

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

**MOHAMMED AHMED SLAM,
AL-KHATEEB (ISN 689),**

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 for Leave to Amend and Supplement the Factual Return for petitioner (filed June 5, 2009) and respondents' Unopposed (Second) Motion for Leave to Supplement Factual Return (filed June 25, 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 their pending motions to amend and supplement (or in the course of assembling materials for other detainees).¹

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,

Respondents did not attach such a certification to either of their motions, nor have they filed such certifications with the Court since their motions. The Court will not consider granting respondents' motions unless respondents have completed the required searches. It is therefore hereby

ORDERED that respondents' Motion for Leave to Amend and Supplement 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 respondents' Unopposed (Second) Motion for Leave to Supplement Factual Return 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.

SO ORDERED.

Signed by Royce C. Lamberth, Chief Judge, on July 6, 2009.

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 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).