

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

ZAKARIA AL-BAIDANY,

Petitioner

v.

JOSEPH R. BIDEN, in his official capacity as
President of the United States, *et al.*

Respondents.

Civil Action No. 05-2380 (CKK)

ORDER

(September 1, 2022)

The Court has received and reviewed the parties' [317] Joint Status Report.

Respondents request the Court set a briefing schedule for a motion to withhold and redact certain relevant information from counsel for Petitioner, pursuant to Section I.F of the [98] Case Management Order (Nov. 6, 2008). For his part, Petitioner requests the Court set a briefing schedule for a motion to admit or exclude hearsay testimony in the advance of a merits determination, pursuant to Section II.C of the [98] Case Management Order.

As to the withholding issue, Respondents shall file their Section I.F motion on or before **November 7, 2022**. Petitioner shall file his response on or before **November 21, 2022**, and Respondents may file a reply on or before **November 28, 2022**.


As to hearsay, Respondents correctly note that, after the entry of the [98] Case Management Order, the United States Court of Appeals for the District of Columbia Circuit clarified that hearsay evidence is "always admissible" in habeas proceedings. *Al-Bihani v. Obama*, 590 F.3d 86, 879 (D.C. Cir. 2010). Nevertheless, *al-Bihani* clearly envisions litigation over the probative weight of hearsay evidence in advance of a merits hearing. *See id.* at 890. As such, the Court agrees with Petitioner that resolution of hearsay issues in advance of a merits hearing would assist the Court in its ultimate merits determination. Separate pre-hearing

briefing, however, would be unnecessarily cumulative. Therefore, the Court expects the parties to address the issue in subsequent merits briefing, which the Court shall schedule at a later date.

Finally, the parties shall submit a joint status report on or before **September 30, 2022** updating the Court as to the progress of Petitioner's expert's application for a security clearance.

SO ORDERED.

Dated: September 1, 2022



COLLEEN KOLLAR-KOTELLY
United States District Judge