

pending. After years of illegal detention, and even using a process designed to assure continued detention, Respondents decided that Ala would be classified as a “No Longer Enemy Combatant,” a Kafkaesque designation that this Court has recognized “deliberately begs the question of whether these petitioners ever were enemy combatants.” See Memorandum, *Qassim v. Bush*, Civ. No. 05-0497, at 5 (D.D.C. Dec. 22, 2005). Since the United States no longer “wished” to detain him, Respondents intended to turn Ala over to Egyptian authorities. Ala sought to enjoin his return to a country that he fled after being subjected to arrest for political reasons and tortured years earlier. The Court entered a Temporary Restraining Order on October 27, 2005, but did not rule on Ala’s Motion for Preliminary Injunction.

Petitioner Algazzar’s legal case was in a different procedural posture. This Court entered an Order in Algazzar’s case on April 7, 2005 asserting *in personam* jurisdiction over Algazzar and the other petitioners and imposing a stay. The Order provided that “this stay will apply to all proceedings applicable to the petitioners, including without limitation their release, repatriation, or rendition.” Order, *el-Mashad v. Bush*, Civ. No. 05-270 (Apr. 7, 2005).

On October 17, 2005, the government filed a Motion for Partial Modification of the Court’s April 7, 2005 Order, essentially requesting the Court’s permission to render Algazzar to Egypt pursuant to the government’s “understanding” with Egypt that it would continue to

detain and “investigate” Algazzar after he was turned over. The Court recognized that the government’s request was for a “quite significant modification of the stay” as it would potentially moot Algazzar’s ability to challenge his illegal detention. Counsel opposed the government’s effort to strip the Court of its jurisdiction by sending Algazzar to a country with a documented history of using torture during its detention and investigations.

At the November 7, 2005 hearing, counsel represented that they were meeting their clients at Guantanamo Bay in December and would provide a report to the Court following their trip to Guantanamo. This memorandum addresses the current status for each.

Petitioner Algazzar faces continued detention in Egypt. The concerns for his safety and humane treatment if the Stay Order is modified to permit his rendition are unabated and Respondents, who use rendition to promote torture in the government’s own investigations and detentions, cannot be trusted to take any steps to protect him. Nevertheless, after years of detention at Guantanamo, Algazzar wants “to breathe the air of Egypt,” even at the cost of potential detention in his home country. He has instructed counsel not to oppose the modification of the stay Order. The Court, however, confronted with an illegal, albeit unopposed, rendition, should take steps to protect Algazzar by requiring Respondents to provide counsel with seven (7) days advance notice of Algazzar’s rendition to Egypt, so that counsel can coordinate efforts in

Egypt to help ensure his safety and humane treatment post-rendition, and should, as permitted by law, continue its habeas jurisdiction even as Algazzar is rendered, thus holding out some possibility of protection.

Ala, who by the government's admission is not an enemy combatant, is in a different position. As explained below, Ala fled Egypt years ago after being imprisoned and tortured. The government previously advised the Court that Ala was arrested in Pakistan and then "turned over" to the United States. *11/7/05 Tr.* at 16. The government now proposes to turn him over to Egypt, but with the proviso that it has "no control over what the Egyptians may think appropriate to do as far as investigating him or prosecuting him or not" *11/7/05 Tr.* at 24.

As this Court has noted with respect to other non-enemy combatants, Ala's detention is illegal. Memorandum, *Qassim v. Bush*, Civ. No. 05-0497 (D.D.C. Dec. 22, 2005). That illegality will be compounded if the government can choose to simply render him to Egyptian authorities with a "do with him as you wish" attitude. Ala has first hand experience with Egyptian investigation and detention. He opposes his illegal rendition to Egyptian authorities. The Court should continue its injunction while counsel, and hopefully the government, work to find an acceptable third country to accept Ala. If the Court, however, is inclined to permit his rendition, then the Court should continue its habeas jurisdiction, provide counsel with sufficient time to coordinate efforts in Egypt to protect his safety and well-being, require

Respondents to give counsel seven (7) days advance notice of his rendition, and take any additional precautions necessary to ensure his safety.

The legal issues regarding these issues are addressed in the accompanying memorandum filed herewith.

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Respectfully submitted,

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