

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

IN RE:

**GUANTANAMO BAY
DETAINEE LITIGATION**

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) **Misc. No. 08-442 (TFH)**
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**RESPONDENTS' UNOPPOSED MOTION FOR A SECOND, ONE-DAY
ENLARGEMENT OF TIME TO RESPOND TO THE PRESS
INTERVENORS' MOTION FOR AN ORDER TO SHOW CAUSE**

Respondents hereby respectfully request a one-day extension of time, up to and including November 18, 2009, to respond to the motion by the Associated Press, The New York Times Company and USA Today (the “press intervenors”) for an order to show cause why the Government should not be held in contempt (Dkt. No. 1868).¹ The Court previously granted the Government’s request to extend the deadline for its response from October 20 to November 17, 2009, stipulating, however, that it would grant “[n]o further extensions of time . . . absent exceptional cause.” *In Re: Guantanamo Bay Detainee Litigation*, No. 08-0442, Minute Order (Nov. 6, 2009). For the reasons discussed below, the Government respectfully submits that exceptional cause exists for the modest, one-day extension of time sought herein.

As explained in the Government’s initial request for an extension of time (Dkt. No. 1871), Respondents are preparing a two-fold response to the press intervenors’ motion. First, their response will show that the press intervenors’ interpretation of the Court’s June 1, 2009, Order regarding the filing of publicly releasable factual returns is unsupported by the text of the Order or the context in which it originated, and that the Government complied with the Order

¹ Pursuant to Local Rule 7(m), Respondents have conferred with counsel for the press intervenors, who advised that the press intervenors do not oppose this motion.

when, after making an enormous commitment of agency resources, it declassified and publicly filed the factual returns in over 150 cases. Second, and most pertinent for purposes of the instant request, the Government has processed a sample of five factual returns in the manner that the press intervenors propose, both to quantify the agency time and resources that would be diverted from the *habeas* litigation (and the resulting delays) if the intervenors' reading of the Court's Order were adopted, and to identify recurrent categories of sensitive but unclassified information that the Government would seek to redact from returns filed on the public record. The sample includes the return submitted in *Al-Ghizzawi v. Obama*, No. 05-2378, pursuant to Judge Bates' Order of September 24, 2009 (Dkt. No. 266).

In addition, Respondents have prepared at least five declarations that: (1) document the time and effort devoted by each affected agency to processing the sample returns, including the identification and highlighting of sensitive but unclassified information that cannot be released on the public record; (2) document the specific types of such sensitive information that Respondents submit should be redacted from the returns; and (3) explain the law enforcement, national security, and other important governmental and private interests that support the Government's position (to be set forth in its response) that the Court, even if it were to agree with intervenors' position, nevertheless should categorically approve the withholding of these recurrent types of sensitive information from returns filed on the public record.

Notwithstanding the complexity of this submission, the Government completed the sample of re-processed returns in sufficient time to prepare and file its response to the press intervenors' motion, with supporting declarations, by the November 17, 2009 deadline. However, concurrent with the preparation of the Government's response in this case and to the Court's Order in *Al-Ghizzawi*, the Department of Defense completed an ongoing revision and

standardization of its procedures for the continuing classification or declassification of detainee-related information used in support of these *habeas* proceedings, with the potential to reduce to a significant degree the amount of information that must be withheld from the publicly releasable returns. The five returns in the sample, including the return in *Al-Ghizzawi*, were prepared under these new procedures.

In preparing, however, actually to submit the *Al-Ghizzawi* return as Judge Bates had directed, Respondents discovered that information was still highlighted in the return that under the new procedures should not have been designated for redaction. Similar errors regarding application of the new procedures were then discovered upon review of the other four returns in the sample. As a result, all five returns had to be re-processed, and the completion not only of the returns but of the declarations supporting the Government's response to the press intervenors' motion was delayed by several critical days as the November 17 deadline approached. The Government made every effort to make up for this lost time, and although partially successful, was not able to do so entirely.

The Government respectfully submits that the complex nature of its response, combined with the delays resulting from the first-time application of new Defense Department procedures regarding the continuing classification or declassification of detainee-related information used in these proceedings, constitute exceptional cause justifying a brief, one-day extension of time to complete this important and multi-faceted submission.

For the foregoing reasons, Respondents' unopposed request for a one-day extension of time should be granted.

Dated: November 17, 2009

Respectfully submitted,

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