

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HAJJI NASSIM (ISN 10028)
Former Detainee
U.S. Naval Station, Guantánamo Bay, Cuba,

Petitioner,

No. 09-CV-01332 (HHK)

v.

BARACK H. OBAMA, President, etc., et al.,

Respondents.

_____/

IN RE:

No. 08-CV-442 (TFH)

GUANTÁNAMO BAY
DETAINEE LITIGATION

_____/

**PETITIONER HAJJI NASSIM'S PUBLIC RESPONSE
ACCOMPANYING RESPONDENTS' FILING OF A
PUBLIC VERSION OF THE FACTUAL RETURN**

Hajji Nassim, though undersigned counsel, files this Public Response to
Accompany the Public Factual Return filed by Respondents.

1. The detainee identified by Internment Serial Number 10028 was Hajji
Nassim, not Inayatullah. As the Public Factual Return reveals, Mr. Nassim
consistently and repeatedly denied that his name was Inayatullah. His denials
notwithstanding, interrogators insisted on labeling each interrogation report with

the inaccurate name, Inayatullah. The Public Factual Return's Narrative, a summary of argument prepared by Respondents' counsel, also identifies ISN 10028 incorrectly, as Inayatullah. For the sake of accuracy and clarity, counsel for ISN 10028 will identify the detainee by his true name, Hajji Nassim.

2. The Public Factual Return is heavily edited and redacted, deleting significant information about Mr. Nassim, his family, and others. Moreover, there are many documents and medical records concerning Mr. Nassim that have not been publicly disclosed by Respondents. Due to court-imposed limitations on Mr. Nassim's counsel, those documents, as well as the redactions and deletions, may not be revealed or discussed publicly since they are categorized as "classified" or "protected" information.

3. The Public Factual Return is an edited and incomplete version of Respondents' allegations made at the outset of Mr. Nassim's habeas corpus case. A significant portion of the Narrative, and underlying documents, is simply boilerplate general allegations unrelated to Hajji Nassim, (PFR ¶¶ 2-20), or innocuous statements having nothing to do with terrorism. (PFR ¶¶ 21, 23, 26, 27). The remainder of the Narrative purports to explain Mr. Nassim's background and reasons why the unidentified author of the Narrative believed that he had associated with al-Qaida. To be sure, the Public Factual Return is replete with

errors and unsupported statements. In particular, the Narrative section of the Public Factual Return makes allegations that are unsupported by the underlying publicly disclosed documentary exhibits, and, in many instances, are completely refuted by the underlying exhibits. For example:

a. The Public Factual Return attempts to connect Mr. Nassim to al-Qaida by contending that he provided housing and care for the wife and small children of a Moroccan al-Qaida member who was detained at Guantánamo Bay. (PFR ¶ 24). The underlying documents referenced in the Narrative refute this attempt to associate him with such activity. Interrogation reports state that Mr. Nassim said he was asked to house the family by an elder Mullah and prayer leader in his hometown in Pakistan, ((ISN 10028 SIR (Sept. 16, 2007) & (IIR 6 034 130 08)), but that Mr. Nassim replied he was “not interested in that kind of job, due to his interest in the dried fruit business.” (IIR 6 034 130 08). Indeed, the underlying documents establish that Mr. Nassim and his family were involved in a legitimate dried fruit business. Beyond recording his refusal to become involved in the housing and care of the Moroccan family, the interrogation report and IIR make clear that Mr. Nassim never met the family, was not involved in housing or caring for the family, and that the housing and care were arranged and provided by others. (IIR 6 034 130 08 & ISN 10028 SIR (Sept. 15, 2007)).

b. After the Moroccan detainee was released, he and his family left the house. The Public Factual Return then asserts that housing and care was arranged at the same premises for the wife of a detained Egyptian al-Qaida member. (PFR ¶ 25). The underlying interrogation report does not support this allegation, either. (ISN 10028 SIR (Sept. 15, 2007)). Again, the care and housing were provided by others. At some point, a note was left outside the door of the house at which the Egyptian family was living. The note – apparently signed by the “CIA” – was left on the door, stating “We know there is an AQ family residing here.” An unidentified person (“one of the brothers”) telephoned the person who set up the housing to tell him about it, after which the wife and family were moved out of the house and out of Pakistan. (IIR 6 034 130 08). The referenced documents make no claim that Mr. Nassim relayed the information or played any role in the relocation of the family.

c. Similarly, the Public Factual Return alleges, without support, that Mr. Nassim facilitated the movement of al-Qaida fighters between Iran and Pakistan. (PFR ¶¶ 28-45). The underlying documents contained in the Public Factual Return establish something much different. As the underlying documents reveal, Mr. Nassim was born in Afghanistan, but moved with his family to Pakistan when he was still a child. He had a dried fruit business in Pakistan. Later,

he moved with his wife to a bordering town in Iran and opened other legitimate businesses – a grocery and a mobile phone business. He was conversant in Farsi, Pushtu, Arabic, Dari and some English. (PFR ¶ 21). Living and working in Iran, however, required him to have his visa renewed on a regular basis, necessitating travel back to Afghanistan to have the requisite documents approved. This regular travel between Iran and Afghanistan – usually via roads through Pakistan – made him familiar with border crossings between the countries. In this wholly innocent context, Mr. Nassim did have familiarity with different routes of travel, security, and congestion present at border crossings. It was also in this context that he would see others – both fighters and their travel facilitators – traveling along the same routes. The underlying documents do not establish, however, that he facilitated the movement of any fighters. One of the travel facilitators would sometimes have travelers gather in front of Mr. Nassim’s store in Iran, before they began their passage over the border, but the Public Factual Return does not provide any evidence that Mr. Nassim was involved in transporting these fighters or any others. Indeed, the Public Factual Return accurately recounts that Mr. Nassim denied knowing the affiliation of the travelers who may have gathered outside his store, until much later, long after they were gone, when he was told by a friend about who the travelers may have been. (PFR ¶ 38 and reports cited). That

he knew, or later learned what others were doing, because he lived in a border region and traveled himself, does not equate to his own complicity in that activity. His candor in describing to his interrogators the activity of others is not a sign of his own guilt, and his knowledge of others' activities does not establish he was complicit in terrorism. Although the bare allegations of the Public Factual Return allege Mr. Nassim's complicity in transporting fighters, the actual documentation provides no such proof. Rather, the underlying documents support Mr. Nassim's explanation relating to these events. Just because he could see and hear what others were doing publicly does not fairly lead to the conclusion that he was personally involved in facilitating the transportation of fighters.

d. The Narrative of the Public Factual Return also makes the bare allegation, without support, that Mr. Nassim facilitated delivery of correspondence, money and supplies between senior al-Qaida leaders. (PFR ¶¶ 46-59). The underlying documents establish something much different: Mr. Nassim was ordered, against his will, to deliver a sealed letter containing a writing he had not seen to a person in the Waziristan region of Pakistan. (PFR ¶ 48: "The letter was folded and taped, with the name "Habib" on the outside."). He did so, not because he was associated with al-Qaida, but because he was afraid of al-Qaida. He delivered the sealed note to an old man, without knowing its contents,

then returned to his hometown in Iran with a similarly sealed note, containing a writing he had not seen, giving it to the person who ordered the deed. (PFR ¶ 48). He was paid for his travel expenses, approximately \$66 USD. (PFR ¶ 48). On another occasion, he was asked by an acquaintance to deliver approximately \$817 USD to a mutual friend, Abdul Majid, in his hometown in Iran. Yet, even the Public Factual Return acknowledges that Mr. Nassim said “he did not know where the money came from or why it needed to be given to Abdul Majid.” (PFR ¶ 57). Rather than accept his innocent explanation – or refute it – the interrogator substituted his own preconceived agenda and uninformed skepticism for evidence:

Collectors Comment: - It does not make sense that the Kuwaiti would not give the money to Majid himself seeing as they just saw each other. It could be some sort of tactic used to include as many middle men as possible to make it harder to know the original source.

ISN 10028 SIR (Oct. 16, 2007) ¶ D. All of this speculation is not evidence, and it overlooks the more fair question and answer: Since Mr. Nassim was a legitimate businessman who owned a dried fruit business, a grocery and mobile telephone business – and was conversant in many dialects – was it a sign of terrorist activity for him to be entrusted to deliver a relatively small sum of money to a friend? That question, however, is fairly answered in the negative and undermines the preconceived thesis under which the interrogators were operating. Yet, as the

Public Factual Return documents, Mr. Nassim was a legitimate businessman, with legitimate businesses in Iran and Pakistan. Legitimate businesses transact business, a feature of which is the receipt and payment of funds. For one to entrust a businessman with money – or the delivery of payments – is hardly a sign of terrorist activity. He also had a need to travel to Afghanistan to renew his visa every three months. This travel often traversed Pakistan, as well. For a legitimate businessman, with legitimate reasons to travel to neighboring countries, to hand-carry letters or funds is not unusual and is certainly not evidence of wrongdoing.

e. Lastly, Respondents contend that Mr. Nassim received money from al-Qaida operatives, either as payment for his services or to finance his facilitation work. (PFR ¶¶ 60-64). As the Public Factual Return concedes, Mr. Nassim “denied receiving any money as a facilitator.” (PFR ¶ 60 n.20). In large part, these allegations are a repetition of the allegations addressed above, involving reimbursement for travel expenses (IIR6 105 5106 08). (See PFR ¶¶ 61-64). Although the Public Factual Return also alleges one payment was made to facilitate the relocation of an al-Qaida family to Waziristan, (PFR ¶ 61), the three underlying source exhibits contain no evidence that Mr. Nassim did any such a thing. In fact, IIR 6 105 5142 08 states that any one of three other people may have been used for this task, but does not state that Mr. Nassim facilitated the relocation

of the family.

4. The Public Factual Return relies, as to material allegations, solely on interrogation sessions with Mr. Nassim. The Public Factual Return reveals no meaningful corroboration of those interrogations, nor does it refute the exculpatory answers he repeatedly made. Despite the paucity of evidence against him, Respondents would rely on a few isolated comments allegedly made, often stretching those comments out of proportion. Yet, the isolated comments reported by interrogators deserve no credence, considering the coercive conditions of Mr. Nassim's confinement and interrogation sessions. The conditions of Mr. Nassim's detention and the constant pressure of interrogation sessions – only some of which are revealed in the Public Factual Return – adversely affected the reliability of his responses to the interrogators. Important information about these matters is revealed in the unclassified notes of Mr. Nassim's interview by psychiatrist Emily Keram, M.D. at Guantánamo Bay, Cuba. Mr. Nassim told her:

. . . he wanted the I[nterrogator]'s to move him out of the first & second dark cells. He asked the I[nterrogator]'s to move him, what would he need to do to get move? They said, "tell us what we want to know." He said he \emptyset [does not] know what they wanted to know. ~~Said if they would just tell him what he~~ The I[nterrogator]'s were threatening him "you will not get out of this dark/small place, you will be sent to a place where you will be beaten. We will put your family in prison.

The I[nterrogator's] said you need to admit these things. So he said "okay

you tell me what I need to admit to and I will agree to it. So they told him & he said ‘okay, that’s correct; okay, I agree w/ that.’” He never offered information himself. He just agreed that the information the I[nterrogator’s] presented to him was correct.

Unclassified Notes of Interview Conducted by Emily Keram, M.D. (11/10/10) at 10/11. The notes also reveal how the combination of conditions of Mr. Nassim’s confinement, augmented by sleep deprivation, fed the very real human fears he experienced during the interrogation sessions:

Reasons he decided to agree w/ information the I[nterrogators] gave him:

- Strongest reason → impossible to say. wore him down bigtime
1. Sleep deprivation → θ [not] thinking clearly & suffering
 2. fear of what would happen to his family
 3. fear of being kept in small dark places
 4. Fear of being sent somewhere to be beaten
 5. Fear of never getting out

Id. at 11. When his fear faded, he recanted any untruths he had spoken, which only caused his interrogators to repeat the coercive process.

5. This much is clear, even from the limited Public Factual Return: Mr. Nassim was interrogated extensively, often twice a day, for many months. Despite his repeated denials of wrongdoing, the interrogations continued, incessantly, a process that is apparent even from the incomplete, redacted and edited exhibits appended to the Narrative. Mr. Nassim’s prolonged detention and interrogation, as

well as the conditions of his confinement, exacted a heavy toll: He eventually took his own life while still detained at Guantánamo Bay Naval Station.

6. In the end, there is no evidence that Mr. Nassim ever committed a single act of wrongdoing. There is no evidence he was a terrorist or that he was associated with terrorism. There is no evidence that he associated with the Taliban or al-Qaeda. He was, sadly, a victim of the war on terrorism, a young man – a husband and father – who found an unfathomable exit to the torment of his unjust detention.

Dated: August 29, 2012

Respectfully submitted,

MICHAEL CARUSO
FEDERAL PUBLIC DEFENDER

/s/ Paul M. Rashkind
Paul M. Rashkind (pursuant to LCvR 83.2(e))
Supervisory Assistant Federal Public Defender
Chief of Appeals
150 W. Flagler Street, Suite 1500
Miami, Florida 33130-1555
Tel. (305) 536-6900 x 4241
Fax (305) 530-7120
Email: Paul_Rashkind@fd.org

PETITIONER'S EXHIBIT

Unclassified Notes of Interview Conducted by Emily Keram, M.D. (11/10/10)
pp. 10-11 / 11

UNCLASSIFIED

SECURE FACILITY

Office Phone#
(703) 601-4300

Fax Phone#
(703) 601-4119

29 Nov 2010

HABEAS COUNSEL FAX COVER SHEET

FROM:

FAXED BY David

TO:

NAME: Paul Rashkind

ORG: Self

PHONE: (305)536-6900

FAX: (305)530-7120

COMMENTS:

ISN 10028

DCT

Total Number of Pages Sent (including cover sheet) 22

Please telephone (703) 601-4300 if there were any problems with this transmission.

UNCLASSIFIED

UNCLASSIFIED

19/20

Told of things that weren't true @
 Baghdad, for example, he wanted
 the J's to move him out of the
 first of second dark cells. He
 asked the J's to move him, what would
 he need to do to get more? They said
 "tell us what he want to know."
 He said he to know what they
 wanted to know. Said if they would
 just let him what he The J's
 were threatening him "you will
 not get out of this dark small
 place, you will sent to a place
 where you will be beaten. We will
 put your family in prison."

The J's said you need to admit
 these things. So he said "okay you
 tell me what I need to admit to and
 I will agree to it. So they told
 him & he said, "okay, that's correct;
 okay, I agree to that" He never offered
 information himself. He just agreed
 that the information the J's presented
 to him was correct.

UNCLASSIFIED

~~(B)~~

UNCLASSIFIED

Reasons he decided to agree to information the (B) gave him:

Strongest reason -> impossible to say.

- 1. Sleep deprivation -> D. O. turning clearly / softly
- 2. Fear of what would happen to his family
- 3. Fear of being kept in small / dark place
- 4. Fear of being sent somewhere to be beaten
- 5. Fear of never getting out

UNCLASSIFIED

UNCLASSIFIED