

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SUHAIL ABDU ANAM, et al.,

Petitioners,

- v -

GEORGE W. BUSH, et al.,

Respondents.

04-CV-1194 (HHK)

IN RE:

GUANTANAMO BAY
DETAINEE LITIGATION

**PETITIONERS' RESPONSE TO RESPONDENTS' NOTICE OF
PRIOR DISCLOSURE OF EXCULPATORY EVIDENCE AND
MOTION FOR EXTENSION OF TIME**

Petitioners Saeed al Sarim (ISN 235), Riyadh Ataq al Haj (ISN 256), Abdulaziz al Swidi (ISN 578), Emad Abdullah Hassan (ISN 680), and Fahmy al Tawlaqi (ISN 688) respectfully submit by and through their undersigned counsel this Response to Respondents' Notice of Prior Disclosure of Exculpatory Evidence and Motion for Extension of Time.

As Petitioners informed the Government in an email dated December 29, 2008 (attached as Exhibit A), Petitioners do not oppose providing the Government the extension they seek in order to allow them time to comply meaningfully with Section I.D.1. of Judge Hogan's Amended Case Management Order (the "Amended CMO"). As respondents themselves state in their motion, the Amended CMO "require[s] the government to conduct a search for exculpatory information significantly broader than the information previously reviewed in any particular

case.” Petitioners expect to file traverses after the Government has satisfied its disclosure and discovery obligations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I filed and served the foregoing Response to Respondents' Notice of Prior Disclosure of Exculpatory Evidence and Motion for Extension of Time upon the following counsel of record by the CM/ECF system on the 12th day of January, 2009:

Gregory Katsas
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Attorneys for Respondents

/s/ Kurt Vellek
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Chung, Jane:LT (NY)

From: Havens, Sarah:LT (NY)
Sent: Monday, December 29, 2008 2:12 PM
To: 'Jonathan.Needle@usdoj.gov'
Cc: Chepiga, Pamela:LT (NY); Withers, Julie:LT (NY)
Subject: Anam v. Bush, 04-cv-1194 (HHK)

Categories: Copied to Virtual File
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FolderNumber: 629860
MatterInformation: MATTER_ID:00266|CLIENT_ID:10004

Dear Mr. Needle,

I write in response to your email dated December 24, 2008, in which you request consent to an extension of the government's obligation to produce exculpatory information in cases governed by Judge Hogan's amended Case Management Order. Apparently due to an oversight we were not copied on your email. We represent the following ten Petitioners in the above-referenced litigation: Abdulkhaliq al Baidhani (ISN 553), Ali Yahya Mahdi (ISN 167), Riyad Ataq al Haj (ISN 256), Emad Abdullah Hassan (ISN 680), Khaled Ahmed Qassim (ISN 242), Ali al Razehe (ISN 045), Abdulaziz al Swidi (ISN 578), Saeed al Sarim (ISN 235), Fahmy al Tawlaqi (ISN 688), and Bashir al Marwalah (ISN 837).

In principle, we do not oppose your motion for an extension until January 30, 2009. However, this consent is premised on our understanding that the government will use this extra month to achieve meaningful compliance with Section I.D.1 of Judge Hogan's CMO. First, Section I.D.1 requires the government to review "evidence contained in any information reviewed by attorneys preparing factual returns for all detainees." We understand this to require that the government search for exculpatory information relevant to each Petitioner by conducting a review of any information reviewed by any government attorney in preparing the factual return for any detainee. Second, Section I.D.1 requires the government to disclose evidence "that tends materially to undermine the information presented to support the government's justification for detaining the petitioner." We read this description to include both evidence that tends to exculpate the Petitioner and evidence that is useful to impeach the credibility of any witness against the Petitioner (including but not limited to whether the witness was subjected to coercive interrogations). Finally, Section I.D.1 does not provide an exemption for evidence the government believes is cumulative of evidence already provided. Please inform me immediately if the government's understanding of its obligations under Section I.D.1 differs from what I have described. We do not consent to a month-long extension if it merely serves to forestall litigation over the scope of this provision.

Finally, we will now receive the government's Section I.D.1 disclosures after our long-scheduled trip to Guantanamo in mid-January. We reserve the right to seek additional time to file traverses so that we can meet with our clients after receipt of any exculpatory information and before filing the traverses.

Please do not hesitate to call me if you would like to discuss this issue further.

Kind regards,

Sarah Havens

Associate

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