

**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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DECLARATION OF DAVID A. SCHULZ

I, David A. Schulz, declare under penalty of perjury as follows:

1. I am a member of Levine Sullivan Koch & Schulz, L.L.P., counsel in this action to The Associated Press, The New York Times Company, and USA Today (collectively, “Press Intervenors”). I submit this declaration in support of Press Intervenors’ opposition to the Government’s motion to amend prior orders governing the sealing of unclassified material and to delay public filing of the unclassified Factual Returns. This declaration is based on my personal knowledge.
2. Shortly before the Government filed its motion to amend, counsel for the Government, Lisa Marcus, contacted me and my colleague Jeanette Bead to discuss new categories of unclassified information the Government intended to seek permission to withhold from the public on a blanket basis. We participated in two “meet and confer” calls with Ms. Marcus regarding the Government’s anticipated motion; James Gilligan, another lawyer for the Government, participated in the second call.
3. During these calls, I advised the Government lawyers that Press Intervenors did not object, in principle, to a categorical approach that was limited to carefully defined categories of facts that could properly be withheld on a categorical basis. I clarified that certain discrete types

of information might categorically be agreed for redaction if this would serve to expedite public disclosure of the unclassified Returns, the same position taken by Press Intervenors at the hearing on their contempt motion months earlier.

4. I further advised during these two phone calls of the strenuous objection of Press Intervenors to some of the specific categories being proposed by the Government. Specifically, Press Intervenors objected to four of the categories that were vaguely worded, left broad discretion about the types of information included, and encompassed information that necessarily required a case by case assessment to properly determine if sealing was proper.

5. Counsel for the Government responded that the review process was already far along, and would not voluntarily agree to revise or limit any of the proposed categories in any respect.

6. In response to the Government's request for a still further extension of time to comply with the Court's January 14, 2010 Order, I advised that Press Intervenors would object to any process that would cause any further delay in the public disclosure of the unclassified material in the Factual Returns.

7. On the eve of filing its motion, Ms. Marcus called once again to advise me that the Government "might" file its motion as a "classified motion." I objected, noting the fundamental unfairness of such a procedure. I also observed that none of the matters discussed during the two prior "meet and confer" calls was classified, and pointed out the Government's constitutional obligation to make public the unclassified sections of its motion papers.

8. After receiving notice that the Government had filed a completely classified motion, I made repeated requests for a redacted copy as the Protective Order requires. On April 28, 2010, Ms. Marcus called me to indicate that the Government had decided to prepare a declassified

version of its motion papers, and that redacted motion papers might be available for public filing by the end of the the first week of May.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of May 2010 in New York, N.Y.

A handwritten signature in black ink, appearing to read "David A. Schulz", written in a cursive style.

David A. Schulz