

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

In re Guantanamo Detainee Cases

Civil Action Nos.

02-CV-0299 (CKK), 02-CV-0828 (CKK),

02-CV-1130 (CKK), 04-CV-1135 (ESH),

04-CV-1136 (JDB), 04-CV-1137 (RMC),

04-CV-1142 (RJL), 04-CV-1144 (RWR),

04-CV-1164 (RBW), 04-CV-1166 (RJL),

04-CV-1194 (HHK), 04-CV-1227 (RBW),

04-CV-1254 (HHK), 04-CV-1519 (JR)

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

COME NOW respondents, by and through their undersigned counsel, and respectfully request that this Court designate as “protected information” the unclassified information contained in respondents’ factual returns to the petitions for writ of habeas corpus that is not filed on the public record. Counsel for respondents have conferred with David Remes, representative counsel for petitioners, regarding this motion. Petitioners have indicated that they cannot take a position regarding respondents’ motion unless they are able to review the information at issue. Respondents, however, cannot disclose the information to petitioners’ counsel until it is subject to the protections of the Protective Order. The Court should designate the information as “protected information” under the Protective Order for the reasons stated herein, and once petitioners’ counsel gain access to the information, petitioners may confer with respondents regarding public disclosure of specific information and bring any unresolved dispute over the specific information to the Court for resolution. As grounds for this motion, respondents state as follows:

1. On November 8, 2004, the Court issued an Amended Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantanamo Bay, Cuba (“Protective Order”) that establishes procedures regarding the handling of classified national security information and other protected information involved in the above-captioned cases. Paragraph 11 of the Protective Order defines the terms “protected information and/or documents,” “protected information” and “protected documents” as

any document or information deemed by the Court, either upon application by counsel or *sua sponte*, as worthy of special treatment as if the document or information were classified, even if the document or information has not been formally deemed to be classified.

2. Respondents have submitted *in camera* factual returns in response to the petitions for writ of habeas corpus filed by each petitioner in the above-captioned cases.¹ The factual returns contain classified national security information that is subject to the provisions of the Protective Order, and unclassified information, certain of which is not suitable for public release. As explained in the declarations submitted with the factual returns, respondents have filed on the public record only those portions of the factual returns that are unclassified and appropriate for public disclosure; unclassified information not suitable for public release was redacted. Such redacted information includes sensitive law enforcement information (e.g., FBI interview reports

¹ Respondents have not submitted a factual return in response to the petition for writ of habeas corpus by Salim Ahmed Hamdan, whose case is exempt from the Court’s order requiring the submission of factual returns. See Court’s October 4, 2004 Order in Hamdan v. Rumsfeld, No. 04-CV-1519 (JR). Nevertheless, the Protective Order was entered in the Hamdan case, and in the event that the Court at some point requires a factual return to be submitted in that case, respondents request that the Court designate as “protected information” the unclassified information not publicly filed in that factual return, which will be of similar sensitivity as the information at issue herein.

and other materials marked “Law Enforcement Sensitive”), and personal identifying information of certain individuals (e.g., names and addresses of detainees’ family members, other detainees and United States government personnel). Respondents request that such information be designated and treated as “protected information” under the Protective Order, that is, that it not be publicly disclosed, not disclosed to detainees, etc., as provided in the Order. While the information is not classified as national security information, the Law Enforcement Sensitive material is nonetheless highly confidential. Disclosure of such information inconsistent with the Protective Order would cause harm and damage to the government’s ongoing law enforcement activities related to the global war against al Qaeda and its supporters. Further, disclosure inconsistent with the Protective Order of the identifying information for which protection is sought could potentially endanger the safety of the individuals mentioned in the factual returns. Thus, the information is “worthy of special treatment as if [it] were classified,” and the handling and dissemination of this information should be governed by the procedures established in the Protective Order. Furthermore, respondents should not be required to disclose or serve the factual returns containing the information sought to be protected pending resolution of this motion so as to prevent dissemination of such information inconsistent with the protections warranted by the nature of the information as described above.

WHEREFORE, for the reasons stated herein, respondents respectfully request that the unclassified information contained in respondents’ factual returns that is not filed on the public record be designated as “protected information” and subject to the applicable provisions of the Protective Order. A proposed order is attached.

Dated: November 8, 2004

Respectfully submitted,

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