

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

MAHMOAD ABDAH, *et al.*,
Petitioners,

v.

GEORGE W. BUSH, *et al.*,
Respondents.

Civil Action No. 04-01254 (HHK)

**REPLY IN SUPPORT OF PETITIONERS' MOTION FOR
INQUIRY INTO RESPONDENTS' COMPLIANCE WITH
DOCUMENT PRESERVATION ORDER**

1. As Petitioners made clear in their classified submission of December 13, 2007, their concerns reach well beyond whether the government has violated the Court's preservation order, to the more general question of the government's handling of evidence that may be relevant to this case. Despite the styling of their motion, the inquiry Petitioners seek is not limited to the government's compliance with the Court's preservation order.

2. Nevertheless, it is noteworthy that the government does not deny that it has violated the protective order. Nor does the government assert that Abu Zubaidah was not at Guantánamo or tortured there. The government merely states that Petitioners "have neither alleged nor shown" that Abu Zubaidah was in Guantanamo on the day the order was entered. Opp. 2. *See also id.* at 3, 4. In light of the government's destruction of the Abu Zubaidah and other video recordings, the government bears the burden of establishing that it has not violated the protective order or otherwise destroyed relevant evidence.¹

¹ Cf. *Citizens For Responsibility & Ethics In Washington v. Executive Office Of The President*, No. 07-01707 (HHK) (Nov. 12, 2007) (Doc. 18) (temporary restraining order). In view of the absolute secrecy in which the government has sought to shroud its activities in these matters, Petitioners should not be faulted for not making more specific and concrete claims.

4. The government urges the Court to stay its hand “[i]n light of the current inquiries by the political branches into the destruction of the tapes that occasioned petitioners’ motion.” Op. 2; *see also id.* at 4 & n.2. At the same time, the government is trying to force Congress to leave the matter entirely to Justice Department and the CIA, both of which are implicated in the destruction of the tapes and deeply interested parties.² Plainly the government wants only foxes guarding this henhouse.

Dated: Washington, D.C.
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