

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SUHAIL ABDOH ANAM, <i>et al.</i> ,)	
)	
Petitioners,)	Civil Action No. 04-1194 (TFH)
)	
v.)	Honorable Judge Thomas F. Hogan
)	
BARACK OBAMA, <i>et al.</i> ,)	
)	
Respondents.)	

**EMERGENCY MOTION OF PETITIONER MUSA'AB OMAR AL MADHWANI
FOR HUMANITARIAN AND LIFE-SAVING RELIEF**

Petitioner Musa'ab Omar al Madhwani ("Musa'ab"), by and through his undersigned counsel, hereby requests emergency humanitarian relief in the form of an Order directing Musa'ab's custodians to provide him with drinking water and sufficient clothing to keep him warm. In support of this motion, Musa'ab's counsel submit the Declaration of Stephen N. Xenakis, M.D., attached hereto as Exhibit 1, and state the following:

1. Musa'ab Al-Madhwani is a Yemeni national in his eleventh year of imprisonment at the U.S. Naval Station in Guantánamo Bay, Cuba.
2. After a four-day evidentiary hearing, including a full day of testimony by Musa'ab, this Court rejected virtually all of the evidence offered by the Government to support Musa'ab's detention, because that evidence consisted of statements extracted from Musa'ab through torture and coercion by agents of the United States. Dkt. 696 at 5-13; Transcript of Dec. 14, 2009 Hg. at 17-29. As the Court noted, Musa'ab "had endured forty days of solitary confinement, severe

physical and mental abuse, malnourishment, sensory deprivation, anxiety, and insomnia” in the Dark Prison and at Bagram Air Base. Dkt. 696 at 11; Transcript of Dec. 14, 2009 Hg. at 17-20, 25. As this Court found:

Although the names in Afghanistan and Guantánamo changed, the use of threats, that is coercion, did not. As described in petitioner’s classified testimony about his conditions of confinement, which I find to be credible, the United States was involved in the prisons where he was held, and believe to have orchestrated the interrogation techniques, the harsh ones to which he was subject.

Transcript of Dec. 14, 2009 Hg. at 21. It is undisputed that Musa’ab suffers from post-traumatic stress disorder as a result of his treatment by U.S. personnel. Dkt. 696 at 8, 11-12; Transcript of Dec. 14, 2009 Hg. at 25.

3. In its ruling of January 6, 2010, this Court found that Musa’ab is not a threat to the United States and suggested the Government release him. Dkt. 696 at 26. Repeatedly questioning whether there is any real basis for his continued detention, the Court found that Al-Madhwani’s record, including the Government’s own documents, “do[es] not give any basis for his continued detention,” but instead shows he “does not presently pose a threat to the United States,” and is “a lot less threatening” than scores of detainees the government had recently released. *Id.*; Transcript of Dec. 14, 2009 at 10-11, 13. Nevertheless, the Court felt its “hands [were] tied” by the “law as written” and it had no choice but to deny Musa’ab’s petition for habeas corpus. Dkt. 696 at 4.

4. More than three years have passed since this Court’s ruling, and Musa’ab remains imprisoned at Guantánamo. In that time, both of Musa’ab’s parents have died.

5. At the beginning of this year, a new commander assumed control of the prison at Guantánamo. At the same time, the conditions imposed on the prisoners reverted to the harsh conditions that existed when Musa'ab first arrived at Guantánamo.

6. On March 25, 2013, the undersigned counsel spoke with Musa'ab by telephone, with the assistance of translator Felice Bezri. During the telephone call, Musa'ab related the following facts:

- a. Musa'ab has been on a hunger strike for an extended period, to protest the disrespect shown to the Qur'an by Guantánamo guards and the return of the harsh conditions that existed in 2002 and 2003. Musa'ab is consuming only water, and no food.
- b. The degraded conditions at the prison have become so extreme that virtually all of the detainees are participating in the hunger strike as a protest to the treatment being inflicted upon them.
- c. For the past 3 days, prison authorities have denied Musa'ab – and others within his and one other cell block – access to potable water. When Musa'ab and his fellow prisoners requested drinking water, the guards told them to drink from the faucets. The tap water at Guantánamo Bay Naval Station is not potable, and residents of the Naval Station drink only bottled water.
- d. The lack of potable water has already caused some prisoners kidney, urinary, and stomach problems.

e. For the past 10 days, prison authorities have maintained the air conditioning at extremely frigid temperatures, much colder than ever before. The cotton clothing provided to Musa'ab is insufficient to keep him warm under these super-cooled conditions.

7. Counsel are particularly concerned that the lack of potable water, coupled with the ongoing hunger strike, could cause Musa'ab and other prisoners serious and potentially life-threatening physical harm.

8. Dr. Stephen N. Xenakis, Brigadier General (Ret.), a psychiatrist and former Senior Adviser to the Chairman of the Joint Chiefs of Staff, testified before this Court as an expert witness during Musa'ab's habeas hearing in October 2009. Dr. Xenakis believes that advising these detainees to drink water from the faucet sets them up for gastrointestinal infections and a quick demise, because their metabolic status has been severely compromised and their medical and physiologic conditions are significantly impaired. Ex. 1, Xenakis Decl., ¶ 4.

9. In addition, Dr. Xenakis believes that the reversion to the harsh conditions that prevailed in 2002 and 2003 could trigger in Musa'ab the symptoms of post-traumatic stress disorder linked to the effects of his torture. *Id.* at ¶ 5.

10. Dr. Xenakis is willing to testify before the Court in support of this Emergency Motion. *Id.* at ¶ 6.

11. Whether the prison authorities have deprived Musa'ab and his fellow prisoners of potable water, and have caused the prison facility to be excessively cold

without providing adequate clothing, in an attempt to break the hunger strike or for some other reason, this Court should not condone or tolerate such inhumane treatment.

12. On March 26, 2013, Patricia Bronte, Mari Newman, and Darold Killmer, counsel for Musa'ab, spoke with Respondents' counsel Andrew Warden, David Avila, Terry Henry, and Ron Wiltsie, in an effort to resolve this Emergency Motion without the need for the Court's intervention. Mr. Warden stated that he would contact the Department of Defense immediately and then call Musa'ab's counsel, but Mr. Warden was unwilling to agree that the prisoners would be given potable water without first speaking with the Department of Defense. As of the filing of this Emergency Motion, Musa'ab's counsel had not yet heard back from Respondents' counsel.

13. Nine prisoners have already died in captivity at Guantánamo Bay Naval Station. Musa'ab and his counsel request this Court's urgent intervention to prevent more deaths.

14. Absent immediate Court attention and intervention into this life-threatening circumstance, irreparable injury will occur. Petitioner requests an immediate hearing into the facts and circumstances described herein.

Wherefore, Petitioner Musa'ab Omar al Madhwani respectfully requests that this Court order his custodians to provide him and others in the prison with potable water and adequate clothing, to maintain the facility at an appropriate temperature, and grant such other and further relief as the Court deems just.

Respectfully submitted,

s/ Mari Newman

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Attorneys for Petitioner Musa'ab Omar Al Madhwani

March 26, 2013

CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2013, I caused the foregoing Emergency Motion of Petitioner Musa'ab Omar al Madhwani for Humanitarian and Life-Saving Relief to be delivered to the below-listed counsel of record in the above-captioned matter through the CM/ECF system:

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s/ Lauren Fontana
