



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

May 5, 2023

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

Dear Special Procedures Mandate Holders:

Please find enclosed the U.S. response to your letter dated January 11, 2023.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping, fluid strokes that form a cursive, somewhat abstract shape. The signature is positioned centrally below the word 'Sincerely,'.

Michèle Taylor  
U.S. Ambassador and Permanent Representative  
to the UN Human Rights Council

## **U.S. Response to Joint Communication Regarding Guantanamo Bay Detainee al-Tamir**

The United States appreciates the opportunity to respond to the serious issues raised in your communication of January 11, 2023. We are grateful for the work you do across the globe to promote respect for human rights. We are particularly grateful for ongoing efforts to conduct an assessment of practices at the Guantánamo Bay detention facility.

The Biden-Harris Administration has repeatedly reaffirmed its commitment to closing the detention facility at Guantánamo. To that end, the Administration has engaged in a thorough review, involving all relevant departments and agencies, to develop an approach for responsibly reducing the detainee population and setting the conditions to close the facility.

In the last two years, the U.S. government has successfully repatriated or resettled ten detainees from Guantánamo. Currently, thirty detainees remain: sixteen are eligible for transfer; three are eligible for review by the Period Review Board; nine are involved in the military commissions process; and two have been convicted in a military commission. This last category includes Mr. al-Tamir, who as your communication notes, pleaded guilty in June 2022 to attacking protected property, using treachery or perfidy, attempted use of treachery or perfidy, and conspiracy to commit law of war offenses.

We note at the outset that the United States disagrees in significant respects with the factual and legal assertions in your letter. The absence of any comment in this response regarding any assertion in your letter should not be misunderstood as agreement with such assertion.

All U.S. military detention operations conducted at Guantánamo Bay are carried out in accordance with international humanitarian law, including Common Article 3 of the Geneva Conventions of 1949, and all other applicable international and domestic laws. The detainees who remain at the Guantánamo Bay detention facility continue to be detained lawfully, both as a matter of international law and under U.S. domestic law. As a matter of international law, the United States is engaged in an ongoing armed conflict with al-Qaida and associated forces. As part of this conflict, the United States has captured and detained enemy belligerents, and is permitted under the law of war to hold them until the end of hostilities. The United States rejects assertions that U.S. detention operations at Guantánamo constitute arbitrary detention in violation of applicable international law. In both international and non-international armed conflicts, a State may detain enemy belligerents consistent with the law of armed conflict until the end of hostilities, and such detention is not arbitrary. As a matter of domestic law, as we have previously explained, Mr. al-Tamir is lawfully detained under the Authorization for Use of Military Force (AUMF) (U.S. Public Law 107-40), as informed by the law of war, in the ongoing armed conflict with al-Qaida 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,” including the authority to detain persons who are part of al-Qaida or associated forces.

The United States continues to comply with international humanitarian law and international human rights law, as applicable, in relation to the detention of Mr. al-Tamir and other detainees at Guantánamo, as well as its domestic laws and policies, which often provide for more favorable treatment for detainees than that required by international law. In particular, the United States takes very seriously its responsibility to provide for the safe and humane care of detainees at Guantánamo Bay, including providing appropriate medical care and attention required by the detainee’s condition, to the extent practicable. Detainees at Guantánamo Bay receive the same quality of medical care that active duty service members receive at Guantánamo. The Joint Medical Group (JMG), Joint Task Force Guantánamo Bay (JTF-GTMO), consists of licensed, board-certified physicians of different specialties. The U.S. Naval Hospital, Guantánamo Bay, provides additional consultative services from numerous medical professionals, and the JMG routinely brings in subspecialists as needed.

JMG is committed to providing appropriate and exemplary medical care to all detained individuals. JMG providers take seriously their duty to protect the physical and mental health of detained persons and approach their interactions with such persons in a manner that encourages provider-patient trust and rapport and that is aimed at encouraging participation of detained persons in medical treatment and prevention. The healthcare provided to the detained persons at Guantánamo is comparable to that which U.S. military personnel receive while serving at Joint Task Force–Guantánamo. U.S. practice is consistent with Principle No. 2 of the non-binding Principles of Medical Ethics Relevant to the Role of Health Personnel in the Protection of Prisoners and Detainees Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

As a matter of policy, for privacy and other reasons, the United States will not provide the details or results of any medical examinations or other health-related information concerning Mr. al-Tamir.

All military health care personnel whose duties involve support of detainee operations or contact with detainees receive advanced training commensurate with their duties prior to evaluating patients. The purpose of this training is to equip them to provide quality care in a detention setting by ensuring that they have a working knowledge and understanding of the requirements and standards for providing health care to detainees. Under Department of Defense Instruction 2310.08, Medical Program Support for Detainee Operations, these health care personnel provide appropriate medical care, in the context of a provider-patient treatment

relationship and established principles of medical practice, to detainees in the control of the U.S. Department of Defense (DoD). Moreover, health care personnel exclusively maintain a professional provider-patient treatment relationship with detainees for the purpose of evaluating, protecting, or improving their physical and mental health.

All detainees, upon arrival at JTF-GTMO, received a complete physical examination. Medical issues identified during the examination, or identified during subsequent examinations, are monitored by the medical staff. Detainees may make a request to guard personnel in the cell blocks or to the medical personnel who make daily rounds on each cell block at any time in order to initiate medical care. In addition to responding to such detainee requests, the medical staff will investigate any medical issues observed by JTF-GTMO guards or staff. Health care is generally provided with the informed consent of the detainee, except in specific circumstances described in paragraph 3.6 of DoD Instruction 2310.08, Medical Program Support for Detainee Operations.

Detainees receive timely, compassionate, quality health care and have regular access to primary care and sub-specialist physicians while in custody. Medical services are available to detainees around the clock, seven days a week. A detainee is provided medical care and treatment based solely on his need for such care, and the level and type of treatment are dependent on and meet accepted standards of care for the condition being treated. Medical care is not provided or withheld based on a detainee's compliance or noncompliance with camp rules. JMG providers administer care to all detainees at Guantánamo, including psychiatric services and care specific to a detainee's age group. Detainees are treated at dedicated medical facilities with an expert medical staff. The medical facilities are equipped with inpatient beds, a physical-therapy area, an audiology booth, optometry exam room, dental treatment suites, an operating room, pharmacy, radiology unit, and central sterilization. Navy Hospital Corpsmen visit each cellblock daily. Upon the request of any detainee for care, these Corpsmen can refer them to primary care providers in the JMG. In addition to providing routine medical care, more serious medical conditions can be treated at U. S. Naval Hospital Guantánamo, which provides care to U.S. service members at the base. Additional specialists are available from outside the base to provide care at Guantánamo for medical needs that exceed the capabilities of the U.S. Naval Hospital at Guantánamo.

Specific to psychiatric treatment, the Joint Medical Group can provide behavioral health on an outpatient or inpatient basis. Services include preventive mental health screenings, comprehensive evaluation, individual counseling, and medication management. Mental health care is available for detainees as needed and upon request.

While the JTF-GTMO continues its mission-essential requirement to provide sufficient medical care and treatment as deemed appropriate by the medical providers, it is undeniable that

detainee health care has been heavily litigated. The senior medical officer for the high value detainee camp recently submitted a declaration under oath affirming that all detainees have regular interaction with a primary care physician, with the resident psychiatrist, nurses and corpsmen. He further described the medical capabilities of the detention facility and noted that for the circumstance in which the detainee requires acute care beyond the capacity of the detention facility, he may be transported to the Naval Station Hospital in order to receive any medically necessary treatment. You may review the totality of his affidavit within the filings of *Bin Lep v. Biden*.

In addition, detainee medical care is overall monitored by the Chief Medical Officer (CMO), a statutorily created position outside the JTF that reports directly to the civilian Assistant Secretary of Defense-Health Affairs. The role of the CMO is to oversee the quality of care being provided detainees, make recommendations for improvements, and provide periodic reports to Congress. The CMO exists to ensure that the treatment of detainees meets modern standards and is executed to the highest ethical standard.

For further information about the provision of medical records to detainees, you may wish to consult the Government Accountability Office's (GAO) report on GTMO Detainee Medical Records for details on requesting detainee medical records for those detainees involved in Military Commissions proceedings. That GAO report also mentions how records can be obtained in habeas proceedings, or through a Freedom of Information Act (FOIA) request.

All current military commission proceedings at Guantánamo incorporate fundamental procedural guarantees that meet or exceed the fair trial safeguards required by Common Article 3 and other applicable law and are consistent with those in Additional Protocol II to the 1949 Geneva Conventions, as well. These include, inter alia: (1) the presumption of innocence and the requirement that the prosecution prove guilt beyond a reasonable doubt; (2) the prohibition of the admission of any statement obtained by the use of torture or by cruel, inhuman, or degrading treatment in military commission proceedings, except against a person accused of torture or such treatment as evidence that the statement was made; (3) latitude for the accused in selecting defense counsel; (4) in capital cases, the right of the accused to counsel "learned in applicable law relating to capital cases"; and (5) the right of the accused to pre-trial discovery. The 2009 Military Commissions Act also provides for the right to appeal final judgments rendered by a military commission to the U.S. Court of Military Commission Review and to the U.S. Court of Appeals for the District of Columbia Circuit, which is a federal civilian court consisting of life-tenured judges, and ultimately to the United States Supreme Court.

Regarding Mr. al-Tamir's prosecution, in 2014 he was charged before a military commission with denying quarter, attacking protected property, using treachery or perfidy, and attempted

use of treachery or perfidy, and conspiracy to commit law of war offenses. In June 2022, Mr. al-Tamir pleaded guilty to attacking protected property, using treachery or perfidy, and attempted use of treachery or perfidy, and conspiracy to commit law of war offenses. His pre-sentencing hearing is scheduled for June 2023.

Mr. al-Tamir has raised, and continues to raise numerous medical care related concerns before his military commission. The Government has responded to those claims, including biweekly medical updates from the JTF Senior Medical Officer. You may review all of the filings relevant to Mr. Tamir's allegations and the United States' response by visiting [www.mc.mil/CASES/MilitaryCommissions.aspx](http://www.mc.mil/CASES/MilitaryCommissions.aspx) and selecting "Abd al Hadi al Iraqi."

Disposition as to many of Mr. al-Tamir's allegations remains subject to ongoing litigation. He continues to avail himself of this ability to make such challenges, even following his June 2022 plea agreement. For further detail regarding the United States' position on these claims, please review the filings available at the website previously noted.