

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID M. HICKS,

Petitioner,

v.

GEORGE W. BUSH,

President of the United States,
et al.,

Respondents.

Civil Action No. 02-CV-0299 (CKK)

FAWZI KHALID ABDULLAH FAHAD
AL ODAH, *et al.*

Plaintiffs,

v.

UNITED STATES OF AMERICA,
et al.,

Defendants.

Civil Action No. 02-CV-0828 (CKK)

MAMDOUH HABIB, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,

President of the United States,
et al.,

Respondents.

Civil Action No. 02-CV-1130 (CKK)

MURAT KURNAZ, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1135 (ESH)

O.K., *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1136 (JDB)

MOAZZAM BEGG, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1137 (RMC)

RIDOUANE KHALID, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1142 (RJL)

JAMIL EL-BANNA, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1144 (RWR)

FALEN GHEREBI, *et al.*

Petitioners,

v.

GEORGE WALKER BUSH,

et al.,

Respondents.

Civil Action No. 04-CV-1164 (RBW)

LAKHDAR BOUMEDIENE, *et al.*

Petitioners,

v.

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

Respondents.

Civil Action No. 04-CV-1166 (RJL)

SUHAIL ABDUL ANAM, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1194 (HHK)

ISA ALI ABDULLA ALMURBATI, *et al.*

Petitioners,

v.

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

Respondents.

Civil Action No. 04-CV-1227 (RBW)

MAHMOAD ABDAH, *et al.*

Petitioners,

v.

GEORGE W. BUSH,
President of the United States,
et al.,

Respondents.

Civil Action No. 04-CV-1254 (HHK)

**RESPONDENTS' STATUS REPORT ON THE SUBMISSION OF
FACTUAL RETURNS TO PETITIONS FOR WRIT OF HABEAS CORPUS**

Respondents hereby submit this report on the status of the submission of records of proceedings before the Combatant Status Review Tribunals as factual returns to petitioners' petitions for writ of habeas corpus.

Respondents have identified 63 individuals detained at Guantanamo Bay who have filed petitions for writ of habeas corpus.¹ As of the filing of this status report, respondents have filed on the public record portions of the factual returns pertaining to 51 petitioners. The complete factual returns for these 51 petitioners, which contain classified information and information not suitable for public release, have not yet been filed. Respondents anticipate filing the factual returns for three additional petitioners by the end of the day.

Factual returns pertaining to eight petitioners will remain outstanding after today, largely due to requests by the petitioners for supporting witnesses and/or documents that have delayed

¹ This number includes petitioner 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). There is one additional petitioner (Aref Abd II Rheem) named in Abdah v. Bush, No. 04-CV-1254 (HHK), whom respondents have been unable to identify as a detainee at Guantanamo Bay.

proceedings before the Combatant Status Review Tribunals. Absent unexpected delays, respondents anticipate that factual returns pertaining to three petitioners will be filed during the week of October 25, 2004. Witnesses requested by another two petitioners have elected to submit written testimony, and the Tribunals are awaiting the witnesses' responses to questions from petitioners which have been transmitted to them. With respect to the final three petitioners, respondents are attempting to locate witnesses and documents that petitioners have requested. The witnesses are foreign nationals, and some of the documents requested by petitioners are in the possession of a foreign government. These circumstances have required the Department of Defense (DoD) to refer the requests to the Department of State (DoS), which is attempting to locate the witnesses and documents through contacts with foreign governments and/or other information provided by the petitioners. DoS is proceeding as expeditiously as possible, and respondents intend to promptly file the factual returns pertaining to these petitioners upon resolution of the witness and document requests and completion of the Tribunal proceedings.

A summary of the status of the factual returns for petitioners in each of the above-captioned cases follows.

1. **Hicks v. Bush, No. 02-CV-0299 (CKK)**: The factual return pertaining to the petitioner has been filed on the public record. Thus, no factual return is outstanding.
2. **Al Odah v. United States, No. 02-CV-0828 (CKK)**: The factual returns pertaining to ten petitioners have been filed on the public record.² One factual return will be filed by October 22, 2004. One factual return is outstanding:

² During the October 13, 2004 status conference, the Court questioned the factual return filed on September 27, 2004 pertaining to petitioner Saad Madai Saad Ha Wash Al-Azmi in the Al Odah case. Saad Madai Saad Ha Wash Al-Azmi is a named petitioner in the Al Odah case, and the factual return pertaining to him was properly filed in that case.

Omar Rajab Amin: Tribunal proceedings for this petitioner are postponed pending the outcome of petitioner's requests for documents. On September 20, 2004, petitioner requested his Bosnian and Kuwaiti citizenship papers. On September 29, petitioner requested his employment history, employment leave requests, and health reports for his child. On October 7, petitioner's requests were referred to DoS. On October 19, DoS informed DoD that the relevant embassy was contacted regarding petitioner's requests, but no information was available from the embassy at that time. DoS is actively pursuing obtaining these documents.

3. **Habib v. Bush, No. 02-CV-1130 (CKK)**: The factual return pertaining to the petitioner has been filed on the public record. Thus, no factual return is outstanding.
4. **Kurnaz v. Bush, No. 04-CV-1135 (ESH)**: The factual return pertaining to the petitioner has been filed on the public record. Thus, no factual return is outstanding.
5. **O.K. v. Bush, No. 04-1136 (JDB)**: The factual return pertaining to the petitioner has been filed on the public record. Thus, no factual return is outstanding.
6. **Begg v. Bush, No. 04-CV-1137 (RMC)**: The factual return pertaining to one petitioner will be filed by October 22, 2004. One factual return is outstanding:

Moazzam Begg: Tribunal proceedings for this petitioner are postponed pending the outcome of petitioner's requests for documents and the testimony of seven witnesses. On September 23, 2004, petitioner requested the testimony of two witnesses. On September 24, DoD referred this request to DoS. On October 8, petitioner requested the testimony of four additional witnesses and documents from his habeas attorney, Gitanjali Gutierrez. On October 12, DoD sent petitioner's request for documents to Ms. Gutierrez, who confirmed receipt of the request on October 14, and indicated that it would take approximately one week to gather the documents. On October 13, petitioner's request for the four additional witnesses was referred to DoS. On October 14, petitioner's request for another witness was referred to DoS. DoS is actively pursuing locating these witnesses. On October 19, DoD contacted Ms. Gutierrez to request a time frame for the delivery of the documents requested by petitioner and is currently awaiting Ms. Gutierrez's response.

7. **Khalid v. Bush, No. 04-CV-1142 (RJL)**: The factual return pertaining to the petitioner has been filed on the public record. Thus, no factual return is outstanding.

8. **El-Banna v. Bush, No. 04-CV-1144 (RWR)**: The factual return pertaining to two petitioners have been filed on the public record. One factual return is outstanding:

Martin Mubanga: Tribunal proceedings for this petitioner were held on September 25, 2004, after petitioner's request for the testimony of three witnesses was denied by the Tribunal President. On October 5, the CSRT Director directed the Tribunal to reconvene based on a determination that the three witnesses are relevant to petitioner's enemy combatant status. On October 14, petitioner's original witness request was referred to DoS. Further proceedings before the Tribunal are postponed pending the location of the three witnesses requested by petitioner. DoS is actively pursuing locating these witnesses.

9. **Gherebi v. Bush, No. 04-CV-1164 (RBW)**: The factual return pertaining to the petitioner has been filed on the public record. Thus, no factual return is outstanding.

10. **Boumediene v. Bush, No. 04-CV-1166 (RJL)**: The factual returns pertaining to two petitioners have been filed on the public record. One factual return will be filed by October 22, 2004. Three factual returns are outstanding:

Mohammed Nechle: Tribunal proceedings for this petitioner were held on October 19, 2004, after DoS was unable to locate a witness requested by petitioner. DoD expects the record of proceedings to arrive in Washington, D.C. within the next two days for review by the CSRT Legal Advisor and approval by the CSRT Director. Absent any unexpected delays, respondents anticipate filing a factual return during the week of October 25.

Hadj Boudella: Tribunal proceedings for this petitioner were held on October 19, 2004, after DoS was unable to locate a witness requested by petitioner. DoD expects the record of proceedings to arrive in Washington, D.C. within the next two days for review by the CSRT Legal Advisor and approval by the CSRT Director. Absent any unexpected delays, respondents anticipate filing a factual return during the week of October 25.

Mustafa Ait Idir: Tribunal proceedings for this petitioner were completed on October 20, 2004, after being reopened for additional proceedings based on new information. DoD expects the record of proceedings to arrive in Washington, D.C. within the next two days for review by the CSRT Legal Advisor and approval by the CSRT Director. Absent any unexpected delays, respondents anticipate filing a factual return during the week of October 25.

11. **Anam v. Bush, No. 04-CV-1194 (HHK)**: The factual returns pertaining to fourteen petitioners have been filed on the public record. No factual returns are outstanding.
12. **Almurbati v. Bush, No. 04-CV-1227 (RBW)**: The factual returns pertaining to four petitioners have been filed on the public record. Two factual returns are outstanding:

Abdullah Majed Sayyah Hasan Alnoaimi: Tribunal proceedings for this petitioner are postponed pending the outcome of petitioner's request for the testimony of one witness. On September 20, 2004, petitioner's request for one witness was referred to DoS. On October 5, DoS indicated that the witness was located. On October 19, DoS informed DoD that the witness elected to submit an affidavit to the Tribunal instead of testifying in person or via telephone, and questions from the petitioner and his personal representative were sent to DoS for transmittal to the witness. Further proceedings are postponed pending the submission of the witness's written testimony to the Tribunal.

Salman Bin Ibrahim Bin Mohammed Bin Ali Al-Kalifa: Tribunal proceedings for this petitioner are postponed pending the outcome of petitioner's request for the testimony of two witnesses. On September 25, 2004, petitioner's request for three witnesses was referred to DoS. On September 28, one witness was determined not to be relevant to petitioner's enemy combatant status, and the request for this witness was withdrawn from DoS. On October 5, DoS indicated that the two remaining witnesses were located. On October 19, DoS informed DoD that the witnesses elected to submit affidavits to the Tribunal instead of testifying in person or via telephone, and questions from the petitioner and his personal representative were sent to DoS for transmittal to the witnesses. Further proceedings are postponed pending the submission of the witnesses' written testimony to the Tribunal.

13. **Abdah v. Bush, No. 04-CV-1254 (HHK)**: The factual returns pertaining to thirteen petitioners have been filed on the public record. No factual returns are outstanding.

In sum, of the eight petitioners for whom factual returns are outstanding, three will be filed no later than the week of October 25, 2004, absent unexpected delays. With respect to two of the remaining five, Tribunal proceedings are merely awaiting written responses of witnesses requested by petitioners, and with respect to the other three, proceedings are awaiting the location

of foreign witnesses or documents requested by petitioners. Delays in the resolution of these five Tribunals have resulted from an attempt to accommodate the requests of detainees for access to witnesses and documents not under the control of the United States, and thus to afford them a reasonable opportunity to present evidence potentially bearing on the enemy combatant status issue. The process should be permitted to run its course to completion so that with respect to any detainee where the Tribunal process results in a conclusion that the detainee is properly held as an enemy combatant, any factual return with respect to the detainee may be based on the complete factual record justifying that conclusion. See Aug. 31, 2004, Letter to Hon. Joyce Hens Green from Thomas R. Lee re Guantanamo Bay Detainee Cases.

Respondents will provide periodic status reports regarding the outstanding Tribunal matters or, as appropriate, other information the Court may require.

Dated: October 22, 2004

Respectfully submitted,

PETER D. KEISLER
Assistant Attorney General

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
D.C. Bar No. 457-078
Chief, Special Proceedings Section

555 Fourth Street, N.W.
Room 10-435
Washington, D.C. 20530
(202) 514-7280

/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
NICHOLAS J. PATTERSON
ANDREW I. WARDEN

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