

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

SHERIF el-MASHAD, <i>et al.</i>,)	CASE NO. 1:05-CV-00270 (JR)
)	
Petitioners)	
)	
v.)	MOTION FOR LEAVE TO FILE
)	AFFIDAVIT OF GEOFFREY MOCK
)	PURSUANT TO LOCAL RULE 65.1
)	
GEORGE W. BUSH, <i>et al.</i>,)	
)	
Respondents)	
)	

**REPLY MEMORANDUM IN SUPPORT OF
MOTION FOR LEAVE TO FILE AFFIDAVIT OF
GEOFFREY MOCK PURSUANT TO LOCAL RULE 65.1**

Petitioners Sherif el-Mashad and Adel Fattouh Aly Ahmed Algazzar (collectively, Petitioners), by their attorneys, hereby file this reply memorandum in support of their Motion for leave to file the Affidavit of Geoffrey Mock (attached to Petitioners' Motion as Exhibit 1]. In opposing even the filing of this Affidavit, the Respondents reveal the lengths to which they will go to prevent any judicial inquiry into their treatment of the *incommunicado* detainees, or their well-known plans to transfer such detainees to a jurisdiction they will then argue is outside the reach of this Court's jurisdiction. Respondents have not only refused to provide the Court with the wealth of evidence that Respondents exclusively hold, they now seek to preclude the Court even from considering the best evidence available, in a case where Petitioners have not yet had the chance to tell their own stories or share their justified fears with this Court in their own words. There is no basis for the

Respondents' position, and this Court should decide the very weighty issues at stake in this case on the best evidence available.

Mr. Mock's Affidavit was filed in direct response to the Respondents' attempt, in their opposition papers, to belittle the Petitioners' very real fear that they will be rendered to the custody of Egypt and subjected to torture. It was the Respondents themselves who sought to articulate a standard of whether it would be "more likely than not" that the Petitioners would be subject to torture. *See Respondents' Memorandum in Opposition to Petitioners' Motion for Preliminary Injunction ("Preliminary Injunction Opposition") Br. at 4* (admitting that "[i]n any such transfer, a key concern is whether the foreign government will treat the detainee humanely and in a manner consistent with its international obligations," and asserting that "it is the policy of the United States not to repatriate or transfer a detainee to a country where the United States believes it is more likely than not that the individual will be tortured"). It was the Respondents who sought to belittle the authoritative information provided by the Petitioners, including reports cited in the State Department's own 2003 Country Report for Egypt, as "press reports, editorials, and propaganda pieces." *Preliminary Injunction Opposition Br. at 6*. Indeed, the Respondents belittled these sources of information, while effectively conceding that Petitioners made "a prima facie showing that they may be repatriated to their country of nationality." *Preliminary Injunction Opposition Br. at 7*.

Given that Respondents have taken the astonishing position that the respected reports on which the State Department relies are mere "propaganda pieces," it is not surprising that the Respondents now fail to recognize Mr.

Mock's very real qualifications and expertise on the subject of human rights in Egypt. Mr. Mock's profession requires him to have expert knowledge of human rights in Egypt: he is the Egypt Country Specialist for Amnesty International, USA. *Affidavit of Geoffrey Mock* ¶ 2. He has been a specialist in this area for well over a decade, not including his related education, and he has been personally monitoring the treatment of human rights in Egypt alone for more than nine years. *Id.* ¶¶ 4, 5, 6, 7. His knowledge is based on direct personal contact as well as a detailed knowledge of the sources of available information as to human rights in Egypt. *Id.* Mr. Mock's affidavit by itself demonstrates his depth of knowledge in this area, and he specifically details the Egyptian "justice" system, including its Security Courts, the risk of torture suffered by detainees, particularly political detainees, the common methods of torture favored by Egypt's security forces, and the United States' collusion in the seizure of individuals and transfer to Egypt for torture. *Id.* ¶¶ 11-21. Clearly, Mr. Mock's opinions can be of substantial assistance to the Court in addressing these issues, which is all that is required for such testimony to be admissible. *See, e.g., Fed. R. Evid., Rules 701 et seq.*

Finally, there is no merit to the Respondents' argument that this Court, which has indisputable jurisdiction over the Petitioners and their claims, cannot even inquire as to the conditions under which the Respondents may attempt to transfer the Petitioners out of the Court's jurisdiction.¹ This is not

¹ The Respondents also attempt to manufacture a requirement that Petitioners show "good cause" to file an additional affidavit, but they fail to cite any authority for this new requirement (because there is no such authority), and Respondents' "good cause" requirement is not supported by the text of the Rule. Local Rule 65.1 does not refer to "good cause" for filing additional materials, but simply requires the Court's permission in a manner similar to Rule 15 of the Federal Rules of Civil Procedure, which requires leave of court to file an

an extradition proceeding, it is a civil lawsuit in which the Respondents must justify their actions, not a foreign state. It is the *Respondents* who must act in accordance with the Constitution and laws of the United States, and who must answer if they fail to do so. It is the Court's important role to exercise its jurisdiction when the Respondents' fail to meet their obligations, and it is well within the Court's necessary powers (as well as those expressly granted under the All Writs Act) to prevent the Respondents from depriving the Court of jurisdiction and the ability to perform its important constitutional role. It is entirely proper for the Court, in exercising this key and important function, to consider the best evidence available, which Mr. Mock's Affidavit represents.

Of course, it is the Respondents themselves who possess the very best evidence of the Petitioners' danger of rendition, the poor human rights record of the Egyptian Security Forces, and the United States' past collusion with foreign regimes such as Egypt to detain and torture suspected terrorists. The Respondents, however, have refused to produce that evidence and instead merely assert that they, and they alone, can evaluate whether the Petitioners may be safely transferred. Such claims ring utterly hollow, and evidence continues to mount that the Court cannot depend on any "assurances" obtained by Respondents. See Dana Priest, "CIA Challenged About Suspects' Torture Overseas," Wash. Post., March 17, 2005 (noting that current and

amended pleading. Rule 15 contains no "good cause" requirement, and leave under that Rule "shall be freely given when justice so requires." Fed. R. Civ. Proc., Rule 15(a). Local Rule 65.1 should be similarly applied here. The Respondents have had a full opportunity to respond to the Mock Affidavit, as shown by their lengthy opposition papers, no "sandbagging" has taken place, and the purposes of Local Rule 65.1 have been fully satisfied. Given the importance of the issues in this case, and the effect of this Court's decision on the Petitioners' lives, there is no just reason to limit the Court's consideration to anything less than the full record.

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