

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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MOHAMEDOU OULD SLAHI,)	
)	
<i>Petitioner,</i>)	
)	
v.)	Civil Action No. 05-569 (RCL)
)	
BARACK H. OBAMA, <i>et al.</i> ,)	
)	
<i>Respondents.</i>)	
_____)	

RESPONDENTS’ RESPONSE TO THE COURT’S ORDER OF DECEMBER 17, 2015

Respondents submit this response to the Court’s order of December 17, 2015, in which the Court ordered Respondents to explain certain apparent factual inconsistencies among three representations in the record about the storage of detainees’ legal materials. *See* ECF No. 477, Order. In the Court’s accompanying Memorandum Opinion, the Court surmised that the apparent “inconsistencies may simply be due to some change in the legal material storage policies at Guantanamo that occurred” over time. Memorandum Opinion (“Mem. Op.”), ECF No. 478, at 9-10. The Court is correct. Policies relating to the storage of detainees’ legal materials have changed over time. Accordingly, each of the statements to which the Court referred in its order and opinion were accurate reflections of the policies in effect at the time, as set forth below.

By way of background, Petitioner filed a Motion to Show Cause containing allegations, *inter alia*, that Respondents were depriving him of access to his legal materials. *See* Motion for Order to Show Cause, ECF No. 453, at 3, 21. After the briefing was complete, but before oral argument, Respondents explained in a status report why they believed that issues related to Petitioner’s access to his legal materials had largely been resolved. *See* Respondents’ Status

Report Regarding Petitioner's Legal Materials, ECF No. 475. At the hearing, the Court heard arguments from both parties about the current status of Petitioner's access to his legal materials. In its Memorandum Opinion, the Court determined that it was "largely satisfied that petitioner has adequate access to his legal materials." Mem. Op. at 8.

The Court nevertheless identified "inconsistencies" among various statements in the record regarding "the rules about the maximum number of legal material bins a detainee may have." *See* Mem. Op. at 9, 10. Specifically, these statements were made in (1) an email sent by Department of Justice counsel, Andrew Warden, to the Petitioner's bar on February 26, 2014, (Email, Exhibit A, hereto); (2) a declaration signed by the Joint Task Force-Guantanamo Commander Colonel David E. Heath on July 27, 2015 (Declaration, Exhibit B, hereto); and (3) a statement made by the undersigned counsel at oral argument on November 24, 2015 (Transcript, Exhibit C, hereto, at 62).¹ Mr. Warden's email explained that a detainee could have two legal bins in his cell and that the detainee could have an unlimited number of legal bins in storage, *see* Exhibit A, whereas Colonel Heath stated that a detainee could have one legal bin in his cell and up to four in storage. *See* Exhibit B, at ¶ 6. At the hearing, counsel for Respondents informed the Court that Petitioner was allowed one legal bin in his cell and that he had a total of nine bins of legal materials. *See* Exhibit C, at 62. The Court ordered that Respondents "shall, within fourteen days of the date of this Order, file with the Court an explanation of the inconsistencies identified" above. *See* Order.

“_____”
¹ The email from Andrew Warden was attached as an exhibit to Respondents' Status Report, ECF No. 475. The Declaration of Colonel David E. Heath was an exhibit to the same status report, and it was, in its classified form, also an exhibit to Respondents' Opposition to Petitioner's Motion to Show Cause, ECF No. 462.

Each of the statements made about the number of legal bins a detainee is allowed in his cell accurately described the policy then in effect. When the February 2014 email from Mr. Warden was sent, the standard operating procedure was that a compliant detainee could have two legal bins in his cell. That policy changed in November 2014 and from then until now a detainee may keep only one legal bin instead of two in his cell. Accordingly, the statement in Colonel Heath's declaration in July 2015 that detainees are permitted one legal bin in their cells accurately reflects the current policy, and undersigned counsel's representation during oral argument that Petitioner has one legal bin in his cell also is in accordance with that policy.

Similarly, each of the statements made about the number of legal bins a detainee is permitted to keep in storage also accurately reflected the policy then in effect. In February 2014, the applicable policy did not contain a limit on the number of legal bins a detainee could maintain in storage, and so the description in Mr. Warden's February 2014 email of the number being "without limit" was accurate. By June 2014, however, the policy had changed, and a presumptive limit of up to four legal bins was added. Thus, Colonel Heath's July 2015 declaration explained the policy at that time permitted a detainee to "have up to four legal bins stored in Detainee Admin[istration]." Exhibit B, at ¶ 6. Although the total number of legal bins maintained in storage specifically for Petitioner was not addressed in Colonel Heath's declaration, the four-bin limit has had no practical effect on Petitioner's or any other detainee's access to their legal materials because, as Respondents' counsel have been informed, no detainee has been denied access to or deprived of any legal materials based upon this four legal bin limit. Nevertheless, the four-bin limit was removed from the policy in October 2015 and is no longer in effect.

Finally, undersigned counsel's statement at oral argument that Petitioner "has nine" legal bins was, and remains, accurate. Exhibit C, at 62. Petitioner has nine sequentially numbered legal bins comprising one 15-quart bin in his cell, six 15-quart bins in storage, and one 30-quart bin (numbered as two bins) also in storage.

Respondents respectfully submit that the foregoing provides the Court with an explanation of the apparent inconsistencies that the Court identified in its Memorandum Opinion and that it ordered Respondents to address within fourteen days of its December 17, 2015 Order.

Dated: December 30, 2015

Respectfully submitted,

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