

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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MAJID ABDULLA AL JOUDI, <i>et al.</i> ,)	
)	
Petitioners,)	
)	
v.)	Civil Action No. 05-CV-0301 (GK)
)	
GEORGE W. BUSH,)	
President of the United States, <i>et al.</i> ,)	
)	
Respondents.)	
_____)	

**RESPONDENTS’ RESPONSE TO PETITIONERS’
MOTION FOR ORDER TO SHOW CAUSE WHY RESPONDENTS SHOULD
NOT BE HELD IN CONTEMPT OF THE COURT’S OCTOBER 26, 2005 ORDER**

Respondents hereby oppose petitioner Al Joudi’s motion for an order to show cause why respondents should not be held in contempt of the Court’s October 26, 2005 Order (“October 26 Order”), which requires notice to counsel of if petitioner is involuntarily fed, as well as a corresponding production of certain medical records. *See* dkt. no. 76 (“Petr’s Motion”); *Al-Joudi v. Bush*, 406 F. Supp. 2d 13, 23 (D.D.C. 2005). Simply put, petitioner Al Joudi’s allegation that he was involuntarily fed at any time after the date in early January 2006 when his previous involuntary feeding ended is completely and utterly false. As explained in the attached declaration of the Joint Task Force Surgeon of Joint Task Force–Guantanamo (“JTF-Guantanamo”), Captain Ronald L. Sollock, M.D., Ph. D., who oversees the medical care provided detainees at Guantanamo Bay, Cuba, attached as Exhibit 1 (“Sollock Decl.”), petitioner has not been involuntarily fed at any time since such feeding of petitioner ended on January 4, 2006. Accordingly, none of the requirements of the Court’s October 26 Order have been implicated since respondents’ obligation to produce medical records under the Order ended in

January 2006, when the involuntary feeding of petitioner ended. Respondents did not violate the Court's Order, and petitioner's request for relief and sanctions should be rejected.

BACKGROUND

In October 2005 petitioners in this case sought injunctive and other relief, claiming that petitioners had been subjected to mistreatment in connection with medical treatment provided in response to a detainee hunger strike. *See* dkt. nos. 41, 46, 47. Petitioners claimed that they were subjected to brutal methods of involuntary enteral feeding, including the insertion of feeding tubes without lubrication or anesthetic, the forcible removal of feeding tubes by "riot guards," and the reuse of feeding tubes containing blood and stomach bile between detainees without sanitization, such that detainees suffered excessive bleeding and vomiting in connection with their involuntary feedings. *See* dkt. no. 46. In response, respondents provided declarations, including from the JTF-Guantanamo Task Force Surgeon at the time, directly refuting these allegations, explaining, *inter alia*, that during involuntary feedings, feeding tubes were inserted only by trained and experienced physicians or credentialed registered nurses and were never inserted or manipulated to inflict pain; that guards never inserted or removed feeding tubes; that lubricant was always used to insert feeding tubes and topical anaesthetic was offered; that tubes were never reused between patients; and that, while occasional minor bleeding, nausea, and throat sores had occurred in connection with the use of feeding tubes, there were no serious complications. *See* Petr's Motion, Mason Decl. Ex. I (Declaration of John S. Edmondson, M.D.)

(“Edmondson Decl.”) (filed as Ex. A to Resps’ Oct. 19, 2005 Supp. Opp. to Petrs’ Motion to Compel Access to Counsel and Information Related to Medical Treatment, dkt. no. 48).¹

On October 26, 2005, the Court issued its order requiring that respondents provide notice to petitioners’ counsel of the commencement of any involuntary feeding of petitioners and the subsequent weekly production of medical records until involuntary feeding concluded. *See* dkt. no. 50; *Al-Joudi v. Bush*, 406 F. Supp. 2d 13, 23 (D.D.C. 2005). Consistent with that Order, respondents provided notice to petitioner’s counsel once involuntary feeding of petitioner Al Joudi (who is assigned Internment Serial Number or ISN 025) commenced on November 30, 2005; respondents also then began providing counsel medical records for petitioner.² *See* Petr’s Motion at 6-7; Sollock Decl. ¶ 4. Respondents continued supplying such records in compliance with the Court’s Order while petitioner was being involuntarily fed. Petitioner Al Joudi’s last involuntary feeding occurred on January 4, 2006, after which petitioner resumed eating on his own, thereby suspending respondents’ obligation to produce petitioner’s medical records. *See* Petr’s Mot. 6-7; Sollock Decl. ¶ 4.

Since that time, as explained in Dr. Sollock’s sworn declaration, involuntary feeding of petitioner Al Joudi has never resumed. Sollock Decl. ¶ 4. Nonetheless, on September 19, 2006, based on the bare allegations of petitioner – and notwithstanding respondents’ representations to

¹ The enteral feeding protocol described in Dr. Edmondson’s declaration did not involve use of a restraint chair, which began to be utilized at a later date. *See* Petr’s Motion, Mason Decl. Ex. H (Declaration of Stephen G. Hooker) (“Hooker Decl.”) (filed as Ex. 1 to Resps’ Mar. 1, 2006 Opp. to Petr’s Emergency Mot. for Injunction in *Al Adahi v. Bush*, No. 05-CV-280 (GK) (dkt. no. 69)).

² In compliance with the Court’s Order, respondents similarly provided medical records with respect to petitioner Al Shehri in this case, as well as petitioner Bawazir in *Al Adahi v. Bush*, No. 05-CV-280 (GK), while they were being fed involuntarily.

the contrary³ – petitioner’s counsel filed their motion for an order to show cause claiming that petitioner had been involuntarily fed in a restraint chair, in an abusive fashion, for some seven months since January 2006.

ARGUMENT

Contempt is an extraordinary remedy, and any request for the remedy must be considered with caution.⁴ *See Gompers v. Buck’s Stove & Range Co.*, 221 U.S. 418, 450-51 (1911); *Joshi v. Prof’l Health Servs., Inc.*, 817 F.2d 877, 879 n.2 (D.C. Cir. 1987). Convincing proof of the violation of a court’s order is required.⁵ *See Cobell v. Norton*, 334 F.3d 1128, 1145-47 (D.C. Cir.

³ On September 11, 2006, petitioner’s counsel contacted undersigned counsel for respondents claiming that respondents were in violation of the October 26 Order, but providing no details. *See Petr’s Motion*, Ex. E. The next day, after conferring with Guantanamo authorities, respondents’ counsel confirmed with petitioner’s counsel that the Order had not been violated with respect to any of the detainees covered by it. *See id.* Petitioner’s counsel subsequently contacted respondents’ counsel, claiming in more detail that it was petitioner Al Joudi who allegedly had been involuntarily fed for some six or seven months, from “some time” in January 2006 through “some time” in July or August 2006. *Id.* Respondents confirmed specifically with respect to petitioner Al Joudi that no involuntarily feeding of him had occurred at any time since involuntary feeding ceased in January 2006. On September 19, 2006, respondents’ counsel informed petitioner’s counsel that petitioner, indeed, had not been involuntarily fed since his enteral feeding ended in January 2006. *See Declaration of Terry M. Henry* (attached as Exhibit 2). Petitioner’s motion for an order to show cause was filed the same day.

⁴ This response to petitioner’s motion for an order to show cause is made without prejudice to any argument that this Court lacks jurisdiction under the Detainee Treatment Act of 2005, Pub. L. No. 109-148, tit. X, 119 Stat. 2680, which, among other things, amends 28 U.S.C. § 2241 to create an exclusive review mechanism in the D.C. Circuit to address the validity of the detention of such aliens and final decisions of any military commissions, *id.* § 1005(e)(1), (e)(2), (e)(3). *See Floyd v. District of Columbia*, 129 F.3d 152, 155 (D.C. Cir. 1997) (noting that “jurisdiction cannot be waived”).

⁵ A contempt proceeding is either civil or criminal by virtue of its “character and purpose.” *Cobell v. Norton*, 334 F.3d 1128, 1145 (D.C. Cir. 2003) (citing *Int’l Union, United Mine Workers v. Bagwell*, 512 U.S. 821, 827 (1994)). Civil contempt is remedial and coercive; it is prospective in nature and “is ordinarily used to compel compliance with an order of the court.”

2003). Here, respondents have not violated the Court's October 26 Order. As noted in the sworn declaration of Dr. Sollock, the official who oversees the medical care provided Guantanamo detainees, petitioner Al Joudi has not been involuntarily fed since his involuntary feeding ended on January 4, 2006. Sollock Decl. ¶¶ 1, 4. Involuntary feeding of petitioner has never resumed after that date – period. *Id.* ¶ 4 (“Detainee ISN 025's involuntary feeding began on November 30, 2005, and his last involuntary feeding occurred on January 4, 2006, and has never resumed; also, he has not been otherwise fed in a restraint chair.”). Petitioner's allegations to the contrary are simply falsehoods. Accordingly, respondents' obligations under the October 26 Order have not been implicated with respect to petitioner since January 4, 2006.

That petitioner's allegations are nothing more than mere fabrications is confirmed by the fictionalized account he offers of the method of his alleged involuntary feedings. As noted

Cobell, 334 F.3d at 1145. In some circumstances, civil contempt may be compensatory in nature, “designed to compensate the complainant for losses sustained.” *See id.* Civil contempt will lie “only if the putative contemnor has violated an order that is clear and unambiguous . . . and the violation must be proved by ‘clear and convincing’ evidence.” *Armstrong v. Executive Office of the President*, 1 F.3d 1274, 1289 (D.C. Cir. 1993) (citations omitted). The “clear and convincing” evidence standard represents a higher burden than the “preponderance of the evidence” standard; in a civil contempt context, it is such evidence that “produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts.” *See Travelhost, Inc. v. Blandford*, 68 F.3d 958, 961 (5th Cir.1995); *see generally Cornell v. Nix*, 119 F.3d 1329, 1334-35 (8th Cir. 1997) (discussing “clear and convincing evidence” standard in various contexts).

In contrast to civil contempt, “criminal contempt is used to punish, that is, to ‘vindicate the authority of the court’ following a transgression rather than to compel future compliance or to aid the plaintiff.” *Cobell*, 334 F.3d at 1145 (quoting *Bagwell*, 512 U.S. at 828). Thus, a sanction for a “past failure to comply with an order is criminal in nature.” *Cobell*, 334 F.3d at 1146-47. A finding of criminal contempt requires more than clear and convincing evidence of a violation of an order: it requires proof beyond a reasonable doubt. *See id.*; *Bagwell*, 512 U.S. at 826-27, 831-34.

above, petitioner was not involuntarily fed subsequent to January 4, 2006, so his allegations as to the current manner of involuntary feeding involving use of a restraint chair may represent a cobbling together of reinvented allegations from previous filings and storytelling and exaggerations of other detainees, undertaken to impose nuisance and unwarranted criticism upon military authorities.⁶ Whatever the case, his various allegations cannot be credited. For example, his allegations that nasogastric feeding tubes are “rammed . . . up” a detainee’s nose, without lubrication or anesthetic, and removed and reinserted intentionally to cause pain, *see* Petr’s Motion, Mason Decl. ¶¶ 13, 16-17, are false. Insertion of feeding tubes for involuntary feedings is performed only by physicians and credentialed registered nurses in a humane manner and only after it is determined that such feeding is medically necessary. *See* Sollock Decl. ¶ 5a. Lubrication is used when the tubes are inserted, and detainees are always offered a topical anesthetic (such as lidocaine). *Id.* ¶ 5b. Medical personnel do not insert or remove feeding tubes in any manner intentionally designed to inflict pain or harm on a detainee; the comfort and safety of the detainee is a priority for the medical staff. *Id.* ¶ 5c.

Petitioner’s claims that detainees are force-fed laxatives and massive quantities of nutritional formula, so much that they violently vomit, and are then left in the restraint chair to soil themselves, Mason Decl. ¶¶ 13, 18-21, are also untrue. During an enteral feeding, medically

⁶ Allegations of mistreatment and abuse by al Qaeda affiliated enemy combatants must be approached with a skeptical eye. A training manual for al Qaeda was seized at the home of an al Qaeda member in Manchester, England, and introduced into evidence in the 2001 trial in the Southern District of New York of al Qaeda operatives for 1998 embassy bombings. *See* Gov’t Exs. 158, 1677-T, introduced into evidence in *United States v. Bin Laden*, No. S(7) 98 Cr. 1023 (LBS) (S.D.N.Y.); *see also Al Adahi v. Bush*, No. 05-CV-280 (GK) (dkt. no. 69, Ex. 2, Decl. of Major General Jay W. Hood, ¶ 6). That manual reveals that al Qaeda recruits are coached to complain about mistreatment to judicial authorities as one prong of a calculated strategy to resist and defeat any confinement. *See id.*

appropriate amounts of nutritional formula are given the detainee. *See* Sollock Decl. ¶ 5d. The medical staff monitors the process, and if there are any indications of discomfort to the detainee, the rate and amount of formula and fluids being given is adjusted.⁷ *Id.* Enterally fed detainees are offered or given medication that would make tolerance of the feeding easier, but the vast majority of feedings occur with no discomfort to the detainee. *Id.* ¶ 5e. Such detainees also are assessed regularly by a physician to ensure the feeding process is safely administered and being tolerated by the detainee. *Id.* Furthermore, detainees being enterally fed are offered and encouraged to use the restroom before and after each feeding session. *Id.* ¶ 5g. In addition, after a detainee is fed through a nasogastric tube while in a restraint chair, the detainee is not required to remain in the restraint chair for a period of observation (to ensure the detainee has tolerated the feeding and to permit digestion of the nutritional formula sufficient to thwart any later attempt to purge) where the detainee has a demonstrated record of not engaging in attempts to thwart the feeding through purging or other means. *See id.* In sum, when enteral feeding is necessary to preserve the life and health of a hunger-striking detainee, health care professionals at Guantanamo provide appropriate medical care and conduct such feedings in a humane and appropriate fashion. Petitioner's contrary allegations – about feedings that did not occur in petitioner's case – are not true.

Further, petitioner's allegations cannot be credited merely because petitioner's counsel claims she observed petitioner's throat as "swollen" and his voice as "hoarse," Mason Decl. ¶ 23.

⁷ Similarly, petitioner's allegation that JTF-Guantanamo began using 15-gauge tubes on hunger strikers in June 2006 is untrue. Since the fall of 2005, JTF-Guantanamo has used only 10-French or 12-French tubes for enteral feeding, including feedings involving restraint chairs. *See* Sollock Decl. ¶ 5f.; *see also* Edmondson Decl. ¶ 9; Hooker Decl. ¶ 15.

Indeed, on September 7, 2006, the day before counsel's visit with petitioner, *see id.* ¶ 2, in the course of a follow-up behavioral health evaluation (an evaluation provided consistent with Guantanamo's provision of quality medical care to detainees⁸), the evaluation report noted that petitioner's "speech was normal in rate, range, and intensity," and there was no mention of petitioner's having complained of a sore throat or any observation of hoarseness. *See Sollock Decl.* ¶ 6.

Petitioner has similarly invented a story around an injury to a leg petitioner describes as "weakened from a prior accident" and having "since atrophied due to poor nutrition, weakened health, and restricted movement in the restraint chair." *Mason Decl.* ¶ 24. While petitioner's allegations of a leg injury (*i.e.*, a contusion or bruise) and of Guantanamo's X-ray examination of the injury – again consistent with Guantanamo's provision of quality medical care to detainees – are true, petitioner's related allegations are misleading falsehoods. As explained in Dr. Sollock's declaration, Mr. Al Joudi has a shortened leg due to an injury prior to his detention at Guantanamo. *See Sollock Decl.* ¶ 7. Mr. Al Joudi sustained a contusion on the leg in August 2006, but it did not affect his ability to walk. *Id.* The X-ray examination performed in evaluating the contusion did not show any changes from X-rays taken late last year, thus debunking Mr. Al Joudi's claim of continuing atrophy. *Id.* Further, Mr. Al Joudi shows no signs of poor nutrition; in fact, in August 2006 he weighed 193 pounds, 39 pounds more than when he arrived at Guantanamo. *Id.* Mr. Al Joudi is simply not telling the truth.

⁸ *See, e.g.*, Resps' Supp. Opp. to Petrs' Motion to Compel Access to Counsel and Information Related to Medical Treatment (dkt. no. 48), Ex. G (Apr. 11, 2005 Decl. of John S. Edmondson, M.D., from *O.K. v. Bush*, No. 04-CV-1136 (JDB)) (noting quality medical care available to Guantanamo detainees).

At bottom, for the Court to find respondents in contempt of its October 26 Order, the Court would have to credit the unsworn allegations of a detainee held as an enemy combatant and reject the declaration, given under penalty of perjury, of a Captain and physician in the U.S. Navy, who oversees the delivery of medical care, including involuntary feeding where necessary, of Guantanamo detainees. *See Sollock Decl.* ¶ 1. It would also have to do so where the declaration specifically refutes not only petitioner's allegation of involuntary feeding after January 4, 2006, but petitioner's concocted story of restraint chair feedings and of related alleged injuries. There is no basis for such an extraordinary step in the context of a contempt proceeding in which the burden is upon the movant to prove a violation of the Court's Order by, at the very least, clear and convincing evidence, much less in the unique context presented by the detention of enemy combatants by the military during an ongoing conflict against an enemy trained to assert claims of mistreatment in order to resist confinement.⁹

In sum, petitioner's allegation that he was involuntarily fed after January 4, 2006, is false. Petitioner has not been involuntarily fed since that time, and respondents' obligations under the Court's October 26 Order have not been implicated. Petitioner's requests for contempt, sanctions, and other relief, therefore, should be rejected¹⁰ – and petitioner's waste, through his

⁹ It has been noted that the heightened standard of proof required in contempt proceedings reflects a public policy judgment that society is “unwilling[] to allow punishment for a claimed violation of a court order, save where the evidence warrants a high degree of confidence in the correctness of the determination that a contempt has occurred.” *Autotech Technologies Ltd. Partnership v. Automationdirect.Com, Inc.*, 2006 WL 1304949 at *4 (N.D.Ill. May 10, 2006). Such a concern should be all the more acute in the context of a claim of contempt by an enemy combatant against the military during an ongoing war.

¹⁰ Petitioner claims that a so-called “independent” medical examination by petitioner's own expert is needed to “determine the merits of [petitioner's] claim and any physical injuries and psychiatric damage he has likely sustained.” *See Petr's Motion* at 13 n.6. Of course,

falsehoods, of this Court's time and the time and resources of the Guantanamo legal and medical staff should not be countenanced.

CONCLUSION

For the reasons stated, petitioner's requests for relief should be denied.

Dated: September 29, 2006

Respectfully submitted,

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petitioner's argument in this regard assumes the veracity of petitioner's allegations. *See id.* at 13-14. Moreover, such an approach would require that petitioner's unsworn allegations be credited over the sworn evidence presented by respondents' declarant, which would be improper, including for the reasons discussed *supra* at 9.