

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

IN RE:

GUANTANAMO BAY
DETAINEE LITIGATION

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Misc. No. 08-0442 (TFH)

Civil Action No. 1:08-CV-01104
(CKK)

PETITIONER’S MOTION TO COMPEL

Petitioner Bashir Ghalaab files this motion to compel Respondents to provide the full CSRT record.

1. Petitioner (ISN 175) has been imprisoned at Guantanamo since May 2002. He was, however, one of the last to decide that he wanted legal representation. By the time that the undersigned counsel began representing Petitioner, the Military Commissions Act had stripped the district courts of jurisdiction to hear habeas cases from Guantanamo prisoners. We therefore initially filed a petition in the court of appeals under the Detainee Treatment Act to challenge Petitioner’s designation as an enemy combatant.

2. Promptly after the Supreme Court’s decision in *Boumediene*, In June 2008, we filed this habeas case on Petitioner’s behalf. As evidenced by the cause number of this case, Petitioner’s case is one of the last habeas cases filed on behalf of Guantanamo prisoners. The consequence of this position is that, under the

Court's scheduling orders, Petitioner will be among the very last prisoners to obtain a factual return on his habeas petition. Under the current schedule it will take at least three or four more months before a factual return is filed in this case.

3. We were happy to learn that Respondents had volunteered to provide a CSRT report for those cases in which a factual return had not been filed. Soon after August 6, 2008, we received "a copy of the unclassified paper record" of the CSRT for Petitioner.

4. Unfortunately, the "unclassified paper record" of the CSRT provides no more information about the reasons for Petitioner's imprisonment than was already available on the internet. In fact, the "Unclassified Summary of Basis for Tribunal Decision," which is attached as Exhibit A (with protected information redacted), concedes that the unclassified evidence "is not persuasive in that it provides conclusory statements without supporting unclassified evidence." *See* p. 000007.

5. The real evidence, apparently, was contained in classified exhibits, numbered R-2 through R-11 and D-a. Those exhibits were not provided by Respondents, even though they were part of the CSRT record.

6. We sent a letter to Respondents' counsel on August 15, 2008 (attached as Exhibit B), asking Respondents to advise us if they had already placed

the classified exhibits in the Secure Facility for our review, or if they would agree to do so. We received no response to our request.

7. We are not attempting to circumvent the Court's schedule regarding the providing of factual returns. We are simply requesting that evidence already gathered, marked as exhibits, and used in the CSRT for this Petitioner be provided in advance of the factual returns. Otherwise, it will be at least three or four months before we receive any useful information about why Petitioner continues to be detained.

Therefore, Petitioner moves to compel Respondents to produce the classified exhibits from the CSRT proceeding, by placing them in the Secure Facility subject to the Protective Order, within 10 days of the entry of an order by this Court. Petitioner prays for such other relief to which he may be justly entitled.

Respectfully submitted,

/S/ Murray Fogler

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**ATTORNEY-IN-CHARGE
FOR PETITIONER
BASHIR GHALAAB**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Petitioner's Motion to Compel was served upon the following on August 27, 2008, as follows:

Terry M. Henry
Judry L. Subar
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue, N.W.
Room 7342
Washington, D.C. 20530
Via E-Filing

/S/ Murray Fogler

MURRAY FOGLER