

**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’S REPLY TO GOVERNMENT’S OPPOSITION
TO MOTION TO COMPEL DISCOVERY REGARDING COMPETENCE,
KNOWLEDGE AND VOLUNTARINESS**

In anticipation of an argument by Respondents that the “next friend” authorization of petitioner’s brother is not sufficient for some reason¹, undersigned counsel’s Response to the Motion to Dismiss included a Motion to Compel Discovery Regarding Competence, Knowledge and Voluntariness. It is important to recognize there is literally no evidence currently in the record regarding Mr. Idris’ mental state, other than his brother’s “next friend” authorization.

¹ Respondents claim that the “next friend” authorization provided by Abdul Qader Ahmed Idris (petitioner’s brother) is defective because it does not set forth “a credible basis” for the asserted belief that petitioner lacks the mental capacity to make decisions about the litigation, and further that there is no discussion of Abdulqader’s communications with his brother. Resp. Opp., Doc. 1266, p. 1, 7. No case law is offered in support for the claim that a “next friend” authorization is required to contain such information, and undersigned counsel is unaware of any such case law. It is the position of undersigned counsel that the authorization is adequate as currently composed, and that this Court should reject the additional requirement respondents are seeking to impose upon a “next friend” authorization. However, undersigned counsel is in contact with AbdulqaderAhmed Idris and the rest of petitioner’s family in Sana’a, Yemen, and is willing to supplement the next friend authorization with such additional facts as this Court may require.

Moreover, there is undisputed evidence suggesting that Mr. Idris' mental state could be damaged, as follows: (1) many detainees have been tortured or subjected to "enhanced interrogation techniques," which can lead to a mental state so damaged that an individual may be unable to access the courts; and (2) many detainees have been held in solitary confinement, which can lead to a mental state so damaged that an individual may be unable to access the courts.² Should this Court feel that the "next friend" authorization by petitioner's brother is not sufficient because it does not adequately establish that petitioner lacks the mental capacity to access the courts, this Court should allow discovery to fill in the blanks, rather than dismiss the case.

Moreover, discovery in the areas of torture and "enhanced interrogation techniques" is likely to produce evidence relevant to the issue of petitioner's mental capacity to access the courts. It is beyond meaningful dispute (except perhaps in the minds of counsel for Respondents) that a great number of detainees were subjected to torture, "enhanced interrogation techniques," and brutal treatment generally, at Guantánamo Bay and elsewhere. No accounting in the public record has yet produced statistics demonstrating what percentage of detainees were victimized in this fashion. However, given the wealth of information in the public record that many detainees have been subjected to torture, "enhanced interrogation techniques," and brutal treatment generally at Guantánamo Bay and elsewhere, this Court should grant petitioner's Motion to Compel Discovery regarding interrogation methods, conditions of confinement, and

² Respondents suggest that because petitioner is currently held in non-solitary conditions, that the totality of Dr. Grassian's declaration is "irrelevant" Resp. Opp., Doc. 1266, p. 6. This argument ignores the portions of Dr. Grassian's declaration concerning the mental harm that can be caused by torture and "enhanced interrogation techniques." Significantly, Respondents offer no evidence regarding petitioner's previous conditions of confinement, and oppose discovery in that regard.

psychological and medical records, all of which is directly relevant to the issue of mental capacity to access the courts.

In weighing whether to (1) allow undersigned counsel to proceed based on petitioner's brother's authorization, (2) compel discovery relevant petitioner's mental ability to access the courts, or (3) dismiss petitioner's case, this Court should carefully consider two ways in which the Guantánamo Bay cases are unlike any other habeas cases. First, there is no prior judicial determination that this Court is reviewing. Petitioner has never appeared before a court, despite being held for more than seven (7) years. No judicial officer or appointed attorney has evaluated his mental state in that time; indeed, no judge or lawyer has even spoken to him. The record generated by this habeas case may very well be the only time any judicial officer makes findings regarding his mental state. Second, dismissal in this case is unlike dismissal in a traditional habeas case. Respondents control petitioner's access to the courts, and unsigned counsel's access to petitioner, to an unprecedented degree. Dismissal of this case will be a final determination denying petitioner freedom, possibly for the rest of his life.

CONCLUSION

For these reasons, petitioner Idris Abdu Qadir Ahmed Idris respectfully renews his request that this Court compel discovery regarding competence, knowledge and voluntariness.

July 21, 2009

Respectfully submitted,

/s/Darin Thompson
DARIN THOMPSON (LCvR 83.2(e))
Assistant Federal Public Defender
Office of the Federal Public Defender,
Northern District of Ohio
1660 West Second Street, Suite 750
Cleveland, Ohio 44113
Phone: (216) 522-4856; Fax: (216) 522-4321

/s/Andy Hart

ANDY HART (LCvR 83.2(e))
Assistant Federal Public Defender
Office of the Federal Public Defender,
Northern District of Ohio
617 Adams Street
Toledo, Ohio 43604
(419) 259-7370 Fax: (419) 259-7375
andy_hart@fd.org

/s/Jonathan Witmer-Rich

JONATHAN WITMER-RICH (LCvR 83.2(e))
Attorney at Law
Office of the Federal Public Defender,
Northern District of Ohio
1660 West Second Street, Suite 750
Cleveland, Ohio 44113
(216) 522-4856 Fax: (216) 522-4321
jonathan_witmer-rich@fd.org

Counsel for Petitioner Idris Ahmed Qadir Idris