

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

JIHAD DHIAB,

Petitioner,

v.

BARACK OBAMA, *et al.*,

Respondents.

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Civil Action No. 05-1457 (GK)

ORDER

On October 3, 2014, this Court granted Intervenor's Motion to Intervene and to Unseal Videotape Evidence [Dkt. No. 349]. On that date, the Court's Order required redaction of all identifiers of individuals in the videotapes, ordered counsel to work cooperatively to ensure that all necessary redaction of the videotapes would be made so that redacted versions could then be entered on the public docket, and ruled that the videotapes would remain sealed until all redactions were completed.

On October 9, 2014, the Court issued a separate Order, which set specific dates for completion of the previously ordered redactions, directed the Intervenor and the Government to submit a Joint Proposal as to how the videotapes could be made available to the public in the most efficient manner; and once again ruled that the videotapes would remain under seal until the Court approved the Joint Proposal of the Intervenor and the Government [Dkt. No. 355].

On October 15, 2014, the Government filed a Motion to Stay Order[s] Unsealing Classified Videotapes Pending Possible Appeal and Request for an Administrative Stay [Dkt. No. 356] so that the Government could consider and decide whether to take an appeal from the Court's earlier

Orders. The Court granted the Motion and entered a stay on December 3, 2014 [Dkt. No. 378]. That same day, the Government filed its Notice of Appeal to our Court of Appeals [Dkt. No. 377].

On May 29, 2015, the Court of Appeals ruled that the Government's appeal was premature and, therefore, it lacked jurisdiction. Dhiab v. Obama, 787 F.3d 563, 567 (D.C. Cir. 2015). The Court of Appeals then remanded the case back to this Court and issued its Mandate on June 25, 2015 [Dkt. No. 385].

On July 9, 2015, this Court held a hearing with all parties to determine how the case should proceed. The Court made it clear that given the ruling of the Court of Appeals, this Court's earlier grant of Intervenor's Motion to Intervene and to Unseal Videotape Evidence was still the law of the case as it was on October 3, 2014, when Parties were ordered to take certain specific steps.

At the lengthy hearing held July 9, 2015, the Parties spelled out their positions regarding how to proceed. All Parties at the hearing were formulating their positions about further proceedings in the case on the assumption that any future ruling by this Court would again be appealed to the Court of Appeals. Petitioner urged that the Government make the appropriate redactions, as quickly as possible, of the Compilation he had prepared of those parts of the videotapes which Petitioner presented to this Court during the sealed portion of an earlier evidentiary hearing and believed would be relevant to the Court of Appeals. That Compilation is only approximately one hour and 15 minutes. The Intervenor suggested that the Government redact Petitioner's Compilation, the Government's Compilation, and the eight videotapes that the Government had identified for redaction. The Government agreed to redaction of the eight videotapes that it believed to be most important and relevant for the Court of Appeals, but did not agree to redaction of both Petitioner's Compilation and its own Compilation by August 31, 2015.

The Parties had very different views as to the date on which redactions should be completed. The Government's estimate of how long redaction of the videotapes would take has varied widely over the course of this case. In its October 15, 2014 Motion to Stay, the Government estimated that it would take "approximately 25 business days, or 5 weeks" to redact all 32 videotapes in accordance with the Court's redaction Order, "assuming there are no technical issues such as equipment breakdowns or interruption of work due to other court deadlines." Gov't's Mot. to Stay at 7. The Government supported this representation with a partially-redacted and very detailed affidavit explaining precisely why, "process[ing] three videos at a time, it w[ould] take approximately 25 business days[] to process all 32 videos[.]" Declaration of Navy Commander [REDACTED], Department of Defense Security Classification/Declassification Review Team at ¶ 19 [Dkt. No. 356-2].

However, at the July 9, 2015 Status Conference, the Government substantially changed its previous position. The Government stated that it now believes it will need until August 31, 2015, slightly more than 7 weeks, to redact just eight of the 32 videos. In other words, the Government now says that it needs 37 business days to process only one quarter of the video tapes at issue. At its new rate, it would take the Government 148 days -- six times the period the Government itself initially stated -- to process the 32 videos that it had previously said could be redacted in just 25 business days.

The only thing consistent about the Government's position has been its constant plea for more time. However, as the Court learned at the Status Conference, the Government has failed, after having managed to stall for nine months by filing a truly frivolous Appeal with the Court of Appeals, to use the additional time it has already received. In the months since the Court ordered

redaction and release of the 32 videotapes, the Government has made almost no progress in completing its redactions.

For all these reasons, and based on the Parties' arguments, as well as the Declaration of Navy Commander [REDACTED], the Court has concluded that the Government shall redact Petitioner's Compilation, the Government's Compilation, and the eight videotapes that the Government believes will present the best record for review by the Court of Appeals. Because the Government now believes that it can redact its eight videotapes by August 31, 2015, it shall be ordered do so. As already noted, Petitioner's Compilation is less than one hour and 15 minutes in length and the Government's Compilation is shorter still. Accordingly, the Government shall have an additional month to complete the redaction of the Compilations.¹ However, the Parties are on notice that there will be **no** extensions of time.

For the foregoing reasons, it is hereby

ORDERED, that the Government shall complete redaction of the eight videotapes it has identified and file Notice of such completion on or before August 31, 2015; and it is further

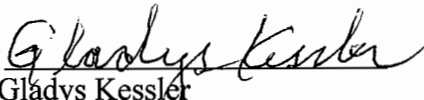
ORDERED, that the Government shall complete redaction of Petitioner's Compilation and the Government's Compilation and file Notice of such completion on or before September 30, 2015; and it is further

¹ The Government's new timeline requires 37 business days to redact one quarter of the 11 hours of footage contained on the 32 videotapes at issue in this case (about two hours and 45 minutes of footage). Thus, by its current estimation, the Government should be able to redact about one hour of footage every 13 and a half business days.

Of course, according to the Declaration of Navy Commander [REDACTED], the Government's initial 25-day timeline indicated a redaction rate of just over two days per hour of additional footage. Decl. at ¶ 19. Thus, the Government should have little difficulty redacting both Compilations by the end of September.

ORDERED, that the Parties shall appear for a Status Conference on October 15, 2015 at
10:00 a.m.

July 10, 2015


Gladys Kessler
United States District Judge

Copies to: attorneys on record via ECF