

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

**RESPONDENTS' RESPONSE TO PETITIONERS' MOTION SEEKING LEAVE
OF COURT TO FILE A DISCOVERY MOTION IN EXCESS OF 45 PAGES**

Respondents respectfully submit this memorandum in response to the Motion Seeking Leave of Court to File Consolidated Discovery Motion in Excess of 45 Pages, filed by Petitioners Othman Abdulraheem Mohammed (ISN 027), Farouk Ali Ahmed Saif (ISN 032), Abdulmalik Abdulwahhab 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), on April 13, 2009 (Docket # 479). Petitioners seek leave to file a discovery motion brief that is 69 pages, or 24 pages longer than the 45-page limit on memoranda authorized by Local Civil Rule 7(e). Petitioners filed this overlong brief on April 13, 2009. (Docket # 480.)

Under Section I.E.2 of the Amended Case Management Order, Petitioners have the burden to satisfy four mandatory requirements in order to be entitled to additional limited discovery. (Docket # 329, 370.) The relevant analysis necessarily requires a case-specific

determination that focuses, among other things, on whether the petitioner has explained why the request, if granted, would be likely to produce evidence that demonstrates that his detention is unlawful, and why the requested discovery will enable the petitioner to rebut the factual basis for his detention without unfairly disrupting or unduly burdening the government. (Amended CMO § I.E.2.) The determination whether a Petitioner has satisfied the four criteria will necessarily require the Court to individually evaluate each request in the context of the particular facts of each case and the specific allegations set forth in the factual returns. There is no such thing as a “global” discovery request under Section I.E.2.

Respondents believe that grouping the 88 case-specific discovery requests of nine different Petitioners in a single consolidated brief is unnecessary, inappropriate, and confusing. Moreover, such an approach presents logistical difficulties for Respondents, who have treated each petition separately and intend to respond separately to the issues raised in each individual petition. Petitioners’ counsel at the February 27, 2009, status conference stated that he considered each petition to be separate. This Court has expressed a similar view.¹

Respondents will file separate opposition briefs with respect to each Petitioner’s requests for additional limited discovery under Amended CMO Section I.E.2. Respondents do not believe it is appropriate or helpful for Petitioners to have consolidated their discovery requests as they have done. Therefore, Respondents object to Petitioners’ consolidated motion.

¹ On March 16, 2009, six petitioners in *Anam v. Obama*, No. 04-1194, filed separate motions for additional limited discovery under Section I.E.2, even though the six briefs contained common issues. Respondents believe that this is the better approach.

Date: April 17, 2009

Respectfully submitted,

MICHAEL F. HERTZ
Acting Assistant Attorney General

TERRY M. HENRY
Assistant Branch Director

s/ Paul Cirino

ANDREW I. WARDEN
PAUL E. AHERN
PAUL CIRINO
Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
P.O. Box 883
Washington, DC 20530
Tel: 202-305-8900
Fax: 202-616-8470
paul.cirino2@usdoj.gov