

FILED WITH THE  
COURT SECURITY OFFICER  
CSO: *[Signature]*  
DATE: *2/4/09*

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

MUHAMMED KHAN TUMANI, <i>et al.</i> ,	)	
	)	
	)	
Petitioner,	)	
	)	
v.	)	Civil Action No. 05-cv-526 (RMU)
	)	
GEORGE W. BUSH, <i>et al.</i> ,	)	
	)	
	)	
Respondents.	)	
	)	

**PETITIONER'S EMERGENCY MOTION FOR  
INDEPENDENT PSYCHIATRIC AND MEDICAL EVALUATION,  
PRODUCTION OF MEDICAL RECORDS AND ADDITIONAL URGENT RELIEF**

Petitioner, Mohammed Khan Tumani, needs help immediately. He is mentally and physically at a breaking point and the undersigned counsel believe there is a serious risk that, absent intervention by the Court, there will be irreparable injury to Petitioner and to his ability to participate in his *habeas* action. For these reasons, counsel, on behalf of Petitioner, respectfully and urgently move this Court for an order (1) specifying that Petitioner be transferred from solitary confinement in Camp VI to Camp IV; (2) allowing him to see his father, who is also incarcerated at Guantanamo and is a co-petitioner in this case, and from whom Petitioner has been separated for seven years; (3) providing for an independent psychiatric and medical evaluation of Petitioner; (4) requiring that Petitioner's medical and mental health records be produced; and (5) prohibiting further interrogations of Petitioner pending the production of his medical records and the outcome of his psychiatric and medical evaluations.

Pursuant to Local Rule 7(m), Petitioner's counsel have conferred with counsel for Respondents concerning this motion, but counsel have been unable to reach agreement.

**I. Background**

Mohammed Khan Tumani's circumstances are nothing short of tragic. He left his home in Syria in June of 2001. He did not want to leave – he was a teenager with one year left to finish high school. Mohammed left because his father made the decision to move the family. As a result, ten family members, including Mohammed's 67 year-old grandmother, left the country together. They were in Afghanistan by July and by the first week of September 2001, Mohammed's aunt and her children, including an eight month old baby, had joined the group. Unfortunately, within a week of his aunt's arrival, it was 9/11. Not long thereafter, amid the chaos of war, Mohammed and his extended family fled Afghanistan for Pakistan, where Mohammed and his father were ultimately taken into custody by the Pakistanis and subsequently turned over to U.S. authorities. Mohammed was only 17 years old at the time.

In the early days of his detention, Mohammed was subjected to brutal physical and psychological abuse. Much of this was aimed at forcing a confession that he and his father were involved in al-Qaeda. As Mohammed has previously described:

During our stay in the Pakistani prison, we were subject to beatings and harsh torture. The torture led to my nose being broken; you can see it in front of you now.

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During our stay in the American prison in Kandahar, we were subject to torture. The reason was that they wanted us to say that we were from al Qaida or the Taliban by force. My father's forehead was fractured and the Red Cross saw this and wrote a report. My left hand was fractured and I suffered many diseases as well and there were also other methods of psychological pressure and fatigue like sleep deprivation for long hours and not going to relieve yourself . . .

\*\*\*

During our stay in [redacted by the government] we were subjected to bad treatment and the reason was so that we could say, by force, that we were from al Qaida or the Taliban. . . . [O]ne of the interrogators brought two wires connected to electricity and said that if you do not say that you and your father are from al Qaida or Taliban, I will place these in your neck.

*See* Petitioner's unclassified 2005 CSRT Transcript and Exhibit 1, Letter to Secretary Gates, dated Aug. 20, 2008. Mohammed was also threatened with being rendered to Egypt and Jordan, and told that his family members would be killed, or were already dead. *See* Exhibit 1.

In 2002, Mohammed was transferred to Guantanamo Bay, where he was subjected to abusive and coercive interrogation techniques, including being forced to sleep in a completely bare cell that "didn't even have a cot;" being deprived of sleep; being deprived of food; being subjected to constant noise 24 hours a day; not being allowed to pray; being told that he should convert to Christianity; and being doused with ice and cold water. *Id.*

Isolation has also been used as a continual method of coercion against Mohammed. He is currently in isolation in Camp 6, where he has been detained for at least a year, because interrogators are still trying to compel him to testify against his father. As Mohammed told his counsel in April 2008, "[T]hey want me to lie about my father, but I will never do it." He lamented that he had not seen his father and that he just wanted to be re-united with him and to be able to speak with him again. *Id.* However, interrogators have repeatedly told him that he must "cooperate" if he wants to be together with his father. *Id.*

Mohammed's detention and abuse have continued for years despite the fact that interrogators recognized long ago that they had no reason to hold Mohammed. As indicated in an interrogation report concerning Mohammed on January 7, 2003:

Source has been fully exploited for intelligence purposes to the best of my knowledge there are no more outstanding [illegible] levied against this source. Source is recommended for the Tier Three Team, source is *not* a threat to the United States.

*Source should not be kept here just because his father may have to stay.*

Memorandum by Senior Reports Office, Interrogation Section, JFT GITMO, attachment R15 to Factual Return filed on July 18, 2005, at 3 (emphasis added).

Mohammed's isolation, coupled with the history of physical and mental abuse recounted above, has taken a serious emotional toll on him over the years. When counsel met with Mohammed nearly three years ago on May 22, 2006, our conclusion was that he was faring poorly. He is a very intelligent young man and, not surprisingly, he is very anguished. It was extraordinarily difficult to engage him in any conversation at all – often he was completely withdrawn – and it was nearly impossible to engage him in conversation in a way that would allow us to prepare for his *habeas* action constructively.

The increasingly damaging effects that isolation and abuse are having on Mohammed's ability to function became more readily apparent in late December 2007. At that time Mohammed placed several letters in the legal mail system that had been smeared in and contained human feces. In March 2008, we received reports from other detainees that Mohammed was banging his head against the walls of his cell for hours on end and that he was smearing his cell with excrement. On April 25, 2008, we sent the following email to counsel for Respondents voicing our growing concern for Mohammed's condition:

We have been following-up with regard to Mr. Tumani (ISN 312). Given the information we have obtained, Elizabeth, Eldon, Gita and I have all become very seriously concerned that Mr. Tumani's mental condition is declining rapidly. We request that you provide us with any information you can regarding the status of his mental health. We also request that the government do everything in its power to assure, and to confirm with us, that Mr. Tumani is receiving proper medical treatment.

See Exhibit 2, email to Andrew Warden. The government has not responded to this correspondence.



Counsel met with Mohammed again on April 28, 2008. It continued to be extremely difficult to engage Mohammed in any discussion of his case. Mohammed's condition appeared to us to be rapidly deteriorating and in need of immediate attention. After considerable discussion about how to proceed and what could be done for Mohammed, we sent a letter to Secretary of Defense Gates urgently requesting improved treatment and making the following points regarding Mohammed's condition:

We frankly believe that [Mohammed's] physical and emotional state is becoming ever more delicate. Further harsh treatment, including denial of contact with this father, is likely, in our judgment, to cause damage from which there can or will be no recovery.

Given the physical and emotional state of our client, we believe it is imperative that the authorities at Guantanamo take steps to ameliorate the conditions of his confinement and provide appropriate physical and mental health care.

*See Exhibit 1.* The government has not responded to this correspondence.

Counsel was able to see Mohammed again in November and December 2008, and January 2009. Tragically, his mental condition has deteriorated well beyond where it was in April 2008. A declaration from counsel is attached describing these visits. *See Exhibit 3, Affidavit of Gitanjali S. Gutierrez (filed under seal).* In short, Mohammed's condition has deteriorated to the point where he attempted suicide in late December. Moreover, while he strongly and unequivocally wants to pursue his habeas challenge to his detention, he exhibited highly anxious and frenetic behavior during attorney-client meetings, and was completely unable to focus or maintain concentration long enough to engage in any productive work on his case.

Ms. Gutierrez's observations and conclusions have been confirmed by recent correspondence received from another detainee who is being held in a cell near Mohammed. In

a letter written in December 2008, the detainee made the following observations and request, which underscores the urgency of Mohammed's condition:

Third: And this is most important, and I want you to publicize it as fast as possible. The man called here Muhammad Nassir Khantomani [sp] committed a suicidal act on December 20<sup>th</sup>, Friday at six thirty, by cutting veins in his left hand in protest of many thing among them (1) the general current state of abuse (2) his detention in Cuba even when he was seventeen years old (3) separating him from his father (4) his health condition (5) protesting many other things...

I provide you with details of the story: At six thirty, I was asleep and suddenly heard the cries of a female soldier...the voice of a man who does not know what he is saying and I looked and saw more than 25 soldiers heading towards Muhammad's cell and after a short while I saw them transporting him on a stretcher while his left hand bleeding and we asked the soldiers about what happened and they said that he cut his hand...but thanks be to God he is still alive but his hand is all filled with puss and I asked him when he returned what did you do and he responded with details. He wrote with his blood on the walls "America the State of Oppression" by way of protesting the current injustice that befell him. In fact, Muhammad is mentally fatigued and he began to talk...like he did before. I hope they return him to his father as soon as possible and that they are working on his case externally because I truly consider him semi-insane.

...Try to publicize this incident quickly and I am responsible for its soundness and the news of this incident have reached the Department of Defense. Muhammad asked for Guita [sp] to be contacted but they did not respond to his request, they placed him on iron and deprived him of eating and drinking. He did what he did only after he was placed under extreme pressure by the interrogator who told him to do this in order to protest torture. Recently, they have been taking him to interrogation almost on a daily basis and for long periods. And they applied on him some methods of psychological torture when I wrote them down I felt that my soul is going out with each word I inscribe. Please respond to me as fast as you can after you get this letter.

Excerpt from Detainee Letter (unclassified).<sup>1</sup>

Most recently, on February 5, 2009, the day before this filing, counsel had a classified phone call with Mohammed in an attempt to discuss his traverse. Counsel was alarmed at how much further he had deteriorated since January. Most of the call was consumed with discussing his psychological state and physical injuries because of his conditions as well as a recent incident of abuse, and his continuing despair over being separated from his father. Although he asked questions about his case and wanted to know how it was progressing, he was completely unable to engage in any substantive discussion.

## II. Argument

The Supreme Court has found that *habeas* petitioners like Mohammed Khan Tumani have a constitutional right of access to the courts. See *Boumediene v. Bush*, 553 U.S. \_\_\_\_ (2008). Moreover, this access must be “adequate, effective, and meaningful.” *Bounds v. Smith*, 430 U.S. 817, 821-22, 97 S.Ct. 1491, 52 L. Ed. 2d 72 (1977); see also *Al-Joudi v. Bush*, 406 F. Supp. 2d 13, 22 (D.D.C. 2005) (“[T]he public interest will be served by ensuring that habeas petitioners have access to counsel so that they can meaningfully challenge their detention, and the courts can adjudicate their claims.”). As this Court held in *Husayn v. Gates*:

Requesting copies of Zubaydah’s medical records and staff records regarding Zubaydah’s seizure-related episodes and being able to secure independent expert assessments of the data in the records is a legitimate and important effort to provide effective representation and present the court with appropriate information affecting the lawfulness of his detention.

Memorandum Opinion and Order, *Husayn v. Gates*, No. 08-1360, at 7, Dkt. No. 53 (D.D.C. Nov. 28, 2008); see also *Zuhair v. Bush*, No. 08-864, Dkt. No. 111 (D.D.C. Dec. 22, 2008) (ordering

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<sup>1</sup> Counsel received the English translation of this letter on February 1, 2009.

independent medical evaluation and medical records be produced); Minute Order, *Batarfi v. Bush*, No. 05-409 (D.D.C. Aug. 20, 2008) (granting motion allowing independent psychologist to accompany counsel to client interviews granted); Order, *Al-Shibh v. Bush*, 06-1725, Dkt. No. 85 (D.D.C. Jan. 16, 2009) (independent psychological examination allowed).

Mohammed is under extraordinary mental pressure, and his mental condition has been deteriorating for years. The signs and effects of his deterioration have been documented and reported to the government to no avail. Mohammed's mental state has now reached the point where he is engaging in life-threatening behavior, and cannot communicate effectively with his attorneys about his case. *See* Exhibit 3. As a result, Mohammed is currently unable to participate in his *habeas* action in any meaningful way, despite his express and long-standing desire to pursue his *habeas* case and challenge his detention, and he may also succeed in his attempts to do serious harm to himself. This Court should act before Mohammed's "ability to present [his] claims to the court is irreparably compromised." *Husayn* at 6 (quoting *Al-Joudi*, 406 F. Supp. 2d at 22).

Under the circumstances, counsel believes that several specific elements of relief are warranted. First, in order to address the crisis of his current state, Mohammed needs to be removed from isolation and transferred to Camp IV, where conditions are less severe, and to be allowed to visit his father, from whom he has been separated now for more than half a decade. Mohammed's medical records should also be produced, and he should receive an independent psychiatric and medical evaluation – measures that will allow counsel and the Court to fully assess "whether and to what extent Petitioner's medical condition threatens to undermine his right to *habeas*." *Id.* at 3. Lastly, while the evaluations are pending, in order to preserve the *status quo* and prevent further deterioration of Mohammed's condition, all interrogations of



Mohammed should cease. While there is no guarantee that these steps will stop or reverse Petitioner's decline, they are the minimum steps counsel believe may prevent irreparable legal, mental and physical harm to Mohammed.

Wherefore, Petitioner respectfully urges that the Court grant his motion for an independent psychiatric and medical evaluation, production of medical records and additional urgent relief.

Dated: February 6, 2009

Respectfully submitted,



Pardiss Kebriaei (pursuant to LCvR 83.2(g))  
Gitanjali S. Gutierrez (pursuant to LCvR 83.2(g))  
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*Attorneys for Petitioner*

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	)	
Respondents.	)	
	)	

**PROPOSED ORDER**

The Court, having fully considered Petitioner’s Emergency Motion for Independent Psychiatric and Medical Evaluation, Production of Medical Records and Additional Urgent Relief, hereby **ORDERS** that the Motion is **GRANTED**.

Respondents shall:

- 1) Transfer Petitioner to Camp IV;
- 2) Allow Petitioner to visit his father;
- 3) Produce all of Petitioner’s medical and mental health records within 30 days;
- 4) Allow Petitioner’s counsel to obtain independent psychiatric and medical evaluations of Petitioner; and
- 5) Cease interrogations of Petitioner while the evaluations are pending.

**SO ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Ricardo M. Urbina  
United States District Judge

# EXHIBIT 1

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August 20, 2008

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

The Honorable Robert M. Gates  
Secretary of Defense  
United States Department of Defense  
1000 Defense Pentagon  
Room 3E880  
Washington, D.C. 20301-1000

**Re: Mohammed Kahn Tumani (ISN No. 312)**

To The Honorable Secretary Gates:

We are counsel to Mohammed Khan Tumani (ISN. No. 312), who is currently a prisoner under your authority at the Guantanamo Bay Naval Station. Based upon our most recent visit with our client, we are writing to express grave concern about his treatment. We believe that this treatment is inappropriate and is taking a significant toll on his physical and emotional condition. We urge you to take all necessary steps to avoid long-lasting and potentially irreversible and irreparable harm to this young man.

Like many prisoners at Guantanamo, our client has been held for more than six years. He was arrested and detained, along with his father, Abd Al Nisr Khan Tumani (ISN No. 307), when he was only seventeen years old. During much of his incarceration, he has been held in isolation, not allowed access to his father and repeatedly pressured by interrogators to tell them that his father was associated with al-Qaida or the Taliban. The years have taken their toll, and we think it fair to say that they have left Mohammed in a state of despondency and despair.

Mohammed Khan Tumani left his home in Syria for Afghanistan in June of 2001. He did not go to Afghanistan to fight or to become a terrorist. He was seventeen, close to completing his education and about to start life on his own. Leaving Syria was not what he wanted to do. He went because his father made the decision to move the family, and, as was their custom and tradition, the family was loyal to the father's wishes. As a result, ten family members, including Mohammed's 67 year old grandmother, made the trip, and, by July, they were in Afghanistan. Subsequently, Abd Al Nisr Khan Tumani brought his sister-in-law to Afghanistan as well. By the first week of September 2001, Mohammed's aunt and her children, including an eight month old baby, had joined the group. Unfortunately, within a week of his aunt's arrival, it was 9/11. Not long thereafter, Mohammed and his extended family fled Kabul.

We think that, if there were any doubt about Mohammed's circumstances, and why his family was trying to flee Afghanistan in the fall of 2001, they were eloquently dispelled by his father's testimony at the Combatant Status Review Tribunal hearing in 2004. His father described some of the circumstances of the family's flight from Afghanistan as follows:

The terrorist as you know, and as the 9/11 incidents proved to you, don't care about death, on the contrary, they yearn for it. As for me, I fled hoping to save



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myself and my family from death and when we fled, we left all our possessions in Afghanistan, and we had only our civilian clothes that we were wearing when we left, and our official papers and a little bit of money. We fled from war and death to save ourselves . . . and I would like you to imagine for a moment the scene of me, my son, and my old mother and the rest of my family in that terrible time and those harsh moments, how the look of each of us was. We didn't have a home to house us; we didn't have anybody to help us . . . . People abandoned us and we were looked at as merchandise that could be bought and sold. I am asking you, is this the picture in your judgment the picture of terrorists or is it the picture of refugees fleeing, in fear for their lives.

Notwithstanding such testimony, both Mohammed and his father were determined to be "enemy combatants." In Mohammed's case, this determination was made largely upon the basis of the dubious testimony of another detainee, who was, according to press reports, referred to in an FBI memo as a "notorious liar." This detainee placed Mohammed at an al-Qaida training camp in Afghanistan in April, 2001, even though this was impossible, since Mohammed did not arrive in Afghanistan until July, 2001. Nonetheless, on the basis of such "evidence," both father and son remain prisoners at Guantanamo to this day.

Since his capture, Mohammed's life has been one of unremitting harshness and isolation. At his CSRT hearing, Mohammed related much of the brutality of his and his father's treatment on their way to Guantanamo:

During our stay in the Pakistani prison, we were subject to beatings and harsh torture. The torture led to my nose being broken; you can see it in front of you now.

\*\*\*

During our stay in the American prison in Kandahar, we were subject to torture. The reason was that they wanted us to say that we were from al Qaida or the Taliban by force. My father's forehead was fractured and the Red Cross saw this and wrote a report. My left hand was fractured and I suffered many diseases as well and there were also other methods of psychological pressure and fatigue like sleep deprivation for long hours and not going to relieve yourself . . .

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During our stay in [redacted by the government] we were subjected to bad treatment and the reason was so that we could say, by force, that we were from al Qaida or the Taliban. . . . [O]ne of the interrogators brought two wires connected to electricity and said that if you do not say that you and your father are from al Qaida or Taliban, I will place these in your neck.

At Guantanamo, while the worst excesses of the early years seem to have been mitigated, conditions have been bleak. As reflected in the unclassified notes from the meeting with our client on April 28, 2008, our client told us that he has been IRFed "a hundred times." He said he was recently hit on the upper lip, and his left wrist was broken. Once, he said, interrogators put a knife on the table and said they would cut him unless he talked about his dad. They also

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threatened, he affirmed, to send him to Egypt or Jordan for torture, unless he talked. He complained that he had been held in isolation for months on end; forced to sleep in a cell that was empty and didn't even have a cot in it; deprived of sleep; not given food, or given food that had dirt and other things in it that made it inedible; subjected to noise-makers, with a sound like a "vacuum cleaner," twenty-four hours a day; not allowed to pray and told he should convert to Christianity; and placed in ice and cold water.

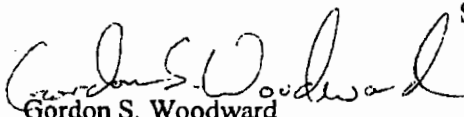
Even with this litany of mistreatment, the worst part of Mohammed's imprisonment has been his isolation from his father and the unrelenting efforts of prison interrogators to force him to implicate his father as a member of al-Qaida or a supporter of the Taliban. "They want me to lie about my father," he told us in April, "but I will never do it." He lamented that he hadn't seen his father, presumably held quite nearby, and that he just wanted to be re-united with his father and to be able to speak with him again. However, interrogators have repeatedly told him that, if he wants to be together with his dad, he must "cooperate." His failure to implicate his father as associated with al-Qaida or the Taliban has meant that Mohammed continues to sit alone in cell 23 hours a day, increasingly losing hope of ever being able to lead a normal life with what is left of his family.

It is not surprising in these circumstances, after years of deprivation and coercion, that Mohammed is not faring well. Despairing, as he told us, that he is "living in this disaster," he seems to be increasingly acting out and perhaps actively putting himself in situations where prison guards are likely to respond with force and harsh, punitive measures. We frankly believe that this is seriously jeopardizing his physical and emotional condition. Further harsh treatment, including denial of contact with this father, is likely, in our judgment, to cause damage from which there can or will be no recovery.

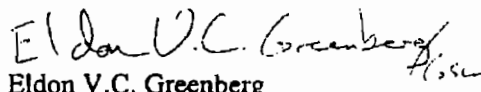
Given Mohammed's physical and emotional state, we believe it is imperative that the authorities at Guantanamo take steps to ameliorate the conditions of his confinement and provide appropriate physical and mental health care. Mohammed has pleaded with us, "Tell them to stop torturing me." Whether one characterizes what has happened to Mohammed as "torture" or not, however, is not the point. It has been needlessly coercive and cruel. A young man has been pressured without cease to testify against his father and denied the family contact that is so desperately important to any young person. We urge you, given your authority over the prison, to do what is necessary to address the denial of humane treatment and ensure that Mohammed Tumani, who has already suffered needlessly for years, does not become another permanent casualty of the "war against terror."

Thank you for the consideration of our request. We look forward to your prompt response.

Sincerely,



Gordon S. Woodward  
For SCHNADER HARRISON SEGAL &  
LEWIS LLP



Eldon V.C. Greenberg  
For GARVEY SCHUBERT BARER

## **EXHIBIT 2**

**Woodward, Gordon**

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**From:** Woodward, Gordon  
**Sent:** Friday, April 25, 2008 11:35 PM  
**To:** 'Warden, Andrew (CIV)'  
**Cc:** 'Gitanjali Gutierrez'; 'Eldon Greenberg'; Ainslie, Elizabeth  
**Subject:** Tumani

Andrew:

We have been following-up with regard to Mr. Tumani (ISN 312). Given the information we have obtained, Elizabeth, Eldon, Gita and I have all become very seriously concerned that Mr. Tumani's mental condition is declining rapidly. We request that you provide us with any information you can regarding the status of his mental health. We also request that the government do everything in its power to assure, and to confirm with us, that Mr. Tumani is receiving proper medical treatment.

Thank you for your attention to this important issue.

Gordon

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## **EXHIBIT 3**

**It is intended that the Declaration of Gitanjali S. Gutierrez, attached as Exhibit 3, will remain under seal to protect petitioner's privacy and the attorney-client privilege.**