

Marjorie Smith: Emails
1 Marjorie Smith E mails for Book narratives relevant emails (in chronological order)

-----Original Message-----

From: marjoriemsmith@verizon.net [mailto:marjoriemsmith@verizon.net]
Sent: Saturday, May 14, 2005 8:33 AM
To: Warden, Andrew (CIV)
Subject: Ahmed v Bush et al. 05-665 (RJR)

Andrew,

I would like to request information the government has on the native speaking language of my client, Hazi Ahmed, and whether there are any other languages in which Mr. Ahmed can comfortably converse. Because under current policy I will need to obtain a clearance for a translator, which I understand may take at least a month, without this information my ability to communicate with my client may be delayed and substantially prejudiced.

> Thanks in advance for your attention to this request.

>

> Marjorie

7. 5/27/05--from Andrew Warden, responding to my email below his:

Andrew.Warden@usdoj.gov>
To: <marjoriemsmith@verizon.net>
Sent: Friday, May 27, 2005 4:22 PM
Subject: RE: Ahmed v Bush et al. 05-665 (RJR)

Marjorie,

It is our understanding that Mr. Ahmed's primary language is Arabic (Yemeni dialect). If you have any further questions concerning his language skills, perhaps the next-friend petitioner in this case would be an appropriate source of information.

Regards,
Andrew

6. 8/16/05--from Andrew Warden, responding to my email below his:

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Ms. Smith,

The clearances will be finalized on or before Friday. I'll send them to you via e-mail.

As for your letter, the revised procedures for counsel access provide the following regarding confirmation of legal mail: "If counsel desires confirmation that the documents were delivered to the detainee, counsel is responsible for providing a stamped, self-addressed envelope for that purpose. The detainee shall be responsible for mailing any confirmation of delivery to counsel as outgoing legal mail. This shall be the sole and exclusive means by which confirmation of delivery is provided to counsel." See Revised Counsel Access Procedures, section IV.A.3. Ms. Gunning's office sends all legal mail to GTMO via certified mail (which takes approximately 2 weeks to arrive) so I have every confidence that Mr. Ahmed received the letter.

Finally, based on the information available, we have determined that the petitioner named in your case is ISN 678. If you have any information to call this conclusion into doubt (e.g., ICRC mail from Mr. Ahmed with a different ISN, legal mail from Mr. Ahmed with a different ISN, letters from Mr. Ahmed to his family with a different ISN), please let us know. I assume your only source for the name "Hazi Ahmed" is the next friend in this case, Mr. Hassen, who is another detainee at GTMO. I suspect Mr. Hassen's information about Mr. Ahmed is incomplete at best, which may explain the discrepancy in the names. Perhaps this is an issue you can raise with petitioner during your visit to GTMO.

Regards,

Andrew

-----Original Message-----

From: marjoriemsmith@verizon.net [mailto:marjoriemsmith@verizon.net]

Sent: Tuesday, August 16, 2005 7:57 AM

To: Warden, Andrew (CIV)

Subject: Re: follow-up re Ahmed v. Bush 05-665(RWR) --travel to GTMO

Andrew,

I'm getting anxious about the country and theater clearances for myself and my interpreter now that I'm only 5 days away from my departure date (Sunday, August 21st). Can you check on that for me?.

Also, can you tell me if Mr. Ahmed received the letter I sent him that was forwarded by Christine Gunning's office on July 11th? She said that she has no way of tracking that but that you might.

Lastly, I'm concerned about the discrepancy between the name that we used in bringing the case, Hazi Ahmed, and the name that respondents have provided in the factual return,

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Fawaz Naman Hamoud Abdullah Mahdi. Is Hazi Ahmed a known a/k/a for Mahdi, or can you otherwise explain how the government concluded that Mr. Ahmed's name is what was provided in the factual return?

Thank you.

Marjorie
Marjorie M. Smith Law Office
845 365-6335

5. my email to CCR & others after I returned from GTMO on 8/23

I wanted to get the input of anyone who has time and cares to respond concerning the following, which I set forth in some detail to give you pertinent background as well as what happened during my recent trip:

1. **Background:** As you probably recall, my case on behalf of Hazi Ahmed was brought with another detainee, Mohammed Mohammed Hassen, a client of Covington & Burling's, as his next friend; the case was filed April 1, 2005 and was assigned to Judge Roberts. The salient facts provided by Mr. Hassen were that Mr. Ahmed was an older detainee, in his 40's, and that he was quite ill, i.e., he suffered from frequent bloody bowel movements, was in lots of pain and took several dozen pills a day (the information concerning his medical condition was included in the declaration filed by Marc Falkoff in support of our response to Judge Roberts' order requiring us to provide support for our naming Mr. Hassen as Mr. Ahmed's next friend).

Prior to my traveling to GTMO to meet with Mr. Ahmed on Monday of this week, I had queried Andrew Warden as to why the government had identified Mr. Ahmed by the ISN #678 and the name Fawaz Naman Hamoud Abdullah Mahdi (that they had done so came to my attention when I received the factual return that the government provided on August 8th in compliance with Judge Roberts' order in the case, which was for detainee #678). I pointed out that this detainee's name bore no resemblance to Mr. Ahmed's. Mr. Warden responded to me in an email as follows:

... based on the information available, we have determined that the petitioner named in your case is ISN 678. If you have any information to call this conclusion into doubt (e.g., ICRC mail from Mr. Ahmed with a different ISN, legal mail from Mr. Ahmed with a different ISN, letters from Mr. Ahmed to his family with a different ISN), please let us know. I assume your only source for the name "Hazi Ahmed" is the next friend in this case, Mr. Hassen, who is another detainee at GTMO. I suspect Mr. Hassen's information about Mr. Ahmed is incomplete at best, which may explain the discrepancy in the names. Perhaps this is an issue you can raise with petitioner during your visit to GTMO.

(While I had written to Mr. Ahmed after Judge Roberts finally entered the protective order in the case, I had not received any return correspondence from him and had no information about him other than what had been provided by Mr. Hassen to Marc Falkoff.)

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The Visit: At the outset of my visit with Mr. Mahdi, I asked him if he was also known as Hazi Ahmed, and he emphatically stated that he was not (he gave his name as Fawaz Noman Hamod, using the first 3 of the 5 names provided by the government for him). In addition, he did not meet the description of Mr. Ahmed that had been provided by Mr. Hassen. Mr. Mahdi is 25 years old, and could not in any way be mistaken for a man in his 40's. Mr Mahdi, who was described in the factual return as having mental problems, disclaimed having any rectal problems or suffering from bloody stools or otherwise being in physical ill health.

During the lunch break, I notified first Capt. Dellaconte , and then Capt. Christopher Brown, that I did not think the government had produced petitioner Ahmed, noting the age and health discrepancies I had observed in my morning interview. Capt. Brown then went to speak with detainee Hassen. Within 1 ½ hours thereafter, using the information received from Mr. Hassen and GTMO's records, he determined that the person who Mr. Hassen had identified as Mr. Ahmed appeared to be one Haji Mohammed Ahmed. Capt. Brown further informed me that Haji Ahmed had been released from GTMO sometime in March, 2005, although he did not give me the details of exactly when he was released, or to what country he had been sent. (I learned upon my return that Warden had sent an email to Marc Falkoff on Monday asking him if he could provide any additional information about Mr. Ahmed!)

Authorization from Mr. Mahdi: I spoke with Mr. Mahdi for several hours on Monday, and although after I informed Capt. Dellaconte that he appeared not to be Mr. Ahmed I was told that I should not continue speaking with him, and the interview was eventually cut short, by that time I had obtained a signed acknowledgment of representation from him in English and Arabic. In addition, just prior to my visit to GTMO, I had received from the Center for Constitutional Rights a next-friend authorization dated April, 2004, from Mr. Mahdi's father, who identified his son as Fwaz Houman Hamod (which is how Mr. Mahdi identified himself and signed his name).

4. **8/29/05--from Andrew Warden, responding to my email below his:**

Ms. Smith,

We intend to respond to your e-mail below later this week.

Regards,
Andrew

From: marjoriemsmith@verizon.net [mailto:marjoriemsmith@verizon.net]

Sent: Friday, August 26, 2005 1:20 AM

To: Warden, Andrew (CIV)

Subject: Re: follow-up re Ahmed v. Bush 05-665(RWR) --travel to GTMOMr. Warden,

I assume you have heard from Capt. Christopher Brown, and/or Capt. Dellaconte of the misidentification of my client, Petitioner Hazi Ahmed, as detainee #678, Fawaz

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Naman Hamoud Abdullah Mahdi ("Fawaz"). Fawaz, who your office had identified as Hazi Ahmed, was produced to speak to me at GTMO on 8/22/05. It was apparent after meeting with Fawaz that not only was his name completely different from Mr. Ahmed's, but he did not fit the description of Mr. Ahmed that had been provided by "next friend" Mohammed Hassen. Fawaz is 25 years old, whereas Mr. Ahmed was described by Mr. Hassen as being an older detainee, in his 40's; Fawaz reported no history of physical ailments, whereas Mr. Ahmed was described by Mr. Hassen as being in ill health and suffering from rectal bleeding (this information was provided in the papers we filed before Judge Roberts in June, 2005).

During the lunch break, I notified first Capt. Dellaconte, and later Capt. Christopher Brown, that I did not think the government had produced petitioner Ahmed. Capt. Brown then went to speak with detainee Hassen.

Within 1 1/2 hours, using the information he received from Mr. Hassen and GTMO's records, he determined that the person who Mr. Hassen had identified as Hazi Ahmed appeared to be one Haji Mohammed Ahmed. Capt. Brown so informed me, and he further advised me that Haji Ahmed had been released from GTMO, although he did not give me the details of when that occurred, or to what country Mr. Ahmed had been sent.

Based on the above, I ask that you provide me with answers to the following questions:

1. When was Haji Ahmed released from GTMO?
2. To what country was he sent?
3. Was he released because he was found not to be an enemy combatant?
4. Was he released after an ARB determined he was no longer dangerous?
5. Under what terms was he released?
6. Is he in prison in another country, and if so what country?
7. Since the government was directed to provide a factual return as to Mr. Ahmed by August 9th, please promptly provide me with a factual return for Mr. Ahmed, rather than the return for Fawaz that was provided.
8. Please provide me with whatever contact information the government has for Mr. Ahmed.

As for the incorrect identification issue, and in light of the fact that I traveled to GTMO to see my client Hazi Ahmed and was not able to do so due to the government's mis-identification of him, I would like an explanation as to:

1. Why the government failed to identify Haji Mohammed Ahmed as the petitioner Hazi Ahmed;
2. What led the government to incorrectly identify Fawaz Naman Hamoud Abdullah Mahdi as the petitioner Hazi Ahmed.

I would appreciate your prompt attention and response to these questions, and must advise you that if I do not receive responsive answers by the close of business on August 30th, I will feel compelled to seek the assistance of the Court.

Marjorie Smith: Emails
Marjorie
Law Office of Marjorie M. Smith

3. 9/6/05--from Terry Henry

Dear Ms. Smith:

I am responding to your August 26, 2005 e-mail to Andrew Warden in which you make several requests for information concerning the person identified in the April 2005 petition in this case as Hazi Ahmed. As you point out, the petitioner in this case was initially, and it now appears, inaccurately, identified as detainee #678. We regret this misidentification, which apparently came about due to detainee #678 having an "Ahmed" alias and being, at the time of the filing of the petition, located at Guantanamo near the next-friend petitioner. Nothing in the petition, which contains no factual information regarding petitioner, contradicted the identification at the time, however.

Once the identification of petitioner as detainee #678 was made, no reason was presented to require respondents to revisit the issue. Your June 2005 filing, which provided information that the petitioner-detainee intended to be represented suffered bloody bowel movements and indicated in one exhibit that the petitioner was French or spoke French, did not prompt respondents to revisit the identification since the filing was addressed to the next-friend standing of detainee Mr. Hassen and not the identification of the petitioner-detainee. Further, that the name in the factual return submitted in early August was different from that of the putative petitioner reflects a phenomenon not uncommon in these cases, where detainees often have multiple aliases. It was not until your visit to Guantanamo that the misidentification was ascertained and the additional information concerning the purported petitioner's age was learned.

It now appears, based upon all of the information available from you and the next-friend, that the best guess is that the putative petitioner was one of the three detainees transferred to France in March 2005 for consideration for prosecution. See <http://www.defenselink.mil/releases/2005/nr20050307-2263.html> (As noted in my March 8, 2005 e-mail to you, one of your clients, Mr. Mustapha, was also among these transferees.) Thus, it appears that the putative petitioner in this case was not even a Guantanamo detainee at the time the petition was filed.

Again, we regret the inadvertent misidentification the putative petitioner; this appears to be the unfortunate result of a number of factors, including use of a next-friend lacking a significant relationship with and sufficient knowledge of the putative petitioner and the fact that key identifying details regarding petitioner were not initially included in the petition or provided respondents early on in the case.

Finally, you will be receiving later today a notice of appeal with respect to the July 8, 2005 advance notice of transfer order issued in this case. Again, DoD's current best guess is that the

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putative petitioner is no longer at Guantanamo, but the appeal is being filed as a prophylactic measure given that this case remains pending.

Sincerely,
Terry M. Henry

2. 9/6/05 from James Hosking at Clifford Chance re the 3 French who were returned to France in March 2005 (one of whom was my client Khaled Ben Mustapha, one of whom was represented by Clifford Chance, Khalid, making Mustaq Ali Patel the only candidate for being Ahmed per Henry's email below.

According to all press reports I have seen (including the one below), the other two detainees transferred with Mustapha were Ridouane Khalid and Mustaq Ali Patel. William Bourdon acted for Patel. Sorry, Iweins' email is Pa.Iweins@taylorwessing.com.

....The following are French counsel for Khalid and for Bench/Sassi, respectively. As you know, Iweins is the more helpful of the two. By the way, Paul-Albert Iweins was the French counsel I had approached earlier about Hazi Ahmed and he told me that there was no French citizen of that name recorded as being at GTMO. He is generally very helpful.

Bâtonnier Paul-Albert Iweins
Avocat associé
Cabinet Taylor Wessing
42 Avenue Montaigne Paris 8^e
Tel 01 72 74 03 33
Fax 01 72 74 03 34

Maitre William Bourdon
Avocat au Barreau de PARIS
156 rue de Rivoli
75001 Paris
France
Tel 011 33 1 42 60 32 60 bourdonvoituriez@wanadoo.fr

excerpt from March 09, 2005 [Le Monde] 804 words
Factiva Apr <http://newstracker.magus.co.uk/cliffordchance/newstracker/view/emailSto>

ès trois ans de détention, les derniers prisonniers français de Guantanamo ont été libérés Il n'y a plus de Français à Guantanamo (Cuba). Après plus de trois ans de détention, Ridouane Khalid, Khaled Ben Mustapha et Mustaq Ali Patel ont atterri à bord d'un avion spécialement affrété sur la base militaire d'Evreux, lundi 7 mars, ...

(supplement translation)

Marjorie Smith: Emails

Email Sent from Majorie Smith to Mark Falkoff on 9/7/05 after Terry Henry's email

As you can see, they basically blame us for failing to properly identify Ahmed to them! Needless to say, there are some holes in the government's explanation, namely that:

They didn't send me the factual return until August 8th, whereas they had received our additional information about Ahmed in response to Roberts' next friend order in early June (this filing as they note included the fact that he was quite ill). Their claiming that the additional information gave them no reason to check who they had selected as the petitioner isn't correct, except in the sense that we didn't specifically say "will you please make sure that the person you're identifying is the right person." (Moreover, I did query whether they were identifying the right person after the factual return, because of the gross discrepancy between Ahmed's name and Mahdi's.)

What they're saying also elides the fact that Capt. Brown was able to locate the correct person in 1 1/2 hours while I was down there, simply by going to see next friend Hassen and then looking in GTMO's records.

As for Henry's statement that their error "appears to be the unfortunate result of a number of factors, including use of a next-friend lacking a significant relationship with and sufficient knowledge of the putative petitioner and the fact that key identifying details regarding petitioner were not initially included in the petition or provided respondents early on in the case," as noted above, Capt. Brown was quite easily able to find me the right person after he went to see Mr. Hassen; and their claim that Hassen lacked a "significant relationship with" the petitioner is simply a canard--he had the knowledge, but the government never took the trouble to check who they were identifying against Hassen's knowledge until I went down there.

Nor did the government ever give any indication prior to my going down there that they were uncertain about their identification of Mr. Mahdi as Mr. Ahmed--quite the contrary, when I questioned the name discrepancy in my email after I received the factual return, they responded that Hassen probably didn't know what he was talking about and therefore discrepancy in the names was of no moment.