

14 Jan 11

From: Detailed Defense Counsel for Mr. Ibrahim al Qosi  
To: Convening Authority

Subj: REQUEST FOR CLEMENCY ICO UNITED STATES v. IBRAHIM AL QOSI

Ref: (a) Rule for Military Commissions 1106(e)(4)  
(b) Legal Advisor's Recommendation of 13 Oct 10  
(c) Regulation for Trial by Military Commission 12-7 (2007 Edition)  
(d) U.S. Army Regulation 190-47  
(e) U.S. Secretary of the Navy Instruction 1640.9C  
(f) U.S. Air Force Instruction 31.205  
(g) Uniform Code of Military Justice, Art. 13  
(h) Rule for Court-Martial 305(k)  
(i) Manual for Military Commissions (2010 Edition), Preamble

Encl: (1) Letter from al Qosi family (Arabic)  
(2) Letter from al Qosi family (English translation)

1. Pursuant to reference (a), the defense respectfully requests you grant clemency in this case. Specifically the defense asks that you suspend an additional six (6) months of Mr. Al Qosi's term of confinement. This request is based in the decision to house Mr. al Qosi in virtual isolation despite recommendations from you and the military judge that he serve his term of confinement in some form of communal living.

2. In accordance with the pre-trial agreement (PTA) reached in this case, you made a recommendation to the Pentagon that, after Mr. al Qosi's sentencing, he be allowed to remain under living conditions substantially similar to those in existence in Camp IV at Guantanamo; as agreed, your recommendation specified that Mr. al Qosi should not be housed in isolation. The Pentagon ultimately did not abide by your recommendation.

3. As the military judge found during the guilty pleas and sentencing hearing, there unfortunately was no coordination with Commander, Joint Task Force Guantanamo (JTF-GTMO) -- coordination which was required under reference (c). Under reference (c), JTF-GTMO and your office are required to determine whether terms of any PTA touching on custodial conditions are "acceptable and will be honored." *Id.* Had the coordination required under reference (c) taken place, the question of where Mr. al Qosi was to serve his sentence would have been resolved before he entered into the PTA.

4. In applying reference (c) to this case, the military judge concluded your office was required to "receive[ ] written confirmation from the JTF-GTMO Commander, prior to signing a pretrial agreement in which the convening authority was agreeing to make a recommendation regarding post-trial confinement of a convicted detainee." Record of Trial at 691. The judge went on to make the following recommendation:

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It is still the commission's policy [sic] [position] that no substantial interest will be served by not allowing Mr. al Qosi to serve any confinement adjudged in Camp 4 and that Mr. al Qosi has complied with all conditions and obligations applicable to him under the Pretrial Agreement and Appendix A, the court, at the request of the government is amending its 7 August order. *The court is not however ordering that Mr. al Qosi be allowed to serve post-trial confinement in Camp 4, or a comparable facility, but highly recommending that the government allow him to do so.*

Record of Trial at 702-703.

5. Believing he had a substantial chance of remaining in Camp 4, Mr. al Qosi complied fully with every requirement of the pre-trial agreement. He thereby provided your office with its first victory in military commissions under the revised Military Commissions Act and Manual for Military Commissions, and gave the government a platform from which the Chief Prosecutor could claim that "[t]he conviction validates the commission process and advances the hearings." See Robles, Frances. "Bin Laden Driver to War-Court Convict," *Miami Herald*, 8 July 2010, accessible at <http://www.miamiherald.com/2010/07/07/1720415/bin-laden-driver-to-war-court.html>.

6. The decision to move Mr. al Qosi from Camp 4 was postponed for 60 days while his conditions of confinement were under review within the Pentagon. Thereafter, he was moved to a facility where he was placed in a solitary cell; there is nothing in that cell but a bed, a sink, and a toilet. The rules applied to Mr. al Qosi for the first two or three months in this facility permitted him to watch television in another room for up to three hours a day; he is also alone in this room. He was permitted to be outside in a cage for up to four hours a day. This time was largely spent alone, too, since there was only one other prisoner present for socialization, and he was not inclined to be social.

7. Since another detainee, Omar Khadr, arrived in the same Camp with Mr. al Qosi, the situation has improved somewhat, in that the two of them interact regularly when given the opportunity. Mr. al Qosi has more recreational time (up to eight hours a day), and the outdoor cage for that purpose has been extended to give a little more space. But again, the confinement conditions are not as you recommended they should be – they are not at all "substantially similar" to Camp 4.

8. What is so egregious about the virtual isolation that Mr. al Qosi has encountered since being sentenced is that the most recent isolation is reminiscent for him of the eight difficult months he spent in complete isolation when first arriving at Guantanamo. It was Mr. al Qosi's grave concerns about reliving this damaging experience that drove the request for a recommendation from you that he remain in a communal living setting. Those months, when he was entirely alone for what was an unforeseeable future, supervised 24 hours a day by a guard posted in his cell, without any communication with anyone but interrogators, were the most psychologically

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painful and damaging months to him. Hailing from a culture marked by its social nature, such isolation is grueling and has had a very negative impact on his emotional health.

9. Importantly also, the increase in the severity of Mr. al Qosi's confinement conditions following his guilty plea is improper under the Military Commissions Act (MCA). The MCA obviously authorizes confinement. Mr. al Qosi was in fact confined prior to his guilty plea and sentence. During that time, he was also a compliant detainee in that he had a very good record of conduct; as a result of his good conduct, he resided in a minimum security communal setting, wearing the garb designated for compliant individuals. Upon Mr. al Qosi's sentencing, however, the political chain of command within the Department of Defense (DoD) along with JTF, decided that his confinement conditions must become more onerous -- even though no change whatsoever arose in his behavior and he remained compliant under JTF's very own estimation. There was no legal foundation for this decision to increase the severity of Mr. al Qosi's confinement conditions. In fact, the MCA does not authorize an increase in the severity of confinement conditions under such circumstances.

10. The political chain and JTF's position has been that confinement conditions for post-conviction detainees should not be the same as untried detainees. Again, there is no legal basis for this position. In fact, service regulations for the receipt of newly convicted inmates specify that the custody grade of the inmate is to be determined by matters such as emotional instability or disturbance, irresponsibility, prior escapes, maturity, history of emotional stability, violence and demonstrated sense of productive work -- not the mere fact of conviction. Ref. (f); *see also* Ref. (d), Ch. 5; Ref (e), §4202.

11. The reasoning of officials assessing Mr. al Qosi's case to-date is flawed in that it fails to recognize that detention in Camp IV is confinement. The focus of the analysis is being incorrectly placed on the fact that Camp IV, as an internment facility, is not intended to impose punishment. Thus, the reasoning has gone, a post-conviction detention scheme that is intended to impose punishment must be harsher than Camp IV. The avowed purpose of Camp IV, however, does not alter the incontrovertible fact that this camp is confinement.<sup>1</sup> Thus, Camp IV-like conditions are sufficient to impose post-conviction punishment: there was no penological justification to exceed those conditions for Mr. al Qosi when he had been compliant with those conditions for years.<sup>2</sup>

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<sup>1</sup> Indeed, were it not confinement, the Congress and other authorities would not have embraced this camp as they have, to serve as the option of choice for holding and controlling detainees.

<sup>2</sup> Mr. al Qosi was placed in what JTF categorized as "medium" custody conditions, under which he is continually supervised. Service regulations specify that this classification is to be assigned to inmates who pose an escape risk, but do not present a significant threat to others or property. According to service regulations, this classification applies to inmates who demonstrate "a poor adjustment to confinement," -- which is, by anyone's assessment, not Mr. al Qosi's situation. *See* Ref. (f), Ch. 5.6.4.

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12. A reduction in Mr. al Qosi's sentence to remedy the unlawful punishment imposed upon him would echo the fairness principles that inform the court-martial system. Under *United States v. Suzuki*, 14 M.J. 491 (C.M.A. 1983), a court-martial is authorized to grant pre-trial confinement credit (beyond the day-for-day credit mandated by statute) where an individual has been subjected to unlawful punishment in confinement before trial. *Id.*; see also, *United States v. Adcock*, 65 M.J. 18, 25 (C.A.A.F. 2007). This well-recognized remedy for unlawful pretrial treatment is also codified in the UCMJ. Ref. (g), (h). While this court-martial practice applies to pretrial conditions of detention, the principle of fair treatment that undergirds it must be heeded here. See *United States v. King*, 61 M.J. 225, 227 (C.A.A.F. 2005) (holding that to assess propriety of pretrial confinement credit, analysis should look to the purpose and intent behind the confinement condition, and whether it is related to a legitimate government objective). This principle has a place in the commissions system: the Manual for Military Commissions (MMC) specifies that its rules "shall, so far as the Secretary considers practicable or consistent with military or intelligence activities, apply the principles of law and the rules of evidence" for trials by general court-martial." Ref. (i). Acknowledging the error committed here in Mr. al Qosi's confinement conditions, is consistent with the principles of law enunciated in the UCMJ and related legal precedents, and reducing Mr. al Qosi's sentence by six months to account for the error follows the tenets of the Military Commissions Act and its implementing rules purport to promote.

13. The defense concedes that Mr. al Qosi's confinement conditions could change as he went from internee status to convicted status; there is no penological or institutional management justification, however, for imposing the new, more severe conditions. Mr. al Qosi is now in slightly less restrictive confinement conditions than when his sentence was first imposed, but he continues to have significantly more severe restrictions than he had in Camp IV. The political DoD chain and JTF's continued insistence on keeping him in confinement conditions not substantially similar to those in Camp IV (in contravention of your recommendation) is inexplicable and legally unjustified. These initial decision makers may respond that Mr. al Qosi was only placed in virtual solitary confinement because there was no option, other than maximum security, for post-conviction detainees. It is beyond cavil, however, that JTF/DoD failed to create confinement facilities for post-conviction detainees, notwithstanding this very same issue having been presented to them two years earlier. As far back as August 2008, following the sentencing for Salim Hamdan, the DoD was specifically put on notice that it needed to prepare for the detention of convicted detainees.<sup>3</sup> Diligent preparation would have included the development or identification of facilities that allowed for such detainees to be held in appropriate confinement conditions – ones that accorded with their actual security status. The DoD failed to make these preparations. Its dilatory actions resulted in its falling back on a one-

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<sup>3</sup> Two year-old DoD communications (pertaining to Mr. Hamdan's confinement) regarding this very need for facilities were presented to this military judge discussed in Mr. al Qosi's case; the judge noted that nothing had been done, in the intervening two years, to prepare for post-trial detentions. Record of Trial at 700.

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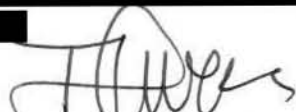
size-fits all maximum security regime that punished Mr. al Qosi without regard to any legitimate penological interest.<sup>4</sup>

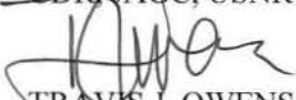
14. Mr. al Qosi was subjected to additional punishment not authorized by law because his confinement conditions were improperly worsened. The policy context of this decision cannot be ignored: The government should seriously ponder the repercussions of a commissions system that imposes the same confinement regime on those who go to full trial and those who plead guilty and have a solid record of institutional compliance. A six-month reduction in Mr. al Qosi's sentence would allow a remedy for the error in his confinement.

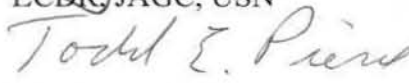
15. A reduction in Mr. al Qosi's sentence is further justified by the particularly propitious environment to which he will return in Sudan. He has a strong family network and even larger supportive community there. Encl. (1), (2). In addition, he also has stable employment awaiting him: his family has owned and operated a successful business, a community market, for years. Upon his return, Mr. al Qosi will be responsible for running that family store. *Id.* The extensive family and community assistance and secured source of income that Mr. al Qosi will enjoy in Sudan will provide him with an environment that will ensure his successful psychological and financial adjustment to a new, free life. His prompt repatriation is therefore highly feasible. It is, moreover, consistent with expressed U.S. policy, and will demonstrate a commitment to resolving the diplomatic problems presented by continued detention of certain detainees at Guantanamo.

16. For all these reasons we respectfully request that you suspend an additional six (6) months of Mr. Al Qosi's confinement. If the defense can be of any further assistance, you may reach us at:

[REDACTED]

  
For SUZANNE M. LACHELIER  
CDR, JAGC, USNR

  
TRAVIS J. OWENS  
LCDR, JAGC, USN

  
TODD E. PIERCE  
MAJ, JA, USAR

<sup>4</sup> Of note here is that following his guilty plea and sentencing, Mr. al Qosi was placed under the same conditions as Ali al Bahlul who, due to his less compliant conduct, never was in Camp IV at all, and who did not plead guilty.

5 يناير 2011

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الى السادة المتفهمين للجنة العسكرية، فليرحموا ربنا

نحن ابناء اسرة ابراهيم عبد محمد ولد من عاقبتهم والدة وزوجه  
وبنتيه واقفوانه واقفوانه نلت من عمدة الارب ابراهيم  
الى السادة المتفهمين وعمدته لمزلنا وعمدة الرفق والامر الاجمالي  
للأسرة

لقد استطاعت الاسرة بفضل جهودها من وصول زوجه ابراهيم  
وبنتيه الاقنيت الى السادة من شهر الثورات مع حق لمقرت  
وغير لقب مع الاسرة في كسرة وقد حصلنا لها من السلطات على  
الاتامه الدائمة لها في المودته وقد قمنا وقال البنات الى  
المدرسة ولهم بالقيا من المنزل والابنه اللذين في لفتنا الى  
والصديق في الصداقات من فرجة الاساس، ولهم من  
قائه السعادة والاحسان بالاطمئنان الاجمالي خاصة لاولاد  
المتفهمين وهم في عمر 13 سنة و 9 سنوات ولكن ان تعلموا  
ان قنيت هذا العمر لا يعرفون احوالهم الا من قنوا لعمده  
فقوا، اما زوجه في الآتية تبين في المنزل ولقبم برئاسة  
هؤلاء البنات وكذلك في المنزل لا يستحال زوجه لسنين  
طويله ولهم ان تعلموا انه زوجه قد تلمعت من كدت  
مع زوجه عن التلقين في آخر مقالة عما يدرك على قنوا  
وسبقها الله

وتحت والدي ابراهيم تبين متفهم عمده، وقد لفتنا  
عن الامر 19 عاماً لوالده و 10 عاماً لوالدة ولم يتبق  
من عمر اللثمة ونعم الله لنا ان يقينا احوال حتى عمده  
ابراهيم والاحتمينا بسوقنا ابنة وقوله لسنين الما من افتر  
استنا الاله انه ليد الى عمرة وذلك لرئيسنا والاهتمام  
لشؤوننا ما سبب له من قائل تقبل لانه قبل لعل  
يقول كثيرا من ابنة الذي كان يتقاهنا لمتما كما نريد  
لنا، وسبقنا بنتي هذا لمت عمده ابراهيم البنا لانه  
مدق بياض الصل الثمار الذي يتلقاه وورثنا مع  
زوجه واطفاله وسبقه لعل استقره مقنا الكروانغ  
لنا من الحياة والتطلع الى كمد افعل

ووصفنا التفرقة من مسؤولياتنا تجاهنا من عدمه فساله محمد  
تبارك كبير بانتظار ابراهيم الذي كودته قلبا بلشنا هجر  
فما صوره المدينة منذ فقدت وسعه بتوكل ابراهيم لتفتقر  
هذا المجر لثما بيد و الأسم المجر يعكس وقته ابتنا  
الأصغر وكنت ما بيد ابراهيم بعد تركه له ذلك لانه  
له وقته من التمدد وقته لأنه حتى احيائه يدونه امر  
حتى يستطيع ان يشعر هذا المجر وكنت ما بيد ابراهيم بعد  
بجد مترا ابا وعلمك جادرا له ليعينه على العاش آياتة  
والدنة .

وتأمل انه تفهرا حسنة امرتنا من حذرة من ضلته واسرة  
ومتأسله ، حتى مع افعالنا الذم انتقلوا حتى حذرة الظروف بعد  
فلبنا ثلاثة من ابتائنا لا تكون ليشوه من حذرة ، هبنا  
التي صيبا مع الامام وابتاد المعرفة . ابتنا الاستاد احمد استاد  
واشغل لبيد منا لعله ، وبعد لزيارتنا مع زوجته وابنته  
على الأقل مرة في الشهر ، وفي كل عطلة امينا ، وبالقل لدينا  
ابتناق ليشوه هبنا منا ، وبعد من لزيارتنا بانتظام ، ولقد  
من ابتاد القومية ليشوه وافق وفارم حذرة ، ستعرف التي  
هولتنا على انه مركب مجمع من الاسرة ، وابتاد ان هبنا في الابتاد  
والعلاقات والسيد والسودان مركب على ما بلشنا لانها تتهي بتأسل  
اى اكد حتى بالنسبة للسودان .

والتي التي في هذا المكان والذي يجب التفرقة من افذه  
في كمننا الزمنا بعد تبيله الدعم القوية المناهضة لبراهيم لدر  
كودته وانه ابتاد العائلة وحتى التي الذي تكلمت به بل لمينك  
بأسرها منتظر كودته لنا ق العير وذلك لانه قل تردريد  
ان بعد له عن مدى حبه له ويقدم له الدعم ليدرك او ليدرك  
حتى لشرا ابراهيم انه قد عاد الى صيانه الاول وانه بين  
اهله تراصدقائه وأصحابه وبعد التي التآقد ربا على  
كتابة بيتا وقاصم خليف كراشتامد تأسل المرقتة مملنة  
لتقنية الدعم المسمى والمادى والدمت القاصم لبتا فلم كريا  
مع صيانه الكيديه

وتعد كاسرة تامل حنكم التفرقة القوية الخامة التي في ناعها  
لهم صا من ابراهيم وصيانه عند كودته ولذا فطلب ناعهم  
واجيبه واكمله ان تأسل له تأسل هذه الظروف وحتى  
كفوة دى وسندا له حتى صيانه الكيديه ان تراصد الامم

المصادر جيدة ، ونحن نقفد انه طيبة عائلتنا ورفقتنا  
 التديه والاكثه والادبه واسامه ابراهيم سيمر انتقاله  
 حياته لتعددته وان الروايات ناصبه وسيسر ذلك اليك  
 والافلاص الذي كنته له لهذا المجمع والاسرة والاقربان  
 لذا سئلهم مرتباً بيننا وحبداً بيننا فاصح او لا عرفتم  
 انه منزله وعمله وكريته التي اشتريناها استعداداً لاستقباله  
 بيننا كل هذا جاعز الزا له  
 ولله اقله تعرفه منكم بالبريه انه تنظروا في ارساله  
 لنا في اقراب وقت عملنا

و شكرنا جزيلاً

امتداد اسرة ابراهيم احمد محمد ليدني الذي يملئ به لتصفنا  
 منه في هذه انتقاله

الرقم	الاسم	العلاقه
1-	احمد محمد ليدني	والد
2-	مجدته محمد ليدني	والدة
3-	زهرة / انتصار / فريده ساحيه سمر	صقيقات
4-	محمد / المبراهيم / مبراهيم سمر صالح	افغان / اتقاء
5-	مضيه / زهرة / النعمان / من	بجائه صقيقات والده
6-	ابنار الحمايه لثباتي و سابت وعلم محمد	ابنار الحمايه (50 فرد)
7-	ابنار الحمايه	(50 فرد)
8-	عبدالمجيد لمبراهيم	محمد / ابنه / محمد والده
9-	سمر صالح	" "
10-	المبراهيم	" "
11-	تركيه	" "
12-	اسامه شريف	صديقه سمر ليدني
13-	احمد سمر الحاتم	صديق للاسرة



In the Name of God, the Most Gracious, the Merciful

Date: 5 January 2011

To: The United States' Military Commission, Guantanamo Bay, Cuba

We, the family members of Ibrahim Mahmoud Al Qosi, including his mother, his wife, his two daughters, his brothers and his sisters, are writing to you regarding the return of brother Ibrahim to the Sudan and to our home, which would bring back warmth, security and social safety to our family.

Thanks to its effort, the family was able to bring Ibrahim's wife and two daughters to the Sudan from Morocco in October 2010. She now lives with the family in Atira. We have also managed to obtain permanent residency for her in the Sudan and enrolled the girls in a nearby school. His oldest daughter is in the Sixth Grade and the youngest is in the Fifth Grade. They all are extremely happy and feel comfortable socially, especially the little girls who are respectively 12 and 9. You can imagine two girls of this age who only know their father by picture. As for his wife, she is living at the house and is taking care of these girls. She is getting the house ready to welcome her husband after a long absence. Please imagine that during their last phone conversation, Ibrahim's wife was stumbling, just to show you how much she [illegible] and misses her husband.

We, Ibrahim's father, 79, and mother, 75, are living with the hope that one day we will see him return, and we do not have much more left to live. We constantly pray to God that we would live long enough to see him return home, and not die before seeing him. During the last few years, our oldest son had to come back to Atira to take care of us and our needs, which caused a heavy financial burden on him because he had to accept a job that pays a lot less than what he was making when he was away from us. This will end when Ibrahim comes back home because he will handle the business that is waiting for him and take care of us, his wife and his children. His presence among us will provide us with the biggest reason to live and look forward to a better future.

Aside from his responsibilities toward us, an important business job will be waiting for Ibrahim upon his return. Our family owns a store in the city's market place since decades ago, and when Ibrahim returns, he will be in charge of running the store. Our youngest son is working at the store at the present time. When Ibrahim returns, he will take over so that his younger brother could return to his government job, from which he has taken an unpaid leave of absence in order to take care of our store. Upon his return, Ibrahim will find a profitable store ready for him to run and support his children and parents.

We hope that you will understand the nature of our family in Atira. It is a large and close-knit family. Although some of our children left Atira for work purposes, three of them still live next to us in Atira, in addition to uncles and cousins. Our son Mahmoud, who is a Professor, has moved far away for work, but comes back to visit us with his wife and two sons at least once a month and whenever they have a break. Likewise, we have two daughters who live away from us and come back to visit us on a regular basis. We also have a large number of cousins who live in Atira and out of town. They consider our house as the family hub and come to visit us during the holidays and the breaks. Our family is well known in Sudan for its closeness, even by Sudanese standards.

The important thing in this letter, to be taken into consideration, is the strong support network that will be available to Ibrahim upon his return. The entire family, neighborhood and even city is awaiting his return and cannot wait to see him home. They all want to express their love for Ibrahim and provide him with all the moral and financial support that he needs so that he may feel that he is back to his old life and that he is with his family, friends and loved ones, and readapt quickly and as easily as possible to his life among us and outside of Guantanamo Bay. This support network will provide Ibrahim with all the moral and financial support that he needs to readapt quickly to his new life.

As a family, we hope that you will consider the special circumstance that we explained to you in the present letter regarding Ibrahim and the life that awaits him upon his return. We kindly ask you to honor his request to review the ruling issued in his case and hope that you will do so in light of these circumstances which will provide him with full support in his new life. We believe that the nature of our family and our strong, clear and unequivocal desire to help Ibrahim will help him to successfully transition into his new life upon his return to the Sudan, as he will feel the love and loyalty that his society, family and loved ones have for him. He will always be part of us physically and emotionally. We are providing him with a home and a job, as well as a vehicle which we bought for him to welcome him home. All this is ready for him now.

We hereby urge you to consider sending him home to us as soon as possible, and thank you for your time and consideration.

Yours truly,

The family members of Ibrahim Mahmoud Al Qosi, seeking the reduction of his detention period.

Number	Name	Relationship
1	Ahmed Mahmoud Al Qosi	Father
2	Maimouna Mohammed Fahmi	Mother
3	Zahra, Intisar, Khadija, Samia, Sahar	Sisters
4	Mahmoud, Abd Al Moun'im, Abdullah, Mohammad Saleh	Brothers
5	Safia, Zahra, Ne'mat, Mouna	Aunts from the father's side
6	Cousins from his uncles [illegible], [illegible], Ali and Mohammed	Cousins (25 people)
7	Cousins from his aunts	Cousins (20 people)
8	Abdul Majid Abdul Rahman and his children	Second Uncle from the father's side
9	Mohammed Saleh and sons and his children	Second Uncle from the father's side
10	Ahmed Hassan and sons and his children	Second Uncle from the father's side
11	Zakaria and his children	Second Uncle on the father's side
12	Osama Charif	Friend of the family
13	Ahmed Serr El Khatm	Friend of the family