

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

IN RE:

Misc. No. 08-442 (TFH)

GUANTANAMO BAY
DETAINEE LITIGATION

Ahcene Zemiri, et al.,

Court File No: 04-cv-2046 (CKK)

Petitioners,

v.

George W. Bush, President of the United
States,

Defendants.

**JOINT STATUS REPORT IN RESPONSE TO
ORDER DATED DECEMBER 22, 2008**

Pursuant to this Court's Order dated December 22, 2008, the parties in *Zemiri v. Bush*, 04-2046 (CKK), hereby submit this joint status report.

I. Status of compliance with the Case Management Order.

On September 29, 2008, Respondents filed a classified version of the Amended Factual Return for Petitioner Ahcene Zemiri ("Zemiri"). *See* Docket No. 92.¹

On November 18, 2008, Respondents filed a Statement of Legal Justification for Detention. *See* Docket No. 104. Zemiri's position is that the Statement was defective

¹ Unless otherwise indicated, all references to "Docket No. ___" refer to the docket in Zemiri's individual case, Court File No. 04-cv-2046 (CKK).

because it was generic to all detainees and did not provide the Respondents' stated legal justification to detain Zemiri. *See* Docket No. 109 (Amended Joint Status Report dated November 26, 2008). Respondents' position is that the Statement of Legal Justification is responsive to the Court's orders and that the Amended Factual Return provides additional information specific to Zemiri.

On November 20, 2008, the government filed a Notice Pertaining to Production of Exculpatory Evidence. *See* Docket No. 105. Zemiri's position is that the Notice was defective because it was generic to all detainees, and that it confirmed that the government disclosed only the exculpatory evidence it happened upon when its attorneys prepared the amended factual returns, rather than searching all of the agencies who might have such evidence. *See* Docket No. 109 (Amended Joint Status Report dated November 26, 2008). Respondents' position is that the Notice Pertaining to Production of Exculpatory Evidence was responsive to the Court's order at the time. The requirement to disclose exculpatory was amended by Judge Hogan in an Order dated December 16, 2008. *See* Docket No. 115 (amending Section I.D.1). Respondents will file a notice in accordance with the requirements of that Order.

On November 21, 2008, Judge Hogan stayed various deadlines in the Case Management Order ("CMO") in response to Respondents' November 18, 2008 motion for clarification and reconsideration or in the alternative for certification for appeal and to stay. *See* Docket No. 107.

On December 15, 2008, Respondents served an unclassified version of the Amended Factual Return for Zemiri on Zemiri's counsel. *See* Docket No. 114.

On December 16, 2008, Judge Hogan amended the Case Management Order in response to Respondents' motion for clarification and reconsideration or, in the alternative, for certification of appeal and to stay. *See* Docket No. 115.

On December 28, 2008, counsel for Zemiri requested the following categories of information in accordance with Judge Hogan's Order dated December 16, 2008: (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.

On December 30, 2008, Respondents filed a motion to extend the time by which they must comply with the obligation, set forth in CMO Section I.D.1., to "disclose to the petitioner all reasonably available evidence in its possession that tends materially to undermine the information presented to support the government's justification for detaining the petitioner." *See* Docket No. 119.

In addition, Respondents have sought in other cases, and intend to seek in this case, an extension of the time by which they must comply with the obligation, set forth in CMO Section I.E.1., to disclose "information about the circumstances in which such statements of the petitioner were made or adopted."

On December 31, 2008, Judge Hogan issued a Minute Order holding that because Respondents' Notice of Prior Disclosure of Exculpatory Evidence and Motion for Extension of Time and Motion for Extension of Time to Provide Discovery Pursuant to Amended Case Management Order Section I.E.1(3) are motions to amend the Case

Management Order that Judge Hogan entered on November 6, 2008, and amended on December 16, 2008, the Merits Judges will address the motions in their individual cases. Judge Hogan denied those motions in Court File No. 08-mc-442 (TFH).

Zemiri's counsel have scheduled a meeting with Zemiri on February 5, 2009. This will be the first meeting between Zemiri and his counsel since Respondents filed the Amended Factual Return. Zemiri has not yet submitted a traverse.²

II. The schedule for all motions, filings, or other disclosures contemplated in the Case Management Order assuming no alterations of the deadlines set forth therein.

Section I.D.1 Deadline to disclose exculpatory evidence: Under the amended Section I.D.1., the government's deadline to disclose all "reasonably available evidence in its possession that tends materially to undermine the information presented to support the government's justification for detaining the petitioner" is fourteen days after the date of the Case Management Order if Respondents have already filed a factual return. Respondents have filed an Amended Factual Return in this case. Accordingly, Respondents' deadline was December 30, 2008. However, on December 30, 2008, Respondents moved to extend the deadline until January 30, 2009. Counsel for Zemiri has advised Respondents that Zemiri does not oppose this motion.

Section I.E.1. Deadline to make requested disclosures: Under the amended CMO Section I.E.1., Respondents' deadline to disclose additional categories of documents and information is fourteen days from the date of the request. Zemiri's counsel confirmed

² On October 14, 2008, Respondents moved to dismiss all Respondents except for the Secretary of Defense. *See* Docket No. 94.

that Zemiri requests the additional documents and information in an email to Respondents' counsel on December 28, 2008.

Accordingly, Respondents' deadline to make these disclosures is January 12, 2009. However, in other cases, Respondents have sought extensions of this deadline to January 30, 2009, and anticipate seeking an extension in this case until at least January 30, 2009.

Section I.G. Deadline to file traverse: Under the amended CMO Section I.G., the deadline to file a traverse is fourteen days from the date Respondents file a notice relating to exculpatory evidence under Section I.D.1. Respondents have not yet filed the notice relating to exculpatory evidence in Zemiri's case.

Accordingly, the deadline cannot be determined at this time.

Section III.A. Deadlines to file initial briefs, response briefs, and reply briefs: Under Section III.A., the deadline to file an initial brief is fourteen days from the filing of the traverse, and the deadline to file a response brief is seven days after the filing of the initial brief. Zemiri has not yet filed a traverse.

Accordingly, the deadline for the initial brief and the response brief cannot be determined at this time.

III. Description of any anticipated problems that may arise during compliance with the schedule set forth in the Case Management Order.

As noted above, on December 30, 2008, Respondents filed a motion to extend the time by which they must comply with the obligation, set forth in CMO Section I.D.1., to "disclose to the petitioner all reasonably available evidence in its possession that tends

materially to undermine the information presented to support the government's justification for detaining the petitioner." *See* Docket No. 115. In this case, the motion is unopposed.

Also as discussed above, Respondents have sought in other cases, and intend to seek in this case, an extension of the time by which they must comply with the obligation, set forth in CMO Section I.E.1., to disclose "information about the circumstances in which such statements of the petitioner were made or adopted."

Zemiri's position is that he cannot file a complete traverse until he has had the opportunity to meet with his lawyers and see the unclassified version of the amended factual return. Zemiri's lawyers have requested, and been approved, to meet with Zemiri on February 5, 2009.

Zemiri requires the following additional areas of discovery under Section I.E.2 of the Case Management Order:

1. All information provided to the government by Canada, including investigative reports, notes, or transcripts that refer or relate to Zemiri and the alleged LAX plot.
2. All information provided to the government by Canada, including investigative reports, notes, or transcripts that refer or relate to Zemiri's contacts, communications, or relationship with Ahmed Ressam, Mokhtar Haouari, or Abdel Ghani Meskini.

3. All information regarding the government's communications with Ahmed Ressam, Mokhtar Haouari, and Abdel Ghani Meskini that refer or relate to Zemiri.
4. All information regarding what inducements, promises, or communications the government made to Ahmed Ressam, if any, in exchange for his statement(s) about Zemiri.
5. All information regarding the bounty paid in exchange for Zemiri.
6. All information supporting the government's allegations against Zemiri, including allegations that Zemiri was part of a network supporting subversion in Algeria.
7. All exculpatory evidence in accordance with *Brady* and *Giglio*, including "[a]ll exculpatory evidence that is reasonably available to the government and that bears on [Zemiri's] detention." *Zuhair v. Bush*, 08-864 (EGS) (Minute Order dated October 8, 2008). Zemiri maintains that such exculpatory evidence should be disclosed pursuant to Sections I.D.1 and I.E.1.

Respondents believe that Zemiri's requests for discovery should follow CMO Section I.E.2. That provision requires that Petitioners present a written motion and (1) be narrowly tailored, not open-ended; (2) specify the discovery sought; (3) explain why the request, if granted, is likely to produce evidence that demonstrates that the petitioner's detention is unlawful, . . . and (4) explain why the requested discovery will enable the

petitioner to rebut the factual basis for his detention without unfairly disrupting or unduly burdening the government

IV. Proposals to change the Case Management Order.

The Court should extend until January 30, 2009, the deadline for Respondents to disclose exculpatory evidence, as defined in CMO Section I.D.1. In addition, Respondents intend to request an extension until at least January 30, 2009, of the deadline for the disclosures under the amended CMO Section I.E.1. The government's obligation to produce exculpatory evidence is ongoing, as set forth in CMO Section I.D.2.

Zemiri intends to file a motion for leave to take discovery. Respondents intend to file a written response to that motion. The parties propose that Zemiri's deadline to file a motion for leave to obtain discovery should be January 15, 2009, and that Respondents' response to that motion should be due on January 26, 2009.

The parties propose that discovery be completed by March 5, 2009.

The parties propose that Zemiri file the Traverse on or before March 30, 2009.

The parties propose that, within three business days after the Traverse is filed, counsel contact the court to arrange a status conference. At this conference, the parties will discuss the material issues in dispute that should be tried and whether all or a portion of those issues should be decided by dispositive motion. If appropriate, the parties can discuss evidentiary and witness issues in advance of a final hearing on the merits. The parties and the court may set a schedule for any briefing or merits hearing at this status conference.

V. Final proposed schedule.

The parties offer the following as the final proposed schedule:

- I. Respondents' deadline to make disclosures pursuant to CMO Section I.D.1 shall be extended to January 30, 2009.
- II. On or before January 12, 2009, Respondents shall file a motion requesting an extension of the deadline to make disclosures pursuant to CMO Section I.E.1.
- III. Zemiri shall file his motion for leave to obtain discovery on or before January 15, 2009,
- IV. Respondents shall file their response to Zemiri's motion for leave to obtain discovery on or before January 26, 2009.
- V. All discovery shall be completed by March 5, 2009.
- VI. Zemiri shall file and serve the Traverse on or before March 30, 2009.
- VII. Within three business days after Zemiri files and serves the Traverse, the parties shall contact the Court to arrange a status conference to discuss the material issues in dispute that should be tried and whether all or a portion of those issues should be decided by dispositive motion. If appropriate, the parties may discuss evidentiary and witness issues in advance of a final hearing on the merits. The Court may set a schedule for any briefing or merits hearing at this status conference.
- VIII. The parties may seek appropriate extensions of time, for good cause shown.

The parties believe that the foregoing proposed schedule is the most efficient manner to proceed to a prompt resolution of the claims in this case.

Dated: January 2, 2009

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*Representing Petitioner without
compensation pursuant to L. Cv. R.
83.2(g)*

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