

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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SUHAIL ABDU ANAM, et al.,	)	
	)	
Petitioners,	)	04-CV-1194 (HHK)
	)	
- v -	)	
	)	
BARACK H. OBAMA, et al.,	)	
	)	
Respondents.	)	
	)	
	)	
	)	
	)	

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**NOTICE OF ADDITIONAL INFORMATION IN SUPPORT OF PETITIONERS’  
MOTION TO COMPEL COMPLIANCE WITH SECTIONS I.D.1 AND I.E.1 OF THE  
CASE MANAGEMENT ORDER AND TO SET A SCHEDULE**

Petitioners Saeed al Sarim (ISN 235), Riyad Ataq al Haj (ISN 256), Jalal Salim bin Amer (ISN 564), Suhail Abdu Anam (ISN 569), Abdulaziz al Swidi (ISN 578), Emad Abdullah Hassan (ISN 680), Fahmy al Tawlaqi (ISN 688) and Mus’ab Omar al Mudwani (ISN 839) respectfully submit the attached Declaration of Patricia A. Bronte dated February 12, 2009 (the “Bronte Declaration”) in further support of Petitioners’ Motion to Compel Compliance with Sections I.D.1 and I.E.1 of the Case Management Order and to Set a Schedule (the “Motion”).

The Bronte Declaration describes assertions by Respondents’ counsel that executive agencies may withhold from production to Petitioners’ counsel documents designated by the Department of Justice as exculpatory pursuant to Section I.D.1 of Judge Hogan’s Case Management Order of November 6, 2008, as amended on December 16, 2008 (the “CMO”), on the grounds that such documents are sensitive to national security. When asked whether

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<b>SUHAIL ABDOH ANAM, <i>et al.</i>,</b>	)	
<b>Petitioners,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Action No. 1:04 CV 1194 (HHK)</b>
	)	
<b>GEORGE W. BUSH, <i>et al.</i>,</b>	)	
<b>Respondents.</b>	)	

**DECLARATION OF PATRICIA A. BRONTE**

The undersigned, Patricia A. Bronte, attorney at law, declares and states as follows:

1. I am one of the attorneys representing Petitioner Musa'ab Omar Al Madhwani, ISN 839, in this action.
2. On the morning of February 11, 2009, I spoke by telephone with Respondents' counsel, Mr. David Avila, regarding the status of several outstanding issues in the case.
3. One of the issues we discussed was Respondents' failure, as of February 11, 2009, to produce to Petitioner's counsel the exculpatory evidence required under Judge Hogan's Case Management Order of November 6, 2008, as amended on December 16, 2008.
4. I inquired of Mr. Avila when Respondents might produce the exculpatory evidence to us at the Secure Facility. Mr. Avila stated that he collected the exculpatory evidence and forwarded it to the "agencies" for clearance before January 30, 2008. Mr. Avila explained that he could not say when he would receive the materials back from the agencies in order to produce it.

5. I asked Mr. Avila to give me a rough estimate of the volume of exculpatory evidence that Respondents would be producing in this case. Mr. Avila said that he could not know how many documents Respondents would be producing as exculpatory evidence until he had received the documents back from the agencies after the clearance process was complete. I asked Mr. Avila whether he meant that the agencies might withhold some documents that the Department of Justice had designated as exculpatory. Mr. Avila explained that there are some documents that the agencies may deem so sensitive to national security that they cannot and would not be disclosed to habeas counsel, even at the Secure Facility. If any of the documents that the Department of Justice designated as exculpatory fell within this category, Mr. Avila said, then those documents would not be produced to petitioners' counsel.

6. I asked Mr. Avila whether Respondents would notify petitioners' counsel if Respondents withheld certain exculpatory documents from petitioners' counsel because the agencies had deemed them too sensitive. Mr. Avila said he did not know. At my request, he agreed to find out the answer to my question and let me know. To date, Mr. Avila has not answered my question.

7. I am attaching as Exhibit A an exchange of emails between myself and Mr. Avila concerning our telephone conversation of February 11, 2009.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 12, 2009.

A handwritten signature in cursive script that reads "Patricia A. Bronte". The signature is written in black ink and is positioned above the printed name.

Patricia A. Bronte

## **Exhibit A**

**Lalmalani, Sapna G.**

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**From:** Avila, David (CIV) [David.Avila2@usdoj.gov]  
**Sent:** Wednesday, February 11, 2009 11:37 AM  
**To:** Bronte, Patricia A  
**Cc:** Lalmalani, Sapna G.  
**Subject:** RE: Priority declassification and confirmation of our discussion.

Pat:

Thank you for raising your additional concerns. Your message highlighted two things that I would like to clarify.

First, I simply intended to convey that I do not want to get ahead of the clearance process in my oral representations and to the extent that I may have left you with a different impression in our telephone conversation I apologize. I did not intend to convey to you that there are documents that are exculpatory and that will not be produced. I attempted to correct this misimpression by stating that there are no "black holes" in this production. I did agree to get guidance on what the government response would be should that hypothetical situation arise but I do not want you to be left with the impression that there will be holes in the government's production. Indeed, as I also stated over the telephone, we are making every effort to provide full and complete responses as required by the relevant orders.

Second, with respect to the matter of petitioner's statements, as government counsel on ISN 839's case I am the person who can forward your request to the appropriate declassifying agency and push for a priority declassification of the statements you have deemed to be a priority need. I therefore need you to provide, to me, a list of statements that you deem to be priorities for priority declassification. Of course you will not be waiving any arguments or objections you may have to the legal issues surrounding the use of petitioner's statements. I am merely attempting to provide you with a constructive option to facilitate your interest in promptly speaking with your client.

Best Regards,  
dpa

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**From:** Bronte, Patricia A [mailto:PBronte@jenner.com]  
**Sent:** Wednesday, February 11, 2009 11:59 AM  
**To:** Avila, David (CIV)  
**Cc:** Lalmalani, Sapna G.  
**Subject:** RE: Priority declassification and confirmation of our discussion.

Thanks, David. We also discussed the fact that you assembled the exculpatory evidence for ISN 839 and sent it out for the agency clearance process before Jan. 30, but you don't know when the process would be complete so that the evidence could be produced to us at the Secure Facility. When I asked you about the volume of documents, you said you can't know that until the documents are cleared, because there are documents that DOJ has identified as exculpatory but that the agencies deem so sensitive that they cannot be produced to us, even at the Secure Facility. You said you did not know whether we would be notified if some exculpatory documents were being withheld for this reason, but you agreed to find out and let us know.

Regarding Judge Hogan's order of January 15, 2009, and Judge Kennedy's order of January 29, 2009, you are correct that we view Respondents' refusal to comply with these orders as a serious matter. (That was actually the first topic during our telephone discussion.) You referenced Respondents' position regarding these orders, but I am not sure what that position

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is exactly -- except, as you say below, that others in DOJ are assessing the orders. You ask below whether we can send you a list of statements attributed to Musa'ab in the factual return that we could prioritize for declassification review. We do not agree that declassification is necessary, but in any event, Sapna delivered a list of statements to the Privilege Team on Friday, February 6. Attached to the list are the interrogation reports containing the statements. Finally, I forwarded to you the email we discussed during our phone call, which we received yesterday from the Privilege Team.

Best regards,  
Pat

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**Patricia A. Bronte**  
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**From:** Avila, David (CIV) [mailto:David.Avila2@usdoj.gov]  
**Sent:** Wednesday, February 11, 2009 10:00 AM  
**To:** Bronte, Patricia A  
**Cc:** Lalmalani, Sapna G.  
**Subject:** Priority declassification and confirmation of our discussion.

Pat:

I am following up our telephone conversation with this e-mail to confirm our conversation and to restate the government's offer to push prioritized declassification of petitioner's statements that you need for your upcoming visit to Guantanamo.

As we discussed, the two documents you previously identified as missing from the exhibit list have been identified. Since those documents were not initially included with the exhibit list, they had not already gone through the clearance process. Classified documents must be cleared before being produced. As soon as they are cleared, I will submit them to you.

Also, with respect to the production the government will make pursuant to Hogan's CMO, those documents are still in the clearance process and will also be produced as soon as that process is complete. As I indicated on the telephone, while I do not now have a specific number to give you, I would characterize the total number of potentially responsive documents as relatively small. As is also the case with the two documents missing from the exhibit list of the factual return, the clearance and production of these documents remain a priority.

Finally, you stated that the privilege review team at Guantanamo indicated that they would not be declassifying petitioner's statements and you shared your view that this is contrary to the prevailing order in ISN 839's case. It is my understanding that your colleague, Sapna Lalmalani, has been unable to speak with petitioner about some statements he has made. You further stated that you will forward me the message that the privilege review team provided to you. As I stated on the telephone, the privilege review team at Guantanamo is not a classification

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authority and therefore does not have authority to declassify documents. This issue raises concerns for the government which the government is presently assessing. I also stated, however, that I am willing to do what I can to facilitate your practical needs.

I understand that you have a trip to Guantanamo scheduled for sometime next month. As we discussed, if you identify specific statements as priority needs, I will push for priority declassification of those statements with the goal of providing them to you in advance of your next visit to Guantanamo. I appreciate your stated desire to resolve problems as amicably as possible. In our conversation you indicated that you would identify statements you deem a priority to have declassified. I urge you to provide to me, as soon as possible, a list of statements that are a priority for your client consultation. The sooner I can get this list, the greater the possibility for a satisfactory outcome.

Please let me know if you have any concerns or disagreements with my summary of our conversation.

Best,  
David P. Avila

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Petitioners' counsel would receive notification in the event that any exculpatory document had been withheld on national security grounds, Respondents' counsel did not answer the question.


Petitioners respectfully submit that this information further calls into question Respondents' compliance with Section I.D.1 of the CMO, and is therefore relevant to Petitioners' pending Motion.

Dated: February 12, 2009  
New York, NY

Respectfully submitted,

Patricia A. Bronte  
Sapna G. Lalimalani  
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CERTIFICATE OF SERVICE

I hereby certify that I filed and served the foregoing Notice of Additional Information upon the following counsel of record by the CM/ECF system on the 12th day of February, 2009:

Joseph H. Hunt  
Terry M. Henry  
Paul E. Ahearn  
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Daniel M. Barish  
Julia A. Berman  
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Paul A. Dean  
Scott Eltringham  
Scott M. Marconda  
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