



U.S. Department of Justice

Office of the Solicitor General

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Washington, D.C. 20530

February 5, 2010

Honorable William K. Suter  
Clerk  
Supreme Court of the United States  
Washington, D.C. 20543

Re: Kiyemba v. Obama, No. 08-1234

Dear Mr. Suter:

I am writing to respond to the February 3, 2010, letter of counsel for petitioners advising the Court of a recent development with respect to two of the petitioners in the above-captioned case, which is scheduled for oral argument on March 23, 2010.

Petitioners are members of the Uighur ethnic minority group in China who were previously held in military detention in an enemy status at the Guantanamo Bay Naval Base. The United States agreed in 2008 that petitioners should not be held on that basis and commenced the process of resettling them. That process was complex because of the Uighurs' unique situation. The Uighur detainees at Guantanamo Bay reasonably fear torture if they are returned to their home country. United States policy is not to transfer a person from military detention to a country where it is more likely than not he will be tortured. Accordingly, the government determined not to return petitioners to China, and began the process of finding an alternate country that would accept petitioners for resettlement. In the meantime, petitioners were transferred to part of the Guantanamo Bay Naval Base that is used for persons awaiting transfer following a habeas order of release.

The question presented is whether a federal court exercising its habeas corpus jurisdiction may order the United States Government to bring petitioners into the United States for release, contrary to the federal immigration laws and statutory prohibitions on the transfer of individuals detained at Guantanamo Bay for release in the United States.

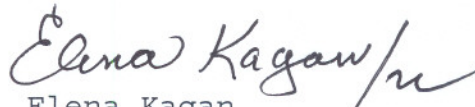
As counsel for petitioners reports in his letter, on February 3, 2010, the government of Switzerland announced that it has agreed to accept two petitioners, Arkin Mahmud and Bahtiyar Mahnut, for

resettlement, and they have accepted that offer. Arkin Mahmud had not previously received an offer of resettlement from any nation.

Once those two men leave Guantanamo Bay for Switzerland, only five of the 22 Uighurs originally detained at Guantanamo Bay will remain there. (Five of the Uighurs were transferred to Albania in 2006; four were transferred to Bermuda in 2009; and six were transferred to Palau in 2009.) All of the remaining five Uighurs at Guantanamo Bay previously have received two offers of resettlement from foreign countries, one of which is Palau.

These developments are addressed in the government's brief on the merits, which is being filed today, simultaneously with this letter. In that brief, the government suggests that these developments eliminate the factual premise of the question presented in this case -- i.e., that petitioners have no possibility of leaving Guantanamo Bay except by being brought to and released in the United States. Accordingly, the Court may wish to dismiss the writ of certiorari as improvidently granted.

Sincerely,

A handwritten signature in cursive script that reads "Elena Kagan" followed by a stylized flourish.

Elena Kagan  
Solicitor General

cc: See Attached Service List