

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

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**DAVID M. HICKS,**

**Petitioner,**

v.

**GEORGE WALKER BUSH,**  
**President of the United States,**  
*et al.,*

**Respondents.**

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) **Civil Action No. 1:02-CV-00299 (CKK)**  
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**RESPONSE TO PETITIONER'S STATEMENT OF  
UNDISPUTED MATERIAL FACTS IN SUPPORT OF  
PETITIONER'S CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT**

Respondents hereby respond to each of petitioner's numbered statements in petitioner's Statement of Undisputed Material Facts in Support of Petitioner's Cross-motion for Partial Summary Judgment, as follows:

1. This statement is not disputed for purposes of petitioner's motion for partial summary judgment.
2. This statement is not disputed for purposes of petitioner's motion for partial summary judgment.
3. This statement is not disputed for purposes of petitioner's motion for partial summary judgment.
4. This statement is not disputed for purposes of petitioner's motion for partial summary judgment.
5. This statement is not disputed for purposes of petitioner's motion for partial summary judgment.

6. This statement is not properly supported for purposes of summary judgment in a habeas context. Further, contrary to the statement, the record supports that petitioner was, in fact, an enemy combatant. See Response to Petition for Writ of Habeas Corpus, Ex. A (dkt. no. 83).
7. This statement is not properly supported for purposes of summary judgment in a habeas context. Further, this statement is disputed. See Response to Petitions for Writ of Habeas Corpus and Motion to Dismiss or for Judgment as a Matter of Law at 16-17 & n.17 (dkt. no. 82).
8. This statement is not properly supported for purposes of summary judgment in a habeas context. Further, the second sentence of the statement is not material to petitioner's motion for partial summary judgment.
9. This statement is not properly supported for purposes of summary judgment in a habeas context. Further, the first sentence of the statement is not material to petitioner's motion for partial summary judgment.
10. This statement is not properly supported for purposes of summary judgment in a habeas context. Further, this statement is not material to petitioner's motion for partial summary judgment.
11. This statement is not properly supported for purposes of summary judgment in a habeas context. Further, the statement sets forth a legal conclusion, not material fact.
12. The portions of the statement that petitioner received a determination from a CSRT regarding his enemy combatant status and that legal counsel for a detainee

in a CSRT proceeding is not permitted, are not disputed for purposes of petitioner's motion for partial summary judgment, though the latter is not material to petitioner's motion for partial summary judgment. The remainder of the statement is not properly supported for purposes of summary judgment in a habeas context and sets forth legal conclusions, not material fact.

13. This statement is not disputed for purposes of petitioner's motion for partial summary judgment, although the statement sets forth a legal conclusion, not material fact.
14. This statement is not disputed for purposes of petitioner's motion for partial summary judgment.
15. Except for the fourth and last sentences, which are not disputed for purposes of petitioner's motion for partial summary judgment, these statements constitute argumentative characterizations of military commission orders, which are themselves the best evidence of their contents. Petitioner's arguments are disputed or addressed in respondents' Response and Motion to Dismiss or for Judgment as a Matter of Law with Respect to Challenges to the Military Commission Process ("MC Response") (dkt. no. 88) and respondents' Response to Petitioner's Cross-Motion for Partial Summary Judgment ("MC Response to Cross-Motion") (submitted herewith).
16. These statements constitute argumentative characterizations of military commission orders, which are themselves the best evidence of their contents.

Petitioner's arguments are disputed or addressed in respondents' MC Response and MC Response to Cross-Motion.

17. These statements constitute argumentative characterizations of military commission orders, which are themselves the best evidence of their contents. Petitioner's arguments are disputed or addressed in respondents' MC Response and MC Response to Cross-Motion.
18. These statements are not properly supported for purposes of summary judgment in a habeas context, or they constitute argumentative characterizations of military commission orders, which are themselves the best evidence of their contents. Petitioner's arguments are disputed or addressed in respondents' MC Response and MC Response to Cross-Motion.

[Petitioner's Statement does not include statements numbered "19." or "20."]

21. This statement constitutes characterizations of a military commission order, which is itself the best evidence of its contents.
22. This statement constitutes argumentative characterization of a Department of Defense order, which is itself the best evidence of its contents. Petitioner's arguments are disputed or addressed in respondents' MC Response and MC Response to Cross-Motion.
23. The first sentence of this statement is speculation and is not properly supported for purposes of summary judgment in a habeas context. Both sentences of this

statement constitute argumentative characterizations of a military commission order, which is itself the best evidence of its contents. Petitioner's arguments are disputed or addressed in respondents' MC Response and MC Response to Cross-Motion.

23. [Petitioner's Statement contains two paragraphs numbered "23."] This statement is argumentative and mischaracterizes the cited facts alleged in the Second Amended Petition.
24. This statement is not disputed for purposes of petitioner's motion for partial summary judgment.
25. Except for the last sentence, this statement constitutes argumentative characterization of a document (Charge Sheet), which is itself the best evidence of its contents. Petitioner's arguments are disputed or addressed in respondents' MC Response and MC Response to Cross-Motion. The last sentence of this statement is not disputed for purposes of petitioner's motion for partial summary judgment, although the sentence is not material to petitioner's motion for partial summary judgment. Further, petitioner has recently been moved to a cell block reserved for military commission detainees within Camp Delta at Guantanamo Bay and will be transferred back to Camp Echo when visiting with his counsel. See Notice of Change of Circumstances (dkt. no. 96).
26. This statement sets forth a legal conclusion, not material fact. Petitioner's arguments are disputed or addressed in respondents' MC Response and MC Response to Cross-Motion.

27. This statement is not disputed for purposes of petitioner's motion for partial summary judgment.
28. This statement is not disputed for purposes of petitioner's motion for partial summary judgment.
29. The portions of the statement that a CSRT was convened to determine petitioner's enemy combatant status is not disputed for purposes of petitioner's motion for partial summary judgment. The remainder of the statement is not properly supported for purposes of summary judgment in a habeas context, is not material to petitioner's motion for partial summary judgment, and sets forth legal conclusions, not material fact. Petitioner's arguments are disputed or addressed in respondents' MC Response and MC Response to Cross-Motion.

DATED this 15th day of November, 2004.

Respectfully submitted,

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