

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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MAHMOAD ABDAH, et al.,)	
)	
<i>Petitioners,</i>)	
)	
v.)	Civil Action No. 04-1254 (HHK)
)	
BARACK H. OBAMA, et al.,)	
)	
<i>Respondents.</i>)	
_____)	

EMERGENCY MOTION FOR AN EXTENSION OF TIME

Petitioners Uthman Abdul Rahim Mohammed Uthman (ISN #27), Faruq Ali Ahmed (ISN #32), Abd Al Malik Abd Al Wahab (ISN #37), Majid Mahmud Abdu Ahmad (ISN #41), Muktar Yahya Najee Al Warafi (ISN #117), Adnan Farhan Abd Al Latif Ala’ dini (ISN #156), Adil Said Al Haj Obeid Al Busayss (ISN #165), Yasin Qasem Muhammad Ismail (ISN #522), and Mohammed Mohammed Hassen (ISN #681) (collectively, “Petitioners”) respectfully move for an extension of time until March 13, 2009, to file their traverses.¹

On December 19, 2008, Petitioners filed an unopposed motion to set February 16, 2009, as the deadline for the filing of Petitioners’ traverses. Dkt. # 376. The Court has not yet acted on that motion. The motion was based on the assumption that there would be timely completion of discovery, including completion by the Government of its obligation to provide exculpatory

¹ Counsel for Petitioners consulted with counsel for the Government, who indicated that they would not oppose an extension of the traverse deadline to March 13 but only if Petitioners would agree to abstain until that date from seeking additional discovery under Section I.E.2 of the Amended CMO. Petitioners are unwilling to agree to this condition, which would cause unnecessary delay in completing discovery.

evidence under Section I.D.1 of the Case Management Order, as amended on December 16, 2008, Dkt. #1315 in 08-mc-0442 (“Amended CMO”). *See* Dkt. #376 n.1.

Under § I.G of the Amended CMO, traverses are due 14 days after the Government files unclassified returns or 14 days after it files its notice that it has completed its obligation to disclose exculpatory evidence, whichever is later. The Government filed unclassified returns for these petitioners in 2008 and early January 2009. On January 30, 2009, the Government filed Supplemental Certifications Pertaining to Production of Exculpatory Information with respect to Petitioners Ala’dini (ISN #156), *see* Dkt. #414, and Busayss (ISN #165), *see* Dkt. #417. In these Supplemental Certifications, the Government asserts that its obligations under Section I.D.1 of the Amended CMO are complete. If this assertion were correct (and Petitioners dispute that it is), then the date for filing traverses for these two Petitioners would arguably be February 13, 2009. Similar certifications for the other Petitioners could be filed at any time.²

Petitioners request an extension of the deadline for filing traverses until March 13, 2009, for the following reasons. First, counsel met with all but one of the Petitioners in Guantánamo during the last two weeks of January, and all of the information obtained during those visits has not yet been cleared by the Privilege Review Team and provided to counsel. This information is

² The Government has filed Supplemental Notices Pertaining to Production of Exculpatory Information with respect to Petitioners Uthman (ISN #027), *see* Dkt. #421; Faruq Ali Ahmed (ISN #032), *see* Dkt. #418; Abd al Wahab (ISN #037), *see* Dkt. #423 and Dkt. #424; Majid Ahmed (ISN #041), *see* Dkt. #425; al Warafi (ISN #117), *see* Dkt. #420; Ismail (ISN #522), *see* Dkt. #415; and Hassan (ISN #681), *see* Dkt. #416. Those notices state that the Government has identified “[s]ome arguably responsive documents” that “remain in the clearance process” and “will be disclosed . . . as soon as possible.” Counsel for the Government has indicated that they do not view these Supplemental Notices as completing their obligation to provide exculpatory evidence under Section I.D.1 of the Amended CMO and that these notices do not trigger the 14-day period for the filing of traverses.

important for preparing the traverses. Some of this information will be translated into Arabic and returned to Guantánamo for review by one or more Petitioners, a process that could take weeks. Second, it was not until Friday, January 30, 2009, that the Government purported to provide the information required by Sections I.D.1 and I.E.1 of the Amended CMO. Third, there are unresolved discovery disputes, including disputes as to the completeness of the information provided by the Government pursuant to Sections I.D.1 and I.E.1 of the Amended CMO, which require production of exculpatory evidence as well as production of Petitioner statements “in whatever form” relied on by the Government and all information concerning the “circumstances” in which those statements were made. Petitioners intend to file a motion to compel production of information required by Sections I.D.1 and I.E.1.

The Court has scheduled a status conference in this case for February 19, 2009. Petitioners expect then to propose an overall schedule for the case, and the Government may make its own proposal. At that time, Petitioners may seek a modified deadline for filing traverses (say, April 30), as part of an overall schedule, and the Government can present its arguments concerning the schedule for discovery. Granting this emergency motion for an extension will maintain the status quo, without prejudice to either side, pending the Court’s status conference on February 19.

CONCLUSION

For the reasons stated above, Petitioners respectfully request that their emergency motion for an extension of time be granted.

Respectfully submitted,

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February 9, 2009