

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.

Civil Action No. 05-301 (GK)

ORAL ARGUMENT REQUESTED

PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF  
HIS MOTION FOR AN ORDER TO SHOW CAUSE  
WHY RESPONDENTS SHOULD NOT BE HELD IN CONTEMPT OF  
THIS COURT'S OCTOBER 2005 ORDER REQUIRING NOTICE AND  
PROVISION OF MEDICAL RECORDS FOR FORCE-FED PRISONERS

Petitioner Majid Al Joudi respectfully submits this memorandum of law in support of his Motion for an Order to Show Cause Why Respondents Should Not be Held in Contempt of this Court's October 26, 2005 Order directing the Government to provide counsel with a) notice upon commencement of Petitioners' forced feeding and b) medical records on a weekly basis for as long as forced-feeding continues. *Al-Joudi v. Bush*, 406 F. Supp. 2d 13, 23 (D.D.C. 2005) (Kessler, J.) (the "October Order"). In habeas counsel's most recent trip to Guantánamo, counsel was shocked and dismayed to learn that the named Petitioner in this proceeding, Majid Al Joudi, was on a hunger strike and being force-fed by Respondents – in a cruel, inhumane, and medically dangerous manner – for *over seven months* without either notice, or the provision of required medical records, that are clearly called for under this Court's explicit October Order. Due to Respondents' seeming disregard for the Orders of this Court, as well as the potentially grave injuries that have resulted to Petitioners' health from Respondents' brutal approach to the provision of medical care, Petitioner respectfully urges this Court to hold

Respondents in contempt for their violation of the October Order and to permit Petitioner access to an independent medical evaluation. Petitioners also request that Respondents be compelled to declare, under oath, whether any other prisoners subject to this Court's October Order have been force-fed without notice to counsel.

The facts are as straightforward as they are shocking. On October 26, 2005, this Court directed Respondents to "provide notice to Petitioners' counsel within 24 hours of the commencement of any forced feeding of their clients" and provide "medical records spanning the period beginning one week prior to the date forced feeding commenced ... on a weekly basis until forced feeding concludes." *Id.* On December 9, 2006, Respondents began providing the medical records for Petitioner Al Joudi, dated from November 26, 2005. On January 13, 2006, Respondents informed counsel that Petitioner Al Joudi had ended his hunger strike on January 6, 2006 and that Respondents would cease providing medical records. Believing the Government was adhering to the October Order, counsel did not make any objections.

This past week, however, during a client visit to Guantánamo, counsel for Petitioner discovered that, contrary to the Government's assertion, Petitioner Al Joudi had, in fact, participated in a seven-month hunger strike lasting from approximately January to August 2006. During this time, he was held in isolation with other participants in the strike—including three prisoners who committed suicide in June 2006—and subjected to a brutal forced-feeding regime by the Government. As set forth below and detailed in the accompanying declaration of counsel, Respondents have violated Petitioner's fundamental right to be free from torture and physical abuse; they

have violated the globally accepted standards of medical care for individuals in need of enteral feeding; and they clearly stand in contempt of this Court's Order.

A finding of contempt is fully warranted here because (i) the October Order was clear and unambiguous, (ii) Respondents evinced their understanding of the Order and their ability to comply with it by providing medical records for Al Joudi on a weekly basis from December 2005 through January 2006, but nevertheless (iii) Respondents failed to comply with the Order for a period of seven months. Accordingly, Al Joudi respectfully requests that the Court: (1) issue an order requiring Respondents to show cause why they should not be held in contempt; (2) grant Petitioner access to an independent medical evaluation in order to determine the extent of his injuries; (3) require Respondents to declare, under oath, whether any other prisoner subject to the October Order has been force-fed without notice to counsel; and (4) issue further sanctions as it deems necessary.

#### **FACTUAL BACKGROUND**

Petitioner Majid Al Joudi is a citizen of Saudi Arabia. He has been unlawfully held, without charge, in the custody of Respondents since January 2002. On February 9, 2005, Al Joudi, by and through his Next Friend and brother, filed a petition for writ of *habeas corpus*, challenging his "enemy combatant" designation and alleging that his detention violated the Constitution, laws and treaties of the United States. On April 29, 2005, Al Joudi's *habeas* proceedings were stayed pending the disposition of the appeals in *In re Guantanamo Detainee Cases*, 355 F. Supp. 2d 443 (D.D.C. 2005) and *Khalid v. Bush*, 355 F. Supp. 2d 311 (D.D.C. 2005) in the United States Circuit Court of Appeals for the District of Columbia. Order, *Al-Joudi v. Bush*, No. 05-301 (D.D.C. Apr.

29, 2005) (dkt 26). The Order, however, is clear that the entrance of the stay “shall not prevent the parties from filing a motion for emergency relief.” *Id.*

As the Court may recall, the October Order at issue arose from concerns about the health and safety of detainees at Guantánamo in the wake of widespread hunger strikes. Over one year later—and with three long-time hunger strike participants now dead—the Order retains its importance.

On or about August 25, 2005, counsel learned that a widespread hunger strike had begun at Guantánamo. *Al-Joudi*, 406 F. Supp. 2d at 15. This hunger strike followed an earlier hunger strike that ended approximately two weeks before, and was motivated by the prisoners’ protestations of abuses by the Government, inhumane conditions of confinement and indefinite detention without charge. *Id.*; *see also* Mason Decl., Ex. A ¶¶ 4-5.

Believing that some or all of their clients were on the hunger strike and deeply concerned for their health and safety, counsel for Al Joudi, among others, filed a motion for an order requesting, among other relief, immediate access to Petitioners and access to the records of Petitioners’ medical treatment, meal schedules, punishment and hospitalization. *See* Petitioners’ Motion to Compel Access to Counsel and Information Related to Medical Treatment, *Al-Joudi v. Bush*, No. 05-301 (D.D.C. Sept. 19, 2005) (dkt 37).<sup>1</sup>

Immediately after filing the motion, during a regularly scheduled visit to the base from September 30 to October 2, 2005, counsel confirmed that three clients—

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<sup>1</sup> This motion was filed jointly with Petitioners in *Al-Marri v. Bush*, No. 04-2035, *Al-Adahi v. Bush*, No. 05-280 and *Al Razak v. Bush*, No. 05-1601.

Petitioners Al Joudi, Yousef Al Shehri and Abdul-Rahman Shalabi—were indeed participating in the hunger strike and being involuntarily force-fed. *See* Mason Decl., Ex. B ¶¶ 2-4, 23. Counsel learned that the detainees on the hunger strike were being subjected to brutal methods of involuntary force-feeding, including the extreme and unnecessary use of force to insert and remove the feeding tubes, the use of excessively large tubes without anesthetic or lubricant, and the use of unsanitary tubes. *Id.* ¶¶ 8-16, 26-28. As described at length in the Supplemental Declaration, the detainees suffered extreme pain during enteral feeding, bleeding from the nose and throat, and vomiting blood, and their health declined rapidly. *Id.* ¶¶ 7-17, 25-29.

Counsel filed a supplemental declaration based on these new facts upon their return from Guantánamo. *See id.* During oral argument held before the Court on October 14, 2005, Respondents attempted to characterize Petitioners' allegations as "detainee storytelling, exaggeration, misunderstanding, [and] miscomprehension." Mason Decl., Ex. C at 39. The Court, however, noting the severity of the situation alleged by Petitioners, stated: "I make no bones about the fact that the allegations are very serious, and certainly describe treatment that is needlessly painful, abusive and extremely inappropriate in terms of needlessly causing further deterioration certainly of the mental conditions of the detainees involved." *Id.* at 22. The Court ultimately ruled that Petitioners provided "sufficient facts, based both on counsel's personal observations over a period of time, and the detainees' accounts of their own experiences, to establish that the threat of death or serious physical deterioration is real and imminent, and that Petitioners' have satisfied the requirement of facing irreparable harm unless injunctive relief is granted." *Al-Joudi*, 406 F. Supp. 2d at 20. This Court also concluded that "in

order to properly represent Petitioners, their counsel must have access to them, must be able to communicate with them, and must be made aware if their clients are in such fragile physical condition that their future ability to communicate is in imminent danger.” *Id.* at 21-22. Given the realities of traveling to Guantánamo and counsel’s inability to communicate with clients outside of written mail, which can take weeks to transmit, the Court acknowledged counsel’s inability to “know their [clients’] true medical conditions, including whether they are in imminent danger of death, so as to counsel them in order to persuade them to stay alive ...” *Id.* at 22. Thus, the Court held that, without intervention, “it is obvious that [Petitioners’] ability to present their claims to the Court will be irreparably compromised.” *Id.*

The Court’s Order granted Petitioner the following relief:

- (1) The Government shall provide notice to Petitioners’ counsel within 24 hours of the commencement of any forced feeding of their clients;
- (2) For those Petitioners who are being force fed, the Government shall provide to Petitioners’ counsel:
  - a. medical records spanning the period beginning one week prior to the date forced feeding commenced; and
  - b. provision of medical records shall continue, at a minimum, on a weekly basis until forced feeding concludes.

*Id.* at 23. In addition, the Court encouraged Respondents to create procedures “so that ... counsel can be granted prompt access to those Petitions, if any, who are being force fed in order to assess their condition.” *Id.* at 23 n.10.

Pursuant to the October Order, Respondents began providing the medical records of Petitioner Al Joudi on December 9, 2006. Counsel continued to receive such records on a weekly basis until January 13, 2006. On that date, Respondents informed

counsel of the following: “Mr. Al Joudi ended his hunger strike and began eating regularly on January 6, 2006. Accordingly, his enteral feeding concluded on or before January 6, 2006, thus ending respondents’ obligation to produce any additional medical records for Mr. Al Joudi under the terms of Judge Kessler’s order.” See Mason Decl., Ex. D.

Based on Respondents’ representation with respect to Al Joudi, counsel believed that he had ended his hunger strike and was not being involuntarily fed at any time after January 6, 2006.<sup>2</sup>

On September 6, 2006, counsel traveled to Guantánamo and met with Al Joudi on September 8.<sup>3</sup> During the meeting, Al Joudi explained that, contrary to the Government’s representation, he had been continuously on a hunger strike since January 2006 and had ended his strike only about one month prior to counsel’s visit. Mason Decl. ¶ 4. The manner in which Al Joudi was force-fed during these months was frequently harsh and physically painful. Al Joudi was sometimes dragged to feedings in the restraint chair by the chains on his feet. *Id.* ¶ 13. Once he was fully restrained in the chair, nurses would insert a feeding tube, and then pull it out unnecessarily and reinsert it; on one occasion, laughing at Al Joudi’s evident pain. *Id.* ¶¶ 14-17. Al Joudi was also forced to

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<sup>2</sup> This belief was strengthened by the fact that counsel continued to receive medical records for Al Shehri until February 10, 2006.

<sup>3</sup> Counsel did not find out about Respondents’ serious violation of the October Order until the meeting on September 8, 2006 visit as counsel had not met with Al Joudi since September 20, 2005. Al Joudi declined a counsel visit in December 2005 (at which time he had been force-fed for several months), Respondents unilaterally cancelled counsel’s scheduled February 2006 visit, and Al Joudi again declined to visit with counsel on their June 2006 trip (at a time when he was being subjected to the cruel force-feeding described herein).

sit for hours in the restraint chair without the opportunity to use a bathroom, despite his repeated pleas to be allowed to use the facilities. *Id.* ¶¶ 20-21. At one point, he was forced to consume at least a carton of Ensure—rather than the five cans he was typically fed—which caused him to vomit so violently that the other end of the feeding tube came out of his mouth. *Id.* ¶ 19.

During their visit, counsel observed that Al Joudi is still suffering the aftereffects of the harsh medical treatment. His voice is hoarse, his throat is visibly swollen and he has difficulty swallowing. *Id.* ¶ 25.

On September 11, 2006, immediately upon counsel's return from Guantánamo, counsel contacted Respondents to alert them to the apparent violation of the October Order. Respondents replied that they would investigate the situation. Mason Decl., Ex. E. On September 12, 2006, Respondents replied that after conferring with their client, they were "unaware of any violation of Judge Kessler's October 26, 2005 Order" and that to their knowledge, "none of your clients subject to the Order have been enterally fed since enteral feeding of Mr. Al Shehri ended in January 2006." *Id.* Once the information concerning Al Joudi's force-feeding were declared unclassified by the Privilege Review Team, Petitioners' counsel gave additional, specific, and detailed information to Respondents concerning Al Joudi's allegations, but Respondents have yet to provide any adequate explanation for their apparent failure to comply with the October Order. In light of the assurances that Respondents previously made with respect to Petitioner's treatment—assurances that have been demonstrated to be false time and time again—Petitioner seeks relief from the Court.

ARGUMENT

**I. RESPONDENTS SHOULD BE HELD IN CONTEMPT AND THE COURT SHOULD IMPOSE SANCTIONS.**

“The power to punish for contempt is inherent in all courts; its existence is essential to ... the enforcement of the judgments, orders, and writs of the courts, and consequently to the due administration of justice.” *Broderick v. Donaldson*, 437 F.3d 1226, 1234 (D.C. Cir. 2006) (quoting *Ex parte Robinson*, 86 U.S. (19 Wall.) 505, 510 (1874)). Civil contempt serves to “obtain compliance with a court order or to compensate for damage sustained as a result of noncompliance.” *American Rivers v. U.S. Army Corps of Engineers*, 274 F. Supp. 2d 62, 65 (D.D.C. 2003) (Kessler, J.).

To hold a party in contempt, it is only necessary to show that: “(1) the Court’s order was reasonably clear and specific; and (2) the alleged contemnor failed to comply with the Court’s order” by clear and convincing evidence. *Lee v. Department of Justice*, 401 F. Supp. 2d 123, 130 (D.D.C. 2005) (citations omitted). It is not necessary to show that the failure to comply with the order was willful or intentional; it is enough to show that the order was violated. *American Rivers*, 274 F. Supp. 2d at 65.

Respondents’ actions clearly warrant contempt charges under this standard because the Court’s Order—and the Respondent’s violation of it—is unambiguous. The October Order directs that “[t]he Government *shall* provide notice to Petitioners’ counsel within 24 hours of the commencement of *any* forced feeding of their clients.” *Al-Joudi*, 406 F. Supp. 2d at 23 (emphasis added). Once Al Joudi resumed his strike and force-feeding was reinitiated, the Government was obligated to provide notice to counsel. Respondents simply failed to do so. The second part of the Order—requiring the

Government to provide counsel with medical records “[f]or those Petitioners who are being force fed ... until forced feeding concludes”—is equally straightforward and unconditional, as is Respondents’ violation thereof.

Respondents have stated that Al Joudi was not force-fed subsequent to January 2006. As shameful as it is, counsel and the Court can no longer credit Respondents’ assertions which have so often proved to be false. Indeed, the Court will recall that Respondents initially dismissed reports of a hunger strike as merely “rumor” and did not concede that there was a crisis at the base until media reports about the strike brought public attention to the matter. Petitioners’ Motion to Compel Access to Counsel and Information Related to Medical Treatment, *Al-Joudi v. Bush*, No. 05-301 (D.D.C. Sept. 19, 2005) (dkt 37), ¶ 6. Respondents have also insisted that they have always treated the detainees humanely yet this claim has been contradicted by the Government’s own records which describe behavior tantamount to torture. See, e.g., Adam Zagorin and Michael Duffy, *Inside the Interrogation of Detainee 063*, Time Mag., June 20, 2006. The Government’s records also show that doctors have been complicit, at the very least, in some of these abuses. M. Gregg Bloche, M.D., J.D., and Jonathan H. Marks, M.A., B.C.L., *Doctors and Interrogators of Guantanamo Bay*, 353 New Eng. Med. 6, 8 (2005). In fact, an ethics complaint was filed against the former head physician at Guantanamo for withholding medicine from detainees deemed to be non-compliant in interrogations and for sharing detainee medical records with interrogators in breach of confidentiality obligations. Neil A. Lewis, *Head of Hospital at Guantanamo Faces Complaint*, N.Y. Times, July 15, 2005, at A13.

Although Respondents have steadfastly denied or minimized allegations such as those described herein as “detainee storytelling [or] exaggeration,” Mason Decl., Ex. C at 39, testimony of detainee after detainee demonstrates a clear policy at Guantánamo to break hunger strikes by inflicting extreme pain and suffering on detainees, belying Respondents’ statements to the contrary. In a markedly candid media interview in February 2006, General Bantz J. Craddock, head of the United States Southern Command, confirmed that Respondents’ use of the restraint chair (which Petitioners liken to an “electric chair”) and other methods against hunger strikers was done not for medical necessity but instead to punish those engaged in what they believed was an act of rebellion. *See* Eric Schmitt and Tim Golden, *Force-Feeding at Guantanamo is Now Acknowledged*, *The New York Times*, Feb. 22, 2006.

Al Joudi’s description of his treatment is not only consistent with his physical condition, it is also are very similar to the description made by other petitioners who were still being force-fed in the middle of January 2006. For example, Petitioner Mohammed Bawazir alleged that, beginning on January 11, 2006, he was force-fed while strapped in the restraint chair, the medical staff used excessively large feeding tubes and inserted and removed them for each feeding, he was forced to ingest excessive quantities of the nutritional supplement and water at every feeding, and he was not permitted to use the bathroom after being force-fed. *See* Mason Decl., Ex. F ¶¶ 10-15. Another detainee, Hassan bin Attash, said that the military began a “crackdown” in January 2006 in order to get the last remaining hunger strikers off their strike and described the force-feeding in similarly graphic terms. *See* Mason Decl., Ex. G ¶¶ 5-7.

Moreover, Respondents have admitted most of the underlying facts. They have acknowledged that they use the restraint chair to force-feed detainees, and they acknowledge that under their policy, a detainee could be strapped in the chair for up to 120 minutes per feeding—amounting to four hours every day—on an indefinite basis until the detainee ended the hunger strike. *See* Mason Decl., Ex. H ¶¶ 12-13, 16.<sup>4</sup> Respondents also acknowledge that, at some point, it increased the size of tubes and required that the tubes be inserted and removed for each feeding.<sup>5</sup> *Id.* ¶ 15.

Al Joudi was force-fed in a deliberately cruel and medically dangerous manner for over seven months, during which time counsel – and by extension this Court – was kept completely in the dark about his precarious medical condition and his appalling treatment. Because counsel was not informed that Al Joudi was continuing his

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<sup>4</sup> Contrast this with the Government’s earlier statement:

“[N]o detainee participating in the hunger strike has ever been placed in six-point restraint to receive intravenous medication. Only rarely are detainee patients unwilling to have the nasogastric tubes inserted. Only on one occasion has detainee patient been placed in a six-point restraint to receive a nasogastric tube and within minutes of placement the restraint level was reduced to two-point restraint .... In less than ten cases have trained medical personnel have had to use four-point medical restraint in order to achieve insertion.”

Mason Decl., Ex. I ¶ 7.

<sup>5</sup> In October 2005, Dr. Edmonson stated that the hospital was using 10 French tubes rather than 12 French or larger, because “it was determined that a protocol involving smaller tubes which remained in the patient for longer periods of time was more comfortable for the patients and was easier to manage for medical personnel.” *Id.* ¶ 9. The change of protocol to larger tubes that must be inserted and removed twice daily raises significant concerns. One doctor has stated that “[t]here is no medical indication for repeatedly inserting and removing a feeding tube multiple times a day for every meal .... Repeated insertions will increase the risk of any potential trauma caused by the tube and cause great discomfort for the patient.” Mason Decl., Ex. J ¶ 10 (“Crosby Aff.”).

hunger strike, they could not try to persuade him to end the strike, nor could they pursue any judicial action on his behalf which could have ameliorated the harms that he suffered.

Petitioner respectfully suggests that Respondents' failure to comply with the unambiguous October Order *for over seven months* compels the strongest rebuke by this Court, if this Court's authority is to amount to anything of substance under our system of Government. For these reasons, Al Joudi respectfully requests the Court issue an order requiring Respondents to show cause why they should not be held in contempt of this Court's October Order.

**II. RESPONDENTS' VIOLATION OF THE COURT'S ORDER NECESSITATES AN INDEPENDENT MEDICAL EVALUATION TO DETERMINE THE EXTENT OF PETITIONER'S POTENTIALLY GRAVE INJURIES.**

Al Joudi also requests a medical examination by an independent doctor as well as any other such relief as the Court deems appropriate. An independent medical evaluation is critical to evaluate the harm done to him in these months in which he has been subjected to painful and humiliating treatment that may have long-term adverse health consequences.<sup>6</sup>

An independent medical examination is particularly appropriate where, as here, the medical records raise more questions than they answer. Dr. Sondra Crosby,<sup>7</sup> an

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<sup>6</sup> Furthermore, given Respondents' blatant denial of Petitioner's allegations, an independent medical expert is key to determine the merits of Al Joudi's claim and any physical injuries and psychiatric damage he has likely sustained as a result of the treatment he has suffered at the hands of the Government.

<sup>7</sup> Dr. Crosby is a licensed physician with a specialty in internal medicine and experience caring for survivors of torture and could serve as the independent medical expert.

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expert who has reviewed Al Joudi's medical records, stated that the records raised "serious questions" about the health of detainees involuntarily subjected to enteral feeding. Crosby Aff. ¶ 6. Specifically, Dr. Crosby declared that "there are significant and troubling gaps in the information provided regarding the care and status of Petitioners Al Joudi, Al-Shehri and Shalabi .... [O]f particular concern are problematic indicators of and lack of documentation related to excessive use of restraints, improper rate and volume of caloric feeding, inadequate monitoring, water supplementation and lack of adequate psychological care." *Id.* ¶ 13. Accordingly, an examination by an independent medical expert is necessary to evaluate Petitioner Al Joudi's health and well-being. It is also essential that Petitioner Al Joudi be provided a medical evaluation by a physician he can trust – not one at whose hands he has been tortured.

**CONCLUSION**

For the reasons discussed above, the Court should hold Respondents in contempt for their violation of the Court's October Order and should issue sanctions as it deems appropriate. In addition, Petitioner's request for an independent medical examination should be granted, and Respondents should be compelled to declare, under oath, whether any other prisoners subject to the October Order have been force-fed without notice to counsel for Petitioners.

Dated: New York, New York  
September 19, 2006

Respectfully submitted,

**PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP**

By 

Julia Tarver Mason (NY0029)

Martin Plumenbaum

Jennifer Ching

Jana C. Ramsey

1285 Avenue of the Americas  
New York, New York 10019-6064  
(212) 373-3000

*Counsel for Petitioners*