

## **EXHIBIT D**

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

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SAEED HATIM, )  
Petitioner, )  
v. ) Civ. No. 05-1429 (RCL)  
BARACK OBAMA, *et al.*, )  
Respondents. )  
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)

**DECLARATION OF DAROLD W. KILLMER**

I, DAROLD W. KILLMER, DECLARE AS FOLLOWS:

1. I am a Partner in the Denver, Colorado civil rights law firm of KILLMER, LANE & NEWMAN, LLP . I submit this Declaration in support of the above-titled motion.
2. Along with other members of our legal team within the firm, I am counsel of record to five (5) men from Yemen currently imprisoned at Guantánamo Bay, Cuba. We have represented these men since 2007. These detainees are Jalal bin Amer (ISN 564), Suhail Abdo Anam Shorabi (ISN 569), Sa'ad al Azani (ISN 575), Abdul Rahman al Qyati (ISN 461) and Musa'ab Omar al-Madhwani. All five men have petitions for habeas corpus pending in the District Court for the District of Columbia.
3. I began visiting detainee clients in Guantánamo in late 2007. I have traveled to Guantánamo over a dozen times to visit with these clients. I have observed various levels of cooperation by the Guantánamo personnel with legal counsel for the detainees over the course of my representation. Although there have been some difficulties in ensuring unimpeded communication between the detainees and their lawyers, generally speaking such access has been adequate at most times. This appears to have changed considerably since the

commencement in February 2013 of the prison-wide hunger strike which has been joined by most of the men at the prison, including most (and maybe all) of my clients.

4. Two of my clients, Suhail Abdu Anam Shorabi and Jalal bin Amer, are currently among those detainees that are being force-fed daily.

5. On Friday, May 17, 2013, we had a 90-minute unsecured telephone call with our client Jalal bin Amer (ISN 564). Mr. bin Amer had been requesting the administration at Guantánamo to arrange such a telephone call with counsel to report the badly deteriorating conditions at the prison and the treatment of the detainees, especially the hunger strikers. Mr. bin Amer has been participating in the hunger strike since February 2013, and recently has been placed on the very harsh force-feeding regimen at the prison.

6. Mr. bin Amer detailed the extraordinarily harsh treatment being inflicted upon the hunger strikers in order to coerce them into terminating the hunger strike. He described the recent change to solitary confinement. He further described the extremely intrusive searches of their cells and their persons, including a very intrusive search of him that very morning prior to his transport to the facility where he was during the telephone call. He described the personal search of his body and his “private parts” as humiliating and unnecessary, and significantly different and more personally intrusive than searches he had previously undergone at Guantánamo for such transport purposes.

7. Mr. bin Amer described considerable interference by the Guantánamo personnel with the detainees’ communications with their families and lawyers. He said that the searches and the miserable treatment inflicted upon them during the transport from their cells to the telephone facilities are explicitly intended to deter the detainees from communicating with their families or lawyers. Jalal told me “they don’t want us to talk with our lawyers.” When I asked

him why he believed that this was the reason for the abusive treatment, he said that one of “the officers told us that this is done to us in order to make it difficult to talk with our lawyers and family.” He has been told more than once by Guantánamo personnel that they do not want them communicating with the outside world. This has been true ever since the commencement of the hunger strike by the detainees in February 2013, but the treatment and difficulties with such communication have become increasingly intense since the hunger strike has worn on.

8. The recent harsh treatment of the detainees is clearly related to the effort to break the hunger strike. In early April, the guards began to withhold drinking water from some of the detainees. This was reported to us by Mr. bin Amer in the May 17 telephone call and previously by another of our clients, Musa’ab Omar al Madhwani (ISN 839). Mr. al Madhwani told us that the guards said that “drinking water is a privilege, not a right” and that they would resume the supply of drinking water upon request if the detainees would simply stop the hunger strike.

9. Only after the withholding of drinking water became publicized in the media and became the subject of an Emergency Motion we filed in Mr. Al Madhwani’s case pending before Judge Hogan (*Anam v. Obama*, civil action no. 04- 1194(TFH)) was the regular provision of drinking water to the detainees resumed.

10. The reports of both Mr. al Madhwani and Mr. bin Amer are consistent regarding the details of the harsh and retaliatory treatment inflicted as a result of the hunger strike and to deter them from having telephone communications with either their lawyers or their families.

11. We arranged to have an unsecure telephone client with another one of our clients, Abdul Rahman al Qyati (ISN 461) in late April. When it was time for the call, we were informed that our client had “refused” the call. This was very surprising to us, as Mr. al Qyati is a very cooperative and communicative client with whom we have an excellent relationship.

Given the context of this refusal and the reports we have received from our other clients and the reports of other habeas lawyers regarding communications with their clients, I believe that it is significantly more probable than not that Mr. al Qyati's "refusal" to have the scheduled telephone call was a product of the efforts by Guantánamo officials to deter such communications between detainees and their lawyers.

12. We arranged for a telephone call with yet another of our clients, Suhail Abdu Anam Shorabi (ISN 569) for May 15, 2013. When it came time for the call, we were informed by Guantánamo personnel that Mr. Shorabi had "refused" the call. This further convinced me that the reports of treatment inflicted upon the detainees designed to deter them from communicating with their lawyers had merit. Although Mr. Shorabi has, from time to time in the past refused visits from us, more recently he had been cooperative, including having sent us written correspondence. Mr. Shorabi has been on the hunger strike since February 2013, and is among the detainees that are on the harsh force-feeding regimen.

13. I have been told by counsel for other detainees that recent visits with the detainees at the prison camps have been made difficult by, among other things, the refusal to allow meetings with the detainees in the prison camps in which they reside. A meeting with a detainee who lives in Camp 6, for example, is much less difficult if the meeting is scheduled in Camp 6, as the significant difficulties associated with search and transport of the detainee can be avoided. The same is true if the detainee lives in Camp 5. I have, on previous trips to Guantánamo, visited with clients both in Camp 5 and Camp 6. Apparently, the administration at Guantánamo now refuses to allow such visits at Camp 5 and 6. I am unaware of any legitimate penological purpose for such a restriction, as my previous meetings with clients in Camps 5 and 6 occurred without any difficulties at all as far as I could tell.

14. In past years, we have also witnessed interference by Guantánamo personnel with attorney-client meetings and communications. For example, in late 2008, personnel at the prison prevented in-person meetings between us and two of our clients, Abdul Rahman al Qyati (ISN 461) and Sa'ad al Azani (ISN 575). They did this by reporting to us that our clients had “refused” such meetings while we were at the prison, but the attendant circumstances convinced us (and later conversations with these clients confirmed) that there actually had not been any refusals. This extreme and unjustifiable interference with our clients’ access to their lawyers went beyond any other interference we had seen to that time, so we brought the matter to the attention of the Honorable Judge Walton, before whom both detainees’ habeas cases was pending. Judge Walton issued an “Order Granting Petitioners’ Counsel an Expeditious, Unobstructed, Face-to-Face Visit with Petitioners Saad Masir Mukbl Al Azani and Abdul Rahman Umir Al Qyati.” *Al Qyati, et al. v. Obama*, Civil Action No. 08-cv-2019 (RBW)(May 5, 2009)[Doc. 95].

15. My clients have also described other means by which the command is currently seeking to break the hunger strike by making the men’s lives as miserable as possible, including sleep deprivation, temperature manipulation, deprivation of drinking water, deprivation of personal items such as books, pictures and legal papers, interference with prayer, and desecration of the Koran.

I declare that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 22<sup>nd</sup> day of May 2013.

/s – Darold W. Killmer/  
Darold W. Killmer