

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
AHMED ZAID SALEM ZUHAIR,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 08-CV-0864 (EGS)
BARACK OBAMA, <i>et al.</i> ,)	
)	
Respondents.)	
_____)	

**RESPONDENTS' NOTICE OF FILING TWO DECLARATIONS
REGARDING PETITIONER'S FEBRUARY 11 AND 12 MEETING WITH
COUNSEL AND HIS CURRENT MEDICAL STATUS**

Respondents hereby provide notice of the filing of two declarations regarding the circumstances surrounding Petitioner's February 11 and 12 meeting with his counsel and his current medical status. In his February 16, 2009 Status Report (dkt. no. 143), Petitioner's counsel alleges, *inter alia*, that his client's health has "deteriorated significantly" since their last meeting in December 2008. The Status Report also states that Petitioner was confined to a gurney during his meeting with counsel and that he was provided large quantities of painkillers by medical personnel. Petitioner alleges that Respondents improperly obstructed counsel's visit, resulting in the loss of over seven hours of planned attorney-client meetings.

Captain Bruce C. Meneley, M.D., and Commander Don A. Martin categorically refute these allegations in their respective declarations (attached hereto as Exhibits 1 and 2). Specifically, these declarations explain that, although Petitioner claimed that he fainted in his cell on February 9 and that he injured his hip and knee when he fell to the ground, he was evaluated by medical staff, who determined that he had not suffered any significant injury.

Nevertheless, even though it was not medically necessary, Petitioner insisted he would only attend his counsel appointments on February 11 and 12 if he was carried there on a gurney or backboard.

As Commander Martin explains, Petitioner's refusal to attend his counsel appointment unless these conditions were met constituted a refusal to meet with his counsel under Joint Task Force – Guantanamo protocols. However, in reviewing the situation and in order to facilitate a meeting with counsel, the decision was subsequently made to transport Petitioner by ambulance and gurney. Petitioner's counsel also was advised that Guantanamo Bay was facilitating the meeting under these conditions even though Petitioner's x-rays were negative for any injuries and he was believed to be ambulatory. On February 11, Petitioner was allowed to meet with his counsel for an additional two-and-a-half hours past the typical close time of counsel meetings. In addition, the meeting on February 12 was terminated by counsel and not by Guantanamo staff.

Dr. Meneley's declaration also explains the reasons for Petitioner's continued hospitalization and his administering of painkillers. It also explains Petitioner's current health status and the efforts of the Guantanamo Bay medical staff to keep his weight up. In direct contradiction to the characterizations made by Petitioner's counsel, Dr. Meneley's declaration refutes that Petitioner's health has deteriorated significantly, and demonstrates that the medical staff continues to closely monitor his enteral feedings and overall health.

Dated: February 19, 2009

Respectfully submitted,

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Acting Assistant Attorney General

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EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AHMED ZAID SALEM ZUHAIR,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 08-CV-0864 (EGS)
)	
GEORGE W. BUSH, President of the United)	
States, et al.,)	
)	
Respondents.)	
_____)	
)	

DECLARATION OF CAPTAIN BRUCE C. MENELEY, M.D.

Pursuant to 28 U.S.C. § 1746, I, Bruce C. Meneley, M.D., hereby declare:

1. I am a Captain in the United States Navy with over 32 years of active and reserve service. I currently serve as the Commander, Joint Medical Group, Guantanamo Bay and Joint Task Force Surgeon, Joint Task Force-Guantanamo (JTF-GTMO), at Naval Station Guantanamo Bay, Cuba. I am responsible for the medical care provided to personnel stationed at Guantanamo Bay and oversee the operation of the Joint Medical Group (JMG) that provides medical care to the detainees currently held at Guantanamo Bay. I have served in this position since 6 July 2007.

2. I have personal knowledge of the procedures that are in place for the operation of the Detention Hospital, and I am responsible for ensuring that they are followed. Due to my responsibilities, I have personal knowledge of, or have received information concerning, the most recent allegations made by Ahmed Zaid Salem Zuhair (ISN 669), the petitioner in the above-captioned case, through his counsel. This declaration is based on information made available to me through my official duties and from the medical records of ISN 669.

3. I am aware that ISN 669's counsel has stated that during his meetings with ISN 669 on 11 and 12 February 2009, ISN 669 "appeared unable to walk or do more than slightly lift his upper body and lift his arm," that he could only talk "in a whisper" and was in "great pain" throughout the meetings with "any movement appearing to cause him excruciating pain" with "his eyes rolling back in pain at any break in the conversation." That information is not consistent with ISN 669's medical condition or his behavior in front of JMG staff.

4. During ISN 669's morning feed on 9 February, 2009, he told the physician that he had fallen in the recreation yard the day before and had hit his right hip and knee. No guard staff had observed this incident in the recreation yard. Because of this report, medical personnel began making arrangements for ISN 669 to be examined for this issue later in the day. The enteral feed physician noted, however, that ISN 669 walked normally from the feeding chair to his cell, without limping.

5. Shortly after he returned to his cell following the morning enteral feeding, one of the JTF-GTMO guards observed ISN 669 at approximately 1100 hours lying face down in his cell and not immediately responding to query. ISN 669 claimed that he fainted in his cell and injured his hip and knee when he fell to the ground. Consistent with JTF-GTMO standard operating procedure, ISN 669 was brought to the Detention Hospital for evaluation after an initial assessment by a physician in the cell block and further assessment in the Camp 6 Medical Clinic.

6. ISN 669 told medical personnel that as he stood up from his bunk to go outside for recreation, he had a momentary blackout, which resulted in a fall to the floor. He stated that he was awake after hitting the floor. ISN 669 complained to the physician of right hip and knee pain, as he had earlier that day to the physician who administered his enteral feedings.

7. On 9 February, ISN 669's right hip, right knee and chest were x-rayed, and no fracture or other internal damage was noted. Follow-up x-rays of the right hip and abdomen performed on 17 February 2009 confirmed the normal results. Initial lab testing was also performed on 9 February, including blood count and chemistries, which indicated good hydration but was otherwise unremarkable. An orthopedic surgeon reviewed the x-ray films on 9 February and followed up with a clinical assessment later on 13 February while ISN 669 was in the Detention Hospital. Following a physical examination of ISN 669 and a review of the medical testing, the orthopedic surgeon concluded that ISN 669 had not suffered any significant injury and that there were no medical or structural reasons why the detainee could or should not walk. (ISN 669 would not allow medical personnel to move his limbs in order to be able to assess his passive range of motion.) Furthermore, no bruising or skin changes were observed in the area of the reported injury on initial assessment or upon serial reassessment at later times. Additionally, ISN 669 has made no complaints of a sore throat during this inpatient period and has generally spoken to JMG personnel in a normal tone during assessments.

8. Based on the comprehensive evaluation performed by JMG physicians, it was determined that ISN 669's complaints of pain were out of proportion to the reported mechanism of his injury and that there appeared to be no medical reason that he should be feeling the level of pain that he stated he was feeling. He has no medical condition that would cause him to be in excruciating pain, to be barely able to move his upper body, or to only talk in a whisper.

9. Because ISN 669 appeared to have no medical condition that prevents him from being ambulatory, JMG personnel informed JTF-GTMO guard personnel that he did not need to be transported via a stretcher. He is physically capable of walking without human or mechanical

assistance but is choosing not to. He currently elects to use a walker for assisted movement but it is not required for any medical condition.

10. Because complaints of pain are always subjective, JMG personnel take these complaints of pain by detainees at face value and offer treatment for the detainee's stated complaints, followed by periodic reassessment of symptoms. It is possible some degree of pain is present as a result of ISN 669's alleged fall to the ground, independent of his ability or inability to walk but there is no medical reason for the level of acute pain he claims to be experiencing in his hip and knee from the fall. Nonetheless, ISN 669 has been administered the anti-inflammatory medication Celebrex, as well as Ultram and Tylenol, all of which were prescribed to treat his claim of acute pain. He has also been offered a topical pain relieving rub, as well as ice, to be applied directly on the area of perceived pain.

11. On 11 and 12 February 2009, ISN 669 was transported to his legal appointments at Camp Echo on a gurney after he refused to attempt to sit or stand. Although also not medically necessary, ISN 669 was offered the use of a walker or a wheelchair for the transport to the appointment, but he insisted he would only attend the appointments if he were carried there on a gurney or backboard. Given ISN 669's condition, even if he was uncomfortable walking, there was no medically justifiable reason to use a gurney or backboard when a wheelchair was available. The gurney was only used upon ISN 669's insistence. Although not medically required based on ISN 669's condition, a nurse accompanied the detainee to Camp Echo for his visit, in order to provide the capability of rapid reassessment of the situation and to be able to provide pain medications if ISN 669 requested them.

12. Prior to the attorney visits on both days, ISN 669 received a scheduled dose of Celebrex, Ultram and Tylenol. The Ultram and Tylenol were readministered during the legal

appointments on both days after ISN 669's attorney called the nurse into the interview room and stated that the detainee was in pain and asked if the nurse had any medicine. These medications were provided according to their standard schedule and were acceptable to re-administer at the requested time due to the long duration of the legal appointments. The nurse had Tylenol with him and called for a delivery of Ultram from Camp 6. The Tylenol was given first, and when the Ultram arrived, it was also given. There was no requirement that any legal appointment be cut short so ISN 669 could return to the clinic for medical treatment or medication.

13. Prior to his attorney visit on 11 February 2009, ISN 669 also received a dose of Toradol, a non-narcotic pain medication. On 12 February 2009, immediately following his legal appointment, ISN 669 received a single low dose (2 milligrams) of morphine, due to his continued complaint of uncontrolled pain. ISN 669 was also offered ice for topical use during the appointment, but it was declined. Again, although there is no medical problem that would cause ISN 669 to experience the amount of pain he claims to be feeling, JMG policy is to take his complaints at face value and treat the symptoms he is reporting. Accordingly, pain medication is administered to him upon demand, within medically appropriate limits for such medications.

14. At various times ISN 669 has declined available pain medication offered on schedule. Around the time of the legal visit, ISN 669 declined 8 of the 12 doses of Tylenol offered from 10-12 February and declined 1 of 4 doses of Ultram on 12 February.

15. ISN 669 has been regularly re-evaluated since 9 February 2009, and these evaluations and all medical testing continue to reveal no apparent medical reason for his continued complaints regarding persistent pain.

16. As discussed in my prior declarations, ISN 669 continues to be enterally fed. Consistent with JTF-GTMO standard operating procedure, he is regularly weighed as part of the enteral feeding regime.

17. Since 20 January 2009, ISN 669's weight has fluctuated between a low of 107 pounds on 21 January to a high of 117 pounds on 25 January. A recent maximum weight of 118 pounds was observed on 7 February 2009, followed by a declining trend to 115 pounds on admission to the Detention Hospital on 9 February. As of 16 February, ISN 669's weight was 108.7 pounds (76.1 percent of Ideal Body Weight (IBW)), and it improved to 112 pounds on 17 February. The detainee's weight trend as an inpatient has been difficult to assess due to ISN 669's refusal to get out of bed during the first several days of admission. As a result, no weight was obtained for the detainee's first few days in the hospital. Hydration issues can account for a several pound degree of weight change; ISN 669 has significantly reduced his water intake during the inpatient period. He also argued strongly against receiving increased feed and would intermittently spit up small amounts of formula while awake. The spitting behavior has decreased significantly in the more recent few days.

18. ISN 669's overall medical condition is good; however, there remain concerns related to his chronic low body weight, prolonged hunger strike, and his failure to voluntarily consume food, which increase risk for multiple complications. JMG personnel continue to monitor his medical condition with appropriate testing.

19. ISN 669 was admitted to the Detention Hospital on 9 February 2009 and remains admitted for increased monitoring of his weight and adjustment of his enteral feeding (due to concern for a recent resurgence in his complaints of vomiting and difficulty tolerating his usual feed), as well as for further assessment of his recent reported injury and support for activities of

daily living. Prior to ISN 669's hospital admission, the medical team was discussing various alternatives to address the detainee's low body weight and inadequate caloric intake. One option under consideration was admission to the hospital for inpatient treatment, although a date had not yet been finalized. Hospitalization was one of many options, including changing formulas to increase his caloric intake, increasing the number of enteral feedings per day, voluntary consumption, and the addition of small amounts of olive oil to his feeding, all of which were discussed with ISN 669 as possible options about a week prior to admission. The decision to admit ISN 669 to the hospital was ultimately made following his reported fainting episode and subsequent fall.

20. Since being admitted to the hospital, ISN 669 is receiving treatment for his pain and is encouraged to ambulate. A physical therapy consultation was completed on 19 Feb 2009. The physical therapist suggested ISN 669 may have experienced soft tissue injury with possible muscle spasm in the right hip area and recommended the detainee practice specific stretches several times each day. ISN 669's feed composition and timing of his feedings are still being adjusted as evaluations continue regarding increasing his caloric intake and weight.

21. While at the Detention Hospital prior to his legal visit on 12 February 2009, ISN 669 was observed easily moving his head and shoulders off of his bed, spontaneously and without discomfort. On 16 February 2009, ISN 669 sat up fully in bed, with his back away from support, while he did some writing, and then he leaned farther forward, without difficulty, to permit respiratory assessment. On 17 February 2009, ISN 669 had no significant problems moving to and using the shower with the assistance of a walker. That same day, ISN 669 was offered the opportunity to be transported by wheelchair to the x-ray room for a planned reassessment; however, he declined this assistance and chose to move the approximately 100-foot distance

using a walker. He has also used the walker to move to and from the shower and for each use of the toilet. Other than at his insistence and to facilitate his meeting with his counsel and on his initial admission to the hospital, ISN 669 has not otherwise been transported by gurney or backboard.

22. According to the attending physician who saw him on 10 February and throughout his inpatient stay, ISN 669 has stated that pain would come and go. Pain was relieved with medications but would come back with certain right leg movement. No complaints of constant pain have been noted. The physician also stated that ISN 669 looked alert and very clear and did not appear fatigued.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true, accurate, and correct to the best of my knowledge.

Dated: February 19, 2009



BRUCE C. MENELEY
Captain, Medical Corps, U.S. Navy

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
AHMED ZAID SALEM ZUHAIR)	
)	
	Petitioner,)	
)	
v.)	Civil Action No. 08-CV-864 (EGS)
)	DECLARATION OF COMMANDER
)	DON A. MARTIN
BARACK H. OBAMA, et al.,)	
)	
	Respondents.)	
_____)	

Pursuant to 28 U.S.C. §1746, I, Commander Don A. Martin, declare as follows:

1. I am a Commander in the United States Navy, with 17 years of active duty service. I currently serve as the Staff Judge Advocate (SJA) of Joint Task Force - Guantanamo (JTF-GTMO), at Naval Station Guantanamo Bay, Cuba. I have held this position since 25 July 2008. As such, I am the principal legal advisor to the JTF-GTMO Commander and his subordinate commanders.

2. This declaration is based on information made available to me through my official duties, including information regarding the petitioner, Ahmed Zaid Salem Zuhair, Internment Serial Number (ISN) 669.

3. JTF-GTMO takes very seriously the matter of counsel visits with detainees. These meetings occur on a daily basis and occur in the context of habeas, Detainee Treatment Act, and Military Commissions cases. In 2008, JTF-GTMO facilitated over 1,850 counsel visits with

their detainee clients. It is JTF-GTMO policy to allow counsel access to their clients consistent with established standard operating procedures and the terms of the various protective orders issued by the courts. During their stay at JTF-GTMO, counsel are provided with accommodations and appropriate facilities to meet with their clients.

4. JTF-GTMO has established a specific procedure to facilitate habeas counsel visits with clients. In every instance, detainee escort personnel advise the detainee that counsel has arrived, generally about 15 minutes prior to the meeting. Should the detainee refuse to go to the visit, a military attorney from my office, the JTF-GTMO Office of the Staff Judge Advocate, will then meet with counsel and advise him or her of the detainee's refusal to meet with counsel. At that time, counsel is provided the opportunity to write a note to the detainee, which is promptly delivered to the detainee by the SJA attorney.

5. To deliver the note, the SJA attorney ensures an appropriate translator is present, and then immediately goes to the detainee's physical location within the camps. Upon locating the detainee, the SJA attorney informs him that his counsel has written a note and asks the detainee if he wants it. If requested by the detainee, the SJA attorney will read the letter aloud to the detainee (through the translator, if appropriate). If the detainee has a verbal or written response to the letter, that will be relayed to the counsel by the SJA attorney. If the detainee wishes to read the letter himself, the SJA attorney will wait for the detainee to finish reading the letter and provide a response. If the detainee refuses to take possession of the letter or if he continues to decline to attend the counsel meeting, those actions are considered a full and final refusal by the detainee to meet with counsel.

6. Alternatively, if the detainee elects to meet with counsel, the detainee is transported from his current location to the meeting place. Normally, counsel/detainee meetings take place

at Camp Echo, a location specifically designated to facilitate such meetings. Because of security and safety concerns for both JTF-GTMO personnel and the detainee, transportation of detainees between camps at JTF-GTMO requires substantial logistical coordination. The detainee is then promptly transported to the meeting place.

7. In certain situations, JTF-GTMO may consider the actions of a detainee to constitute a refusal to attend the visit. This would include a situation where the detainee states that he will only attend his counsel visit if certain preconditions are met by JTF-GTMO personnel. Acceding to such demands can create a discipline problem within the detention facility as it encourages detainees to engage in such behavior in an effort to manipulate JTF-GTMO personnel and/or the detention system.

COUNSEL MEETINGS WITH ISN 669

8. I am aware that counsel represented he was scheduled to meet with ISN 669 for 14 hours during his visit on 11-12 February 2009. That is incorrect. Pursuant to counsel's own visit request, which was submitted and approved prior to his arrival at Guantanamo, he was scheduled to meet with ISN 669 for 13 hours over the two days (he had requested to meet during the meeting times of 9:00 am until 11:30 am and 1:00 pm until 5:00 pm). This would total 13 hours over the two day period.

9. On 11 February 2009, counsel for ISN 669 was scheduled to meet with the detainee. JTF-GTMO personnel, acting in accordance with established procedure described above, informed ISN 669 that the counsel had arrived to meet with him. The meeting was scheduled to occur at Camp Echo. ISN 669, who was a patient in the Detention Hospital, refused to stand or walk when the detainee escorts went to notify him of his legal visit. As discussed in Dr. Meneley's declaration, the Joint Medical Group had determined that ISN 669 had no medical

condition that prevented him from being ambulatory. Consequently, ISN 669's refusal to walk to and from the transport van was deemed a refusal. Counsel was informed that the detainee refused to attend the meeting, but at that time, counsel was not advised of ISN 669's location or medical condition.

10. After counsel was informed of the refusal, he chose to send a note to ISN 669. In accordance with procedure, the SJA attorney went to the Detention Hospital to deliver the note. ISN 669 read the note and indicated to the SJA attorney that he could not stand and asked if his counsel could come to him in the Detention Hospital. The SJA attorney told ISN 669 that the meeting could not occur in the hospital and that his continued refusal to stand and walk would be deemed a refusal to meet with his counsel.

11. The SJA attorney advised counsel that ISN 669, who was in the Detention Hospital, refused the meeting. Counsel was advised that ISN 669 was in the Detention Hospital and claimed to be non-ambulatory. Counsel then requested that JTF-GTMO allow him to meet with ISN 669 in the Detention Hospital. The SJA attorney advised counsel that he would pass counsel's request to JTF-GTMO leadership.

12. In reviewing counsel's request, JTF-GTMO could not operationally support a legal visit to occur within the Detention Hospital, the primary medical facility supporting the entire detainee population of nearly 250 individuals. However, in keeping with our efforts to facilitate counsel meetings, again a high priority for JTF-GTMO, the decision was made that ISN 669 could be transported to Camp Echo (by ambulance and in a gurney) without otherwise adversely impacting JTF-GTMO operations and without endangering the guard force or the detainee. The decision was not based on any change to the medical determination that ISN 669 was ambulatory, and in fact, counsel was advised that JTF-GTMO was facilitating the meeting under

these conditions despite the fact that ISN 669's x-rays were negative for any injuries and ISN 669 was believed to be ambulatory.

13. ISN 669 was subsequently moved to Camp Echo by ambulance at approximately 3:00 pm and counsel was allowed to meet with him for four hours until 7:00 pm (two hours past the scheduled ending time of 5:00 pm).

14. Additionally, on 11 February 2009, prior to meeting with ISN 669, counsel requested that he be able to meet with ISN 669 during lunch both on 11 and 12 February 2009. JTF-GTMO advised counsel that his request was approved provided ISN 669 attended the legal visits. As the 11 February 2009 visit did not occur until mid-afternoon, counsel's request was moot. However, counsel was allowed to meet with ISN 669 during the lunch period on 12 February 2009.

15. At approximately 9:00 am the following morning, 12 February 2009, JTF-GTMO again transported ISN 669 to Camp Echo for another meeting with counsel. Counsel did not meet with ISN 669 for the entire day (9:00 am until 5:00 pm) on 12 February 2009 as counsel terminated the meeting early. ISN 669 was transported back to the Detention Hospital at approximately 2:00 pm, after having met with counsel for five hours. Counsel did not request additional time or another meeting with ISN 669 on the following day. Had counsel requested such additional time or meetings, JTF-GTMO would have accommodated such requests.

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

Date: 19 February 2009



D. A. MARTIN
Commander, JAGC, U.S. Navy
Staff Judge Advocate, JTF-GTMO