

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

<p>MAHMOAD ABDAH, et al.,</p> <p>Petitioners,</p> <p>v.</p> <p>BARACK H. OBAMA, et al.,</p> <p>Respondents.</p>
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Civil Action 04-01254 (HHK)

PREHEARING ORDER

Upon consideration of the parties' Joint Proposed Prehearing Order, it is this 8th day of October, 2009, hereby

ORDERED:

1. Hearing Date and Time

The merits hearing for Petitioner Faruq Ali Ahmed (ISN 32) is scheduled for 10:00 a.m. on November 2, 2009. The hearing shall continue day to day until concluded.

2. Petitioner's Participation

Counsel for Petitioner will notify the Court and the parties by October 21, 2009 whether Petitioner will testify at the hearing. Petitioner will be subject to cross-examination if he testifies.

3. Briefs

- a) Each side shall submit a brief in support of a motion for judgment on the record on October 16, 2009, not to exceed 45 pages. The briefs shall include:
- i. a discussion of applicable legal principles concerning detention authority as well as any other issues relevant to the motions, and
 - ii. discussion and argument concerning the relevant facts, with specific citations to and discussion of the evidence relevant to the positions taken in the briefs.
- b) Each side shall submit an opposition brief on October 26, 2009, not to exceed 35 pages.
- c) The parties need not comply with the provision in Section III.A of the Consolidated Case Management Order to the extent that it requires submission of separate statements of material facts as to which a party contends there is no genuine dispute.

4. Exhibits

Respondents will mark their exhibits as GE#___ and will provide two sets of their exhibits to Petitioner's counsel and to the Court on October 29, 2009. Petitioner will mark his exhibits as PE#___ and will provide two sets of his exhibits to Respondents' counsel and to the Court on October 29, 2009. The parties are on notice that any documentary evidence that has not been included in the sets of exhibits referenced in the preceding sentences, or any argument based on such evidence, likely will be excluded from consideration by the Court. The two exceptions to this deadline shall be (1) documents offered solely for rebuttal of arguments made at the Merits Hearing that could not reasonably have been anticipated before October 29, 2009, and (2) exculpatory information, as to which Respondents have a continuing obligation to

disclose to Petitioner.

5. Merits Hearing Procedures

a) Opening Statements. The parties will begin with unclassified opening statements, with Respondents presenting their opening statement first. Counsel for Petitioner has indicated that Petitioner would like to listen to the unclassified opening statements. Petitioner shall be responsible for providing a translator, and Respondents will coordinate with the appropriate entities and individuals to provide the logistical arrangements. Following the unclassified opening statements, Respondents, and then Petitioner, will present classified opening statements.

b) Petitioner's Testimony. Following the opening statements, Petitioner shall have an opportunity to testify. No other individuals will testify during this proceeding.

c) Presentation of Evidence. The parties will make an issue-by-issue presentation, consistent with the approach to these proceedings used by other Members of the Court. By October 28, 2009, the parties will file a statement of material issues in dispute, and the order in which they will be presented, to the Court. If the parties cannot agree on what the material issues are, or the sequence in which they shall be addressed, they will file separate proposals to the Court, identifying the areas of disagreement. As to each material issue, Respondents shall make the first presentation. Petitioner then will have an opportunity to respond to Respondents' presentation, and Respondents then will have an opportunity to respond to Petitioner's presentation in rebuttal.

d) Closing Statements. The parties shall present classified closing statements. Respondents shall make their closing argument first, followed by Petitioner. Respondents will

then be allowed an opportunity to present arguments in rebuttal. The parties will be given equal time for making closing statements, including rebuttal.

6. Objections to Prehearing Order. Any objection or request for clarification of this order shall be filed by no later October 14, 2009.

Henry H. Kennedy, Jr.
United States District Judge