

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

IN RE:)	
GUANTÁNAMO BAY)	Misc. No. 08-442 (TFH)
DETAINEE LITIGATION)	Civil Action No. 1:06-cv-01668 (HHK)
)	
)	

**DECLARATION OF JAMES M. HOSKING
IN SUPPORT OF MOTION FOR
EXTENSION OF TIME TO FILE AUTHORIZATION**

The undersigned, James M. Hosking, attorney, declares and states as follows:

1. I am a Partner at Clifford Chance US LLP and counsel in this proceeding. On September 28, 2006, Clifford Chance US LLP filed this *habeas* petition in reliance on authorizations obtained from “Next Friends” of each of the named Petitioners, including Tariq Ali Abdullah Ba Odah (ISN 178).

2. On July 29, 2008, this Court ordered that Petitioner file a written authorization or a statement from counsel that Petitioner had authorized representation and an explanation of why that could not be obtained in writing.

3. On October 11, 2008, my colleagues Siham Nurhusein and Hanna Madbak met with Mr. Ba Odah but were at that time unable to obtain a direct authorization. Counsel then filed a request for a 30 day extension to the deadline to file the authorization, supported by a declaration from Ms. Nurhusein explaining the background to her visit with Mr. Ba Odah and the reasons why the authorization could not be obtained at that time. True copies of that motion and Ms. Nurhusein’s declaration are annexed as Exhibits 1 and 2, respectively.

4. On October 29, 2008, the Court granted Petitioner's motion for an extension.

5. Accordingly, my colleague Omar Farah and I traveled to Guantánamo on November 12, 2008 to meet with our clients, including Mr. Ba Odah.

6. On the morning of November 13, 2008, Mr. Farah and I were directed by the habeas escorts to Camp Echo for the purpose of meeting with Mr. Ba Odah. Despite submitting a meeting request form (and receiving approval), the JTF personnel were unable to locate Mr. Ba Odah for approximately two hours. I was only informed well into the time allotted for the morning session (which only lasts two and one-half hours), and after several calls had been made trying to locate Mr. Ba Odah, that in fact he had been transferred from Camp VI to Camp I yesterday evening, *i.e.*, on the same day that I landed at the base. Upon information and belief, Camp I is a camp usually used as an isolation clinic and I do know that it had previously been used as the home for those detainees on long-term hunger strikes. Mr. Ba Odah had previously told us that he had spent many months in near isolation in that camp while being continuously force fed. He had found this very psychologically trying. I was puzzled why he would have returned there.

7. By the time we finally located Mr. Ba Odah he sent word that he was not willing to meet with us. He then confirmed this to the officer from the Staff Judge Advocate Corp that brought my written request to meet with him. Unfortunately, because of our tight timetable and the logistical complications that come with a base visit, we were unable to schedule another meeting with Mr. Ba Odah for this trip.

8. In subsequent discussions with counsel for another long-term hunger striker, he advised that all six of the long-term hunger strikers were moved to Camp I because of their deteriorating

health and because of new stricter rules regarding the conditions of their confinement. Mr. Ba Odah is one of those who was moved for this reason.

9. Mr. Ba Odah is one of a few “hard core” hunger strikers who is protesting his unlawful detention by refusing to eat. He has not eaten in approximately two years and two months. As a consequence, he is subjected to daily forced feeding, which is undeniably an extremely painful and humiliating process. Twice daily, Mr. Ba Odah has a feeding tube inserted through his nose into his stomach. As a result, Mr. Ba Odah has complained that he suffers from a wide range of medical problems, including but not limited to damage to his nostrils, digestive tract, kidney, and prostate. I was told that he currently weighs approximately 109 pounds.

10. During his last meeting with Clifford Chance attorneys, Mr. Ba Odah complained of debilitating health problems directly attributable to the forced feedings he has endured for almost two years. He also reported being subjected to mistreatment by the guards, including being beaten by the Extreme Reaction Force (“ERF”). On one fairly recent occasion, Petitioner’s back was severely injured.

11. There have previously been indications that Petitioner’s hunger strike and the abuse he has sustained have had an impact on his mental state. In his last meeting, he had appeared dazed and expressed difficulty remembering details, saying he needed more time to collect his thoughts. He had also apparently been on painkillers.

12. I also learned from counsel for one of the other long-term hunger strikers that Mr. Ba Odah does not want to meet again with a particular lawyer from Clifford Chance. While I was not in the previous meeting, I understand that my colleague had tried to dissuade Mr. Ba Odah from continuing his hunger strike. While well-intentioned, this had understandably angered him.

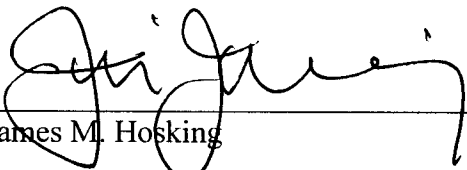
13. Given this unfortunate conflagration of events - Mr. Ba Odah's declining health, his very recent move into the psychologically damaging conditions at Camp I and the well-intentioned but tactless comment made by my junior colleague - Mr. Ba Odah's refusal to meet with us is not surprising. However, this is the first time that he has refused a visit. We have every reason to believe that he will meet with us next time and we have written to him advising that we will be returning soon.

14. Accordingly, we have booked a trip to Guantánamo starting on December 4, 2008 and we have requested permission to visit with Mr. Ba Odah on December 6, 2008. The focus of that meeting will be on obtaining Mr. BaOdah's authorization.

15. Although this is not the first request we have made in this matter, my obligation to Mr. Ba Odah requires that I make an additional visit to thoroughly inquire into his health and to confirm that he authorizes us to represent him in these proceedings. If he declines to give us an authorization on that trip, then counsel will consider whether and how to proceed with his petition.

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

Dated: November 25, 2008


James M. Hosking

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Exhibit 1

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

IN RE:

GUANTÁNAMO BAY
DETAINEE LITIGATION

)
) Misc. No. 08-442 (TFH)
)
) Civil Action No. 1:06-cv-01668 (HHK)
)
)

**UNOPPOSED MOTION ON BEHALF OF PETITIONER
TARIQ BA ODAH FOR EXTENSION OF TIME
TO FILE AUTHORIZATION**

Petitioner Tariq Ali Abdullah Ba Odah (ISN 178), through his undersigned counsel, respectfully requests an additional thirty-day extension of time to the Court’s July 29, 2008 Order to file a signed authorization or a declaration by counsel regarding Petitioner’s authorization for counsel to pursue the action. Petitioner further rely upon the Declaration of Siham Nurhussein in Support of the Motion (“Nurhussein Decl.”). Counsel for Respondents has confirmed that they do not oppose the motion.¹ A draft Order is attached for the Court’s consideration.

1. This proceeding was filed in reliance upon an authorization provided by Petitioner’s “Next Friend” — Mr. Ba Odah’s brother. This authorization specifically empowers counsel to file this proceeding. (Nurhussein Decl. ¶ 1, attaching Authorization of Nasser Ali Abdullah Ba Odah as Exhibit 1.)

¹ Counsel have conferred in accordance with their duties under LCvR 7(m). Mr. Andrew Warden, on behalf of Respondents, confirmed by telephone on October 29, 2008, that Respondents do not oppose the motion.

2. Mr. Ba Odah has not yet provided Petitioner's counsel with an authorization that meets the requirements of the Court's July 29, 2008 Order. The reasons for this are as follow.

a. A protective order was not issued in this habeas proceeding until July 21, 2008. A protective order was entered in the separate actions under the Detainee Treatment Act on September 6, 2007; however, the classified portions of the CSRT record (containing the Respondents' purported justification for detaining Petitioner) were not available until April 2008 (and then only in part). It was only at this stage, and having obtained the necessary security clearances, that a trip to Guantánamo Bay by undersigned counsel could be contemplated. Therefore the earliest practical opportunity that counsel had to travel to Guantánamo Bay to meet with Petitioner was May 2008. (Nurhussein Decl., ¶ 2)

b. Prior to the Court's original deadline for filing authorizations, counsel had made two visits to the base: one in the week of May 19, 2008 and one in the week of August 11, 2008. (Nurhussein Decl., ¶ 3) During this time they were able to meet with Mr. Ba Odah twice but because of the very limited exposure to Petitioner, counsel did not have a sufficient opportunity to establish the relationship of trust and confidence necessary to obtain a written or oral authorization from Mr. Ba Odah. (Nurhussein Decl., ¶ 5.) This was especially so when one factors in that Petitioner has been incarcerated at Guantánamo for nearly seven years, during which time, upon information and belief, he has been exposed to misinformation, mistreatment and abuse. He has also been the subject of literally hundreds of hours of interrogations. Moreover, he has been on a hunger strike and subjected to daily forced feeding for almost two years. (Nurhussein

Decl., ¶¶ 6, 7.) His weight dropped at one point to a mere 79 pounds, which has resulted in wide-ranging medical problems. (Nurhussein Decl., ¶ 7.)

c. Given this background, and based on the fact that an additional trip to Guantánamo Bay was scheduled for October 8-12, 2008, undersigned counsel filed an unopposed motion for an additional thirty days from the Court to obtain an authorization from Petitioner, which was granted by the Court.

d. Counsel met with Mr. Ba Odah for a third time on October 11, 2008, for approximately three hours. (Nurhussein Decl., ¶ 8.) During the meeting, Mr. Ba Odah complained of ongoing health problems attributable to his ongoing forced feeding. (Nurhussein Decl., ¶ 9.) He also reported that since our last visit in August, he had been subjected to further mistreatment by the guards, including being beaten by the Extreme Reaction Force (“ERF”). (Nurhussein Decl., ¶ 9.) There have been some indications that Mr. Ba Odah’s hunger strike and the abuse he has sustained have had an impact on his mental state. (Nurhussein Decl., ¶ 10.) Mr. Ba Odah has appeared dazed and expressed difficulty remembering details, saying he needed more time to collect his thoughts. (Nurhussein Decl., ¶ 10.) In addition, Mr. Ba Odah reported being on painkillers that may have affected his mental state. (Nurhussein Decl., ¶ 10.) In the meeting on October 11, 2008, Mr. Ba Odah told Counsel that he was not in a position to provide the requested formal authorization. (Nurhussein Decl., ¶ 11.) He expressed mistrust of the system that has allowed him to be mistreated. (Nurhussein Decl., ¶ 11.) Mr. Ba Odah did express that he would continue to consider the request. (Nurhussein Decl., ¶ 11.)

3. Petitioner’s counsel is requesting a visit to Guantánamo during the week of November 10, 2008, and believe that an additional meeting with Mr. Ba Odah is necessary to

Exhibit 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE: _____)

GUANTÁNAMO BAY)
DETAINEE LITIGATION)

) Misc. No. 08-442 (TFH)

) Civil Action No. 1:06-cv-01668 (HHK)
)
)

DECLARATION OF SIHAM NURHUSSEIN
IN SUPPORT OF UNOPPOSED MOTION FOR
EXTENSION OF TIME TO FILE AUTHORIZATION

The undersigned, Siham Nurhusein, attorney, declares and states as follows:

1. I am an Associate at Clifford Chance US LLP and counsel in this proceeding. On September 28, 2006, Clifford Chance US LLP filed this *habeas* petition in reliance on authorizations obtained from “Next Friends” of each of the named Petitioners. This motion is filed on behalf of one of those Petitioners, namely Tariq Ali Abdullah Ba Odah (ISN 178), in this matter. A true copy of the Next Friend authorization form for this Petitioner is attached as Exhibit 1.
2. A Protective Order in this case was issued on July 21, 2008. The Protective Order in the Petitioner’s corresponding action under the Detainee Treatment Act was issued on September 6, 2007, however the classified portions of the CSRT record (containing the Respondents’ purported justification for detaining Petitioner) were not made available until April 2008 (and then only in part). It was only at this stage, and having obtained the necessary security clearance, that a trip to Guantánamo Bay could be contemplated.

3. Clifford Chance lawyers have now made three trips to Guantánamo: one in the week of May 19, 2008, another in the week of August 11, 2008, and the most recent one in the week of October 6, 2008. Clifford Chance currently represents six detainees at Guantánamo and our time at the base has to be divided accordingly.
4. During those trips we have been able to meet with Mr. Ba Odah during only three “sessions”: on May 21, 2008, on August 13, 2008, and on October 11, 2008. Due to operational restraints imposed by the Government, these meetings lasted only a few hours. We have also had some limited written correspondence with Petitioner.
5. During our first two limited visits with Petitioner, counsel did not have a sufficient opportunity to establish the relationship of trust and confidence necessary to obtain a written or oral authorization from him. Petitioner indicated that he needed more time to consider our request for a formal authorization. Accordingly, on September 29, 2008, we filed an Unopposed Motion for Extension of Time to File Authorization, along with a supporting Declaration from my colleague James Hosking. We also submitted a visit request for the week of October 6, 2008.
6. Petitioner has been incarcerated at Guantánamo for nearly seven years, during which time, upon information and belief, he has been exposed to misinformation, mistreatment and abuse. Further, Petitioner has been subject to hundreds of hours of interrogations at Guantánamo.
7. Petitioner is one of a handful of “hard core” hunger strikers who is protesting his unlawful detention by refusing to eat. He has not eaten in almost two years, at one point dropping to a mere 79 pounds. As a consequence, he has been subjected to daily forced feeding for almost two years, in which twice daily he is strapped to a restraining chair and a feeding tube

is inserted through his nose into his stomach. Because of this, Petitioner is believed to suffer from a wide range of medical problems, including but not limited to damage to his nostrils, digestive tract, kidney, and prostate.

8. On October 11, 2008, I met with Petitioner, together with my colleague Hanna Madbak and an Arabic interpreter. The meeting lasted approximately three hours.

9. During the meeting, Petitioner complained of ongoing health problems attributable to the forced feeding that are causing him severe pain. He also reported that since our last visit, he had been subjected to further mistreatment by the guards, including being beaten by the Extreme Reaction Force (“ERF”). On one recent occasion, Petitioner’s back was severely injured.

10. There have been some indications that Petitioner’s hunger strike and the abuse he has sustained have had an impact on his mental state. Petitioner has appeared dazed and expressed difficulty remembering details, saying he needed more time to collect his thoughts. In addition, Petitioner has reported being on painkillers.

11. In the last meeting, Petitioner stated that he was not in a position to provide the requested formal authorization to counsel. He expressed mistrust of a system that has allowed him to be mistreated, but indicated that he would continue considering our request.


12. Given this background, and counsel’s recent and limited interaction with Petitioner, it has been very difficult to establish the necessary degree of confidence and trust that would make him amenable to providing an authorization in the form required by this Court’s July 29, 2008 Order.

13. We believe an additional visit is necessary in order to determine whether Petitioner would like to be represented by counsel in these proceedings. In an effort to comply with the

Court's Order, my colleague, James Hosking, is requesting permission to travel to Guantanamo in the week beginning November 10, 2008 in order to meet with Petitioner to request the specified authorization.

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

Dated: October 29, 2008


Siham Nurhussein, Esq.

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Exhibit 1

AUTHORIZATION

I am Nasser Ali Abdullah Baodah, and a citizen of Yemen.
I have had the concept of "Next Friend" explained to me in my native language. I wish to act as
Next Friend for Tarig Ali Abdullah Baodah who is my
Brother and is being held at Guantanamo Bay. He is a citizen of
Yemen.

I hereby authorize:

Tina Monshipour Foster (and the Center for Constitutional Rights),

Julia Symon (and the law firm of Clifford Chance US LLP),

_____ ; and

any person assigned by these lawyers,

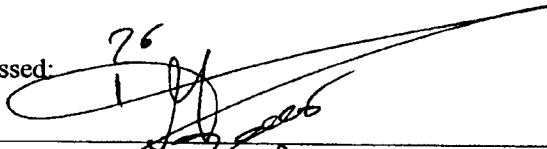
to act on my behalf and on my relative's behalf, to secure any documentation and information concerning my relative that are necessary for his defense and to seek whatever redress they believe to be in his best interests in the courts of the United States and in any other legal forum available. I am sure that my relative would want me to assert these rights.

Dated: 26 day of January, 2006



Print Name: Nasser Ali Abdullah Baodah

Witnessed: 26


Print Name of Witness: Jahanned Alwjech