



of this new information, respondent renews his request that the Court stay, or, at a minimum, extend the deadline for the filing of the certified index in this case (which we construe as mandating provision of the record as defined by *Bismullah* to counsel of record, with the necessary security clearances, on that date).

2. At the time the Government filed its motion, its discussion was primarily addressed to the burdens and propriety of producing the records in this case prior to the disposition of the en banc petition in *Bismullah*. There have been developments in other Detainee Treatment Act cases that bear upon that motion.

Counsel in the *Bismullah* and *Parhat* cases filed motions seeking orders requiring production of the record as defined by *Bismullah* by September 13. The Government has opposed those motions. Those cases involve a total of eight detainees, with eight separate records. As we have explained, the record as defined by *Bismullah* is not simply a collection of papers sitting in a box at the Defense Department. It is a massive undertaking just to produce the record in this one case. Producing it by September 13 is not possible without potentially compromising the reliability of the production and without also fundamentally compromising the intelligence agencies' abilities to redact sensitive national security material, as permitted by this Court's *Bismullah* decision. See *Bismullah*, Slip Op. at 17 (recognizing that the presumption that counsel "needs to know" classified material

in the record “is overcome to the extent the Government seeks to withhold from counsel highly sensitive information, or information pertaining to a highly sensitive source or to anyone other than the detainee”). That redaction process requires line-by-line review by a trained intelligence analyst. We have been advised by the officials responsible for this process that the current deadline simply does not permit adequate time for that vital process to be carried out.

This Court’s establishment of the September 13 deadline here not only spurred the motion in *Bismullah* and *Parhat* seeking the same September 13 deadline, but also opened the door to the Court’s entry of numerous other scheduling orders mandating production of the record, as defined by *Bismullah*, in seven additional detainee cases (requiring production of the records for three detainees by September 24).<sup>1</sup> These additional orders and fast approaching deadlines simply multiply the extraordinary difficulty of the unprecedented task being imposed by the Court.

As in the present case, we submit, these deadlines should be stayed temporarily pending the outcome of the en banc process. The en banc process will, we hope, clarify and limit the nature of the production required. As we noted in our August 20

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<sup>1</sup> Orders were issued in *Al Ginco v. Gates*, No. 07-1090 (record due 10/3/07); *Chaman v. Gates*, No. 07-1101 (record due 10/25/07); *Hamad v. Gates*, No. 07-1098 (record due 10/15/07); *Mahnut v. Gates*, Nos. 07-1066, 07-1340, 07-1341 (record for three detainees due 9/24/07).

motion, the parties disagree as to the scope of the record specified in *Bismullah*. This Court's disposition of the en banc petition may resolve, or at least provide clear guidance, as to the nature and confines of the record that must be produced. Thus, the date for requiring production of the record should await the disposition of the en banc petition. Moreover, as explained above, the current deadlines cannot possibly be met without compromising both the reliability of the production and national security interests.

Accordingly, we respectfully ask that this Court enter a temporary stay of the deadline in this case, at least while the Court considers the government's rehearing petition on an expedited basis. The Government will be requesting the same relief in the other cases where the Court has entered production orders.

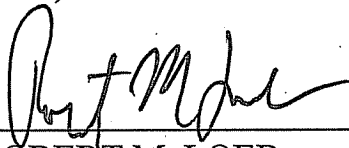
## CONCLUSION

For the foregoing reasons, and those set forth in the Government's August 20, 2007 motion, the Government respectfully requests that its obligation to file a revised certified index be stayed until thirty days after this Court has disposed of the Government's rehearing petition in *Bismullah*. In the alternative, the Government seeks a thirty-day extension of time.

Respectfully submitted,

DOUGLAS N. LETTER

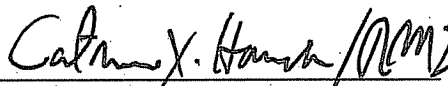
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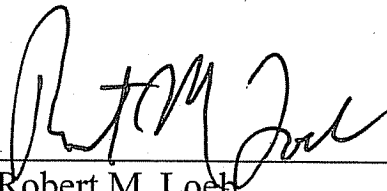
AUGUST 2007

**CERTIFICATE OF SERVICE**

I hereby certify that on this <sup>31st</sup> 30th day of August, 2007, I served the foregoing  
“FILING IN SUPPORT OF MOTION FOR STAY OF ORDER REQUIRING  
RESPONDENT TO FILE REVISED CERTIFIED INDEX AND MOTION FOR  
LEAVE TO FILE,” by causing an original and four copies to be served on the Court  
via hand delivery and one copy to be sent to the following counsel via e-mail and  
first-class U.S. mail:

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