

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
LAKHDAR BOUMEDIENE, <i>et al.</i> ,)	
)	
Petitioners,)	
)	
v.)	Civil Action No. 04-CV-1166 (RJL)
)	
GEORGE W. BUSH,)	
President of the United States, <i>et al.</i> ,)	
)	
Respondents.)	
_____)	

**RESPONDENTS' UNOPPOSED MOTION TO SUPPLEMENT THE
FACTUAL RETURN TO PETITION FOR WRIT OF HABEAS CORPUS BY
PETITIONER BELKACEM BENSAYAH**

COME NOW Respondents, by and through their undersigned counsel, and respectfully request that the Court permit them to supplement, as explained herein, the factual return to the petition for writ of habeas corpus by petitioner Bensayah Belkacem (listed in the petition as Belkacem Bensayah) previously submitted to the Court and made available to petitioner's counsel. Counsel for petitioner and respondents have conferred by telephone, and petitioner's counsel does not oppose the relief requested herein. As grounds for this unopposed motion, respondents state as follows:

1. Consistent with various orders of Judge Green, copies of a factual return to petitioner Bensayah Belkacem's petition for writ of habeas corpus were submitted *in camera* to Judge Green and made available to petitioner's counsel when this case was coordinated with the other Guantanamo Bay detainee cases. This factual return contained the record of proceedings before the Combatant Status Review Tribunal pertaining to petitioner Bensayah Belkacem. Consistent with Judge Green'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, in the remaining coordinated cases, respondents submitted highlighted versions of the previous submissions of the factual return to this Court on December 17, 2004.

2. After the Tribunal proceedings concluded, a document pertaining to petitioner Belkacem Bensayah was discovered during a search of a Government agency's files that caused the CSRT Legal Advisor to reopen the proceedings and request that the Tribunal reconsider their prior enemy combatant status determination in light of this newly discovered document. In order to provide the Court and counsel for petitioner with the complete record of proceedings before the Tribunal, respondents seek to supplement the factual return that was previously submitted with this record of additional proceedings.

3. The portion of the record of additional proceedings 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 through the Court Security Officer. One copy of the supplement to the factual return is being submitted to the Court for *in camera* review. Another copy, containing classified information suitable for disclosure to counsel under seal, is being made available to petitioner's counsel who have been issued security clearances for review in the secure facility established for this case, 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 supplement to the factual return are explained in the declaration(s)/certification(s) submitted therewith. Both copies of the supplemental submission contain highlighting, explained therein, consistent with Judge Green's December 8, 2004 Order. Respondents request that the Court designate certain appropriately highlighted, unclassified

information in the supplemental submission 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

4. For the reasons explained in the factual return, including all supplements thereto, petitioner Belkacem Bensayah has been determined to be an enemy combatant and is, therefore, lawfully subject to detention pursuant to the President’s power as Commander in Chief or otherwise. The final, complete factual return demonstrates that some evidence exists supporting petitioner Belkacem Bensayah’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.

5. Counsel for petitioner has indicated that he does not oppose the supplementation requested herein.

WHEREFORE, for the reasons stated herein, respondents respectfully request that the Court permit them to supplement the factual return to the petition for writ of habeas corpus filed by petitioner Belkacem Bensayah. A proposed order is attached.

Dated: December 30, 2004

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

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.

KENNETH L. WAINSTEIN
United States Attorney

BRIAN D. BOYLE
Principal Deputy Associate Attorney General

DAVID B. SALMONS
Assistant to the Solicitor General

DOUGLAS N. LETTER
Terrorism Litigation Counsel

ROBERT D. OKUN
Assistant United States Attorney
Chief, Special Proceedings Section

/s/ Preeya M. Noronha

JOSEPH H. HUNT (D.C. Bar No. 431134)
VINCENT M. GARVEY (D.C. Bar No. 127191)

TERRY M. HENRY

LISA A. OLSON

JAMES J. SCHWARTZ

PREEYA M. NORONHA

ROBERT J. KATERBERG

ANDREW I. WARDEN

NICHOLAS J. PATTERSON

Attorneys

United States Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W. Room 7144
Washington, DC 20530
Tel: (202) 514-4107
Fax: (202) 616-8470

Attorneys for Respondents