

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

IN RE:

**GUANTANAMO BAY
DETAINEE LITIGATION**

Misc. No. 08-442 (TFH)

Civil Action No. 05-2387 (RMC)

EXHIBIT 2

From: Warden, Andrew (CIV) [Andrew.Warden@usdoj.gov]
Sent: Sunday, November 02, 2008 11:50 AM
To: Donald, Skye H.
Subject: RE: Motion for factual return
Skye:

We take the same position in the Al-Quhtani case. In light of the dismissal of the MCA charges without prejudice, respondents agree that petitioner Al Quhtani is no longer exempted by the provision of Judge Hogan's order governing production of factual returns. Respondents, of course, may move for an exception to sequencing of the filing of factual returns and reserve the right to do so in Mr. Al Quhtani's case. Further, in the event MCA charges are reinstated against petitioner Al Quhtani, production of a factual return would not be required under Judge Hogan's scheduling order.

Best,

Andrew

Andrew I. Warden
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave, NW
Washington, DC 20530
Tel: 202-616-5084
Fax: 202-616-8470

From: Donald, Skye H. [mailto:SDonald@mofa.com]
Sent: Wednesday, October 29, 2008 4:22 PM
To: Warden, Andrew (CIV)
Subject: Motion for factual return

Dear Andrew:

I saw that counsel for Barhoumi recently filed an unopposed motion to require respondents to submit a factual return in light of the fact that Barhoumi's military commission charges were dismissed last week. We (counsel for Jobran Saad Al-Quhtani, ISN 696) would like to file a similar motion. Can we reach the same agreement regarding your non-opposition? Below is the email Barhoumi's counsel cited in their motion regarding your position. Please let us know if you feel the same about our client's case and agree that Al-Quhtani should no longer be exempted by the provision of Judge Hogan's order governing production of factual returns because Al-Quhtani's military commission charges were dropped on October 20, 2008.

Thank you,

Skye

Skye Donald
Associate
Morrison & Foerster LLP
555 West Fifth Street, Suite 3500
Los Angeles, CA 90013
Tel. 213-892-5748
Fax 323-210-1174

"Counsel for Petitioner have conferred with counsel for Respondents, who stated their position in an

October 23, 2008 e-mail as follows: "In light of the dismissal of the MCA charges without prejudice, respondents agree that petitioner Barhoumi is no longer exempted by the provision of Judge Hogan's order governing production of factual returns. Respondents, of course, may move for an exception to sequencing of the filing of factual returns and reserve the right to do so in Mr. Barhoumi's case. Further, in the event MCA charges are reinstated against petitioner Barhoumi, production of a factual return would not be required under Judge Hogan's scheduling order.""

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