

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

LAKHDAR BOUMEDIENE, et al.

Petitioners,

v.

GEORGE WALKER BUSH, et al.

Respondents.

Civil Action No. 04-cv-1166 (RJL)

**PETITIONERS' MOTION TO COMPEL SIGNATURE OF UNSIGNED "NARRATIVE
FOR PETITIONERS" OR, IN THE ALTERNATIVE,
TO STRIKE THE UNSIGNED NARRATIVE AND EXHIBITS**

Four years ago Petitioners filed this case seeking writs of *habeas corpus*; after protracted litigation over jurisdictional and constitutional matters, the Supreme Court ruled on June 12, 2008 that Petitioners' habeas case may go forward. *Boumediene v. Bush*, 128 S. Ct. 2229 (2008). This Court ordered the Government to submit any material it wished to add to its previously-filed "return" – i.e., its explanation why the Petitioners were being imprisoned – on or before August 22. Briefing and Scheduling Order, *Boumediene v. Bush*, No. 04-1166, Dkt. No. 125 (RJL) (D.D.C. July 31, 2008). The Court also ruled that the Government bears the burden of proof to show that Petitioners' imprisonment is lawful. Case Management Order, *Boumediene v. Bush*, No. 04-1166, Dkt. No. 142 (RJL) (D.D.C. Aug. 27, 2008).

On August 22, 2008, the Government submitted its proposed "Amended Factual Return for Petitioners" (Dkt No. 137) ("Amended Return"). An unclassified version was filed publicly on September 5, 2008. (Dkt. Nos. 161-164). The proposed Amended Return includes a two-

page covering memorandum, a one page Declaration from Rear Admiral Thomas, a fifty-three page “Narrative For Petitioners,” and 134 exhibits to the Narrative. (Many of the exhibits are redacted even in the classified version of the Amended Return; almost all of the exhibits are redacted in the unclassified versions, many of them in their entirety.)

The two-page covering memorandum, signed by counsel for the Government, is ministerial. It alleges no facts justifying detention; rather, it merely explains that subsequent documents – which include the Narrative – allegedly set forth the “factual bases” that justify Petitioners’ continued imprisonment in Guantanamo. Amended Return at 2.

Likewise, Rear Admiral Thomas’s Declaration is ministerial, and alleges no facts justifying detention. Rather, Rear Admiral Thomas declares (under pains and penalties of perjury) that the “attached narrative and supporting materials ... contain information used by the Department of Defense to establish the status of the individuals who are the subjects of the narrative as enemy combatants and to substantiate their detention as enemy combatants at Guantanamo Bay, Cuba.” Thomas Decl. ¶ 3.

The “Narrative” is fifty-three pages. It begins with a case caption, is styled “Narrative For Petitioners,” and sets out in 98 numbered paragraphs the allegations that the Government says justify the Petitioners’ imprisonment, with citations to accompanying exhibits. A few of the allegations made in the Narrative are now public; many more have been declared secret by the Government, and have been redacted from the version that was publicly filed on September 5. For that reason, little can be said by Petitioners’ counsel in public about the truth of these allegations, or the lack thereof. (Much more will be said later; likely all or almost all of it will need to be said out of public view.)

Although the facts alleged by the Government in support of continued imprisonment are contained in the Narrative, no officer of this Court has attested that the alleged facts are true or have a good-faith basis in fact. The Narrative – the Government’s summation of the reasons why the Petitioners have been and continue to be imprisoned – is unsigned. No one from the Government has put his or her name to the allegations – not the Government’s counsel from the Department of Justice (who signed the cover memo, but not the rest), nor Rear Admiral Thomas, who cautiously declares under penalty of perjury only that the Narrative contains “information” that the Department of Defense used to “establish” and “substantiate [Petitioners’] detention.” Thomas Decl. ¶ 3. Admiral Thomas does not declare under penalty of perjury that the “facts” alleged within the Narrative are, to the best of his knowledge, information, and belief, all true. Nobody does. (By contrast, the CSRT records that were submitted in 2004 as the Government’s Return included memoranda describing the factual findings of Petitioners’ CSRT tribunals – and those memoranda, unlike the Narrative, were *signed* by the respective tribunal presidents.)

“The person to whom the writ or order is directed shall make a return *certifying* the *true cause of the detention*.” See 28 U.S.C. § 2243 (emphasis added). “Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney’s name. ... The court *must strike* an unsigned paper unless the omission is promptly corrected after being called to the attorney’s or party’s attention.” Fed. R. Civ. Proc. 11(a) (emphasis added). The Narrative is plainly a “pleading” or “other paper” within the scope of Rule 11; indeed, since it is the only statement of the “facts” that the Government says are sufficient to imprison these six men indefinitely, it is easily the most important “paper” submitted by the Government so far. *Some* officer of the Court representing the Government must sign it. Otherwise, the Government has not “certif[ied],” as it must, the “true cause of the detention” – and the Government has

failed, as it must, to represent that “to the best of [counsel’s] knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,” the Narrative’s factual allegations all “have evidentiary support” and are “not being presented for any improper purpose.” Fed. R. Civ. Proc. 11(b). Surely someone at the Department of Justice is willing to do that, if these allegations are to be given the weight and credibility that the Government contends are sufficient to justify indefinite military detention. Failure of an officer of the Court to sign the Narrative certainly reinforces Petitioners’ arguments regarding the insufficiency and vagueness of the Government’s allegations.

Therefore, Petitioners respectfully request that the Court order the Government to file a signed Narrative, or a signed certification from counsel of record attesting to the veracity of the unsigned Narrative. If Government counsel will not sign, Petitioners request that the Court strike the Narrative and its accompanying exhibits. *See Thomas v. Paulson*, 507 F. Supp. 2d 59, 64 n.6 (D.D.C. 2007) (plaintiff’s unsigned response to defendant’s summary judgment statement of material facts violated Rule 11(a)); *see also Tucker v. Thomasville Toyota*, 2008 WL 3092717 (M.D. Ga. Aug. 4 2008); (unsigned complaint “must be stricken unless the omission is promptly corrected”); *Dean v. Blum*, 2007 WL 2264615 at 3 (D. Neb. Aug. 6, 2007) (plaintiff submitted unsigned amended complaint; court ordered plaintiff to submit a certificate “which states that the allegations and legal contentions set forth in the amended complaint ... are his,” or else court would strike amended complaint); *Schutter v. Herskowitz*, 2008 WL 2726921 (E.D. Pa. Jul. 11, 2008) (various unsigned motions, responses to motions, and memoranda all violated Rule 11(a)).

Counsel for Petitioners consulted with counsel for the Government regarding the substance of this motion pursuant to Local Rule 7(m). The Government opposes this motion.

Respectfully submitted,

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Dated: September 16, 2008

CERTIFICATE OF SERVICE

I, Allyson J Portney, hereby certify that on September 16, 2008, I electronically filed and served the foregoing PETITIONERS' MOTION TO COMPEL SIGNATURE OF UNSIGNED NARRATIVE OR, IN THE ALTERNATIVE, TO STRIKE THE UNSIGNED NARRATIVE AND EXHIBITS.

/s/ Allyson Portney
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