

**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)

**PETITIONER'S REPLY TO RESPONDENTS' OPPOSITION TO PETITIONER'S
MOTION FOR ORDER REQUIRING IMMEDIATE DISCLOSURE OF
FORCE-FEEDING PROTOCOLS**

In Respondents' opposition to Petitioner's motion for an order requiring disclosure of still-secret protocols and SOPs governing force-feeding and use of restraint chairs at Guantánamo Bay, Respondents insist on something they have previously waived: a formal invocation of discovery provisions in the Case Management Order. That waiver, and Petitioner's invocation of the Case Management order herein, should dispense with any obstacles to the requested disclosure order.

In late 2013, during the pendency of *Aamer v. Obama* in the Court of Appeals, Petitioner's counsel made an informal request via email to Respondents' appellate counsel for disclosure of the revised Guantánamo Bay force-feeding protocols dated November 14, 2013 and December 16, 2013. Respondents' counsel graciously complied with the request to produce those two sets of protocols. Respondents' counsel declined, however, to produce any additional SOPs, including the new SOPs now governing the use of restraint chairs. *See* Doc. #1001-4 ¶¶ 2-5.

Plainly, given Respondents' production of the two sets of revised protocols, Petitioner's purported noncompliance with the Case Management Order was not the reason why Respondents' counsel refused to produce the still-secret SOPs. Respondents again declined to assert the procedural requirements of the Case Management Order in their memorandum of points and authorities opposing a preliminary injunction.

Under well-settled principles of forfeiture and estoppel, Respondents should not now be heard to complain of noncompliance with the Case Management Order, since they have twice previously waived such compliance.

In any case, lest there be any doubt, Petitioner hereby invokes Section I.E.2 of the Case Management Order and requests an order compelling limited discovery of (1) currently operative protocols and SOPs not yet disclosed to Petitioner's counsel that address the use of restraint chairs in the enteral feeding of Guantánamo Bay detainees, and (2) any other currently operative protocols and SOPs not yet disclosed to Petitioner's counsel that address the process of enteral feeding at Guantánamo Bay. Given the obvious relevance of currently-operative force-feeding and restraint chair protocols in an action that challenges the lawfulness of force-feeding and use of restraint chairs, this formal invocation of Section I.E.2 ought to be sufficient to support a disclosure order. And for purposes of judicial economy, issuance of a disclosure order forthwith makes much more sense than the "do over" renewed discovery motion that Respondents request from Petitioner. *See* Doc. #1030 at 3-4.

On the merits of this motion, Respondents contend "there is no reason to produce the standard operating procedures in this case" because Respondents' prior filings "explain in detail the enteral feeding process both in general and as applied to Petitioner" Doc. #1030 at 4 n. 3. But May 15, 2014, brought yet another troubling revelation. Over the course of ten email

exchanges that day between opposing counsel, Respondents' counsel eventually admitted that he *does not even know* whether, in addition to the December 16, 2013 force-feeding protocols and the still-secret restraint chair protocols, there are any other current protocols or SOPs relating to force-feeding, enteral feeding, hunger-striking, and/or non-religious fasting at Guantánamo Bay. Further, Respondents' counsel never gave a clear reply to an inquiry by Petitioner's counsel whether the Department of Defense or JTF-GTMO knows the answer to that question. Respondents' counsel simply said "DoD has not reviewed its SOPs to determine which, if any, are responsive."

Surely it cannot be possible that the Department of Defense and JTF-GTMO do not even know what SOPs govern force-feeding at Guantánamo Bay. In any case, however, given the admitted ignorance of Respondents' counsel, they cannot possibly know that there is no reason for disclosure of the still-secret protocols.

Petitioner requests this Court to order disclosure of the still-secret protocols and SOPs forthwith.

Respectfully submitted,

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Dated: May 19, 2014

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