

**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.	:	
_____	x	

**PETITIONER’S UNOPPOSED MOTION TO VOLUNTARILY DISMISS
HABEAS PETITION WITHOUT PREJUDICE**

In accordance with this Court’s Order of July 23, 2013 and following his January 31, 2014 Status Report, Petitioner Tariq Ali Abdullah Ahmed Ba Odah, by his undersigned counsel, respectfully moves this Court for leave to voluntarily dismiss his petition for *habeas corpus* relief, without prejudice, pursuant to Fed. R. Civ. P. 41(a)(2).¹

The Court ordered undersigned counsel to report by January 31, 2014 about Mr. Ba Odah’s “intention to either proceed or withdraw his habeas petition.” During an in-person meeting at the detention facility at Guantánamo Bay on January 28, 2014, Mr. Ba Odah authorized undersigned counsel to file this motion.

RELEVANT PROCEDURAL HISTORY

Mr. Ba Odah’s petition for a writ of habeas corpus was filed on September 28, 2006 in reliance upon a “Next Friend” authorization provided by Mr. Ba Odah’s brother,

¹ Undersigned counsel has conferred with counsel for Respondents via telephone and email and Respondents do not oppose the relief sought in this motion.

Mr. Nasser Ali Abdullah Ba Odah. [Dkt. No. 1.] In February 2007, Mr. Ba Odah began what remains an uninterrupted hunger-strike at Guantánamo Bay in protest of his indefinite detention. Predictably, the hunger-strike has severely compromised his physical health. On January 12, 2009, counsel filed an unopposed motion to stay this petition because Mr. Ba Odah had consistently declined (or was unable) to attend attorney-client meetings, which prevented counsel from obtaining an authorization that would satisfy the terms of this Court’s July 29, 2008 Order or preparing a defense to the allegations Respondents set forth in the Factual Return. [Dkt. No. 83.] On January 13, 2009, then-presiding District Court Judge Henry Kennedy granted Mr. Ba Odah an indefinite stay of these proceedings. [Dkt. No. 85.] On July 23, 2013, this Court ordered Mr. Ba Odah to indicate his “intention either to proceed or withdraw his habeas petition.”

ARGUMENT

On January 28, 2014, Mr. Ba Odah determined that he would dismiss his habeas petition and authorized undersigned counsel to file this motion accordingly. Mr. Ba Odah further authorized counsel to disclose that, presented with the choice to either litigate or dismiss his petition, he has chosen to dismiss because, after seven years of daily force feedings via nasogastric intubation, his body is simply too weak to effectively assist counsel in preparing his defense. Because the Government has not filed for judgment on the record and Mr. Ba Odah has not filed a traverse or otherwise taken any affirmative steps to litigate this matter since the petition was first filed on his behalf, he respectfully seeks dismissal of this action without prejudice to refile.

Though Mr. Ba Odah has chosen to dismiss his habeas petition, he does not wish to terminate his attorney-client relationship. On numerous occasions during the years

since the stay was entered in this case, Mr. Ba Odah has affirmed his desire to be represented by undersigned counsel. He did so again during his most recent attorney-client meeting on January 28, 2014. Therefore, despite the impending dismissal of this action, undersigned counsel's access to and communications with Mr. Ba Odah will continue uninterrupted according to the terms set out in the Protective Order of September 11, 2008 under the Procedures for Counsel Access to Detainees at the U.S. Naval Base in Guantánamo Bay, Cuba.

Respondents have indicated that they do not oppose the relief sought in this motion.

CONCLUSION

For the foregoing reasons, Mr. Ba Odah respectfully moves this court for voluntary dismissal of his petition for *habeas corpus* relief without prejudice. A proposed order is attached.

Dated: New York, New York
March 3, 2014

Respectfully submitted,

/s/ Omar A. Farah

Omar A. Farah (Pursuant to LCvR 83.2(g))
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Counsel for Petitioner

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**[PROPOSED] ORDER GRANTING PETITIONER’S
UNOPPOSED MOTION TO VOLUNTARILY DISMISS
HABEAS PETITION WITHOUT PREJUDICE**

Upon consideration of Petitioner Tariq Ali Abdullah Ahmed Ba Odah’s Unopposed Motion to Voluntarily Dismiss Habeas Petition Without Prejudice, it is hereby

ORDERED that the motion is GRANTED and his petition is hereby dismissed without prejudice. It is further

ORDERED that the Protective Order and Procedures for Counsel Access to Detainees at the United States Naval Base in Guantanamo Bay, issued by Judge Hogan on September 11, 2008, in In re: Guantanamo Bay Detainee Litigation, No. 08-MC-442 (TFH) (D.D.C.) (08-MC-0442 Dkt. No. 235), and entered in this case (Dkt. No. 37) on that date (the “Protective Order”), shall remain in effect and continue to govern Petitioner’s access to counsel while he remains confined at Guantanamo Bay and has the

right to seek further relief by habeas corpus, whether or not he actually continues to have a petition pending before the Court. It is further

ORDERED that this Order is without prejudice to the parties' rights to seek to set aside, modify, or otherwise obtain relief from any provision herein or of the Protective Order on any ground that could be or could have been raised at any time. It is further

ORDERED that the Court shall retain jurisdiction to enforce the terms of this Order.

It is so ORDERED.

Dated this ____ day of ____ 2014.

Honorable Thomas F. Hogan
Senior U.S. District Judge