

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

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**IN RE:**

**GUANTANAMO BAY DETAINEE  
LITIGATION**

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) **Misc. No. 08-442 (TFH)**

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) **Civil Action No. 1:06-cv-01668(HHK)**  
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**STATUS REPORT**

Petitioners Mohammed Abdullah Mohammed Ba Odah and Tariq Ali Abdullah Ba Odah, by their undersigned counsel, respectfully submit this report to advise the Court of the status of this litigation pursuant to Judge Hogan's order dated July 11, 2008.

**I. COMMON ISSUES**

There are several common issues relating to each of the Petitioners that need to be addressed as soon as possible:

A. Stay

On May 4, 2007, Petitioners moved to stay pending related appeals and that motion was granted by the Court on July 28, 2007. Those appeals now having been resolved, Petitioners request that the stay be lifted.

B. Protective Order

No protective order has been entered in this matter. Petitioners filed an unopposed motion for Protective Order on July 16, 2008.

C. Factual Returns

The Government has not produced any factual returns for any of the Petitioners in this *habeas* case. As explained below, it has provided some information in the Petitioners' DTA petitions pursuant to the protective order entered in those petitions.<sup>1</sup>

D. Status of Client Visits

Because of the stay and the fact that no protective order has been entered to date in this matter, undersigned counsel were unable to visit their clients at Guantánamo Bay, Cuba, until a protective order was entered in the DTA actions. Due to these delays, Clifford Chance's first visit to Guantánamo Bay, Cuba, was in May 2008, during which counsel met both Petitioners for the first time. A second visit is scheduled in early August. It will be important for counsel to make multiple visits to our clients in the coming months in order to represent them in these proceedings. We hope and expect that these visits will be accommodated by the Government.

E. Security Clearances

Clifford Chance US LLP represents a total of six detainees still at Guantánamo whose petitions are actively being pursued.<sup>2</sup> Only three Clifford Chance attorneys have been granted security clearances to review classified information and meet with their clients. One of those cleared is now on secondment overseas, leaving only two cleared attorneys. The security clearance application for an additional attorney, Mr. Hanna Madbak, has been pending since January 28, 2008. Mr. Madbak has made frequent follow-up inquiries with the Court Security Office ("CSO"), and has promptly provided any additional information requested. However, as recently as July 17, 2008, the CSO declined to give Mr. Madbak any time frame within which he could expect to receive a determination on his request for clearance. To the best of his

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<sup>1</sup> The *Bismullah* protective order was entered by the Court in the DTA actions for both Petitioners in the United States Court of Appeals for the District of Columbia Circuit on September 6, 2007.

<sup>2</sup> In addition to Petitioners in this proceeding, Clifford Chance also represents four additional petitioners in *Ghazy, et al. v. Bush*, 05-CV-2223 (RJL).

knowledge, all of his referees have been interviewed. As a male Arabic speaker, Clifford Chance urgently needs his security clearance to be granted in order to move forward with these matters expeditiously.

## II. **MOHAMMED ABDULLAH MOHAMMED BA ODAH (ISN 249)**

Mr. Mohammed Ba Odah (a/k/a Mohammed Al Hamiri) is citizen of Yemen. He was twenty-one years old when he was detained and has been held at Guantánamo Bay, Cuba, since early 2002. Mr. Ba Odah wishes to return to his home in Yemen and hopes to get married to his fiancé. Mr. Ba Odah also needs to have surgery, delayed as a result of his detention, to remove a metal plate inserted in his skull following an accident as a teenager.

### A. Statement of Factual History Surrounding Detention

The circumstances surrounding Mr. Ba Odah's arrest and detention are not fully known. Based on the unclassified evidence received in Mr. Ba Odah's DTA case, we understand that the Government alleges that in late 2001 Mr. Ba Odah was captured by Pakistani police near the Afghanistan/Pakistan border and was later taken into custody by US authorities. Petitioner's counsel does not have sufficient information to determine the specific date on which Mr. Ba Odah arrived at the Guantánamo Bay Naval Base.

The unclassified record indicates that Mr. Ba Odah's detention was considered by a Combatant Status Review Tribunal ("CSRT") on December 13, 2004. At the hearing, the CSRT determined that, by a preponderance of the evidence, Mr. Ba Odah was properly classified as an enemy combatant.

B. Status of Petitioner's Detention

To the best of counsel's knowledge, Mr. Ba Odah is currently detained at Guantánamo Bay Naval Base. Counsel met with the Petitioner pursuant to the DTA protective order in the week of May 19, 2008.

Undersigned counsel is not aware whether Mr. Ba Odah has been cleared for release or transfer. To counsel's best knowledge and belief, if approved for transfer Mr. Ba Odah would wish to be repatriated to Yemen. However, counsel does not have instructions on this issue.

C. Duplicate Petitions

Undersigned counsel is not aware of any duplicate petitions on behalf of Mr. Ba Odah.

D. War Crimes Charges

Undersigned counsel is not aware of any war crimes charges being filed against Mr. Ba Odah.

E. Pending and Anticipated Motions

Petitioners' unopposed motion for entry of a protective order is pending before the Court. In addition, two motions for admission *pro hac vice* for Petitioners' counsel are also pending.

Because no factual return has been provided by the Government, counsel are unable now to ascertain what additional motions may be needed in the future.

F. Factual Return

The Government has not provided a factual return for Mr. Ba Odah.

On August 24, 2007, the Government provided undersigned counsel with a "certified index of record" in Mr. Ba Odah's DTA proceeding. This included an unclassified version of Mr. Ba Odah's CSRT record of proceedings. In response to demands from Petitioner's counsel, in or about April 2008, the Government also made a redacted version of Mr. Ba Odah's

classified CSRT record of proceedings available for review at the secured facility. This has been reviewed by certain Clifford Chance lawyers who have obtained security clearance.

G. Discovery

Because no factual return has been provided by the Government, counsel for Mr. Ba Odah is unable to state at this time whether discovery will be needed.

III. **TARIQ ALI ABDULLAH BA ODAH (ISN 178)**

Mr. Tariq Ba Odah is a citizen of Yemen who was born in Shebwa, Yemen, but moved at a very young age to Jedda, Saudi Arabia, where his family now live. He has been detained at Guantánamo Bay, Cuba, since approximately early 2002. Mr. Ba Odah has been on a hunger strike at Guantánamo Bay, Cuba, for the last 18 months as a protest against his unlawful detention. Upon release, Mr. Ba Odah wishes to return to his home and family.

A. Statement of Factual History Surrounding Detention

The circumstances surrounding Mr. Ba Odah's arrest and detention are not fully known. Based on the unclassified evidence received in Mr. Ba Odah's DTA case, we understand that the Government alleges that in late 2001 Mr. Ba Odah was arrested by the Pakistani Army at the Afghanistan/Pakistan border and after several weeks in a Pakistani prison, Mr. Ba Odah was taken to the Kandahar prison run by US authorities. Petitioner's counsel do not have sufficient information to determine the specific date on which Mr. Ba Odah arrived at the Guantánamo Bay Naval Base.

The unclassified record indicates that Mr. Ba Odah's detention was considered by a CSRT on November 5, 2004. At the hearing, the CSRT determined that, by a preponderance of the evidence, Mr. Ba Odah was properly classified as an enemy combatant.

B. Status of Petitioner's Detention

To the best of counsel's knowledge, Mr. Ba Odah is currently detained at Guantánamo Bay Naval Base. Counsel met with the Petitioner pursuant to the DTA protective order in the week of May 19, 2008.

Undersigned counsel is not aware whether Mr. Ba Odah has been cleared for release or transfer. To counsel's best knowledge and belief, if approved for transfer, Mr. Ba Odah would prefer to be repatriated to join his family in Saudi Arabia. However, counsel does not have instructions on this issue.

C. Duplicate Petitions

Undersigned counsel is not aware of any duplicate petitions on behalf of Mr. Ba Odah.

D. War Crimes Charges

Undersigned counsel is not aware of any war crimes charges being filed against Mr. Ba Odah.

E. Pending and Anticipated Motions

Petitioners' unopposed motion for entry of a protective order is pending before the Court. In addition, two motions for admission *pro hac vice* for Petitioner's counsel are also pending.

While no motions have been filed to date, Petitioner's counsel anticipates that at some point it may be necessary to seek the Court's assistance in obtaining further information about Mr. Ba Odah's mental and physical state. As a consequence of his prolonged hunger strike and the insertion twice daily for the last 18 months of a nasal tube for forced feeding, Petitioner is in an extremely fragile condition. Counsel hope to be in a better position to assess this following our next visit.

F. Factual Return

The Government has not provided a factual return for Mr. Ba Odah.

On August 24, 2007, the Government provided undersigned counsel with a “certified index of record” in Mr. Ba Odah’s DTA proceeding. This included an unclassified version of Mr. Ba Odah’s CSRT record of proceedings. In response to demands from Petitioner’s counsel, in or about April 2008, the Government also made a redacted version of Mr. Ba Odah’s classified CSRT record of proceedings available for review at the secure facility. This has been reviewed by certain Clifford Chance lawyers who have obtained security clearance.

G. Discovery

Because no factual return has been provided by the Government, Counsel for Mr. Ba Odah is unable to state at this time whether discovery will be needed.

Dated: July 18, 2008

Respectfully submitted,

By: \_\_\_\_\_/s/

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