

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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 THE COURT’S OCTOBER 16, 2006 ORDER
AND TO INQUIRIES RAISED AT THE OCTOBER 11, 2006 HEARING**

Pursuant to the Court’s October 16, 2006 Order (dkt. no. 80) and in response to questions raised at the October 11, 2006 hearing on 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 (dkt. no. 76), respondents hereby provide the Court with the following information.

Background. In the government’s opposition to petitioner’s motion, respondents submitted the 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. Dr. Sollock explained that, as indicated in the medical records, petitioner Al Joudi’s last involuntary feeding occurred on January 4, 2006, after which petitioner resumed eating on his own. *See* Resps’ Response to Petr’s Motion for Order to Show Cause, Exhibit 1 ¶ 4 (dkt. no. 78). Because the involuntary feeding of petitioner ended at that time, respondents’ obligation to produce petitioner’s medical records pursuant to the October 26, 2005 Order also ended. *See Al-Joudi v. Bush*, 406 F. Supp. 2d 13, 23 (D.D.C. 2005).

At the October 11, 2006 hearing on petitioner's motion, the Court inquired regarding several matters, including why Captain Stephen G. Hooker, M.D., who had provided declarations regarding the use of restraint chairs for involuntary feeding in another case before the Court, *Al Adahi v. Bush*, No. 05-CV-280 (GK) (D.D.C.), had not provided the declaration in this case regarding petitioner Al Joudi, *i.e.*, instead of or in addition to Dr. Sollock. Other matters raised at the hearing included petitioner's allegations that when he was involuntarily fed in a restraint chair from January through late July or early August 2006, he was residing on Oscar block; that there were three restraint chairs in use in three specific cells on Oscar block;¹ and that petitioner was involuntarily fed using a restraint chair along with several other detainees, including the three detainees who died by apparent suicide on June 9/10, 2006, such that he could hear their "moans" as they were involuntarily fed. These details were asserted purportedly to provide supporting corroboration for petitioner's allegations regarding his involuntary feeding.

At the conclusion of the October 11, 2006 hearing, the Court directed respondents to provide the Court with an estimate of the number of pages of medical records covering the time period petitioner alleges he was involuntarily fed without notice to counsel. *See also* Oct. 16, 2006 Order (dkt. no. 80). The Court also asked respondents to address whether, if the Court orders production of the records, the records should be produced *in camera* only or to petitioner's counsel.

¹ While the information regarding the specific cells (2, 6, and 36) allegedly containing restraint chairs was marked as classified by the Privilege Team in petitioner's counsel's notes from a meeting with petitioner (presumably because it involved allegations regarding activity in specific cell locations at Guantanamo), the Department of Defense, having learned of the information as a result of the October 11, 2006 hearing, has determined that the specific information is not classified.

The matters raised at the October 11, 2006 hearing are addressed below. As explained there, the alleged “details” of petitioner Al Joudi’s story do not support his claim that he was involuntarily fed subsequent to the conclusion of his involuntary feeding in early January 2006; in fact, just the opposite is true because the key details he provides are simply false. Further, the production of additional medical records should not be required.²

Dr. Hooker. As noted above, at the October 11, 2006 hearing, the question was raised why Dr. Hooker, who had provided declarations regarding the use of restraint chairs for enteral feeding in *Al Adahi*, had not provided the declaration in this case. As explained in the attached supplemental declaration of Captain Sollock (Exhibit 2), Dr. Hooker completed his scheduled duty rotation and left his previous position as Officer in Charge of the Detention Hospital, JTF-Guantanamo, on April 29, 2006. Accordingly, he was not in a position to provide a declaration

² Respondents provide this response to the Court’s inquiries without prejudice to any argument that this Court lacks jurisdiction over this case. *See Floyd v. District of Columbia*, 129 F.3d 152, 155 (D.C. Cir. 1997) (noting that “jurisdiction cannot be waived”). At the time petitioner’s motion was filed, the Detainee Treatment Act of 2005, Pub. L. No. 109-148, tit. X, 119 Stat. 2680, among other things, had amended 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, e.g., Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207-09 (1994) (“exclusive” jurisdiction under federal Mine Act precludes assertion of district court jurisdiction). Moreover, on October 17, 2006, the Military Commissions Act of 2006, Pub. L. No. 109-366 (2006) (“MCA”), became law. The MCA, among other things, amends 28 U.S.C. § 2241 to eliminate altogether district court jurisdiction to consider *habeas* petitions, as well as any other action “relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement,” of aliens detained by the United States as enemy combatants. *See id.* § 7 (a copy of the MCA is appended to respondents’ October 18, 2006 Notice of Military Commissions Act of 2006, dkt. no. 81). The MCA expressly applies the amendment “to all cases, without exception, pending on or after the date of the enactment of this Act,” *id.*, which would include the above-captioned case.

regarding petitioner Al Joudi, or the false allegations of involuntary feeding, at the time petitioner's contempt motion was filed. *See* Exhibit 2 ¶ 1.

Allegations of Involuntary Feeding on Oscar Block. As noted above, at the October 11, 2006 hearing, petitioner's counsel provided elaborations on petitioner's allegations, intended to support his story, including that when he allegedly was involuntarily fed in a restraint chair from sometime in January through late July or early August 2006, he was residing on Oscar block; that there were three restraint chairs in use in three specific cells on that block; and that petitioner was involuntarily fed using a restraint chair along with the three detainees who died. As explained, however, in the supplemental declaration of Captain Sollock, as well as the declaration of Colonel Wade F. Dennis, the Commander of the Joint Detention Group, JTF-Guantanamo, who oversees detention operations for JTF-Guantanamo (attached as Exhibit 3), the details provided do not support, but rather further undermine, petitioner's story; the details petitioner provides are simply untrue.

As Captain Sollock has explained, under oath, the last involuntary feeding of petitioner Al Joudi was on January 4, 2006. *See* Resps' Response to Petr's Motion for Order to Show Cause, Exhibit 1 ¶ 4. Also, had petitioner been subsequently involuntarily fed, it would be indicated in his medical records, and it is not. *Id.* Furthermore, as Colonel Dennis explains, also under oath, when a detainee is involuntarily fed using a restraint chair, the Guantanamo Joint Detention Group moves the detainee to a cell that contains a restraint chair for feeding, and such movements are done pursuant to movement orders. *See* Exhibit 3 ¶ 3. Consistent with Dr. Sollock's testimony, Colonel Dennis attests that there is no record of a movement of petitioner Al Joudi for purposes of an involuntary restraint chair feeding between January 5 and August 11,

2006, the approximate period in which petitioner alleges he was involuntarily fed in restraint chairs.³ *See id.* The last record of any such movement of petitioner was for January 4, 2006. *Id.*

In addition, petitioner's allegations that he was involuntarily fed after early January 2006 while housed on Oscar block with other detainees who were being involuntarily fed, including the three detainees who died, are similarly untrue. In fact, after petitioner began eating regular meals in January 2006, he was moved off of Oscar block to another cell block, and he has not been housed on Oscar block since that time. *Id.* ¶ 4. Likewise, petitioner's allegation that he was housed with and involuntarily fed with other detainees including the three who died, such that he could hear them as they were involuntarily fed, is also untrue. For one thing, only two of the three detainees who died were involuntarily fed any time after petitioner's involuntary feeding ended. *See* Exhibit 2 ¶ 2. Further, during the relevant time period since petitioner's involuntary feeding ended, he was not housed on a cell block containing a restraint chair where any involuntary feeding would have taken place.⁴ *See* Exhibit 3 ¶ 5.

Petitioner Al Joudi's story is just that: a concocted story, untrue both as to its key assertion that he was involuntarily fed after January 4, 2006, and as to other key details. The involuntary feeding of petitioner never resumed after January 4, 2006, and respondents' obligations under the October 26, 2005 Order have not been implicated with respect to petitioner since that time.

³ Respondents selected August 11, 2006, as an end date in dealing with petitioner's allegations since counsel indicated at the October 11, 2006 hearing that the alleged involuntary feeding of petitioner did not go beyond the first week of August.

⁴ In addition, petitioner's allegation that three restraint chairs were used for involuntary feedings is untrue; there were only two. Exhibit 3 ¶ 5.

Medical Records. The Court has ordered respondents to provide the Court with the number of pages of medical records covering the time period petitioner alleges he was involuntarily fed without notice to counsel. Respondents hereby inform the Court that for the period January 6, 2006, through August 11, 2006,⁵ approximately 136 pages of medical records exist for petitioner.

The Court should not require production of such records in this litigation, however. Requiring production would in effect credit the unsworn allegations of an enemy combatant held by the military during an ongoing war over declarations, given under penalty of perjury, of a Captain and physician in the U.S. Navy – who, as Joint Task Force Surgeon, oversees the delivery of medical care of Guantanamo detainees – as well as of a Colonel in the U.S. Army who is responsible for detention operations, including detainee movements, at Guantanamo. And it would do so where the declarations specifically refute not only petitioner’s allegation of involuntary feeding after January 4, 2006, but the significant details of petitioner’s concocted story of his experience and that of others in restraint chair feedings. There is no basis for the extraordinary step of rejecting the sworn declarations of such officers, based upon the unsworn tale of an enemy combatant detainee who may have the motive or desire to impose nuisance upon military authorities during an ongoing war. Furthermore, to require the production of medical records in such circumstances would provide precedent for any detainee who could concoct or imagine a sympathetic story being able to obtain production of his medical records by military

⁵ Respondents’ previous production of medical records to petitioner’s counsel extended through January 6, 2006. Respondents selected August 11, 2006, as an end date because counsel indicated at the October 11, 2006 hearing that the alleged involuntary feeding of petitioner did not go beyond the first week of August. *See supra* note 3.

authorities. Such an arrangement is pregnant with the potential for mischief and the enabling of detainees' ability to impose, malevolently or otherwise, nuisance, burden, and unwarranted criticism upon military authorities, and it should be rejected.⁶

If, however, despite these factors, production of the medical records noted above is required, the Court should cabin such a production in two ways. First, the Court should permit respondents to redact the names of medical care providers in the records, as has been previous practice in the production of such records. Such redaction is warranted in light of security, safety, and privacy concerns related to the release of names of Guantanamo personnel publicly or to detainees.⁷ Second, the Court should require production of the records, if at all, only *in camera*. The volume of the records is such that they can be reviewed by the Court in short order, and without the assistance of petitioner's counsel, to confirm the absence of any record of an involuntary feeding of petitioner. Further, *in camera* production would avoid the issue noted above of detainees learning that they may be able to obtain production of their medical records by military authorities through the fabrication of stories.

At bottom, petitioner Al Joudi, through his fabrications, has already put Guantanamo authorities to significant trouble and burden. He should not be permitted to compound the situation through a requirement for the production of medical records, even *in camera* (as any

⁶ Such production is also inconsistent with the expressed intent of Congress to preclude enemy combatant detainees such as petitioner from asserting in court claims "relating to any aspect of the[ir] detention, transfer, treatment, trial, or conditions of confinement." *See* MCA § 7.

⁷ *Cf. In re Guantanamo Detainee Cases*, 344 F. Supp. 2d 174 (D.D.C. Nov. 8, 2004), Exhibit A, §§ IV.A.7, V.B (provisions of Court-approved Guantanamo counsel access procedures precluding communication of Guantanamo personnel names to detainees by counsel).

required production should be). Petitioner's waste, through his falsehoods and misrepresentations, of this Court's time and the time and resources of the Guantanamo medical, detention, and legal staff should not be countenanced.

* * *

For the reasons stated above and in respondents' September 29, 2006 response, petitioner's requests for relief should be denied.

Dated: October 27, 2006

Respectfully submitted,

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EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
MAJID ABDULLA AL-JOUDI, et al.,)	
)	
Petitioners/Plaintiffs)	
)	
v.)	CIVIL ACTION
)	NO. 05-CV-0301
GEORGE W. BUSH, et al.,)	
)	
Respondents)	
_____)	

DECLARATION OF CAPT RONALD L. SOLLOCK, M.D., Ph.D.

Pursuant to 28 U.S.C. § 1746, I, Ronald L. Sollock, M.D., Ph. D., hereby declare that to the best of my knowledge, information, and belief, the following is true, accurate, and correct. This declaration is provided to supplement my prior declaration in this case and is based on my personal knowledge or information provided to me in my official capacity.

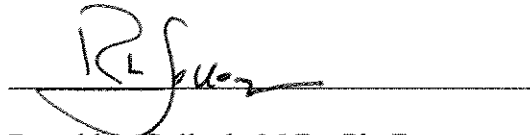
1. Dr. Stephen G. Hooker completed his scheduled rotation and left his position as the Officer in Charge of the Detention Hospital, Joint Task Force-Guantanamo Bay, Guantanamo Bay, Cuba, on April 29, 2006. Since then, he has not been in a position to provide information to the Court regarding enteral feeding matters on detainee ISN 025.

2. Enteral feeding of detainee ISN 025 ended on January 4, 2006. While all three of the detainees who died on June 9/10, 2006, were classified at some time as hunger strikers, only two of these detainees were enterally fed between January 4, 2006 and June 9/10, 2006. On June

9/10, 2006, only five detainees were being enterally fed and none of these detainees were the detainees who died. Detainee ISN 025 was not one of these five individuals. Currently only two detainees are being enterally fed; ISN 025 is not one of these individuals.

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

Dated: 27 October 2006



Ronald L. Sollock, M.D., Ph. D.

EXHIBIT 3

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

_____)	
MAJID ABDULLA AL-JOUDI, et al.,)	
)	
Petitioners/Plaintiffs)	
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)	
Respondents)	
_____)	

DECLARATION OF COLONEL WADE F. DENNIS

Pursuant to 28 U.S.C. § 1746, I, Colonel Wade F. Dennis, hereby declare that to the best of my knowledge, information, and belief, the following is true, accurate, and correct:

1. I am a Colonel in the United States Army with over 28 years of active duty service. I currently serve as the Commander of the Joint Detention Group (JDG) for the Joint Task Force - Guantanamo Bay, Cuba (JTF-GTMO). I am responsible for all aspects of detention operations for JTF-GTMO. I have served in this position since June 2006. The information provided herein is based on my personal knowledge or information supplied to me in my official capacity.

2. Since the use of restraint chairs for enteral feeding began, when a detainee has required enteral feeding, the JDG has moved the detainee to a cell that contains a restraint chair for feeding. Moving a detainee is a multi-step process that is coordinated through the JDG headquarters.


3. No detainee is moved for such purposes without an order to do so. The JDG maintains a record of all such movement orders. Between January 5, 2006, and August 11, 2006, the JDG has no record of detainee ISN 025 being moved to be involuntarily fed in a restraint chair. The last record we have for this action is January 4, 2006.

4. Since January 2006, detainee ISN 025 has not been housed on Oscar block; in fact, ISN 025 was moved from Oscar block to another block after he began eating regular meals.

5. I am informed that petitioner's counsel has stated that detainee ISN 025 told her that the restraint chairs used for enteral feeding were located in cells 2, 6, and 36 of Oscar block. There are only two feeding chairs. Between the time he was removed from Oscar block in January 2006, and August 2006, ISN 025 has not resided on a cell block containing a restraint chair nor has he been present during the enteral feeding of any other detainees.

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

Dated: 27 October 2006



WADE F. DENNIS
Colonel, U.S. Army
Commander, Joint Detention Group