

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

IMAD ABDULLAH HASSAN,

Petitioner/Plaintiff,

v.

BARACK H. OBAMA, et al.,

Respondents/Defendants.

Civ. No. 04-CV-1194 (UNA)

**EMERGENCY MOTION FOR ORDER COMPELLING
PRESERVATION OF EVIDENCE**

On May 16, 2014, in the related case *Dhiab v. Obama*, Civ. No. 05-1457 (GK), Judge Gladys Kessler issued an order requiring, among other things, preservation and maintenance of “all relevant videotapes of Petitioner’s Forcible Cell Extractions for purposes of enteral feeding and all videotapes of Petitioner’s enteral feedings” during the period of Mr. Dhiab’s force-feedings. The present motion seeks a similar order for Mr. Hassan, expanded to include photographs as well as videotapes.

On May 13, 2014, Respondents’ counsel admitted for the first time, and only under persistent questioning by Petitioners’ counsel during a protracted email exchange, that JTF-GTMO has made videotapes that include depictions of force-feedings at Guantánamo Bay. *See Dhiab, supra*, Doc. #217 at 2. During the course of that email exchange, when Petitioner’s counsel asked for reassurance that immediate steps were being taken to preserve the videotapes and ensure against their destruction, Respondents’ counsel replied: “DoD is aware of its preservation obligations and *has no reason to believe* that the videotapes you seek in your motion have been destroyed.” *Id.* Doc. #220 at 4. The equivocation in the italicized language

left open the possibility that evidence *had in fact been destroyed* and suggests that the Department of Defense *did not even know* and *had not yet made any effort to determine* whether evidence had in fact been destroyed.

Within hours, Petitioner's counsel filed an emergency motion in the *Dhiab* proceeding seeking an order compelling, among other things, preservation and maintenance of the videotapes. *See Dhiab, supra*, Doc. #220 at 6. In their opposition memorandum filed March 15, 2014, Respondents advised Judge Kessler that "there are approximately 140 to 150 FCE videos of Petitioner between April 9, 2013 and February 19, 2014," and "it appears that the vast majority of these videos are of FCEs in connection with enteral feeding or otherwise arguably related to enteral feeding" *Id.* Doc. #219 at 10. Respondents promised Judge Kessler that "the Department of Defense will preserve any video recordings falling within the scope [of] Petitioner's discovery request." *Id.* Doc. 219 at 12. Respondents did not, however, explain what they meant by "the scope [of] Petitioner's discovery request."

The next day, May 16, 2014, Judge Kessler ordered preservation and maintenance of all videotapes and scheduled a status conference for May 21, 2014, at which Respondents are to inform Judge Kessler when the videotapes can be produced. *Id.* Doc. #221 at 2.

Petitioner Hassan now seeks a similar preservation order, for the same reasons why Judge Kessler issued the preservation order in *Dhiab*.

Additionally, in separate email to Respondents' counsel on May 15, 2014, Petitioner's counsel asked the following question: "Are there any still shot photographs of any enteral feedings of any of the detainees at Guantánamo Bay?" Petitioner's counsel repeated this inquiry on May 16, 2014 and May 18, 2014. As of this writing, however, Respondents' counsel have not

responded to this inquiry. Petitioner therefore asks this Court to include photographs in the preservation order.

In conclusion, Petitioner respectfully requests the Court to order Respondents to preserve and maintain all videotapes and photographs of Petitioner's forcible cell extractions and/or force-feedings from August 25, 2005 to May 18, 2014.

Respectfully submitted,

/s/ Jon B. Eisenberg

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