

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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MOHAMMED SULAYMON BARRE,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civil Action No. 08-1153 (HHK)
	:	
BARACK H. OBAMA, <i>et al.</i> ,	:	
	:	
Respondents.	:	
	:	
_____	x	

**REPLY IN SUPPORT OF MOTION FOR STATUS CONFERENCE,  
AND OPPOSITION TO CROSS-MOTION TO TRANSFER OR STAY**

Petitioner Mohammed Sulaymon Barre, by and through his undersigned counsel, respectfully submits this reply in support of his motion for a status conference to establish a process and schedule for resolving this case on the merits. He also opposes the government’s cross-motion to transfer this case to Judge Hogan or, alternatively, to stay proceedings pending Judge Hogan’s disposition of habeas cases involving other released detainees. Mr. Barre’s motion should be granted, and the government’s cross-motion denied, for the following reasons.

**Argument**

**I. The Motion for a Status Conference Should Be Granted Absent Direct Objection**

Mr. Barre filed a motion requesting that the Court schedule a status conference to establish a process and schedule for resolving this case on the merits, including deadlines for the parties to file cross-motions for judgment on the record, and, if necessary following the Court’s ruling on the cross-motions for judgment, procedures for an evidentiary hearing on the merits of Mr. Barre’s habeas case. In support of his motion, Mr. Barre argued (at p.3) that the Court

retains jurisdiction over his habeas case notwithstanding his release from Guantánamo Bay because he continues to suffer collateral consequences of his prior detention, including restrictions on his right to travel and stigmatic injury. The government does not address let alone dispute the merits of these arguments. It instead limits its response to arguing that this case should be transferred or stayed rather than decided on the merits at this time. Even so, the government does not offer any explanation as to why this Court should not schedule a status conference to address the issues raised by Mr. Barre and the government concerning the proper disposition of this case. Mr. Barre's motion should therefore be granted absent direct objection.

**II. The Government Has Failed to Justify Further Indefinite Delay**

The government argues in its cross-motion that this case should be transferred to Judge Hogan for coordination with *In re Guantánamo Bay Detainee Litigation*, Misc. No. 08-444 (TFH) (D.D.C.), because certain cases involving other released detainees have been coordinated in this fashion, and because the question of whether the Court retains jurisdiction over undecided habeas cases after the detainees are released is already fully briefed before Judge Hogan.

Alternatively, the government seeks a stay of this case pending resolution of other released detainee cases before Judge Hogan. These arguments should be rejected for several reasons:

1. As the government concedes in its cross-motion (at p.3), not all habeas cases involving released detainees have been transferred to Judge Hogan for coordination.
2. Not all habeas cases involving released detainees are susceptible of coordinated resolution on the question of continuing jurisdiction. In particular, not all released detainees suffer collateral consequences of their prior detention in the manner that currently impacts Mr. Barre, nor were all other released detainee cases coordinated before Judge Hogan as close to resolution on the merits as Mr. Barre's case was at the time he was released. Each released

detainee case is factually and procedurally unique, and should be adjudicated separately in circumstances such as those presented by Mr. Barre's case.

3. As noted above, the government has neither directly contested this Court's continuing jurisdiction over Mr. Barre's habeas case notwithstanding his release, nor addressed the binding authorities cited by Mr. Barre in support of such jurisdiction.

4. The government's cross-motion should be denied because it would result in further delay – and the harm to Mr. Barre from further delay is substantive, not procedural. Delay means continuing collateral harm from the period of his prior detention. Here, such harm is concrete and palpable. For example, since Mr. Barre's release from Guantánamo Bay, his counsel have sought to provide him with limited assistance to rebuild his life in Somaliland. Although the government has acknowledged that such assistance is not unlawful, and that a license to provide such assistance is not required to comply with U.S. Treasury Department regulations, the government has refused to provide such a license to Mr. Barre's counsel in abundance of caution on the ground that “[i]t would not be customary . . . to issue a specific license for payments to members of designated terrorist organizations.” *See* Letter from Office of Foreign Assets Control to Center for Constitutional Rights (Mar. 10, 2010) (attached hereto in redacted form as Exhibit A).<sup>1</sup> The government thus continues to cast aspersions on Mr. Barre because he was labeled an “enemy combatant” at Guantánamo Bay, and to withhold assurances regarding efforts to assist with his reintegration that it would surely provide without hesitation if Mr. Barre won his habeas case before this Court. In the meantime, Mr. Barre struggles with each passing day to rebuild his life and free himself of the burdens of his prior detention.

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<sup>1</sup> An unredacted copy of this letter is available to the Court and opposing counsel upon request.

5. The Supreme Court has held clearly and unambiguously that “[t]he detainees in these cases are entitled to a prompt habeas corpus hearing.” *See Boumediene v. Bush*, 128 S. Ct. 2229, 2275 (2008). The Supreme Court made no exception for detainees like Mr. Barre, who have been released but continue to suffer the collateral consequences of their prior detention. *See, e.g., Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (holding that “once the federal jurisdiction has attached in the District Court, it is not defeated by the release of the petitioner prior to completion of proceedings on such application”); *id.* at 239 (“[The habeas] statute does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted. It provides that ‘the court shall . . . dispose of the matter as law and justice require’ . . . [and] contemplate[s] the possibility of relief other than immediate release from physical custody”); *Sibron v. New York*, 392 U.S. 40, 55 (1968) (holding that the mere possibility that collateral consequences may exist is sufficient to preserve a live controversy). Indeed, Mr. Barre should not be made to suffer continuing harm simply because the government decided to release him after nearly a decade of imprisonment without charge, trial or habeas hearing. *Cf. Carafas*, 391 U.S. at 240 (“[Petitioner] should not be thwarted now and required to bear the consequences of assertedly unlawful conviction simply because the path has been so long that he has served his sentence.”).

6. The law is also well-settled that the government bears a higher burden to justify delay in a habeas case than it would in an ordinary civil action. *See Cross v. Harris*, 418 F.2d 1095, 1105 n.64 (D.C. Cir. 1969) (“This is a habeas corpus proceeding, and thus particularly inappropriate for any delay.”); *see also Yong v. INS*, 208 F.3d 1116, 1119 (9th Cir. 2000) (noting standard of review of district court decision to stay habeas proceeding “is somewhat less deferential than the flexible abuse of discretion standard applicable in other contexts”). The

statutory provisions for prompt returns, immediate hearings, and summary disposition of habeas cases expressly require that petitions be heard and decided promptly. *See* 28 U.S.C. §§ 2241, 2243; *see also Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 490 (1973) (noting interests of prisoner and society in “preserv[ing] the writ of habeas corpus as a swift and imperative remedy in all cases of illegal restraint or confinement”) (internal quotation marks omitted); *Yong*, 208 F.3d at 1120 (“[H]abeas proceedings implicate special considerations that place unique limits on a district court’s authority to stay a case in the interests of judicial economy.”); *Ruby v. United States*, 341 F.2d 585, 587 (9th Cir. 1965) (“The application for the writ usurps the attention and displaces the calendar of the judge or justice who entertains it and receives prompt action from him within the four corners of the application. . . . One who seeks to invoke the extraordinary, summary and emergency remedy of habeas corpus must be content to have his petition or application treated as just that and not something else.”); *Van Buskirk v. Wilkinson*, 216 F.2d 735, 737-38 (9th Cir. 1954) (“[The Writ] is a speedy remedy, entitled by statute to special, preferential consideration to insure expeditious hearing and determination.”).

It is equally indisputable that the high standard for delay has not been met in this case by any measure, and certainly not on the sole basis asserted by the government – *i.e.*, because other cases have already been delayed indefinitely. The Court should not transfer or stay this case.

### **Conclusion**

For the foregoing reasons, and the reasons previously submitted, Mr. Barre’s motion should be granted and the government’s cross-motion should be denied.

Dated: New York, New York  
March 22, 2010

Respectfully submitted,

/s/ J. Wells Dixon

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# **EXHIBIT A**



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

CASE No. SDGT-1329

Shayana D. Kadidal, Esq.  
Center for Constitutional Rights  
666 Broadway, 7<sup>th</sup> Floor  
New York, NY 10012

Dear Ms. Kadidal:

This is in reply to your January 29, 2010 letter to the Department of the Treasury's Office of Foreign Assets Control ("OFAC") requesting a specific license to provide \$ [REDACTED] to Mohammed Sulaymon Barre [REDACTED] former detainees at the U.S. Naval Base at Guantanamo Bay, to aid in their social reintegration now that they have been repatriated to Somalia. The Center for Constitutional Rights ("CCR") intends to coordinate the fund distribution and use [REDACTED]

You have indicated that neither Mr. Barre [REDACTED] appears on the Specially Designated Nationals and Blocked Persons List ("SDN List"). While no license is required in order for U.S. persons, including U.S. charities, to engage in transactions with persons whose property or interests in property have not been blocked pursuant to 31 C.F.R. Chapter V or any Executive order or statute administered by OFAC, the SDN list does not encompass the name of every member of designated terrorist organizations. A U.S. individual or organization may not engage in transactions with persons or entities owned or controlled by or acting on behalf of a designated terrorist organization, regardless of whether or not they appear on the SDN List. CCR may not provide or receive payment on behalf, directly or indirectly, to or from any entity or individual whose property or interests in property are blocked, including any entity or individual named or designated pursuant to the Antiterrorism and Effective Death Penalty Act of 1996, Executive Order 12947 of January 23, 1995, or Executive Order 13224 of September 23, 2001, unless authorized by OFAC. It would not be customary for OFAC to issue a specific license for payments to members of designated terrorist organizations, regardless of whether or not they are individually listed on the SDN List.

Sincerely,

Handwritten signature of Andrea Gacki.

Andrea Gacki  
Assistant Director for Licensing  
Office of Foreign Assets Control

Mar. 10, 2010  
Date