

RE: April 20, 2021 PRB Hearing for Sharqawi Al Hajj, ISN 1457

Members of the Periodic Review Board:

Thank you for the opportunity to appear before you remotely. My name is Pardiss Kebriaei, and I am Private Counsel for Sharqawi Al Hajj, ISN 1457, whom I have represented since 2015 as an attorney at the Center for Constitutional Rights (CCR). CCR has been involved in the representation of Guantanamo detainees since 2002, including in the context of providing support for reintegration after release. I have represented detainees since I began at CCR in 2007.

At the time of writing, Mr. Al Hajj has indicated that he does not plan to participate in his PRB hearing. If in fact he does not attend, his lack of participation would be a relatively unusual development tracking his worsening mental and physical condition since 2019 at least. Mr. Al Hajj engaged in the PRB process for years, beginning in 2016. In February 2017, he appeared before the Board for a full hearing and participated earnestly in the process, meeting with his Personal Representative to prepare, urging me to contact his family in Yemen for a statement of support, writing his own lengthy statement that he read in English to the Board, and answering dozens of questions from board members about his views, his behavior, his efforts at rehabilitation, and his wishes for the future. In early 2018, he met with his Personal Representative for his March 2018 File Review and encouraged my statement on his behalf. He began to withdraw from the PRB process only later in 2018, at a time when it was becoming relatively clear there would be no transfers from Guantanamo under the former administration, and I first began reporting hopeless and increasingly suicidal statements by Mr. Al Hajj, which escalated over 2019 and 2020 into actual incidents of self-harm.

Still, despite this trajectory, Mr. Al Hajj initially expressed some optimism about his hearing and a desire to participate. His change in course is potentially tragic, given a new administration and that his hearing is currently his only mechanism for possible transfer, and should be understood in the context of his clinical condition, as the statement by Katherine Porterfield in the written submission for Mr. Al Hajj explains. Even if he were to attend, the concentration, recall, and mental and physical stamina that would be required of him in a high-stakes hearing of this sort would be extremely challenging, not helped by the lack of in-person contact with his attorneys for an entire year due to COVID-19. In short, his possible absence from his hearing should not be held against him or otherwise prevent a recommendation for transfer, as the statement from the Center for Victims of Torture and Physicians for Human Rights in his submission also urges. If the Board requires additional information from Mr. Al Hajj, he should be permitted the chance to provide that information through alternate means, outside the context of a live hearing.

Dr. Porterfield's statement provides some of the mental health context for understanding Mr. Al Hajj's withdrawal so far from his hearing process. Since mid-2018, Mr. Al Hajj has gone from making general statements of hopelessness, to increasingly specific statements about wanting to end his life, to two separate incidents of actual self-inflicted violence, in August 2019 and again in March 2020. This has been alongside repeated hospitalization after prolonged periods of hunger striking, as well as longstanding issues of chronic pain and jaundice-related symptoms of weakness and fatigue that exacerbate his overall condition. From the vantage point of his

attorneys, Mr. Al Hajj's detention over the past two and a half years has appeared increasingly like a revolving door of hospitalization, Behavioral Health Unit observation, and disciplinary status for behavior likely relating to his condition, with routine memos by his counsel to JTF-GTMO reporting specific threats of imminent self-harm. The picture has appeared untenable and worsening. As Dr. Porterfield states, his mental functioning will likely continue to worsen under the status quo, to the point of possible irreparable harm.

While the government has argued in the context of Mr. Al Hajj's habeas case that his behavior is motivated by a desire to achieve a change in his conditions and not end his life, as Dr. Porterfield explains, suicide attempts can have multiple motivations and still result in death or severe injury. Mr. Al Hajj acted twice in the span of seven months to violently hurt himself, and continues to threaten repeated or worse self-injury. Separate from the question of his motivation, the risk that he will act again to seriously, and possibly irreparably, harm himself remains high. If he is malnourished or weakened due to his hunger strikes, any act of self-injury carries even higher risk. Medical care has at times been accepted by Mr. Al Hajj, who has had positive relationships with some of his providers and spoken of appreciation for their efforts. But his care at Guantanamo has not stemmed his mental deterioration, and likely cannot, if its cause is inextricably linked to his environment.

The Board will likely have questions about Mr. Al Hajj's views about the past and his hopes and prospects for the future. I would refer the Board to the statement he made at his hearing in 2017, which holds true. As he stated then, he is not the same person he was in his 20s, and has no interest in behavior that may result in more deprivation. He wants to be away from violence and negative influences, and is convinced that fighting and wars are futile. He never married and wants to. He has participated in classes during his detention and, for example, has English language skills that could serve him in future work. He understands that he would not be returned to Yemen, as does his family, and in fact does not want to return so long as there is conflict. He would accept resettlement in any safe third country.

Upon release, Mr. Al Hajj would need medical and psychological support, but he would also have other critical core support. While his parents passed away in recent years, his mother just last year, his siblings, all working with families of their own, have submitted a statement for consideration by the Board stating their ability and willingness to offer emotional and financial support to Mr. Al Hajj after release. CCR would also remain involved, as we have with numerous other resettled clients, from Uruguay to Portugal to Oman, where we have provided wide-ranging support, from liaising with in-country authorities and services to problem-solve and address needs, to providing laptops and foreign-language learning materials to assist with reintegration.

I'll end with two final points to address prior concerns of the Board. First, Mr. Al Hajj answered rigorous questioning in 2017 about his past and present conduct. Answers to additional questions about pre-capture conduct should not, 20 years later, be a precondition for a recommendation for transfer. As counsel for Mr. Al Hajj and other advocates have previously stated, detainees cannot reasonably be expected to answer questions about incriminating allegations when assurances have been sought and withheld about how their answers may be used in other proceedings.

Second, any behavior in detention the government characterizes as misconduct by Mr. Al Hajj should also not weigh against a recommendation for transfer, including any actions relating to self-harm over the past two years. Mr. Al Hajj should not be penalized with continuing detention for the likely effects of untreated mental illness and trauma. The statement from the Center for Victims of Torture and Physicians for Human Rights also speaks to this point.

In light of all of the above and the written submission for Mr. Al Hajj, his advocates would ask the Board to strictly evaluate whether Mr. Al Hajj's continuing detention remains necessary and humane after 19 years, and ultimately recommend his transfer to a safe country with appropriate support. Thank you for your consideration. I am available to answer any questions you may have about Mr. Al Hajj.