

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

_____)	
AL HAMANDY, <i>et al.</i> ,)	
)	
Petitioners,)	
)	
v.)	Civil Action No. 05-cv-2385 (ESH)
)	(Jawad, ISN 900)
BARACK OBAMA, <i>et al.</i> ,)	
)	
Respondents.)	
_____)	

**NOTICE THAT RESPONDENTS WILL NO LONGER TREAT
PETITIONER AS DETAINABLE UNDER THE AUMF AND REQUEST FOR
APPROPRIATELY TAILORED RELIEF**

Pursuant to the Court’s July 17, 2009 Order, respondents respectfully submit this notice that respondents will no longer treat petitioner as detainable under the Authorization for Use of Military Force and request that in fashioning any relief the Court take appropriate account of the relevant considerations discussed herein.

On July 15, 2009, respondents declined to contest petitioner’s “Motion to Suppress His Out-of-Court Statements.” *See* Respondents’ Response to Petitioner Mohammed Jawad’s Motion to Suppress His Out-of-Court Statements (Dkt. No. 302). On July 17, 2009, this Court granted petitioner’s Motion and ordered respondents “to file a brief that describes the legal and factual basis for its case-in-chief.” *See* Order dated July 17, 2009 (Docket No. 303). In light of the evidence that remains in the record following respondents’ decision not to contest petitioner’s Motion, respondents will no longer treat petitioner as detainable under the Authorization for Use of Military Force (“AUMF”), Pub. L. 107-40, § 2(a), 115 Stat. 224 (2001),

as informed by the laws of war. Consistent with this determination, the Department of Defense is taking steps to house petitioner at an appropriate camp facility at Naval Station, Guantanamo Bay, Cuba.

However, in light of the multiple eyewitness accounts that were not previously available for inclusion in the record – including videotaped interviews – as well as third-party statements previously set forth in the government’s factual return, *see generally* Attachment A, hereto, the Attorney General has directed that the criminal investigation of petitioner in connection with the allegation that petitioner threw a grenade at U.S. military personnel continue, and that it do so on an expedited basis. As the Court is aware, the standard for detention under the AUMF is different than the elements that must be proved in a criminal prosecution, and thus a decision not to contest the writ does not resolve whether the current eyewitness testimony and other evidence, or additional evidence that may be developed, would support a criminal prosecution stemming from the attack on U.S. service members.

Further, respondents respectfully advise the Court that any relief in this case should be fashioned in light of Congress’s recent enactment of restrictions and requirements in the Supplemental Appropriations Act and should take into account issues related to logistical and other arrangements with the receiving government. The Act provides that no funds may be used to “transfer or release an individual detained at . . . Guantanamo Bay . . . to the country of such individual’s nationality . . . or to any other country other than the United States, unless the President submits [certain information] to Congress, in classified form 15 days prior to such

transfer.” Pub. L. No. 111-32, 123 Stat. 1859 (2009).¹ In addition to compliance with these statutory requirements, in order to give effect to any order to transfer the Government will

¹ Section 14103 of the Act provides, in full:

SEC. 14103. (a) None of the funds made available in this or any prior Act may be used to release an individual who is detained as of the date of enactment of this Act, at Naval Station, Guantanamo Bay, Cuba, into the continental United States, Alaska, Hawaii, or the District of Columbia.

(b) None of the funds made available in this or any prior Act may be used to transfer an individual who is detained as of the date of enactment of this Act, at Naval Station, Guantanamo Bay, Cuba, for the purpose of detention in the continental United States, Alaska, Hawaii, or the District of Columbia, except as provided in subsection (c).

(c) None of the funds made available in this or any prior Act may be used to transfer an individual who is detained, as of the date of enactment of this Act, at Naval Station, Guantanamo Bay, Cuba, into the continental United States, Alaska, Hawaii, or the District of Columbia, for the purposes of prosecuting such individual, or detaining such individual during legal proceedings, until 45 days after the plan detailed in subsection (d) is received.

(d) The President shall submit to the Congress, in classified form, a plan regarding the proposed disposition of any individual covered by subsection (c) who is detained as of the date of enactment of this Act. Such plan shall include, at a minimum, each of the following for each such individual:

(1) The findings of an analysis regarding any risk to the national security of the United States that is posed by the transfer of the individual.

(2) The costs associated with transferring the individual in question.

(3) The legal rationale and associated court demands for transfer.

(4) A plan for mitigation of any risk described in paragraph (1).

(5) A copy of a notification to the Governor of the State to which the individual will be transferred or to the Mayor of the District of Columbia if the individual will be transferred to the District of Columbia with a certification by the Attorney General of the United States in classified form at least 14 days prior to such transfer (together with supporting documentation and justification) that the individual poses little or no security risk to the United States.

(e) None of the funds made available in this or any prior Act may be used to transfer or release an individual detained at Naval Station, Guantanamo Bay, Cuba, as of the date of enactment of this Act, to the country of such individual's nationality or last habitual residence or to any other country other than the United States, unless the President submits to the Congress, in classified form 15 days prior to such transfer, the following information:

(1) The name of any individual to be transferred or released and the country to which such individual is to be transferred or released.

(2) An assessment of any risk to the national security of the United States or its citizens, including members of the Armed Services of the United States, that is posed by such transfer or

require a period of several weeks to prepare Mr. Jawad's records so that they can be shared with the receiving government authorities and to engage with those authorities on logistical and other issues related to transfer arrangements.

Accordingly, respondents respectfully request that this Court take into account the circumstances noted above in any subsequent order entered in this case. *Cf.* Memorandum Opinion, *Basardh v. Obama*, No. 05-889, at 11 (Huvelle, J.) (Apr. 15, 2009) ("The Court further orders the government to take all necessary and appropriate diplomatic steps to facilitate petitioner's release forthwith.").

release and the actions taken to mitigate such risk.

(3) The terms of any agreement with another country for acceptance of such individual, including the amount of any financial assistance related to such agreement.

(f) Prior to the termination of detention operations at Naval Station, Guantanamo Bay, Cuba, the President shall submit to the Congress a report in classified form describing the disposition or legal status of each individual detained at the facility as of the date of enactment of this Act.

Date: July 24, 2009

Respectfully Submitted

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