

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

**IN RE GUANTANAMO BAY
CONTINUED ACCESS TO COUNSEL**

FILED ELECTRONICALLY

Civil Misc. No. 12-mc-398 (RCL)

This Document Relates To:

**HAYAL AZIZ AHMED AL-MITHALI v.
OBAMA *et al.*,
No. 05-cv-2186 (ESH)**

**PETITIONER'S EMERGENCY MOTION FOR ENFORCEMENT
OF THE COURT'S ORDER DATED JULY 11, 2013
REGARDING DETAINEE ACCESS TO COUNSEL**

On July 11, 2013, the Court issued an Order amending the Protective Order issued by Judge Hogan to require the use of “the modified search procedure identified by Admiral Wash . . . Specifically, guards shall be limited to grasping the waistband of the detainee’s trousers and shaking the pants to dislodge any contraband.” Order, dated July 11, 2013 (Dkt No. 46) (“the Counsel Access Order”).

Counsel has a telephone call scheduled with Petitioner tomorrow, July 17, 2013. This afternoon, counsel for Respondents sent an email, attached hereto as Exhibit A, stating that because the government “will shortly be seeking an immediate stay” of the Counsel Access Order, “DoD has informed us that it is not in a position to apply the Court’s order with respect to your scheduled telephone calls [*sic*] tomorrow.” Counsel for Respondents requested that counsel for Petitioner either consent to the use of genital

searches or postpone the scheduled telephone call. Counsel for Petitioner declined to consent or to postpone the telephone call.

To the best of counsel's knowledge, the Counsel Access Order has not been stayed and is therefore in effect and binding upon the government, including the Department of Defense. Because the Order required the Department of Defense to revert to a previously used protocol, there is no reason why they should not comply with it. Respondents' unilateral assertion that they will not comply with the Counsel Access Order is yet another example of their efforts "seemingly at every turn . . . to deny or to restrict Guantanamo detainees' access to counsel." Memorandum Opinion on Counsel Access, dated July 11, 2013 (Dkt No.47) at 24.

Because the telephone call between counsel and Petitioner is scheduled for tomorrow, Petitioner respectfully requests that the Court immediately issue an order requiring the government to comply with the Counsel Access Order or face significant sanctions for contempt.

A proposed order is attached.

Dated: July 16, 2013
New York, N.Y.

Respectfully submitted,

DEBEVOISE & PLIMPTON LLP

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Counsel for Petitioner Hayal Aziz Ahmed Al-Mithali

Cowan, Jennifer R.

From: Henry, Terry (CIV) <Terry.Henry@usdoj.gov>
Sent: Tuesday, July 16, 2013 2:10 PM
To: Cowan, Jennifer R.; Bhaskaran, Rushmi
Cc: Barish, Daniel (CIV); Warden, Andrew (CIV); Wiltsie, Ronald (CIV)
Subject: Scheduled Telephone Call with Mr. al-Mithali

Dear Counsel:

I apologize for the short notice, but I am writing regarding your scheduled telephone call tomorrow with Mr. al-Mithali (ISN 840). First, I understand from DoD that you have requested that your call be rescheduled for a later time tomorrow. DoD is considering that request.

Second, please be advised that the government will shortly be seeking an immediate stay of Judge Lamberth's July 11, 2013 order concerning, among other things, modification of JTF-Guantanamo detainee search procedures. Given the timing of the order and other factors, DoD has informed us that it is not in a position to apply the Court's order with respect to your scheduled telephone calls tomorrow. Accordingly, should you wish to proceed with your scheduled call tomorrow, the search and other procedures utilized by JTF-Guantanamo in the move of Mr. al-Mithali to the telephone call site will need to be those standard procedures currently in use, and we would ask that you consent that JTF-Guantanamo may utilize those procedures for the call. If you cannot consent to the use of such procedures, we would ask that you postpone the telephone call for at least several days pending further action on the forthcoming motion to stay.

If you wish to postpone your call, please let us know as soon as possible, and cc Angela Weidenbenner of DoD (angela.weidenbenner@osd.mil) on your response. Otherwise, please indicate your consent as requested above. If you proceed with the call, DoD will contact you regarding your request to move it to tomorrow afternoon.

Regards,

*Terry M. Henry
Assistant Branch Director
Civil Division, Federal Programs Branch
U.S. Department of Justice
Tel. 202.514.4107*

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[PROPOSED] ORDER

Upon consideration of Petitioner's Emergency Motion For Enforcement Of The Court's Order Dated July 11, 2013 Regarding Detainee Access To Counsel it is hereby:

ORDERED that the motion is GRANTED; and it is

FURTHER ORDERED that Respondents are directed to comply with the Order dated July 11, 2013 and limit their search of Petitioner before and after his telephone call with counsel on July 17, 2013 in compliance with that Order; and it is

FURTHER ORDERED that if Respondents fail to comply with that Order, they will be found to be in contempt and face appropriate sanctions.

IT IS SO ORDERED.

Dated: _____

ROYCE C. LAMBERTH
Chief Judge
United States District Court