



THE PERMANENT REPRESENTATIVE
OF THE
UNITED STATES OF AMERICA
TO THE
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

August 17, 2015

Ms. Gabriela Knaul
Special Rapporteur on the independence of judges and lawyers
Geneva, Switzerland

Mr. Ben Emmerson
Special Rapporteur on the promotion and protection of human
rights and fundamental freedoms while countering terrorism
Geneva, Switzerland

Dear Ms. Knaul and Mr. Emmerson:

Thank you for your letter dated April 17, 2015, regarding [REDACTED] (also known as [REDACTED]). In response to your inquiry, the United States provides the following information:

Mr. [REDACTED] continues to be detained lawfully under the Authorization for Use of Military Force (AUMF) (U.S. Public Law 107-40), as informed by the laws of war, in the ongoing armed conflict with al-Qaida, the Taliban, and associated forces. This law authorizes the President of the United States to "use all necessary and appropriate force against those . . . organizations or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001," which includes the authority to detain persons who are part of al-Qaida, the Taliban, or associated forces.

All Guantánamo Bay detainees have the ability to challenge the lawfulness of their detention in U.S. Federal court through a petition for a writ of habeas corpus. Detainees have access to counsel and to appropriate evidence to mount such a challenge before an independent court. Except in rare instances required by compelling security interests, all evidence relied upon by the government in habeas proceedings to justify detention is disclosed to the detainees' counsel, who are granted security clearances to view the classified evidence, and an unclassified version of the government's case against a detainee is filed on the public record. In response, the detainees may provide witness testimony where appropriate, submit written statements, and provide live testimony at their hearings via video link. The United States has the burden in these cases to establish its legal authority to hold the detainees. Detainees whose habeas petitions have been denied or dismissed continue to have access to counsel pursuant to the same terms applicable during the pendency of proceedings.

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Recipients :.....SLO.....

Enclosure

Mr. ██████ filed a pro se habeas petition in 2010 and the D.C. District Court (Judge Bates) appointed federal defenders from Massachusetts and New Hampshire to represent him. The U.S. government filed a factual return, as well as an unclassified and publicly available version of that return, providing the factual basis and evidence supporting his detention. The U.S. government also produced some discovery, but the evidentiary progress in the case stalled in 2012 because of concerns that Mr. ██████ had not authorized the federal defenders to represent him. In late 2014, Mr. ██████ wrote a letter to the court requesting new counsel. The court held a status conference in November 2014 and granted the federal defenders' motion to withdraw as counsel. The case remains stayed, and no new counsel have entered their appearance.

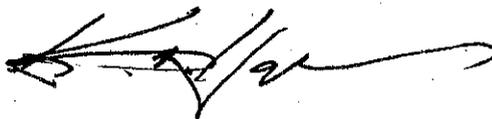
Mr. ██████ was identified for potential prosecution by the 2009-2010 Guantánamo Review Task Force, but has not yet been charged with crimes before a military commission or in federal court. On March 7, 2011, President Obama issued Executive Order (E.O.) 13567 establishing a new process of periodic review for the detainees at Guantánamo who, pursuant to the 2009-2010 Guantánamo Review Task Force process, were designated for continued law of war detention or referred for prosecution but not yet charged or convicted. Accordingly, at this time, Mr. ██████ is eligible to receive a periodic review under this process.

With respect to any potential prosecution of Mr. ██████ the United States remains of the view that our efforts to protect our national security must continue to include civilian and, when appropriate, reformed military commission proceedings that incorporate fundamental due process and other protections essential to the effective administration of justice. Although U.S. law currently precludes the transfer of detainees from Guantánamo for prosecution in the United States, military commissions, such as those being held at Guantánamo Bay, are lawful and appropriate forums for trying violations of the law of war. All current military commission proceedings at Guantánamo Bay are governed by the 2009 Military Commissions Act (MCA), which instituted significant reforms to the system of military commissions. These reforms include the continued prohibition on the admission at trial of statements obtained through torture, and further prohibited the admission at trial of statements obtained through cruel, inhuman, or degrading treatment. Under the 2009 MCA, the only exception to these prohibitions is for statements by individuals alleging that they were subject to torture or such treatment as evidence against a person accused of committing the torture or mistreatment. All military commissions under the MCA incorporate fundamental procedural guarantees, including: the presumption of innocence and the requirement that the prosecution prove guilt beyond a reasonable doubt; prohibitions on the use of evidence obtained through coercion; additional evidentiary requirements for the admission of hearsay evidence; a requirement that an accused in a capital case be provided

selecting his or her own military defense counsel; and enhancements to the accused's right to discovery of evidence. If an accused is convicted by a military commission, the conviction is subject to multiple levels of review, including judicial review in the U.S. Court of Appeals for the District of Columbia Circuit, a Federal civilian court consisting of life-tenured judges, and ultimately by petition to the U.S. Supreme Court.

Further, the United States is committed to ensuring the transparency of commission proceedings. To that end, proceedings are now transmitted via live video feed to locations at Guantánamo Bay and in the United States -- so that the press and the public can view them -- with a 40-second delay to protect against the disclosure of classified information. Court transcripts, filings, and other materials are also available to the public online via the website of the Office of Military Commissions: www.mc.mil. The Office of Military Commissions (OMC) Victim/Witness Assistance Program (VWAP) is committed to making military commissions accessible to victims and their family members, and to providing logistical support for witnesses participating in military commissions. Additional information on victim/witness assistance can be found on the VWAP website at <http://www.mc.mil/VICTIMWITNESSASSISTANCE.aspx>.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Harper', with a long horizontal flourish extending to the right.

Keith M. Harper
Ambassador
U.S. Representative to the United Nations
Human Rights Council

