

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:

**GUANTANAMO BAY
DETAINEE LITIGATION**

Misc. No. 08-0442 (TFH)

Civil Action Nos.

02-cv-0828, 04-cv-1136, 04-cv-1164, 04-cv-1194, 04-cv-1254,
04-cv-1937, 04-cv-2022, 04-cv-2046, 04-cv-2215, 05-cv-0023,
05-cv-0247, 05-cv-0270, 05-cv-0280, 05-cv-0329, 05-cv-0359,
05-cv-0392, 05-cv-0492, 05-cv-0520, 05-cv-0526, 05-cv-0569,
05-cv-0634, 05-cv-0748, 05-cv-0763, 05-cv-0764, 05-cv-0877,
05-cv-0883, 05-cv-0889, 05-cv-0892, 05-cv-0993, 05-cv-0994,
05-cv-0999, 05-cv-1048, 05-cv-1124, 05-cv-1189, 05-cv-1220,
05-cv-1244, 05-cv-1347, 05-cv-1353, 05-cv-1429, 05-cv-1457,
05-cv-1487, 05-cv-1490, 05-cv-1497, 05-cv-1504, 05-cv-1506,
05-cv-1555, 05-cv-1592, 05-cv-1601, 05-cv-1607, 05-cv-1623,
05-cv-1638, 05-cv-1645, 05-cv-1646, 05-cv-1678, 05-cv-1971,
05-cv-1983, 05-cv-2088, 05-cv-2104, 05-cv-2185, 05-cv-2186,
05-cv-2199, 05-cv-2249, 05-cv-2349, 05-cv-2367, 05-cv-2371,
05-cv-2378, 05-cv-2379, 05-cv-2380, 05-cv-2384, 05-cv-2385,
05-cv-2386, 05-cv-2387, 05-cv-2479, 06-cv-1668, 06-cv-1684,
06-cv-1690, 06-cv-1758, 06-cv-1761, 06-cv-1765, 06-cv-1766,
06-cv-1767, 07-cv-1710, 07-cv-2337, 07-cv-2338, 08-cv-0987,
08-cv-1101, 08-cv-1153, 08-cv-1207, 08-cv-1221, 08-cv-1224,
08-cv-1228, 08-cv-1230, 08-cv-1232, 08-cv-1233, 08-cv-1235,
08-cv-1236, 08-cv-1237, 08-cv-1238, 08-cv-1360, 08-cv-1440,
08-cv-1789, 08-cv-1805, 08-cv-1828, 08-cv-1923, 08-cv-2019,
08-cv-2083, 09-cv-0745

ORDER

Pending before the Court is the government's Motion to Confirm Designation of Unclassified Factual Returns as "Protected." For the reasons given in the Memorandum Opinion filed herewith, the Court

ORDERS that the motion is **DENIED WITHOUT PREJUDICE**. The Court further

ORDERS that on or before July 29, 2009, for each petitioner in the above-captioned cases,¹ the government is directed to either (i) publicly file a declassified or unclassified

¹ This order does not apply to petitions that are stayed or to any petitioner who consented to the motion.

factual return or (ii) file under seal with the petitioner's counsel and the appropriate Merits Judge an unclassified factual return highlighting with a colored marker the exact words or lines the government seeks to be deemed protected, as well as a memorandum explaining why each word or line should be protected. If the government chooses to file a highlighted factual return under seal, the parties must first meet and confer pursuant to Local Rule of Civil Procedure 7(m); if an agreement cannot be reached, the government must file with the appropriate Merits Judge a motion to designate as protected each highlighted portion of the return. Until July 29, 2009, the unclassified factual returns are to remain protected, except that each petitioner shall have access to the unclassified factual return pertaining to himself, and counsel may disclose the unclassified factual return to the petitioner's witnesses and experts who have signed the Acknowledgment. If the government does not file an unprotected or highlighted factual return for a petitioner by July 29, 2009, that petitioner's unclassified factual return will be treated as unprotected, unless the appropriate Merits Judge rules to the contrary. In cases in which the government has not yet provided petitioner's counsel with an unclassified factual return, the government shall comply with this order within 60 days of the date on which the government provides the unclassified return. The Court further

ORDERS that in cases involving petitioners who have chosen or later choose not to seek an unprotected factual return, the press may file, on or after September 29, 2009, a motion before the appropriate Merits Judge requesting an unprotected factual return.² The government must then either (i) publicly file a declassified or unclassified factual return for the petitioner or (ii) file under seal with the appropriate Merits Judge an unclassified factual return for the petitioner

² At this time, the press may not file such a motion to access the factual returns of petitioners whose petitions are stayed.

highlighting with a colored marker the exact words or lines the government seeks to be deemed protected, as well as a memorandum explaining why each word or line should be protected. If the government chooses to file a highlighted factual return under seal, the appropriate Merits Judge will determine whether to designate each highlighted portion of the return as protected. In cases in which the government has not yet provided petitioner's counsel with an unclassified factual return, the press may file such a motion any time after 120 days have passed since the date on which the government provides the unclassified return.

SO ORDERED.

June 1, 2009

/s/
Thomas F. Hogan
United States District Judge