

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

IN RE:)

GUANTANAMO BAY)
DETAINEE LITIGATION)

Misc. No. 08-442 (TFH)

IDRIS AHMED ABDU QADIR IDRIS,)

Petitioner,)

v.)

BARACK OBAMA *et al.*,)

Respondents.)

Civil Action No. 09-00745 (RCL)

**PETITIONER IDRIS AHMED ABDU QADIR IDRIS'S
OPPOSITION TO RESPONDENTS' MOTION TO DISMISS
FOR LACK OF AUTHORIZATION**

Petitioner Idris Ahmed Abdu Qadir Idris, through counsel, hereby opposes Respondents' Motion to Dismiss his Petition for a Writ of Habeas Corpus. Respondents have detained Mr. Idris at the Guantánamo Bay Detention Center for over seven years without charge or adequate legal process. For many of those years, Respondents denied Mr. Idris access to counsel. Respondents now move to dismiss Mr. Idris's Habeas Petition because Mr. Idris has not, to date, met with undersigned counsel. That motion should be denied.

I. Background

Mr. Idris's case began with a Petition for a Writ of Habeas Corpus filed on behalf of Mr. Idris (and other detainees) on December 21, 2005. (Docket Entry No. 1.) The case was

originally assigned to Judge Reggie B. Walton under Case Number 05-CV-2386. The Petition was filed by attorneys for the Center for Constitutional Rights.

On November 14, 2008, the Center for Constitutional Rights filed a Motion to Appoint Counsel – specifically, the Office of the Federal Public Defender for the Northern District of Ohio – for Mr. Idris (and one other detainee). That motion was granted on November 14, 2008. Undersigned counsel entered their appearance in this case on December 15, 2008. (Docket Entry Nos. 770-776.)

A. Camp Guards have told counsel that Mr. Idris has refused visit requests.

Counsel first visited the Guantánamo Bay Detention Center in February 2009, which was the earliest opportunity counsel could schedule a visit after receiving the necessary security clearances. Counsel again visited the base once in March, once in April, and once in May. At the time of this filing, two of undersigned counsel are in Guantánamo Bay in counsel's fifth visit (collectively) to the base.

During each of the four trips accomplished to date, and during the current trip, undersigned counsel have requested to meet with Mr. Idris. Counsel have also requested, but Respondents have refused to permit, a face-to-face meeting with Mr. Idris so that counsel can explain their role and intention to assist Mr. Idris. The guards at the base have informed counsel that Mr. Idris has refused counsel's requests to meet, but counsel have never seen Mr. Idris or heard a refusal from him personally.

Counsel have also asked that Respondents permit counsel to meet with Mr. Idris in a meeting room in the camp where he is being housed, rather than requiring Mr. Idris to be transported to the meeting room in Camp Echo. Respondents have also refused that request. *See* Exhibit D (e-mail chain regarding request). Counsel has reason to believe that detainees

sometimes refuse attorney visit requests due to the burden of being transported to another camp, which can include being subjected to electronic scanning devices. One of counsel's other clients had also in the past declined to meet with counsel, but in that case Respondents permitted counsel's request to meet with that detainee in his own camp. That limited accommodation resulted in that client agreeing to meet with undersigned counsel, and that detainee has now met twice with counsel and has authorized counsel to represent him in his habeas proceedings. With regard to Mr. Idris, however, Respondents have refused this accommodation request.

B. Mr. Idris's brother in Yemen, Abdulqader Idris, has expressly authorized undersigned counsel to proceed on his behalf, and has expressed his view that Mr. Idris lacks the necessary voluntariness to proceed on his own behalf.

While counsel have not yet had the opportunity to meet with Mr. Idris, counsel's Arabic-speaking investigator, Farah Chani, did have an opportunity to meet with Mr. Idris's family in Yemen. Among others, Ms. Chani met with Mr. Idris's brother, Abdulqader Ahmed Idris. Abdulqader Idris signed a Next Friend Authorization, attached as Exhibit A (in both English and Arabic). The Authorization states that Abdulqader is the brother of Idris Ahmad Abdu Qader Idris, a citizen of Yemen currently detained at Guantánamo Bay. The Authorization further states that the concept of "Next Friend" was explained to Abdulqader in Arabic (his native language). Abdulqader states that it is his "belief and understanding that Idris, due to his long-standing detention without proper access to lawyers, doctors, or family, lacks the necessary voluntariness to make decisions on his own behalf." Abdulqader further states that in his view, "were he not so indisposed, Idris would want me to take legal action on his behalf to secure his release." Exhibit A.

Therefore, "As Idris's next friend, acting as I believe he would under other circumstances, I hereby authorize the Office of the Federal Public Defender for the Northern District of Ohio,

and any attorneys assigned by them, to take legal action on behalf of Idris, including defending him zealously in civil and criminal actions and taking any other legal action in US or international venues that is necessary and appropriate to defend his rights under law.” Exhibit A.

The Next Friend Authorization – a copy in Arabic and a copy in English – is signed by Abdulqader Idris and by counsel’s investigator, Farah Chani, who witnessed the authorization.

II. Respondents’ Motion to Dismiss Should Be Denied.

Mr. Idris was seized by Pakistani authorities in December 2001 at the Afghanistan-Pakistan border, and later turned over to American authorities at a time when the United States was paying millions of dollars in bounties to the Pakistanis in exchange for supposed Taliban or Al Qaeda suspects. *See* Pervez Musharraf, In the Line of Fire, p. 237 (2006) (noting that Pakistanis received millions of dollars in bounties in exchange for handing over suspects to American authorities). Mr. Idris has consistently explained that he traveled to Afghanistan to teach the Koran. Public records of Mr. Idris’s July 2005 Administrative Review Board (ARB) hearing show that Mr. Idris “denied going to fight or train in Afghanistan . . . [and] continues to say he went to Afghanistan to teach the Koran.” Unclassified Summary of ARB Evidence, 20 July 2005, attached as Exhibit B.

Respondents have now held Mr. Idris for more than seven years. He has never been charged with any crime, either in federal court or in a military commissions proceeding. For years of his confinement, Respondents denied him access to counsel, to his family, or to any independent group that would represent his interests. During this time Respondents interrogated Mr. Idris repeatedly. The conditions under which Mr. Idris was held, and the interrogation methods used against him, are unknown. Respondents alone know the treatments they have subjected Mr. Idris to – whether that be sleep deprivation, waterboarding, death threats, sexual

humiliations, temperature extremes, confinement in a box, stress positions, or any of the other techniques widely publicized to have been used against detainees at Guantánamo Bay. *See infra* Part II.A.1.

After years of denying Mr. Idris access to counsel, his family, or to any person who would represent his interests, Respondents now move to dismiss Mr. Idris's habeas petition because Mr. Idris has, to date, refused to meet with undersigned counsel. Respondents have produced no evidence that Mr. Idris is competent or that his apparent refusals are knowing and voluntary. The conditions under which he has been held are *prima facie* evidence to the contrary.

In addition, counsel's investigator has met with many of Mr. Idris's family and friends in Yemen. Mr. Idris's brother, Abdulqader Idris, believes that Mr. Idris lacks the voluntariness to make decisions on his own behalf, and that were circumstances different, Mr. Idris would want to take legal action on his own behalf and would want Abdulqader to take action on his behalf. Thus, Abdulqader has authorized undersigned counsel to proceed on Mr. Idris's behalf.

In these circumstances, Respondents' Motion to Dismiss should be denied. Abdulqader's express written authorization, along with his assertion that Mr. Idris's voluntariness is compromised by the circumstances of his confinement, provide sufficient authority for undersigned counsel to proceed on Mr. Idris's behalf.

At the very least, Abdulqader's statements, combined with the fact and conditions of Mr. Idris's lengthy confinement, cast very grave doubt on whether Mr. Idris's apparent refusals to meet with counsel are genuine, and are the result of a free, voluntary, and informed decision. Accordingly, this Court should grant counsel's motion requesting that Respondents disclose the medical records, interrogation records, and other evidence regarding the conditions under which

Respondents have held Mr. Idris for the past seven years (up to and including the present). In addition, this Court should grant counsel's Motion for Direct Contact with Client – a motion that in other cases has resulted in successful attorney-client meetings when detainees purportedly had refused earlier visit requests.

A. The Next-Friend Authorization by Mr. Idris's Brother, Abdulqader Idris, Provides the Authority to Proceed in This Action.

The Next Friend Authorization provided by Mr. Idris's brother, Abdulqader, is sufficient to permit undersigned counsel to pursue a petition on Mr. Idris's behalf. In *Whitmore v. Arkansas*, 495 U.S. 149, 163-64 (1990), the Supreme Court held that a habeas action can be initiated and proceed with a "next friend" when two conditions are met: (1) there must be a reason why the real party in interest, here the detainee, cannot appear on his own behalf, and 2) the person asserting himself as a next friend must be "truly dedicated to the best interests of the person on whose behalf he seeks to litigate."

1. There are ample reasons why Mr. Idris may not be able to appear on his own.

According to public records, Pakistani authorities took Mr. Idris into custody sometime in December 2001. It appears Mr. Idris has been detained at the Guantánamo Bay Detention Center since early 2002. There now exists a large body of public reports detailing the inhumane treatment and torture that Respondents have inflicted upon detainees at the Guantánamo Bay Detention Center.¹ Because Respondents have not disclosed their records of Mr. Idris's

¹ See, e.g., Senate Armed Services Committee Inquiry Into the Treatment of Detainees in U.S. Custody (November 20, 2008, released April 22, 2009), available at http://armed-services.senate.gov/Publications/Detainee%20Report%20Final_April%2022%202009.pdf; Amnesty International, *Guantánamo and Beyond: The Continuing Pursuit of Unchecked Executive Power*, at 83-115, Ch. 12-13, AMR 511063/2005 (13 May 2005), available at <http://www.amnesty.org/en/library/info/AMR51/063/2005>; Amnesty International, *Guantánamo: An Icon of Lawlessness*,

treatment, undersigned counsel cannot at this point determine what treatment was inflicted on Mr. Idris that might have caused or contributed to his current apparent refusal to meet with counsel.

According to the unclassified Report of the Senate Armed Services Committee, titled “Inquiry Into the Treatment of Detainees in U.S. Custody” (hereinafter, “the Senate Armed Services Committee Report”), in December 2002 senior staff at the Guantánamo Bay Naval Base (GTMO) drafted a Standard Operating Procedure (SOP) for the use of SERE (Survival Evasion Resistance and Escape) techniques on Guantánamo Bay inmates. Senate Armed Services Committee Inquiry Into the Treatment of Detainees in U.S. Custody (November 20, 2008, released April 22, 2009), at xx, available at http://armed-services.senate.gov/Publications/Detainee%20Report%20Final_April%2022%202009.pdf.

The draft “GTMO SERE SOP” “described how to slap, strip, and place detainees in stress positions. It also described other SERE techniques, such as ‘hooding,’ ‘manhandling,’ and ‘walling’ detainees.” *Id.* The Report recounts how one detainee was threatened with military dogs, “deprived of adequate sleep for weeks on end, stripped naked, subjected to loud music, and made to wear a leash and perform dog tricks.” *Id.*

Jan. 6, 2005, at 3-5, available at <http://www.amnesty.org/en/library/info/AMR51/002/2005/en>; Physicians for Human Rights, *Break Them Down: Systematic Use of Psychological Torture by US Forces*, Ch. 3 (2005), available at <http://physiciansforhumanrights.org/library/report-2005-may.html>; Carol D. Leonnig, “Guantánamo Detainee Says Beating Injured Spine; Now in Wheelchair, Egyptian-Born Teacher Objects to Plan to Send Him to Native Land,” *Wash. Post*, Aug. 13, 2005, at A18; Neil A. Lewis, “Fresh Details Emerge on Harsh Methods at Guantánamo,” *N.Y. Times*, Jan. 1, 2005, at A11; Carol D. Leonnig, “Further Detainee Abuse Alleged; Guantánamo Prison Cited in FBI Memos,” *Wash. Post*, Dec. 26, 2004, at A1; Dan Eggen & R. Jeffrey Smith, “FBI Agents Allege Abuse of Detainees at Guantánamo Bay,” *Wash. Post*, Dec. 21, 2004, at A1; Neil A. Lewis, “Red Cross Finds Detainee Abuse in Guantánamo,” *N.Y. Times*, Nov. 30, 2004, at A1; “FBI: Workers Saw Prisoner Abuse at Guantánamo,” *Wash. Post*, Jan. 2, 2009, available at <http://www.cnn.com/2007/WORLD/americas/01/02/Guantanamo/index.html>.

The report details the following abuses, among others, inflicted on detainees at Guantánamo Bay:

- (1) sexual humiliation and abuse of detainees, including the use of fake menstrual blood wiped on a detainee's face,
- (2) use of strobe lights and loud music,
- (3) sleep deprivation,
- (4) forced shaving,
- (5) sensory deprivation,
- (6) death threats,
- (7) strip searched imposed for purposes of humiliation rather than security,
- (8) prolonged stress positions,
- (9) falsification of letters stating that the detainee's mother had been detained and would be interrogated and transferred to GTMO if the detainee did not cooperate.

Id. at pp. 132-140.

The Report notes the use of aggressive techniques before requests for use of those techniques had been approved. *Id.* at pp. 138-139. The Report also details aggressive interrogation techniques being used even after a detainee has apparently been "broken" and was fully cooperative. *Id.* at p. 140.

The Report also details severe physical and psychological problems among the detainees who were subjected to these techniques. *See, e.g., id.* at pp. 140-141.

Respondents have also imposed harsh interrogation techniques on detainees even when there is no reason to believe the detainee is particularly high-value or that he might possess any meaningful intelligence information. For example, Lieutenant Colonel Darryl J. Vandeveld, a former prosecutor at the Office of Military Commissions, filed a declaration in support of the

habeas petition of Mohammed Jawad, a Guantánamo Detainee formerly prosecuted by Lieutenant Colonel Vandeveld. In that declaration, Lieutenant Colonel Vandeveld recounts his discovery that Mr. Jawad “had been subjected to a sleep deprivation program popularly referred to as the ‘frequent flyer’ program,” including “112 unexplained moves from cell to cell over a two week period, an average of eight moves per day for 14 days.” Declaration of Darryl Vandeveld, pp. 8-9, ¶ 19 (filed on 1/21/09 in Case No. 05-cv-2385). Mr. Jawad had been subjected to this mistreatment, Lieutenant Colonel Vandeveld states, even though it was clear that Mr. Jawad – even if guilty of the charges against him – was at worst a low-level foot soldier who would not have possessed any actionable intelligence. Lieutenant Colonel Vandeveld states, “I lack the words to express the heartsickness I experienced when I came to understand the pointless, purely gratuitous mistreatment of Mr. Jawad by my fellow Soldiers.” *Id.*

The Senate Armed Services Committee Report contains the following conclusions, among others:

Conclusion 1: “techniques such as waterboarding, nudity, and stress positions . . . were authorized for use in interrogations of detainees in U.S. custody.” Senate Armed Services Report, at xxvi.

Conclusion 4: “The use of techniques in interrogations derived from SERE resistance training **created a serious risk of physical and psychological harm to detainees.**” *Id.* at xxvi (emphasis added).

Conclusion 13: “Secretary of Defense Donald Rumsfeld’s authorization of aggressive interrogation techniques for use at Guantánamo Bay **was a direct cause of detainee abuse there.**” *Id.* at xxviii (emphasis added).

These conclusions provide more than ample justification to believe that Mr. Idris has

been subjected to severe, harsh, and inhumane conditions of confinement that have created a “serious risk of physical and psychological harm.” *Id.* at xxvi.

The use of solitary confinement is widespread at the Guantánamo Bay Detention Center. A February 23, 2009 report by the Center for Constitutional Rights states that “[s]olitary confinement is the norm for the majority of detainees at Guantánamo.” *See Current Conditions of Confinement at Guantánamo Bay: Still in Violation of the Law*, Center for Constitutional Rights, Feb. 23, 2009, available at http://ccrjustice.org/files/CCR_Report_Conditions_At_Guantánamo.pdf.

The dangers and psychological damage caused by solitary confinement alone – not to mention the many other interrogation techniques used at Guantánamo Bay – is well-established:

Solitary confinement – that is the confinement of a prisoner alone in a cell for all, or nearly all, of the day with minimal environmental stimulation and minimal opportunity for social interaction – can cause severe psychiatric harm. It has indeed long been known that severe restriction of environmental and social stimulation has a profoundly deleterious effect on mental functioning: this issue has been a major concern for many groups of patients including, for example, patients in intensive car units, spinal patients immobilized by the need for prolonged traction, and patients with impairment of their sensory apparatus (such as eye-patched or hearing-impaired patients). This issue has also been a very significant concern in military situations, polar and submarine expeditions, and in preparations for space travel.

Stuart Grassian, M.D., *Psychiatric Effects of Solitary Confinement*, 22 Wash. U. J.L. & Pol’y 325 (2006).

Undersigned counsel have consulted with Dr. Stuart Grassian about the possible psychological effects the conditions at the Guantánamo Bay Detention Center may have upon the detainees.² Dr. Grassian has conducted extensive research and study into the issue of the

² Dr. Grassian does not possess a secret security clearance at the moment, therefore, counsel were unable to discuss specific classified information about Mr. Idris with him. Dr.

psychological effects of stringent conditions of confinement. He has written and lecture on the subject for years as well has provided expert assistance to courts on the issue.

According to Dr. Grassian's unclassified declaration, Exhibit C, (1) prolonged solitary confinement causes serious psychiatric harm, (2) the conditions of solitary confinement at Guantánamo are generally more severe even than those in civilian supermax prisons, (3) accused enemy combatants and accused Al-Qaeda supports have undergone marked psychiatric deterioration while being subjected to confinement and interrogation, (4) the harsh interrogation tactics employed at Guantánamo push towards either massive dependency or else in rage and paranoid mistrust, and (5) Guantánamo confinement will very often create great difficulty in establishing a relationship of trust with potential helpers – including both mental health workers and attorneys appointed to represent the detainee.

The conditions of confinement at the Guantánamo Bay Detention Center may be affecting Mr. Idris to such an extent that he is not able to access the jurisdiction of this Court on his own. The Court should not assume that Mr. Idris's refusal to meet with counsel equates to his refusal to desire the continuation of habeas counsel's representation.

2. Abdulqader Idris is an appropriate next friend.

There is no question that Mr. Idris's brother, Abdulqader Idris, is "truly dedicated to the best interests of the person on whose behalf he seeks to litigate." *Whitmore*, 495 U.S. at 163-64. Mr. Idris grew up with his family in Yemen and lived with them until the time of his departure to Afghanistan in April 2001.

Undersigned counsel's investigator met with many members of Mr. Idris's family, all of

Grassian has previously held a secret security clearance, and counsel are attempting to obtain a current security clearance for Dr. Grassian for use in this case.

whom urgently desire his release and return home. Many members of Mr. Idris' family have expressed their heartfelt desire that undersigned counsel represent Mr. Idris and do everything in their power to defend his interests and obtain his release from his lengthy confinement at Guantánamo Bay.

Abdulqader Idris is in a better position than Respondents, this Court, or undersigned counsel to assess his brother's wishes and interests. Abdulqader unequivocally states his "belief and understanding that Idris, due to his long-standing detention without proper access to lawyers, doctors, or family, lacks the necessary voluntariness to make decisions on his own behalf."

Exhibit A. Abdulqader further states that in his view, "were he not so indisposed, Idris would want me to take legal action on his behalf to secure his release." Exhibit A. Accordingly, Abdulqader has expressly "authorize[d] the Office of the Federal Public Defender for the Northern District of Ohio, and any attorneys assigned by them, to take legal action on behalf of Idris, including defending him zealously in civil and criminal actions and taking any other legal action in US or international venues that is necessary and appropriate to defend his rights under law." Exhibit A.

Accordingly, the signed Next Friend Authorization by Mr. Idris's brother, Abdulqader Idris, is sufficient to permit this action to proceed.

B. This Court Should Not Dismiss Mr. Idris's Petition Until Counsel Has An Opportunity To Meet With Him, Explain His Rights, and Offer Their Assistance; and This Court Should Order Disclosure of Records Relevant To Mr. Idris's Competence.

In the event this Court determines that Abdulqader Idris's Next Friend Authorization may be insufficient to permit this case to proceed, this Court should nevertheless decline to dismiss this petition. At the very least, this Court should (1) grant counsel's Motion for Direct

Contact With Client, and (2) grant counsel's Motion for Disclosure of Medical Records, Interrogation Records, and Records of Conditions of Confinement.

The Motion for Direct Contact With Client could very well resolve any uncertainty that currently exists regarding the petition. As noted in that motion, two other judges of this Court have recently granted similar motions, and those Court Orders promptly resulted in successful attorney-client meetings with a detainee who had previously refused to meet with counsel. In both cases, the detainee – after the opportunity to meet with counsel, be informed of his rights, and hear first-hand counsel's offer of assistance – made the decision to authorize counsel to proceed on his behalf.

Alternatively, this Court should not dismiss Mr. Idris's petition without some assurance as to Mr. Idris's competency and the voluntary and knowing nature of any purported refusal or waiver of his habeas rights. The conditions of confinement and interrogation at Guantánamo Bay, detailed above, combined with Abdulqader Idris's belief that Mr. Idris's circumstances have compromised his voluntary choice, are more than sufficient to cause this Court grave doubt as to Mr. Idris's psychological well-being and competence to waive his rights. These exceptional circumstances at the very least warrant the disclosure to counsel of Mr. Idris's medical records, psychiatric and psychological records, interrogation records, and other evidence of the conditions of Mr. Idris's confinement. Those records will permit this Court to better evaluate whether further medical or psychological evaluation is necessary.

C. Dismissal of Mr. Idris's Petition Would Perpetuate The Grave Injustice of His Seven-Year Illegal Detention Without Charge, Trial, or Adequate Process.

Mr. Idris has now been incarcerated without charge and without adequate legal process for over seven years. During that time he has been subjected to unknown numbers of

interrogations and to unknown harsh interrogation techniques. Respondents denied him access to counsel and to his family for years. Public records indicate that Mr. Idris has repeatedly insisted that he traveled to Afghanistan to teach the Koran, that he had no intention to and did not ever join in any fighting, and that he simply wishes to return home to Yemen, to his family and his former job at the Ministry of Agriculture. *See Exhibit B.*

Mr. Idris's brother and family in Yemen daily mourn his absence and are desperate for his return home. They have urged undersigned counsel to do everything in their power to assist Mr. Idris, to represent his interests, and to obtain his release. Mr. Idris's brother, Abdulqader Idris, has authorized undersigned counsel to represent Mr. Idris, and has expressed his view that Mr. Idris's voluntary choice has been compromised by the over seven years of lawless incarceration and harsh conditions.

In these extraordinary circumstances, it is shameful that the United States Department of Justice has moved to dismiss Mr. Idris's Petition for a Writ of Habeas Corpus and that it continues to seek to deny adequate legal process to Mr. Idris. Dismissal of this petition would constitute a grave injustice. For all these reasons, undersigned counsel respectfully ask this Honorable Court to deny Respondents' Motion to Dismiss.

June 29, 2009

Respectfully submitted,

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