



THURGOOD MARSHALL
CIVIL RIGHTS CENTER
HOWARD UNIVERSITY SCHOOL OF LAW

January 11, 2021

Re: Grave Health Condition of Sharqawi Al Hajj at the United States Detention Center in Guantánamo Bay

Urgent Complaint Submitted to:

Mr. Nils Melzer

UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ms. Tlaleng Mofokeng

UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Cc:

United Nations Working Group on Arbitrary Detention

Ms. Fionnuala D. Ní Aoláin

UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Ms. Navi Pillay

UN High Commissioner for Human Rights

The Movement Lawyering Clinic at Howard University School of Law (“the complainant”) respectfully submits this letter alleging that the United States Government’s ongoing detention of Mr. Sharqawi Al Hajj at the detention facility in Guantánamo Bay violates international human rights laws, including the right to health and the prohibition on torture and cruel, inhuman and degrading treatment or punishment.¹ Mr. Al Hajj is gravely ill today, and has made multiple attempts on his life, and could die in Guantánamo absent immediate effective intervention.

Given the history of torture and cruel, inhuman and degrading treatment used against the people inside the detention facility, torture and mental health are inextricably linked in Guantánamo Bay. Undoubtedly, these men continue to suffer long-lasting mental health consequences of their torture, exacerbated by the fact that they are still detained at the site of their torture, by the state responsible for their torture, and that they currently are held with no rights to meaningfully challenge their continued detention in court.

¹ Mr. Al Hajj is identified by the U.S. Department of Defense by the internment serial number (“ISN”) 1457.

Ultimately, the nature of the detention facility in Guantánamo Bay makes it impossible for Mr. Al Hajj to receive the medical treatment he most desperately needs and is entitled to under international law. For this reason, complainant respectfully requests that the Special Rapporteurs declare that the continued detention of Mr. Al Hajj in Guantánamo Bay violates international law, specifically guarantees of the right to health and the right to be free from torture and cruel, inhuman and degrading treatment.

Additionally, complainant respectfully requests that the Special Rapporteurs urge the government of the United States to:

- 1. Release and safely repatriate or resettle Mr. Sharqawi Al Hajj;**
- 2. Close Guantánamo Bay and end indefinite detention;**
- 3. In the interim, allow all detainees who suffer from serious medical issues meaningful access to effective treatment by outside independent medical providers;**
- 4. Allow detainees, their lawyers, and consulting outside independent medical providers full access to detainees' medical records in the control of the U.S. government; and**
- 5. Allow the Special Rapporteurs full access to the Guantánamo Bay detention facility and unfettered access to detainees.**

I. Factual Background

i. Capture & Torture

Mr. Sharqawi Al Hajj is a 47 year-old Yemeni citizen held without charge in the U.S. detention facility in Guantánamo Bay.² Many of the details of Mr. Al Hajj's detention are unknown, as the U.S. government refuses to reveal key details of its detention and interrogation program. Thus, the full scope of what has befallen Mr. Al Hajj while in U.S. custody is purposefully shrouded by the U.S. government.

Based on the unredacted versions of U.S. Senate Select Committee on Intelligence's *Committee Study of the CIA's Detention and Interrogation Program* ("Senate Torture Report"), reports compiled by civil society organizations based on public information (such as flight data and interviews with survivors), and cleared-for-public-release court filings in Mr. Al Hajj's habeas case, complainant has pieced together an incomplete version of events that detail how the U.S. government rendered and tortured, and has continued to detain Mr. Al Hajj since early 2002.

In February 2002, Pakistani intelligence captured Mr. Al Hajj in Karachi, Pakistan.³ He was transferred to the U.S. Central Intelligence Agency's ("CIA") custody shortly thereafter. In mid-February 2002, the CIA rendered him to Jordan.

² Al Hajj v. Trump, CENTER FOR CONSTITUTIONAL RIGHTS, <https://ccrjustice.org/home/what-we-do/our-cases/al-hajj-v-trump-0> (last updated Sept. 9, 2019).

³ *Double Jeopardy CIA Renditions to Jordan*, HUMAN RIGHTS WATCH, 23, (Apr. 7, 2008) <https://www.hrw.org/report/2008/04/07/double-jeopardy/cia-renditions-jordan> (hereinafter "HRW Rendition Report") (Note: This source refers to Mr. Al Hajj as "Ali al-Hajj al-Sharqawi").

The Jordanian General Intelligence Directorate (“GID”) held Mr. Al Hajj for almost two years. During this time, GID interrogators beat and tortured Mr. Al Hajj, while asking him questions provided by Americans.⁴

He experienced *falaqa*, a torture method in which he was extensively beaten on the bottom of his feet.⁵ GID interrogators would beat him then resume their interrogations.⁶ If he did not offer any information, they threatened to electrocute him.⁷ The GID interrogated Mr. Al Hajj throughout the day and night and told him that they had the capacity to exact permanent mental and physical damage upon him.⁸ When the International Committee of the Red Cross visited the GID facility, the GID hid him away from sight, placing him in the soldiers’ lecture room at 4 A.M. and not returning him to his cell until the representatives left the facility.⁹

In a note smuggled out of GID detention in late 2002, Mr. Al Hajj revealed the GID interrogators “beat me in a way that does not know any limits.”¹⁰ He elaborated, “they threatened me with electricity ... with snakes and dogs [they said] we’ll make you see death... They threatened to rape me.”¹¹ A former GID prisoner told Human Rights Watch that, although almost every detainee at GID was beaten with sticks, Mr. Al Hajj was beaten “much more” than him.¹²

On January 8, 2004, in the middle of the night, the GID handed Mr. Al Hajj back to U.S. custody.¹³ They covered his face with a black hood, cut off his clothes, and searched his anus. He was then carried like a sack and thrown into a plane.¹⁴ Americans flew him from Jordan to Kabul, Afghanistan, where he stayed in a CIA proxy prison.¹⁵ At the CIA black site, he was kept in complete darkness and subjected to continuous loud music.¹⁶ After a month and a half at the black site, he was transferred to the U.S. military detention facility at Bagram Airbase in Afghanistan.¹⁷

In August 2004, he was transferred to Guantánamo Bay, Cuba where he remains indefinitely.¹⁸ Out of the 40 detainees still being held at Guantánamo, 31, including Mr. Al Hajj, have never been charged with a crime.¹⁹ Because he is gravely ill today, and still has no prospects for release, he could die in Guantánamo.

ii. Detention in Guantánamo

⁴ *Id.* at 14, 23.

⁵ *Id.* at 2-3.

⁶ *Id.* at 3.

⁷ *Id.*

⁸ *Id.* at 23-24.

⁹ *Id.* at 16-17.

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Id.* at 3.

¹³ *Id.* at 24-25.

¹⁴ *Id.* at 25.

¹⁵ *Id.*

¹⁶ Scott Roehm, *Deprivation and Despair: The Crisis of Medical Care at Guantánamo*, THE CENTER FOR VICTIMS OF TORTURE AND PHYSICIANS FOR HUMAN RIGHTS, 38, (June 26, 2019), <https://phr.org/wp-content/uploads/2019/06/2019-PHR-CVT-Guantanamo.pdf> (hereinafter “CVT & PHR Guantánamo Medical Care Report”).

¹⁷ HRW Rendition Report, at 25.

¹⁸ Mem. Op. at 2, *Al-Hajj v. Obama*, 800 F. Supp. 2d 19 (D.D.C. 2011) (Dkt. No. 1529 No. 1:09-cv-00745-RCL).

¹⁹ CVT & PHR Guantánamo Medical Care Report, at 6.

The U.S. government has detained Mr. Al Hajj without charge in Guantánamo since August 2004.²⁰ Mr. Al Hajj has made several unsuccessful attempts to contest his detention in both administrative and judicial proceedings over the last sixteen years.²¹ Mr. Al Hajj’s physical and mental health have deteriorated severely over time, stemming from underlying health problems likely brought upon by the corporal and psychological torture inflicted upon him in U.S. custody, as well as the effects of prolonged indefinite detention.²²

a. *Indefinite Detention*

The U.S. government bases its authority to detain prisoners at Guantánamo Bay without charge or trial on the grounds of the 2001 Authorization for Use of Military Force and the laws of war. The U.S. government maintains that detainees can be held for the duration of hostilities for security and military necessity, defining the hostilities as “the ongoing armed conflict with al-Qaida, the Taliban, and associated forces.”²³ All U.S. presidential administrations so far, from 2002 to the present, have maintained that hostilities against al-Qaida and associated forces are ongoing, a status which has led journalists and commentators to dub it the “forever war” and the detainees trapped in this legal limbo “forever prisoners.”²⁴ The United States claims that individuals may be detained if they are “part of” or provided “substantial support” to al-Qaida or the Taliban, or associated forces.²⁵ Such “support” has been interpreted by the government and sanctioned by the courts extremely broadly, to include conduct as tenuous as an individual’s stay in a suspect guesthouse for two weeks.²⁶

Following an executive review process by the United States in 2009, 48 out of 240 detainees were at the time “determined to be too dangerous to transfer but not feasible for prosecution,” meaning that they would continue to be held indefinitely without charges.²⁷ In 2011, Executive Order 13567 established the Periodic Review Board (“PRB”) process by which the United States may reassess whether Guantánamo detainees not charged or cleared for transfer should continue

²⁰ Mem. Op. at 2, 800 F. Supp. 2d 19 (D.D.C. 2011).

²¹ Petitioner’s Emergency Motion for an Independent Medical Evaluation and Medical Records at 2-3, *Al-Hajj v. Trump*, No. 1:09-cv-00745-RCL (D.D.C. Sept. 6, 2017) (hereinafter “2017 Motion for Independent Medical Evaluation”).

²² CVT & PHR Guantánamo Medical Care Report, at 14 (“Health conditions are also worsened by the prolonged, indefinite detention of those confined at Guantánamo, a form of abuse that has been extensively documented to carry severe and long-lasting health consequences”); 2017 Motion for Independent Medical Evaluation, Ghannam Decl. ¶ 12.

²³ *Towards the Closure of Guantánamo*, Inter-Am. Comm’n H.R., OAS/Ser.L/V/II, Doc. 20/15, 41 (June 3, 2015) (hereinafter “IACHR Guantánamo Closure Report”).

²⁴ See Carol Rosenberg, *New Guantánamo Intelligence Upends Old ‘Worst of the Worst’ Assumptions*, MIAMI HERALD (updated Oct. 9, 2016), <https://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article105037571.html>, P.J. Crowley, *Keeping Guantanamo Open Means Keeping Alive The ‘Forever War’*, MSNBC (June 19, 2013), <https://www.msnbc.com/msnbc/keeping-guantanamo-open-means-keeping-alive-t-msna60941>.

²⁵ IACHR Guantánamo Closure Report, at 44.

²⁶ *Ali v. Obama*, 736 F.3d 542, 545-46 (D.C. Cir. 2013) (finding that a Guantánamo detainee’s presence in a guesthouse, his English lessons at the guesthouse, and presence of documents and equipment associated with terrorist activity together provided sufficient grounds to support detainee’s continued detention as an enemy combatant).

²⁷ Guantanamo Review Task Force, *Final Report*, ii (Jan. 22, 2010), <http://www.justice.gov/ag/guantanamo-review-final-report.pdf>.

to be held in detention, which includes considerations such as detainees' mental and physical health.²⁸

During Mr. Al Hajj's most recent file review on August 13, 2020, the PRB determined that "a significant question is not raised as to whether the detainee's continued detention is warranted," despite having documented information from his counsel about the serious deterioration of his health, including a suicide attempt, discussed more *infra*.²⁹ Mr. Al Hajj's next full review by the board has not yet been scheduled. Even if Mr. Al Hajj were to be cleared for transfer by the PRB, the evidence so far suggests it would not result in timely release. Five detainees currently in Guantánamo Bay were cleared for transfer by the government years ago, during the Obama administration.³⁰ An additional detainee was cleared for release in December 2020, the first time the PRB cleared a detainee in the Trump presidency.³¹ All are still awaiting transfer.³²

b. *Medical Situation, including Suicide Attempts*

Mr. Al Hajj has long suffered from chronic symptoms including acute weakness and fatigue, recurring jaundice, severe abdominal pain, and painful urination.³³ He was diagnosed with Hepatitis B in the 1990s, prior to his detention at Guantánamo, and since arriving has been diagnosed with Gilbert's Syndrome, a liver disorder resulting in jaundice.³⁴ However, Dr. Jess Ghannam, an independent physician who consulted with Mr. Al Hajj's counsel about his health, stated in an expert opinion submitted in court that, "this unconfirmed diagnosis does not explain the totality of [his] symptoms," and instead attributed them to what he called "'Guantánamo Syndrome' where individuals subjected to severe torture in Pakistan, Afghanistan, and Jordan develop a wide range of significant medical and psychiatric symptoms and conditions that are debilitating and disabling."³⁵ Furthermore, Dr. Robert Cohen, another independent physician who served as an expert in Mr. Al Hajj's habeas case, suggested that Mr. Al Hajj's symptoms may be a sign of liver damage resulting from a chronic Hepatitis B infection, which may lead to liver failure, liver cancer, end stage liver disease, massive gastrointestinal bleeding, anemia, bleeding disorders, cirrhosis, and death.³⁶

In 2017, Mr. Al Hajj participated in a hunger strike due to his "deepening despair over [his] chronic health issues and his indefinite detention."³⁷ His hunger strike aggravated his already poor health. In July 2017, he stopped drinking Ensure or being tube-fed, then lost consciousness and was taken to the hospital because his blood sugar dropped to a dangerous level.³⁸ Mr. Al Hajj's

²⁸ IACHR Guantánamo Closure Report, at 104.

²⁹ Periodic Review Board, *File Review – Sharqawi Abdu Ali al-Hajj, (YM-1457)*, (Aug. 13, 2020), https://www.prs.mil/Portals/60/Documents/ISN1457/File%20Review%207/200813_U_FOUO_ISN1457_MFR%20e%20Seventh%20File%20Review_UPR.pdf.

³⁰ See Carol Rosenberg, *5 Were Cleared to Leave Guantánamo. Then Trump Was Elected*, N.Y. Times (Oct. 9, 2020), <https://www.nytimes.com/2020/10/09/us/politics/guantanamo-prisoners-trump.html>.

³¹ See Sacha Pfeiffer, *U.S. Clears For Release Longtime Guantánamo Inmate Never Charged With A Crime*, NPR (Dec. 11, 2020), <https://www.npr.org/2020/12/11/945565473/u-s-clears-for-release-long-time-guantanamo-inmate-never-charged-with-a-crime>.

³² *Id.*

³³ 2017 Motion for Independent Medical Evaluation, Kebriai Decl. ¶ 5.

³⁴ *Id.* See also, 2017 Emergency Motion for Independent Medical Evaluation, Cohen Decl. ¶ 5.

³⁵ 2017 Emergency Motion for Independent Medical Evaluation, Ghannam Decl. ¶¶ 10, 12.

³⁶ 2017 Emergency Motion for Independent Medical Evaluation, Cohen Decl. ¶¶ 6, 8-9.

³⁷ 2017 Emergency Motion for Independent Medical Evaluation, Kebriai Decl. ¶ 3.

³⁸ *Id.* at ¶ 3.

counsel noted that during visits, he appeared “frail, gaunt, and had noticeable difficulty maintaining energy and concentration” to the point that counsel felt compelled to ask him multiple times if he was able to continue meeting. Mr. Al Hajj turned down multiple legal meetings and phone calls, finding it exhausting to be moved from his cell for legal appointments due to his poor health.³⁹ His counsel stated that their communications were often centered around his health concerns so that discussions about his legal circumstances were often pushed aside, impeding his “strong desire” to prepare further legal challenges to his detention.⁴⁰

In August 2017, Mr. Al Hajj modified his hunger strike to include water, honey, and small solids so that he could take medication he needed to allow him to urinate, but was still unable to take his regimen of other prescribed medications, which numbered at least seven. At that time, he weighed approximately 104 pounds.⁴¹ Both independent physicians consulted by Mr. Al Hajj’s counsel warned of the imminence of his “total bodily collapse and medically irreparable harm” and of “deterioration of his condition [which] can cause death” without proper medical intervention.⁴² Mr. Al Hajj’s counsel filed an Emergency Motion for an Independent Medical Evaluation and Medical Records to the U.S. District Court for the District of Columbia, concerned about “his precarious health condition and elevated risks of permanent harm.”⁴³

By 2018, Mr. Al Hajj’s mental health continued to decline as he continued his hunger strikes, which also aggravated his deteriorating physical health. He spent his days sleeping in his cell, declining to go outside or classes, or to eat.⁴⁴ During a phone call with his counsel on September 26, 2018, Mr. Al Hajj stated that worsening prison conditions were “creating ‘too much pressure’ on him.”⁴⁵ He conveyed a desire to pursue his hunger strike to the point of hospitalization, regardless of the potential harm to his health, and expressed “not having ‘any more patience’ with his circumstances.”⁴⁶ Mr. Al Hajj’s counsel was alarmed by his statements, describing them as uncharacteristic and prompting her to move for a status conference to discuss her concerns relating to Mr. Al Hajj’s health and to urge the court to rule upon Mr. Al Hajj’s undecided Emergency Motion for an Independent Medical Evaluation and Medical Records.⁴⁷

As Mr. Al Hajj’s detention extended into 2019, he exhibited increasing mental distress. On a July 24, 2019 phone call with his counsel, he made a suicide threat.⁴⁸ Mr. Al Hajj informed his counsel that he had just been discharged from the hospital after being admitted for a 15-day hunger strike, the last two days of which he stopped drinking water.⁴⁹ By that point, he could not focus or see, his blood sugar had once again dropped to a dangerous level, and he had returned to a weight of 104 pounds.⁵⁰ Mr. Al Hajj then told his counsel, “Maybe I’m going to cut my nerves to make myself bleed. Maybe that’s what I need to do.”⁵¹ Later in the same call, he said, “I have to do

³⁹ *Id.* at ¶ 10.

⁴⁰ *Id.* at ¶¶ 10, 11.

⁴¹ *Id.* at ¶ 8.

⁴² 2017 Emergency Motion for Independent Medical Evaluation, Ghannam Decl. ¶ 12 and Cohen Decl. ¶ 9.

⁴³ 2017 Emergency Motion for Independent Medical Evaluation at 2,

⁴⁴ Notice of Public Filing of Petitioner’s Mot. For Status Conference ¶ 3, *Al-Hajj v. Trump*, No. 1:09-cv-00745-RCL (D.D.C. Nov. 7, 2018) (hereinafter “2018 Motion for Conference”).

⁴⁵ *Id.* at ¶ 4.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Notice of Public Filing of Petitioner’s Renewed Mot. For Status Conference, *Al-Hajj v. Trump*, No. 1:09-cv-00745-RCL (D.D.C. Aug. 22, 2019), Kebriaci Decl. ¶ 3 (hereinafter “Aug. 2019 Motion for Conference”).

⁴⁹ *Id.* at ¶ 2.

⁵⁰ *Id.*

⁵¹ *Id.* at ¶ 3.

something, try to kill myself. For how long can I be patient. I'm human."⁵² He additionally stated, "I swear, I mean it. I was going to do it [hurt himself] this weekend."⁵³

Mr. Al Hajj had not previously made statements about self-harm "with the same seriousness and specificity that he expressed during this call."⁵⁴ In fact, he had spoken in the past about his averseness to suicide due to his Islamic faith.⁵⁵ The sudden change in Mr. Al Hajj's outlook and the gravity of his statements was such that his counsel sent a letter that same day to Guantánamo officials warning them of the "risk that he may do imminent harm to himself."⁵⁶ His counsel also filed a renewed motion for a status conference in court.⁵⁷ At the time of this renewed motion, the court still had not rendered a decision upon Mr. Al Hajj's Emergency Motion for an Independent Medical Evaluation and Medical Records, filed almost two years earlier.⁵⁸

Mr. Al Hajj's mental and physical health reached a critical point a few weeks after his July 24, 2019 call to counsel when his suicide threat actualized as a suicide attempt.⁵⁹ During a call with his counsel on August 19, 2019, Mr. Al Hajj attested that in the weeks since their July 24, 2019 call, he had been moved to a Behavioral Health Unit where he was placed in solitary confinement and denied basic necessities such as a pillow, a decision that his doctor had advised against.⁶⁰ He embarked on a hunger strike without water once again, and had to be hospitalized after he began urinating blood two days into his strike.⁶¹ Upon being discharged, "he was moved to a freezing cold cell and denied a warm blanket and warm clothes recommended by his doctors because of his frail condition," which incited him to stop drinking water again.⁶² His doctor cautioned him that he was "getting worse and worse" and "soon [they] may not be able to control [his] health situation."⁶³

As Mr. Al Hajj's counsel spoke to him on that August 19, 2019 call, Mr. Al Hajj told her that he had just cut his wrists using a piece of glass in an attempt to injure himself, telling her that he was bleeding "but [his] body doesn't have any liquid left" and expressing that he was "sorry for doing this but they treat [them] like animals" and that he was "not human in their eyes."⁶⁴ Dr. Kate Porterfield, a third independent physician consulted by Mr. Al Hajj's counsel, described his actions as "active planful suicidability" that "presented the highest level of risk."⁶⁵ Dr. Jess Ghannam characterized Mr. Al Hajj as being "on the brink" and stated that he "easily could commit suicide."⁶⁶ A day short of two years since filing Mr. Al Hajj's Emergency Motion for an Independent Medical Evaluation and Medical Records, his counsel petitioned the court a third time

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Aug. 2019 Renewed Motion, Letter to JTF-GTMO and JDG Commanders, dated July 24, 2019.

⁵⁷ Aug. 2019 Renewed Motion, at 1.

⁵⁸ *Id.* at 1-2.

⁵⁹ Notice of Public Filing of Petitioner's Emergency Mot. for Status Conference at 1, *Al-Hajj v. Trump*, No. 1:09-cv-00745-RCL (D.D.C. Sept. 5, 2019) (hereinafter "Sept. 2019 Motion for Conference").

⁶⁰ *Id.*, Kebriaei Decl. ¶ 3.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.* at ¶ 4.

⁶⁴ *Id.* at ¶¶ 5, 6, 7.

⁶⁵ *Id.* at ¶ 8.

⁶⁶ *Id.*

for a status conference to address the dire state of his health and for a favorable ruling on the emergency motion in order to obtain suitable medical care for him.⁶⁷

On September 10, 2019, U.S. District Court Judge Royce C. Lamberth denied Mr. Al Hajj's Emergency Motion for an Independent Medical Evaluation and Medical Records on the grounds that the medical care he was receiving in Guantánamo was adequate and that his right to judicial access was not impeded.⁶⁸

c. Inadequate Medical Care and Inability to Access Medical Documents

Trust is the essential basis of a doctor-patient relationship.⁶⁹ However, trust is difficult to establish when there is a revolving door of physicians employed by Guantánamo attending to Mr. Al Hajj's needs, as they are unable to advocate for him effectively with only a surface-level knowledge of his medical history, and he is understandably wary about their ability to provide effective care.⁷⁰ Given the historic complicity of medical professionals in Guantánamo Bay with egregious detainee abuse, the fact that medical professionals' recommendations are frequently ignored by those in control of the detention facility, and because detention authorities ultimately have veto power over many medical recommendations, any hope for Mr. Al Hajj receiving meaningful medical care is through an outside, independent provider.⁷¹ Ultimately, however, release is required for Mr. Al Hajj to avoid irreparable harm or death; effective treatment, even by an outside provider, simply cannot be provided so long as he continues to be detained, given that his prolonged indefinite detention itself is part of the cause of his deteriorating mental and physical health, and that effective mental health treatment for the effects of his prior torture cannot be provided so long as he remains detained under the control of the state responsible for his torture.

Having no choice but to seek treatment from the physicians employed at Guantánamo removes control from the hands of detainees over their own bodies. This inability to retain bodily self-autonomy, which has been described by the Center for Victims of Torture as "the first casualty of torture," only further reinforces the intrusive, coercive, and restrictive nature of the detainees' imprisonment and torture. Detainees are unable to receive effective treatment if they do not have control over medical decisions such as who their physician is and how they will be treated.⁷²

Safety is also an essential component of effective treatment. Because torture victims can suffer from altered neurological and hormonal functioning as a result of being held in captivity and brutalized, they are often "unable to achieve the subjective sense of safety and calm that healthy people take for granted due to the dysregulation of their nervous system under chronic threat."⁷³ Thus, it is crucial to develop a safe environment for detainees to receive proper medical treatment, which is at odds with the reality that detainees must constantly face their torturers or representatives of the entities that tortured them when requesting care from Guantánamo.⁷⁴ Creating a safe environment is further hindered by the biases held by medical personnel prior to even encountering detainees. One psychiatric technician contended, "You heard all these things

⁶⁷ Sept. 2019 Motion for Conference, at 1-3.

⁶⁸ Mem. Order at 4, *Al-Hajj v. Trump*, No. 1:09-cv-00745-RCL (D.D.C. Sept. 10, 2019).

⁶⁹ CVT & PHR Guantánamo Medical Care Report, at 16.

⁷⁰ 2017 Motion for Independent Medical Evaluation, Cohen Decl. ¶ 10.

⁷¹ *Id.*; 2017 Motion for Independent Medical Evaluation, Ghannam Decl. ¶ 16.

⁷² Brief of Amicus Curiae Center for Victims of Torture in Support of Petitioner's Habeas Corpus Motion at 12-13, *Al-Hajj v. Trump*, No 1:09-cv-00745-RCL (D.D.C. Jan. 30, 2018) (hereinafter "CVT Amicus Brief").

⁷³ *Id.* at 13.

⁷⁴ *Id.*

about how terrible [detainees] are . . . I became extremely hateful and spiteful.”⁷⁵ Undoubtedly, these preconceived notions prevent detainees from receiving proper medical care.

Torture creates trauma in detainees that disrupts and destroys their trust of others, requiring corrective action and the creation of safe and stable conditions to restore those human relationships. Rebuilding these connections entails transparency, reliability, and accountability, and more specifically in the medical context, “regular, predictive access to one’s treatment provider(s).”⁷⁶ The lack of continuity of care poses significant barriers to this tenet of proper medical treatment, as Guantánamo medical staff are often placed in a rotation of three to nine months.⁷⁷ In addition, as previously stated, a trusting doctor-patient relationship, vital for effective medical care, simply cannot be built by detainees with the physicians employed by Guantánamo, the very site of their imprisonment and torture.⁷⁸

Medical records are frequently devoid of torture and trauma histories, which impede proper medical treatment because it prevents health care providers from accessing the full scope of detainees’ medical needs.⁷⁹ According to an Army psychiatrist previously stationed at Guantanamo, mental health providers have been instructed to not ask about a detainee’s interrogation experiences and “to redirect the conversation” if a detainee brings up his prior treatment.⁸⁰ Withholding of medical records adds further barriers to providing detainees with comprehensive, informed care because they are not allowed to access the entirety of their medical history. What’s more, on the occasion that detainees are granted access to their medical records, the documents are often heavily classified to the extent that even medical providers at Guantánamo may not be able to review them without proper security clearance, or may not be able to meet alone with certain detainees.⁸¹ Conversely, military commission prosecutors may have access to detainee’s medical records even when detainees or their counsel do not, which can dissuade detainees from seeking medical care out of fear that their records could adversely affect them in litigation.⁸²

Mr. Al Hajj states that, “each [physician] deals with [detainees] as he sees fit.”⁸³ The subjectiveness of their treatment is also complicated by the prison hierarchy, since treatment recommendations “can depend on approval by other prison camp officials.”⁸⁴ Security interests frequently trump medical advice and subjugate detainees’ health concerns.⁸⁵ As characterized by Mr. Al Hajj, “doctors don’t have the full right to treat [detainees].”⁸⁶ This reality was illustrated during his isolation and hospitalization around August 2019, when non-medical detention officials subjected him to freezing cell conditions and deprived him of basic necessities against the recommendations of his treating physicians.⁸⁷

Mr. Al Hajj has stated that despite the severity and constancy of his symptoms, the physicians at Guantánamo tell him that “there is nothing wrong with [him]” and consequently, he does not

⁷⁵ *Id.* at 18.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ CVT & PHR Guantánamo Medical Care Report, at 20-21

⁸⁰ CVT Amicus Brief, at 20.

⁸¹ CVT & PHR Guantánamo Medical Care Report, at 22.

⁸² CVT & PHR Guantánamo Medical Care Report, at 27.

⁸³ 2017 Motion for Independent Medical Evaluation, Kebriaci Decl. ¶ 7.

⁸⁴ *Id.*

⁸⁵ CVT & PHR Guantánamo Medical Care Report, at 14.

⁸⁶ 2017 Motion for Independent Medical Evaluation, Kebriaci Decl. ¶ 7.

⁸⁷ *Id.* at ¶ 3.

request medical care “because they’ll just say [he’s] fine and give [him] vitamins.”⁸⁸ Mr. Al Hajj’s inability to trust the only physicians that he has access to deters him from seeking the medical care that is crucial to his health. It is furthermore impossible for trust to be established between Mr. Al Hajj and the medical staff at Guantánamo because they are associated with his ongoing abuse and indefinite detention, and with his previous torture, denying Mr. Al Hajj this fundamental element of adequate medical care.⁸⁹ His distrust of medical officials and the limitations placed upon their recommendations by the prison hierarchy are echoed in the experiences of other Guantánamo detainees.⁹⁰

Additionally, Congressional reports demonstrate how medical professionals at the detainee hospital were once complicit in the development and implementation of counterterrorism techniques specifically for use at Guantánamo in order to “break detainees.”⁹¹ At times, access to medical care has depended on a detainee’s cooperation with interrogators.⁹² Mental health providers, including psychologists and psychiatrists, once aided in the design and implementation of torture techniques.⁹³ Even interpreters worked for both mental health teams and interrogators, enabling information to be shared about detainees that could later be used against them in interrogations.⁹⁴ For example, one detainee observed interrogators in possession of his medical records, which they used to exploit his chronic back pain by subjecting him to “prolonged, painful stress positions.”⁹⁵ Another detainee’s declassified interrogation plans revealed that Department of Defense Behavioral Science Consultant Teams (“BSCT”) used his psychological and social vulnerabilities to advise interrogators on how to break him down psychologically.⁹⁶ Furthermore, when the detainee experienced auditory hallucinations as a result of extreme sleep deprivation and other torture, a BSCT psychologist did nothing to mitigate the psychological harm that the detainee was experiencing.⁹⁷ Overall, the study revealed that medical providers at Guantánamo failed to inquire further into the causes of and document evidence of intentional harm, both physical and psychological.⁹⁸

The medical facilities at Guantánamo are limited, creating problems such as the lack of certain basic diagnostic tests, the forced outsourcing of laboratory tests to facilities off the island, and the need to bring in specialists when medical staff are not trained in certain specialties which are “necessary to treat potentially complex emergencies and various chronic diseases.”⁹⁹ The inadequacy of these facilities prevents Mr. Al Hajj from accessing the laboratory tests, diagnostics tests, and treatments he desperately needs in order for his health to stabilize, at the very least.¹⁰⁰

⁸⁸ *Id.* at ¶ 6.

⁸⁹ 2017 Motion for Independent Medical Evaluation, Ghannam Decl. ¶ 16.

⁹⁰ Friends Comm. On Nat’l. Legislation, *Coalition Calls for Immediate Medical Treatment for Guantanamo Detainee*, (Sept. 11, 2019), <https://www.fcnl.org/updates/2019-09/coalition-calls-immediate-medical-treatment-guantanamo-detainee>.

⁹¹ CVT & PHR Guantánamo Medical Care Report, at 16.

⁹² Vincent Iacopino & Stephen N. Xenakis, *Neglect of Medical Evidence of Torture in Guantánamo Bay: A Case Series*, 8 PLOS Med. 1, 3 (2011).

⁹³ CVT & PHR Guantánamo Medical Care Report, at 16-19.

⁹⁴ CVT Amicus Brief, at 17-18.

⁹⁵ Vincent Iacopino & Stephen N. Xenakis, *Neglect of Medical Evidence of Torture in Guantánamo Bay: A Case Series*, 8 PLOS Med. 1, 3 (2011).

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ 2017 Motion for Independent Medical Evaluation, Ghannam Decl. ¶ 7; CVT Amicus Brief, at 18-19.

¹⁰⁰ 2017 Motion for Independent Medical Evaluation, Ghannam Decl. ¶ 15.

Furthermore, highly specialized treatment providers are necessary so that detainees receive suitable medical care, as torture impacts the “body, mind, and spirit of a person” and calls for a “tailored, individualized approach” that accounts for the various dimensions of detainees’ imprisonment and torture experiences.¹⁰¹ The limited resources of the medical facilities at Guantánamo cannot provide the comprehensive medical care that Mr. Al Hajj and other detainees require.

iii. Domestic Litigation

In January 2018, Mr. Al Hajj, along with 10 other detainees, filed a habeas petition in the U.S. District Court for the District of Columbia challenging his indefinite detention under the Due Process Clause of the U.S. Constitution and the 2001 Authorization for Use of Military Force.¹⁰² The filing highlighted the Trump administration’s anti-Muslim animus and the President’s proclamation that he had no intention of releasing any men from Guantánamo regardless of their individual circumstances. The petition requested that the Court find that the men held in Guantánamo Bay are guaranteed U.S. constitutional due process protections against indefinite detention, including additional procedural protections.

In August 2018, the district court judge denied the motion in one detainee’s case, citing decisions of the controlling higher court that the district court found reject the application of the Due Process Clause to Guantánamo.¹⁰³ That petitioner appealed the case to the D.C. Circuit Court of Appeals, which denied the motion on May 15, 2020.¹⁰⁴ On July 13, 2020, he filed a petition for a rehearing and rehearing *en banc*, which the D.C. Circuit Court denied 16 days later.¹⁰⁵ On December 28, 2020, he petitioned the Supreme Court.¹⁰⁶ Mr. Al Hajj’s own motion has yet to be decided, and may turn on the outcome of this petition. Nonetheless, his prospects for release are grim or uncertain at best, even under a Biden administration.

II. Legal Claims

i. The Prolonged Indefinite Detention of Sharqawi Al Hajj Constitutes Torture or Cruel, Inhuman or Degrading Treatment

Mr. Al Hajj continues to languish in Guantánamo without charge and with still no end in sight after 18 years in U.S. custody. Medical experts have found that indefinite detention results in severe psychological and physical harms in otherwise healthy individuals.¹⁰⁷ Representatives from the Inter-American Commission on Human Rights have opined that the indefinite detention in Guantánamo creates an environment of uncertainty, resulting in “severe and prolonged

¹⁰¹ CVT Amicus Brief, at 16.

¹⁰² Motion for Order Granting Writ of Habeas Corpus, *Ali v. Trump*, 317 F. Supp. 3d 480 (D.D.C. Jan. 11, 2018) (Dkt. 1885, No. 1:09-cv-00745-RCL).

¹⁰³ *Ali v. Trump*, 317 F. Supp. 3d 480, 488 (D.D.C. 2018), *aff’d*, 959 F.3d 364 (D.C. Cir. 2020).

¹⁰⁴ *Ali v. Trump*, 959 F.3d 364 (D.C. Cir. 2020).

¹⁰⁵ Order, *Ali v. Trump*, 959 F.3d 364 (D.C. Cir. 2020) (Dkt. No. 1853979 No. 1:10-cv-01020-RJL).

¹⁰⁶ *Ali v. Trump*, petition for cert. pending, No. 20-888 (filed Dec. 28, 2019).

¹⁰⁷ See CVT & PHR Guantánamo Medical Care Report, at 23 (“psychiatric and physical traumas that medical examinations have documented [in Guantánamo] are associated with prolonged indefinite detention”); and CVT Amicus Brief, at 8 (“medical examinations have documented indefinite detention leading to profound depression and vegetative symptoms, with all the attendant degradation of multiple aspects of health”).

physiological and psychological damage.”¹⁰⁸ For someone like Mr. Al Hajj, who continues to deal with the psychological effects of his kidnapping, torture, and detention, indefinite detention exacerbates his psychological harms. Continued indefinite detention increases Mr. Al Hajj’s trauma, while making it impossible for him to obtain the medical the treatment and care he needs. Mr. Al Hajj’s prolonged indefinite detention without charge or trial constitutes torture or cruel, inhuman or degrading treatment under the Convention Against Torture (“CAT”), the International Convention for Civil and Political Rights (“ICCPR”), and the Universal Declaration of Human Rights.

The Chairperson of the Working Group on Arbitrary Detention and the Special Rapporteur on the independence of judges and lawyers consider detention “without charges or access to counsel for the duration of hostilities” to be a radical departure from well-established international human rights law.¹⁰⁹ Conditions of detention that are used to “counter resistance and to cause stress,” particularly the uncertainty that is created by “the indeterminate nature of confinement and the denial of access to independent tribunals,” have led to serious mental health concerns which violate the right of detainees under article 10 (1) ICCPR to be treated with humane dignity and respect.¹¹⁰ Furthermore, these stress-inducing conditions may also amount to inhuman treatment, violating article 7 ICCPR.¹¹¹

The Special Rapporteur on Torture has also stated that as a general rule, “where the physical conditions and the prison regime fail to respect the inherent dignity of the human person and cause severe mental and physical pain or suffering, it amounts to cruel, inhuman or degrading treatment or punishment.”¹¹² In line with the Chairperson of the Working Group on Arbitrary Detention’s and the Special Rapporteur on the Independence of Judges and Lawyers’ findings, the Special Rapporteur on Torture recognizes that the more uncertainty there is regarding the length of detention, the greater the risk of serious mental pain and suffering to the inmate, to the extent that it may constitute cruel, inhuman or degrading treatment or punishment or even torture.¹¹³ As the imprisonment of some detainees and particularly Mr. Al Hajj nears two decades, they have yet to be tried and found guilty of any crime by a court of law, depriving them of the right to due process, and prolonging their state of suffering, stress, fear and anxiety in clear violation of international law.¹¹⁴

Additionally, in its 2014 Concluding Observations on the third to fifth periodic reports of United States of America, the Committee Against Torture specifically referenced the use of indefinite detention in Guantánamo Bay finding that, “Notwithstanding the State party’s position that these individuals have been captured and detained as ‘enemy belligerents’ and that under the

¹⁰⁸ U.N. News Tracker, *Amid Hunger Strike, UN Rights Experts Urge US to Close Down Guantánamo Detention Facility* (May 1, 2013), <https://news.un.org/en/story/2013/05/438582-amid-hunger-strike-un-rights-experts-urge-us-close-down-guantanamo-detention#.WmJRxq6nHIW>. See also U.N. Human Rights Council, *Opinions Adopted by the Working Group on Arbitrary Detention*, p. 8, U.N. Doc. A/HRC/WGAD/2017/89, (Jan. 24, 2018) (finding, “the indefinite detention of individuals beyond a minimal and reasonable period of time constitutes a flagrant violation of international human rights law, which in itself constitutes a form of cruel, inhuman and degrading treatment”).

¹⁰⁹ U.N. Comm’n. Hum. Rts., *Situation of Detainees at Guantánamo Bay*, ¶ 21, U.N. Doc. E/CN.4/2006/120, (Feb. 27, 2006).

¹¹⁰ *Id.* at ¶ 53.

¹¹¹ *Id.*

¹¹² U.N. Comm’n. Hum. Rts., *Statement of the United Nations Special Rapporteur on Torture at the Expert Meeting on the Situation of Detainees Held at the U.S. Naval Base at Guantánamo Bay*, (Oct. 3, 2013) <https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13859&LangID=E>.

¹¹³ *Id.*

¹¹⁴ *Id.*

law of war is permitted ‘to hold them until the end of the hostilities’... indefinite detention constitutes *per se* a violation of the Convention.”¹¹⁵

Numerous international instruments, including the Universal Declaration of Human Rights, the ICCPR, and CAT clearly prohibit torture.¹¹⁶ These documents make clear that the right to be free from torture and cruel, inhuman or degrading treatment is absolute; “no exceptional circumstances, whether a state of war or a threat of war, internal political instability or any other public emergency may be invoked as a justification of torture.”¹¹⁷

ii. Mr. Al Hajj’s Medical Care in Guantánamo Bay Violates His Right to Health

The medical care that Mr. Al Hajj has received in Guantánamo Bay violates the right to health under international law.

The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health (“Special Rapporteur on right to health”) states that the right to health, particularly regarding global mental health, can only be effectively realized if individuals are able to participate in decision-making about their own health and well-being.¹¹⁸ The Special Rapporteur has emphasized that individuals should be treated as rights holders who exercise autonomy and are meaningfully and actively involved in matters that concern their own health.¹¹⁹ In the context of mental health, to overcome the traditional power asymmetries that may exist within provider systems, empowering individuals through a variety of methods including self-advocacy, peer support, and small group dialogues helps restore trust between rights holders and their care providers.¹²⁰

The Special Rapporteur on right to health has also recognized systematic violations of widely accepted ethical standards and medical confidentiality rules by health professionals at Guantánamo Bay.¹²¹ Two international human rights instruments, the United Nations Principles of Medical Ethics and the Declaration of Tokyo, provide guidelines for international ethical norms.¹²² The United Nations Principles of Medical Ethics state that, “it is a contravention of medical ethics for health personnel (a) to be in any relationship with detainees ‘the purpose of which is not solely to evaluate, protect or improve their physical and mental health,’ (b) to use their knowledge and skills to assist in the interrogation of detainees ‘in any manner that may adversely affect physical or

¹¹⁵ Comm. Against Torture, *Concluding Observations on the Third to Fifth Periodic Reports of United States of America*, par. 14, U.N. Doc. C/USA/CO/3-5 (Dec. 19, 2014).

¹¹⁶ INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS art. 7, Dec. 16, 1966 999 U.N.T.S. 171 (“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”); G.A. Res. 217 (III) A, UNIVERSAL DECLARATION OF HUMAN RIGHTS, art 15 (Dec. 10, 1948).

¹¹⁷ CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT ART. 2, 16, Dec. 10, 1984, 1465 U.N.T.S. 85. *See also*, Comm. Against Torture, *General Comment 2, Implementation of Article 2 by States Parties*, ¶ 3, U.N. Doc. CAT/C/GC/2/CRP. 1/Rev.4 (Nov. 23, 2007) (“The Committee has considered the prohibition of ill-treatment to be likewise non-derogable under the Convention and its prevention to be an effective and non-derogable measure.”).

¹¹⁸ Dainius Pūras (Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Health), Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Health, ¶ 42, U.N. Doc. A/HRC/35/21 (Mar. 28 2017).

¹¹⁹ *Id.* at ¶ 43.

¹²⁰ *Id.* at ¶ 44.

¹²¹ U.N. Comm’n. Hum. Rts., *Situation of Detainees at Guantánamo Bay*, ¶ 75, U.N. Doc. E/CN.4/2006/120, (Feb. 27, 2006).

¹²² *Id.* at ¶ 72.

mental health’, or (c) to certify the fitness of detainees for any ‘treatment or punishment that may adversely affect their physical or mental health.’”¹²³ The Declaration of Tokyo adopted similar ethical standards, prohibiting doctors from attending or participating in “any form of torture or other form of cruel, inhuman or degrading treatment and from providing any knowledge to facilitate such acts” and stating that doctors’ fundamental role is to alleviate distress – “no other motive shall prevail against this purpose.”¹²⁴

Guantánamo medical professionals’ historic complicity in detainee abuse violates international human rights standards defining health professionals’ obligations to their patients. But moreover, it is their past involvement that has rendered it impossible for detainees to trust the medical care they receive in the detention facility. The after-shocks of the U.S. torture program continue to be felt in doctor-patient relationships in Guantánamo today.

Additional international human rights standards are relevant to assessing Mr. Al Hajj’s medical care at Guantanamo. The Nelson Mandela Rules declare that the relationship between detainees and medical care providers should be governed by the same standards as those that apply to patients in the community. These guidelines outline several duties, including protecting prisoners’ health through the prevention and treatment of diseases on clinical grounds only, adhering to prisoner autonomy and consent, the general confidentiality of medical information, and an “absolute prohibition” on involvement in “acts that may constitute torture or other cruel, inhuman or degrading treatment or punishment.”¹²⁵

The Nelson Mandela Rules also provide that detainees’ individual medical files should be accurate and up-to-date, and that detainees should have access to or allow a third party to have access to their own files upon request.¹²⁶ Furthermore, medical care providers are directed to document and report “any signs of torture or other cruel, inhuman or degrading treatment or punishment.”¹²⁷ Additionally, under the Rules, medical providers are directed to not have any role in imposing disciplinary sanctions or other punitive measures.¹²⁸

Finally, and key for Mr. Al Hajj, under the United Nations Standard Minimum Rules for the Treatment of Prisoners, detainees with severe mental disabilities or health conditions that could be further exacerbated by remaining in prison are not to be detained and should instead be transferred to mental health facilities.¹²⁹ Less severe cases, at the very least, should be observed and treated in facilities supervised by qualified medical providers or be provided with needed psychiatric treatment.¹³⁰ With respect to suicide risk, the U.N. Human Rights Committee has underscored the duty of States to take adequate measures to prevent suicides of individuals who are detained.¹³¹ The U.N. High Commissioner for Human Rights has also declared that states are required to administer “additional vigilance . . . for detainees with psychosocial disabilities, a history of self-harm and suicide attempts, a history of substance abuse and signs of increased risk of suicide.”¹³²

¹²³ *Id.* at ¶ 73.

¹²⁴ *Id.* at ¶ 74.

¹²⁵ The United Nations Standard Minimum Rules for the Treatment of Prisoners, PENAL REFORM INTERNATIONAL, 1, 14, U.N. Doc. A/RES/70/175 (Dec. 17, 2015).

¹²⁶ *Id.* at 1, 12-13.

¹²⁷ *Id.* at 1, 14.

¹²⁸ *Id.* at 1, 17.

¹²⁹ *Id.* at 31.

¹³⁰ *Id.* at 1, 31.

¹³¹ U.N. Comm’n. Hum. Rts, *General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life*, ¶ 9, U.N. Doc. CCPR/C/GC/36 (Oct. 30, 2018).

¹³² U.N. Hum. Rts. Council, *Human Rights in the Administration of Justice*, ¶ 28, U.N. Doc. A/HRC/42/20 (Aug. 21, 2019).

The U.S. Government has violated Mr. Al Hajj’s right to health under international standards. It has denied Mr. Al Hajj the right to informed consent, including by denying him and his legal representatives access to his medical records and preventing him from obtaining independent assessments he can rely on.¹³³ He has no consistent trust in his medical providers in Guantanamo, who rotate continuously, and has reported that each doctor “deals with [detainees] as he sees fit.”¹³⁴ Even when his providers make necessary medical recommendations for his care, prison officials have subverted those recommendations, sometimes ignoring them completely, or taking steps that have exacerbated his condition and inflicted further harm, such as placing him in solitary confinement after his suicidal statements in July 2019, which then led to his suicide attempt the following month.

Moreover, there is an irredeemable environment of distrust by detainees of medical providers in Guantánamo Bay because of the lived history of detainees in the prison. Mr. Al Hajj largely sees his medical providers as extensions of the U.S. government, not as independent advocates for his health, with the authority to effectuate the medical care he needs. This view is based on a long-history of medical professionals’ complicity in the abuse of detainees in Guantanamo and other U.S. detention sites, including breaching confidentiality through unauthorized disclosure of medical records or health information for interrogation purposes; advising, attending, or participating in interrogations; and attending or participating in non-consensual treatment.¹³⁵ This history necessarily infects Mr. Al Hajj’s relationships with his current providers and, together with the other structural problems discussed above, deter him from receiving necessary medical care.

Ultimately, however, even in the absence of all of these issues, it is Mr. Al Hajj’s continuing indefinite detention at Guantanamo, on top of the untreated effects of his prior CIA torture, that is causing his health to steadily worsen, as demonstrated by his suicide attempt and continuing suicidal statements. No amount of medical care, however well-intentioned, can cure or meaningfully stem the harm so long as the very source continues unabated. After 18 years of detention without charge, Mr. Al Hajj still has no clear prospect for release. The complainant respectfully urges immediate intervention before any further irreparable harm or death occurs.

¹³³ *Id.* at ¶ 82 (“From the perspective of the right to health, informed consent to medical treatment is essential, as is its ‘logical corollary’ the right to refuse treatment”).

¹³⁴ 2017 Motion for Independent Medical Evaluation, Kebriyai Decl. ¶ 7.

¹³⁵ U.N. Comm’n. Hum. Rts., *Situation of Detainees at Guantánamo Bay*, ¶ 72, U.N. Doc. E/CN.4/2006/120, (Feb. 27, 2006).