

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

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MOHAMMED ABDULLAH MOHAMMED	:	
BA ODAH, <i>et al.</i> ,	:	
	:	
Petitioners,	:	
	:	Civil Action No. 06-1668 (TFH)
v.	:	
	:	
BARACK H. OBAMA, <i>et al.</i> ,	:	
	:	
Respondents.	:	
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STATUS REPORT

In accordance with this Court’s Minute Order of July 16, 2012, undersigned counsel to Petitioner Tariq Ali Abdullah Ahmed Ba Odah respectfully supplements his July 5, 2012 and January 7, 2013 status reports in order to further advise the Court of Petitioner’s (Mr. Ba Odah) physical condition and the status of litigation in the above-captioned matter.

Mr. Ba Odah continues his hunger strike and is still force-fed via nasogastric intubation. He reports that his weight is below 100 pounds. Mr. Ba Odah also continues to complain of a litany of health problems, including an inability to concentrate and racing heart-beat, which he attributes to the physical strain of his long-term hunger-strike and routine force-feedings. As the Court is now aware, these ailments (and conditions at Guantanamo generally) often cause Mr. Ba Odah to cancel his scheduled meetings with counsel. This pattern continues: since counsel’s last status report was filed, Mr. Ba Odah cancelled a scheduled call on March 14 and an in-person meeting on May 2, 2013. On

the one occasion counsel was able to see Mr. Ba Odah since January, he was visibly degraded and struggled to perform minor physical tasks such as pouring water for himself. In short, Mr. Ba Odah's physical condition is grave and continues to significantly complicate counsel's representation of him. Therefore, as yet, counsel cannot determine whether Mr. Ba Odah wishes to proceed with this litigation. However, recent Guantanamo related developments suggest that maintaining the current indefinite stay in Mr. Ba Odah's case is appropriate at this time.

First, on May 23, 2013, President Obama publically recommitted his administration to working towards Guantanamo's closure and initiated a number of steps towards that end, including lifting the moratorium on transfers to Yemen. *See* Remarks of President Barack Obama (May 23, 2013), *available at* <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-barack-obama>. Of critical importance to Mr. Ba Odah, who is Yemeni, the President has now committed to reviewing potential transfers to Yemen on a detainee-by-detainee basis. *Id.*

Second, and relatedly, on June 17, the government disclosed Mr. Ba Odah's status under the Guantanamo Detainee Task Force review process in response to several Freedom of Information Act requests. *See* Respondents' Notice Lifting Protected Information Designation of Decisions by the Guantanamo Bay Review Task Force (Dkt. No. 261) at 2. This is the first time this information has been publically available, including to undersigned counsel, since the Task Force concluded its work approximately four years ago. As the Court is now aware from the government's filing of earlier today, July 8, 2013, the Task Force determined that "[b]efore the closure of Guantanamo, [Mr. Ba Odah] may be transferred if the security condition in Yemen improves, an appropriate

rehabilitation program or third-country resettlement option becomes available.” *Id.* at Ex. 1, p.10. Mr. Ba Odah has not, therefore, been slated for indefinite detention – likely a revelation of material importance to Mr. Ba Odah’s deliberations about how to proceed in this case.

Mr. Ba Odah, however, has not yet had an opportunity to discuss these developments with counsel. Indeed, with respect to the government’s Task Force disclosures, Mr. Ba Odah remains entirely unaware that he is eligible for transfer prior to Guantanamo’s closure.

Under any circumstances, Mr. Ba Odah ought to be afforded a full opportunity to confer with counsel about the developments outlined above. After more than eleven years of indefinite detention, however, ample time for Mr. Ba Odah to confer with counsel about their potential effect on this litigation is imperative. Counsel will continue to make every effort to contact Mr. Ba Odah accordingly. However, counsel anticipates that Mr. Ba Odah’s physical state will likely continue to impede this process.

Under these circumstances, counsel submits that maintaining the current, indefinite stay is the appropriate way to accommodate Mr. Ba Odah’s compromised health, while preserving his ability to consider how to proceed in this litigation in light of the significant developments outlined above. However, because of the time-intensive nature of counsel’s dealings with Mr. Ba Odah and the other challenges his representation presents, counsel proposes to file an additional status report when Mr. Ba Odah is able to inform the court of his intention to either litigate or withdraw his petition for a writ of habeas corpus. Counsel, therefore, respectfully requests that the court maintain the status

quo until that time and permit the indefinite stay of Mr. Ba Odah's habeas petition to continue.

Dated: New York, New York
July 8, 2013

Respectfully submitted,

/s/ Omar A. Farah

Omar A. Farah (Pursuant to LCvR 83.2(g))
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