

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

FAWZI KHALID ABDULLAH FAHAD AL ODAH,)	
<i>et al.,</i>)	
Plaintiffs-petitioners,)	
)	
v.)	No. CV 02-0828 (CKK)
)	
UNITED STATES OF AMERICA, et al.,)	
)	
Defendants-respondents.)	
)	

DECLARATION OF DAVID J. CYNAMON

I, David J. Cynamon, hereby declare as follows:

1. I am a litigation partner at the firm of Pillsbury Winthrop Shaw Pittman LLP. Along with Matthew J. MacLean, another partner at Pillsbury Winthrop Shaw Pittman LLP, I represent, among others, Khalid Abdullah Mishal Al Mutairi (“Al Mutairi”) and his next friend, Thamer A.M. Al Mutairi (named in the Complaint as Meshal A.M. Th. Al Mutairi). Through his next friend, Al Mutairi filed his complaint seeking habeas corpus and other relief on May 1, 2002. I was engaged to represent Al Mutairi and the other petitioners in this case in May 2006 to replace their prior counsel, Thomas Wilner and Neil Koslowe of Shearman & Sterling LLP. I have traveled to Guantanamo on multiple occasions to meet with the Petitioners.

2. I am authorized to represent Al Mutairi by his next friend pursuant to 28 U.S.C. § 2242. Al Mutairi’s brother has a significant relationship with Al Mutairi, and is truly dedicated to his best interests. It is necessary for Al Mutairi’s habeas action to proceed on the basis of his next friend’s authorization because Al Mutairi is unable to proceed himself due to the toll that years of detention have had on him coupled with the distrust for American lawyers that has been fomented by Guantanamo interrogators.

3. By the time Al Mutairi's original attorneys were first able to meet with him in 2004, he had already been detained for over two years without any access to the outside world. His detention at the hands of the American military had made him deeply distrustful of American attorneys, or anyone purporting to act on his behalf. Although he met initially with the attorneys, Al Mutairi would not sign an authorization, and subsequently refused to meet with anyone.

4. I believe that Al Mutairi's refusal to meet with his attorneys results from his prolonged isolation and detention by the U.S. military, and his resulting distrust of Americans. Moreover, based on information provided by other detainees it has become clear that the reluctance of many detainees to sign attorney authorizations is the result of actions taken by the U.S. military itself to discourage detainees from seeking the assistance of counsel.

5. Thomas Wilner previously filed a declaration ("Wilner Dec."), attached hereto as Exhibit 1, detailing several instances related to him by Petitioners Fouad Al Rabiah and Fayiz Al Kandari in which U.S. interrogators have intentionally sown distrust for American lawyers. For example, an interrogator told Petitioner Al Kandari, "[D]on't trust your lawyers. ... [D]id you know your lawyers are Jews?" Wilner Dec. at ¶ 7. Another interrogator told Petitioner Al Rabiah, "How could you trust Jews? Throughout history, Jews have betrayed Muslims. Don't you think your lawyers, who are Jews, will betray you?" *Id.* at ¶ 11. On another occasion, Petitioner Al Rabiah's interrogator asked him, "What will other Arabs and Muslims think of you Kuwaitis when they know the only help you can get is from Jews?" *Id.* at ¶ 14. Petitioner Al Rabiah's interrogator also warned him that if he consented to be represented by an attorney, he would be kept in Guantanamo forever. *See id.* at ¶ 9.

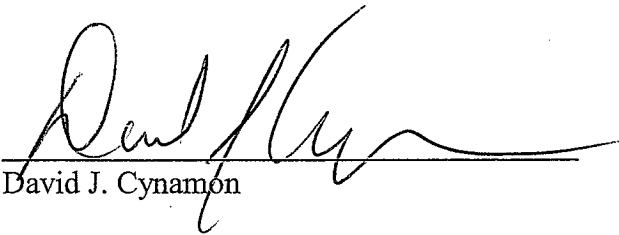
6. Other detainees have stated that their interrogators have told the detainees that their attorneys were not attorneys at all. Upon information and belief, U.S. military members or

persons working on their behalf have also impersonated attorneys in interrogations of the detainees.

7. As word of such instances has spread through the prison population, detainees understandably have become more distrustful of their attorneys and more reluctant to meet with them. Moreover, in spite of multiple decisions from the U.S. Supreme Court in the detainees' favor, it has not been lost on them that no Guantanamo detainee has ever actually been released as a result of any habeas action. There is, therefore, a growing sentiment among the Guantanamo detainees that their attorneys are useless, and that there is no point in meeting with them. The longer these cases drag out, the more burdensome that sentiment will become on the attorney-client relationship, further hampering this Court's constitutional duty to provide a meaningful habeas review.

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

Executed on September 25, 2008.



David J. Cynamon

EXHIBIT 1

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DECLARATION OF THOMAS WILNER

1. My name is Thomas Wilner. I am a partner of Shearman & Sterling LLP and am a member of the Bar of this Court as well as of the Bars of the State of New York, the Commonwealth of Pennsylvania and the Supreme Court of the United States.

2. I, and my colleagues at Shearman & Sterling LLP, represent 12 Kuwaiti nationals, 11 of whom continue to be imprisoned by the United States at the Guantanamo Bay Naval Station.

3. I have now met with the Kuwaiti nationals incarcerated at Guantanamo Bay four times. It has become clear in the course of those visits that U.S. government officials have engaged in practices to destroy the trust of the Kuwaiti nationals in us as their lawyers.

4. On February 15, 2005, I met with one of the Kuwaiti nationals, Fayiz Al Kandari. Mr. Al Kandari told me that his interrogator had told him many times not to trust his lawyers.

5. Mr. Al Kandari described his interrogator as a young, white attractive woman with blonde hair to her shoulders, which Mr. Al Kandari described as a “lion’s cut,” who is of medium height and wears tight civilian clothing. She calls herself “Megan” in the interrogations.
6. Mr. Al Kandari had previously been the only one of the Kuwaiti detainees at Guantanamo who had been allowed a book. He told me that his interrogator had recently taken away his book. He said the interrogator told him “your lawyer said you don’t have books so I am taking away your book. Tell your lawyers that is why I am taking the book. Tell your lawyer to give you a book.” We, of course, are not allowed by the U.S. government to provide books to the detainees.
7. Mr. Al Kandari reported that his interrogator also said to him that he would be tortured if he went back to Kuwait. When he said that his lawyers had assured him otherwise, the interrogator laughed and said “don’t trust your lawyers.” She also said “did you know your lawyers are Jews?”
8. During my last visit to Guantanamo, I again met with Mr. Al Kandari on March 16, 2005. He said that his interrogator, Megan, had come in after my last visit and told him that she was very angry at him because of what he had told his lawyers, and that she would no longer visit him but would send another interrogator.
9. During my last trip, I also met on March 16 with Fouad Mahmoud Al Rabiah, another of the Kuwaiti nationals imprisoned at Guantanamo. Mr. Al Rabiah reported that his interrogator, specifically said, “don’t trust these lawyers.” He said that his

interrogator “told me that if I signed the form to be represented by you, I would be kept here forever.”

10. Mr. Al Rabiah then asked me very politely: “By the way, may I ask what religion you are?” I answered that I am Jewish.
11. Mr. Al Rabiah reported that his interrogator had made numerous comments that he should not trust his lawyers because they are Jewish. At one point, the interrogator said: “Your lawyers are Jews. How could you trust Jews? Throughout history, Jews have betrayed Muslims. Don’t you think your lawyers, who are Jews, will betray you?”
12. Mr. Al Rabiah reported that the interrogator also said to him: “Don’t ever believe that a Jew will help a Muslim unless he gets more out of it than he gives.”
13. Mr. Al Rabiah reported that, at another time, the interrogator said to him: “Your lawyers are Jews. They are from one of the world’s biggest law firms, which is Jewish and represents the Government of Israel.” (Shearman & Sterling LLP is a law firm of diverse membership which represented the State of Israel on a very small trade dispute 15 years ago and has not represented the State of Israel since.)
14. Mr. Al Rabiah reported that, at another time, the interrogator said to him: “What will other Arabs and Muslims think of you Kuwaitis when they know the only help you can get is from Jews?”

15. I asked Mr. Al Rabiah whether the interrogator who said these things to him is a woman using the name Megan. He answered that his interrogator is not a woman, but a man.

16. During my most recent trip to Guantanamo, I met with another of the Kuwaiti detainees, Saad Al-Azmi, and asked whether the government had suggested to him that he should not trust his lawyers. Mr. Al-Azmi grew very embarrassed and refused to answer the question.

17. At approximately 5:30 p.m. on Thursday, March 17, as I was leaving the prison at Guantanamo having completed my scheduled interviews, I was informed that the Administrative Review Board (“ARB”) hearings for the Kuwaiti Detainees were scheduled to begin on March 28. I immediately asked the military escorts to extend my visit to Guantanamo for a few days so that I could meet again with the Kuwaiti Detainees to inform them that their ARB hearings were scheduled and to advise them regarding those hearings. I was put in touch with the Navy Commander who we understand is in charge of logistics at the prison. He said that he was not able to agree to an extension of my visit and that I would need to go through our normal contact at the Justice Department who schedules visits to Guantanamo. I called that person from Guantanamo and spoke to him that evening. He told me that, for logistical reasons, he would not be able to extend my visit at Guantanamo. I then asked him to consider allowing me and others from my firm to come down the following week to meet with the Kuwaiti Detainees to advise them about the ARB hearings. He said that he would consider that request. The following week that request was also denied.

18. After our requests to visit Guantanamo were denied, we requested to speak with the Detainees by telephone. The government denied this request for logistical reasons. We then requested that the government make available a means of sending legal mail on an expedited basis. This request was also denied.

19. During the night of March 17, I wrote a hand-written letter to Mr. Al Rabiah. As mentioned, I had met with Mr. Al Rabiah on Wednesday, March 16, and had expected to meet with him again the following morning of March 17. Mr. Al Rabiah had wanted to discuss his possible ARB hearing during that morning's meeting. When I arrived to meet with Mr. Al Rabiah on the morning of March 17, however, he had been mistakenly returned to his permanent cell the night before, and I therefore could not meet with him. When I learned that Mr. Al Rabiah's ARB hearing would begin on March 28 or soon thereafter, and that I would not be able to extend my visit to meet with him before then, I decided to write him a letter regarding the ARB hearing, which I did the night of March 17.

20. On leaving Guantanamo on the morning of March 18, I gave the letter to the sergeant who escorted us to the airport and asked the sergeant to deliver the letter to Mr. Al Rabiah as soon as possible. Although the sergeant said that he would do so, the letter was not delivered to Mr. Al Rabiah but, instead, was sent to the secure facility outside Washington, where it arrived 20 days later, on April 6. We asked that the letter immediately be sent back to Mr. Al Rabiah at Guantanamo. Given the time required for mail delivery to and from Guantanamo, however, it is likely that Mr. Al Rabiah will not receive that letter until well after his ARB hearing has been completed.

21. On March 25, we submitted a formal written request to the Department of Justice to visit our clients at Guantanamo the first week in May. On March 31, Terry Henry, the Justice Department trial attorney, wrote Neil Koslowe of our office a letter “demand[ing]” explanations of our conduct during prior visits to Guantanamo. In the last paragraph of that letter, Mr. Henry demanded “appropriate explanations . . . prior to scheduling additional visits to GTMO by members of your law firm.”
22. On April 4, 2005, Mr. Koslowe responded to that letter.
23. Mr. Henry responded on April 8, 2005. Mr. Henry made clear in his April 8 letter that the Justice Department would refuse to schedule additional visits by Shearman & Sterling attorneys to Guantanamo until it received additional assurances.
24. On April 11, Mr. Koslowe and I spoke with Mr. Henry by telephone and explained to him that (i) under Paragraph 49 of the Amended Protective Order entered by the Court a party is required to raise with the Court any alleged violations of the Amended Protective Order or the Revised Counsel Access Procedures and to seek appropriate sanctions from the Court; (ii) a party has no right unilaterally to determine that violations have occurred or unilaterally to impose sanctions for those alleged violations; (iii) the government, in other words, has no right unilaterally to determine that the terms of the Amended Protective Order have been violated or unilaterally to deny Detainees access to their counsel on the basis of such allegations.
25. As a result of the government’s refusal to schedule a trip during the first week of May, we were unable to make arrangements to travel to Guantanamo that week, and

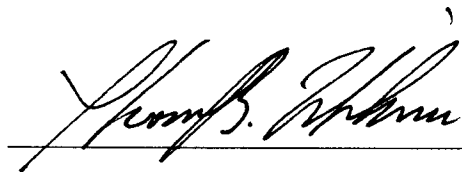
have now requested that we be allowed to visit our clients in Guantanamo the second week of May.

26. On our two initial trips to Guantanamo we had brought with us DVDs from family members of the Kuwaiti nationals which we were allowed to show them. The detainees uniformly told us that they greatly valued these DVDs from their families and that they were very thankful to us as their lawyers for bringing them.
27. The family members also prepared short DVDs to show each of the Kuwaiti detainees during our trip in February 2005. We offered to provide the DVDs to the Justice Department representative in Washington shortly prior to that trip, but he advised us to take the DVDs directly to the military at Guantanamo for security review. We did so and provided the DVDs to the military at Guantanamo when we arrived Monday morning, February 14, 2005, and waited during that trip for the DVDs to be cleared by the military so that we could show them to our clients. Each day during the trip we checked with the military on the progress of their review and were told it was continuing.
28. On the last day of the February trip, the Navy Commander who we understand is in charge of these matters told us that the military had edited some of the DVDs but had not finished reviewing all of them. We told him that we had promised our clients that we would show them the DVDs during this trip and that they would be extremely disappointed if we did not. The Navy Commander said that all of the DVDs would be ready in time for our next trip and that, in the future, we should give the military more advance time to do the security review. We informed our clients that we would

not be able to show the DVDs during the February trip but would do so when we returned in the middle of March.

29. On March 11, three days before our departure for our most recent trip, and after the government knew that we had promised the detainees that we would show them the DVDs on that trip and that they were looking forward to seeing the DVDs on the trip, Terry Henry, the Justice Department trial attorney, told us that we would not be allowed to show the DVDs. The government made no claim that the DVDs posed any security problems. Rather, Mr. Henry said that they were nothing more than “home movies” and that we would not be allowed to show them. We told our clients on the March trip that, despite our earlier promises, we were not able to show them the DVDs from their families. They were extremely disappointed.

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

A handwritten signature in black ink, appearing to read "Thomas Wilner", written over a horizontal line.

Thomas Wilner

Executed on April 20, 2005 in Washington, DC