

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ABDUL RAZAK ALI (ISN 685),

Petitioner,

v.

**BARACK H. OBAMA, President
of the United States, et al.,**

Respondents.

Civil Action No. 09-745 (RCL)

ORDER

Before the Court is respondents' Motion [1207] for Leave to Amend the Factual Return for petitioner (filed June 5, 2009). Amended CMO § I.D.1 requires respondents to file a certificate as to the production of exculpatory evidence within 14 days of filing a factual return. Misc. No. 08-442, Doc. [940] (Nov. 6, 2008), *as amended by* Doc. [1315] (Dec. 16, 2008) (D.D.C.) (Hogan, J.). Common sense dictates that a similar requirement attach to any proposed amendments to a factual return. New exculpatory evidence could easily have come into the government's possession in the course of assembling the Motion to Amend (or in the course of assembling materials for other detainees).¹ Respondents did not attach such a certification to

¹See *Gherebi v. Bush*, Civ. No. 04-1164, Doc. [164] (D.D.C. 2008) (Walton, J.), stating the scope of respondents' exculpatory-disclosure obligation:

The government shall disclose to the petitioner all reasonably available evidence in its possession that tends materially to undermine the information presented to support the government's justification for detaining the petitioner. In this context, the term "reasonably available evidence" means evidence contained in any information reviewed by attorneys preparing factual returns for all detainees; *however, the scope of this disclosure obligation is not limited to evidence*

their Motion [1207], nor have they filed one with the Court in the weeks since their motion. The Court will not consider granting respondents' motion unless respondents have completed the required search. It is therefore hereby

ORDERED that respondents' Motion [1207] for Leave to Amend the Factual Return for petitioner is DENIED without prejudice as to its refiling alongside a certification either that all reasonably available exculpatory evidence in the government's possession has been disclosed or that the government possesses no reasonably available exculpatory evidence that has yet to be disclosed; and it is further

ORDERED that if respondents intend to refile with certification as described above, they shall do so within 14 days of this Order or such further time as the Court may allow.

SO ORDERED.

Signed by Royce C. Lamberth, Chief Judge, on July 2, 2009.

discovered by the attorneys preparing the factual return for the petitioner. The term also includes any other evidence the government discovers while litigating habeas corpus petitions filed by detainees at Guantanamo Bay or any other United States military facility.

(amending slightly Amended CMO § I.D.1) (emphasis added) (citation omitted).