

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ZAYN AL ABIDIN MUHAMMAD)
HUSAYN (ISN # 10016),)
)
Petitioner.)
)
v.)
)
ASHTON B. CARTER,)
)
Respondent.)
)

No. 08-CV-1360 (EGS)

**PETITIONER’S REPLY REGARDING HIS UNOPPOSED MOTION
FOR STATUS CONFERENCE**

Petitioner Abu Zubaydah moved for a status conference; the Government responded by, *inter alia*, listing what it believes are the pending motions. The Court has ordered Zubaydah to reply.

To begin with, a *caveat* is in order. Because of the timing, we are preparing this outside the SCIF, and rely on our collective memory rather than a study of the record and pleadings. As a consequence, we may be mistaken in some particulars, both for the obvious reason—the long passage of time—and because of the exceptional complexity of the case. That said, we can stake out a number of positions with some clarity.

First, the Motion to Recuse Judge Roberts is indeed moot, though we believe the extended period of judicial inactivity is not without significance. The long passage of time, for instance, has made certain material investigations either impossible or substantially more difficult. Petitioner reserves the right to raise the significance of Judge Roberts’ inaction in the future.

Second, the various Motions for Status Conference are moot, assuming the Court incorporates the issues raised in those Motions into the forthcoming status conference.

Third, we believe Respondent is mistaken about Petitioner's Motion for Legible Copies of Documents Relied on by the Government. If memory serves, counsel for Respondent represented that it had provided copies of the material in its immediate possession, and that it was just as illegible to them as it was to us. That, however, is no answer. The motion is for legible copies, and the fact that counsel for the Department of Justice is content with illegible copies does not relieve them of the obligation to provide legible copies to us, nor does it mean that legible copies are unavailable. Counsel should be directed to determine whether other agencies of the United States Government have legible copies of all responsive documents, including FBI 302s.

Fourth, Petitioner's Motion for Discovery, filed September 14, 2009, is ripe for resolution, though Petitioner reserves the right to file additional motions for discovery based on the intervening material that has become available on the public record, including most prominently the redacted Executive Summary of the report prepared by the Senate Select Committee on Intelligence on the CIA detention and interrogation program (known colloquially as the Senate Torture Report).¹ In the ordinary case, it would perhaps make most sense for Zubaydah to supplement his pending motion for discovery. But Respondent's disclosures to date have been so inadequate, and the inadequacy so detrimental to Zubaydah, that proceeding *seriatim* is preferable, despite the seeming inefficiency.

¹ Senate Select Committee on Intelligence: Committee Study of the Central Intelligence Agency's Detention and Interrogation Program (Dec. 2014), available at http://www.feinstein.senate.gov/public/index.cfm/files/serve?File_id=7c85429a-ec38-4bb5-968f-289799bf6d0e&SK=D500C4EBC500E1D256BA519211895909.

For instance, we long ago moved for Zubaydah to be allowed to see copies of his own writings and drawings. Because of his medical and psychological impairments, Zubaydah cannot reconstruct and explain events without this material. Yet the diaries provided to Zubaydah, especially about his time in CIA custody, are heavily redacted, and as a result, Zubaydah has no access to their content. This is particularly detrimental since Respondent relies on selective portions of Petitioner's diaries to justify his detention. This is merely one illustration of Respondent's unjustifiably narrow approach to discovery.

Fifth, Petitioner's Motion for Sanctions for the Spoliation of Evidence, along with the Supplement thereto, is not ripe for resolution. The remedy for the Government's deliberate spoliation turns in part on the availability of a substitute for the destroyed tapes. If memory serves, our Motion sought disclosure of CIA documentation that reconstructed the content of the destroyed tapes, since that documentation could substitute—albeit imperfectly—for the tapes. After we filed that Motion, the Senate Select Committee on Intelligence collected this documentation in the full, un-redacted version of the Senate Torture Report. The Motion for Sanctions needs to be updated to reflect the CIA documentation, which the Senate Torture Report makes clear is immediately available and already pooled.

Sixth, and for essentially the same reasons, the Motion for Disclosure of CIA Medical Records and to Allow In-Person Medical Examination is likewise not ripe for resolution. The Executive Summary of the Senate Torture Report reveals in excruciating detail not only the extended brutality of Zubaydah's torture, but the ongoing dispute between his torturers and the staff of the CIA Office of Medical Services, which strongly suggests that Zubaydah's torture affected him in ways that bear on the legality of his continued detention under the laws of war, as we have long alleged. We suspect these ongoing impairments are documented in the CIA

medical records. The motion for the CIA medical records needs to be updated to reflect this new information.

Finally, there may be other pending motions that require amendment, but which we cannot reconstruct from memory. For instance, several years ago, we reached an impasse with opposing counsel about the number of security-cleared lawyers on Petitioner's team. Since that time, two lawyers have left the team and a new one, already cleared, has joined. We may seek the Court's intervention to add cleared counsel.

In closing, we would respectfully ask that, if the Court is favorably inclined toward an in-person status conference, the matter be scheduled for May 9. One of Petitioner's counsel lives in Denmark and will be returning home May 10.

Dated: April 25, 2016

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was served on opposing counsel, below, by electronic court filing this 25th day of April, 2016.

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_____/s/_____
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