

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA**

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IN RE:

Misc. No. 08-442 (TFH)

GUANTANAMO BAY  
DETAINEE LITIGATION

Ahcene Zemiri, et al.,

Court File No: 04-2046 (CKK)

Petitioners,

v.

George W. Bush, President of the United  
States,

Defendants.

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**JOINT STATUS REPORT**

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Pursuant to this Court's Order dated November 14, 2008, the parties in *Zemiri v. Bush*, 04-2046 (CKK), hereby submit this joint status report.

**I. Petitioner's Statement.**

Petitioner Ahcene Zemiri ("Zemiri") is an Algerian citizen who has been held in prison by the United States at Guantanamo Bay, Cuba, since early 2002. His petition for habeas corpus was filed in this Court on November 19, 2004. *See* Docket No. 1 (unless otherwise indicated, all references to "Docket No. \_\_\_\_" refer to the docket in Zemiri's individual case, Court File No. 04-2046 (CKK)).

Zemiri has been held in near isolation from the world since 2002. He has had only limited correspondence with his family. He has not seen his wife since late 2001. He has never seen their son, Karim, who is now six years old. No charges have ever been filed against him.

## **II. Respondents' Statement.**

Respondents respectfully submit the following statement in response to the Court's Order of November 14, 2008 (Docket No. 101), which required the parties to "identify additional matters that were not decided in the Case Management Order" entered by Judge Hogan on November 6, 2008 (Docket No. 99).<sup>1</sup>

There is only one matter pending before the Court that was not decided in Judge Hogan's Case Management Order. On October 14, 2008, Respondents moved to dismiss all Respondents except for the Secretary of Defense. (Docket No. 96). That motion has not been decided.

Respondents note the following additional matter not decided by the November 6, 2008 Case Management Order: On November 21, 2008, in response to Respondents' November 18, 2008 motion for clarification and reconsideration or in the alternative for certification for appeal and to stay, Judge Hogan stayed various deadlines in the Case Management Order. (Docket No. 107).

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<sup>1</sup> Respondents are unable to join in Petitioners' statement, given its argumentative nature, its inappropriate characterization of various matters, and its discussion of topics that are expressly covered by Judge Hogan's Case Management Order.

**III. Status of compliance with the Case Management Order and current procedural posture of the case.**

On September 29, 2008, the government filed a notice of filing of proposed amended factual return for Zemiri. *See* Docket No. 92. On November 21, 2008, in response to the government's November 18, 2008 motion for clarification and reconsideration or in the alternative for certification for appeal and to stay, Judge Hogan stayed various deadlines in the Case Management Order ("CMO"). *See* Docket No. 107.

To date, the government has not filed unclassified versions of the amended factual returns as required by ¶ I.C. of the CMO, and Zemiri has not had any opportunity to see or respond to the allegations contained in the classified amended return. Moreover, the government has not disclosed to Zemiri "all reasonably available evidence in its possession that tends materially to undermine the information presented to support the government's justification for detaining" Zemiri and has not certified that it has disclosed the exculpatory evidence under ¶ I.D. of the CMO.

Instead, the government filed a document captioned "Notice Pertaining to Production of Exculpatory Evidence," stating that it has disclosed only the exculpatory evidence "encountered in developing returns by the attorneys preparing them . . . ." *See* Docket No. 105 (Nov. 20, 2008). The Notice is defective because it only confirms that it has disclosed whatever exculpatory evidence it happened upon when its newly-recruited attorneys the amended factual returns. It clearly did not search all of the agencies which might have such evidence. Because the Notice is defective, it does not trigger the obligation to file a traverse under the CMO. In addition, Judge Hogan issued an Order on

November 21, 2008, which stays the exculpatory notice obligation and, accordingly, the traverse obligation as well.

On November 18, 2008, the government filed an omnibus “Statement of Legal Justification for Detention.” *See* Docket No. 104. The Statement was defective because it did not provide the government’s stated legal justification to detain Zemiri, but rather was generic to all detainees.

**IV. Additional matters not decided by the Case Management Order.**

**A. Deadlines for the unclassified amended factual return and traverse.**

Zemiri’s lawyers need to discuss an unclassified version of the amended return with Zemiri before they can file an accurate and complete traverse. Zemiri’s lawyers have requested they be permitted to visit Zemiri on January 14, 2009. That request is pending. Assuming the visit request is approved, and based on conversations with the government, Zemiri’s lawyers anticipate that the parties could stipulate to an extension of the deadlines in the CMO, subject to court approval. Zemiri proposes that the government’s deadline to file the unclassified version of the amended factual be extended to January 7, 2009, and that Zemiri’s deadline to file the traverse be set for February 13, 2009.

**B. Discovery**

Under ¶ I.E.1. of the CMO, the government is obligated to disclose to the petitioner: (1) any documents or objects in its possession that are referenced in the factual return; (2) all statements, in whatever form, made or adopted by the petitioner that relate to the information contained in the factual return; and (3) information about the

circumstances in which such statements of the petitioner were made or adopted. Zemiri requests the government to disclose forthwith all information and documents referenced in ¶ I.E.1. of the CMO.

In addition to the information and documents referenced in ¶ I.E.1. of the CMO, Zemiri should be granted discovery including but not limited to the following areas:

- 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.
- 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.
- All information regarding the government's communications with Ahmed Ressam, Mokhtar Haouari, and Abdel Ghani Meskini that refer or relate to Zemiri.
- All information regarding what inducements, promises, or communications the government made to Ahmed Ressam, if any, in exchange for his initial statement about Zemiri.
- All information regarding the bounty paid in exchange for Zemiri.

- All information supporting the government's allegations against Zemiri, including allegations that Zemiri was part of a network supporting subversion in Algeria.
- 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 have been disclosed pursuant to the CMO.

Zemiri respectfully requests that the Court order the government to produce the documents and information referenced in ¶ I.E.1. of the CMO, allow Zemiri to serve further discovery requests on the government, and set a deadline for the government to respond.

**C. Statement of Legal Justification.**

On November 18, 2008, the government filed its Statement of Legal Justification for Detention. *See* Docket No. 104. The Statement was defective because it did not provide the government's stated legal justification to detain Zemiri. Zemiri respectfully requests that the Court order the government to file a statement of legal justification for the detention of Zemiri and to allow Zemiri the opportunity to respond to that legal justification.

**D. Government's motion to dismiss all Respondents except for the Secretary of Defense.**

On October 14, 2008, the government moved to dismiss all respondents except for the Secretary of Defense. *See* Docket No. 96. In an email exchange earlier that day, Zemiri, through counsel, had informed the government that Zemiri would consent to the government's motion if the government would stipulate in that motion to the following conditions: (1) the Secretary of Defense is a proper respondent; (2) the Secretary of Defense is subject to the jurisdiction of the Court; (3) the Secretary of Defense has the power and authority to implement any court orders granting the relief requested in Zemiri's petition including, but not limited to, Zemiri's release and production of documents or any other evidence in the possession or control of the government; (4) the government, not limited to the Department of Defense, has an obligation to preserve documents or any other evidence relevant to this litigation; (5) the government will not transfer Zemiri to the custody of another branch of the U.S. government and should it do so, the government agrees to reinstate the President as the Respondent in this litigation.

In addition, Zemiri's lawyers stated that in order to consent to the government motion, the motion must state that Zemiri does not agree that the President and Army Commanders are improper respondents and that by agreeing to the removal of the President and/or Army Commanders as Respondents, Zemiri was not waiving any rights. The government did not respond to that email and instead filed the motion. The motion is pending.

**E. Merits Judge**

Given the unique circumstances in Zemiri's case, and in accordance with footnote 1 of the CMO, Zemiri respectfully requests that all further proceedings in this case be addressed by Judge Kollar-Kotelly.

Dated: November 26, 2008

Attorneys for Petitioner Ahcene Zemiri

Attorneys for Respondents

s/ Nicole M. Moen

James E. Dorsey (MN # 137893)  
John W. Lundquist (MN # 65286)  
Nicole M. Moen (MN # 329435)  
Debra A. Schneider (MN # 313105)  
FREDRIKSON & BYRON, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, MN 55402  
Tel: (612) 492-7000  
Fax: (612) 492-7077

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

s/ Paul Cirino

Joseph H. Hunt (D.C. Bar #431134)  
Vincent M. Garvey (D.C. Bar #127191)  
Terry M. Henry  
Alexander K. Haas  
Andrew I. Warden  
Paul E. Ahern  
Robert J. Prince  
Paul Cirino  
Attorneys  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Ave., N.W.  
Washington, DC 20530  
Tel: (202) 616-5084

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