

[ORAL ARGUMENT NOT SCHEDULED]

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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	:
MOHAMMED SULAYMON BARRE,	:
	:
Appellant,	:
	:
v.	: No. 10-5203
	:
BARACK OBAMA, <i>et al.</i> ,	:
	:
Appellees.	:
	:
_____	x

MOTION TO GOVERN

Appellant Mohammed Sulaymon Barre, by and through his undersigned counsel, respectfully submits this motion to govern future proceedings, pursuant to the Court’s order of December 2, 2011. The Court should remand this case to the district court for consideration of *Gul v. Obama*, 652 F.3d 12 (D.C. Cir. 2011), and deny Appellees’ motion for summary affirmance dated August 29, 2011.

Argument

Mr. Barre appeals from the summary dismissal of his habeas corpus petition as moot following his transfer from Guantánamo Bay to the Republic of Somaliland in December 2009. This Court subsequently consolidated Mr. Barre’s appeal with a small number of other post-transfer detainee appeals, and held those

cases in abeyance pending its resolution of post-transfer detainee appeals in *Gul v. Obama*, D.C. Cir. Nos. 10-5117.

In July 2011, this Court affirmed the dismissal of the habeas petitions in *Gul v. Obama*, 652 F.3d 12 (D.C. Cir. 2011). Appellees thereafter filed a motion for summary affirmance of the remaining consolidated post-transfer appeals. The appellants in those cases, including Mr. Barre, requested further abeyance pending U.S. Supreme Court review of *Gul*, or, in the alternative, remand to the district court for consideration of *Gul*. Pursuant to its December 2, 2011 order, the Court ordered continuing abeyance until 30 days after the disposition by the Supreme Court of any petition for a writ of certiorari in *Gul*, and deferred the motion for summary affirmance pending further order of the Court. On April 16, 2012, the Supreme Court denied certiorari in *Gul*.

In light of that ruling, Mr. Barre requests that this Court remand this case to this district court for application of *Gul*, in the first instance, to the unique facts and circumstances of his case. As set forth in his August 30, 2011 motion to govern and his September 9, 2011 opposition to Appellees' motion for summary affirmance, the Court should order remand for several reasons, including because: (1) this Court proceeded in *Gul* as if the collateral consequences doctrine applies to Guantánamo detainee habeas cases (analyzing and rejecting each of the *Gul* petitioners' claimed collateral consequences); (2) such a fact-specific analysis of

individualized claims of collateral consequences has never taken place in this case; and (3) Mr. Barre has suffered unique, redressable injuries as a collateral consequence of his continued inability to confront the false allegations leveled against him in connection with his prior detention at Guantánamo, which *Gul* did not address. Such injuries include, for example, the U.S. government's refusal to provide an OFAC license to his counsel to provide various forms of support to him aimed at facilitating his readjustment to life after Guantánamo, via correspondence conveying the clear implication that counsel or similarly-inclined third parties would risk criminal sanctions for providing any assistance to Mr. Barre based on his prior detention at Guantánamo. Indeed, the government has not specifically addressed this claim or disputed that such harm would be redressable by a district court order granting Mr. Barre's habeas petition. At the very least, Mr. Barre should have a chance to present those specific claims of collateral consequences, which neither the district court nor this Court in *Gul* has addressed, to the district court for consideration in light of *Gul*.

Conclusion

Accordingly, and for the reasons set forth in Mr. Barre's prior submissions, this motion to govern should be granted and this case should be remanded to the district court. The motion for summary affirmance should likewise be denied.

Dated: New York, New York
May 16, 2012

Respectfully submitted,

/s/ sdk

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CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2012, I caused the foregoing Motion to Govern to be filed with the Court and served on counsel for all parties, including without limitation counsel listed below, by using the appellate CM/ECF system.

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