

APPROVED FOR FILING BY THE CSO**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE:**GUANTANAMO BAY
DETAINEE LITIGATION**

) **Misc. No. 08-442**) **Civ. Action Nos.**) **05-CV-2386 (RBW)**) **05-CV-0634 (RWR)**

NOTICE OF COMMENTS ON COURT'S PROPOSED ORDER

Counsel for Petitioners Adel bin Mabrouk, Muhammed Ahmed Salam Al Khateeb, Abdullah Muhammad Abdel Aziz, and Omer Saeed Salem Al Daini (collectively, "Petitioners"), respectfully offer comments regarding this Court's proposed order following the conference conducted by this Court on July 8, 2008.¹

1. We support without qualification the arguments and positions expressed at the conference by the designated spokespersons for all detainees. We oppose the Government's proposed timetable for making

¹ Counsel of record for Mohammed Abdullah Taha Mattan (05-CV-2386) advise us that they agree with our comments.

returns and amendments to existing returns. We also oppose the Government's proposal for separate briefing of substantive legal issues alleged to be of common application to all detainees. For one or more of the Petitioners whom we represent, we contemplate requesting immediate hearings on the merits and consider the delays requested by the Government to be unwarranted and intolerable. We believe that Petitioners' cases are similar to those of many other detainees, and that Petitioners' particular circumstances may serve as examples to assist the Court in formulating an appropriate order.

2. We have received a classified habeas return for one of the Petitioners whom we represent. *Al Daini*, 05-CV-0634, dkt no. 12. The Government has redacted certain information in the classified return, which consists of the classified record of the Combatant Status Review Tribunal ("CSRT") proceedings. The redaction of unclassified information is improper. *See Parhat v. Gates*, No. 06-1397 (D.C. Cir. Jun. 20, 2008), at 33-7. The redaction of classified information from the classified CSRT record is also improper under the Court's protective order. We suggest that the Court's order require that improperly withheld information be furnished to the Court and to counsel for all detainees whose returns reflect redactions,

and that such information be furnished on or before the date specified in the Court's order for the submission of classified returns for detainees whose counsel have not received returns. Such a clarification as to the Government's past practice will have the added advantage of streamlining any future production of information by the Government.

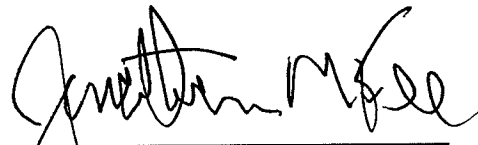
3. We have not received classified habeas returns for two Petitioners. *Aziz, Mabrouk*, 05-CV-2386. We have, however, received these Petitioners' classified CSRT records, also extensively redacted, in proceedings pending before the D.C. Circuit Court of Appeals under the Detainee Treatment Act ("DTA"). In order to avoid further delay, we will consent to the Government's election to treat the classified CSRT records furnished to us in these Petitioners' DTA cases as returns in their habeas cases, subject to the same condition regarding improperly withheld information discussed in paragraph 2, above. We propose that the Court's order offer the Government such an election in all similarly situated detainees' cases, subject to the consent of detainees' counsel.

4. We have not received a classified habeas return for the remaining Petitioner whom we represent. *Al Khateeb*, 05-CV-2386. Nor have we received any classified records in his DTA case. We propose that the Government be ordered to furnish its classified CSRT records to the

Court and to counsel for all such detainees, whose counsel have not received such records in either their habeas or DTA proceedings, without any redactions of classified or unclassified information, on or before July 18, as requested by designated counsel representatives in yesterday's hearing.

We applaud this Court's resolve to conclude these cases expeditiously. We hope that our comments will serve the Court's purpose in this regard.

Respectfully submitted,



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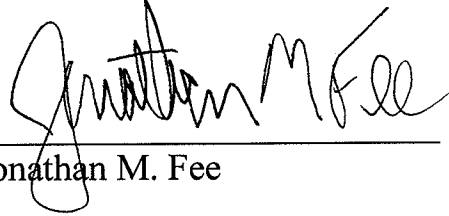
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Dated: July 9, 2008

CERTIFICATE OF SERVICE

I, Jonathan M. Fee, hereby certify that I today caused a true and accurate copy of the foregoing to be served electronically via the Court's Electronic Case Filing system.



Jonathan M. Fee

Dated: July 9, 2008