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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HANI SALEH RASHID ABDULLAH,
et al.,

Petitioners,

v.

GEORGE W. BUSH, *et al.*,

Respondents.

No. 05-00023 (RWR)

REPLY BRIEF IN SUPPORT OF
MOTION FOR ACCESS TO HILTON DECLARATION

Petitioner Hani Saleh Rashid Abdullah is aware of the case law concerning the deference the Court is required to show classification decisions made by the Executive. This deference cannot be unlimited, however: the government cannot pretend that the revelation of facts, or sources and methods that are not actually secret – [REDACTED] an investigative technique as old as photography – must be protected lest the national security interests of the United States be impaired. Judging from the excerpts of the affidavit the government has made available to counsel – with the express limitation that it not be shared with any other counsel, even those with security clearances, because it is so sensitive – the classification here is far overbroad.

Whatever deference the Court might owe to Executive decisions on security classification, surely it owes little or none to the Executive's determination of a lawyer's 'need to know' facts which are relevant to federal court litigation. There is no reason to presume that the Central intelligence Agency has superior knowledge of the issues at stake in this litigation, what evidence may or may not be important, or what is necessary for counsel to provide competent advice and other representation. Here too, the partially redacted copy of the declaration is telling: the CIA has concluded that counsel has no need to know [REDACTED]

The Court has ordered the government to account for its handling of evidence related to Mr. Abdullah. Although Ms. Hilton's Declaration still has excerpts to which counsel does not have access, it appears that her search for relevant documents was not broad enough. As is apparent from his classified return, and from published reports, Mr. Abdullah was arrested with several other persons [REDACTED] Ms. Hilton's Declaration does not indicate that her search for documents covered this, or perhaps other collective names. She seems not to have interviewed the persons who interrogated suspects whose tapes were destroyed, to find out if evidence

Ms. Hilton states [REDACTED]

relevant to Mr. Abdullah or the group he is accused of belonging to was mentioned. Perhaps, though, the redacted portions of the Declaration explain why this is so.

Nearly three months ago, the Court order Respondents to file a report on destruction of spoliation of evidence. The government's reluctance to comply has taken two forms – first direct opposition in the form of a request to reconsider, which was partially granted. Second, though, the government has engaged in its own passive aggressive version of hide-and-seek, including, apparently, making classifications decisions which are, to judge from the excerpts made available to counsel on special terms, nearly frivolous.² It is not clear even now whether even Respondents believe that they have completed their obligations under this Court's orders. Perhaps the classified portions of the Declaration shed some light on this as well.

In the current posture, counsel has a need to know what steps Respondents have taken to comply with the Court's 2008 orders – even if the Court has relieved them, for the time being, of reporting on their compliance with the Court's 2005 order. Counsel has a need to know what evidence, if any, has been destroyed for two reasons. First, so we can advocate appropriate action to the

² In this category falls the deletion of [REDACTED]

Court and second so we can try to mitigate the harm the government's spoliation has caused.

The motion should be granted forthwith.

~~Respectfully submitted,~~

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