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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHARQAWI AL HAJJ (ISN 1457),

Petitioner,

v.

DONALD J. TRUMP, *et al.*,

Respondents.

Case No. 09-cv-745 (RCL)

PETITIONER'S RENEWED MOTION FOR STATUS CONFERENCE

Petitioner Sharqawi Al Hajj, by and through his counsel, respectfully submits this renewed and ever urgent motion for a status conference to discuss an apparent suicide threat made by Mr. Al Hajj during an unsecure telephone call with his counsel last week. His recent statements demonstrate a grave new point of decline in his mental health, which counsel has been urging attention to since 2017, when Mr. Al Hajj filed an Emergency Motion for an Independent Medical Examination and Medical Records. As an immediate matter, counsel must know – as a function of Mr. Al Hajj's habeas right to counsel – Mr. Al Hajj's present condition in Guantanamo, including the nature of any medical care he is currently receiving and any medical assessments concerning his suicide threat. More fundamentally, his recent statements underscore the need for Mr. Al Hajj to be examined by an independent outside physician he trusts so that counsel and the Court can fully apprehend his medical condition and risks in order to preserve his capacity to proceed before this Court, particularly given his pending due process challenge to the legality of his indefinite detention. A status conference would be an expedient way for the Court to be apprised of Mr. Al Hajj's current condition in order to resolve his

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underlying medical motion. Alternatively, Mr. Al Hajj respectfully requests a hearing on the merits of that motion.

Counsel has conferred with the government about this request. Respondents note that Petitioner al Hajj is currently under the care of Joint Task Force-Guantanamo medical personnel and is receiving appropriate medical and psychological treatment. Consequently, Respondents do not concur that a status conference is needed, but they do not intend to otherwise formally oppose this request.

In support of this Motion, Mr. Al Hajj states the following.

1. Mr. Al Hajj filed an Emergency Motion for an Independent Medical Examination and Medical records on September 6, 2017, after he collapsed in his cell during a hunger strike and was hospitalized in an intensive care unit in Guantanamo for four days (Dkt. No. 1880). In the Motion, Mr. Al Hajj described his baseline health condition, including severe abdominal pain, painful urination, recurring jaundice, and extreme weakness and fatigue, and the exacerbating effects his hunger strikes. In support of his Motion, he submitted declarations from two independent medical experts who strongly urged that he be provided access to an outside independent physician of confidence because of the seriousness of his condition, including risks to both his physical and psychological health. *See* Declaration of Dr. Jess Ghannam, ¶¶ 12, 14, 16-17. The Motion was fully briefed by September 27, 2017, and remains pending.

2. On October 26, 2018, counsel for Mr. Al Hajj filed a Motion for a Status Conference to address serious new concerns regarding his mental health in particular and request that the government provide any mental health assessments of Mr. Al Hajj, and to urge resolution of his underlying medical motion (Dkt. No. 1918). The Motion followed a telephone call with Mr. Al Hajj, after a series of particularly distressed communications with him, during

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which he spoke uncharacteristically of not having “any more patience” with his circumstances and no longer caring about any harm he might do to himself. Counsel argued that she could not know how to evaluate these statements, that Mr. Al Hajj refuses mental health care in Guantanamo, and that an examination by a trusted outside physician was the only reliable way for counsel to understand Petitioner’s true condition. Counsel also notified JTF-Guantanamo of these concerns by letter dated September 28, 2018, but received no response.

3. Most recently, on July 24, 2019, counsel had an unsecure telephone call with Mr. Al Hajj, during which he told counsel that he had just been discharged from the detainee hospital. He had been admitted after a hunger strike of approximately 15 days, during which he had nothing but water, and then stopped drinking water. Ex. A, Declaration of Pardiss Kebriaci, dated August 7, 2019, ¶ 2 (“Kebriaci Decl.”). By the end, he said he “couldn’t focus or see.” *Id.* His blood sugar level had dropped to “45.” *Id.* He weighed 104 pounds. *Id.* When counsel asked Mr. Al Hajj if he planned to resume his strike, he responded, “Maybe I’m going to cut my nerves to make myself bleed. Maybe that’s what I need to do.” *Id.* ¶ 3. Later in the call, he said, “I have to do something, try to kill myself. For how long can I be patient.” *Id.* Again a few minutes later, he said with more specificity, “I swear. I mean it. I was going to do it [hurt himself] this weekend.” *Id.*

4. 

 counsel also sent a letter to JTF-GTMO the same day alerting the government to an

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imminent risk that Mr. Al Hajj might harm himself. Ex. B. Letter to JTF-GTMO and JDG Commanders, dated July 24, 2019.

5. Prior to the termination of the July 24, 2019 call, counsel told Mr. Al Hajj that she would schedule another call as soon as possible the following week, and Mr. Al Hajj agreed to accept if he was in a condition to speak. *Id.* ¶ 4. Counsel scheduled two follow-up telephone calls with Mr. Al Hajj, on July 29, 2019, and August 2, 2019, neither of which occurred. *Id.* Counsel was told that Mr. Al Hajj refused the first call. *Id.* Just prior to the second call, the government notified counsel that it had been cancelled because Mr. Al Hajj had a conflicting medical appointment. *Id.* Counsel has been unable to communicate with Mr. Al Hajj since July 24, 2019, *id.*, or know anything about his condition from the government apart from the information stated in Respondents' position with respect to this Motion. Counsel has scheduled yet a third call with Mr. Al Hajj, on August 9, 2019, the occurrence of which remains to be seen.

6. As noted in his prior Motion for Status Conference, Mr. Al Hajj has a Motion for Judgment and Order for Release pending before this court, which challenges the legality of his indefinite detention on due process grounds (Dkt. No. 1885). It is thus imperative that his counsel understand the full and true nature of his health condition and risks, and the implications for his ability to participate meaningfully in his future legal proceedings. *See Al-Joudi*, 406 F.Supp. 2d at 22 ("Unless petitioners' counsel can have access to their clients, and know their true medical conditions ... it is obvious that their ability to present their claims to the Court will be irreparably compromised."); *id.* at 21-22 ("[I]n order to properly represent [habeas] Petitioners, their counsel ... must be made aware if their clients are in such fragile physical condition that their future ability to communicate is in imminent danger."); *see also In re Guantanamo Bay Detainee Continued Access to Counsel*, 892 F.Supp. 2d at 20 (detainees'

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access to the courts must be “adequate, effective and meaningful”) (quoting *Bounds v. Smith*, 430 U.S. 817, 822 (1977)).

CONCLUSION

Mr. Al Hajj’s deterioration to this point was predictable, as is the risk of further, actual, irreparable harm to himself and his habeas right of access to counsel and the court. For the reasons stated in Mr. Al Hajj’s pending medical motion, a medical evaluation of him by Guantanamo personnel, particularly of his psychological health, cannot yield an accurate assessment. The Court should schedule an immediate status conference so that counsel and the Court can be informed of Mr. Al Hajj’s current status, and so that the Court can expediently resolve his medical motion on the basis of a complete picture of his present condition. Alternatively, if a status conference would not be of appropriate assistance to the Court, Petitioner respectfully requests the opportunity for a hearing on the merits of the medical motion.

Dated: New York, New York
August 7, 2019

/s/ Pardiss Kebriai
Pardiss Kebriai (pursuant to LCvR 83.2(g))
Baher Azmy
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, NY 10012
Tel: (212) 614-6452

Counsel for Petitioner

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Exhibit A

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Petitioner,

v.

DONALD J. TRUMP, *et al.*,

Respondents.

Case No. 09-cv-745 (RCL)

**DECLARATION OF PARDISS KEBRIAIEI IN SUPPORT OF PETITIONER'S
MOTION FOR STATUS CONFERENCE**

1. I am counsel for Petitioner Sharqawi Al Hajj, a 44 year-old citizen of Yemen who has been detained in Guantanamo without charge since 2004. I have represented Mr. Al Hajj since 2016.

2. On July 24, 2019, I had an unsecure telephone call with Mr. Al Hajj. He sounded weak and spoke with effort. He told me that he had just been discharged from the detainee hospital in Guantanamo. He had been taken there after a hunger strike lasting approximately 15 days, during which he went without any food and, for the last two days, stopped drinking water. By the end, Mr. Al Hajj said he "couldn't focus or see." His blood sugar level had dropped to "45." He weighed 104 pounds. He was kept in the hospital on an IV for two days.

3. I asked Mr. Al Hajj if he planned to resume his strike. He responded, "Maybe I'm going to cut my nerves to make myself bleed. Maybe that's what I need to do." Later in the call, he said, "I have to do something, try to kill myself. For how long can I be patient. I'm

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human.” Again a few minutes later, he said with more specificity, “I swear, I mean it. I was going to do it [hurt himself] this weekend.”

4. I asked Mr. Al Hajj to allow me to schedule another call with him as soon as possible the following week. He agreed to accept the call if he was in a condition to speak. I scheduled a follow-up call with Mr. Al Hajj on July 29, 2019. I was told that he refused the call. I scheduled a second call on August 2, 2019. I was told about an hour before the call that it was being cancelled because Mr. Al Hajj had a conflicting medical appointment. I have not been able to speak with Mr. Al Hajj since July 24, 2019.

5. While Mr. Al Hajj has spoken before of contemplating suicide, he has also said before that he would not carry it out because it is prohibited by his Islamic faith. This time, when I pressed about what he meant, Mr. Al Hajj only reiterated, “I have to do something.” Mr. Al Hajj has never before made statements about harming himself with the same seriousness and specificity that he expressed during this call. I believe he has reached a point where the status quo is becoming untenable.

6. 




I notified the government by letter the

same day.

I declare under penalty of perjury, that the foregoing is true and correct.

Dated: August 7, 2019
New York, New York

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/s/ Pardiss Kebriaei

Pardiss Kebriaei

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Exhibit B

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July 24, 2019

Via E-Mail to the Department of Justice

Rear Adm. Timothy Kuehhas
JTF-GTMO Commander
U.S. Naval Station
Guantanamo Bay, Cuba

Col. Steven Yamashita
JDG Commander
U.S. Naval Station
Guantanamo Bay, Cuba

Re: Sharqawi Al Hajj, ISN 1457 – Urgent

Dear Sirs:

I am counsel for Sharqawi Al Hajj, ISN 1457. I had an unsecure call with Mr. Al Hajj this morning, July 24, 2019. During that call, Mr. Al Hajj made statements that cause me to believe that he may be at risk of imminent harm to himself. I am hereby providing notice to the government of his statements out of serious concern for my client and pursuant to the Habeas Protective Order, I.J. § 30. [REDACTED]

During the call, Mr. Al Hajj told me that he had been on a hunger strike for a period of about 15 days earlier this month, during which he refused all food and nutrition, and, for the last two days of his strike, stopped drinking water. By the end of his strike he said he “couldn’t focus or see.” His blood sugar level had dropped to 45. He weighed 104 pounds. As a result of his condition, he was admitted to the detainee hospital in Camp [REDACTED] several days ago, where he was revived intravenously and remained for two days. During our call, he said he had just been discharged from the hospital and was back in his cell block in Camp [REDACTED].

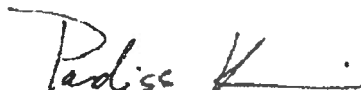
Mr. Al Hajj described a period of building frustration and despair over his conditions and detention in the months leading up to his recent hunger strike and hospitalization. I asked Mr. Al Hajj whether or not he planned to resume his strike. He responded, “Maybe I’m going to cut my nerves to make myself bleed. Maybe that’s what I need to do.” Later in the call, he said, “I have to do something, try to kill myself. For how long can I be patient.” Again a few minutes later, he said with more specificity, “I swear, I mean it. I was going to do it [hurt himself] this weekend.”

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In a letter to JTF-Guantanamo dated September 28, 2018, I expressed concern over statements by Mr. Al Hajj at that time which I observed to indicate a notable decline in his mental health. I believe his statements this morning indicate a further serious deterioration and a risk that he may do imminent harm to himself.

I can be reached at the contact information below for anything further about Mr. Al Hajj.

Sincerely,



Pardiss Kebriaei
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cc: Ronald Wiltsie
Department of Justice
Federal Programs Branch
Ronald.Wiltsie@usdoj.gov Pardiss Kebriaei