion to intervene for the limited purpose of opposing this motion, and the petitioner's response to the principal motion, as well, that Mr. Remes is here to argue on

on behalf of petitioners.

As a matter of precedence, I think the press application motion to intervene, which has been opposed, we should address for a few minutes, and then I intend to go to the merits as well. Whether the press should be permitted to intervene, and if so, whether the public has a right of access to these returns.

And the parties have addressed briefly, let us say, a permissive intervention under Rule 24. And so whether or not the Court should allow the press to intervene is the first issue I want to talk about, as to the right of access to the civil trials or civil proceedings, and what authority we have on this circuit for that. And whether there's something different from these habeas cases that are only found to exist by the Supreme Court's decision in June of 2008 that causes any concern and if national security interests are implicated in allowing the press access or not, as a preliminary issue as to whether or not they should be allowed to intervene.

The press made the motion, let me start with the press on that and then we'll go to the merits in a minute.

MR. SCHULZ: Thank you, Judge. On the basic question of whether there's a right to intervene or whether intervention is the proper procedure here, I think it's quite clear in the case law that intervention in an ongoing action is the way that the press or any member of the public is

allowed to assert their rights under both the Constitution and the common law to have access to court records. And that's what the press is asserting here.

The Government objects to the intervention itself, but really their arguments merge kind of to the merits of the -- and with the procedure. I think as a preliminary matter there is no doubt that Rule 24 is the proper procedure here. We've cited several cases both within this circuit and out dealing with civil cases.

THE COURT: You agree it would be a permissive intervention?

MR. SCHULZ: I'm not sure, and actually -- some of the cases we cite -- I think the EEOC case does deal with it as permissive intervention. But I think it would also qualify under 24(a), a theory that the right that we're asserting here is so inextricably wound up with the underlying proceeding that it couldn't be resolved outside of this proceeding.

But under either branch of Rule 24, the issue is, is Rule 24 the proper procedure? I think it is. And then we move on to the next question of: What's the nature of the right we're asserting and do we have that right? But I think we have the right to be heard and that the intervention to allow us to participate in the proceedings should be granted.

THE COURT: Is it within my discretion, if it's permissive intervention, if I decide that your participating

in these cases -- these very unusual cases, would delay or hinder their progress to disallow the intervention but allow you to proceed as amicus.

MR. SCHULZ: Well, I don't think that would be the proper procedure. Our primary goal is to assert the rights that the press has to inspect records here. We don't intend to participate in any of the merits of things -- we don't -- if there's discovery. We're not asking to become a party here to participate. But what we're asserting is that the records that get filed in this proceeding, we're not just talking about any records.

These are records where the Government is offering up its reasons for holding these detainees, many of which have been held for six years without charge, and they are submitting them to a court. And under the rules of the United States and the way things work here, the public has a right to see those records unless the Government makes a showing, as the reasons to withhold information, and --

THE COURT: Is there a D.C. Circuit case, if these are civil matters, the right to come into these cases?

MR. SCHULZ: There's not a D.C. Circuit case dealing with the civil issue. The D.C. Circuit has never said that there's no right in a civil matter, contrary.

THE COURT: Or that there is a right?

MR. SCHULZ: Or that there is. But every single

circuit that's looked at this issue, and I'm not aware of a district court decision going the other way. If you look at our brief, these cases haven't even been litigated since the late 80s, it's so well-settled. It was an issue when the nature of the right was first being resolved by the Supreme Court, but no one has even raised this in the last 20 years.

And there's a legion of cases all across the country where the press has asserted rights to information filed with public courts in civil proceedings and have been allowed to assert those rights.

THE COURT: What cases did you have as to the special class of cases, these habeas cases, as to any decision of law that you have a right to intervene or that you have a permissive intervention that could be --

MR. SCHULZ: I'm not aware that we have a civil case where permissive intervention has been allowed. We cite several cases in our reply memorandum on Page 3 and 4. I'm sorry, I take it back. Where they have been held subject to the right of access. Some of those are treated as a common law right and some apply the First Amendment standard without being clear about the right.

But we found I think in three cases in different jurisdictions, one from Ohio and from New York -- two from New York, one from California. And in every one of those the Court found there was a right of access. There's not a single

case that the Government has come up with on the other side saying that there's no right of access, and it wouldn't make sense under either the logic and history prong or analysis that the Supreme Court has said that should be applied or under the reasonably related standard that the 2nd Circuit and others have applied.

There's a right of access to the records in this case, which are the fundamental evidentiary basis on which the rulings of this court will be made for the public to see those, again, unless the Government makes a showing. Now, we're not -- as we're clear in our motion, we're not arguing at this point about classified information. The Government has said they're redacting this stuff. We're not here saying we're insisting on saying that. But what we are saying is that when the Government prepares, as it's required to do under the protective order, unclassified returns, that the public has a right to see those returns when they are filed with the Court --

THE COURT: That's getting to the merits. Let me go back for a minute to the intervention. If you're allow to intervene in this case that I have as an overall governance-type matter as opposed to individual ones. Does that then open the door for you to intervene in each case for each judge as you wish to see records that you think should be public that have been protected under the order?

MR. SCHULZ: I would assume that that wouldn't be necessary. That the whole point of having this Case Management Order is to set the procedures that will be followed. What we're looking for, Judge, is not so much the stamp of approval saying we can intervene, but we're looking for a ruling from this Court that says the public has a right to look at these records unless the Government makes a showing, and to be heard on that. And intervention, as they say, is consistently the procedure that courts have followed.

THE COURT: Some suggestion that these habeas cases -- I thought you had made in your application -- have an overlay of criminal with them.

MR. SCHULZ: Yes, Judge, that was to respond to a point that the Government was making which it has no foundation in the case law that there is no right of access outside of criminal proceedings, and therefore, they say no right of access in these habeas petitions.

We show in our papers both that that premise -- that there's no right of access outside of criminal laws is fundamentally wrong. It has been rejected by every court that has addressed it, and it's inconsistent with what the Supreme Court said in the very first case, Richmond Newspaper. So that premise is wrong.

And then we go on to say that even if it had some merit, if you were going to look at this as to whether it was

civil or criminal, this is really more like a criminal case than a civil case, so all the policy reasons would apply here for allowing public access.

THE COURT: Well, obviously, they always have been historically treated as civil regardless of some of the overlays, even though many of these cases historically arose from criminal prosecutions.

MR. SCHULZ: And that point is not critical to our position.

THE COURT: What is the distinction, if you're allowed to file an amicus brief, and I consider your arguments substantively as opposed to allowing you to intervene and establishing a precedent where you can potentially intervene in each of these cases individually.

MR. SCHULZ: Judge, I can think of at list one in particular, and that is the right of the press to appeal a decision denying the access right. If this Court were to review these records, and say, no public right. We have a right to appeal that. As an amicus, it would be difficult to assert that. We'd be forced to proceed by mandamus or some other way.

But I think, again, that amicus isn't really intended to be a procedure to allow people to assert their own rights in a litigation. We're not here to advise the Court on what we think should be done with respect to the parties'

rights here. We are asserting the press's rights and the public right, which is independent of the rights of the parties.

THE COURT: All right. Let me talk to the government just on the intervention motion for a minute before we get back on the merits.

MR. SCHULZ: Okay.

THE COURT: Thank you, sir.

MR. AHERN: Thank you. Good afternoon, Your Honor. The Court has raised a question about the nature of these proceedings, and I think there is no question these matters are unprecedented. At best, the right for a detainee held in military custody at a time of armed conflict to challenge his detention and habeas, at best, has only been recognized since 2004 in Rasul.

And even then, the right that is at issue here -- the constitutional right to habeas has only been at issue since last summer. The Court is properly concerned with the novel nature of these cases. There is no direct analogue. They are not criminal cases, they are not necessarily civil cases either. They are sui generis.

THE COURT: But if you look upon these as sui generis but having historically an overlay of -- been nominated as civil cases, there are circuits, although this one hasn't specifically ruled, allowing or recognizing that

there is a First Amendment right to review civil litigation papers.

MR. AHERN: The precedent in this circuit, Your Honor, is crystal clear, and it comes from Center for National Security Studies, where the D.C. Circuit said, I quote: Neither the Supreme Court nor this Court has applied the Richmond Newspaper's test outside the context of criminal judicial proceedings or the transcripts of such proceedings.

And that makes eminent sense because the courts test -- the Supreme Court's test laid out in Free Press Enterprises has to do with the historical nature of access to criminal trials and the proceedings surrounding criminal trials.

THE COURT: Is there any doubt that these cases have become some of the most notable in recent court matters, the public interest and the press interest in these cases?

MR. AHERN: Noteworthiness, Your Honor, is not the test. And to import noteworthiness into some kind of historical practice I think misapprehends what the Supreme Court's test is, and it misapprehends the limited right to intervene or the limited attachment of the First Amendment right to proceedings like this.

Even if you look at the Press Enterprises test, the two-part test, whether the place and the process have historically been open to press and public, I think clearly --

habeas cases in a time of armed conflict, there is no historical precedent for that, and clearly that prong is not met.

But the second prong is whether the public access plays a significant positive role in the functioning of the particular process. That interest is marginal in this case. Given that most of the proceedings involved here, as the Court is aware, are necessarily closed, they involve classified information. There's no reason why the check of public access to these particular documents at this time would positively affect the functioning of the judicial process.

And, indeed, I don't want to get too far into the merits, but the Government is not -- we are not asking to permanently keep from the public record the information that is publicly releasable from these returns or from any other pleading that is filed in these cases. We're simply asking the Court to take account of the unique practical and procedural problems in these cases and to delay the time for filing those on the public record.

THE COURT: Yeah, that gets a little bit more to the merits. Let me ask you this. Hasn't our circuit interpreted Rule 24(b) to permit third parties to seek information sealed by a protective order, challenge that protective order in civil cases?

MR. AHERN: Your Honor, again, I come back to the

unprecedented nature of these cases. The civil rules, I would argue, do not apply to these cases, except by analogy. The analogy to allow a party affected by the protective order I suppose would be a valid analogy, but I don't think you can draw a straight -- you can import straight the Rules of Civil Procedure into these proceedings.

And for all of these reasons that we've been discussing, there just simply is no right to intervene in these cases. And I would also note that even under the Supreme Court's precedent, the right to intervene or the First Amendment right that attaches to proceedings, it is a qualified right, necessarily so. It's trumped by other interests.

For example, the right of a criminal defendant to avoid unnecessary publicity or prejudicial publicity. Certainly concerns of national security and other interests which we have laid out in our papers are valid concerns in this case. And we are proposing to the Court a narrow tailoring to address any prejudice that the press applicants think that they might encounter. Because, again, we're not asking to permanently seal these records, we're simply asking for a delay in releasing publicly fileable information to the public.

THE COURT: Again, I think I'll get to that as we go into the merits argument in a few minutes with the

petitioners and the press, as I may allow them to argue. The cases that the defendants -- I'm sorry, that the potential interveners have cited, one is the Pyramid company out of the Second Circuit, specifically recognizing a right to civil proceedings, it's a 2006 case.

Why wouldn't I think if our circuit was presented with similar factors they would come to that conclusion. The Third Circuit has an earlier case, 1984. The Sixth Circuit, one in 1983. Why wouldn't three circuits be convincing?

MR. AHERN: Your Honor, the Center for National Security Studies is only since 2003, it's not a case of vintage, it's recent, it's precedent in this circuit. And most of the cases that the petitioners cite, indeed these do have a criminal overlay to them. Whether another circuit has recognized a First Amendment right attaching to habeas proceedings, let's say, that come out of an underlying criminal proceeding, that would still be consistent with what the D.C. Circuit has said, and it would not be consistent with allowing intervention in these cases, which do not have a criminal overlay.

THE COURT: Well, you're saying these cases, the detainee cases do not have a criminal overlay?

MR. AHERN: I'm saying they are not criminal proceedings, Your Honor. There's no historical basis for seeing them as criminal proceedings. These are individuals

who are detained by the military during a time of armed conflict. The question before the Court is not -- or before the jury, I guess in the criminal context, is not whether beyond a reasonable doubt they have committed a criminal offense. It is, as the Court is aware, a much different standard, and these proceedings, therefore, are much different than habeas proceedings that review the procedural or the constitutional efficacy of a criminal trial.

THE COURT: All right. Thank you, Mr. Ahern. Let me ask the press just a couple more questions on this and then we're going to move along.

MR. SCHULZ: Yes. And, actually, if I could reply to just a couple of points?

THE COURT: All right.

MR. SCHULZ: Me first?

THE COURT: Go ahead.

MR. SCHULZ: There were just two that I wanted to underscore because -- we just heard from the Government, again, citing this National -- Center for National Security Studies case, that case absolutely, 100 percent, does not hold that the right does not exist in civil proceedings. They're citing to dicta -- that was a case, it was a FOIA case, where the applicants were essentially arguing that executive branch documents held by the Justice Department could arguably be within the First Amendment right. And this Court quite fairly

said, you know, no one has ever extended it that far and we're not going to.

The other case they cite, another case, was arguing that there was a First Amendment right of access to soldiers on the battlefield. Again, the Court said, you know, that's not what this right is about, this Supreme Court hasn't applied it in those. It did not address the question of whether it would apply in a civil context, it certainly didn't hold that, and every circuit -- we cite the Seventh Circuit, the Fourth Circuit, the Third Circuit, the Second Circuit --

THE COURT: Slow down.

MR. SCHULZ: I'm sorry. Everyone has said that it applies. The second point, and it's related because it goes to this civil/criminal distinction and why it doesn't really make sense. We just heard the Government say that the nature of these proceedings are kind of unique. Well, it's true that the subject matter is unique, it's not true that the nature of this proceeding is unique.

This is an Article III court holding evidentiary hearings in habeas petitions which have existed as long as the republic has existed. The Government continuously confuses the question of whether the right can be overcome because of unique circumstances, national security needs, over whether the right exists. And under the logic and policy analysis, the history and policy analysis that the Supreme Court said

applies, it quite clearly does.

The right applies any time in an evidentiary hearing. The power of the United States is being adjudicated to an individual in a proceeding before a neutral arbitrator where you're following the rules of evidence. The question the Supreme Court said is: Does the right of public access further those proceedings? And clearly it does, for all the reasons that cite in criminal cases it applies here.

THE COURT: Let me follow up with that last thought of yours. Obviously, the Guantanamo habeas proceedings are sui generis, they were first -- or found exist in 2008 by the Supreme Court.

MR. SCHULZ: Sure. The subject matter is --

THE COURT: We're talking less than a year that this right to exist, there's no tradition of public access historically to this particular type of proceeding that didn't exist before. We never before had enemy combatants, except the Government's terminology at war with the United States have been found to have constitutional rights of habeas corpus. It's the first time this has happened.

MR. SCHULZ: Here is where I think we would see it a little different, Judge. If Congress today, which is dealing with this financial meltdown, passes a law, and says, we're going to create some new financial crimes that never existed before. It's going to be a crime the take a bonus

from federal tax money or something -- I'm sorry.

No one would say in a criminal prosecution under this new law because this was never a liability before, this is a new theory, it's a new law, we have to start all over and decide whether the right of access applies. The issue is, what is the type of proceeding that is going on here?

This is a habeas proceeding just like other habeas proceedings, granted it deals with different subject matter, potentially different levels of liability, but the nature of the proceeding is fundamentally the same. And because of that, for all the reasons that the constitution requires criminal proceedings to be open, it requires this type of proceeding to be open, subject to the Court's ability to close it where necessary.

But at a fundamental level, the right of access exists and it should be recognized, and then we should be arguing about the scope of it. Because the third point, I want to make quickly, is we just heard the Government again quote about that there's no --

THE COURT: Slow down.

MR. SCHULZ: -- no public purpose served by letting the press and the public come in to hear classified information. That's not what we're talking about, they keep changing the issue. The issue is, the public has a right to know what's going on in these proceedings to the extent that

it can possibly be made known where national security requires some closure, the Court has full power to do that. But the Government has an obligation to make a showing, which they're not making here. I don't want to get into the merits, but this is the third time in three years they've been before a court essentially saying, let us decide what will become public and when it will become public.

THE COURT: Again, getting to the merits. The benefit of public access is what you're arguing that they should have the light of day shed upon them, et cetera. Is that minimalized by the Government saying that they will have access to declassified returns eventually when they're filed?

MR. SCHULZ: It's minimized but --

THE COURT: Intervention is not necessary.

MR. SCHULZ: It's minimized, but I think, Judge, under the proper analysis the question -- it says the Government made a showing to justify withholding this information now, and even if they have, and we would dispute that they have, is it -- they say narrowly tailored because some day we'll get to it. That is absolutely not sufficient. There should be some time limits imposed.

When the Court of Appeals had Parhat and they were making these same arguments about, we don't have to designate this stuff, they said get it done in 30 days. When this Court entered it's protective order -- I mean it's Case Management

Order, it said that unclassified returns should be filed in 14 days. We've been here for three months litigating this motion and they still haven't made one available to the public. So, it is absolutely not narrowly tailored and not sufficient for the Government to say some day we'll give this out.

THE COURT: Do I look upon the issue as to whether or not you should be allowed to intervene as to potential harm to national security, or do I only look upon that if I let you intervene and argue about the merits?

MR. SCHULZ: Again, I think that confuses the merits with the intervention right. I think we have a right to intervene. If the Government wants to make the case that national security justifies the breadth of closure that they want to assert here, we can argue about that. But that's not a reason to keep it out. I think that's a fundamental -- and I just would comment on this. They cite to the Third Circuit case.

The Third Circuit and the Sixth Circuit reach different conclusions about the right of access in two cases raising the same issue, which was a different issues, just to underscore, than here. The issue in those cases was whether the right of access extends to an executive branch proceeding, a deportation hearing conducted by the Department of Justice, not an Article III case. They reached opposite conclusions.

But even if you read the Third Circuit opinion by

Chief Judge Becker, I think there is a confusion there that the Court would understand. He purports to say at the beginning of his opinion that the issue before the Court is whether the right of access exists in these deportation hearings, then mistakenly brings in this notion of, well, these all deal with potential terrorists, and therefore, we have special concerns.

But then his holding is, the right of access doesn't exist where you have these special proceedings involving terrorists. So, he doesn't even really match up where he said he was starting. He seems to really be saying that the right -- that applying the standard that would apply, assuming the right exists, the Government has met its burden here. So, I think there's just a confusion there.

The other thing to underscore about both of those cases is that both the Third Circuit and the Sixth Circuit, while they reached different decisions on the merits in an Article II proceeding, they both held that the press -- the press in those cases had a right to intervene and had a right to be heard. So, on the intervention question, neither of those is consistent with what the Government is arguing here.

THE COURT: All right. Thank you. The Court's going to do as follows as to this press applicant's motion to intervene for the limited purpose of opposing the Government's motion to confirm designation of unclassified factual returns

as protected. It will issue a brief oral opinion at this time so we can proceed with this litigation, accepting the press at their word that it's for the limited purpose of opposing the Government's motion.

They acknowledged, however, that they wish to be able to be in a position to appeal as a party of interest. But that it would not mean that they would be, by this ruling, if I grant their request, as a permissive intervener intervening in every case -- individual case, or be allowed to intervene automatically in every case.

The parties hadn't expressly discussed at length in their pleadings, Rule 24(b)(1), but it gives the Court the authority under the rule to permit anyone to intervene who has a claim or a defense that shares the main action or question of common -- common question of law or fact, but that has been interpreted to permit third parties to seek information for use besides litigation in our circuit.

The circuit has specifically said that people can intervene for the purpose of seeking access to materials that have been shielded from public view by seal or by a protective order. And one of the cases: In Re: Vitamins Antitrust Litigation by District of Columbia -- it's a District Court case by Hogan, J. The test, really looking for permissive intervention, is the grounds that they have to intervene the subject matter jurisdiction as timely, and that they have a

common cause of the main action, in essence, a very flexible -- according to the circuit. And have recognized a right for third parties, that I said, to intervene, to obtain information that is sealed or contained in a protective order.

Really, the press is asking the Court not to extend authority to the Government to seal these records further. In other words, questioning the protective order, which I think is a requirement that the circuit has set forth, and that has been recognized, as I said, in other cases to challenge a protective order by third parties is appropriate.

It seems that timeliness is not an issue as one of the other factors because this has not yet been decided. There's still ongoing matters. We're still in a discovery phase, in essence, in many of these Guantanamo cases. Certainly, a qualifying common question in that -- the issues regarding the protective order and what can be sealed or not.

So, the Court's going to rule, just as a preliminary matter on the issue of permissive intervention, it's going to grant the press's application for a limited purpose as indicated to oppose the Government's motion to confirm designation of unclassified fact returns as protected so that they may be heard as to this overall issue.

It does not recognize the press's authority to intervene in any particular case. And it's within this Court's discretion to grant such an intervention, so I'll

allow the press to become involved as to that extent. I think there's a minimum prejudice to the Government in the continuation of these cases. It really affects not any substantive hearings that are ongoing, but really acts as to these unclassified returns, and would not, I hope, open the door to delay by subsidiary litigation with each judge that has these individual cases.

So, in granting that motion then we'll go to the merits of the Government's motion to confirm designation of unclassified factual returns as protected. In other words, as a class, until such time as they are declassified, as I understand the Government's position, to allow declassification review, and then make the factual returns public, but not until then because of national security concerns contained in the unclassified versions.

And for clarity sake, as I understand -- the Government can correct me -- unclassified factual returns done at the request of the Court in its order -- Case Management Order, does not mean the factual returns are declassified. Unclassified is a term of art meaning that they have been redacted to some extent, but made available to the counsel for the petitioners under the restriction of the protective order to be used in the prosecution of their habeas cases, as may be appropriate, again, under the terms of the protective order, which such individuals are cleared to receive them, et cetera.

That does not mean they are declassified for public consumption, there's a distinction that people sometimes miss. Declassification means they have to go through all the relevant agencies line by line and be declassified in part and then other parts may not be. And once they are declassified, presumably, and the Government has to answer this for the Court eventually, that they will not be protected and remain under seal.

So, with that background, let me hear from the Government as to their motion to designate every unclassified return as protected because they may inadvertently disclose classified information, some returns, or as a group may cause national security injury because of the reviews that can be made by others who would understand what these unclassified returns reveal of the Government's investigation of these matters.

MR. AHERN: Thank you, Your Honor. As we stated before, the Government recognizes that it has an obligation to release the publicly releasable information in the returns, information in other pleadings, indeed, information in the Court's orders that are classified at some point on the public docket to the extent that it can be publicly releasable.

The question before this Court is simply how to prioritize competing rights and interests in light of limited professional resources in the national security agencies,

given the magnitude and the complexity of the task and still give full effect to the Supreme Court's mandates in Boumediene and Hamdi.

This Court has already mentioned the unprecedented nature of these proceedings, the novelty of them. Indeed, the Court and the Government right now are in the process of trying to organize and litigate almost 200 cases proceeding simultaneously on the basis of information that is, in large part, classified, and was produced for a purpose entirely separate from the judicial function and the litigation that we're engaged in now.

We laid out in the pleadings some of our concerns with the precipitous release of these unclassified returns to the public or broader dissemination than allowed under the protective order, and I will talk about that in a second. But before I do that, I think it's helpful to the Court to understand what the national security agencies are doing right now, what they're involved in.

As the Court noted a few minutes ago, across most of the merits judges in this court, about 150 cases in active litigation simultaneously, all of them are proceeding through discovery right now. We're litigating motions to compel based on various interpretations of this Court's CMO, Section I.E.1. We're also litigating separately a number -- scores of requests for good cause discovery under I.E.2. The merits

judges have begun ruling on those discovery motions. We have orders requiring us to produce discovery.

When a court in these scores of cases orders us to produce some discovery, the national security agencies then are engaged in a process of searching for the information. As the Court is a well-aware, it goes through a clearance process that is burdensome that must consider national security implications, the format that the information may be released in, what information is not responsive and needs to be taken out, and how the information can then be presented in a form as required.

Thousands of documents right now have either been produced in discovery or are in the process of being produced. In addition to that, separately, the Government recognized, and certainly the petitioners I think will confirm this, that the unclassified returns for reasons that the Court pointed out are not particularly helpful in an individual case. They are heavily redacted. And as a result we all recognized that there needed to be some kind of a product to give to the petitioner in these cases the most information that he could possibly have in order to challenge his detention.

So, as a result, we have been engaged in an effort of declassifying information in the factual returns based on -- it varies among the different merits judges, but generally based on priority requests from counsel, which are

then prioritized based on their visits to Guantanamo to see their client or the impending nature of a merits proceeding. The information that is requested to be declassified -- it is then processed in this very burdensome line by line review, the multiagency process, specifically, for the detainee's eyes only. So that the distribution is limited, the dissemination is limited.

And in that manner those documents constitute the absolute most information that could be released to the detainee you allow him to challenge his detention. In that process we also have thousands of documents that have either already been processed or are in the clearance process right now. So, the magnitude of that task is enormous.

Beyond that, we recognize that there is a need and we have received requests from counsel to produce declassified versions of these documents so that they can share more information with witnesses and experts. And the national security calculus involved in declassifying the document for that purpose because it is being disseminated to a broader audience is different, so the versions that are produced are different. But all of this is with the goal of presenting the detainees with the most information that they can have in order to challenge their detention.

In addition, we are separately, apart from this, also prioritizing requests to declassify documents that are

not in the return. These are documents that are produced as part of the discovery and they may have been produced as exculpatory under the CMO, that's a separate process. And, again, you add all this up and we're talking about thousands of documents in the process.

Also, we're processing new factual returns, as the Court is aware, we still have some returns to do. We're creating unclassified returns for those newly filed factual returns that will be filed. And, also, we are now processing requests from the individual merits judges to declassify other pleadings that are filed in a secret format, and to declassify some of the orders that are issued in these cases that are in the secret format.

And the bottom line is, all of this, the thousands of documents, the searches that are going on right now simultaneously across all of the 150 cases that are in litigation, the responsibility for doing that by and large generally in the agencies, it all falls on the same shoulders. It is the same professionals, the same individuals who cannot be created overnight, who are classification authority specialists who deal with this who are responsible for all of these things in the habeas proceedings as well as processing similar requests that come up, for example, in CIPA litigation, regular criminal cases. So, on top of their normal plate they have this incredibly burdensome task.