

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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| FAWZI KHALID ABDULLAH FAHAD |) | |
| AL ODAH, <i>et al.</i> |) | |
| |) | |
| Petitioners, |) | |
| |) | |
| v. |) | Civil Action No. 02-CV-0828 (CKK) |
| |) | |
| UNITED STATES OF AMERICA, |) | |
| <i>et al.</i> , |) | |
| |) | |
| Respondents. |) | |

**RESPONDENTS' AMENDED FACTUAL RETURN TO PETITION FOR WRIT OF
HABEAS CORPUS BY PETITIONER OMAR RAJAB AMIN AND
NOTICE OF SUBMISSION OF AMENDED FACTUAL RETURN UNDER SEAL**

Respondents hereby submit, as explained herein, an amended factual return to the petition for writ of habeas corpus by petitioner Omar Rajab Amin, which substitutes for the factual return previously submitted to the Court and made available to petitioner's counsel. This amended submission contains the final record of proceedings before the Combatant Status Review Tribunal pertaining to petitioner Omar Rajab Amin. These proceedings were delayed in order to afford petitioner a reasonable opportunity to present evidence potentially bearing on his enemy combatant status. See Respondents' Status Report on the Submission of Factual Returns to Petitions for Writ of Habeas Corpus, filed October 22, 2004. This amended submission is being made pursuant to, and consistent with, the Court's direction. See Transcript of Hearing (Dec. 1, 2004) at 10-11; Respondents' Status Report on the Submission of Five Factual Returns to Petitions for Writ of Habeas Corpus, filed December 6, 2004.

The portion of the record suitable for public release is attached hereto. See Exhibit A. The remaining portions of the record, including information that is classified or not suitable for

public release, are being submitted under seal. One copy of the amended factual return is being submitted to the Court for *in camera* review. Another copy of the amended factual return, containing classified information suitable for disclosure to counsel under seal, is being made available to petitioner's counsel who have been issued security clearances, consistent with the Protective Order. See Amended Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantanamo Bay, Cuba, dated November 8, 2004. Any redactions made in the amended factual return are explained in the declaration(s)/certification(s) submitted therewith. Both copies of the amended factual return contain highlighting, explained therein, pursuant to the Court's Order for Specific Disclosures Relating to Respondents' Motion to Designate as "Protected Information" Unclassified Information and Petitioners' Motion for Access to Unredacted Factual Returns, dated December 8, 2004. Respondents request that the Court designate certain appropriately highlighted, unclassified information in the factual return as "protected" pursuant to the Protective Order. See Respondents' Motion to Designate as "Protected Information" Unclassified Information in Factual Returns to Petitions for Writ of Habeas Corpus That Is Not Filed on the Public Record, filed November 8, 2004.¹

For the reasons explained in the amended factual return, petitioner Omar Rajab Amin has been determined to be an enemy combatant. Accordingly, petitioner Omar Rajab Amin is lawfully subject to detention pursuant to the President's power as Commander in Chief or otherwise, and is being detained. The amended factual return demonstrates that some evidence

¹ Pursuant to the Court's November 10, 2004 Order, respondents are disclosing this information to petitioner's counsel, who must treat such information as "protected" unless and until the Court rules that the information should not be designated as "protected." See Order Addressing Designation Procedures for "Protected Information," dated November 10, 2004.

exists supporting petitioner Omar Rajab Amin's enemy combatant status, and his petition for writ of habeas corpus should be dismissed and the relief sought therein denied. See Respondents' Response to Petitions for Writ of Habeas Corpus and Motion to Dismiss or for Judgment as a Matter of Law and Memorandum in Support, filed October 4, 2004.

Dated: December 30, 2004

Respectfully submitted,

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