IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SALEH ABDULLA AL-OSHAN, *et al.*,

Petitioners,

v.

BARACK H. OBAMA, *et al.*,

Respondents.

Civil Action No. 05-0520 (RMU)

SUPPLEMENTAL DECLARATION OF DR. SONDRA S. CROSBY

Pursuant to 28 U.S.C. § 1746, I hereby declare the following:

1. I submit this Supplemental Declaration in support of Petitioner's Reply in Support of his Emergency Motion, Docket No. 284.

2. The Government produced additional medical records concerning Mr. Shalabi on October 22, 2009 and on October 29, 2009.

3. The medical records continue to lack documentation of any medical evaluations by a physician. There is no documentation of physical examinations, laboratory and other diagnostic tests, or analysis of Mr. Shalabi's current weight loss. There is no documentation of a corrective plan. Standard practice is that any medical contact with a patient is reflected in the medical records. Given Mr. Shalabi's extremely poor health, it is highly unusual to not see evidence in the medical record of doctor's visits, diagnostic tests, or a plan of treatment.

4. The Declaration of Captain Wright states several things that appear to me to be inconsistent with Mr. Shalabi's medical records.

5. Captain Wright states that Mr. Shalabi's "decision to limit caloric intake is directly causing his weight loss. . . There is no other medical condition that is contributing to his weight loss." (Declaration of Captain David G. Wright ("Wright Decl."), ¶ 6.) Neither the medical records nor Captain Wright's Declaration provide any indication of the reasons that Mr. Shalabi is unable or unwilling to accept more calories. When I evaluated Mr. Shalabi in August 2009, he understood that he would die if he did not take sufficient calories, and expressly indicated to me that he was willing to be fed to prevent weight loss and death. Therefore, Captain Wright's statement is not consistent with my evaluation of Mr. Shalabi. If Mr. Shalabi is, in fact, now "resisting" the amount of calories that he is being fed, there is likely a medical reason that is not made clear in the medical records. Some possibilities include nasopharyngeal discomfort, inability to tolerate additional volume due to abdominal pain, concern about the contents of the feeding formula, or some other reason.

6. Additionally, neither the medical records nor Captain Wright's Declaration provide any indication to support the assertion that "There is no other medical condition that is contributing to his weight loss." There are many medical reasons that could be contributing to Mr. Shalabi's weight loss, including hyperthyroidism, malabsorbtion, cancer, infection, and others. The medical records contain no evidence that Mr. Shalabi has been evaluated for any underlying medical causes of weight loss that might exist simultaneously with low caloric intake.

7. Psychiatric illness or symptoms may play a role in Mr. Shalabi's weight loss and alleged refusal to accept additional calories. In his declaration, Captain Wright states "There is no evidence that ISN 042 has reported presented with, or suffered from

symptoms of either illness [referring to Dr. Keram's diagnoses of PTSD and symptoms of major depression]." (Wright Decl. ¶ 25.) There is no evidence in the medical records that a psychiatric evaluation has been performed.

8. Captain Wright's Declaration states that "ISN 042 does not have severe and untreated abdominal pains." (Wright Decl., ¶ 12.) However, the medical records clearly indicate that Mr. Shalabi had "severe and untreated abdominal pains" on September 22, 2009. On that day, the medical records indicate that he was in such severe pain that he suffered tremors and was crying. The records indicate that the nurse who discovered him evaluated his pain as 10/10, which is a standard notation for the worst possible pain on a scale of 1 to 10. Notwithstanding that evaluation, the records do not indicate that Mr. Shalabi was seen by a doctor, the cause of the pain was evaluated, or that he was treated. Instead, the records indicate that his stomach was "splinted" and that he was given Ativan, an anti-anxiety drug.

9. It is uncontested that Mr. Shalabi needs to be fed more calories, otherwise he will die. Based on orders in the medical records and Captain Wright's declaration, Mr. Shalabi is receiving somewhere between 1000-1245 calories/day, although daily calorie counts are not documented in the record. This is not sufficient to sustain him. His weight continues to decline, as documented in the medical record and illustrated in the weight graph I have prepared.

10. Captain Wright's Declaration states that the placement of a PEG tube is "contrary to standard practice and would unnecessarily complicate the enteral feeding process," and that "PEG tubes are for treating patients who are unable to swallow," and thus not appropriate for Mr. Shalabi, who "is able to swallow but chooses not to." (Wright Decl.,

¶ 17.) I am in agreement that the optimal choice to provide enteral nutrition is utilizing a system where a feeding tube is placed through the nasopharyngeal cavity into the stomach. However, it is unprecedented to have a tube inserted into the nasopharynx over 3000 times, and the fact that Mr. Shalabi is requiring nasal rest every 4th day (25% of the time, during which no calories are being delivered) because of pain and recurrent sinus and throat infections (which are documented in the medical records) is evidence that this method of administration is not able to deliver the required number of calories. While it is true that placing a PEG tube is not a standard procedure for a hunger striking detainee, the fact is that this situation is completely unprecedented. At this time, I would recommend that all options be considered. A method to provide continuous and adequate nutrition must be developed and implemented immediately. Increasing the frequency of his daily feedings, switching him to a continuous feeding system, or eliminating altogether the necessity of using a nasogastric tube in favor of a PEG tube are options that ought to be discussed with Mr. Shalabi.

11. Mr. Shalabi has been on a hunger strike for four years, and only recently has his condition severely deteriorated. Mr. Shalabi's current level of malnutrition is cause for grave medical concern, and requires immediate evaluation and intervention. He is at risk for sudden cardiac death, among other things. However, without standard laboratory or EKG data, it is difficult to quantify that risk.

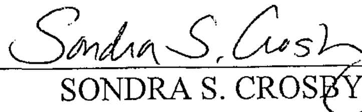
12. Mr. Shalabi's profound depleted nutritional status would reasonably be expected to influence his mood, concentration, memory, and ability to rationally manipulate complex data and make decisions. Mr. Shalabi's letter to counsel suggests that he may be suffering these psychological effects of malnutrition.

13. Finally, based on historical circumstances at Guantanamo in the earlier years of his detention, it is my belief that the doctor-patient relationship between Mr. Shalabi and JMG staff has been irreparably harmed, and that because of this inherent mistrust, Mr. Shalabi may not be making medical decisions that are in his own best interests. One of reasons that I was able to develop a rapport with Mr. Shalabi is that he trusted me as an independent physician. This in no way reflects on the intentions or medical competence of the current JMG staff, but only the circumstances of the situation.

14. The facts set forth herein are based on my personal knowledge or have been verified by me after appropriate inquiry.

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

Executed on November 2, 2009.



SONDRA S. CROSBY