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CSO:
DATE: 9/19/09



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SUHAIL ABDU ANAM, *et al.*,

Petitioners,

v.

Civil Action No. 04-1194 (TFH)

BARACK H. OBAMA, *et al.*,

Respondents.

ORDER

On August 5, 2009, the Court held a closed-session Motions Hearing for petitioner Suhail Abdu Anam (ISN 569), during which the Court discussed petitioner's Motion to Compel Additional Discovery Pursuant to Sections I.E.1 and I.E.2 of the Case Management Order ("Motion for Discovery"). For the reasons set forth during the hearing, and for those that follow, the Court hereby

ORDERS that the Motion for Discovery is **GRANTED IN PART** and **DENIED IN PART**. Petitioner makes thirteen requests: one request for an order requiring the government to comply with Section I.E.1 and twelve discovery requests pursuant to Section I.E.2. The Court's ruling as to each request is explained in detail below.

1. An Order Requiring the Government to Comply with Section I.E.1

The Court grants in part petitioner's request. Petitioner presents evidence, and the government does not dispute, that he was held in an isolation cell from April 10, 2003 until at least June 23, 2003. According to a report by the Office of the Inspector General of the

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Department of Justice, such tactics “would not be permissible for FBI agents to use in the United States.” Pet’r’s Reply 3. During this over two-month period, the FBI appears to have conducted at least twenty interrogations of petitioner. The government has not disclosed the FBI reports for all of these interrogations. Based on the parties’ representations, the government has also not disclosed all of the FBI notes on these interrogations.

The FBI reports and notes for these twenty interrogations must be produced. The government maintains that it was not required to produce every interrogation report since it is not relying on all of the petitioner’s statements during this period. And under Section I.E.1(2), the government is correct. However, Section I.E.1(3) requires the government to disclose “information about the circumstances” in which a petitioner’s statements that the government relies on to justify detention were made or adopted. *See* Case Management Order (“CMO”), *In re Guantanamo Bay Litig.*, Misc. No. 08-0442, Dkt. No. 940 (Nov. 6, 2008), amended by Dkt. No. 1315 (Dec. 16, 2008) § I.E.1(3). The interrogations during this period occurred almost daily. The undisclosed interrogations occurred just days before or after interrogations on which the government relies. Meanwhile, the overarching condition of confinement during this entire period, the isolation cell, remained constant. There is thus a clear nexus between the government’s actions during these undisclosed interrogations, petitioner’s condition during these undisclosed interrogations, and petitioner’s statements on which the government relies. Based on this nexus, the Court finds that the undisclosed FBI reports and notes during petitioner’s period in isolation would clarify the circumstances in which petitioner’s statements on which the government relies were made or adopted. The government is ordered to provide any reasonably

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available FBI reports and notes on the interrogations of petitioner from April 10, 2003 to June 23, 2003. In this context, the term “reasonably available” means evidence contained in the consolidated files or the Guantanamo Review Task Force database, as well as evidence held by the FBI.

In all other respects, the request is denied.

2. Documents Concerning the Treatment of Petitioner and Government Witnesses

Petitioner’s request for treatment documents is actually six separate requests. The Court grants in part and denies in part these six requests.

- A. Medical Records: The Court denies petitioner’s request. Petitioner fails to demonstrate a nexus between his hunger strikes and his statements on which the government relies.
- B. Abuse Records: The Court grants in part petitioner’s request. As noted *supra*, petitioner was held in an isolation cell from April 10, 2003 until at least June 23, 2003. The government relies on at least eleven interrogations of petitioner during this time. Due to the clear nexus between petitioner’s isolation and the statements on which the government relies, the government is ordered to produce any reasonably available evidence of coercive techniques used on petitioner during this period, as well as any inducements or promises made. *See Zaid v. Bush*, 05-cv-1646 (Dkt. No. 96) (D.D.C. Dec. 22, 2008) (Bates, J.) (ordering the government to disclose “any evidence of coercive techniques used during any

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[REDACTED]

interrogation or any inducements or promises made”). In this context, the term “reasonably available” means evidence contained in the consolidated files or the Guantanamo Review Task Force database. With respect to records of abuse during any other period, the request is denied without prejudice. Petitioner fails to demonstrate with sufficient specificity and evidence that he suffered from abuse during any other period or that such abuse had a specific nexus with any statement that he made after June 23, 2003, on which the government relies. If petitioner can document evidence of such abuse or articulate a specific nexus, he may renew this request.

- C. Records Authorizing Isolation: The Court denies petitioner’s request. Whether or not petitioner’s isolation was found to be of “military necessity” is not relevant to these proceedings.
- D. Photographic of Video Evidence of Conditions of Isolation: The Court grants in part petitioner’s request. Based on petitioner’s extended period of time in an isolation cell, and the multitude of statements that he made during that period on which the government relies, the government is ordered to produce either (i) a photograph of the isolation cell occupied by petitioner or (ii) a diagram detailing the cell’s dimensions. Such evidence may be relevant to the coercive nature of petitioner’s confinement during the primary period in which he made inculpatory statements.

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E. Medical and Feeding Records: The Court denies petitioner's request.

F. Abuse Tracker Records: The Court denies petitioner's request. Petitioner fails to demonstrate that searching Abuse Tracker for additional records of abuse is "likely to produce evidence that demonstrates that the petitioner's detention is unlawful." CMO § I.E.2(3).

3. Documents Reflecting Credibility of Government Witnesses

The Court denies petitioner's request. The Court finds that granting the request for any documents reflecting the credibility of any witness on which the government relies is not "likely to produce evidence that demonstrates that the petitioner's detention is unlawful." CMO § I.E.2(3).

4. Documents Detailing Conditions of Confinement and Abuse by Foreign Captors

The Court denies petitioner's request. Though petitioner seeks documents detailing the abuse he suffered "at the hands of any captors from any nation prior to Petitioner being handed over to American authorities," he only presents evidence of abuse while "in the hands of American authorities." Mot. for Discovery 8-9. Petitioner provides no documents or declarations that he suffered abuse while in the hands of Pakistani authorities. Additionally, there is no evidence that the government relies on petitioner's statements to Pakistani authorities. Therefore, the Court finds that granting the request is not "likely to produce evidence that demonstrates that the petitioner's detention is unlawful." CMO § I.E.2(3).

5. Access to All Detainees Who Are Witnesses Against Petitioner

The Court denies petitioner's request. The Court finds that the request is not "likely to

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[REDACTED]

produce evidence that demonstrates that the petitioner's detention is unlawful." CMO § I.E.2(3).

6. Bounties or Fees Given to Third Parties

The Court denies petitioner's request. The Court finds that the request is not "likely to produce evidence that demonstrates that the petitioner's detention is unlawful." CMO § I.E.2(3).

7. Procedures Through Which Individuals Became Members of al-Qaeda

The Court denies without prejudice petitioner's request. The relevance of petitioner's request depends on the scope of the government's detention authority, which the Court has not yet defined. Once the Court defines the scope, petitioner may renew his request, if it is relevant.

8. Photographs Used to Identify Petitioner

The Court grants in part petitioner's request. In the Factual Return, the government relies on witnesses' identifications of petitioner [REDACTED]. Therefore, the government is ordered to disclose every [REDACTED] that those witnesses positively identified as petitioner. *See, e.g., Al Odah v. United States*, Civil Action No. 02-0828 (Dkt. No. 474) (D.D.C. Feb. 12, 2009) (Kollar-Kotelly, J.) [REDACTED]

[REDACTED]

[REDACTED]

In all other respects, the request is denied.

9. Polygraph and Voice Stress Test Results

The Court denies petitioner's request. However, the government is ordered to confirm that it has produced all exculpatory results from polygraph examinations administered to petitioner.

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10. Petitioner's Association with an Organization

The Court denies petitioner's request. The Court finds that granting the request for any information regarding petitioner's association with an organization that the government intends to rely on is not "narrowly tailored." CMO § I.E.2(1). The request is also not "likely to produce evidence that demonstrates that the petitioner's detention is unlawful." CMO § I.E.2(3).

11. Documents Shown to Petitioner During Interrogations

The Court denies petitioner's request. The Court finds that granting the request for documents shown to petitioner by FBI questioners on May 9, 2003, is not "likely to produce evidence that demonstrates that the petitioner's detention is unlawful." CMO § I.E.2(3).

12. Information Regarding Interpreters

The Court denies petitioner's request. A request for all information regarding the identification, education, certification, and other professional credentials of any and all interpreters used in questioning petitioner and any complaints from any source regarding the competency of such interpreters, as well as all information on any person who has allegedly provided statements regarding petitioner taken by any foreign language interpreters, is not "narrowly tailored." CMO § I.E.2(1). Additionally, the Court finds that the request is not "likely to produce evidence that demonstrates that the petitioner's detention is unlawful." CMO § I.E.2(3). The broad search suggested by petitioner would also "unduly burden[] the government." CMO § I.E.2(4).

13. All Physical Evidence

The Court denies petitioner's request. The Court finds that granting the request for any

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