

Susan Baker Manning
Direct Phone: 202.373.6172
Direct Fax: 202.373.6472
susan.manning@bingham.com
Our File No.: 0000928762

October 16, 2008

Via Hand Delivery

Mr. Mark J. Langer
Clerk, United States Court of Appeals
for the District of Columbia Circuit
333 Constitution Avenue, N.W., Room 5423
Washington, D.C. 20001

Re: *Kiyemba v. Bush*, Appeal Nos. 08-5424, 08-5425, 08-5426, 08-5427, 08-5428 and 08-5429

Dear Mr. Langer:

Pursuant to Fed. R. App. P. 28(j), we write to advise the Court of important new information regarding the government's mischaracterization of Appellees, and its sabotage of its own efforts to resettle the Uighurs in a third country.

On appeal, the Department of Justice has asserted that Appellees may not be released into the United States because they are dangerous. As discussed in Appellees' Opposition To Government's Motion For Stay Pending Appeal And Response To Motion For Expedited Appeal at 16-18 (filed Oct. 14, 2008), these assertions are untrue and without any basis in the record.

According to a report in this morning's paper, the State Department does not believe that the Justice Department's characterizations are accurate either. *The New York Times* reports that the State Department, which is charged with persuading other countries to resettle the Uighurs, "regarded the language [in the Department of Justice's brief] as inflammatory and impossible to prove." William Glaberson, *Release of 17 Guantanamo Detainees Sputters as Officials Debate the Risk*, N.Y. TIMES, Oct. 16, 2008 at A20.

The report also confirms that the government's efforts to resettle Appellees in a third country have utterly failed. It quotes an administration official: "Based on what they were saying in the brief, it made it impossible to conduct negotiations" with possible resettlement countries. *Id.* (also reporting the cancellation of planned resettlement discussions as a direct result of the Department of Justice's stay briefing).

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Bingham McCutchen LLP
2020 K Street NW
Washington, DC
20006-1806

T 202.373.6000
F 202.373.6001
bingham.com

A/72690651.1

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For these additional reasons, and for the reasons detailed in their Opposition, Appellees respectfully urge the Court to deny the requested stay pending appeal.

Respectfully yours,



Susan Baker Manning

Enclosure: William Glaberson, *Release of 17 Guantanamo Detainees Sputters as Officials Debate the Risk*, N.Y. TIMES, Oct. 16, 2008 at A20

cc: Sharon Swindle, Esq. (counsel for Appellants)
Robert M. Loeb, Esq. (counsel for Appellants)
Eric A. Tirschwell, Esq. (counsel for Appellees)
Elizabeth P. Gilson, Esq. (counsel for Appellees)
George Clarke, Esq. (counsel for Appellees)
Angela C. Vigil, Esq. (counsel for Appellees)
J. Wells Dixon, Esq. (counsel for Appellees)

October 16, 2008

Release of 17 Guantánamo Detainees Sputters as Officials Debate the Risk

By WILLIAM GLABERSON

An urgent effort by the Bush administration to find a country willing to accept 17 detainees held at Guantánamo Bay, Cuba, has stalled because of a bitter dispute inside the government about whether the men are dangerous.

The administration stepped up its search for a new home for the detainees, members of the Uighur Muslim minority in western China, after a federal judge ordered them to be released inside the United States a week ago.

But because of the dispute within the administration, an American ambassador canceled a trip for international negotiations about the fate of the 17 men that had been scheduled to begin Monday.

People briefed on the issue said that the State Department, which is charged with trying to resettle Guantánamo detainees by coaxing other countries to accept them, argued that the Justice Department compromised diplomatic efforts with a court filing Friday that asserted that the Uighurs should not be released inside the United States. The filing described them as “a danger to the public” and as men who had been trained in insurrection.

“Based on what they were saying in the brief, it made it impossible to conduct negotiations,” said an administration official who spoke on the condition of anonymity because he had not been authorized to discuss the dispute.

The State Department has often been at odds with the Justice Department and the Pentagon over detainee issues, at times arguing that those agencies do not take sufficient account of Guantánamo’s impact on international relations.

The Uighur detainees have been at the center of a contentious legal confrontation that drew wide attention with a ruling from Judge Ricardo M. Urbina, on Oct. 7, directing that they be freed in Washington, D.C. The ruling that the men were not a danger to the United States was a defeat for the White House and was the first to order the freeing of Guantánamo detainees.

After an emergency filing by the Justice Department the next day, an appeals court temporarily stayed the ruling while it considered whether to grant a longer stay.

Clint Williamson, the State Department's ambassador-at-large for war crimes issues who conducts Guantánamo resettlement talks with other countries, confirmed that he had changed his plans.

"I was scheduled to depart on another round of negotiations early this week," Mr. Williamson said. "It was impossible to resolve some concerns we had about going forward at the time. As a result I canceled the trip." He declined to say where he had planned to travel.

A Justice Department spokesman, Dean Boyd, declined to discuss the dispute, saying, "We don't comment on internal deliberations."

The temporary stay of Judge Urbina's ruling had given provided time for renewed diplomatic efforts to resettle the men and to avoid a potential conflict between the judge and the administration.

The appeals court could rule as soon as Friday about whether it will extend the stay on Judge Urbina's ruling or return the case to him. The State Department had been under great pressure inside the administration to find a country willing to accept the Uighurs.

Lawyers for the Uighurs, who were in Afghanistan in 2001, said the men would be persecuted if they were returned to China. The administration agreed that it would not send them there. But it said that since transferring 5 Uighur detainees to Albania in 2006, it had been unable to persuade governments to accept the other 17.

Diplomats say that many governments fear reprisal by China, which considers Uighur separatist groups terrorists.

Lawyers for the men have said that the Justice Department exaggerated its claims against the men in its legal arguments.

The people who have been briefed on the dispute said that the State Department also regarded the language describing the men as inflammatory and impossible to prove.

They said the department viewed efforts to find a country willing to accept the detainees as futile as long as the Justice Department argued that the men were too dangerous to be admitted into the United States.

The Uighur case has become a focus of many critics of the Guantánamo detention center. Jennifer Daskal, a counterterrorism specialist at [Human Rights Watch](#), said that some administration officials appeared determined to block their release.

“The true fear,” Ms. Daskal said, “is not that they will pose a security threat, but that they will serve as living reminders of the administration’s mistakes in setting up Guantánamo.”

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