

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MOHAMMED AL-QAHTANI, ET AL,

Petitioner,

CA No. 05-1971

Washington, DC

Friday, September 17, 2010

2:10 p.m.

vs.

BARACK OBAMA, ET AL.,

Respondent.

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TRANSCRIPT OF STATUS CONFERENCE  
BEFORE THE HONORABLE ROSEMARY M. COLLYER  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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Appearances continued:

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For the Respondent:     DANIEL BARISH, Esquire  
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Court Reporter:         Crystal M. Pilgrim, RPR  
                             Official Court Reporter  
                             United States District Court  
                             District of Columbia  
                             333 Constitution Avenue, NW  
                             Washington, DC    20001

Proceedings recorded by mechanical stenography, transcript  
produced by computer-aided transcription.

1           THE DEPUTY CLERK: Civil action 05-1971, Mohammed  
2 Al-Qahtani versus Barack Obama, et al.

3           For the plaintiffs, Shayana Kadidal, Sandra Babcock, Ben  
4 Fishman, Ibrahim Qatabi, and Larry Lustberg.

5           For the defense, Daniel Barish, Kathryn Mason and Mary  
6 Carney.

7           THE COURT: Hello everyone. Can the people on the  
8 phone hear me?

9           MR. LUSTBERG: Yes, Your Honor.

10          THE COURT: If the people on the phone are to hear  
11 what anybody else says, you have to stand actually at the  
12 microphone. Otherwise some signals will not work, so you have  
13 to actually come to the microphone.

14          The purpose of this status conference was to ascertain  
15 the state of discovery so that we get some idea as to how long  
16 it's going to be before we can push this case forward.

17          Some things come up in the meantime, however. I got the  
18 status report filed yesterday, I guess, by the government which  
19 indicates that there's an issue of authorized representation  
20 for the petitioner with a very funny affidavit from an officer  
21 in the JAG attesting to things that he wasn't participating in.  
22 Well, that's all right. I suppose their names are all secret.

23          Anyway, Mr. Kadidal, do you want to tell me what you  
24 think the state of your relationship is with your client.

25          MR. KADIDAL: Certainly. Thank you, Your Honor.

1           As you noted, Ms. Mason has raised some questions in a  
2 series of e-mails and then in her status report about whether  
3 our client still wants us to represent him based on information  
4 passed on to her by the staff judge advocate or SJA where  
5 lawyers at Guantanamo regarding a pair of phone call  
6 appointments we made with our client during the Ramadan fest.  
7 Subsequent to Ramadan, we visited our client this Monday.

8           My last communication with Ms. Mason about this was in an  
9 e-mail on Thursday just before noon which I'll read from.

10          Quote, our client met with us for a full day on Monday.  
11 He remains our client and has not indicated to us that he  
12 wishes to withdraw his habeas action. For the reasons we laid  
13 out in our letter of September 3rd, we will not be providing  
14 the quote, renewed declaration unquote or quote documentation  
15 unquote you asked for in the second paragraph of your letter of  
16 September 9th.

17          We do not intend to provide the government with a running  
18 narrative detailing our client's privileged communications with  
19 us in this case or any other. I hope this puts an end to this  
20 discussion.

21          Now the cue line for present purposes in that e-mail was  
22 quote he remains our client and has not indicated to us that he  
23 wishes to withdraw his habeas action.

24          And let me put it another way just to be maximally clear  
25 for the benefit of the Court. Having sat through our meeting

1 on Monday, I can unequivocally state that there is no chance  
2 that our client left the meeting wanting to discharge me as his  
3 lawyer, and there's no chance that he wanted to dismiss his  
4 habeas action. I hope that's clear enough.

5 Now if the Court wants further elaboration, we would be  
6 happy to do so in an ex parte submission. We can't do it here  
7 now for two reasons.

8 First, the notes from our Monday meeting were just cleared  
9 last night and so our entire team has not had the opportunity  
10 to read them and more importantly, to discuss them.

11 Second, more, importantly we have no intention of  
12 discussing our client's thought processes with the government  
13 in the room. The government's request that we do so in a  
14 written submission to them is astonishing here. In a case that  
15 is essentially centered on a program of systematic torture  
16 calculated to psychologically destroy our client, they expect  
17 us to divulge what they call is quote his frustration and anger  
18 unquote about the litigation right here in this courtroom or in  
19 a filing that's suppose to go to them directly.

20 And this is when our client was interrogated as recently  
21 as two years ago. I think that suggestion is the height of  
22 absurdity and again, while we're more than happy to brief the  
23 Court in an ex parte submission in greater detail, there's just  
24 no way that the government is entitled to be a party to that.

25 While we're here though I do want to make one additional

1 point on this issue. By filing this status report subsequent  
2 to the exchange of e-mails that I had with Ms. Mason, the  
3 government is essentially accusing me of lying on dissimilating  
4 about this matter, and now I have been at this long enough not  
5 to be offended by that, but I do find it ironic given that on  
6 the face of the declaration that the government submitted,  
7 there's a violation of the ethical rules governing attorneys  
8 that is apparent.

9         The model rules state that quote a lawyer shall not  
10 communicate about the subject of the representation with the  
11 person the lawyer knows to be represented by another lawyer in  
12 the matter. And this so-called no contact rule applies quote  
13 even though the represented person initiates or consents to the  
14 communication unquote and I'm quoting there from Model Rule 4.2  
15 and comment 3.

16         So notwithstanding the case the government cites in  
17 footnote two of its status report which concerns a conflict of  
18 interest between an insurance company and a plaintiff in a car  
19 accident case, there's no exception to the now contact rule for  
20 cases where the government lawyer is just checking whether a  
21 detainee really feels good about his lawyer and his case at the  
22 present moment.

23         The SJA who is an attorney is not entitled for instance  
24 to walk from cell to cell every Friday checking in and quizzing  
25 detainees in English no less if we're to believe the

1 declaration to reconfirm their enthusiasm for the litigation.

2 Yet in paragraph twelve of the Government's declaration  
3 indicates that the Assistant SJA did in fact initiate a second  
4 conversation about these issues with our client.

5 We have warned the government about violations of the no  
6 contact rule in this particular case by letter in the recent  
7 past, and I would ask that the Court today reiterate this basic  
8 principle and order the government to keep the SJA from  
9 initiating or engaging in communications regarding the  
10 litigation with our client outside of our presence.

11 I would point out as I guess the Court has already today  
12 that the declaration the government attached to its status  
13 report contains a great deal of hearsay from an unnamed  
14 Assistant SJA. There are two Assistant SJAs at Guantanamo that  
15 I know of. One enjoys a good reputation for upright dealing  
16 with counsel and detainees and the other not so much so.

17 If the government wants to pursue this further, I think  
18 that they should disclose this SJA's identity and produce a  
19 non-hearsay declaration from them. They have had time here to  
20 prepare a seven page declaration, so I am surprised to see that  
21 almost the entirety of the substance is secondhand.

22 Now there are three ministerial matters I guess that I  
23 wanted to quickly address which I expected earlier in the week  
24 would be the complete subject of this status conference.

25 THE COURT: Can I first interrupt you.

1 MR. KADIDAL: Sure.

2 THE COURT: I want to complete conversation about the  
3 status report and the status of your representation of the  
4 petitioner.

5 There is a reference somewhere along in here that  
6 indicates that Judge Hogan ordered some years ago that all  
7 counsel come forward with a written indication signed  
8 authorization from the petitioner to pursue the action and that  
9 you or another one of the lawyers on the team declined to do  
10 that.

11 MR. KADIDAL: Judge Hogan's order states that you can  
12 either produce a signed authorization document or you can  
13 produce a declaration from the attorney indicating that the  
14 attorney is authorized to go forward.

15 THE COURT: And in these conditions, I'm going to  
16 modify that order and indicate that I want a signed  
17 authorization.

18 I'm not questioning your credibility. And I don't have  
19 any way to question the credibility of the SJA or his  
20 assistants. I can't do that. I just need to know that things  
21 are on the up and up.

22 MR. KADIDAL: Can I suggest the reason that Judge  
23 Hogan offered that alternative, and I'll relate this back to  
24 our own kind of practical experience at Guantanamo.

25 There were two bits of advice that I heard at the first



1 training session for counsel going to the base back in 2005 I  
2 guess.

3           One of them was that interrogators will never disclose  
4 anything about their personal lives to a detainee. So, you  
5 know, one would be well advised to talk about whether you're  
6 married or have children or how old you are or where your  
7 parents come from and that kind of thing.

8           The other was that nobody, the only people down at  
9 Guantanamo who will ask a detainee to sign anything are  
10 interrogators and there is a reflexive reaction to being asked  
11 to sign something that just about any detainee will have. They  
12 don't understand generally the way that the American legal  
13 system works, even basic things about the structure of the  
14 courts and their independence from the political branches  
15 constantly are in need of explanation.

16           And then beyond that, most of them have experienced years  
17 of having confessions or other documents thrust in front of  
18 them and being asked to sign them and being told, being given  
19 ridiculous promises about repatriation or other things like  
20 that that might flow as a consequence. That's the reason that  
21 you see very few signed authorizations generally. That's the  
22 reason we have never submitted one in this case.

23           THE COURT: I don't intend to seem impervious to  
24 those realities. But it appears that the detainee himself has  
25 created an inconsistent record. That is, his statements to you

1 and his statements to others whether solicited or not and most  
2 of them were not.

3 And I just need to know and I can't know through your  
4 statements or the government's statements because you say he  
5 said different things.

6 And so I think I need you to say to him that I'm  
7 confused. I'm the judge, I need to know. I don't want him to  
8 sign anything that has anything to do with anything but this  
9 case and I just need one piece of paper which if you prefer you  
10 can submit to me ex parte. So that the government doesn't see  
11 it and you can tell him that too, the government will not see  
12 it. It will come only to me. But at the moment he has said  
13 two very dramatically different things.

14 You understand where I am coming from with that?

15 MR. KADIDAL: Sure.

16 Can I suggest one thing then? We've already offered  
17 here to submit an ex parte statement, declaration regarding our  
18 experience of the last couple of weeks I suppose interacting  
19 with our client. Could we possibly do that first and then have  
20 you consider whether or not you want to see something further  
21 from the client?

22 THE COURT: I don't think it would be appropriate for  
23 me to say no, so I will say yes, and it should be submitted ex  
24 parte.

25 I'm not sure that I won't change my approach, let me

1 just be real straight with you, okay. Again, it's not what you  
2 say or the government says or the Navy says, it's what the  
3 detainee says, and at the moment he seems to be saying more  
4 than one thing at different times.

5 MR. KADIDAL: Right. Well, obviously, the government  
6 has put its entire hearsay account of the situation on the  
7 record and we, because we're not in an ex parte setting, I'm  
8 just giving you sort of our bottom line.

9 THE COURT: I understand, that's fine.

10 MR. KADIDAL: Perhaps we can set some sort of  
11 deadline on that after I check back in with my team.

12 THE COURT: That would be good.

13 MR. KADIDAL: As far as the ministerial matters --

14 THE COURT: Let me back up.

15 You should communicate with Ms. White when you think you  
16 have a deadline, all right.

17 MR. KADIDAL: Very good.

18 As far as discovery and the rest of it, we're still  
19 waiting on clearance of the last two sets of documents which we  
20 mentioned in our last filing to the Court which was a motion  
21 for extension of some deadlines.

22 Those sets of documents, one exculpatory disclosure and  
23 one set of medical records that we're also still waiting on the  
24 security clearance for Dr. Craig Hainey although I was assured  
25 yesterday by the Court security office that they are close to

1 being done. Dr. Hainey I think was going to be in the region  
2 next weekend, so we're hoping that that will be finished in the  
3 next week and that he might have a chance to look over some of  
4 the materials with us in the secure facility.

5 One final point, the government has still not given us  
6 any indication of when they might move to amend the factual  
7 return here. So it might be helpful to everyone if the Court  
8 could clarify that a little bit now.

9 Thank you.

10 THE COURT: Thank you.

11 Could I just ask one question. The clearance of  
12 documents that's done by the security officer or someone like  
13 that, not by the attorneys?

14 MR. KADIDAL: It's a long process. I think there was  
15 the most recent detailed memorandum about it was submitted to  
16 Judge Hogan in the current dispute over filing of public  
17 factual returns.

18 But basically my understanding is that the documents go  
19 to a variety of agencies, then the different redactions are  
20 compared and that's all ironed out.

21 THE COURT: But it's not by the lawyers. I can't  
22 lean on them and say hurry up and get this done because they're  
23 not doing it.

24 MR. KADIDAL: You might want to ask Ms. Mason about  
25 the process, I'm not an insider.

1 THE COURT: Okay.

2 MR. KADIDAL: Thank you.

3 THE COURT: Thank you.

4 Ms. Mason, for the moment, I think that we will proceed  
5 on the premise that the petitioner is still represented by  
6 current counsel or they'll clarify that in the next couple of  
7 weeks one way or another.

8 I understand that the JAG officer went to speak with the  
9 petitioner at his request, that is the second visit in a day  
10 that's referenced in paragraph 13.

11 And I understand that the subject matter was that the  
12 petitioner wanted to fire his lawyers which would indicate that  
13 he was no longer represented which might explain why the JAG  
14 officer thought that he could go talk to the petitioner  
15 without violating any of the don't talk to rules when somebody  
16 is represented.

17 You would do me a favor if you would communicate to the  
18 JAG officers that this is such a delicate set of issues, not  
19 just with this detainee, but with others, that they should  
20 probably assume that, continue to assume people are represented  
21 until such time as something official happens to indicate that  
22 they are not.

23 MS. MASON: Yes, Your Honor and I certainly will.

24 I just want to say one thing about that subject and it  
25 is that it's not remarkable in any way that detainees have

1 interactions with Guantanamo personnel including people from  
2 the SJA because we are in a unique circumstance where the  
3 petitioner himself is in the custody of respondents and  
4 therefore, contact between personnel of respondents is  
5 inevitable. And that includes to facilitate petitioner's  
6 meetings with his attorneys.

7 As you can see from the declaration, there's no evidence  
8 that the subject of the representation was discussed in any  
9 way.

10 THE COURT: No, just the fact of the representation.

11 The thing, the problem, of course, is that the detainees  
12 are entirely in the custody and control of the military and it  
13 makes their civilian counsel anxious on their behalves.

14 MS. MASON: I understand.

15 THE COURT: It's a very unusual situation. And as I  
16 say, my assumption is that the particular JAG officer, whoever  
17 he was, who talked to the petitioner on that afternoon went  
18 back thinking he wasn't represented. Because he fires his  
19 lawyer.

20 It's just that because the situation is so complicated  
21 if you could advise them to avoid that kind of approach until  
22 things are ironed out officially. Obviously, there's contact  
23 for other issues, but when we're talking this kind of  
24 litigation it does make people get very prickly.

25 MS. MASON: I appreciate the sensitivity, Your Honor,

1 and we will inform our client of your comments here today.

2 THE COURT: Thank you.

3 MS. MASON: With regard to the authorization issue  
4 there's just one thing that I want to say because Your Honor  
5 has I believe satisfied our interest. The interest obviously  
6 is to protect both parties in this suit as well as the Court  
7 from any sort of collateral attack if a final judgment is  
8 entered in this case.

9 THE COURT: So all we're doing is straightening this  
10 out so it's clear that as to what the petitioner really wants  
11 done here. As long as we manage to do that, we're all golden.

12 MS. MASON: Absolutely, Your Honor.

13 I would just like to say that by no means in my e-mails  
14 or communications with Mr. Kadidal or in the status report have  
15 I accused him of lying. Clearly there are some conflicts and  
16 that's why we came to the Court to make the Court aware of the  
17 conflicts and to hopefully make sure that the record is  
18 absolutely clear on this issue.

19 The government does maintain that the fact of  
20 representation attorney client relationship and the specific  
21 authorization that created that attorney client relationship  
22 are not privileged subjects.

23 I understand that the Court would benefit according to  
24 your comments from an ex parte declaration from counsel. If  
25 that helps to solve the problem, then the government doesn't

1 have a problem with that. However, we still do maintain that  
2 those facts aren't privileged.

3 With regard to a couple of the issues that Mr. Kadidal  
4 raised. The documents that were noted in the Court's minute  
5 order of September 1st, they have been cleared for production.  
6 We have not received authorization from our client to release  
7 those documents because of the issues that are surrounding the  
8 authorization.

9 As I have heard the Court we are to continue to act as  
10 if representation is not at issue and we will produce those  
11 documents, if not today because there are some filing deadlines  
12 this afternoon, if not today then Monday.

13 THE COURT: Okay.

14 MS. MASON: In which case that should I believe  
15 trigger the next deadline which would be petitioner's discovery  
16 motion.

17 THE COURT: Tell me before we stop talking  
18 petitioner's discovery motion is a motion for more discovery?

19 MS. MASON: Correct.

20 THE COURT: What is the status of an amended  
21 reformulated factual return? Does the government intend to  
22 file such a thing or have you completed your factual return  
23 filings?

24 MS. MASON: We do intend to file an amendment to the  
25 factual return. We have been working on it and we continue to



1 work on it as we speak.

2 THE COURT: Okay. How long do you think it's going  
3 to take?

4 MS. MASON: Your Honor, I believe that 45 days from  
5 October 4th would be a reasonable estimate. I say October 4th  
6 because I will be out of the country beginning next week until  
7 October 1st so this would not account for the time that I'm  
8 unfortunately not in the office to work on it.

9 THE COURT: I don't know if it's unfortunate not to  
10 be in the office. If you are out of the country doing  
11 something fun it's not unfortunate. If you are out of the  
12 country at Guantanamo, maybe it's unfortunate.

13 Anyway, 45 days from October 4, holy demolly.

14 MS. MASON: I would let the Court know over the  
15 course of the summer we were a bit side tracked from this  
16 project because of the discovery obligations and also complying  
17 with the continuing obligations of 1 D 2. So there were a lot  
18 of discovery over the summer and documents that we were able to  
19 produce to petitioner both exculpatory and inculpatory. We  
20 have been trying to wade through those as well.

21 The date that Your Honor is looking for would be I  
22 believe November 19th.

23 THE COURT: All right.

24 Mr. Kadidal, because we're on the phone with your  
25 colleagues, could you just come up here so you both can talk

1 back and forth without having to have people wait.

2 Tell me about the discovery motion that you plan to  
3 file.

4 MR. KADIDAL: Well, I'm not sure how much detail we  
5 can get into, but we have sent a meet and confer letter, five  
6 pages long specifying, you know, essentially documents that the  
7 prior production has --

8 THE COURT: Additional things you want, you've  
9 identified what else you want?

10 MR. KADIDAL: Right.

11 THE COURT: Okay. How long will it take for you to  
12 prepare a motion?

13 MR. KADIDAL: I mean, I think if I can beg the  
14 Court's forbearance on this, I think it might be useful if I  
15 could talk to our team just because we have been traveling so  
16 much recently. One of us returned from Guantanamo yesterday.  
17 A couple others obviously earlier in the week.

18 THE COURT: How many people, how many petitioners is  
19 your team representing?

20 MR. KADIDAL: Let's see, we have four still at  
21 Guantanamo.

22 THE COURT: Okay. Is this one in the least developed  
23 stage of the four?

24 MR. KADIDAL: I think it's roughly equivalent maybe,  
25 maybe, that's fair to say.

1           THE COURT: Yes, this one seems to, this one is more  
2 complicated than some of the others. Seems to me to be having  
3 it's own life here.

4           What I'm trying to do is figure out how we get this so  
5 that which is a point of oh, maybe somebody making a decision  
6 or two, that would be exciting wouldn't it.

7           And that's why if you want more discovery it means that  
8 you have to ask, they have to oppose, you have to reply, I have  
9 to decide and presuming I order anything, they then have to go  
10 find it, get cleared and finally get it to you. All of which  
11 might not happen until March if I don't keep my eye on the  
12 ball, help you keep your eyes on the ball, that's why I'm  
13 trying to hurry it up.

14          Members of the team out there on the telephone, if I set  
15 an arbitrary and capricious date for your motion to compel,  
16 will you all gag and die? Sounds like it. Sounds like you  
17 just gagged and died right now.

18          Today is the 17th of September. Why don't I say that  
19 the motion to compel should be filed by the 22nd of October.  
20 That gives you five weeks. Now, filed on the 22nd of October  
21 is of course with the Court's security people. It's not like  
22 I'm going to get it on the 22nd of October. We all understand  
23 that.

24          Now if it turns out that when you all get together  
25 somebody has keeled over in a dead faint on October 22nd, let

1 me know.

2 Nobody has fainted yet, right?

3 MR. LUSTBERG: No, we're good.

4 THE COURT: Let me know, but I really, we just need  
5 to keep this moving because this has been a long time getting  
6 us to here.

7 If Mr. Petitioner, sorry, thinks that he's been a long  
8 time waiting, I mean, it's time that we kind of got a sense of  
9 urgency about his case. We have tried this before, there are  
10 very good reasons for what you are trying to do. I understand  
11 and agree with all of those but we need to move it along too.  
12 Okay.

13 MR. KADIDAL: Okay. We will try to get to you that  
14 ex parte statement as quickly as we can. It may reflect on  
15 some of these issues.

16 THE COURT: Yes, it probably will. If you can get me  
17 the ex parte statement.

18 Now members of the team out there in cyberspace, you  
19 have to speak up if this is going to be ridiculous here. You  
20 can't just sit back there and be quiet and then yell at  
21 Mr. Kadidal when he shows up.

22 How about the 8th of October? That's two weeks from  
23 today.

24 MR. KADIDAL: I think that should be more than enough  
25 time and, you know, obviously we'll try to get it to you as

1 quickly as possible.

2 THE COURT: Please do because as I say, it has to go  
3 through clearance and everything so the 8th of October is  
4 really much later than that by the time I get it.

5 MR. KADIDAL: Actually, Your Honor, I believe, I have  
6 not seen them but the entirety of our notes from the meeting on  
7 Monday I think were cleared. So hopefully we'll be able to  
8 make an unclassified ex parte submission.

9 THE COURT: Good. That will be nice.

10 Okay. Now as to the 19th of November, since we are  
11 anticipating a motion to compel more discovery, the 19th of  
12 November should be sufficient because Mr. Kadidal and his  
13 colleagues are not going to be ready to respond to your amended  
14 factual return until the issue of more discovery is resolved.

15 So have a nice trip. And you have until the 19th of  
16 November.

17 MS. MASON: Thank you, Your Honor.

18 THE COURT: Okay. Is there anything else we need to  
19 do here?

20 MS. MASON: Your Honor, with the Court's indulgence,  
21 may I confer with my co-counsel before we adjourn?

22 THE COURT: You surely may.

23 (Pause.)

24 Oh, the big guns. Now I'm in trouble. I'm just telling  
25 the team members.

1 MR. BARISH: Hello, Your Honor, thank you.

2 I just wanted to clarify one thing on the authorization  
3 representation issue.

4 THE COURT: Yes, sir.

5 MR. BARISH: I understand that you've ordered counsel  
6 to submit an ex parte declaration from themselves and then  
7 depending on whether you're satisfied with that, there may be a  
8 requirement for an ex parte signed authorization from their  
9 client.

10 I just want to raise the concerns we have on that and  
11 that process will go forward, but I want to reserve the right.  
12 We may have to object at some point because if we never get to  
13 see whether or not there is authorization from petitioner to  
14 number one, go forward with this case and number two, have  
15 these attorneys represent him, that could be a problem.

16 We fully respect your judgment and ability to make that  
17 decision, but I just want to reserve the right. We may have a  
18 problem because as has been stated, whether or not the  
19 petitioner authorizes this proceeding and these attorneys  
20 cannot be privileged or ultimately even an ex parte fact. So  
21 we may need to see some sort of documentation through that.

22 THE COURT: Okay, I will recognize and of course you  
23 would have anyway, but your reservation of your right to object  
24 to say we really need more than what we've had, Judge.

25 Let me first see what counsel have to say in their ex

1 parte order and whether that's sufficient for my purposes and  
2 whether as a result of that there's anything that I can write  
3 or say that would be classified or not that would address your  
4 concerns.

5         If that isn't possible and we end up with a written  
6 authorization from the petitioner that is more probable that I  
7 would be able to show it to you in a closed hearing, not  
8 necessarily give it to you, but at least show it to you so you  
9 would know that it existed and it would be in a sealed part of  
10 the file. Everything is classified. Everything is in a tight  
11 little place as you know.

12                 MR. BARISH: Yes, thank you, Your Honor.

13                 So we will --

14                 THE COURT: We'll just take it one step at a time.

15                 MR. BARISH: Right. And so as you've ordered, we  
16 will for now produce the outstanding discovery.

17                 THE COURT: Please do, because these representatives  
18 can make use of that discovery to move the ball forward on  
19 behalf of the petitioner, and even if ultimately the case goes  
20 to someone else or he withdraws his habeas petition, time will  
21 not be lost.

22                 MR. BARISH: Yes.

23                 Thank you, Your Honor.

24                 THE COURT: Thank you, Mr. Barish.

25                 All right, are we together with each other now?

1           Thank you everybody, it was nice to see you all. Have a  
2 nice weekend.

3           Thank you.

4           MR. KADIDAL: Thank you, Your Honor.

5           MR. BARISH: Thank you.

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## 1 CERTIFICATE

2 I certify that the foregoing is a true and correct  
3 transcript, to the best of my ability, of the above pages, of  
4 the stenographic notes provided to me by the United States  
5 District Court, of the proceedings taken on the date and time  
6 previously stated in the above matter.

7 I further certify that I am neither counsel for, related  
8 to, nor employed by any of the parties to the action in which  
9 this hearing was taken, and further that I am not financially  
10 nor otherwise interested in the outcome of the action.

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13 /S/Crystal M. Pilgrim, RPR

\_\_\_\_\_ Date: September 27, 2010  
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