IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SALIM AHMED HAMDAN, Petitioner, v. DONALD RUMSFELD, Secretary of Defense, *et al.,* Respondents.	)	Civil Action No. 04-CV-1519 (JR)

RESPONDENTS' UNOPPOSED MOTION FOR CLARIFICATION
REGARDING SUBMISSION OF A RESPONSE AND FACTUAL RETURN

Respondents, by and through undersigned counsel, hereby respectfully request clarification as to whether the Court's orders to date require that respondents file a response to the petition in this case on October 4, 2004 addressing the issue of petitioner's detention as an enemy combatant and a factual return regarding the bases for that detention by the week of October 18, 2004. The grounds for this motion, and the position of petitioner's counsel on the matter, are set forth below.

1. This case is a petition for a writ of habeas corpus or mandamus by an alien detained at Guantanamo Bay, and is one of fourteen cases pending in this Court brought on behalf of alien enemy combatants held at Guantanamo Bay in connection with hostilities involving al Qaeda, the Taliban, and their supporters.

2. The case was originally filed in April 2004 in the Western District of Washington, but was transferred to this Court and, on September 2, 2004, assigned to Judge Robertson. Judge Robertson then transferred the case to Senior Judge Joyce Hens Green for coordination and

management, as well as for resolution of common issues where consent is obtained from the transferring Judge, pursuant to an August 17, 2004 Order by the Calendar and Case Management Committee and a September 14, 2004 Resolution of the Executive Session of the Court.

3. Petitioner, who is detained as an enemy combatant, has also been designated as a defendant for trial by a military commission. His petition raises only legal claims pertaining to his detention pursuant to military commission proceedings. He has not raised allegations or argument concerning his detention as an enemy combatant, apart from the military commission proceedings. In his prayer for relief, nevertheless, petitioner requests that the Court "[o]rder Respondents promptly to justify as lawful *any* continued detention of [petitioner]." Petition at p. 25, ¶ 7 (emphasis added).

4. Pursuant to a schedule ordered by the Western District of Washington, respondents filed a return and cross-motion to dismiss addressed solely to petitioner's detention pursuant to military commission proceedings on August 6, 2004, prior to the transfer of the case to this Court.

5. On September 20, 2004, the parties submitted a joint letter to the Court requesting a schedule for the completion of briefing with respect to respondent's cross-motion to dismiss. That same day, the Court issued an order requiring respondents to file and serve in all coordinated Guantanamo Bay detainee cases by October 4, 2004, responsive pleadings showing why the writs of habeas corpus and the relief sought by petitioners should not be granted. The Court also required respondents to submit factual returns for each detainee pertaining to the detention as an enemy combatant no later than the week of October 18, 2004. See Coordination

Order Setting Filing Schedule and Directing the Filing of Correspondence Previously Submitted to the Court (filed Sept. 20, 2004) (attached as Ex. A).

6. On September 24, 2004, the Court accepted the parties proposed briefing schedule with respect to the cross-motion to dismiss. See Order Setting Briefing Schedule for Motion to Dismiss and Granting Motion for Leave to File Brief as Amicus Curiae (filed Sept. 24, 2004) (attached as Ex. B).

7. Apart from his challenge to his detention pursuant to the military commission proceedings, petitioner in this case has not raised allegations or argument concerning his detention as an enemy combatant. Thus, the issues raised by the petition are addressed in respondent's cross-motion to dismiss, and no further justification of petitioner's detention as an enemy combatant should be required at this stage of the litigation. Nonetheless, the September 20, 2004 order requiring a factual return and pleading demonstrating why no relief should be granted, was filed in all the Guantanamo Bay cases and, on its face, is applicable to this case. Some question exists regarding respondents obligations with respect to this case under the September 20 and September 24, 2004 orders, but perhaps the best reading of the Court's September 24, 2004 order regarding separate briefing in this case is that it supercedes the Court's general briefing schedule contained in the September 20, 2004 order. Thus, if that reading is correct, respondents would not file in this case the unified response intended to be filed in the other coordinated Guantanamo Bay detainee cases addressing challenges in those cases to the petitioners' detention as enemy combatants, nor would respondents submit a factual return in this case.

8. With respect to the position of petitioner's counsel, petitioner's counsel has authorized us to state on their behalf that respondents have filed a return to Hamdan's petition, and that the only further briefing appropriate in this case is respondents' reply in support of its cross-motion to dismiss, as stated in the Court's September 24, 2004 order. Petitioner's counsel objects to any other briefing by Respondents in this matter at this time.

9. Accordingly, respondents respectfully request clarification that the government need not file a response addressing enemy combatant status issues on October 4, 2004, or a factual return providing the factual basis for petitioner's detention as an enemy combatant no later than the week of October 18, 2004. A proposed order is attached.

Dated: October 1, 2004

Respectfully submitted,

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