UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOHAMMED ABDULLAH MOHAMMED BA ODAH, *et al.*,	:	
Petitioners,	:	
	:	Civil Action No. 06-1668 (TFH)
v.	:	
BARACK H. OBAMA, *et al.*,	:	
Respondents.	:	

MEMORANDUM OF LAW IN SUPPORT OF PETITIONER'S MOTION TO REINSTATE HIS HABEAS PETITION AND FOR JUDGMENT ON THE RECORD

Petitioner, Tariq Ali Abdullah Ba Odah, through his undersigned counsel, respectfully submits this Memorandum of Law in support of his motion to reinstate his habeas petition and for judgment on the record.

INTRODUCTION

Petitioner, Tariq Ali Abdullah Ba Odah, is a Saudi resident of Yemeni descent who has been imprisoned at Guantánamo since 2002. He is approved for transfer. As the government reported during counsel's last trip to Guantánamo, Mr. Ba Odah's weight has dropped to an alarming 74.5 pounds. That amounts to merely 56% of his ideal body weight, a status typically associated with hospice or late-stage cancer patients. Mr. Ba Odah is visibly suffering from the devastating effects of severe malnutrition and is at serious risk of permanent physical and neurological impairment and death. He seeks habeas relief from this Court because the laws of war no longer authorize his continued detention under the Authorization for the Use of Military

Force ("AUMF"). This Court is thus empowered and, under the circumstances here, obligated to provide that relief.

Mr. Ba Odah is on a prolonged hunger strike to peacefully protest his over thirteen years of indefinite detention without charge. As of this filing, he has not voluntarily eaten food in eight years and four months. Despite being force fed, Mr. Ba Odah is suffering from an array of dangerous symptoms attributable to severe malnutrition. At this sensitive stage, however, where his body appears unable to properly absorb calories or micronutrients, his further deterioration cannot likely be remediated by increasing the volume of commercial liquid formula the government feeds him through his nose – though Mr. Ba Odah reports the government has already attempted that approach. Even ingesting solid food now presents a mortal risk to Mr. Ba Odah.

Though medical opinion scarcely seems necessary, three independent medical experts conclude – primarily on the basis of Mr. Ba Odah's shockingly low weight – that he is gravely malnourished and in danger of catastrophic physical and neurological impairment and even death. In their clinical opinion, that outcome could occur slowly, within a period of months through continued progressive degeneration, or suddenly with the onset of common injury or infection that could overwhelm his body's diminished capacity.

As the Supreme Court explained in Hamdi v. Rumsfeld, 542 U.S. 507 (2004), the government's asserted authority to indefinitely detain Mr. Ba Odah, pursuant to the Authorization for the Use of Military Force, is expressly constrained by the laws of war. The laws of war are incorporated into binding domestic law set forth in U.S. Army Regulation 190-8, which delineates categories of prisoners who are seriously ill, such as Mr. Ba Odah, and provides for their direct humanitarian release and repatriation. For this Court to exercise its remedial

habeas powers consistently with the very same law of war authority in no way impinges on the Executive's prerogative to assess future threats, nor otherwise implicates sensitive military judgments. Mr. Ba Odah's indisputably dire medical condition, detailed below, authorizes and obligates his release and repatriation under Army Regulation 190-8.

Short of his release (to Saudi Arabia or other appropriate destination) and urgent, sophisticated medical care, Mr. Ba Odah may well die in U.S. custody – and possibly in a period of months. He is therefore compelled to move this Court to reinstate his habeas corpus petition and seek an order requiring the government to take every necessary step to release him without delay.

BACKGROUND

A. Relevant Procedural History and Basis for Reinstatement

Mr. Ba Odah is a citizen of Yemen and resident of Saudi Arabia. In 2002, the government imprisoned Mr. Ba Odah at Guantánamo, but has not since charged him with a crime. He remains there today in solitary conditions, which he has endured almost without interruption since 2009. He is approved for transfer with conditions, meaning the Guantánamo Review Task Force – an interagency body comprised of all those national security, law enforcement, and diplomatic agencies with a mandate over Guantánamo detainee affairs – determined that "[b]efore the closure of Guantánamo, [Mr. Ba Odah] may be transferred if the security conditions in Yemen improve, [or] an appropriate rehabilitation program or third-country resettlement option becomes available . . . ." Resp'ts' Notice Lifting Protected Information Designation of Decisions by the Guantánamo Bay Review Task Force [Dkt. No. 261] Exhibit 1, p. 10.

Mr. Ba Odah filed a petition for a writ of habeas corpus on September 28, 2006. [Dkt. No. 1]. In February 2007, Mr. Ba Odah began a hunger strike, as further explained below, to peacefully protest his indefinite detention. On January 12, 2009, counsel filed an unopposed motion to stay his petition because Mr. Ba Odah often declined or was physically unable to attend attorney-client meetings. [Dkt. No. 83]. On January 13, 2009, then-presiding District Court Judge Henry Kennedy issued an indefinite stay of this matter. [Dkt. No. 85]. On July 23, 2013, after transfer to this Court, Hon. Thomas F. Hogan issued a minute order requiring Mr. Ba Odah to indicate his "intention either to proceed or withdraw his habeas petition." His health dictated that he elect to withdraw; in his already weakened state, Mr. Ba Odah could not effectively participate in mounting a defense to the government's allegations against him. On March 3, 2014, with the government's consent, Mr. Ba Odah moved this Court to withdraw his petition without prejudice. [Dkt. No. 270]. The motion was granted on March 13, 2013. [Dkt. No. 271].

As detailed in the supporting declaration of Omar Farah, Esq. ("Farah Decl."), during a meeting with Mr. Ba Odah on April 21, 2015, Mr. Ba Odah acknowledged his precarious physical and neurological state and signed a written authorization for counsel to seek reinstatement of his habeas petition and all other appropriate relief on his behalf.[1] Farah Decl. ¶ 12.

[1] Mr. Ba Odah has a constitutional right to seek habeas relief. He does so here under the extraordinary circumstances detailed in this motion, including over thirteen years of indefinite detention and over eight years on hunger strike enduring nasal tube feedings – an ordeal his body no longer appears able to endure. Reinstating his petition, which was pending before this Court for over three years and was dismissed without prejudice, is common procedure in in this Court in managing habeas petitions, see, e.g., Order Reopening Habeas Corpus Case, Aamer v. Obama, No. 04-2215 (D.D.C. 2015), [Dkt No. 277]; it conserves judicial resources, permits direct adjudication of the merits of the motion, and is appropriate here.

B. Petitioner's Eight-Year Hunger Strike

As this Court is aware from prior filings, Mr. Ba Odah has been on an uninterrupted hunger strike since 2007, to peacefully protest his indefinite imprisonment at Guantánamo. Each day, the military force-feeds him a commercial liquid supplement. The process involves military and medical staff strapping him to a restraint chair and inserting a tube up his nose to drain liquid supplement into his stomach. He says the daily tube-feedings are humiliating. Id. at ¶ 24. He calls it torture. Id.

Mr. Ba Odah believes his protest has provoked a punitive backlash from the military, designed to get him to abandon his hunger strike. This is manifested by, among other abuses and indignities, violent cell-extractions, force-feeding sessions that leave him wet with his own vomit, and unremitting confinement in solitary conditions in Guantánamo's Camp 5, where now he says he does not see anyone and he does not see the sun. This is to say nothing of his psychological torment: Mr. Ba Odah is plagued by uncertainty about his fate. After over thirteen years of indefinite detention, Mr. Ba Odah fears he may never leave Guantánamo though he has never been charged and despite being approved for release by the very government that continues to imprison him.

Mr. Ba Odah does not wish to die; he wishes to be reunited with his family in Saudi Arabia or to be freed to any other safe country where he can begin to recover. Farah Decl. ¶ 48. At the same time, he feels compelled by the injustice he is enduring at Guantánamo to continue his hunger strike, the only peaceful way available for him to protest with self-control and with dignity. If he were repatriated to Saudi Arabia or resettled elsewhere, he would end his hunger strike and welcome rehabilitative care. Id. He seeks peace and a return home: "There is nothing else I want. There is nothing better that I care about." Id.

C. Mr. Ba Odah's Crisis-Level Physical and Psychological Condition

For years, Mr. Ba Odah has suffered a variety of symptoms of undernourishment – surely not uncommon among other long-term hunger striking Guantánamo prisoners who are subjected to nasogastric force-feedings. However, the most striking manifestation of his precarious health has been the steady drop in his body weight, which has reached a dangerous floor in recent months. In 2007, Mr. Ba Odah reports that he was 140 pounds. Id. at ¶ 33. By approximately October 2012, Mr. Ba Odah says he was 105 pounds. Six months later, in April 2013, he reported that he weighed only 90 pounds. And in July 2014, just months after Mr. Ba Odah voluntarily withdrew his habeas petition, his weight had fallen further to approximately 85 pounds. Id. at ¶ 35.

From his previously reported low of 85 pounds, Mr. Ba Odah's weight has fallen even further. According to the government, Mr. Ba Odah weighs 74.5 pounds – merely 56% of his ideal body weight. Id. at ¶ 13. Despite his long-term suffering, it is this profound and acute deterioration – particularly in the time since Mr. Ba Odah withdrew his petition – that precipitates this action. During meetings with counsel in March and April of this year, Mr. Ba Odah was so dramatically underweight as to be essentially unrecognizable, even by standards of his usual frailty. Id. at ¶¶ 9-11. In the absence of a photograph, counsel can only compare Mr. Ba Odah's appearance to iconic and horrifying photographs of Holocaust survivors. Id. at ¶ 16. Upon entering the meeting cells at Guantánamo, all one can see of Mr. Ba Odah are his rail-thin arms, the outline of his shoulders, his ribcage, and his hipbones covered by a prison smock. Id. at ¶ 37. On March 17, he allowed counsel to view his naked torso; each of his ribs was visible as though there was only skin covering them, but little muscle or tissue. Id. at ¶¶ 16-17. He has demonstrated that he can nearly touch the tips of his pinky finger and thumb around his own

bicep. Id. at ¶ 18. The image of his protruding jawline and teeth was jarring. Id. at ¶ 18. In Mr. Ba Odah's own words: "My life is not like it was; this is the hardest time I have ever had." Id. at ¶ 11.

Associated with his declining health, Mr. Ba Odah suffers from bouts of extreme exhaustion – something counsel has witnessed and which have even caused Mr. Ba Odah to abruptly end in-person meetings. Id. at ¶ 3. He complains that his vision has weakened. Id. at ¶ 38. He also says that his feet swell and his joints stiffen such that he does not feel he can walk confidently on his own power. Id. Mr. Ba Odah is plagued by severe migraine-like headaches and other neurological ailments like frequent nervousness and agitation. Id. at ¶ 39. He describes the sensation as one of his "muscles and nerves shivering," "needles in [his] heart," and a "racing heartbeat." Id. Mr. Ba Odah recently declined to take a phone call from counsel on June 9, prior to the filing of this motion. Id. at ¶ 10. Mr. Ba Odah has forewarned counsel that such refusals are caused by some combination of the above symptoms or mistreatment by guard staff. Id. at ¶¶ 10, 32.

Other symptoms of Mr. Ba Odah's undeniable starvation signal that his body is overwhelmed. Mr. Ba Odah reports that he is progressively losing sensation in his hands and feet. Id. at ¶ 19. He also says that he is now mostly bedridden because standing causes him to feel dizzy, but sitting up also leads to back pain, which counsel has observed first-hand during meetings. Id. at ¶ 20. Mr. Ba Odah complains that his ability to focus and recall information has been compromised. Id. at ¶¶ 21-22. During both a March and an April meeting, counsel observed that Mr. Ba Odah periodically went through spells during which he momentarily appeared vacant. Id. at ¶ 21. When Mr. Ba Odah became alert, he would ask for information to be repeated to him. Id.

Mr. Ba Odah's progressive deterioration is all the more distressing in light of what he says has been a significant increase in the amount of liquid supplement the government is feeding him. "What I used to get in two or three [feeding] sessions," he says, "I now get in one." Id. at ¶ 23.

D. Medical Expert Analysis

Common sense dictates that Mr. Ba Odah is starving because his body is failing to properly absorb and process the liquid calories and nutrients he is being force fed. No other conclusion is viable unless one presumes the government *intends* to maintain him at just 56% of his ideal body weight while he is on hunger strike. But in recognition of the limited medical record before the Court about Mr. Ba Odah's health, counsel sought expert medical opinion based on Mr. Ba Odah's reported symptoms and the government's representation on April 20, 2015 that he weighs 74.5 pounds. Each of these experts: (1) expresses shock that an adult male has been diminished to such a dramatically low weight – a status associated with late-stage hospice, cancer and AIDS patients; (2) confidently opines on this basis as well as on reported symptoms, that Mr. Ba Odah is suffering from severe malnourishment, a morbidly dangerous condition that may have already produced serious physical and/or neurological damage and; (3) reports that absent urgent and sophisticated medical intervention that Mr. Ba Odah cannot receive so long as he remains in Guantánamo, this deterioration could eventually kill him, possibly in a period of months.

These independent, expert opinions are provided by Dr. Jess Ghannam, Clinical Professor of Psychiatry and Global Health Sciences in the School of Medicine at the University of California, San Francisco, see Exhibit B, Declaration of Dr. Jess Ghannam, dated June 21, 2015 ("Ghannam Decl."); Dr. Mohammed Rami Bailony, Medical Director of Enara Health Group,

P.C., and part-time Internal Medicine Hospitalist at Kaiser Hospital in San Jose, California, see Exhibit C, Declaration of Dr. Mohammed Rami Bailony, dated June 18, 2015 ("Bailony Decl."); and Professor and Dr. Sondra S. Crosby, Co-Founder of the Immigration and Refugee Health Program at the Boston Medical Center, and Co-Director of Forensic Medicine at Boston University School of Medicine, see Exhibit D, Declaration of Dr. Sondra Crosby, dated June 22, 2015 ("Crosby Decl.").

Without Mr. Ba Odah's medical records or history, Drs. Ghannam, Bailony, and Crosby are able to unanimously conclude that Mr. Ba Odah is suffering from severe malnourishment and is at substantial risk of imminent death, caused by multiple health complications, each potentially lethal in their own right. See Ghannam Decl. at ¶ 3; Crosby Decl. ¶¶ 5, 45; Bailony Decl. ¶ 31. They conclude, for example:

- In the absence of any remaining fat or protein "stores" in his body, Mr. Ba Odah's body will inevitably cannibalize organ mass and vital proteins, presaging organ failure and death. Bailony Decl. ¶¶ 24-26. "*[M]alnourishment's impact on vital organ depletion is severe and the consequences grave*. Morbid (i.e. potentially fatal) complications from organ damage including sepsis, respiratory failure, acute renal failure, and ultimately hemodynamic collapse (requiring advanced cardiac and respiratory support) are all increased with the caloric deprivation and resultant protein cannibalization." Id. ¶ 26 (emphasis added).

- Complications from chronic malnutrition include, "hemodynamic instability (bradycardia, hypotension), arrhythmias (prolonged QT interval), volume depletion, metabolic alkalosis, liver inflammation, coagulopathy, bone marrow suppression, hypoglycemia, fall risk, gastroparesis and aspiration risk, cerebral atrophy and cognitive impairment, and osteoporosis. *All organ systems can be affected by malnutrition, and damage can be irreversible.* Death occurs by fatal heart arrhythmias, infection, or other organ failure." Crosby Decl. ¶ 31 (emphasis added).

- Persistent micronutrient deficiency, particularly thiamine (B-1 vitamin) deficiency classically associated with chronic malnutrition can produce symptoms, of the kind Mr. Ba Odah complains of, such as dry beriberi (associated with numbness in extremities) and Wernicke-Korsakoff's encephalopathy, a serious and potentially lethal disorder that can produce heart failure. Bailony Decl. ¶¶ 30, 35.

In addition to the fatal decline associated with the longer-term effects of malnutrition, the physicians each stress that, given the severe protein, calorie and micronutrient deficiencies found in extremely malnourished bodies, minor stresses caused by infection or fever can overwhelm the system and precipitate total body collapse. As Dr. Bailony explained, severe malnutrition

> creates a very dangerous spiral: symptomology from the calorie deficiency in turn demands more calories from the body to combat their effects, but without those calories the body sustains greater injuries. Death is the inevitable long-term result, if infection or injury does not hasten it.

Bailony Decl. ¶ 17; see also Crosby Decl. ¶ 33 ("In addition to his anticipated progressive malnutrition-driven decline, I must stress that in Mr. Ba Odah's precarious state, small insults such as injury, infection or fever can set off a fatal cascade of organ failure."); Ghannam Decl. ¶ 20 (describing risk of total body collapse, "a medical phenomenon in which sickly, but apparently stable patients, rapidly deteriorate and expire from cascading failures of the body's vital organs and systems").

In cases of severe malnutrition, changes often happen at a cellular level that make caloric absorption difficult. Bailony Decl. ¶ 30(a) ("[T]he stomach and intestine cells during starvation change their intracellular composition, which prevents the proper absorption of nutrients. This only exacerbates patients' preexisting micronutrient deficiency, causing a potential death spiral: malnourishment changes the molecular functioning of cells that frustrates micronutrient absorption, which in turn amplifies the effects of starvation."). This pattern is consistent with Dr. Bailony's calculation, based on verified medical formulas, that Mr. Ba Odah is chronically and necessarily calorie deficient, regardless of the amount of nutritional formula he is ingesting. Bailony Decl. ¶ 14. Globally verified nutritional health assessments put individuals with Mr. Ba Odah's predicted malnourishment in a grade whose median expected mortality is approximately 6 months. Id. at ¶ 22.

It is for these reasons that Mr. Ba Odah's condition can in no way be clinically stable. See id. at ¶¶ 6, 28 ("His body is in a state of persistent, inevitable morbid decline and is at every moment presenting a latent but severe risk of death from infection."). As Dr. Bailony explains, the fact that his weight has not further declined is in no way reassuring. To the contrary, given that basic human mass (skeleton, organs, blood) cannot be lost, Mr. Ba Odah may well have no more weight to lose. As such, "the caloric deficiency he is enduring may not manifest in continued weight loss; instead it may manifest as further and progressively life-threatening symptomology." Id. at ¶ 16. People who die from malnutrition do not continue to lose weight below a 50% threshold; instead "[t]hey die precisely at the level of lost body mass Mr. Ba Odah is at now – or even at a greater percentage body weight – from the effects of malnutrition on the body's functioning." Id. at ¶ 18; see also Crosby Decl. ¶ 30 ("It is widely accepted that body weights below 70% of ideal body weight are considered medically dangerous because of increased risk of multiorgan dysfunction, life-threatening medical complications, and sudden death.").

Many of the symptoms Mr. Ba Odah manifests are classically associated with malnutrition. See Bailony Decl. ¶ 8; Crosby Decl. ¶¶ 34-37; Ghannam Decl. ¶ 3. And some of these may suggest he is already suffering from or at risk of permanent damage, should he even survive. For example, the cellular changes in the stomach and intestines that inhibit micronutrient absorption may produce damage to intestinal lining from which he may "never recover[]." Bailony Decl. ¶ 30(a). Likewise, Dr. Crosby explains, "[G]iven the length of his hunger strike, his reported symptoms, and very low body weight, it would not be surprising if he has suffered long-term damage to his GI tract, which can be irreversible." Crosby Decl. ¶ 40. In addition, the foot-swelling reported by Mr. Ba Odah constitutes a "significant symptom" (leg

edema), highly unusual in someone of Mr. Ba Odah's age, which suggests the potential existence of serious conditions including "protein deficiency, heart failure, or kidney failure." Bailony Decl. ¶ 35.

Mr. Ba Odah's reported neurological impairments are no less a feature of extreme malnourishment. He reports losses of short-term memory and poor concentration, migraine-like headaches, chronic dizziness, weakened vision, and persistent numbness in his extremities. Farah Decl. ¶¶ 3, 20-22, 38-39. Dr. Ghannam observes that these symptoms "are concerning and could be indicative of severe neuropsychological damage." Ghannam Decl. ¶ 31. Dr. Ghannam also explains that the damage may have already occurred: "[H]e may be facing permanent impairment in his ability to process information and damage to his short-term memory . . . [and] permanent and potentially challenging symptoms of depression, anxiety, and PTSD – which will result in Mr. Ba Odah's struggling to overcome sensations of perpetual fear, hopelessness and despair." Id. at ¶ 46; see also Crosby Decl. ¶ 40 ("It is also certainly possible that he has suffered long-term neurocognitive impairment.").

Each of these doctors explains that Mr. Ba Odah should receive the highest level of urgent care. Dr. Bailony clarifies that acute hospitalization, though necessary, is still insufficient to restore Mr. Ba Odah to "what is commonly understood as good health. Rather, this is what is minimally necessary to remove him from danger of death." Bailony Decl. ¶ 42. Mr. Ba Odah's need for care "would dictate strict medical supervision in a hospital setting," to be followed by "long-term monitoring, outpatient care and rehabilitation." Crosby Decl. ¶¶ 39, 45. What each doctor makes clear, is that there is a serious risk of fatality from "refeeding syndrome," and Mr. Ba Odah cannot reverse his decline by merely choosing to eat again. Ghannam Decl. ¶ 44;

Crosby Decl. ¶ 41. "Put simply," states Dr. Crosby, "Mr. Ba Odah's survival and rehabilitation are out of his hands." Crosby Decl. ¶ 41.

In addition to the immediate nutritional intervention necessary to stave off Mr. Ba Odah's decompensation, symptoms of neurological damage indicate "he may need physical therapy with sophisticated diagnostic and rehabilitative equipment for a period of 6 months to a year, or perhaps more." Bailony Decl. ¶ 44; see also Crosby Decl. ¶ 40 ("He will likely require long-term rehabilitation for muscle reconditioning, including physical therapy."). Dr. Ghannam adds that his neurological and neuropsychological care requires "substantial diagnostic evaluation and remediation, including Magnetic Resonance Imaging (MRI), Functional MRI (fMRI), Electroencephalography (EEG), and a full neuropsychological assessment." Ghannam Decl. ¶ 36.

Mr. Ba Odah's chances of emerging from his medical crisis are only frustrated by his continued detention. For one, Mr. Ba Odah continues to be detained in solitary conditions – a strong exacerbating factor to his vulnerable state, which likely amplifies some of his symptoms while depressing his physical ability to overcome them. Id. at ¶¶ 21, 34. In any event, Guantánamo facilities may be ill-equipped to provide Mr. Ba Odah the required care. Id. at ¶ 16.

A further, likely insurmountable obstacle to his recovery is his "predictable and clinically explained" distrust of medical staff at Guantánamo. Id. at ¶ 41. After over eight years of tube-feedings, Ba Odah says he feels like a "guinea pig" and is convinced his doctors are involved in his abuse. Farah Decl. ¶ 44. Drs. Ghannam and Crosby both observe that the doctor-patient relationship appears severely compromised in Ba Odah's situation, precluding his effective treatment at Guantánamo. Ghannam Decl. ¶¶ 39-43; Crosby Decl. ¶¶ 42-44. Deep mistrust in an incarcerated individual towards the custodial institution's medical staff – whom the individual

reasonably associates with the punitive regime – is common and triggers an ethical duty, per accepted international protocols, to ensure *independent* medical diagnosis and treatment. Crosby Decl. ¶¶ 43-44.

ARGUMENT

I. BINDING DOMESTIC LAW, INCORPORATING THE LAWS OF WAR, LIMITS THE GOVERNMENT'S DETENTION AUTHORITY AND REQUIRES THE RELEASE OF SICK AND WOUNDED PRISONERS.

The government's authority to detain Mr. Ba Odah at Guantánamo is derived from the Authorization for the Use of Military Force ("AUMF"). AUMF, Pub. L. 107-40 § 2(a), 115 Stat. 224, 224 (2001). In Hamdi v. Rumsfeld, the Supreme Court sanctioned the detention of individuals who fall within the AUMF's scope only because "detention . . . is so fundamental and accepted an incident to war as to be an exercise of the 'necessary and appropriate force' Congress has authorized the President to use." 542 U.S. 507, 518 (2004) (quoting AUMF). This conclusion turned upon "universal agreement and practice" in international law. Id. But international law – what Justice O'Connor referred to in Hamdi as "clearly established principle[s] of the law of war" – also constrains the government's authority to detain under the AUMF in ways that are consequential here.[2] See id. at 520-21; accord Hamdan v. Rumsfeld, 548 U.S. 557, 603, 681 (2006) (relying on "universal agreement and practice both in this country and internationally" to define law of war offenses).

The Third Geneva Convention, a cornerstone of international law of war principles, provides for the release and repatriation of prisoners who are "seriously sick." See Geneva

[2] In filings before this Court, the government concedes that its authority is constrained by the laws of war, including the Geneva Conventions. See, e.g., Resp'ts' Mem. Regarding the Government's Detention Authority Relative to Detainees Held at Guantanamo Bay at 1 [Dkt. 117]; Br. for Resp'ts-Appellees 4; Al Warafi, 716 F.3d at 629 ("the detention authority conferred by the AUMF . . . is informed by the laws of war, and the laws of war include the First Geneva Convention.").

Convention Relative to the Treatment of Prisoners of War, Retained Personnel, Civilian Internees, and Other Detainees art. 109-110, Aug. 12, 1949, 6. U.S.T. 3316, 75 U.N.T.S. 135 (hereinafter "Third Geneva Convention"). Specifically, the Third Geneva Convention commands that "[p]arties to the conflict […] send back to their own country, regardless of number or rank, seriously wounded and seriously sick prisoners of war" – a category of prisoner it defines as:

> (1) Incurably wounded or sick whose mental or physical fitness seems to have been gravely diminished.
>
> (2) Wounded and sick who, according to medical opinion, are not likely to recover within one year, whose condition requires treatment and whose mental or physical fitness seems to have been gravely diminished.
>
> (3) Wounded and sick who have recovered, but whose mental or physical fitness seems to have been gravely and permanently diminished.

Id.

The obligation to release seriously wounded and sick prisoners derives its force from the established law of war prohibition against punitive detention. In recognizing that principle, the Supreme Court affirmed that detention is appropriate solely for purpose of preventing a captive's return to the battlefield. Hamdi, 542 U.S. at 518 ("the only purpose of [detention] is to prevent prisoners of war from further participation in the war.") (citations omitted). Where such return becomes impossible owing to a prisoner's sickness, the authority to detain expires.

U.S. Army Regulation 190-8, which binds all branches of the U.S. military, employs the above language from the Third Geneva Convention nearly verbatim. By its terms, commanders at all levels are to ensure detainees in U.S. military custody "are accounted for and humanely treated, and that collection, evacuation, internment, *transfers, release, and repatriation operations* are conducted per this regulation." See U.S. Army Regulation 190-8, Enemy

Prisoners of War, Retained Personnel, Civilian Internees, and Other Detainees, ch.1, § 1-4(g) (Oct. 1, 1977) (hereinafter "Army Reg. 190-8") (emphasis added). Mirroring the Third Geneva Convention, Army Reg. 190-8 sets out categories of detainees – including enemy prisoners of war (EPWs) and retained personnel (RPs) – that are eligible for direct repatriation according to the following standards:

> (1) EPW and RP suffering from disabilities as a result of injury, loss of limb, paralysis, or other disabilities, when these disabilities are at least the loss of a hand or foot, or the equivalent.
>
> (2) Sick or wounded EPW and RP whose conditions have become chronic to the extent that prognosis appears to preclude recovery in spite of treatment within 1 year from inception of disease or date of injury.

Army Reg. 190-8 at ch3, § 12(1).[3]

Army Reg. 190-8 codifies into binding domestic law the international law of war principle that calls for the repatriation of seriously ill prisoners. Moreover, it authorizes the habeas relief Mr. Ba Odah seeks here. Al-Warafi, 716 F.3d at 629 (affirming that Army Reg. 190-8 is binding domestic law and therefore properly invoked in a Guantánamo habeas proceeding); see also Aamer, 2014 U.S. Dist. LEXIS 85343 at *27 ("Respondents exclaim that Petitioner's request for repatriation [under Army Reg. 190-8] is substantively different from the

[3] Though Army Reg. 190-8 refers to repatriation, the government cannot contend that political instability in Yemen bars Mr. Ba Odah's release. Though he is a Yemeni national, his family emigrated to the Kingdom of Saudi Arabia when Mr. Ba Odah was an infant and continues to reside there today. Farah Decl. ¶ 5. Given the urgent need to release him from Guantanamo to *any* country where he can be safely resettled and rehabilitated, the government must also pursue transfer to countries other than Yemen – something the U.S. government has accomplished for several other Yemeni prisoners recently. See Charlie Savage, *6 Guantánamo Detainees from Yemen Are Transferred to Oman*, N.Y. Times, June 13, 2015, http://www.nytimes.com/2015/06/14/world/middleeast/6-guantanamo-detainees-from-yemen-are-transferred-to-oman.html (describing the recent release and resettlement of six Yemeni detainees to Oman.). The situation in Yemen, such as it is, has no bearing on the relief Mr. Ba Odah seeks here.

ordinary habeas petition. *Not so*.") (emphasis added). Therefore, when read with reference to its mandatory law-of-war constraints, the AUMF does not authorize the indefinite imprisonment of Mr. Ba Odah who is now desperately ill, possibly near death.

II. MR. BA ODAH IS ENTITLED TO RELEASE UNDER ARMY REGULATION 190-8 BECAUSE HE IS GRAVELY ILL.

The provisions of Army Reg 190-8 that call for the repatriation of sick prisoners cover Mr. Ba Odah. As outlined above, the regulation states that enemy prisoners of war are entitled to direct repatriation where, among other things, their "conditions have become chronic to the extent that prognosis appears to preclude recovery in spite of treatment within 1 year from inception of disease or date of injury." Army Reg. 190-8 at ch. 3, §12(1). As a threshold matter, no *competent* legal authority has yet ascertained Mr. Ba Odah's legal status at Guantanamo. It is of no consequence that the government unilaterally elected not to classify Mr. Ba Odah as a "prisoner of war," applying to him instead its previously unheard of "enemy combatant" label. See Boumediene v. Bush, 553 U.S. 723, 729-30 (2008) (identifying "myriad deficiencies" of the Combatant Status Review Tribunal process by which detainees were designated "enemy combatants").[4]

Because his legal status is unresolved, the regulation categorizes Mr. Ba Odah as an "other detainee" and confers on him protections otherwise reserved for enemy prisoners of war,

[4] Even if the government were to attempt to revive the term, Mr. Ba Odah's designation as an "enemy combatant" by a 2004 Combatant Status Review Tribunal (CSRT) does not foreclose his reliance on Army Reg. 190-8. See Al Warafi, 716 F.3d at 629 (analyzing whether a Guantanamo petitioner qualified as a medic under Army Reg. 190-8 though he, too, was designated an "enemy combatant"); Aamer v. Obama, 2014 U.S. Dist. LEXIS 85343 at *25 (D.D.C. June 24, 2014) (rejecting the government's contention that the "enemy combatant" designation disqualified Guantanamo petitioner from treatment as an "other detainee" and barred his recourse to Army Reg. 190-8, noting "that the Obama Administration apparently jettisoned the terms 'enemy combatant' years ago . . . ").

including eligibility for direct repatriation for the sick. See Army Regulation 190-8, Glossary, Section II-Terms ("Persons in the custody of the U.S. Armed Forces who have not been classified as an EPW (article 4, GPW), RP (article 33, GPW), or CI (article 78, GC), shall be treated as EPWs until a legal status is ascertained by competent authority.")[5] Therefore all that remains is for Mr. Ba Odah to demonstrate that his physical condition – which in Dr. Ghannam's clinical experience is "a phenomenon rarely, if ever encountered in the medical profession" and

[5] In Aamer v. Obama, the court required the petitioner seeking relief under Army Reg. 190-8 to either apply for direct repatriation from the government or request an examination by a Mixed Medical Commission (MMC), the results of which could persuade the government to grant release (or convince the court to issue an order to that effect). See 2014 U.S. Dist. LEXIS 85343, 26-27 (D.D.C. June 24, 2014); see also Army Regulation 190-8 ch.3, § 12(k)(2). That process would be futile in this case.

First, in over thirteen years of indefinite detention, the government has made no effort that counsel is aware of to release Mr. Ba Odah. Just as the government indicated its opposition to this Motion, a formal request for release under Army Reg. 190-8 would likely meet the same response. See Exhibit E (Department of Justice Letter of November 20, 2014, denying request for direct repatriation and Mixed Medical Commission by Guantanamo prisoner Shaker Aamer). Second, seeking consent for a MMC would be similarly ineffectual. The government already took the position that it would not permit Mr. Ba Odah to retain an independent, non-military medical expert to examine him at Guantanamo. At present, it also refuses to disclose copies of his medical records. Farah Decl. ¶ 15. In his precarious condition, Mr. Ba Odah should not be made to pursue these measures; more than likely they will result in him returning to this Court to seek precisely the same relief he seeks now – only after having been prejudiced by significant, and ultimately, unnecessary delay.

Finally, while this Court is empowered to order the government to release Mr. Ba Odah's medical records, to grant him access to an independent medical exam, or, for example, to compel the convening of a MMC, there is already ample, unambiguous evidence on the record to explicitly establish Mr. Ba Odah's entitlement to release. *Even without* seeing him, three medical experts conclude that Mr. Ba Odah is at risk of sudden death. At 74.5 pounds, no MMC could conclude otherwise. Consequently, his continued detention is not authorized under the AUMF and the procedural steps set out in Army Reg. 190-8 do not prevent this Court from issuing an order requiring the government to effect Mr. Ba Odah's urgent release. See Hensley v. Municipal Court, 411 U.S. 345, 349-50 (1973) ("habeas corpus is not 'a static, narrow, formalistic remedy,' but one which must retain the *'ability to cut through barriers of form and procedural mazes.'*) (emphasis added) (citations omitted.); Boumediene v. Bush, 553 U.S. 723, 779-80 (2008) (habeas remedies are adaptable, their "precise application and scope chang[ing] depending upon the circumstances.") (citations omitted).

manifestly life-threatening, Ghannam Decl. ¶ 20 – meets the standard of ill health set out in Army Reg. 190-8 above.[6]

Unless the Army Regulation – and its admonition that detainees are to be treated humanely – are deemed meaningless, Mr. Ba Odah surely meets this standard. See Army Reg. 190-8, ch.1, § 1-4(g). First, it cannot be disputed that Mr. Ba Odah is gravely ill and that he is at serious risk of death from the effects of starvation. The government confirms that at the time of counsel's last visit to Mr. Ba Odah, he weighed 74.5 pounds – 56% of his ideal body weight. Mr. Ba Odah's physique brings to mind liberation photos of Holocaust survivors: his face was drawn such that his jawbone and teeth protruded; his ribs were visible through his skin as though no muscle or tissue covered them. Farah Decl. ¶¶ 16-18.

Medical experts regard the "shocking" fact of his diminished weight as clinically dispositive of chronic illness that presages death. See Bailony Decl. ¶ 6 ("This is a shocking medical fact that alone indicates the presence of a crisis-level medical condition presaging organ failure, neurological damage and, inevitably, death."); Crosby Decl. ¶ 5 (Based on his weight and reported symptoms, "I can confidently say that Mr. Ba Odah is suffering from severe malnutrition and that . . . such a state of starvation will, without medical intervention, lead

[6] Judicial determinations about prisoners' ill health – grounded in affirmative law-of-war limitations on the government's detention authority – are categorically distinct from an inquiry into whether a prisoner might pose a "threat" to the U.S. in the future. While common sense dictates that a prisoner approved for transfer, weighing 74.5 pounds and bedridden by malnutrition poses little threat to the U.S., that is *not* the question presented here. See Awad v. Obama, 608 F.3d 1, 11 (D.C. Cir. 2010) ("Whether a detainee would pose a threat to U.S. interests if released is not at issue in habeas corpus proceedings in federal courts concerning aliens detained under the authority conferred by the AUMF."). To adjudicate this motion, the Court need only determine that Mr. Ba Odah's morbidly severe, potentially permanent health complications bring him within codified law-of-war protections reserved for seriously ill prisoners, including eligibility for direct release. Here, the Court is asked to render its judicial assessment of undisputable medical opinion, and for which the military has no superior expertise and is entitled to no deference.

inevitably to death, possibly in a period of months."). As Dr. Ghannam explains, "a weight of 75 pounds for an adult male is a phenomenon rarely, if ever encountered by the medical profession. It is a level of physical deterioration typically seen in a late-stage cancer or AIDS patient." Ghannam Decl. ¶ 20. Indeed, "*anything below 70%* of ideal body weight – a redline Mr. Ba Odah long ago exceeded – "[is] considered medically dangerous because of increased risk of multiorgan dysfunction, life-threatening medical complications, and sudden death." Crosby Decl. ¶ 30 (emphasis added).[7]

Mr. Ba Odah faces death from the inevitable course of starvation, which eventually overtakes the body's ability to function. Potentially due to damage to the cellular composition in his stomach and intestines associated with malnutrition, Bailony Decl. ¶ 30(a) (or other factors), Mr. Ba Odah is not *absorbing* sufficient number of calories, even as he is being forcibly fed more and more nutritional supplement. This chronic caloric deficiency from malnutrition is associated with substantial depletion of vital organ mass (as the body cannibalizes proteins from vital organs in order to survive) and compromised organ functioning, which can ultimately result in "sepsis, respiratory failure, acute renal failure, and ultimately hemodynamic collapse

[7] All of the medical experts recognize that they cannot make a conclusive diagnosis about the underlying symptomology for Mr. Ba Odah or a precise estimate of his chances of survival, but that does not diminish the certainty of their conclusion about the prospect of underlying injury and risk of death. Some facts are conclusive. As Dr. Ghannam explains, "If a doctor is informed that a patient has a blood pressure of 60/40 systolic over diastolic, the doctor can confidently state that the individual's medical condition is not sustainable and that immediate medical intervention is required, even without knowing the underlying cause of such an alarmingly aberrant blood pressure reading." Ghannam Decl. ¶ 23. And, regrettably, the phenomenon of malnutrition and starvation is so widespread and long-standing, that experts can make some judgments based on broad bands of empirical data. For example, two of the most widely used global assessments of nutritional health place Mr. Ba Odah "into the most severe category of malnourishment." Bailony Decl. ¶ 21. Multiple morbidity studies of malnutrition, validated across thousands of patients, suggests Mr. Ba Odah falls into a class of patients with a median survival term of 6 months, which "sets a norm, standardized across many thousands of cases, and a reliable guide for the risk of mortality Mr. Ba Odah is facing." Id. at ¶ 22.

(requiring advanced cardiac and respiratory support). . . ." Bailony Decl. ¶ 26; see also Crosby Decl. ¶ 33 (describing fatal risks deriving from organ failure). Other complications from chronic malnutrition include, "hemodynamic instability (bradycardia, hypotension)," bone marrow suppression, liver inflammation, and gastroparesis and aspiration risk. Crosby Decl. ¶ 31.

Malabsorption of critical micronutrients can also produce severe illness and death. For example, severe Thiamine (Vitamin B-1) deficiency produces illnesses with symptoms of the kind Mr. Ba Odah complains of, such as dry beriberi (associated with numbness in extremities) and Wernicke-Korsakoff's syndrome, a serious and potentially lethal disorder that can produce heart failure. Bailony Decl. ¶¶ 30, 34.

Beyond Mr. Ba Odah's "persistent state of decline," Crosby Decl. ¶ 32, and his "inevitable decline from wasting and organ failure," Bailony Decl. ¶ 27, he faces an additional risk of sudden death. In his "fragile state" of depleted caloric absorption and compromised vital organ functioning, "any additional stress on the body, from an infection, fever, or serious injury, could quite simply overwhelm his systemic response causing death in a period of days." Bailony Decl. ¶ 27; see also Crosby Decl. ¶ 33 (explaining that in his "precarious state, small insults such as injury, infection or fever can set off a fatal cascade of organ failure").

Critically, there is no comfort to be taken in the government's representation that Mr. Ba Odah has maintained his current weight for some months. Mr. Ba Odah cannot be considered "stable" as that term is used in a responsible clinical sense. Bailony Decl. ¶ 28 ("His body is in a state of persistent, inevitable morbid decline and is at every moment presenting a latent but severe risk of death from infection."). Dr. Bailony calculated Mr. Ba Odah's likely daily calorie expenditure and concludes unequivocally that Mr. Ba Odah's *absorption* is inadequate– irrespective of his calorie *intake*. Bailony Decl. ¶ 13. If Mr. Ba Odah is not losing weight, in all

likelihood it only because he has already reached a floor beyond which additional weight-loss is biologically impossible. Any continued decline he experiences will thus manifest as varied other forms of injury "triggering a spiral of symptomology" that could overwhelm him. Id. at ¶ 23; Crosby Decl. ¶ 32. Indeed, "people who die from malnutrition do not continue to lose weight so as to finally expire, for example, at 40% of their body weight. They die precisely at the level of lost body mass Mr. Ba Odah is at now. . . ." Bailony Decl. ¶ 18.[8]

In sum, Army Reg. 190-8 means nothing if prisoners at risk of death due to extreme malnutrition do not come within its scope.

Second, even were Mr. Ba Odah to survive his immediate crisis – and there is strong medical concern that he may not – he is still eligible for repatriation because it is likely that his health can *never* be restored at Guantanamo, much less within one year's time. According to Dr. Ghannam, the cognitive, neurological, and physical results of Mr. Ba Odah's malnourishment and prolonged solitary confinement may include "permanent impairment in his ability to process information and damage to his short-term memory"; "he will most likely be left with permanent and potentially challenging symptoms of depression, anxiety, and PTSD, which will result in Mr. Ba Odah struggling to overcome sensations of perpetual fear, hopelessness, and despair." Ghannam Decl. ¶¶ 34, 46; see also Crosby Decl. ¶¶ 31, 34 (describing present risk of "cerebral atrophy and cognitive impairment" and noting that Mr. Ba Odah's symptoms are consistent with

[8] To anticipate at least one potentially cynical response to this motion, the fact that Mr. Ba Odah elected to protest his detention at Guantanamo by hunger striking does not preserve the government's authority to detain him under the AUMF. However voluntary his initial decision was, he is now gripped by myriad physical and psychological complications, including "persistent caloric malabsorption," which threaten irreparable harm and even death. Bailony Decl. ¶ 6. Dr. Bailony reports, "[H]e cannot eat himself back to health and no responsible physician would attempt this course of re-nourishment." Bailony Decl. ¶ 39. "Put simply," confirms Dr. Crosby, "Mr. Ba Odah's survival and rehabilitation are out of his hands." Crosby Decl. ¶ 44.

"neurocognitive derangements that are caused by malnutrition."). This conclusion is consistent with Dr. Ghannam's experience treating other long-term hunger strikers – though he says *none* as deteriorated and grave as Mr. Ba Odah; many "developed severe chronic health conditions and permanent medical and psychological damage with a lifetime of disability." Ghannam Decl. ¶ 15.

Dr. Bailony similarly reports that Ba Odah's stated nutritional symptoms may indicate he "has already suffered or is suffering from medical and neurological injuries that will produce permanent impairment or disability." Bailony Decl. ¶ 6). These include potential organ damage as well as "subtle but . . . debilitating" micronutrient deficiency, which "can be permanent if not corrected within a reasonable amount of time." Id. ¶¶ 43, 29; see also Crosby Decl. ¶ 45 ("His injuries may be permanent.").

Moreover, even if Mr. Ba Odah could receive appropriate medical intervention to alleviate his crisis medical situation, he would likely need diagnostic tests and long-term care and rehabilitation to restore him to health and safety. For his likely neurological impairments, Mr. Ba Odah "may need physical therapy with sophisticated diagnostic and rehabilitative equipment for a period of 6 months to a year, or perhaps more." Bailony Decl. ¶ 44. Dr. Crosby confirms that appropriate recovery "requires immediate medical evaluation and intervention to prevent further decline and potential irreversible injury and eventual death" followed by "long-term monitoring, outpatient care and rehabilitation." Crosby Decl. ¶ 45. Thus three expert clinicians uniformly conclude that Mr. Ba Odah's potential rehabilitation would be long and fraught – requiring months, years, or the rest of his life – and will depend on sophisticated, highly attentive care.

Finally, Mr. Ba Odah's recovery within a year is impossible both because his health is so shockingly compromised and because the circumstances of his detention undermine any chance to achieve that recovery. At Guantanamo, he cannot receive either the acute care necessary to stave off his further deterioration or potential demise, nor can he receive the long-term care and rehabilitation necessary to restore him to good health.

Apparently unmoved by his crisis-level weight, the government steadfastly confines Mr. Ba Odah to Guantanamo's Camp 5, the non-communal housing facility renowned for its punitive, isolative conditions. Farah Decl. ¶ 41. This is exactly the opposite of what Mr. Ba Odah needs. Solitary confinement compromises an individual's mental and physical health and risks bringing about "multiple chronic medical illnesses, depression, anxiety, sleep disorders, and permanent neuropsychological damage." Ghannam Decl. ¶ 33. Moreover, solitary conditions are "a strong exacerbating factor to his already precarious condition." Id. at ¶ 21.[9]

Even were Mr. Ba Odah granted access to an environment conducive to his recuperation, an additional, insurmountable obstacle to Mr. Ba Odah's recovery is his distrust of the very

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[9] Indeed, Justice Kennedy very recently highlighted the cruelty of prolonged solitary confinement and urged that its use be limited to only core penological needs lest it continue to inflict severe, unnecessary damage on a prisoner's body and mind. He explained:

> Of course, prison officials must have discretion to decide that in some instances temporary, solitary confinement is a useful or necessary means to impose discipline and to protect prison employees and other inmates. But research still confirms what this Court suggested over a century ago*: Years on end of near-total isolation exacts a terrible price*. See, e.g., Grassian, Psychiatric Effects of Solitary Confinement, 22 Wash. U. J. L. & Pol'y 325 (2006) (common side-effects of solitary confinement include anxiety, panic, withdrawal, hallucinations, self-mutilation, and suicidal thoughts and behaviors).

Davis v. Ayala, 2015 WL 2473373, 21 (S. Ct. June 18, 2015) (Kennedy, J., concurring) (emphasis added).

medical staff at Guantanamo charged with his care – distrust that Dr. Crosby explains "is widely observed and understood" among patients in such punitive settings. Crosby Decl. ¶ 42. If for no other reason, Ba Odah developed that mistrust through more than eight years of tube-feedings through his nose. He now says he feels that he is a "guinea pig" being used for experimentation at Guantanamo. He is afraid of medical treatment there and perceives that the medical staff is integral to the painful restraint and forcible feeding regimen he so despises. Farah Decl. ¶¶ 45, 49.

Mr. Ba Odah's fear is both a common and clinically predictable outgrowth of his thirteen-plus years of indefinite detention and his force-feeding. Ghannam Decl. ¶ 41. Its consequences for his potential recovery, however, are disastrous. Dr. Ghannam explains that "the essential foundation . . . of any successful doctor-patient relationship is trust," without which "medical treatment becomes coercive [,] punitive," and ultimately unviable. Ghannam Decl. ¶¶ 40, 43. Dr. Crosby reports that the doctor-patient relationship "is of paramount importance for treatment and recovery," and "may be irrevocably damaged if physicians have been involved in coercive behavior, such as force-feeding." Crosby Decl. ¶¶ 42-43. This well-observed clinical reality triggers an ethical duty on medical professionals. Codified in the Malta Declaration of the World Medical Association, ethical obligations instruct that when a doctor-patient has been so compromised, a hunger-striking patient should be provided an outside, independent physician of confidence. Crosby Decl. ¶ 44. As such – and leaving aside his emergent medical condition and other exacerbating factors – Mr. Ba Odah cannot recover at Guantanamo within a year, or possibly ever. Ghannam Decl. ¶ 47.

III. THIS COURT SHOULD GRANT MR. BA ODAH'S HABEAS PETITION AND ORDER HIS RELEASE.

Nothing stands in the way of this Court ordering Mr. Ba Odah's release. Entering his 13th year of indefinite detention, Mr. Ba Odah is gravely ill and, if he recovers at all, it will not likely happen within a year. For those reasons, his continued detention violates the domestic law of war standards set out in Army Reg. 190-8 and the related law of war constraints on the government's authority to detain individuals indefinitely under the AUMF. However expansively it may read the AUMF, neither the statute nor the humanitarian protections embodied in the Army Regulation empower the government to continue imprisoning Mr. Ba Odah in a solitary cell at Guantanamo while he teeters on the precipice of death – his body struggling, but ultimately failing, to properly absorb the liquid nutrients he is being force-fed.

Indeed, reliance on the AUMF to authorize Mr. Ba Odah's continued detention requires the government to defend the bizarre proposition that it is lawful to perpetually force-feed Mr. Ba Odah in order to preserve its ability to continue imprisoning him indefinitely, even though the government disclaimed its professed need to keep him at Guantanamo years ago by approving him for transfer. That argument stretches the government's "necessary and appropriate" use of force beyond all conceivable limits of the law of war and the Supreme Court's guidance in Hamdi and states a case for nothing more than arbitrary detention.

Granting Mr. Ba Odah the relief he seeks – to prevent the serious risk of irreversible impairment and death – is in within this Court's important authority. See Harris v. Nelson, 394 U.S. 286, 291 (1969) ("The scope and flexibility of the writ—its capacity to reach all manner of illegal detention . . . have always been emphasized and jealously guarded by courts and lawmakers" and "demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected."). And as the

Supreme Court underscored in Boumediene v. Bush, habeas remedies are adaptable, their "precise application and scope change [] depending upon the circumstances." 553 U.S. 723, 779-80 (2008) (citations omitted). The extraordinary circumstances presented here call for one remedy above all – Mr. Ba Odah's immediate release. The "root principle" of habeas "is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment: if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release." Fay v. Noia, 372 U.S. 391, 402 (1963), overruled in part by Wainright v. Sykes, 433 U.S. 72 (1977).

This Court should not shy away from ordering such relief. By approving Mr. Ba Odah for transfer in 2010, the government long ago signaled its approval of that outcome.

CONCLUSION

For the reasons stated herein, Mr. Ba Odah respectfully requests that this Court reinstate and his petition for a writ of habeas corpus and issue an order requiring the government to take every necessary and appropriate step to facilitate his immediate release from Guantanamo.

Dated: June 25, 2015
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a true and correct copy of the foregoing Motion for Reinstatement of Petitioner's Habeas Petition and for Judgment on the Record and Memorandum of Law in Support on all parties of record through this Court's ECF system.

___/s/ *Omar Farah*
Omar Farah