

September 4, 2020

The Honorable Mark T. Esper
United States Secretary of Defense
1010 Defense Pentagon
Washington, DC 20301-1010

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530

Dear Secretary Esper and Attorney General Barr,

We are a coalition of human rights, civil liberties, and faith groups writing to express our deep concern that, to our knowledge, the Defense Department has not yet taken steps to establish a Mixed Medical Commission for Mohammed al-Qahtani, as required by both court-order and Department regulations. We urge you to do so immediately.

Mr. al-Qahtani has been held captive at Naval Station Guantánamo Bay, Cuba for eighteen years. [According to independent psychiatrist](#) Dr. Emily Keram,¹ Mr. al-Qahtani suffered from schizophrenia, moderate-to-severe major depression, and traumatic brain injury even before he was detained at Guantánamo. These conditions have been exacerbated by the torture inflicted by his military interrogators – as [detailed](#) by the Senate Armed Services Committee² – and by his prolonged indefinite detention. As a result of his torture and detention at Guantánamo, Mr. al-Qahtani has also developed post-traumatic stress disorder (PTSD).

The government does not dispute the nature or severity of Mr. al-Qahtani’s mental illness.

Pursuant to [Army Regulation 190-8](#) (Regulation) – which “implements international law, both customary and codified,” – detainees are “eligible for direct repatriation” if they are:

- (1) “suffering from disabilities as a result of injury, loss of limb, paralysis, or other disabilities, when these disabilities are at least the loss of a hand or foot, or the equivalent;” or
- (2) are ill or injured and their “conditions have become chronic to the extent that prognosis appears to preclude recovery in spite of treatment within 1 year from inception of disease or date of injury.”³

¹ Report of Dr. Emily Keram (June 5, 2016) at PDF pages 11-19, https://ccrjustice.org/sites/default/files/attach/2020/04/Qahtani_%20MCompel%20MMC%20Exam_%20Exhibits_%202017.08.08.pdf. (“Keram Report”).

² Inquiry Into the Treatment of Detainees in U.S. Custody, Report of the Committee On Armed Services, United States Senate, Nov. 20, 2008, at 88-91, https://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final_April-22-2009.pdf#page=119.

³ U.S. Army Regulation 190–8, Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees, available at <https://info.publicintelligence.net/USArmy-Detainees.pdf> (“AR 190-8”).

This determination is to be made by a Mixed Medical Commission comprised of a medical officer of the U.S. military and two physicians, appointed by the International Committee of the Red Cross, from a neutral country.

On August 8, 2017, Mr. al-Qahtani filed a motion in the United States District Court for the District of Columbia requesting such a Commission. In March of this year, over the government's objection, Judge Rosemary Collyer determined that the Regulation applies to Mr. al-Qahtani and granted his motion. On August 12, Judge Ellen Huvelle rejected the government's application to stay Judge Collyer's order.

The [Regulation is clear](#) that the government cannot drag its feet in complying with the Court's orders: "Commanders concerned will assist, facilitate, and expedite the operations of the Commission to the fullest extent."⁴

Dr. Keram has [concluded](#) that "Mr. al-Qahtani will likely require lifelong mental health care" for his schizophrenia and that he "cannot receive effective treatment for his current mental health conditions while he remains in US custody at GTMO or elsewhere, despite the best efforts of available and competent clinicians."⁵ The reasons why have been [well-documented](#) in Mr. al-Qahtani's case:

[T]he inability to develop long-term doctor-patient relationships given the rotation schedule of medical staff, lack of trust in the medical and mental health staff due to previous clinician involvement in interrogations, lack of culturally-informed treatment modalities, and unavailability of family members to participate in treatment.⁶

The U.S. Government has detained and tortured a mentally ill man, and the consequences are predictable: Mr. al-Qahtani is psychologically damaged to the point where he requires long-term, carefully managed treatment. Under these circumstances, the District Court rightly determined that he is entitled to a Mixed Medical Commission. The Department of Defense must immediately take the necessary steps to facilitate this process. And if the Commission determines that Mr. al-Qahtani should be repatriated, the Department [must execute](#) that decision "within 3 months of the time after it receives due notice," as the Regulation requires.⁷

Thank you for your prompt attention to this urgent matter. Please direct any response to Scott Roehm, Washington Director, Center for Victims of Torture (sroehm@cvt.org; (646) 522-6110).

Sincerely,

American Civil Liberties Union
Amnesty International USA
Center for Victims of Torture

⁴ [Id.](#) § 3-12(g).

⁵ Keram Report at PDF pages 18-19.

⁶ [Id.](#) See also [Deprivation and Despair: The Crisis of Medical Care at Guantanamo](#) at 16-20, <https://www.cvt.org/DeprivationandDespair>.

⁷ AR 190-8 § 3-12(f).

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Witness Against torture

CC: Tracey Begley, International Committee of the Red Cross