

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Omar ABU ALI and Faten ABU ALI,)	
as Next Friends of)	
Ahmed ABU ALI,)	
presently detained in Saudi Arabia, his)	
residence and that of his Next Friends is)	
3245 Rio Drive, Apt. 1015)	Civil Action No. 1:04-cv-01258 JDB
Falls Church, VA 22041)	
Petitioners)	Judge John D. Bates
)	
v.)	PETITION FOR
)	HABEAS CORPUS
John ASHCROFT, Attorney General of the)	
United States;)	
Robert S. MUELLER, III, Director of the)	
Federal Bureau of Investigation;)	
Luke KULIGOSKI, Special Agent, Federal)	
Bureau of Investigation;)	
Other Special Agents of the FBI to be)	
Identified and Named;)	
Thomas RIDGE, Secretary of the)	
Department of Homeland Security; and)	
Colin POWELL, United States Secretary)	
of State,)	
Respondents)	

**PETITIONERS' MOTION FOR LEAVE TO FILE
SUPPLEMENTAL SUBMISSION**

1. Petitioners hereby move for leave to file a supplemental submission in the nature of an affidavit that has just come to the attention and into the possession of the Petitioners of critical importance to two of the most important issues raised by the habeas petition and by the proceedings that have taken place thus far in the case.

2. Specifically, the affidavit, submitted by the counsel of record of one of the defendants in the *Royer* case, provides first hand evidence corroborating the fact that Petitioner Ahmed Abu Ali has been tortured during his detention and interrogation in Saudi Arabia, and also corroborating the fact that U.S. government officials involved in a major way in the *Royer* case prosecutions were fully aware that the Petitioner had been tortured.

3. This Court, during the hearing on the Petitioner's request for a preliminary injunction expressed special interest in any evidence concerning whether the Petitioner had been tortured.

4. Evidence of torture, and of the awareness of U.S. government officials that torture may have occurred, has a very direct and especially critical bearing on whether this Court is authorized to consider the Petitioner's habeas petition under the standards set out in *United States v. Barona* (56 F.3d 1087, 9th Cir. 1995) and *United States v. Rose* (570 F.2d 1358, 9th Cir. 1978) regarding circumstances that "shock the conscience" of the court, and that indicate a "joint venture" between the U.S. government and a foreign government that has custody of the petitioner in a habeas proceeding.

5. In addition, this evidence speaks directly to the question of whether sufficiently serious allegations have been made to justify allowing the case to proceed to a consideration of the merits of the habeas petition, under the standards set out in *Ex parte Albertson*, 103 F.Supp. 617, 618 (D.D.C. 1951), *Wash. Metro. Area Transit v. Holiday Tours*, 559 F.2d 841, 844 (D.C.Cir. 1977), *Stewart v. Overholser*, 186 F.2d 339, 342 (D.C. Cir. 1950) and *Walker v. Johnson*, 312 U.S. 275, 285-87 (1941).

6. This affidavit, and the information it contains, were not previously available to the Petitioners, and could not have been submitted at any earlier stage in the proceedings. The affidavit was delivered on this date, October 12, 2004, it was not until a telephone conversation

between the affiant and the Petitioner's mother on September 7th that the information contained in the affidavit first became known, and it took some time for the affidavit to be written, attested to and delivered, since the affiant has been physically located in Kawait and needed some time to obtain some of the supporting information and citations that he referred to in his affidavit.

7. Counsel for Petitioners has made an effort to notify opposing counsel of this Motion and Supplemental Submission, and to obtain an indication as to whether they opposed or consented to the Submission. We contacted and spoke to opposing counsel by phone, who indicated that "not having seen the motion and affidavit the government takes no position at this time" regarding the Submission.

8. Based on these facts, Petitioner hereby moves the Court to accept the accompanying submission.

Respectfully submitted this 12th day of October, 2004 by:

Morton Sklar
Executive Director, World Organization for Human Rights USA
1725 K Street NW, #610
Washington, D.C. 20006
(202) 296-5702
(202) 296-5704 (facsimile)
D.C. Bar Number 144139

and

Sapna Lalmalani
Legal Intern
World Organization for Human Rights USA

2. This attached affidavit, and the information it contains, provides sworn confirmation by someone who was intimately involved in the proceedings in the *Royer* case, and who served as an officer of the court considering that case and thereby is bound to the highest standards of veracity and reliability, that Petitioner Ahmed Abu Ali was tortured during the period of his continuing detention in Saudi Arabia, and that U.S. officials involved in the *Royer* case prosecution were aware of that fact.

3. This information is of particular importance at the present stage of the proceedings because the Court specifically inquired at the hearing on the Petitioners' request for a preliminary injunction as to the evidence that was available indicating that torture may have been inflicted upon Petitioner Ahmed Abu Ali during his detention and interrogation. Equally important, this concrete evidence of torture demonstrates exactly the type of circumstance that "shocks the conscience of the court," and indicates a "joint venture" between the governments of Saudi Arabia and the United States with respect to the Petitioner's arrest, detention and interrogation, that would justify the exercise of habeas jurisdiction by a U.S. court under the principles set out in the cases of *United States v. Barona* (56 F.3d 1087, 1091, 9th Cir. 1995) and *United States v. Rose* (570 F.2d 1358, 1362, 9th Cir. 1978), as set out in the Petitioner's Post-Hearing Submission to this Court.

4. A copy of Salim Ali's affidavit is attached to this pleading, and a Motion for Leave to File accompanies this submission.

Respectfully submitted this 12th day of October, 2004 by:

Morton Sklar
Executive Director, World Organization for Human Rights USA
1725 K Street NW, #610
Washington, D.C. 20006
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v.

John ASHCROFT, Attorney General of the
United States, et al.,
Respondents

Civil Action No. 1:04-cv-01258

Judge John D. Bates

**PETITION FOR
HABEAS CORPUS**

ORDER

Upon Petitioners' Motion for Leave to File a Supplemental Submission, it is hereby:

ORDERED that the Motion is granted, and it is

FURTHER ORDERED that the Petitioners' Supplemental Submission and accompanying Affidavit of Salim Ali are deemed filed and part of the permanent record of this case.

IT IS SO ORDERED.

Dated:

U.S. DISTRICT JUDGE