

**IN THE 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),) 04-CV-1136 (JDB), 04-CV-1137 (RMC), <i>In re Guantánamo Detainee Cases</i>) 04-CV-1142 (RJL), 04-CV-1144 (RWR),) 04-CV-1164 (RBW), 04-CV-1166 (RJL),) 04-CV-1194 (HHK), 04-CV-1227 (RBW)) 04-CV-1254 (HHK), 04-CV-1519 (JR))
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**PETITIONERS' RESPONSE TO RESPONDENTS' MOTION TO DESIGNATE
CERTAIN UNCLASSIFIED INFORMATION AS "PROTECTED INFORMATION"**

Yesterday morning, counsel for Respondents called David H. Remes, counsel for Petitioners in No. 04-CV-1254 (HHK), to inform Petitioners in the above cases of Respondents' intention to file the instant motion and to ask Petitioners their position on the motion. Mr. Remes responded that Petitioners could not take a position on the motion because they had not had an opportunity to review the information that Respondents seek to have designated as "protected information." Mr. Remes requested the opportunity to review the material so as to be able to describe the substance and character of the information to counsel for the other Petitioners in these cases. In that way, Petitioners would be able to take an informed position on the motion and determine whether to challenge any of Respondents' requested designations.

Counsel replied that Respondents could not allow Mr. Remes to examine the information on behalf of Petitioners because, until the information had been designated as "protected information," the Protective Order would not bind Mr. Remes to keep the information confidential. Respondents repeat this position in their motion. Mot. at 1. Mr. Remes promised that he would keep the information confidential but this was not enough to satisfy Respondents, even though Mr. Remes is an officer of the Court.

Petitioners should be allowed to examine any information that Respondents ask the Court to designate as “protected information” before the Court rules on the request. Respondents should not be allowed to put Petitioners in the position of (1) reviewing such information only after the Court has made its designation, and then (2) having to return to the Court to seek reconsideration of a designation already made. This is what Respondents propose. *See* Mot. 1. Such a process would be unfair to Petitioners, inconsistent with our adversary system, and needlessly burdensome for the Court, which would be required to consider the same issues twice.

If Respondents are unwilling to accept the word of Petitioners’ counsel as officers of the Court, Petitioners respectfully request that the Court modify the Protective Order (1) to require Respondents to allow counsel for Petitioners to examine information that Respondents are asking the Court to designate as “protected information,” for the purpose of responding to Respondents’ request; and (2) to require counsel for Petitioners to keep such information confidential unless and until the Court rules that the information should not be designated as “protected information.” Petitioners anticipate that they will generally designate a representative to review the information on their behalf, but they wish to reserve the right of counsel for any Petitioner, in addition to the representative, to review the information.

Respectfully submitted,

/s/

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¹ Petitioners in the following cases join this response: *Al Odah*, No. 02-CV-0828 (CKK); *Hicks*, No. 02-CV-0299 (CKK); *Begg*, 04-CV-1137 (RMC); *Khalid*, No. 04-CV-1142 (RJL); *El-* (footnote cont’d)

Banna, No. 04-CV-1144 (RWR); *Boumediene*, No. 04-CV-1166 (RJL); *Almurbati*, No. 04-CV-1227 (RBW); and *Anam*, No. 04-CV-1194 (HHK). Counsel was unable to get direction within the time for filing this response from Petitioners in *Habib*, No. 02-CV-1130 (CKK); or *O.K.*, No. 04-CV-1136 (JDB).