

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|--|---|--------------------------------|
| ----- | X | |
| ISA ALI ABDULLA ALMURBATI, <i>ET AL.</i> , |) | |
| |) | |
| Petitioners, |) | Civil Action No. 04-1227 (RBW) |
| |) | |
| v. |) | DECLARATION OF |
| |) | JOSHUA COLANGELO-BRYAN |
| GEORGE WALKER BUSH, <i>ET AL.</i> , |) | IN SUPPORT OF |
| |) | MOTION FOR TEMPORARY |
| Respondents. |) | <u>RESTRAINING ORDER</u> |
| ----- | X | |

I, JOSHUA COLANGELO-BRYAN, declare that:

1. I am an attorney associated with Dorsey & Whitney LLP, which represents the Petitioners in this action. I respectfully submit this declaration in support of Petitioners' Motion for a Temporary Restraining Order.

2. My colleague Mark S. Sullivan and I visited the U.S. Naval Base at Guantánamo Bay, Cuba ("Guantánamo") to meet with our clients from July 29, 2005 through July 31, 2005.

3. On July 29, 2005, we were informed by U.S. military personnel at Camp Echo (where counsel visits are conducted) that one of our clients, Isa Almurbati, was hospitalized and would not be brought to Camp Echo that day; military personnel at Camp Echo cover their name tags and therefore we cannot identify the individual who made this statement.

4. Military personnel provided no additional information regarding Mr. Almurbati's condition and made no representations as to if or when Mr. Almurbati would be released from the hospital and brought to Camp Echo.

5. Because Mr. Almurbati was hospitalized, we were not able to meet with him at all on July 29, 2005.

6. On July 29, 2005, I met with Jum'ah Al Dossari, another client. Mr. Al Dossari informed me that a hunger strike involving many detainees had taken place between June 20, 2005 and July 27, 2005. Mr. Al Dossari reported that this hunger strike was undertaken

by the detainees to protest their indefinite detention without fair hearings, as well as the conditions of their confinement, including interference with religious practices, inadequate medical care, substandard food and general abuse.

7. Mr. Al Dossari informed me that the detainees had halted the hunger strike based upon promises by military officials to address detainee grievances. Mr. Al Dossari also informed me that if these promises were not fulfilled, the detainees would initiate a subsequent hunger strike, this of far more severe proportions.

8. Mr. Al Dossari informed me that he had participated in the hunger strike that had concluded on July 27, 2005. He told me that he had been hospitalized and had been fed intravenously. I observed numerous markings on Mr. Al Dossari's arm between the forearm and bicep that Mr. Al Dossari reported had been caused by needles that were inserted to administer intravenous feeding. According to Mr. Al Dossari, his blood pressure had dropped to 90/50 during his hospitalization.

9. Mr. Al Dossari stated that he would participate in any subsequent hunger strike undertaken by detainees at Guantánamo.

10. Also on July 29, 2005, Adel Kamel Abdulla Hajee, another of our clients, informed Mr. Sullivan, my colleague, that he had participated in the hunger strike. Mr. Hajee reported that he had been taken to the detainee clinic for medical treatment during the hunger strike.

11. On July 30, 2005, military personnel at Camp Echo informed Mr. Sullivan that Mr. Almurbati had been brought from the hospital to a cell at Camp Echo.

12. Mr. Sullivan went to speak with Mr. Almurbati. Mr. Almurbati was lying on the cement slab that serves as a sleeping area in Camp Echo cells. Mr. Almurbati was gaunt and his eyes were sunken. Mr. Almurbati did not move from the concrete slab and spoke only a few words.

13. It has been reported in the media and acknowledged by the U.S. military that a hunger strike is presently being undertaken by numerous detainees at Guantánamo. *See, e.g.,*

Mike Mount, *Hunger Strike at Guantánamo Grows*, CNN.com (Sept. 13, 2005) (attached hereto as Exhibit A).

14. Based upon these reports and the observations of habeas counsel who have recently visited Guantánamo, I asked counsel for Respondents to inform us whether any of our clients are participating in the hunger strike. Further, I requested information regarding the physical condition of any clients who are participating in the hunger strike and any medical treatment that is being provided to such clients. Finally, I asked if any of our clients had been hospitalized. *See Exhibit B hereto* (email requesting information from Respondents' counsel).

15. Respondents have refused to provide any information in response to our inquiries. *See Exhibit B hereto*. Therefore, counsel for Petitioners do not presently know whether any Petitioners are participating in the hunger strike, if any Petitioners are in serious physical condition or if any Petitioners are hospitalized. Respondents did provide a declaration executed by Major General Jay Hood, the Commander of Joint Task Force-Guantánamo, in response to my inquiry, which did not relate at all to the Petitioners specifically. This declaration is attached hereto as Exhibit C.

16. Counsel for Respondents approved our request to visit Guantánamo from October 13, 2005 through October 17, 2005 to meet with Petitioners. We have made all travel arrangements necessary for this trip, including arranging for the services of an interpreter.

17. I have requested that we be permitted to meet with Petitioners, if necessary, in medical facilities during our upcoming visit to Guantánamo. Respondents denied this request, stating simply that "GTMO does not permit interviews with detainees in the detainee hospital." *See Exhibit D hereto*.

18. I have been informed by members of the media and congressional delegations who have been given tours of Guantánamo by the military that they were allowed to visit the detainee hospital during those tours.

19. According to a calendar of counsel visits maintained by counsel for the detainees, on the first two of the three days that Petitioners' counsel are scheduled to visit Guantánamo in October, only one other attorney will be conducting a client visit at Guantánamo.

Counsel Are Not Able to Communicate Effectively with Petitioners via the Mail

20. On September 16, 2005, I received a phone call from the Court Security Officer ("CSO") for this case. The CSO informed me that six letters that had been sent by Petitioners to us were mailed by personnel at Guantánamo to the Department of Homeland Security rather than to the CSO, contrary to established procedures. These letters had been received on June 27, July 5 and August 19, 2005 by the Department of Homeland Security. However, the CSO had not taken possession of the letters until September 16, 2005. The CSO informed me that personnel at Guantánamo had mailed correspondence to other counsel for detainees to an address other than that for the CSO on other occasions.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 3rd day of October, 2005 in New York, New York.

/s/ Joshua Colangelo-Bryan
JOSHUA COLANGELO-BRYAN

EXHIBIT A



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WORLD

Hunger strike at Guantanamo grows

Eighteen detainees being force-fed; 128 now refusing to eat

From Mike Mount
CNN

Tuesday, September 13, 2005; Posted: 10:27 p.m. EDT (02:27 GMT)

WASHINGTON (CNN) -- The number of Guantanamo Bay detainees taking part in a hunger strike has swelled to about a quarter of the prison population over the past month, according to Pentagon officials.

Since August 8, the number of detainees refusing food has slowly increased from several dozen to 128, according to the Pentagon.

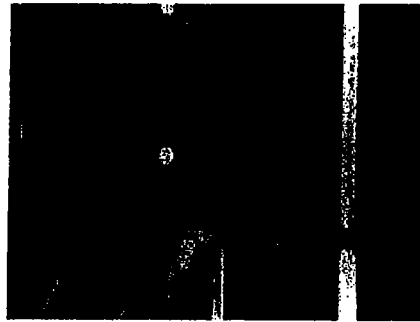
Eighteen prisoners are in medical facilities forcibly receiving nutrition intravenously or through nasal tubes, Pentagon officials said.

Last month officials said 89 detainees were refusing to eat and 12 were receiving forced nutrition in the medical facility.

Since the prison camp at the U.S. Naval Station in Guantanamo Bay, Cuba, opened in January 2002, there have been numerous hunger strikes by detainees. No prisoner has died from starvation, according to Pentagon officials.

"Regulations are the same at Guantanamo as they are in the U.S. prison system, and prisoners will not be allowed to kill themselves by starving themselves," a Pentagon official said.

Pentagon officials said the detainees are protesting their continued detention, but past detainee protests have occurred because of perceived treatment of the Quran by prison guards and treatment of the detainees by guards.



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The previous hunger strike at the prison, known as Camp Delta, was in late July, when 68 detainees stopped eating.

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All of the detainees started eating again on their own before the August 8 hunger strike, according to Pentagon officials.

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The Washington Post reported Monday that lawyers for some of the detainees claim their clients are refusing to eat to protest their detention as well as the beatings they allege some detainees are receiving from prison guards.

Pentagon officials flatly deny that any of the detainees are beaten, including uncooperative ones.

The Defense Department says more than 500 detainees are being held at the detention facility. Most were captured during the U.S.-led war in Afghanistan against the al Qaeda terrorist network and its local allies.

More than 30 countries are represented. But citizens from Saudi Arabia, Afghanistan and Yemen account for the majority of the detainees, 129, 110 and 107, the two U.S. officials told CNN last month.

Human rights activists and the Red Cross have criticized the treatment of prisoners at Guantanamo Bay. The controversy surrounding the facility in recent months prompted some lawmakers to suggest that it may need to be shut down.

But Bush administration officials have defended Guantanamo Bay. Vice President Dick Cheney said in June that the U.S. Guantanamo policy "is the correct one" and that all detainees are "treated with respect and dignity." ([Full story](#))

News of the growing detainee protest came a day after Pentagon officials said Mullah Abdul Salam Zaeef, once the Taliban's ambassador to Pakistan and its primary spokesman during the early days of the U.S. invasion of Afghanistan, was released after an agreement between the Afghan government and the United States.

He was flown to Afghanistan from the Cuban base. He had been held at the prison camp since January 2002 after being arrested by Pakistani authorities and turned over to the United States.

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EXHIBIT B

Colangelo-Bryan, Joshua

From: Andrew.Warden@usdoj.gov
Sent: Tuesday, September 27, 2005 9:29 AM
To: Colangelo-Bryan, Joshua
Subject: RE: Almurbati et al. v. Bush et al.



Food Declaration re
Hunger Str...

Josh,

We cannot agree to your requests. As we've explained in public filings, however, personnel at GTMO are actively involved in monitoring the health status of any detainee who is fasting or participating in a hunger strike, in addition to the normal quality medical care provided to detainees. Security personnel monitor each detainee's daily intake of meals and water. If it is determined that a detainee has missed all meals over three days or has declined food and water for more than two days, medical personnel conduct a medical evaluation of the detainee and then monitor him on a regular basis. If there is reason to believe that the fast or hunger strike could endanger the detainee's health or life, he is admitted to the detention hospital for continued monitoring and counseling regarding the risks associated with not eating. Involuntary medical treatment, such as IV hydration, is administered if the detainee reaches a point where continued fasting would seriously threaten the detainee's life or health. See attached Declaration of Gen. Jay Hood (originally filed in, inter alia, *El Banna v. Bush*, 04-CV-1144-RWR; Sept. 9, 2005)

The situation with regard to whether any particular detainee may be missing meals or be in the detainee hospital is somewhat dynamic and may change from day-to-day. GTMO is not in a position to provide updates on that situation to you or, potentially, counsel for the more than 200 other habeas petitioners at GTMO. As noted above, however, GTMO is appropriately monitoring and providing medical treatment as warranted to preserve detainees' lives and health.

Regards,

Andrew

Andrew I. Warden
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., NW, Room 6120
Washington, DC 20530
Tel: 202.616.5084

-----Original Message-----

From: Colangelo.Bryan.Joshua@dorsey.com [mailto:Colangelo.Bryan.Joshua@dorsey.com]
Sent: Monday, September 26, 2005 1:23 PM
To: Warden, Andrew (CIV)
Subject: Almurbati et al. v. Bush et al.

Andrew,

As you know, we are counsel for petitioners in *Almurbati et al. v. Bush et al.*; 04-CV-1227.

In light of the present hunger strike at GTMO and the fact that certain of our clients participated in the hunger strike that took place in June and July of this year (including one who was hospitalized during the first day of our last visit to GTMO), we request the following information.

1) Please identify any of our clients who have participated in the current hunger strike.

- 2) For any such clients, please state whether they are presently participating in the hunger strike.
- 3) For any clients who have participated in the current hunger strike, please describe with specificity their current physical condition.
- 4) For any such clients, please describe with specificity the medical treatment they have received, including whether they have been hospitalized and/or fed through intravenous means or with a feeding tube.
- 5) For any such clients, please state whether they have expressed a wish not to be fed through intravenous means or a feeding tube.
- 6) For any clients who have been hospitalized, please provide the dates on which such hospitalizations have occurred.

Please inform me by tomorrow at noon whether respondents will agree to provide this information. If respondents so agree, please inform me by noon tomorrow as to when the requested information will be provided.

Thank you for your attention,
Josh

Joshua Colangelo-Bryan
Dorsey & Whitney LLP
250 Park Avenue
New York, NY 10177
(212) 415-9234

EXHIBIT C

DECLARATION OF MG JAY W. HOOD

Pursuant to 28 U.S.C. § 1746, I, JAY W. HOOD, hereby declare under penalty of perjury under the laws of the United States that to the best of my knowledge, information, and belief, the following is true, accurate, and correct:

1. I am a Major General in the United States Army, with 30 years of active duty service. I currently serve as Commander, Joint Task Force-Guantanamo, Guantanamo Bay, Cuba (JTF-GTMO). I have served in that position since March 2004. JTF-GTMO conducts detention and interrogation operations in support of the Global War on Terrorism, coordinates and implements detainee screening operations and supports law enforcement and war crimes investigations. Our detention mission is conducted in a humane manner that protects the security of both detainees and JTF personnel at GTMO. In my capacity as Commander, I am responsible for all aspects of detainee operations at Guantanamo Bay, Cuba to include medical care and I oversee the operation of the detention hospital that provides medical care to the detainees being held at Guantanamo. Currently, there are in excess of 500 detainees being held at Guantanamo Bay, Cuba.

2. Consistent with Department of Defense policy the JTF will prevent unnecessary loss of life of detainees through standard medical intervention, including involuntary medical intervention when necessary to overcome a detainee's desire to commit suicide, using means that are clinically appropriate. Although the principles of autonomy and consent for medical treatment are well established in medical care and are applicable to detainees, there are also clearly recognized exceptions in areas such as communicable disease treatment, occupational health, and

prison medical care, especially to prevent unnecessary loss of life.

3. The U.S. Department of Justice regulations for the Bureau of Prisons (Title 28 of the Code of Federal Regulations, Section 549.65) establishes explicit procedures for involuntary feeding of prison inmates engaged in hunger strikes when necessary to prevent an imminent threat of death or permanent impairment. That program was used as the model for Department of Defense detainee program operations in this area discussed in this declaration.

4. In keeping with the above guidance, it is JTF-GTMO's standard operating procedure (as approved by the Deputy Assistant Secretary of Defense – Detainee Affairs and the Assistant Secretary of Defense – Health Affairs) to avert death from hunger strikes and failure to drink, as well as to monitor the health status of detainees who are fasting voluntarily. Every attempt will be made to allow detainees to remain autonomous up to the point where failure to eat or drink might threaten their life or health.

5. Security forces at JTF-GTMO monitor each detainee's daily intake of meals and water. If a detainee has missed nine consecutive meals or has declined food and water for more than two days, personnel at the detention hospital are notified and a medical evaluation of the detainee is conducted. This evaluation includes a complete medical records review, as well as physical and mental health examinations and testing. Medical personnel on a regular and frequent basis then monitor the detainee.

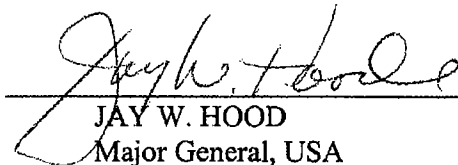
6. If medical personnel have reason to believe that the continuation of a voluntary fast or hunger strike could endanger a detainee's health or life, the detainee will be admitted to the detention hospital. His food and water intake are again monitored, and his medical condition is

continuously observed. Medical Staff counsel the detainee regarding the risks associated with not following our medical advice directing him to eat life-sustaining food and to drink fluids. We also explain the alternatives available to him, including oral food and fluid, oral rehydration solutions, oral nutritional supplements and intravenous hydration.

7. If the detainee elects to voluntarily begin eating/drinking, the detention hospital follows specific protocols designed to ensure the detainee's health and well being as he increases his caloric and liquid intake.
8. If the detainee continues to refuse to eat and/or drink and if a medical officer determines that the detainee's health or life might be threatened if treatment is not initiated immediately, consideration is given to involuntary medical treatment of the detainee. Interventions of an involuntary manner are deferred, however, until there is a clear medical determination by the attending physician that continued fasting would impair the health seriously or jeopardize the life of a detainee. When, after reasonable efforts, or in an emergency preventing such efforts, a medical necessity for immediate treatment of a life or health threatening situation is determined by the physician to exist, I will authorize doctors to administer treatment without the consent of the detainee. This can include the use of intravenous means or a feeding tube. No request for such authorization has been denied, and where sought, such authorizations have been provided in a timely manner without exacerbating the medical situation of a detainee.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: 9 September 2005



JAY W. HOOD
Major General, USA

EXHIBIT D

Colangelo-Bryan, Joshua

From: Andrew.Warden@usdoj.gov
Sent: Thursday, September 29, 2005 12:22 PM
To: Colangelo-Bryan, Joshua
Subject: RE: Almurbati et al. v. Bush et al.

Josh,

GTMO does not permit interviews with detainees in the detainee hospital. In any event, your request to meet with petitioners in the detainee hospital or for assurances that you will be permitted to meet with petitioners in Camp Echo is premature at this point, given that your visit is two weeks away. We can, however, let you know several days in advance of your visit whether we anticipate any problems with you conducting meetings with petitioners in Camp Echo.

Regards,

Andrew

Andrew I. Warden
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., NW, Room 6120
Washington, DC 20530
Tel: 202.616.5084

-----Original Message-----

From: Colangelo.Bryan.Joshua@dorsey.com [mailto:Colangelo.Bryan.Joshua@dorsey.com]
Sent: Wednesday, September 28, 2005 6:13 PM
To: Warden, Andrew (CIV)
Subject: RE: Almurbati et al. v. Bush et al.

Andrew,

We were told on the first day of our visit that Isa Almurbati was hospitalized and would not be brought to Camp Echo that day. The following day he was brought to Camp Echo, but was in very poor condition.

We have reason to believe that Mr. Almurbati and other clients of ours are participating in the current hunger strike. However, as you know, we have no means of confirming this, ascertaining our clients' present physical condition or knowing if our clients are hospitalized. We understand that respondents will not provide any of this information to us.

Therefore, we need an assurance that if clients of ours are hospitalized during the duration of our upcoming visit to GTMO, we will be able to visit those clients at the hospital.

In light of the impending nature of our visit, please inform me by noon tomorrow if respondents will agree to allow us to speak with any client who is hospitalized (and cannot be brought to Camp Echo) at the location where the client is hospitalized during our upcoming visit.

Thanks,
Josh

-----Original Message-----

From: Andrew.Warden@usdoj.gov [mailto:Andrew.Warden@usdoj.gov]
Sent: Wednesday, September 28, 2005 5:32 PM
To: Colangelo-Bryan, Joshua
Subject: RE: Almurbati et al. v. Bush et al.

Josh,

In order for me to raise your request with my clients, it would be helpful for me to know which petitioner(s) were unable to move to Camp Echo during your last visit. Your e-mail appears to reference one petitioner, but I'm uncertain whether you were unable to meet with him only on the first day of your visit (and thus able to meet with him on subsequent days) or whether you were unable to meet with him during the entirety of your visit.

Thanks,

Andrew

-----Original Message-----

From: Colangelo.Bryan.Joshua@dorsey.com [mailto:Colangelo.Bryan.Joshua@dorsey.com]
Sent: Tuesday, September 27, 2005 4:09 PM
To: Warden, Andrew (CIV)
Subject: RE: Almurbati et al. v. Bush et al.

Andrew,

We last visited GTMO at the end of July. On the first day of our visit, we were told by staff at GTMO that one of our clients would not be brought to Camp Echo because he was hospitalized due to participating in the hunger strike that was ongoing at the time.

In light of this, the current hunger strike and respondents' refusal to provide any information regarding our clients' medical condition, we wish to be allowed to speak with any client who is hospitalized (and cannot be brought to Camp Echo) at the location where the client is hospitalized during our upcoming visit.

Please inform me if respondents will agree to this request.

Thank you,
Josh

-----Original Message-----

From: Andrew.Warden@usdoj.gov [mailto:Andrew.Warden@usdoj.gov]
Sent: Tuesday, September 27, 2005 9:29 AM
To: Colangelo-Bryan, Joshua
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Josh,

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