No.

IN THE

Supreme Court of the United States

AMMAR AL BALUCHI,

Petitioner,

v.

PETE B. HEGSETH, SECRETARY OF DEFENSE,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Question Presented is:

Whether the Court of Appeals erred by denying jurisdiction over Petitioner's appeal. In particular, did the Court of Appeals err by interpreting provisions of the Third Geneva Convention, incorporated by Army Regulation 190-8, to allow the United States discretion over the implementation of Mixed Medical Commission conclusions regarding sick and injured Guantanamo Bay detainees?

PARTIES TO THE PROCEEDING

Petitioner is Ammar al Baluchi (Ali Abdul Aziz Ali). Respondent is Pete B. Hegseth, Secretary of Defense.

RELATED PROCEEDINGS

United States District Court for the District of Columbia:

Al Baluchi v. Austin, No. 08-2083 (PLF), 2023 U.S. Dist. LEXIS 159826 (D.D.C. Sep. 8, 2023)

United States Court of Appeals for the District of Columbia Circuit:

Al Baluchi v. Hegseth, No. 23-5251 (D.C. Cir. 2025)

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PETITION FOR WRIT OF CERTIORARI

Ammar al Baluchi respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals is printed in the Appendix at Pet. App. 1a. The opinion of the District Court is reported at *al-Baluchi v. Austin*, No. 08-2083 (PLF), 2023 U.S. Dist. LEXIS 159826, at *33 (D.D.C. Sep. 8, 2023). It is reprinted in the Appendix at Pet. App. 10a.

JURISDICTION

The Court of Appeals issued an order and opinion respecting that order on 17 June 2025. Pet. App. 1a. This Court has jurisdiction under 28 U.S.C. 1253.

STATUTORY AND INTERNATIONAL LEGAL PROVISIONS INVOLVED

Dep'ts of Army, Navy, Air Force, and Marine Corps, Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees, Army Regulation 190-8 §3-12 (Nov. 1, 1997) ["AR 190-8"]:

> **3-12 Repatriation of Sick and Wounded EPW/RPs**
>
> a. Sick and wounded prisoners will be processed and their eligibility determined for repatriation or accommodation in a neutral country during hostilities. Both will be according to the procedures set forth below.
>
> (1) Sick and wounded prisoners will not be repatriated against their will during hostilities.
>
> (2) Procedures for a Mixed Medical Commission will be established by HQDA, according to this Regulation and Annex II of the GPW. The purpose of the Commission will be to determine cases eligible for repatriation. The Mixed Medical Commission will be composed of three members. Two of the members, appointed by the ICRC and approved by the parties to the conflict, will be from a neutral country. As far as possible, one of the neutral members will be a surgeon and

the other a physician. The third member will be a medical officer of the U.S. Army by HQDA. One of the members from the neutral country will act as chairman.

b. If for any reason the use of neutral doctors cannot be arranged for by the ICRC, the United States, acting in agreement with the Protecting Power concerned, will set up a Medical Commission. This Commission will perform the duties of a Mixed Medical Commission.

c. The Mixed Medical Commission will:

(1) Examine EPW, and RP who have applied for repatriation.

(2) Inspect clinical records pertaining to these EPW.

(3) Determine those cases eligible for repatriation or hospitalization in a neutral country.

d. Decisions made by the Mixed Medical Commission will be a majority vote and cannot be changed to the detriment of the EPW and RP examined, except upon concurrence of the Commission.

e. The decisions made by the Mixed Medical Commission on all cases will be communicated to HQDA (DAMO-ODL), NPWIC, the Protecting Power, and the ICRC, during the month following the Commission's visit. Each EPW and RP examined will be informed by the Mixed Medical Commission of the decision made on the case.

f. The United States will carry out the decisions of the Mixed Medical Commission as soon as possible and within 3 months of the time after it receives due notice of the decisions.

g. The U.S. member will arrange all administrative details to expedite the work of the Commission. Commanders concerned will assist, facilitate, and expedite the operations of the Commission to the fullest extent.

h. The EPW and RP noted below will be examined by the Mixed Medical Commission:

(1) EPW and RP designated by a camp or hospital surgeon or a retained physician or surgeon who is exercising the functions of the surgeon in a camp.

(2) EPW and RP whose applications are submitted by a prisoner representative.

(3) EPW and RP recommended for examination by the power on which the EPW and RP depend or by an organization duly recognized by that power and that gives assistance to them.

(4) EPW, RP who submit written requests. These EPW will not be examined until the EPW listed in (1), (2), and (3) above have been examined.

. . .

l. The following EPW and RP are eligible for direct repatriation:

(1) EPW and RP 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.

(2) Sick or wounded EPW and RP whose 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.

Geneva Convention (III) Relative to Prisoners of War (1949)

Article 110 – Cases of Repatriation and Accommodation

The following shall be repatriated direct:

(1) Incurably wounded and sick whose mental or physical fitness seems to have been gravely diminished.

(2) Wounded and sick who, according to medical opinion, are not likely to recover within one year, whose condition requires treatment and whose mental or physical fitness seems to have been gravely diminished.

(3) Wounded and sick who have recovered, but whose mental or physical fitness seems to have been gravely and permanently diminished.

The following may be accommodated in a neutral country:

(1) Wounded and sick whose recovery may be expected within one year of the date of the wound or the beginning of the illness, if treatment in a neutral country might increase the prospects of a more certain and speedy recovery.

(2) Prisoners of war whose mental or physical health, according to medical opinion, is seriously threatened by continued captivity, but whose accommodation in a neutral country might remove such a threat.

The conditions which prisoners of war accommodated in a neutral country must fulfil in order to permit their repatriation shall be fixed, as shall likewise their status, by agreement between the Powers concerned. In general, prisoners of

war who have been accommodated in a neutral country, and who belong to the following categories, should be repatriated:

(1) those whose state of health has deteriorated so as to fulfil the conditions laid down for direct repatriation;

(2) those whose mental or physical powers remain, even after treatment, considerably impaired.

If no special agreements are concluded between the Parties to the conflict concerned, to determine the cases of disablement or sickness entailing direct repatriation or accommodation in a neutral country, such cases shall be settled in accordance with the principles laid down in the Model Agreement concerning direct repatriation and accommodation in neutral countries of wounded and sick prisoners of war and in the Regulations concerning Mixed Medical Commissions annexed to the present Convention.

Article 112 – Mixed Medical Commissions

Upon the outbreak of hostilities, Mixed Medical Commissions shall be appointed to examine sick and wounded prisoners of war, and to make all appropriate decisions regarding them. The appointment, duties and functioning of these Commissions shall be in conformity with the provisions of the Regulations annexed to the present Convention.

However, prisoners of war who, in the opinion of the medical authorities of the Detaining Power, are manifestly seriously injured or seriously sick, may be repatriated without having to be examined by a Mixed Medical Commission.

Article 115 – Prisoners Serving a Sentence

No prisoner of war on whom a disciplinary punishment has been imposed and who is eligible for repatriation or for accommodation in a neutral country, may be kept back on the plea that he has not undergone his punishment.

Prisoners of war detained in connection with a judicial prosecution or conviction and who are designated for repatriation or accommodation in a neutral country, may benefit by such measures before the end of the proceedings or the completion of the punishment, if the Detaining Power consents.

Parties to the conflict shall communicate to each other the names of those who will be detained until the end of the proceedings or the completion of the punishment.

INTRODUCTION AND STATEMENT OF THE CASE

From 2003 to 2006, Petitioner was subjected to the Central Intelligence Agency's Rendition, Detention, and Interrogation program, where he was brutally tortured.[1] Petitioner suffers from permanent physical and psychological effects of that torture, including a traumatic brain injury, anxiety, post-traumatic stress disorder, chronic pain, sleep disturbances, and other debilitating conditions.[2] Petitioner remains in indefinite detention at Guantanamo Bay, where his health is deteriorating, and where he was diagnosed in 2022 with a progressive spinal tumor that will require surgery.[3]

A. Procedural history

Army Regulation 190-8 incorporates protections from the Third Geneva Conventions for detainees held by the United States. Among these protections is the right to evaluation by a Mixed Medical Commission ("MMC"), a panel of three medical experts, upon written request from a detainee.[4]

Following nearly two decades of physical and psychological injury through state-sponsored torture, Petitioner submitted such written request to the Department of Defense in 2020, and moved to compel the MMC in 2022, on the basis that Petitioner is an "other detainee" under AR 190-8 entitled to the same protections as enemy prisoners of war

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[1] *Al Baluchi v. Austin*, 23-5251 Letter Filed Under Fed. R. App. P. 28(j), Doc. No. 2116640 (May 20, 2025) [hereinafter "Mr. al Baluchi's 28(j) letter dated May 20, 2025"] (submitting AE 942SSSS Ruling by military judge in *United States v. Khalid Shaikh Mohammad, et al.*, finding that Mr. al Baluchi "was subjected to physical coercion and abuse amounting to torture" and suppressing his 2007 statements to FBI).

[2] Pet. App. H at 61a; Pet. App. I at 80a-83a.

[3] Pet. App. E at 37a; Pet. App. F at 46a-47a.

[4] Dep'ts of Army, Navy, Air Force, and Marine Corps, Enemy Prisoners of War, Retained Personnel, Civilian Internees and Other Detainees, Army Regulation 190-8 §3-12a, h(4) (Nov. 1, 1997) ["AR 190-8"].

["EPWs"] and retained persons ["RPs"]. In response, the government argued that in 2021, after Petitioner's written request for the MMC, the former Secretary of the Army unilaterally removed all Guantanamo Bay detainees from the protections of AR 190-8, and that Petitioner's status as a military commission defendant foreclosed his right to an MMC.[5]

The District Court rejected Petitioner's motion, holding that AR 190-8 was applicable only to international armed conflict, an interpretation without basis in the regulation and contradicting a previous District Court ruling in the case of *Al- Qahtani v. Trump*.[6] Petitioner appealed to the Court of Appeals for the District of Columbia.

During oral argument on Petitioner's appeal, the Court of Appeals queried counsel for Petitioner on the mandatory nature of an MMC release order, and counsel shortly thereafter supplemented oral argument with a letter filed under Federal Rules of Appellate Procedure, Rule 28(j) containing the International Committee of the Red Cross' Commentaries on Articles 112 and 115 of the Third Geneva Convention. The Court of Appeals thereafter found that it lacked jurisdiction over Petitioner's appeal on the separate basis that the findings of an MMC, including potential repatriation, are not mandatory for the detaining state under the Third Geneva Convention.

B. Legal background

Four successive administrations of the United States government have used the international law of war to govern the detention and treatment of detainees held on Naval Station Guantanamo Bay, Cuba.[7] The law of war is incorporated into domestic law by AR

[5] Pet. App. E at 28a-30a.

[6] 443 F. Supp. 3d 116 (D.D.C. 2020).

[7] *See generally Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), *Al-Bihani v. Obama*, 590 F.3d 866 (D.C. Cir. 2010), *Al Odah v. United States*, 321 F.3d 1134 (D.C. Cir. 2003).

190-8, a multi-service regulation providing "policy, procedures, and responsibilities for the administration, treatment, employment, and compensation of enemy prisoners of war (EPW), retained personnel (RP), civilian internees (CI) and other detainees (OD)" held by the United States.[8] The regulation states that it "implements international law, both customary and codified, relating to EPW, RP, CI, and ODs which includes those persons held in military operations other than war."[9] The regulation then lists the relevant "principal treaties" as the four Geneva Conventions of 1949.

The Third Geneva Convention ["the Convention"] was ratified in 1949, detailing humanitarian protections afforded to prisoners of war. As a signatory, the United States is bound by its provisions.

Article 110 of the Convention provides for "cases of repatriation and accommodation" of detainees, and states:

> If no special agreements are concluded between the Parties to the conflict concerned, to determine the cases of disablement or sickness entailing direct repatriation or accommodation in a neutral country, such cases shall be settled in accordance with the principles laid down in . . . the Regulations concerning Mixed Medical Commissions annexed to the present Convention.[10]

Article 112 of the Convention expands upon Article 110's directive, providing that MMCs are to be appointed upon the outbreak of hostilities to "examine sick and wounded prisoners of war, and to make all appropriate decisions regarding them."[11] The 2020 ICRC Commentary to Article 112 adds that "the decisions of the mixed medical commissions are

[8] AR 190-8 at Section 1-1(a) "Purpose."

[9] *Id.* at Section 1-1(b) "Purpose."

[10] Geneva Convention (III) Relative to the Treatment of Prisoners of War, art. 110, Aug. 12, 1949, 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135 (entered into force Feb. 2, 1956) ["GPW"].

[11] *Id.* at art. 112.

final. Neither the Convention nor the Regulations foresee the possibility for either the prisoner of war or the Detaining Power to contest the decision."[12]

Article 115 of the Third Geneva Convention states that "prisoners of war detained in connection with a judicial prosecution or conviction and who are designated for repatriation or accommodation in a neutral country, may benefit by such measures before the end of the proceedings or the completion of punishment, if the Detaining Power consents."[13] The 1960 ICRC Commentary to Article 115 states that "it is for the Detaining Power to decide whether a wounded or sick prisoner of war detained in connection with a judicial prosecution or conviction shall be allowed to benefit by repatriation or accommodation in a neutral country" under Article 110.[14] That statement does not specifically address the implementation of MMC decisions by the Detaining Powers.

On the issue of detainees such as Petitioner who are subject to judicial prosecution or conviction, the 2020 ICRC Commentary to Article 115 states:

> The wording in paragraph 2, 'detained in connection with a … conviction', means that it applies only to convicted prisoners of war whose punishment entails detention and who are serving their sentences at that time. If they are no longer detained in connection with the proceedings, for example because they have been sentenced to pay a fine or because they have been given a suspended sentence, but are still interned as prisoners of war, they benefit from the same regime as other wounded and sick prisoners of war. Their direct repatriation if they are seriously wounded or sick, or their possible accommodation in a neutral country if they are less seriously wounded or sick, may not be rejected because of their conviction.

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[12] Heleen Hiemstra, Commentary: Geneva Convention (III) Relative to the Treatment of Prisoners of War para. 4364 (Henckaerts ed., 2020), https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-112/commentary/2020 (emphasis added) ["ICRC Commentary of 2020"].

[13] GPW at art. 115.

[14] Jean de Preux, Commentary: Geneva Convention (III) Relative to the Treatment of Prisoners of War 536 (Jean S. Pictet ed., Int'l Comm. of the Red Cross 1960), https://ihl-databases.icrc.org/en/ihl-treaties/gciii-1949/article-115/commentary/1960 ["ICRC Commentary of 1960"].

> The repatriation or accommodation in a neutral country of convicted and detained prisoners of war who are wounded or sick is conditioned on the consent of the Detaining Power. Accordingly, the Detaining Power may keep the prisoners of war detained for the duration of the judicial proceedings or until they have served their sentences.[15]

Similar to the 1960 Commentary to Article 115, this statement does not specifically address any potential conflict between an MMC decision and a judicial prosecution.

Army Regulation 190-8 incorporates all mandatory provisions of Articles 110 and 112 at Section 3-12a, which states at sections c-d and f:

> c. The Mixed Medical Commission will:
> (1) Examine EPW and RP who have applied for repatriation.
> (2) Inspect clinical records pertaining to these EPWs.
> (3) Determine those cases eligible for repatriation or hospitalization in a neutral country.
> d. Decisions made by the Mixed Medical Commission will be majority vote, and cannot be changed to the detriment of the EPW and RP examined, except upon concurrence of the Commission.
> . . .
> f. The United States will carry out the decisions of the Mixed Medical Commission as soon as possible and within 3 months of time after it receives due notice of the decisions.[16]

AR 190-8 contains no language allowing the U.S. government discretion in the implementation of MMC decisions, whether for judicial prosecutions or any other reason. Additionally, the convening of an MMC by the Detaining Power upon written request from a detainee is non-discretionary under any circumstances.

[15] ICRC Commentary of 2020 at paras. 4401-4402.
[16] AR 190-8 at Sections 3-12(c), (d) and (f) "Repatriation of sick and wounded EPW/RP."

REASONS FOR GRANTING THE PETITION

I. The lower court has denied jurisdiction based on an erroneous interpretation of the law of war as applied by Army Regulation 190-8.

The Court of Appeals decision denying jurisdiction over Petitioner's appeal rests on erroneous interpretations of provisions in the Third Geneva Convention to find that the implementation of a decision of an MMC convened pursuant to Army Regulation 190-8 is discretionary for the U.S. government, rather than mandatory. The court's misinterpretation of the Convention and denial of jurisdiction bars Petitioner from invoking AR 190-8 to convene an MMC in first instance and access the medical standard of care for his numerous serious medical conditions, including a progressive spinal tumor documented by the Joint Medical Group at Guantanamo Bay.

The Court of Appeals focused on Article 115 of the Third Geneva Convention,[17] which states that "prisoners of war detained in connection with a judicial prosecution or conviction and who are designated for repatriation or accommodation in a neutral country, may benefit by such measures before the end of the proceedings or the completion of punishment, if the Detaining Power consents."[18] Pursuant to this provision, the Court of Appeals agreed with the government that even if Mr. al Baluchi were "designated for repatriation" by an MMC, the government would retain discretion over that release.[19] This interpretation of Article 115 is incorrect and contravenes the plain language of the Articles 110 and 112, the ICRC

[17] Pet. App. A at 6a-7a.

[18] GPW at art. 115.

[19] Pet. App. A at 7a.

Commentaries on these provisions, and the mandatory language of AR 190-8 implementing the Convention's MMC provisions.[20]

a. Article 110 of the Third Geneva Convention frames the United States' mandatory obligations towards sick and injured detainees.

Article 110 provides the object and purpose for Articles 112 and 115, requiring immediate ("direct") repatriation of prisoners of war who are seriously sick and wounded, or for resettlement in a neutral country for those prisoners for whom "continued captivity" seriously threatens their mental or physical health.[21] Based on medical records and individual expert opinions, Petitioner already suffers from serious medical conditions, and his continued detention at Guantanamo Bay threatens to worsen these conditions.[22]

The proper mechanism to officially determine whether Petitioner is eligible for repatriation or resettlement on medical grounds is a properly constituted MMC, as anticipated by Article 110:

> If no special agreements are concluded between the Parties to the conflict concerned, to determine the cases of disablement or sickness entailing direct repatriation or accommodation in a neutral country, such cases shall be settled in accordance with the principles laid down in . . . the Regulations concerning Mixed Medical Commissions annexed to the present Convention.[23]

Those regulations, contained at Annex II of the Geneva Conventions, use mandatory language to repeat that "[t]he Detaining Power shall be required to carry out the decisions

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[20] *See* GPW at art. 112; *See also* ICRC Commentary of 2020 para. 4365 (requiring Detaining Power to carry out decisions of MMC within three months); *See also* AR 190-8 § 3-12 (requiring United States to carry out MMC decisions within three months). The ICRC Commentary on Article 115 also reiterates this non-discretionary time limit. *See* ICRC Commentary of 2020 para. 4399 ("The Detaining Power must carry out the decision of the mixed medical commission within three months of being notified of such decision.").

[21] GPW at art. 110.

[22] Pet. App. E at 37a-40a; Pet. App. F at 45a-49a; Pet. App. G at 53a-56a.

[23] GPW at art. 110.

of the Mixed Medical Commissions within three months of the time when it receives due notification of such decisions."[24] There is no discretion in the Convention's language for the detaining power, nor room for any court to infer discretion.

AR 190-8 § 3-12(f) implements the Convention's provisions with this requirement, mandating the convening of an MMC upon written request from a detainee, and confirming that "the United States will carry out the decisions of the Mixed Medical Commission as soon as possible and within three months of the time after which it received due notice of the decisions."[25] AR 190-8 contains no provisions offering discretion to the United States regarding the implementation of MMC findings.

District court decisions have unanimously recognized the mandatory nature of the MMC decision under AR 190-8. *Al-Hawsawi v. Biden* explained that "a mixed medical commission's job is not discretionary because it makes findings about the health of an individual that lead to a result certain."[26] The purpose of MMCs—to ensure neutrality and uniform treatment based on a detainee's medical condition—bolsters this conclusion; the ICRC has noted that "the requirement that a competent tribunal make the determination was intended to rule out the possibility of arbitrary decisions being made by a local commander."[27] The *Al Qahtani* court agreed that "a mixed medical commission is designed to make findings about the health of an individual; those findings lead to a result certain, not an exercise of discretion."[28]

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[24] GPW, Annex II, art. 12, Regulations concerning Mixed Medical Commissions, Aug. 12, 1949, 6 U.S.T. 3316, T.I.A.S. No. 3364, 75 U.N.T.S. 135 (entered into force Feb. 2, 1956).

[25] AR 190-8 at Section 3-12(f) "Repatriation of sick and wounded EPW/RP."

[26] *Al-Hawsawi v. Biden*, No. 21-2907 (RJL), 2024 U.S. Dist. LEXIS 44665, at *14 (D.D.C. Mar. 12, 2024); *see also Al-Qahtani v. Trump*, 443 F. Supp. 3d 116, 127 (D.D.C. 2020).

[27] ICRC Commentary of 2020 at para. 1124.

[28] *See Al-Qahtani*, 443 F. Supp. 3d at 127.

Thus, since the United States does not have discretion regarding either the convening or the implementation of MMC findings mandating release on medical grounds for seriously ill detainees, the Court of Appeals may not decline to exercise jurisdiction over Petitioner's appeal.

b. Articles 112 and 115 of the Third Geneva Convention affirm the mandatory and non-discretionary nature of MMC decisions.

The Court of Appeals' interpretation of Article 115 removed the apparent grant of discretion from its proper context under Articles 110 and 112. Article 112 uses hortatory language stating that "upon the outbreak of hostilities, Mixed Medical Commissions shall be appointed to examine sick and wounded prisoners of war, and to make all appropriate decisions regarding them."[29] The 2020 ICRC Commentary to that article adds that "the decisions of the mixed medical commissions are final. *Neither the Convention nor the Regulations foresee the possibility for either the prisoner of war or the Detaining Power to contest the decision*."[30] Thus, the Convention's plain language and the commentary to Article 112 forecloses government discretion to retain sick and injured detainees in violation of an MMC release order.

While the Court of Appeals recognized the relevance of the ICRC commentaries,[31] it focused on the 1960 Commentary to Article 115,[32] which states, "It is for the Detaining Power to decide whether a wounded or sick prisoner of war detained in connection with a judicial prosecution or conviction shall be allowed to benefit by repatriation or

[29] GPW at art. 112.

[30] ICRC Commentary of 2020 at para. 4364 (emphasis added).

[31] Pet. App. A at 5a-7a.

[32] *Id.*

accommodation in a neutral country under Article 110, paragraphs 1 and 2."[33] The Court of Appeals, however, disregarded the next paragraph of the 1960 Commentary, which states that "In accordance with the spirit of the Convention, the Detaining Power should withhold consent only if it has good grounds for doing so and *if its refusal would not seriously impair the state of health of the prisoners concerned*."[34] Not only does this provision foreclose any discretion to the Detaining Power if continued captivity would further seriously impair the prisoner's health, but it assumes that the Detaining Power complies with the mandatory obligation to convene an MMC under Article 112, and as codified in AR 190-8. The Court of Appeals stripped Article 115 from its context to deny jurisdiction over Petitioner's appeal.

The 2020 Commentary to Article 115 appears to support the Court of Appeals' interpretation, when it states that "the Detaining Power may keep the prisoners of war detained for the duration of the judicial proceedings or until they have served their sentences."[35] However, the 2020 Commentary, unlike the 1960 Commentary, is silent on a potential conflict between judicial prosecution and an MMC finding mandating release on medical grounds. Given this lacuna, any discretion afforded must be read in context of the mandatory language of Articles 110 and 112 of the Convention governing MMCs, and of the 1960 Commentary on Article 115. The Court of Appeals, instead, isolates this provision from the object and purpose—and indeed all related text—of the Convention[36] in order to deny Petitioner jurisdiction and grant impermissible discretion to the United States in violation of the Convention and AR 190-8.

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[33] ICRC Commentary of 1960 at 536.

[34] *Id.* (emphasis added).

[35] ICRC Commentary of 2020 at para. 4402.

[36] Vienna Convention on the Law of Treaties, art. 18, May 23, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679 (entered into force Jan. 27, 1980).

II. Only this Court can conclusively settle the Question Presented and prevent irreparable harm to Petitioner.

The D.C. Circuit has previously held that irreparable harm exists "where the health of a . . . vulnerable person is at stake" and that Guantanamo detainees are, in fact, vulnerable to "further physical deterioration, and possibly death, by virtue of their custodial status at Guantanamo and weakened physical condition.[37] Petitioner's serious medical conditions mean that his right to an MMC—an independent medical evaluation—is critical.

In April 2025, a Guantanamo Bay military commission recognized that the United States government had tortured Petitioner.[38] Petitioner continues to suffer serious effects of that torture, including physical and psychological conditions documented by the Joint Medical Group over the nineteen years that he has been detained at Guantanamo Bay. Petitioner's spinal tumor continues to progress, and he is facing potential surgery at a hospital that lacks the space, equipment, and personnel needed to conduct such surgery or address contingencies that may arise.[39] One detainee has previously undergone spinal surgery at Guantanamo, in violation of the standard of care, and with tragic consequences resulting in lifelong debilitation.[40] It is no exaggeration to say that Petitioner's life depends on his right to the independent evaluation and findings of an MMC with regards to the spinal tumor and his other conditions under AR 190-8. This Court should grant certiorari and find no jurisdictional bar for the D.C. Circuit in assessing Petitioner's irreparable harm.

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[37] *See Al-Qahtani*, 443 F. Supp. 3d at 132 (quoting *Majid Abdulla Al-Joudi v. Bush*, 406 F. Supp. 2d 13, 20 (D.D.C. 2005).

[38] Mr. al Baluchi's 28(j) letter dated May 20, 2025, *supra* note 1 at 88.

[39] *E.g.* Pet. App. G at 53a-54a.

[40] *Id.*; *see also* Carol Rosenberg, Iraqi Prisoner Recovering From Emergency Surgery at Guantánamo, N. Y. Times, Nov. 23, 2022, https://www.nytimes.com/2022/11/23/us/politics/guantanamo-prisoner-surgery.html.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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November 13, 2025