IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MAJID ABDULLA AL JOUDI, *et al.*, Petitioners/Plaintiffs, v. GEORGE W. BUSH, *et al.*, Respondents/Defendants.	**Case No. 05-301 (GK)**

PETITIONER'S RESPONSE TO THE COURT'S OCTOBER 16, 2006 ORDER AND TO RESPONDENT'S OCTOBER 27, 2006 FILING

Today, just hours before this reply was filed, counsel for Respondents informed undersigned counsel that Respondents had, indeed, failed to produce medical records for Mr. Al Joudi that were required by this Court's October 26, 2005 Order ("Order"). Counsel for Respondents indicated that they would provide a copy of these records to Petitioner's counsel by no later than Monday, November 6. Although Respondents' counsel indicated that the records pertain to the earlier period in which Mr. Al Joudi had been force-fed, they admitted that these records had never been produced to Petitioner as required by this Court's Order. Clearly, this fact, in addition to the specific, detailed, and troubling information that Mr. Al Joudi told counsel in their last interview, make Petitioners' counsel doubt whether they can trust information provided by Respondents that is based solely on documentation purportedly kept by Respondents without any first-hand verification. Certainly Respondents' apparent failure to follow their own procedures and produce these court-ordered records for nearly a year – even after this issue was first raised with Respondents nearly two months ago and after

submitting no less than three Declarations to this Court that reference Mr. Al Joudi's medical care, including references to those medical records themselves – reinforces Petitioner's concerns about both the accuracy of those records[1] as well as the care Respondents seem to take in submitting declarations to this Court.

Particularly in light of this new information, Respondents' October 27, 2006 submission to the Court raises more questions than it answers. Again, Respondents provide no first-hand information on the pivotal question before the Court: whether Mr. Al Joudi was force-fed without appropriate notice and medical records being provided to his attorneys. Respondents provide no information by any person with first-hand knowledge of whether Mr. Al Joudi was force-fed after January 4, 2006. They ask Petitioner's counsel and this Court to trust that their general procedures and record keeping practices would reveal whether Mr. Al Joudi was or was not force-fed after January 4, 2006. Respectfully, such trust appears no longer to be warranted in light of Respondents' admitted failure to comply with this Court's Order or presumably their own internal procedures for the collection and production of relevant documents.

In their submission, Respondents also fail to demonstrate how producing 136 pages of Mr. Al Joudi's medical records would be burdensome or improper under the circumstances.[2] These are, after all, Mr. Al Joudi's own medical records, and

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[1] As counsel for Petitioners raised at the October 11, 2006 hearing, there are notable inaccuracies and internal contradictions within the medical records for Mr. Al Joudi and other petitioners that Respondents have produced. Indeed, there are medical records relating to other detainees – including one of the detainees who committed suicide – that were found in Mr. Al Joudi's medical records.

[2] Respondents' counsel has since informed us that 27 of these 136 pages relate to Mr. Al Joudi's prior force-feeding and therefore will be belatedly produced pursuant to this Court's Order.

Respondents certainly cannot suggest that the medical records themselves are classified in any way. Nor, presumably, do they impact any issues of national security. All of the medical records previously produced to counsel have been produced in unclassified form, with occasional redactions to preserve the anonymity of treating medical personnel. Moreover, Petitioner's counsel are officers of this Court, with appropriate security clearances, who treat their obligations in these cases very seriously. Thus, it is difficult to imagine how problematic it could be for Respondents simply to turn over to Petitioner's counsel copies of his medical records, especially if, as they suggest, the medical records support Respondents' contention that Mr. Al Joudi was *not* force-fed after January 4, 2006. Accordingly, we respectfully request that the Court order Respondents to produce the medical records to Petitioner's counsel for review. Failing that, at a minimum, this Court should conduct an *in camera* review of the documents to assess whether, in comparison with other medical records produced by Respondents, Respondents have complied with their obligations to produce medical records for Mr. Al Joudi.

The Supporting Declarations do not Resolve the Factual Disputes

Respondents submitted an additional Declaration from Captain Ronald Sollock, purportedly to answer certain questions raised by the Court at the October 11, hearing. *See* Declaration of Capt. Ronald L. Sollock, annexed as Ex. 1 to Respondents' Response, dated Sept. 29, 2006 (dkt. 78). Contrary to Respondents' contentions, Captain Sollock's supplemental declaration sheds no new light on the issue of whether Mr. Al Joudi was force-fed after January 4, 2006. Indeed, it fails to answer the critical question: why are Respondents unable to present someone with first-hand knowledge to testify that

Mr. Al Joudi was not force-fed after January 4, 2006? Captain Sollock informs the Court in his declaration that Dr. Hooker left his position as Officer in Charge of the Detainee Hospital on April 29, 2006. Captain Sollock does not reveal where Dr. Hooker is today – whether he is still a member of the United States military – or whether he could provide any first-hand information about whether Mr. Al Joudi was force-fed from January 4, 2006 up until the time he left that position on April 29, 2006. Nor does Captain Sollock inform the Court or the parties of what first-hand knowledge, if any, Captain Sollock has about these matters or whether there are other individuals at Guantanamo or elsewhere who would have first-hand knowledge of these matters.

Captain Sollock's first declaration denied Mr. Al Joudi's allegations regarding how force-feeding was conducted, not by reference to any specific facts, but rather by referring generally to the official policies at the detainee hospital. Such blanket and general denials do little to assist the Court or Petitioner's counsel in resolving this factual discrepancy between Mr. Al Joudi's story and Respondents' story.

The alleged factual inaccuracy that Captain Sollock cites in Mr. Al Joudi's story – that only two, not three, of the detainees who committed suicide were enterally fed between January 4, 2006 and June 2006 – is not sufficient to disregard completely Mr. Al Joudi's detailed allegations to the contrary. Less than perfect translation and memory recall could certainly account for minor discrepancies such as these. Yet Captain Sollock also seeks to undermine Mr. Al Joudi's credibility by insisting that none of the detainees who committed suicide were on a hunger strike at the time of their deaths. However, Mr. Al Joudi never said otherwise. Mr. Al Joudi was clear that the hunger strikers who committed suicide ended their strike some time *before* their deaths.

(Mason Decl. ¶ 9) Accordingly, Captain Sollock's Declaration actually corroborates Mr. Al Joudi's account of the events surrounding the deaths of the hunger strikers. Similarly, Captain Sollock's Declaration confirms Mr. Al Joudi's statement that there are currently two detainees who are being force-fed. Captain Sollock does not dispute Mr. Al Joudi's identification of these hunger strikers as Abdul-Rahman Shalabi and a detainee named "Ahmed."

At the heart of this dispute lies the factual question of whether Mr. Al Joudi was enterally fed at any time between January 4 and some time in August, 2006. As to this fundamental question, Captain Sollock's Declaration resolves nothing. Rather, Captain Sollock simply states conclusorily, exactly as he did in his first declaration, that Mr. Al Joudi stopped enteral feeding on January 4, 2006, that he was not being force-fed on June 9/10, and that he is not currently being force-fed. Captain Sollock provides no new information or specific factual support for his conclusion that Mr. Al Joudi was never involuntarily fed after January 4, 2006 leaving the Court and counsel in the same position they were in at the beginning of October.

Respondents' submission of the Declaration of Colonel Wade F. Dennis similarly fails to resolve the factual issue underlying this dispute and similarly fails to provide first-hand corroboration of Respondents' contentions. The Dennis Declaration purports to support Respondents' claim that Mr. Al Joudi was not force-fed after January 4, 2006 by alleging that there is no record of Mr. Al Joudi being moved for involuntary feedings and that Mr. Al Joudi was transferred out of Oscar block once he was no longer being force-fed. While Colonel Dennis' account of the "multi-step" movement process allegedly involved in enteral feeding does not support Mr. Al Joudi's contention that he

was enterally fed, it does not conclusively prove that Mr. Al Joudi was not. As with above, Respondents rely upon a statement of general policy,[3] rather than on facts specific to Petitioner.

Production of Medical Records Would not Impose an Unreasonable Burden

Respondents suggest that the limited production of 136 pages of medical records in this case would somehow open the floodgates to non-meritorious requests for medical records or other "mischief" by Guantanamo detainees. This fear, if it's true, is unwarranted. The Court will recall that Mr. Al Joudi's request for medical records arose in the first place because he, among other petitioners who were on hunger strike in the late fall of 2005, alleged that he was being force-fed in a manner that presented a serious risk to his life and his health. The Court found those allegations credible and ordered Respondents to produce medical records for any detainee in the above-captioned case, as well as in *Al-Marri* v. *Bush*, No. 04-2035, *Al-Adahi* v. *Bush*, No. 05-280 and *Al Razak* v. *Bush*, No. 05-1601, who was being force-fed.

The universe of detainees subject to this order is small; only eleven detainees in all. Furthermore, if the government is correct in asserting that only two detainees are currently on hunger strike, there seems to be little risk that petitioners will flood the courts with requests for medical records based on this Court's order or based upon their participation in a hunger strike. Nor is it reasonable to conclude that upon production of medical records for Mr. Al Joudi, the courts will be faced with a flood of

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[3] Because both declarations upon which Respondents rely are largely recitations of general policy, Respondents' suggestion that the testimony of United States military officers must be credited over that of an alleged enemy combatant, is offensive and certainly fails to comport with fundamental notions of due process.

motions intended solely to harass the government. The courts have not been forced to entertain frivolous motions to date, and to the extent that Respondents suggest that counsel cannot be trusted to refrain from filing such frivolous motions in the future, this Court and others certainly know how to deal with that problem.[4]

Moreover, it bears repeating that Mr. Al Joudi is seeking access simply to his own medical records. These records contain no classified or protected information, a fact which Respondents have neither controverted nor addressed. Rather, the records Mr. Al Joudi seeks are the same type of records that the government supplied to counsel for several weeks. Moreover, the volume of records sought is relatively small. As Respondents themselves note, the volume is such that the records can be reviewed in "short order."[5]

Finally, Respondents offer no credible reason why counsel, as officers of the court, should not be entrusted with reviewing the medical records. Respondents have not raised any specific objections to undersigned counsel's handling of the medical records produced pursuant to the Court's Order to date. The only argument Respondents offer to support their request for *in camera* production is that it would avoid the issue of detainees learning that they can obtain production of their medical records by lying. It is

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[4] Respondents contend that Mr. Al Joudi has put the authorities at Guantánamo to "significant trouble and burden" by making allegedly false statements about being force-fed. Yet, prior to the hearing on October 11, counsel sought permission to have a telephone call with Mr. Al Joudi or make an expedited visit to the base to attempt to clarify the inconsistencies between his recollection and the information provided by Respondents. Respondents refused these basic requests, presumably preferring instead to continue to litigate this issue in Court.

[5] Petitioner agrees that 136 pages – or 109 pages, as it were – is not unwieldy for the purposes of review. On the other hand, 109 pages certainly seems excessive for an individual who, according to Respondents, was not on hunger strike or experiencing a medical crisis.

unclear why production of the medical records to counsel would provide an additional incentive for detainees to fabricate stories, but in any event, should the records satisfactorily demonstrate that a petitioner's story is false, it would seem appropriate for counsel to know this information.

Should the Court credit Respondents' argument that production of Petitioner's medical records to counsel creates any such burden or risk, Petitioner respectfully urges, at a minimum, that the Court conduct an *in camera* review of the records to ascertain, based on a comparison with the medical records previously produced, whether Respondents have violated this Court's Order.

For the reasons set forth above and for those set forth in Petitioner's moving papers and at oral argument, Petitioner respectfully requests that the Court grant his motion.

Dated: November 3, 2006

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