

Exhibit 5

December 8, 2004 Order
(02-cv-0299; Dkt. No. 138) (Green, J.),
Filed With Classified Coordinated Motion

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

)	Civil Action Nos.
)	02-CV-0299 (CKK), 02-CV-0828 (CKK),
)	02-CV-1130 (CKK), 04-CV-1135 (ESH),
<i>In re Guantanamo Detainee Cases</i>)	04-CV-1136 (JDB), 04-CV-1137 (RMC),
)	04-CV-1144 (RWR), 04-CV-1164 (RBW),
)	04-CV-1194 (HHK), 04-CV-1227 (RBW),
)	04-CV-1254 (HHK)
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**ORDER FOR SPECIFIC DISCLOSURES RELATING TO RESPONDENTS' MOTION
TO DESIGNATE AS "PROTECTED INFORMATION" UNCLASSIFIED
INFORMATION AND PETITIONERS' MOTION FOR ACCESS TO UNREDACTED
FACTUAL RETURNS**

On November 8, 2004, respondents filed a motion for designation of certain information as "protected" pursuant to the Court's Amended Protective Order. Counsel for petitioners filed a response saying they were unable to take a position on the respondents' motion until they had an opportunity to review the material the respondents sought to have deemed "protected." On November 22, 2004, respondents filed a submission stating that petitioners could identify the material at issue by comparing the classified factual returns provided to counsel at the secure facility with the factual returns filed on the public record. Counsel for respondents argued that because more than sixty factual returns are at issue, requiring any more specificity would be "burdensome and unnecessary." Respondents' Response to Petitioners' Motion for Access to Unredacted Factual Returns and to Compel Compliance with Order on Protected Information Procedures ("Response") at 5.

In a related matter, counsel for petitioners filed a motion on November 18, 2004 seeking access to the full classified factual returns that respondents had submitted to the Court for *in camera* review. Petitioners noted that the classified factual returns that were provided to them for review at the secure facility contained redactions of information that had been fully disclosed to the Court. Counsel for respondents filed an opposition to the petitioners' motion, claiming that the redacted materials involve sensitive information concerning intelligence sources and methods and "do not support a determination that the detainee is not an enemy combatant." Response at 7.

As provided in the Court's Amended Protective Order of November 8, 2004, it is for the Court to determine what unclassified information should be deemed "protected" and treated by all counsel with the same safeguards they would employ with respect to classified information. It is the moving party's obligation, however, to show with exact detail the specific information the party seeks to have designated as "protected." The respondents have fallen far short of the precision necessary to inform the Court and opposing counsel of the exact information they seek to be deemed "protected." Accordingly, it is hereby

ORDERED that respondents shall file with the Court Security Officer on or before December 17, 2004 two copies of the factual returns in the above-captioned cases (one copy for the Court and the other copy for counsel for the petitioners) highlighting with a colored marker the exact words or information in each factual return the respondents seek to be deemed "protected." Because the factual returns already submitted to the Court differ from the factual returns available to counsel for the petitioners, the Court wishes to make clear that it wants the marked copies submitted to the Court pursuant to this Order to be identical in all other respects to

the factual returns earlier submitted to the Court for *in camera* review but not for review by counsel for the petitioners. In addition, the marked copies submitted to counsel for the petitioners pursuant to this Order shall be identical in all other respects to the factual returns earlier submitted to counsel for the petitioners at the secure facility.

So that the Court may better understand the exact nature of the information in the classified returns that respondents have disclosed to the Court for *in camera* review but that respondents have not disclosed to counsel for the petitioners, and to assist the Court in its ruling on Petitioners' Motion for Access to Unredacted Factual Returns, it is

FURTHER ORDERED that on the copies of the factual returns submitted for the Court's review for purposes of determining what information respondents seek to be deemed "protected," respondents shall also clearly indicate with a marker of a different color all information withheld from counsel for the petitioners in the factual returns located at the secure facility. To clarify, the second color on the Court's copies of the factual returns shall be used to inform the Court of the exact information disclosed to the Court but not disclosed to counsel for the petitioners.

IT IS SO ORDERED.

December 8, 2004

/s/

JOYCE HENS GREEN
United States District Judge