

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

IN RE:)	
)	Misc. No. 08-442
)	
GUANTANAMO BAY)	Civil Action No.
DETAINEE LITIGATION)	
)	05-CV-0634
)	

**PETITIONER’S MOTION FOR ORDER COMPELLING FILING OF REVISED
LEGAL JUSTIFICATION**

Pursuant to Rule 7 of the Federal Rules of Civil Procedure, petitioner Omer Saeed Salem Al Daini (ISN 549) (“Al Daini”) hereby moves for an order compelling Respondents Robert M. Gates, *et al.*, (the “Government”) to file a revised statement explaining its legal justification for detaining the petitioner, as required by Paragraph I.B. of the Case Management Order entered by Judge Thomas F. Hogan on November 6, 2008, in Docket Misc. No. 08-0442, as modified by Judge Richard W. Roberts in this docket on November 19, 2008 (“CMO”). Specifically, Al Daini requests a statement that specifies with particularity the nature of the activities or associations that the Government asserts qualify Al Daini as an unlawful enemy combatant.

Counsel for Al Daini has discussed this motion with the Government. While the Government does not believe its prior filed legal justification statement is inadequate or that a revised statement is legally required and thus opposes this motion, it does not oppose the schedule for submission of a revised statement requested in this motion and, pursuant to the direction of the Court, will submit a revised statement on that schedule.

On November 18, 2008, the Government made a filing in this proceeding that purported to be a statement of legal justification. The filing includes a broad definition of “enemy combatant” and a series of examples of activities and associations that meet that definition. The filing does not identify which of those examples, or any other activity or association, applies to Al Daini. The filing therefore fails to comply with Paragraph I.B of the CMO, which states, “The government shall file a succinct statement explaining its legal justification *for detaining the petitioner*. If the government’s justification for detention is the petitioner’s status as an enemy combatant, the government shall provide *the definition of enemy combatant on which it relies*.” (Emphasis added.)

The specificity required by the CMO is consistent with the standards established by the Supreme Court in *Boumediene v. Bush*, 553 U.S. ___, 128 S. Ct. 2229 (2008). The principle underlying *Boumediene* is that Guantanamo detainees are entitled to a determination of the legality of their detention that comports with fundamental due process. Nothing is more basic to due process when a person’s liberty is at stake than “[a] person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense.” *In re Oliver*, 333 U.S. 257, 273 (1948). The statement filed by the Government fails to provide that reasonable notice.

Accordingly, Al Daini requests that the Court direct the Government to file, no later than seven days after Judge Hogan issues an order in response to the Government’s “Motion for Clarification and Reconsideration of the November 6, 2008 Case Management Order and Supplemental Amended Orders or, in the Alternative, Motion For Certification For Appeal Pursuant To 28 U.S.C. § 1292(B) And To Stay Certain Obligations Pending Resolution Of Motion And Appeal” in Docket Misc. No. 08-442, a

revised statement of legal justification that specifies with particularity the nature of the activities or associations that the Government asserts qualify Al Daini as an unlawful enemy combatant. A proposed order is attached.

Respectfully submitted this 26th day of November, 2008.

/s/ Michael E. Ward

Michael E. Ward

Michael E. Ward

D.C. Bar No. 434624

Jonathan M. Fee

D.C. Bar No. 479579

ALSTON & BIRD LLP

950 F Street, NW

Washington, DC 20004

Telephone: (202) 756-3076

Facsimile: (202) 756-3333

Email: michael.ward@alston.com

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

_____)	
IN RE:)	Misc. No. 08-442
)	
GUANTANAMO BAY)	Civil Action No.
DETAINEE LITIGATION)	
)	05-CV-0634
_____)	

[PROPOSED] ORDER

The Motion for Order Compelling Filing of Revised Legal Justification is granted,
and

Respondents are hereby ordered to file, within seven days of the date on which Judge Hogan issues an order in response to the Respondent’s “Motion for Clarification and Reconsideration of the November 6, 2008 Case Management Order and Supplemental Amended Orders or, in the Alternative, Motion For Certification For Appeal Pursuant To 28 U.S.C. § 1292(B) And To Stay Certain Obligations Pending Resolution Of Motion And Appeal” in Docket Misc. No. 08-442, a revised statement of legal justification consistent with Paragraph I.B of the Case Management Order entered by Judge Thomas F. Hogan on November 6, 2008, in Docket Misc. No. 08-0442, as modified by Judge Richard W. Roberts in this docket on November 19, 2008, and describing with specificity the nature of the activities or associations that the Government asserts qualify Petitioner as an unlawful enemy combatant.

SO ORDERED.

Dated: _____

Richard W. Roberts
United States District Judge