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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAHMOAD ABDAH, *et al.*,
Petitioners,
v.
GEORGE W. BUSH, *et al.*,
Respondents.

Civ. No. 04-01254 (HHK)

SUBMISSION OF CLASSIFIED INFORMATION IN SUPPORT OF
PETITIONERS' EMERGENCY MOTION FOR INQUIRY INTO
RESPONDENTS' COMPLIANCE WITH PRESERVATION ORDER

On December 9, 2007, petitioners filed an emergency motion (Doc. 219) for an inquiry into the government's compliance with the Court's preservation order of June 10, 2005. Classified information in the factual return for petitioner Mohammed Mohammed Hassen (ISN #681), illustrates the need for such an inquiry. In particular, the Combatant Status Review Tribunal ("CSRT") based its enemy combatant determination for Mr. Hassen

[REDACTED]

The discussion of the evidence in Mr. Hassen's return is not meant to argue the merits of the CSRT's enemy combatant determination for Mr. Hassen,

[REDACTED]

¹ Petitioners refer to "video recordings" rather than "videotapes" because it remains to be established whether the videos destroyed by the CIA, or other video recordings, were videotapes or digital video. Petitioners understand that, for technological reasons, it is more likely that copies of the latter exist today than copies of the former.

Qaida lieutenant" from a photograph as having been at the "Crescent Mill" guesthouse on Faisalabad, Pakistan.⁶ [REDACTED]

a. *Presence in Afghanistan.* According to the evidence on which the CSRT relied, this "senior Al Qaida lieutenant" identified Mr. Hassen from a photograph purportedly taken at the guesthouse in Pakistan.⁷ [REDACTED]

[REDACTED]

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b. *Presence at "Crescent Mill" guesthouse.* As noted above, [REDACTED]

[REDACTED]¹¹ The

⁶ Unclassified Summary ¶ 2 (first paragraph). Exhibit R-1, the Unclassified Summary of Evidence, states that "[a] senior Al Qaida Lieutenant identified [Mr. Hassen] in a photo as having possibly seen him [sic] in Afghanistan." (Emphasis added.)

⁷ Unclassified Summary ¶ 2 cites Ex. R-1, the Unclassified Summary of Evidence, which states that "[a] senior Al Qaida Lieutenant identified [Mr. Hassen] in a photo as having possibly seen him [sic] in Afghanistan."

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[REDACTED]

CSRT cites [REDACTED]

[REDACTED]

To be clear, petitioners do not contend that the government's destruction of the CIA video recordings at issue necessarily violates the Court's preservation order. Nor do petitioners contend [REDACTED]

[REDACTED] Instead, petitioners contend that the destruction of the CIA video recordings raises an urgent question about the government's compliance (or non-compliance) with the Court's preservation order and the government's independent obligation to preserve evidence. Ironically, the government insisted that a preservation order was not needed in light of its commitment to preserving evidence; and the government ridiculed petitioners for spinning a "conspiracy theory" in requesting such an order.¹⁴

12 [REDACTED]

13 [REDACTED]

¹⁴ In its memorandum opposing entry of a preservation order, the government admonished the Court that "respondents are well aware of their obligation not to destroy evidence that may be relevant in pending litigation." Doc. 97, at 25. The government also reminded the Court that "[a]dministrative agencies are entitled to a presumption 'that they will act properly and accord-

(continued...)

The government's preservation of relevant evidence is obviously vital to petitioners' cases, and inquiry into the government's handling of such evidence cannot wait. When a party admits to having destroyed evidence, prompt inquiry is indispensable. Subsequent representations by the party that it has not destroyed, or will not destroy, other relevant evidence cannot easily be credited. Nor can general investigations of the CIA's destruction of evidence underway in other forums substitute for focused judicial inquiry into the government's handling of all evidence relevant to this case. Finally, the government's destruction of evidence is an especially deep affront to the Court warranting immediate attention.

WHEREFORE, the Court should schedule a hearing to inquire into the government's compliance with the Court's preservation order.

Dated: December 13, 2007

Respectfully submitted,

/s/

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ing to law," *id.* (citation omitted). The government dismissed what it called petitioners' "conspiracy that respondents have a propensity to destroy evidence" on the ground that petitioners had mustered in support of their theory "only" a document pointing to a cover-up of detainee abuse in Iraq. *Id.* at 24.