

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

IN RE: GUANTANAMO BAY DETAINEE LITIGATION)	
)	Misc. No. 8-442 (TFH)
and)	
)	
MOHAMMED AL-ADAHI, <i>et al.</i>)	
)	
<i>Petitioners,</i>)	
)	
v.)	Civil Action No. 05-280 (GK)
)	
GEORGE W. BUSH, <i>et al.</i>,)	
)	
<i>Respondents.</i>)	
)	

**AL ADAHI PETITIONERS' SUR-REPLY TO RESPONDENTS' REPLY
CONCERNING THE COURT'S JULY 11, 2008 SCHEDULING ORDER**

Petitioners Muhammad Al-Adahi, Muhammed Ali Abdullah Bawazir, Zahir Omar Khamis Bin Hamdoon, Suleiman Awadh Bin Aqil Al-Nahdi, and Fahmi Salem Al Assani file this Sur-Reply to Respondents' Reply brief filed September 15, 2008.

Respondents offer the Court a false dichotomy: give them more time or risk national security. The *facts*, however, belie their argument. Although Respondents were required by the scheduling order to file amended factual returns, if any, as to these five petitioners (two of whom are cleared for release and are

ready to go home to Yemen) they only filed as to Mohammed Bawazir, the two-time hunger striker. Petitioners filed a traverse to that August 29, 2008, amended return that has, we believe, been deemed classified.¹

Cutting through Respondents' abstract rhetoric, Petitioners urge the Court to review the classified Amended Factual Return filed by Respondents for Mr. Bawazir and his amended classified traverse. The Court will readily see the make-work nature of the amended return for Mr. Bawazir. It might well be helpful to the Court to have Respondents, the Court, and Mr. Bawazir's counsel review these materials together in closed session. Is there really a danger to national security here? Do Respondents in fact need updated factual returns? Why do all relevant documents predate the filing of his petition on February 7, 2005? Looking at the actual facts of this case will, we believe, assure the Court of the lack of danger, the dilatory tactics of Respondents, and the need for prompt habeas hearings.

The Court may recall that the Al Adahi petitioners, mentioned at the first hearing on the scheduling order by Ms. Gutierrez, said they were ready for hearing on their habeas petition at the earliest possible date. They remain ready and Mr. Bawazir in particular is quite prepared to be heard on his petition for habeas

¹ The undersigned apologizes to the Court for any technical shortcomings in the traverse. Petitioners' counsel, unlike Respondents, are quite limited in their ability to respond under the burdens of the protective order; for example, no clerical assistance. Because of the protective order, counsel for petitioners have a copy of the amended factual return and Mr. Bawazir's filing only in a government facility, not in counsel's office.

corpus. The only thing accomplished by Respondents filing an amended factual return is a delay of, so far, two and one half months. Mr. Bawazir and the other Al Adahi petitioners urge the Court to give them a chance to be heard on the merits.

Dated: September 16, 2008.

Respectfully submitted,

Counsel for Petitioners:

/s/ John A. Chandler

John A. Chandler (Pursuant to LCvR 83.2(g))*
Elizabeth V. Tanis (Pursuant to LCvR 83.2(g))
Kristin B. Wilhelm (Pursuant to LCvR 83.2(g))
SUTHERLAND ASBILL & BRENNAN LLP
999 Peachtree Street, N.E.
Atlanta, Georgia 30309-3996
Telephone: (404) 853-8000
Facsimile: (404) 853-8806

Richard G. Murphy, Jr. (D.C. Bar No. 472769)
Brian C. Spahn (Pursuant to LCvR 83.2(g))
SUTHERLAND ASBILL & BRENNAN LLP
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2415
Telephone: (202) 383-0454
Facsimile: (202) 637-3593

* - Lead Counsel

CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2008, I filed the foregoing electronically through the CM/ECF system, which caused the following counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

Terry Marcus Henry
terry.henry@usdoj.gov

Andrew I. Warden
andrew.warden@usdoj.gov

Judry Laeb Subar
judry.subar@usdoj.gov

James C. Luh
james.luh@usdoj.gov

SUTHERLAND ASBILL & BRENNAN LLP

By: /s/ John A. Chandler
John A. Chandler