

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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DJAMEL AMEZIANE,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civil Action No. 05-392 (ESH)
	:	
BARACK OBAMA, <i>et al.</i> ,	:	
	:	
Respondents.	:	
	:	
_____	x	

**MOTION FOR GRANT OF HABEAS RELIEF IN THE  
FORM OF AN ORDER REQUIRING THE GOVERNMENT  
TO RETURN PETITIONER’S PERSONAL PROPERTY**

Petitioner Djamel Ameziane, by and through his undersigned counsel, respectfully moves for an order granting habeas relief in the form of an order requiring the government to return his personal property. He asks the Court to order the government to return approximately £700 (GBP) that he had earned legally while living in Canada and were seized at the time of his capture. The funds were not returned to him when he was forcibly transferred to Algeria in December 2013, and have been withheld by Joint Task Force Guantánamo in violation of U.S. and international law since his transfer. Mr. Ameziane also requests interest on the funds from the date they were seized. Alternatively, he requests that the Court schedule a full hearing on the merits of his habeas petition. Post-transfer habeas relief is necessary and appropriate because Mr. Ameziane continues to suffer collateral consequences of his prior detention at Guantánamo that are concrete and specific, and plainly redressible by the Court. The government objects.

### **Background**

The history of this case is well-known and undisputed. Mr. Ameziane was rendered to Guantánamo Bay more than twelve years ago. He filed this habeas case more than nine years ago. More than five and a half years ago the Supreme Court held in *Boumediene v. Bush*, 553 U.S. 723, 783, 795 (2008), that “the costs of delay can no longer be borne by those who are held in custody”; “[t]he detainees in these cases are entitled to a prompt habeas corpus hearing”; and “the writ must be effective.” The government also determined there was no military need for Mr. Ameziane’s continued detention and approved him for transfer more than five years ago. In 2009, the Court stayed this case indefinitely at the government’s request based on its inaccurate representations that Mr. Ameziane would be released expeditiously. Yet the government made no serious effort to release him during the subsequent four and a half years, and consequently he filed a motion requesting a court order of release in August 2013. The government succeeded in delaying the Court’s consideration of the motion for several months, however, until the government forcibly repatriated Mr. Ameziane to Algeria on December 5, 2013, despite his fear of persecution.<sup>1</sup> The Court then entered a sealed order dated December 9, 2013 (dkt no. 346). The case remains pending without a final ruling on the merits of Mr. Ameziane’s habeas petition.

As set forth in his attached declaration, Mr. Ameziane has suffered discrete and palpable harm as a consequence of his forcible transfer to Algeria. Among other things, he was subjected to physical and psychological abuse not only during the transfer but also immediately upon his arrival in Algeria. He was then placed in secret detention by the Algerian security services.

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<sup>1</sup> See Editorial, *A Bad Decision at Guantánamo*, N.Y. Times, Dec. 6, 2013 (stating Mr. Ameziane’s forcible transfer is “perverse” and reinforces the perception that America flouts the rule of law), available at [http://www.nytimes.com/2013/12/07/opinion/a-bad-decision-at-guantanamo.html?\\_r=0](http://www.nytimes.com/2013/12/07/opinion/a-bad-decision-at-guantanamo.html?_r=0).

During the period of his secret detention, he was interrogated repeatedly. And when he was not being interrogated, he was kept in deplorable prison conditions. He became seriously ill as a result, and, at least initially, after his release from secret detention was bed-ridden and virtually unable to communicate with family members or his undersigned counsel by telephone.<sup>2</sup>

In addition to the injustice that he has suffered, the U.S. government left Mr. Ameziane utterly destitute. It dumped him in Algeria without any resources, and apparently without arranging for resources prior to his transfer. He currently has no access to medical care, no proper identification, no money, and no immediate prospect of gainful employment or other means of self-support. He has had to rely on the charity of his family for virtually every human need, including food and shelter, but they are not able to care for him on a long-term basis (due in part to the physical and psychological harm caused by his many years of detention). Mr. Ameziane arrived in Algeria wearing the detainee uniform he wore at Guantánamo, and but for clothes that he borrows he would likely still be wearing it. And he must borrow bus fare to report to the Algerian authorities monthly or he will surely be arrested.<sup>3</sup>

The U.S. government is aware of Mr. Ameziane's plight, but has made no apparent effort to intervene on his behalf or help him in any way. Algeria also notably restricts access by human rights organizations such as Amnesty International and Human Rights Watch, effectively preventing them from providing direct humanitarian assistance to Mr. Ameziane and other

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<sup>2</sup> See Decl. of Djamel Ameziane, Feb. 13, 2014 (attached hereto as Exhibit A). Mr. Ameziane has prepared this declaration by email because he has no other means to provide a written statement to the Court. Counsel has redacted Mr. Ameziane's email address to protect his privacy, but will provide an unredacted copy of the email to the Court upon request.

<sup>3</sup> Additional information regarding Mr. Ameziane is set forth in a sealed supplement filed contemporaneously with this motion, which Mr. Ameziane incorporates herein by reference.

former Guantánamo detainees (at least one of whom is reportedly homeless).<sup>4</sup> Even the International Committee of the Red Cross has been unable to substantially improve Mr. Ameziane's present circumstances.<sup>5</sup> This fate, of course, would not have befallen him if he had been safely resettled in a third country.

Nonetheless, in an effort to mitigate his suffering and move on with his life, Mr. Ameziane has requested that the U.S. government return money that was seized from him at the time of his capture. It is money that he earned while living and working legally in Canada, which he used to support himself in the months after he was denied permanent refuge and forced to leave that country. He desperately needs this money in order to support his most basic needs because the U.S. government has callously discarded him after more than a decade of abuse and indefinite detention without any apparent concern for his well-being, the Algerian government appears unwilling or unable to assist him, and he has no other immediate means of support.

Although there is no serious dispute that the money is his personal property, or that U.S. and international law require personal property to be returned upon repatriation, the government has refused to return it to him "due to the concern that those funds may ultimately be used in a manner that adversely affects the security of the United States."<sup>6</sup> The government's position with respect to the approximately £700 at issue is baseless and contrary to law, and should be rejected. The Court should provide a habeas remedy in the form of an order requiring the government to return Mr. Ameziane's money, or schedule a full hearing on the merits of his

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<sup>4</sup> See FIDH Press Release, *Algeria: Allow Rights Groups to Visit*, 11 Feb. 2014, <http://www.fidh.org/en/north-africa-middle-east/Algeria/14629-algeria-allow-rights-groups-to-visit>.

<sup>5</sup> See Ex. A, ¶ 4.

<sup>6</sup> Email from the Dep't of Justice, Jan. 31, 2014 (attached hereto as Exhibit B).

habeas petition in order to mitigate the collateral consequences of his prior detention. The Court should also award interest on the funds withheld, and any other relief it deems necessary and appropriate to address Mr. Ameziane's injury.

### **Argument**

Mr. Ameziane's request for a court order compelling the government to return his personal property is apparently a matter of first impression involving Guantánamo detainees. However, he is plainly entitled to the return of all his personal property, including money, under U.S. and international law. Indeed, the government's refusal to return his money violates the Geneva Conventions and U.S. law implementing those treaties, as well as other law-of-war authorities that the government concedes inform and constrain its detention authority under the Authorization for Use of Military Force ("AUMF"), Pub. L. 107-40, § 2(a), 115 Stat. 224, 224 (2001). The Court also plainly has authority to order the government to return his personal property pursuant to its equitable habeas authority. To be clear, Mr. Ameziane does not seek reparations or damages pursuant to this motion. He seeks a habeas remedy that only this Court can provide, which will enforce an established legal right and alleviate a specific and concrete injury that he continues to suffer as a result of his prior detention at Guantánamo. An order granting relief will help restore him to the position that he would have been in had he not been unlawfully detained at Guantánamo for more than a decade.

The government's contention that it cannot return Mr. Ameziane's personal property because it may be used in a way that could be harmful to the security of the United States is not only speculative but demonstrably false. First, he needs the money to survive. Second, the government's position is not based on anything that Mr. Ameziane has done, but rather on a general policy applicable to all former detainees from which it is unwilling to deviate in this

particular case. *See* Ex. B. Indeed, Mr. Ameziane has done nothing since his transfer to warrant the government's purported concerns; rather, until recently he was virtually confined to his brother's home and to bed because of his illness caused both by the poor conditions of his secret detention in Algeria and the terrible years he spent in detention at Guantánamo. The government's position instead is based solely on Mr. Ameziane's prior detention at Guantánamo, without charge, and its persistent view that he, like all Muslim men and boys sent to Guantánamo, was lawfully detained as "part of" the Taliban, Al Qaeda or associated forces – a claim that he rejects. If as an alternative to an order compelling the government to return his money the Court were to conduct a habeas hearing and conclude that Mr. Ameziane's prior detention was unlawful, it would not only alleviate this stigma of his prior detention but also vitiate the government's concerns and he would get his money back.

**I. Mr. Ameziane Is Entitled to the Return of His Personal Property Under U.S. and International Law**

The government has claimed authority to detain men such as Mr. Ameziane at Guantánamo Bay pursuant to the Authorization for Use of Military Force ("AUMF"), Pub. L. 107-40, § 2(a), 115 Stat. 224, 224 (2001), which permits the use of "necessary and appropriate force [against a narrow set of groups or individuals] in order to prevent any future acts of international terrorism against the United States." As the Supreme Court held in *Hamdi v. Rumsfeld*, 542 U.S. 507, 518, 521 (2004), the power to detain may be inferred from the right to use force under "longstanding law-of-war principles." The Court further explained that "[t]he purpose of detention is to prevent captured individuals from returning to the field of battle and taking up arms once again." *Id.* at 518; *id.* at 519 (although the AUMF "does not use specific language of detention," detention "to prevent a combatant's return to the battlefield is a fundamental incident of waging war" and thus permitted). The Court concluded that detention is

authorized in the “narrow circumstances” where necessary to prevent return to the battlefield, but may last “no longer than active hostilities.” *Id.* at 519, 520. It also concluded that indefinite or perpetual detention is not authorized. *Id.* at 521.<sup>7</sup>

The government has long acknowledged that its AUMF detention authority is informed and limited by these international law-of-war principles. *See* Resp’ts’ Mem. Regarding the Gvt’s Detention Authority Relative to Detainees Held at Guantanamo Bay at 1, *In Re Guantanamo Bay Detainee Litigation*, No. 08-mc-442 (TFH) (D.D.C. Mar. 13, 2009) (dkt. no. 1689) (“Principles derived from law-of-war rules governing international armed conflicts, therefore, must inform the interpretation of the detention authority Congress has authorized for the current armed conflict.”) (citing Geneva Conventions). The D.C. Circuit has also held that domestic law may limit the government’s detention authority. *See Al-Warafi v. Obama*, 716 F.3d 627, 629 (D.C. Cir. 2013). In addition, domestic and international law both specifically require as part of the government’s detention authority that a detainee’s property, including money and other valuables, must be returned to him upon repatriation.

U.S. Department of the Army Regulation 190-8, Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees (1 Oct. 1997), is domestic law that constrains the government’s AUMF detention authority. *See Al-Warafi*, 716 F.3d at 629. It applies to all U.S. armed forces, and “implements international law, both customary and codified, relating to [prisoners of war and civilians] which includes those persons held during military operations

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<sup>7</sup> As Justice Souter explained in his opinion concurring in the *Hamdi* judgment, when a court is asked to infer detention authority from a wartime resolution such as the AUMF, it must assume that Congress intended to place no greater restraint on liberty than was unmistakably indicated by the language it used, which, given the qualified “necessary and appropriate” force language of the AUMF, necessarily suggests that AUMF detention authority is equally limited. 542 U.S. at 544 (quoting *Ex Parte Endo*, 323 U.S. 283, 300 (1944)).

other than war.” Army Reg. 190-8, § 1-1(b). “The principal treaties relevant to this regulation are the [Geneva Conventions].” *Id.* Regulation 190-8 also governs procedures for the transfer and repatriation of detainees. *Id.* §§ 3-14 (prisoners of war); 6-16 (civilians). In particular, it requires that personal property must be returned to the released or repatriated detainee, including money and other valuables. *Id.* §§ 3-14(d) (prisoners of war); 6-16(b) (civilians).<sup>8</sup>

Army Regulation 190-8 is consistent with the longstanding rule under the law of armed conflict that a prisoner’s property is protected from permanent confiscation. For example, the annexed regulations to the 1907 Hague Convention provide that all of a prisoner’s personal belongings, “except arms, horses and military papers, remain their property.” Annex to the Hague Convention Respecting the Laws and Customs of War on Land art. 4, Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 631. The rule applies specifically in the context of international armed conflicts, fought between nation-states and governed by the Third and Fourth Geneva Conventions. *See* Geneva Convention (III) Relative to the Treatment of Prisoners of War art. 18, Aug. 12, 1949, 6 U.S.T. 3316 (“Sums of money carried by prisoners of war may not be taken away from them except by order of an officer, and after the amount and particulars of the owner have been recorded in a special register and an itemized receipt has been given. . . . and shall be returned . . . at the end of their captivity.”); Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War art. 97, Aug. 12, 1949, 6 U.S.T. 3516 (“Monies, cheques, bonds, etc., and valuables in [civilians’] possession may not be taken from them except in

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<sup>8</sup> In the case of individuals such as Mr. Ameziane, who the government has claimed are not entitled to prisoner-of-war status, the regulation specifically states that “[a]ll personal effects, including money and other valuables,” of the individual must be safeguarded, inventoried and recorded, and “[u]pon release, the [individual] will be given all articles, moneys or other valuables impounded during internment.” *Id.* §§ 6-3(a), (c)-(e); 6-16(b). Here, the government has returned what little personal property Mr. Ameziane had at Guantánamo, except for his money, which the government still holds. *See* Ex. B.



accordance with established procedure. Detailed receipts shall be given therefor. . . . On release or repatriation, [civilians] shall be given all articles, monies or other valuables taken from them during internment . . . with the exception of any articles or amounts withheld by the Detaining power by virtue of its legislation in force. If the property of [a civilian] is so withheld, the owner shall receive a detailed receipt.”).

State practice also establishes the rule against appropriating a detainee’s property as a norm of customary international law applicable to non-international armed conflicts, which are waged with armed groups rather than between nation-states, and which are governed by Common Article 3 of the Geneva Conventions.<sup>9</sup> *See* Jean-Marie Henckaerts & Louise Doswald-Beck, 1 *Customary International Humanitarian Law* Rule 122 (Int’l Comm. of the Red Cross, Cambridge Univ. Press reprint, 2009); *see also* Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, June 8, 1977, art. 4(2)(g), 16. I.L.M. 1442.<sup>10</sup>

International human rights law likewise further supports the rule that a prisoner’s property, including money and other valuables, must be returned to him upon release or repatriation. *See, e.g.*, Standard Minimum Rules for the Treatment of Prisoners art. 43(2), adopted by the First U.N. Congress on the Prevention of Crime and the Treatment of Offenders (1955), approved by the U.N. Econ. & Soc. Council, E.S.C. Res. 663(C) (XXIV) (31 July 1957) and E.S.C. Res. 2076 (LXII) (13 May 1977) (“On the release of the prisoner all [valuables, clothing and other effects belonging to a prisoner] and money shall be returned to him except in

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<sup>9</sup> The government concedes that for the purpose of its detention authority at Guantánamo, the ongoing conflict is governed by Common Article 3. *See* Exec. Order 13,492, § 6, 74 Fed. Reg. 4897, 4899 (Jan. 22, 2009); *see also Hamdan v. Rumsfeld*, 548 U.S. 557, 628-32 (2006).

<sup>10</sup> Examples of state practice relating to Customary International Humanitarian Law Rule 122 are available at [http://www.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule122](http://www.icrc.org/customary-ihl/eng/docs/v2_rul_rule122).

so far as he has been authorized to spend money or send any such property out of the institution, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him.”).

Finally, similar to rules applicable under international law, an individual who is aggrieved by an unlawful seizure or deprivation of property pursuant to domestic law is entitled to move for its return when there are no criminal proceedings pending against him. *See* Fed. R. Crim. P. 41(g); *United States v. Martinson*, 809 F.2d 1364, 1366-67 (9th Cir. 1987). In ruling on such a motion, as in exercising its habeas jurisdiction, a court must take into account all equitable considerations. *See* 809 F.2d at 1367; *In re Singh*, 892 F. Supp. 1, 3 (D.D.C. 1995). Moreover, where a claimant substantially prevails in the proceeding, he may recover interest. *See* 28 U.S.C. § 2465(b)(1)(C); *United States v. \$515,060.42 in U.S. Currency*, 152 F.3d 491, 504 (6th Cir. 1998) (“To the extent that the Government has actually or constructively earned interest on seized funds, it must disgorge those earnings along with the property itself when the time arrives for a return of the seized *res* to its owner.”).

Accordingly, it is beyond serious dispute that Mr. Ameziane is entitled to the return of his money with interest, and any other relief that the Court deems necessary and appropriate.

**II. The Court Has Equitable Habeas Authority to Remedy the Injury to Mr. Ameziane Caused by the Deprivation of His Property**

There is no serious dispute that this Court has equitable habeas authority to fashion a practical remedy to mitigate the specific harm to Mr. Ameziane caused by his prior detention. That remedy can take one of two forms here: an order compelling the government to return his money, or a favorable ruling on the merits of his habeas petition which would have the same practical effect of compelling the government to return his money, with interest.

As explained in Mr. Ameziane's motion for release, the Court has equitable habeas authority to dispose of this case as justice and law require based on its unique facts and circumstances. *See* 28 U.S.C. § 2243 ("The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require."). Since the 17th Century, courts in England and America with authority to dispose of habeas corpus petitions have been governed by equitable principles. *See Sanders v. United States*, 373 U.S. 1, 17 (1963); *Boumediene v. Bush*, 553 U.S. 723, 780 (2008) (citing *Schlup v. Delo*, 513 U.S. 298, 319 (1995)). "Indeed, common-law habeas corpus was, above all, an adaptable remedy. Its precise application and scope changed depending upon the circumstances." *Boumediene*, 553 U.S. at 779; *Jones v. Cunningham*, 371 U.S. 236, 243 (1963) (habeas is not a "static, narrow, formalistic remedy; its scope has grown to achieve its grand purpose"). In exercising habeas jurisdiction, courts have equitable discretion to impose flexible, pragmatic remedies that are not limited to an order of release from custody. *See Aamer v. Obama*, No. 13-5223, 2014 U.S. App. LEXIS 2513, at \*14 (D.C. Cir. Feb. 11, 2014) ("[A]lthough petitioners' claims undoubtedly fall outside the historical core of the writ, that hardly means they are not a 'proper subject of statutory habeas.'"); *see also* Brief of Eleven Legal Historians as *Amici Curiae* Supporting Petitioner, *Holland v. Florida*, 130 S. Ct. 2549 (No. 09-5327) (citing cases); *Boumediene*, 553 U.S. at 780 (common-law habeas courts often did not follow black-letter rules in order to afford greater protection in cases of non-criminal detention). "The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected." *Harris v. Nelson*, 394 U.S. 286, 291 (1969). This Court may therefore exercise its equitable habeas powers to fashion a practical remedy that compels the government to return Mr. Ameziane's money with interest. *See also id.* at 300 ("[I]n exercising this [habeas]

power, the court may utilize familiar procedures, as appropriate, whether these are found in the civil or criminal rules or elsewhere in the ‘usages and principles of law.’”).

The Court also retains its jurisdiction over this habeas case notwithstanding Mr. Ameziane’s release from Guantánamo. *See, e.g., Carafas v. LaVallee*, 391 U.S. 234, 238 (1968) (holding that “once the federal jurisdiction has attached in the District Court, it is not defeated by the release of the petitioner prior to completion of proceedings on such application”); *id.* at 239 (“[The habeas] statute does not limit the relief that may be granted to discharge of the applicant from physical custody. Its mandate is broad with respect to the relief that may be granted. It provides that ‘the court shall . . . dispose of the matter as law and justice require’ . . . [and] contemplate[s] the possibility of relief other than immediate release from physical custody.”); *Sibron v. New York*, 392 U.S. 40, 55 (1968) (holding that the mere possibility that collateral consequences may exist is sufficient to preserve a live controversy). Indeed, the D.C. Circuit has assumed that detainees transferred from Guantánamo may continue to pursue their habeas cases based on a detailed factual showing that they continue to suffer collateral consequences of their prior detention that are not speculative and may be redressed by the court. *See Gul v. Obama*, 652 F.3d 12, 16, 18 (D.C. Cir. 2011).

Here, Mr. Ameziane easily satisfies the requirement of showing that his habeas case is not moot. As explained above, as a direct consequence of his prior detention at Guantánamo and the government’s persistent claim that he, like all detainees, was properly detained without charge as part of the Taliban, Al Qaeda or associated forces, the government has refused to return money that belongs to him. As a consequence, he is presently unable to support himself and instead must rely on the uncertain, temporary charity of others – even the clothes that he wears are borrowed. He therefore has a substantial interest either in obtaining a court order

directing the government to return his property as required by U.S. and international law, which is minimally necessary to mitigate the injury caused by his prior detention, or proceeding with a full habeas hearing to obtain a ruling that his detention was unlawful, which would vitiate the government's alleged basis for withholding his funds. *See* 391 U.S. at 237-38. In either case, as with the many years he spent in detention despite his approval for transfer and the government's representations that he would be released expeditiously, it is clear that the only relief he will obtain from his present injury is that which this Court compels of the government.

**Conclusion**

For all of the foregoing reasons, Mr. Ameziane's motion should be granted and the Court should order the government to return his money, with interest, or schedule a full habeas hearing that will ultimately achieve the same result. The Court should also order any other relief that it deems necessary and appropriate pursuant to its equitable habeas authority.

Date: New York, New York  
March 7, 2014

Respectfully submitted,

/s/ J. Wells Dixon  
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