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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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MAHMOAD ABDAH, <i>et al.</i> ,	:	
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Petitioners,	:	
v.	:	
	:	Civ. No. 04-1254 (HHK)
GEORGE W. BUSH, President of the	:	
United States, <i>et al.</i> ,	:	
	:	
Respondents.	:	
	:	
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EMERGENCY MOTION TO COMPEL ACCESS TO
MEDICAL RECORDS OF PETITIONER ADNAN FARHAN ABDUL LATIF
AND FOR OTHER MISCELLANEOUS RELIEF

By this motion, undersigned counsel seeks immediate access to the medical records for petitioner Adnan Farhan Abdul Latif. Counsel visited with Mr. Latif yesterday at the Guantánamo Bay military prison and fears that Mr. Latif – whose body weight has dropped in the last six weeks from 145 to approximately 107 pounds – is near death. Mr. Latif is *not* on a hunger strike, and the cause of his alarming weight drop appears to be unknown. Mr. Latif is also manifesting signs of schizophrenia, for which he is apparently not being treated.

In addition to access to the medical records, counsel also seeks an order requiring prison officials to provide Mr. Latif with a blanket and a mattress in his cell.

Counsel for Respondents oppose this motion.

INTRODUCTION

1. Mr. Latif is a citizen of Yemen. He was taken into custody by Pakistani security forces at the border of Pakistan and Afghanistan in late 2001. Mr. Latif was subsequently

handed over to the United States military and detained in Afghanistan before being transferred to Guantánamo. He has been held at Guantánamo since January 2002, and is at present living in solitary confinement in Camp 6 of the prison.

2. Mr. Latif filed a petition for writ of habeas corpus in July 2004, alleging that his detention is in violation of the Constitution, laws and treaties of the United States. His case has traveled the same, well-known path as the other habeas matters that were coordinated before Senior Judge Joyce Hens Green in August 2004. Now that the Supreme Court has annulled Congress's attempts at jurisdiction stripping, *see Hamdan v. Bush*, 548 U.S. 557, 584 (2006) (holding that the Detainee Treatment Act of 2005 has no retrospective effect on petitioners' cases); *Boumediene v. Bush*, 128 S. Ct. 2229, 2242 (2008) (holding that the Military Commissions Act of 2007 effects an unconstitutional suspension of the writ), counsel for Mr. Latif anticipates that a habeas hearing will be scheduled before this Court in the near future.

3. Counsel believes, however, that Mr. Latif may not survive until his hearing and that, if he does, Mr. Latif will not be competent to assist in the prosecution of his habeas case. *See generally* Ex. A (Declaration of Marc D. Falkoff).

FACTUAL BACKGROUND

4. Mr. Latif has suffered from serious physical problems since at least 1994, when he was in an automobile accident in Yemen. He sustained grave injuries in the accident, including a broken skull and perforated eardrum, along with damage to his hearing and vision. He spent the next half-dozen years seeking medical treatment in hospitals and clinics in Yemen, Jordan, Pakistan and Afghanistan. Some of his medical records, along with translations, are appended as Exhibit B. Mr. Latif still experiences incessant headaches and balance problems stemming from the injuries he received in the accident. Falkoff Decl. at ¶¶ 4–7.

5. In addition, Respondents have been aware for years that Mr. Latif suffers from serious psychological problems, apparently including schizophrenia. Mr. Latif has told counsel that he was once punished for smearing feces all over his cell. Because Respondents have consistently refused requests for counsel to review Mr. Latif's medical records – even though counsel is in possession of a written consent to view the records, *see* Ex. C – counsel does not know whether Mr. Latif has been offered anti-psychotic, anti-depressant or other psychoactive drugs. Mr. Latif has indicated to counsel that he has never taken any psychoactive medication at Guantánamo. Falkoff Decl. at ¶¶ 13–16.

6. Both in conversations and letters, Mr. Latif has indicated to counsel that he has attempted suicide on multiple occasions while imprisoned at Guantánamo, and that he may do so again in the future. Mr. Latif has repeatedly stated that he feels that death would be more merciful than his current situation. In a letter recently received by counsel, Mr. Latif wrote that he had recently attempted to hang himself. According to the letter, he regained consciousness in a hospital bed, where he was told by doctors that he was lucky to be alive. Counsel has never received any confirmation from Respondents that Mr. Latif has attempted suicide. Falkoff Decl. at ¶ 17.

7. In the past, Mr. Latif has engaged in lengthy hunger strikes and has been subjected to painful force-feeding, at least according to his own accounts. Because Respondents have refused to furnish any medical records, counsel cannot verify Mr. Latif's accounts of his hunger striking. Mr. Latif has told counsel, however, that he abandoned all hunger striking in February 2008. At the conclusion of his strike, he says he weighed approximately 137 pounds. Over the next several months, he says he gained some weight and, as of six weeks ago, weighed approximately 145 pounds. Falkoff Decl. at ¶¶ 18, 22.

8. Beginning approximately six weeks ago, Mr. Latif started having difficulty keeping his food down. He quickly lost a substantial amount of weight. According to Mr. Latif, he began suffering from frequent vomiting, and often observed blood in his urine and vomit. He was seen by a doctor several weeks ago, and apparently was given a thorough examination. All that Mr. Latif was told after the examination was that he had a “serious germ” – an uninformative diagnosis that is surely a result of poor translation by a military interpreter. Mr. Latif says that the only treatment that he was offered was a sedative, which he refused. Falkoff Decl. at ¶¶ 23, 24, 26.

9. Mr. Latif told counsel that his weight, as of the last measurement days ago, was 107 pounds. From counsel’s observations, Mr. Latif likely weighs even less than that, perhaps less than 100 pounds. Mr. Latif looks emaciated and skeletal, like a victim of famine. Falkoff Decl. at ¶ 23.

10. Mr. Latif reports that notwithstanding his dire physical condition, he has been “punished” by having all of the comfort items removed from his cell, including his mattress and blankets, leaving him only with a thin “isomat” to cover the steel of his bunk. Falkoff Decl. at ¶ 25.

11. Mr. Latif believes that he is dying. He does not believe that he will live to participate in his habeas hearing. He is also terrified that the military will begin painfully force-feeding him again – as they did when he was on hunger strike – because they might erroneously believe that he is on hunger strike again. Falkoff Decl. at ¶ 29.

12. As set forth in the accompanying declaration, counsel believes that Mr. Latif’s life is in grave danger. Despite counsel’s requests for specific information relating to Mr. Latif’s

medical condition, Respondents have responded with a blanket refusal to provide any such information. Falkoff Decl. at ¶¶ 28, 31.

13. In light of the urgent nature of the issues presented by this application, counsel for Mr. Latif requests that the Court order immediate access by counsel to records detailing Mr. Latif's medical treatment, meal schedules, punishment, and hospitalization. Counsel also asks the Court to order Respondents to assure that Mr. Latif is provided with a mattress and blankets and that those items will not again be confiscated from him.

14. In addition, because Respondents have, in other Guantánamo habeas cases, filed replies to identical legal arguments in the past, *see, e.g., Al Joudi v. Bush*, 406 F. Supp. 2d 13 (D.D.C. 2005) (granting preliminary injunction ordering access to medical records based on same legal arguments presented below), counsel for Mr. Latif respectfully asks this Court to order a prompt reply to the instant motion and to schedule a conference to discuss the motion by next week at the earliest.

ARGUMENT

15. This Court may issue preliminary injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure to ensure that Petitioners have access to the Court. This Court also has inherent power, under the All Writs Act, 28 U.S.C. § 1651(a), to issue “all writs necessary or appropriate to aid of [its] jurisdiction[] and agreeable to the usages and principles of law.” The Act “empowers a district court to issue injunctions to protect its jurisdiction,” *SEC v. Vision Communications, Inc.*, 74 F.3d 287, 291 (D.C. Cir. 1996); *Env'tl. Def. Fund. v. EPA*, 485 F.2d 780, 784 n. 2 (D.C. Cir. 1973), and “to achieve the ends of justice entrusted to it.” *Adams v. United States*, 317 U.S. 269, 273 (1942). Where “alternative remedies are unavailable,” *Clinton v. Goldsmith*, 526 U.S. 529, 537 (1999), a court may use the Act to order appropriate relief.

16. In considering a request for preliminary injunctive relief, the Court must consider four factors: (1) whether Petitioner would suffer irreparable injury if an injunction were not granted; (2) whether Petitioner has a substantial likelihood of success on the merits; (3) whether an injunction would substantially injure other interested parties; and (4) whether the grant of an injunction would further the public interest. *See Cobel v. Norton*, 391 F.3d 251, 258 (D.C. Cir. 2004). “These factors interrelate on a sliding scale and must be balanced against each other.” *Serono Labs, Inc. v. Shalala*, 158 F.3d 1313, 1318 (D.C. Cir. 1998). “If the arguments for one factor are particularly strong, an injunction may issue even if the arguments in other areas are rather weak.” *City Fed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 746 (D.C. Cir. 1995).

17. When the balance of hardships tips decidedly toward the movant, it will “ordinarily be enough that the [movant] has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation.” *Washington Metro. Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 844 (D.C. Cir. 1977) (quoting *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 740 (2d Cir. 1953)).

18. Here, counsel for Mr. Latif seeks nothing more than to ensure that Mr. Latif’s most fundamental right – to bodily integrity, health and safety – is protected. Without his physical and mental health, Mr. Latif will likewise lose his right of access to the courts to prosecute his habeas petition. *See Bounds v. Smith*, 430 U.S. 817, 824 (1977). Counsel cannot ensure such protections. Respondents, however, have refused to provide counsel with *any* particularized information related to the status of Mr. Latif. Without the disclosure of information related to Mr. Latif’s status and health, counsel’s hands are tied. As a result, Mr. Latif requests a simple and

narrowly-tailored remedy – access to Mr. Latif’s medical records and an order that he be provided with a blanket and mattress.

19. Without a doubt, the situation presented by Mr. Latif is extraordinary. Counsel cannot present an analogous situation where attorneys would be denied basic information about his client’s health if his client were potentially on the precipice of death. At the very least, this blanket prohibition by Respondents to provide information presents “fair ground[s]” for consideration and investigation by the Court. *See Washington Metro. Area Transit Comm’n*, 559 F.2d at 844.

(A) Mr. Latif faces substantial, irreparable harm if immediate relief is not granted.

20. Mr. Latif will suffer irreparable harm if counsel is not permitted to have immediate and meaningful access to his medical records. Mr. Latif risks death or permanent physical injury due to his precipitous weight loss, which may be due to inadequate treatment of either his (unknown to counsel) physical ailments, psychological ailments, or both. No subsequent action by the Court or Respondents can repair that damage.

21. Irreparable harm may be shown where the movant’s health is in imminent danger. *See, e.g., Blackman v. District of Columbia*, 185 F.R.D. 4, 6–7 (D.D.C. 1999); *Wilson v. Group Hosp. & Med. Servs., Inc.*, 791 F. Supp. 309, 314 (D.D.C. 1992). As Judge Kessler stated in her decision in *Al-Joudi*, “where the health of a ... vulnerable person is at stake, irreparable harm can be established.” 406 F. Supp. 2d at 20. In addressing the request for medical records made on behalf of other detainees at Guantánamo Bay, Judge Kessler further stated that, “[w]hile Petitioners do not lack legal competence as children do, they are indeed vulnerable to further physical deterioration, and possibly death, by virtue of their custodial status at Guantanamo and weakened physical condition.” *Id.*

22. Moreover, any medical intervention that Mr. Latif is subjected to may deny him his basic right to be informed of and consent to medical care. Loss of these rights cannot later be restored. The ability of counsel to review Mr. Latif's medical records so as to help him make informed, considered decisions will allow Mr. Latif to enforce those rights, if necessary. Without the limited relief requested, Mr. Latif will suffer serious harm, including possibly death.

(B) Mr. Latif has a substantial likelihood of success on the merits.

23. Courts are empowered to “requir[e] additional measures to assure meaningful access” by *habeas* petitioners “to present their own cases.” *Bounds*, 430 U.S. at 824. Such measures include setting forth affirmative obligations to assure all prisoners meaningful access to the courts. *Id.* Pursuant to this power, in a October 20, 2004 Memorandum Opinion setting forth *habeas* petitioners’ access to counsel, Judge Kollar-Kotelly made clear that “the Government is not entitled to unilaterally impose procedures that abrogate the attorney-client relationship.” Oct. 20, 2004 Memo. Op., *Al-Odah v. United States*, No. 02-0828 (CKK). The Court further held that Respondents may not vitiate petitioners’ right to counsel by imposing restrictions on counsel’s access that “inappropriately burden” the attorney-client relationship, *id.* at 9, and that the Court has statutory authority “to craft the procedures necessary” to enforce petitioners’ right to counsel so they may “present the facts surrounding their confinement to the Court.” *Id.* And, as Judge Kessler explained in *Al Joudi*, “[u]nless Petitioners’ counsel can have access to their clients, and know their 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, it is obvious that their ability to present their claims to the Court will be irreparably compromised.” 406 F. Supp. 2d at 21–22 (“counsel ... must be made aware if their clients are in such fragile physical condition that their future ability to communicate is in imminent danger”).

24. Counsel makes this application for emergency relief because the Government has “inappropriately burden[ed]” Mr. Latif’s right of reasonable access to the courts by refusing to provide any information related to Mr. Latif despite the exigent circumstances presented by his harrowing recent weight loss.

25. Indeed, particularly in light of this nation’s “strong commitment to human rights and . . . clear history of human rights violations against prisoners,” courts have long-held that “judicial protection . . . is particularly appropriate and necessary” where prisoners allege abuses and are limited in their access to the courts. *Kane v. Winn*, 19 F. Supp. 2d 162, 175 (D. Mass. 2004); *see also id.* at 182 (“[E]ven if a [*habeas* petitioner] alleges a sort of violation that rarely occurs, any generally applicable statutes or other laws must be interpreted in light of the overall level of violations occurring in our prisons.”).

26. Without intervention by the Court, counsel will have no effective means of conferring intelligently with Mr. Latif – and, ultimately, the Court – and therefore no means to address substantial issues related to his medical treatment – leaving Mr. Latif “only the right to a meaningless ritual.” *Douglas v. State of California*, 373 U.S. 353, 358 (1963). Counsel for Mr. Latif cannot make any informed decisions with respect to his health or competency, as well as responsive actions by the Government, without immediate access to his medical records.

(C) Issuing immediate injunctive relief satisfies a strong public interest.

27. The public interest in ensuring that Mr. Latif’s counsel has access to his medical records under the dire circumstances presented here is undoubtedly strong. *See United States v. Hastings*, 461 U.S. 527 (1983) (noting that there is a “strong public interest in the integrity of the judicial process”). Without immediate access to the medical records, Mr. Latif’s safety and well-being will be jeopardized. Furthermore, counsel cannot provide adequate representation without

access to the information related to Mr. Latif's treatment and health. Mr. Latif therefore respectfully requests that the Court grant the limited requested relief, as it furthers the significant public interest in ensuring the principles of access to counsel and the Court, as well as the health and safety of an individual held in United States custody.

(D) The relief requested will not injure the Government's interests.

28. As a result of Respondents' refusal to provide the requested information, and the exigent circumstances presented by the current crisis, counsel for Mr. Latif comes before the Court to request extremely limited emergency relief. This request does not substantially injure – or even significantly burden – Respondents' interests.

29. Respondents cannot dispute that they are in possession of Mr. Latif's medical records and that they are easily accessible at the base. Nor can they dispute that they have been required to provide similar records to counsel, either by court order, *see, e.g., Al-Joudi*, 406 F. Supp. 2d at 23, or pursuant to Freedom of Information Act requests and lawsuits.

30. Respondents surely have no interest in keeping Mr. Latif's own medical documents from Mr. Latif's counsel, particularly where Mr. Latif has authorized counsel to procure them. If for some reason Respondents believe that Mr. Latif's medical documents should be treated as classified, the Court may order that the documents be provided to counsel in the Secure Facility, where all other documents in this litigation are kept.

31. Any logistical burdens that the government might entail in photocopying Mr. Latif's medical records are far outweighed by the need of Mr. Latif's counsel to ascertain whether his client – who appears to be on the verge of death – is receiving appropriate medical care. The government's secretarial inconveniences weigh little against Mr. Latif's right not just to have access to the courts, but to the very preservation of his life.

CONCLUSION

For the above-stated reasons and for any other reason that may become known to the Court, Mr. Latif respectfully requests the Court grant the above requested relief.

Dated: August 15, 2008
Guantánamo Bay Naval Base

Respectfully submitted,

/s/

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