

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

BOUMEDIENE v. BUSH

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

SLITI v. BUSH

Civil Action No. 05-cv-0429 (RJL)

KABIR v. BUSH

Civil Action No. 05-cv-0431 (RJL)

NOTICE OF SUBSEQUENT AUTHORITY

Petitioners Lakhdar Boumediene et al. respectfully call the Court's attention to the order of the United States Court of Appeals for the District of Columbia Circuit reinstating the decisions of the Court of Appeals in *Bismullah v. Gates*, 501 F.3d 178 (D.C. Cir. 2007) (*Bismullah I*) and *Bismullah v. Gates*, 503 F.3d 137 (D.C. Cir. 2007) (*Bismullah II*). See *Bismullah v. Gates*, No. 06-cv-1197 (Aug. 22, 2008) (copy attached). This order is relevant to the issue of the Government's discovery obligations, which were discussed in the briefs filed in response to the Court's July 30, 2008 Order and in the hearing on August 21, 2008.

The Court of Appeals' order in *Bismullah* confirms the Government's obligation to preserve and produce all information in its possession in a proceeding under the Detainee Treatment Act of 2005 (DTA), Pub. L. No. 109-148, § 1005(e)(2), 119 Stat. 2742-43 (Dec. 30, 2005). See *Bismullah I*, 501 F.3d at 192 ("We conclude the record on review consists of the Government Information, that is, all 'reasonably available information in the possession of the U.S. Government bearing on the issue of whether the detainee meets the criteria to be designated as an enemy combatant.'"). Both the Supreme Court and the D.C. Circuit have recognized that

the DTA involves *less* searching review than is required on habeas. *See Boumediene v. Bush*, 128 S. Ct. 2229, 2266 (2008) (“[T]he procedures adopted [in the DTA] cannot be as extensive or as protective of the rights of the detainees as they would be in § 2241 proceedings.”); *Parhat v. Gates*, No. 06-1397, 2008 WL 2576977, at *15 (D.C. Cir. June 20, 2008) (“The habeas proceeding will have procedures that are more protective of Parhat’s rights than those available under the DTA.”). Accordingly, in the context of the *more* rigorous habeas review, the Court should order the Government to search for and produce all exculpatory information—if not all information—that is “reasonably available” to the Government and that bears on the Petitioners’ detention.

Respectfully submitted,

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Counsel for Petitioners Sliti et al. in No. 05-429 and Petitioner Al Shurafa in Kabir in No. 05-0431

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2008, I caused a true and accurate copy of Petitioners' Notice of Subsequent Authority to be served upon the following counsel for Respondents by electronic filing via the Court's ECF system:

Terry M. Henry, Esq.
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United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 06-1197

September Term 2007

CSRT-ISN-968

Filed On: August 22, 2008

Haji Bismullah, also known as Haji Bismillah,
also known as Haji Besmella and Haji
Mohammad Wali, Next Friend of Haji
Bismullah,

Petitioners

v.

Robert M. Gates, Secretary of Defense,

Respondent

BEFORE: Ginsburg, Henderson*, and Rogers, Circuit Judges

ORDER

Upon consideration of petitioners' motion to reinstate the court's decisions in Bismullah I and Bismullah II, the response thereto, and the reply; and respondent's cross-motion to modify the protective order to conform to the Supreme Court's ruling, and the response thereto, it is

ORDERED that the motion to reinstate the court's decisions be granted. The Clerk is to note the docket accordingly. It is

FURTHER ORDERED that the cross-motion to modify the protective order be dismissed as moot.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY: /s/

Nancy G. Dunn
Deputy Clerk

* Judge Henderson would deny the motion to reinstate the court's decisions and would grant the cross-motion to modify the protective order.