

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
MAHMOAD ABDAH, <i>et al.</i> ,)	
)	Civil Action No. 04-cv-1254 (HHK)
Petitioners,)	
)	
v.)	
)	
BARACK H. OBAMA,)	
President of the United States, <i>et al.</i> ,)	
)	
Respondents.)	
_____)	

**RESPONDENTS’ OPPOSITION TO
PETITIONERS’ EMERGENCY MOTION FOR AN EXTENSION OF TIME**

Respondents respectfully submit this memorandum in opposition to the Emergency Motion for an Extension of Time, filed by Petitioners Othman Abdulraheem Mohammed (ISN 027), Farouk Ali Ahmed Saif (ISN 032), Abdulmalik Adbulwahhab al-Rahabi (ISN 037), Majid Mahmoud Ahmed (ISN 041), Makhtar Yahia Naji al-Wrafie (ISN 117), Adnan Farhan Abdul Latif (ISN 156), Adil El Haj Obaid (ISN 165), Yasein Khasem Mohammad Esmail (ISN 522), and Mohamed Mohamed Hassan Odaini (ISN 681) (collectively, “Petitioners”), on February 9, 2009 (Docket # 433). Respondents do not oppose an extension of time for Petitioners to file a traverse as long as Petitioners refrain from filing additional discovery motions until after the traverse is filed and the pending two discovery motions are decided.

BACKGROUND

This case originally was filed on behalf of 13 detainees at Guantanamo Bay. One of the petitioners (ISN 069) has been transferred out of the base. The petitions of three current

detainees (ISNs 031, 508, and 577) are stayed. Of the remaining nine active petitions, Respondents have identified five (ISNs 027, 032, 037, 041, and 681) for consolidation or coordination before a single judge, and two (ISNs 165 and 681) have been administratively cleared for transfer or release. Three (ISNs 117, 156, and 522) are active petitions that have not been identified for consolidation and where the petitioner has not been administratively cleared for transfer or release.

A. Petitioners' Previous Discovery Motions

Petitioners have filed two previous motions for discovery under the Case Management Order, as amended on December 16, 2008 (the "CMO"), both of which are fully briefed. On November 18, 2008, Petitioners filed their first Motion for Additional Discovery, in which Petitioners seek all statements, in whatever form (including written, electronic, video recording, or audio recording), made or adopted by another individual that relate to any of the information contained in the Factual Return (including all amendments) for Petitioners, all documents containing information as to the circumstances in which such statements were made or adopted, all documents containing information relating to any fees, bounties, or other monetary or non-monetary remuneration or consideration given to third parties for the apprehension, transfer into the Government's custody, or investigation of each Petitioner. The motion also sought to compel Respondents to answer two interrogatories asking Respondents to "identify and describe" all statements made or adopted by another individual that relate to any of the information contained in the Factual Return (including all amendments) relating to Petitioners, as well as all fees, bounties, or other monetary or non-monetary remuneration or consideration given to third parties for the apprehension, transfer into the Government's custody, or investigation of each Petitioner.

(Docket # 339.) On December 4, 2008, Respondents filed a memorandum in opposition to this motion. (Docket # 359.)

On January 7, 2009, Petitioners filed their second Motion for Additional Discovery, which seeks “digital video recordings, analog video recordings, compact disc recordings, cassette tape recordings, or other media recordings of statements made by” Petitioners and other current or former Guantanamo detainees on which the Government relies to justify its continued detention of Petitioners, as well as transcripts or English translations of such statement. (Docket # 392). On January 21, 2009, Respondents filed a memorandum in opposition to this motion. (Docket # 405.)

In the instant motion, Petitioners fail to mention these two pending discovery motions, even as they indicate that they intend to file a *third* motion for discovery. (Mot. at 3.)¹ In this third discovery motion, Petitioners apparently will argue that “the completeness of the information provided by the Government pursuant to Sections I.D.1 and I.E.1” of the CMO is inadequate. (Mot. at 3.) Petitioners presumably also will want to file more motions for additional limited discovery under CMO Paragraph 1.E.2.

B. Petitioners’ Previous Request for an Extension of Time to File Traverses

Petitioners previously requested a lengthy extension of their deadline to file traverses, a request that Respondents did not oppose. (Docket # 376.) On December 19, 2008, Petitioners requested that the deadline for filing traverses be extended to February 16, 2008, because they needed to schedule meeting with their clients in Guantanamo Bay. The Court has not yet issued an order regarding this motion.

C. Respondents’ Production of Information Under CMO Paragraphs I.D.1 and I.E.1

¹ Citations to “Mot.” refer to Petitioners’ Emergency Motion for an Extension of Time, filed February 9, 2009. (Docket # 433.)

On January 30, 2009, Respondents filed notices certifying that they have disclosed the exculpatory evidence required by CMO Paragraph 1.D.1 with respect to Petitioners Adnan Farhan Abdul Latif (ISN 156) and Adil El Haj Obaid (ISN 165). (Docket # 414, 417, 426.) Such notices triggered their obligation to file “a traverse setting forth the relevant facts and evidence supporting the petition.” (CMO ¶ 1.G.) Accordingly, the traverses for Petitioners Latif and Obaide (ISNs 156 and 165, respectively) must be filed on February 13, 2009.

On February 9, 2009, Petitioners filed the instant “emergency” motion seeking an extension of the deadline of *all* Petitioners’ obligation to file a factual return until March 13, 2009. (Mot. at 2.)

ARGUMENT

The Court should grant the requested extension of time for Petitioners to file their traverses, but require that Petitioners not file additional discovery motions until after they have filed the traverses and Petitioners’ two pending discovery motions are decided. Other petitioners have agreed to refrain from filing discovery motions until after the traverse is filed. *See Al-Mohammed v. Obama*, Civil Action No. 05-0247 (HHK) (Docket # 155) (“Petitioner represents that he will not file a motion pursuant to section I.E.2 of the Case Management Order during the period of the requested extension and given that representation, Respondent does not oppose this motion.”).

Only two of the nine petitioners are presently obligated to file a traverse. As Petitioners correctly note, Respondents have not completed their obligation to disclose Paragraph I.D.1 evidence with respect to ISNs 027, 032, 037, 041, 117, 522 and 681. (Mot. at 2 n.2.) Indeed, if there is any arguable “emergency” with respect to filing deadlines in this case, such “emergency”

involves only Petitioners Latif and Obeid (ISNs 156 and 165). The other seven Petitioners are under no current obligation to file a traverse.

Petitioners erroneously base their request for 30 additional days to file the traverse on the belief that Respondents have not properly completed their Paragraph I.D.1 obligations to disclose exculpatory evidence with respect to Petitioners Latif and Obeid. In fact, Respondents have completed their Paragraph I.D.1 obligations with respect to Petitioners Latif and Obeid, as set forth in the certifications filed on January 30, 2009. (Docket # 414, 417, 426.) Respondents are working diligently to conclude the disclosure of the additional information with respect to the other seven Petitioners.¹

The status conference scheduled for February 27, 2009, will provide the parties and the Court an opportunity to review the principal issues that need to be resolved in order to bring this action to a prompt resolution. The Court should preclude Petitioners from filing additional discovery motions until after the traverse has been filed and the two pending discovery motions (Docket # 339, 391) have been decided. At that time, the parties and the Court can determine whether a third or fourth discovery motion is warranted.

¹ To date, Petitioners have not filed a motion challenging Respondents' compliance with Paragraph I.D.1, and so their not-yet-filed discovery disputes should not be an appropriate ground upon which to justify a 30-day extension of time to file the traverse.

CONCLUSION

For the reasons set forth above, the Court should grant Petitioners request to file their traverses on March 13, 2009 and preclude Petitioners from filing discovery motions until after the traverse is filed and the two pending discovery motions are decided.

Dated: February 12, 2009

Respectfully submitted,

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