

THE CONSTITUTION PROJECT



Safeguarding Liberty, Justice & the Rule of Law

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TCP Condemns Obama Administration for Contesting Petition of Dying Detainee

WASHINGTON, D.C. -- A nonpartisan constitutional watchdog group is roundly condemning the Obama administration for its secret court filing earlier today contesting the habeas corpus petition of Tariq Ba Odah, a detainee at the Guantanamo Navy Base who is nearing death and who has been cleared for transfer from the facility since 2010.

"It is outrageous that the Obama administration would fight this case. If the administration won't use the lawful and legitimate tools at its disposal to facilitate Mr. Ba Odah's transfer, how can we have confidence that it will take any of the other steps necessary to close Guantanamo responsibly?," asked Virginia Sloan, president of The Constitution Project.

"This was a gut check for the administration," Sloan continued, "and it failed. Promises won't close Guantanamo. The clock is ticking."

Ba Odah has been at Guantanamo since 2002. He was cleared for transfer by unanimous consent of all relevant U.S. national security agencies in June 2010. He has been on a hunger strike for more than eight years and now weighs less than 75 pounds. Three civilian doctors have declared under oath that this fact alone indicates Ba Odah is suffering a medical crisis and is at significant risk of dying within months.

On June 25, 2015 Ba Odah moved to reinstate his habeas petition in federal court in Washington, DC. His lawyers are seeking his release so that Ba Odah can get the sustained and sophisticated medical care he needs.

In 2013, the Obama administration faced a similar decision in the case of a schizophrenic detainee, Ibrahim Idris. Ultimately the administration consented to Idris' petition, but did so without conceding to any of his factual or legal arguments. Had the administration done the same in Ba Odah's case, it could have transferred him without having to navigate much of the typical legal red tape. Current law includes an exception to the foreign transfer determination requirements for transfers or releases ordered by a court.

Of the 116 detainees remaining at Guantanamo, 52 have been cleared for transfer, the vast majority since 2010. Only six detainees have been transferred since January. The administrative

review process the Obama administration set up to evaluate detainees who have not yet been cleared for transfer is more than three years behind schedule. Since the review process began, only 14 detainees have received a final determination from the Periodic Review Boards, with 10 of them cleared for transfer.

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[About The Constitution Project](#)

Created out of the belief that we must cast aside the labels that divide us in order to keep our democracy strong, The Constitution Project brings together policy experts and legal practitioners from across the political spectrum to foster consensus-based solutions to the most difficult constitutional challenges of our time through scholarship, advocacy, policy reform and public education initiatives. Established in 1997, TCP is based in Washington, D.C.