

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**In Re:****GUANTANAMO BAY
DETAINEE LITIGATION**

Misc. No. 08-442 (TFH)

Civil Action No. 05-02379 (JR)

Civil Action No. 05-2380 (CKK)

**STATUS REPORTS FOR ADHAM MOHAMMED ALI AWAD AND ZAKARIA
AL-BAIDANY**

Pursuant to Judge Hogan's July 11 Order in *In Re: Guantanamo Bay Detainee Litigation*, Misc. No. 08-442 (TFH), Petitioners Adham Mohammed Ali Awad and Zakaria Al-Baidany, by and through undersigned counsel, respectfully submit the following status report.

I. PETITIONER ADHAM MOHAMMED ALI AWAD

Petitioner Awad is a Yemeni citizen who has been held at Guantanamo Bay since 2002. He is currently 26 years old. Petitioner Awad has multiple health problems, including an amputated leg, severe back pain, and loss of vision. Additionally, Petitioner Awad has expressed a lack of hope on several occasions and exhibits signs of severe mental distress from his detention and treatment at Guantanamo Bay. To counsel's knowledge, Petitioner Awad is not cleared for transfer.

II. PETITIONER ZAKARIA AL-BAIDANY

Petitioner Al-Baidany¹ is a Yemeni citizen who has been held at Guantanamo Bay since 2002. To counsel's knowledge, Petitioner Al-Baidany is not cleared for transfer.

¹ Variations of Petitioner Al-Baidany's name may also include Omar Mohammed Ali Al Ramma and Mohammed Omar Al Baidani.

III. PROCEDURAL HISTORY

A. Petitioner Awad's Habeas Proceedings

Petitioner Awad filed his Petition for Writ of Habeas Corpus on December 12, 2005. *Awad v. Bush, et al.*, No. 05-2379, Dkt. No. 1 (D.D.C. Dec. 12, 2005).

Respondents moved to stay proceedings pending related appeals on December 22, 2005. *Id.*, Dkt. No. 2 (D.D.C. Dec. 22, 2005). On January 11, 2006, Judge Robertson entered an Order staying all proceedings including repatriation, release, and transfer. No. 05-2379, Dkt. No. 9 (Jan. 1, 2006 D.D.C.). The government appealed the portion of the Order regarding the stay on the release or transfer of Petitioner Awad. That appeal was stayed by the D.C. Circuit Court of Appeals on June 14, 2006. *Awad v. Bush*, No. 06-5094 (D.C. Cir. June 14, 2006). The government recently moved to stay the proceedings pending the Court's resolution of *Kiyemba v. Bush*, No. 05-5487. No. 06-5094 (D.C. Cir. July 9, 2008).

On April 11, 2006, Judge Robertson issued a minute order entering the protective order applicable to all habeas cases. *Awad v. Bush*, No. 05-2379, Order (D.D.C. Apr. 11, 2006). On June 13, 2006, counsel visited Petitioner Awad in Guantanamo Bay for the first time. On April 5, 2007, Judge Robertson ordered *sua sponte* dismissed Petitioner Awad's petition for lack of subject matter jurisdiction. No. 05-2379, Order, dkt no. 48 (D.D.C. Apr. 5, 2007). Petitioner Awad appealed that Order. *See Awad v. Bush, et al.*, No. 07-5147 (D.C. Cir.) (notice of appeal filed on May 11, 2007).

On July 2, 2008, in light of the Supreme Court's decision in *Boumediene v. Bush*, 127 S. Ct. 3078 (2007), Petitioner Awad moved the Court of Appeals to vacate Judge Robertson's Order and remand the petition to the D.C. District Court. No. 07-5147 (D.C.

Cir. July 2, 2008). The government did not oppose that motion. On July 15, 2008, the D.C. Circuit vacated Judge Robertson's order and remanded the case back to the District Court. No. 07-5147 (D.C. Cir. July 15, 2008).

On July 15, 2008, pursuant to Judge Hogan's July 10, 2008 Order (entered on July 11, 2008), Petitioner Awad moved for a Notice of Request for 30 Days Notice of Transfer. (*See In Re: Guantanamo Bay Detainee Litigation*, Misc. No. 08-442 (TFH), Dkt. 52, *Awad v. Bush*, Case No. 05-2379).

To date, the government has not produced a factual return in connection with Petitioner Awad's habeas proceeding.

B. Petitioner Al-Baidany's Habeas Petition

On December 12, 2005, Petitioner Al-Baidany filed his Petition for Writ of Habeas Corpus through his next friend, Abdel Aziz Al-Swidi. *Al-Baidany v. Bush*, No. 05-2380, Dkt. No. 2 (D.D.C. Dec. 12, 2005). On July 18, 2006, Petitioner Al-Baidany filed an Amended Petition for Writ of Habeas Corpus through his uncle, Ahmed Mohammed Hassin Al Rammah, as his next friend. No. 05-2380, Dkt No. 18 (D.D.C. July 18, 2006). On October 4, 2006, the Court entered an order that, *inter alia*, applied the protective order and supplementary orders issued by Judge Joyce Hens Green to this case and stayed the case pending resolution of various appeals No. 05-2380, Order, Dkt. No. 26 (D.D.C. Oct. 4, 2006). In a separate order, also dated October 4, 2006, the Court ordered that the government must provide the Court with 30 days notice in advance of any release, repatriation, or rendition of Petitioner. No. 05-2380, Order, Dkt. No. 27 (D.D.C. Oct. 4, 2006).

On February 20, 2007, counsel visited Petitioner Al-Baidany in Guantanamo Bay

for the first time.

To date, the government has not produced a factual return in connection with Petitioner Awad's habeas proceeding.

C. Detainee Treatment Act Proceedings

On July 11, 2007, Petitioners Awad and Al-Baidany filed a joint Petition for Immediate Release and Other Relief Under the Detainee Treatment Act of 2005 with the Court of Appeals for the D.C. Circuit. *Al-Baidany, Awad v. Gates, et al.*, No. 07-1269 (D.C. Cir.) (filed petition for review of case on July 11, 2007). On August 29, 2007, the government produced the certified index of the record considered by the Combatant Status Review Tribunal and the unclassified redacted version of the record of proceedings, including unclassified audio of the tribunal proceedings.

IV. RELIEF REQUESTED

A. Petitioner Awad previously filed a Motion to Lift the Stay and to Compel Respondents to Provide Factual Returns, to Provide Counsel Access to Petitioner's Medical Records and to Provide Petitioner with Independent Physical and Mental Health Examinations. No. 05-2379, Dkt. No. 32 (D.D.C. Sept. 22, 2006). This Motion has been fully briefed by both parties, but Judge Robertson has not yet ruled. Petitioner Awad respectfully requests that the court rule on the Motion, which concerns counsel's access to Petitioner Awad's medical records and requests an independent physical and mental health examination for Petitioner Awad.

B. Petitioners Awad and Al-Baidany request that the Court order the government to produce the classified and unredacted Combatant Status Review Tribunal transcripts.

C. Pursuant to the July 11, 2008 Order by Judge Hogan, Misc. No. 08-443 (TFH), Order (D.D.C.), the government will be required to produce factual returns on a rolling basis. Depending on the contents of the factual returns, counsel for Petitioners Awad and Al-Baidany anticipate and hereby advise the Court that there will likely be additional discovery regarding the factual returns.

D. In the past, the government has indicated that it will limit the maximum number of attorneys representing individual Petitioners who may apply for security clearance. At this time, there are three attorneys with security clearance and one attorney whose application is pending who represent Petitioners Awad and Al-Baidany. Counsel anticipate that two additional attorneys will apply for security clearance. Should the government attempt to limit the number of *pro bono* counsel, counsel will seek relief from the Court.

Dated: July 18, 2008

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Catherine Y. Lui, certify that on this 18th day of July 2008, I served the foregoing on the counsel listed below by this Court's Electronic Case Filing ("ECF") system.

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