

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ADIL SAID AL-HAJJ UBAYD)	
AL-BUSAYSS,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 04-cv-1254 (HHK)
)	
BARACK OBAMA, <i>et al.</i> ,)	
)	
Respondents.)	
_____)	

**THE GOVERNMENT’S MOTION FOR EXTENSION OF TIME
TO PROVIDE DISCOVERY PURSUANT TO
AMENDED CASE MANAGEMENT ORDER SECTION I.E.1(3)**

Under the Court’s November 6, 2008 Case Management Order, as amended by the Court’s December 16, 2008 Order, (“Amended CMO”), discovery is currently due Petitioner (ISN 165) in the above-captioned case. Section I.E.1 of the Amended CMO requires the Government to disclose each of the following, if requested by a petitioner, within 14 days of that petitioner’s request:

- (1) any documents and objects in the government’s possession that the government relies on to justify detention;
- (2) all statements, in whatever form, made or adopted by the petitioner that the government relies on to justify detention;
- and (3) information about the circumstances in which such statements of the petitioner were made or adopted.

Amended CMO ¶ I.E.1. In the above-captioned matter, Petitioner (ISN 165) has made such a request. At this point, the Government has complied with its obligations under Sections I.E.1(1) and I.E.1(2), and has also provided certain information responsive to Section I.E.1(3). The Department of Defense (“DoD”) is working diligently to assemble and prepare the balance of the information required by Section I.E.1(3). However, the resources required to obtain this

information and the clearance issues inherent in its disclosure rendered the Government unable to produce this information by the due date. Regrettably, due to an oversight, the Government did not file a motion for an extension by the date on which discovery was due. The Government therefore respectfully requests that the deadline for its compliance with Amended CMO Section I.E.1(3) be extended to February 17, 2009 *nunc pro tunc*.¹ Of course, notwithstanding any extension the Court may grant, the Government will continue to work to provide Petitioner this discovery expeditiously—to the extent that information is identified and cleared for release before the Court deadline, the Government will provide that information to the Petitioner.

To date, the Government has produced to Petitioner much of the discovery required by Section I.E.1 in the attachments to the Government's factual return. With respect to the materials required by Section I.E.1(1)—all documents and objects in the Government's possession that the Government relies on to justify detention—the Government relies on the reports and materials attached to the factual return. Likewise, information required by Section I.E.1(2)—all statements made or adopted by the Petitioner upon which the Government relies—has been provided to Petitioner in the factual return and attachments thereto.

Section I.E.1(3), requiring production of information regarding the circumstances surrounding Petitioner's statements upon which the Government relies, is the sole portion of Section I.E.1 as to which the Government seeks an extension, and that only with respect to DoD. Within DoD, military and other personnel are working diligently to assemble from appropriate DoD entities, including various overseas Combatant Commands, and also clear for

¹ In accordance with Local Rule 7(m), Respondents contacted Petitioner's counsel in the above-captioned case via email to ascertain their position with respect to this motion. Counsel for Petitioner ISN 165 did not reply to Respondents' email by the time this motion was filed.

use in litigation, information surrounding Petitioner's statements to that agency. The extensive effort inherent in this undertaking is compounded in this case not only by the fact that the military is currently engaged in two ongoing armed conflicts, but also by the volume, novelty, and timing of the discovery at issue here. To begin with, though even one undertaking of this kind would pose a substantial burden, the Government currently faces not one request for such discovery, but over ninety. Thus, the DoD must undertake the process of assembly and clearance of information not once, but over ninety separate times. And, these processes must occur almost simultaneously, as the deadlines for these several dozen productions all fall between December 30, 2008 and February 16, 2009.²

Moreover, the provision of information to a detainee regarding the circumstances surrounding his statements to the DoD is unprecedented—this discovery is the first of its kind. No processes existed to fully address such novel requests when they were received.³ Thus, for this first set of discovery requests, additional time is required for the DoD to complete the assembly and clearance of the requested information for disclosure. *See Boumediene v. Bush*,

² The window for compliance with the majority of these requests included one (and sometimes two) federal holidays.

³ The Government is cognizant of the Court's admonition in its November 21, 2008 Order that the stay of obligations under the original Case Management Order should not lead the parties to abandon their efforts to comply with their discovery obligations under that Order. However, the tremendous scope of the undertaking then contemplated under the Case Management Order was such that the Government could not determine the exact resources to apply to the effort. As discussed in the Declaration of Deputy Secretary of Defense England, overwhelming burdens would have been imposed on the already scarce resources of the military had the DoD attempted to comply with the original CMO. *See* England Decl. ¶ 4, attached to the Motion for Clarification and Reconsideration of this Court's 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 the Motion and any Appeal, (Dkt. 1004 in 08-mc-442). Now that the Court has clarified the parameters of the Government's obligations, the DoD is working diligently to comply with the Court's Order.

128 S. Ct. 2229, 2276 (2008) (highlighting Government's interest in "protecting sources and methods of intelligence gathering," and noting the Court's "expect[ation] that the District Court will use its discretion to accommodate this interest to the greatest extent possible").

Most importantly, the responsibility of compiling and clearing information responsive to these requests falls on the shoulders of military personnel including, in many instances, those located in active war zones. Thus, the burden posed by addressing so many novel discovery requests so quickly is truly extraordinary in this case. That extraordinary burden makes it necessary for the Government to seek an extension of the deadline for its compliance with Amended CMO Section I.E.1(3).

For all of these reasons, the Government respectfully requests that the deadline for its compliance with Amended CMO Section I.E.1(3) be extended, and that the new deadline be set for Tuesday, February 17, 2009.

Dated: January 23, 2009

Respectfully submitted,

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