

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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DJAMEL AMEZIANE,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civil Action No. 05-392 (ESH)
	:	
BARACK OBAMA, <i>et al.</i> ,	:	
	:	
Respondents.	:	
	:	
_____	x	

**MOTION FOR STATUS CONFERENCE TO ADDRESS
THE GOVERNMENT’S SEIZURE OF LEGAL MATERIALS**

Petitioner Djamel Ameziane, by and through his undersigned counsel, respectfully moves for a status conference before the Court to address the seizure by Joint Task Force-Guantánamo (JTF-GTMO) of all the legal and non-legal materials in Mr. Ameziane’s possession, and their apparent comingling with more than 100 bins of other detainee papers, including privileged and confidential attorney-client communications, during a raid on Camp 6 at Guantánamo Bay on April 13, 2013. A hearing is necessary to determine exactly what happened and whether Mr. Ameziane’s attorney-client privilege was violated, and fashion appropriate judicial remedies. The Court should also order any other relief that it deems necessary or appropriate. The government objects to this motion.

Preliminary Statement

Mr. Ameziane is a 46-year old, college-educated citizen of Algeria. He has been detained at Guantánamo without charge or trial for more than eleven years – a quarter of his lifetime. He has been approved for transfer from Guantánamo since 2008, but continues to be

held indefinitely and without foreseeable end. His continuing detention is particularly egregious because he has current, viable resettlement opportunities that may slip away if not addressed by the government consistent with the President's purported desire to close the prison.¹

As publicly disclosed in documents unsealed by the D.C. Circuit on October 5, 2012, in *Ameziane v. Obama*, No. 09-5236 (D.C. Cir.), the government has not only approved Mr. Ameziane for transfer but long stated that:

- “[T]he detention of Petitioner is no longer at issue” (App. 37)²;
- “Respondents have determined to relinquish custody over Petitioner” (App. 40);
- “[T]he only issue truly remaining is the country to which Petitioner should be sent” (App. 41); and
- There are no “military rationales” for Mr. Ameziane’s continued detention, and “steps are [being] taken to arrange for the end of such custody” (App. 42).

Yet the government appears to have made no effort actually to release him from Guantánamo, and steadfastly refuses to provide any indication of when it might do so. Mr. Ameziane has become despondent to the point now where he has been on a hunger strike for several months. To make matters worse, JTF-GTMO has locked him in isolation since April 13, 2013, and seized all of the legal and non-legal materials in his possession as of that date. Now the government reports that it is unable to locate those materials and separate them from more than 100 bins of materials seized from other detainees. The parties have met and conferred for more than a month to try to resolve this problem, but have not been successful.

¹ *Text of President Obama’s May 23 Speech on National Security (Full Transcript)*, Wash. Post, May 23, 2013, available at http://articles.washingtonpost.com/2013-05-23/politics/39467399_1_war-and-peace-cold-war-civil-war.

² “App.” refers to the unsealed Appellant’s Appendix in *Ameziane v. Obama*, No. 09-5236 (D.C. Cir.), also available at www.ccrjustice.org/ameziane.

Accordingly, because the seizure of Mr. Ameziane's legal mail directly impacts his access to the Court and his ability to seek an order for his release, he requests that the Court hold a hearing to determine exactly what happened and order remedial measures to resolve this issue.

Background

Mr. Ameziane was transferred to Guantánamo in February 2002. He filed a habeas corpus petition before this Court in February 2005, challenging the legality of his detention, but has not obtained a final ruling on the merits. His case has been stayed at the government's request, over his objections, since 2009, based on the government's representations to the Court that he would be released. However, when imposing the indefinite stay the Court cautioned that Mr. Ameziane "gave up his habeas, not voluntarily but because [the government] wanted a stay, and [the Court] agreed that it ought to be stayed because it's a waste of everyone's time. But for him to give that right up and be in a worse position than somebody who exercises their habeas rights, you can't have it both ways. It's just not fair." App. 104, 112-13. Indeed, that was four years ago and Mr. Ameziane continues to suffer significant, unfair prejudice. The knowledge that he is not being released despite his approval for transfer, and despite the fact that certain governments have indicated interest in possibly resettling him, is particularly cruel, inhuman and degrading, rising to the level of a violation of Common Article 3 of the Geneva Conventions.³

³ See ADM Patrick Walsh, USN, Vice Chief of Naval Operations, *Review of Department Compliance with President's Executive Order on Detainee Conditions of Confinement* 74 (2009), available at http://www.defense.gov/pubs/pdfs/REVIEW_OF_DEPARTMENT_COMPLIANCE_WITH_PRESIDENTS_EXECUTIVE_ORDER_ON_DETAINEE_CONDITIONS_OF_CONFINEMENTa.pdf. The report specifically concludes:

The Review Team is convinced that *the ability of detainees to understand their future* has a direct correlation to detainee behavior and conditions inside the camp population, and *will impact the long-term ability to comply with Common Article 3 of the Geneva Conventions*. Rising tension and anxiety among the detainees leads to acts of defiance, non-compliance with camp rules, and manifestations of self-harm or attempts to injure or kill camp personnel. Therefore, *we recommend*

Today, undersigned counsel are informed that JTF-GTMO has locked Mr. Ameziane in isolation in Camp 6 for between 22- and 24-hours per day, with little or no interaction with other detainees. He is also participating in a widespread hunger strike that may kill him because he has reached the point where he is utterly desperate and hopeless that he will ever be released from Guantánamo. Mr. Ameziane has described his current conditions of confinement as among the worst that he has suffered throughout his detention at Guantánamo.

Although the government is in a better position to explain – and should be *required* by the Court to explain – its failure to transfer Mr. Ameziane, particularly given his resettlement opportunities, it appears that he has not been transferred in part due to Congress’s enactment of detainee transfer restrictions, most recently codified in Section 1028 of the National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, 126 Stat. 1632 (Jan. 2, 2013) (“NDAA”). The transfer restrictions prevent the government from using funds allocated by Congress to transfer a detainee to a foreign country unless the Secretary of Defense issues a multi-part certification attesting to the transferee country’s capacity to accept the detainee. *Id.* § 1028(b). If certain certification requirements are impossible to satisfy, the Secretary of Defense may issue a national security waiver of those requirements. *Id.* § 1028(d)(1). The only exception to the certification and waiver requirements is in instances where the detainee obtains

seeking immediate assistance through the interagency process to expeditiously determine the detainees’ future and take action to repatriate or transfer detainees as appropriate. . . . Not knowing when they might depart Guantánamo (for home or elsewhere) has almost certainly increased tension and anxiety within the detainee population.

Id. (emphasis added); *see also* Physicians for Human Rights, *Punishment Before Justice: Indefinite Detention in the US* (June 2011) (indefinite detention can rise to the level of torture), available at https://s3.amazonaws.com/PHR_Reports/indefinite-detention-june2011.pdf.

an order “affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction.” *Id.* § 1028(a)(2).

Regrettably, in Mr. Ameziane’s case the government does not appear even to have attempted to obtain a certification and/or waiver of the transfer restrictions in order to release him, and refuses to provide any indication of when it might seek to do so. The government has not tried in any measureable fashion to release Mr. Ameziane despite repeated statements that it intends to release him and “continues to work *diligently* toward Mr. Ameziane’s transfer in accordance with U.S. law and policy.”⁴ The government has also refused to consent or stipulate to any form of court order “affecting the disposition” of Mr. Ameziane’s habeas case for the purpose of facilitating his transfer and resettlement (even if such an order were to include relief short of an actual grant of his habeas petition⁵).

Accordingly, given the government’s failure to make any tangible progress toward Mr. Ameziane’s release, he intends to renew his motion for expedited judgment in this case because a court order appears to be the only way that he could assuredly leave Guantánamo alive. Counsel had intended to file such a motion already, which the government has indicated it will oppose, but has been delayed by Mr. Ameziane’s participation in the hunger strike.

The Seizure and Comingling of Mr. Ameziane’s Legal Mail

Mr. Ameziane’s renewed legal challenge has now been further delayed by JTF-GTMO’s reckless seizure and comingling of Mr. Ameziane’s legal materials accumulated over more than eight years of litigating this case. According to Mr. Ameziane, guards at Guantánamo seized all

⁴ *See, e.g.*, Ex. A (Letter from U.S. Dep’t of State to Inter-American Comm’n on Human Rts., July 24, 2012, concerning Mr. Ameziane) (emphasis added).

⁵ NDAA § 1028(a)(2) does not require that a court order resolve the question of whether a detainee is lawfully detained pursuant to the Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (2001).

of his legal and non-legal materials during the April 13 raid on Camp 6, after which detainees including Mr. Ameziane were placed in isolation as apparent punishment for their participation in the widespread hunger strike. Mr. Ameziane continues to be denied access to any of his materials, even though others in his cell block have reportedly had some of their materials returned. As Mr. Ameziane has explained to the Staff Judge Advocate General at Guantánamo, he needs his legal mail to be returned specifically because there are pressing matters that he needs to discuss with his counsel concerning his renewed legal challenge seeking a court order for his release.⁶

In response, the government has conceded that “no materials (legal mail or non-legal mail)” have been returned to Mr. Ameziane since the April raid. The government has stated that during the raid, guards collected detainee materials, including legal mail, and that there remain documents whose ownership cannot be determined without further review. The government also acknowledges that Mr. Ameziane’s legal mail may be among those unidentified materials, which have been secured since the raid.⁷ Thus, it appears that guards at Guantánamo carelessly removed from cells and common areas of Camp 6 the detainees’ legal and non-legal materials and comingled them during the raid, despite the fact that the raid was pre-planned and rehearsed by the guards.⁸ The government is now confronted with a situation in which it is necessary to

⁶ If necessary, counsel will provide the Court on an *ex parte* basis with copies of the relevant letters from Mr. Ameziane addressing these matters.

⁷ Ex. B (excerpts of email correspondence among the parties).

⁸ See Carol Rosenberg, *White House Alerted Ahead of Guantánamo Raid*, Miami Herald, Apr. 15, 2013, available at <http://www.miamiherald.com/2013/04/15/3345952/white-house-was-alerted-ahead.html>; Ryan J. Reilly, *Guantanamo Hunger Strike Lays Bare Detainees’ Growing Desperation*, Huffington Post, May 2, 2013 (“The guards had trained for the mission for weeks.”), available at http://www.huffingtonpost.com/2013/05/02/guantanamo-hunger-strike_n_3188170.html.

sift through and review the contents of the seized materials in order to determine what they are and to which detainees they belong.

In an effort to resolve this situation, the government has proposed to unilaterally instruct the Privilege Team to review the unidentified materials collected by the guards, which counsel have been informed comprise a total of 105 bins and 3 bags of documents and materials. Although Mr. Ameziane is not categorically opposed to having the Privilege Team sort through the unidentified materials, he has raised with the government several concerns and objections to their proposal. In particular, Mr. Ameziane contends that the government must move the Court for permission to re-task the Privilege Team for this purpose, and ensure that they are assigned substantially more resources to allow them to continue to perform their current responsibilities under the Protective Order (dkt. no. 70). The Privilege Team has only a handful of staff, including translators, and is often delayed in processing attorney-detainee meeting notes, letters and other legal materials, which plainly suggests that they would be unable reasonably to fulfill those responsibilities while undertaking the proposed review using only their existing resources. Mr. Ameziane further contends that the Court should oversee the review process and remain available to resolve any disputes that may arise, *e.g.*, concerning Privilege Team determinations about whether particular documents constitute legal or non-legal mail.

Although the government has addressed some of Mr. Ameziane's concerns and objections, it has indicated that it will notify the Court of its intention to have the Privilege Team conduct the review but not seek the Court's approval. Moreover, after conferring on these issues for several weeks, the government has provided no specific schedule for when it will resolve Mr. Ameziane's other concerns and objections, provide its notice to the Court and begin the review, or otherwise return Mr. Ameziane's legal materials. Because the parties fundamentally disagree

about the need for the Court's involvement, and because Mr. Ameziane is not content to await further uncertainty and delay, he is filing this request for the Court to schedule a status conference to address these issues now.

Request for Status Conference

Despite the obvious threats to Mr. Ameziane's attorney-client privilege, the government's continuing interference with detainee access to counsel and the Court, the facial insufficiency of the government's implicit suggestion that it may be trusted to act unilaterally regarding such sensitive matters,⁹ and the government's lack of authority "to unilaterally impose procedures that abrogate the attorney-client relationship,"¹⁰ the Court should hold a status conference before the government takes any unilateral action that may prejudice Mr. Ameziane in order to determine exactly what happened and whether Mr. Ameziane's attorney-client privileged was violated, and

⁹ See Mem. Opinion at 24, *In re Guantanamo Bay Detainee Litig.*, 12-mc-398 (RCL) (July 11, 2013) ("As petitioners' counsel correctly noted during this Court's hearing, '[t]he government is a recidivist when it comes to denying counsel access.' The government, seemingly, at every turn, has acted to deny or restrict Guantanamo detainee's access to counsel.") (citation omitted), *administratively stayed*, Order, *Hatim v. Obama*, No. 13-5218 (D.C. Cir. July 17, 2013); Order at 4, *Al-Zarnouqi v. Obama*, No. 06-cv-1767 (RCL) (D.D.C. May 6, 2013) (dkt. no. 415) ("[T]he Court is concerning with the continuing erosion of counsel access at Guantanamo. The government's decision to hold legal mail in this and other cases . . . threatens [its] credibility."); *In re Guantanamo Bay Detainee Continued Access to Counsel*, 892 F. Supp. 2d 8, 26 (D.D.C. 2012) (citing other detainee cases).

¹⁰ *Al Odah v. United States*, 346 F. Supp. 2d 1, 5 (D.D.C. 2004); see also *Lanza v. New York*, 370 U.S. 139, 143-44 (1962) ("[I]t may be assumed that even in a jail, or perhaps especially there, the relationships which the law has endowed with particularized confidentiality must continue to receive unceasing protection."); *Ex parte Hull*, 312 U.S. 546, 549 (1941) (government may not impair prisoner's right to petition federal court for habeas relief); *Goff v. Nix*, 113 F.3d 887, 892 (8th Cir. 1997) ("The taking of legal papers will often (though perhaps not always) interfere with an inmate's right of access to the courts. . . . [T]he destruction or withholding of inmates' legal papers burdens a constitutional right, and can only be justified if it is reasonably related to a legitimate penological interest.") (internal citations omitted). Here, the government has made no individualized showing as to why Mr. Ameziane's mail was seized. Cf. Mem. Opinion at 26, *In re Guantanamo Bay Detainee Litig.*, 12-mc-398 (RCL) (July 11, 2013) ("[N]othing in the record indicates that detainees have received any contraband from their attorneys or that detainees have attempted to pass contraband to each other during phone calls or meetings with attorneys.").

fashion appropriate judicial remedies. The Court should further order any remedial relief necessary in order to remedy any actual or threatened violations of Mr. Ameziane's rights, and any other relief that the Court deems necessary and appropriate.

Finally, to ensure that Mr. Ameziane's attorney-client privilege is protected and that the haphazard seizure and comingling of legal materials by the guard force does not happen again, the Court should enter an order prohibiting the government, including JTF-GTMO, from seizing or removing Mr. Ameziane's legal materials in the future absent a Court order. There is no allegation that Mr. Ameziane has ever misused the legal mail procedures set forth in the Protective Order (dkt. no. 70), or has otherwise ever posed a risk to the guard force that might warrant the seizure and removal of his legal mail. It is one thing for the guards to conduct a search for physical contraband, but quite another to seize or remove legal materials.

Conclusion

Mr. Ameziane's request for a status conference should be granted.

Date: New York, New York
July 26, 2013

Respectfully submitted,

/s/ J. Wells Dixon
J. Wells Dixon (Pursuant to LCvR 83.2(g))
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