[ORAL ARGUMENT NOT YET SCHEDULED]

IN THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MOHAMMED SULAYMON BARRE,

Appellant,

v.

No. 10-5203

BARACK OBAMA, et al.,

Appellees.

APPELLANT'S OPPOSITION TO GOVERNMENT MOTION FOR SUMMARY AFFIRMANCE

Appellant Mohammed Sulaymon Barre respectfully submits this response in opposition to the government's Motion for Summary Affirmance (Doc. # 1326523, filed August 29, 2011). The government's request for summary affirmance should be rejected for the reasons set forth in Appellant Barre's Motion to Govern (Doc. # 1326617, filed August 30, 2011¹).

Due to the failure of the Appellate ECF system on the evening of August 29, 2011, counsel, following instruction from the Clerk's Office, filed their Motion to Govern via ECF on the morning of August 30.

The government's response to Barre's Motion to Govern, filed today (Doc. # 1328603), recognizes that the Gul panel proceeded as if the collateral consequences doctrine applies to these habeas petitions. In its Motion for Summary Affirmance, the government noted that the Gul Court considered and "rejected each category" of the Gul petitioners' claimed collateral consequences.2 Such a factspecific analysis of individualized claims of collateral consequences has never taken place in this case. ³ To give just one example, as Barre noted in his Motion to Govern, the government has refused to provide an OFAC license to Barre's counsel to provide various forms of support to him aimed at facilitating his readjustment to life after Guantánamo. Instead, the government responded to counsel's request with a letter containing a warning that counsel could not "engage in transactions with persons or entities owned or controlled by or acting on behalf of" any designated terrorist organization. In light of the fact that the government accused every detainee at Guantánamo of some degree of association with designated organizations like the Taliban and/or al Qaeda, and then denied them the chance to clear their names in habeas by seeking dismissal after their release, the clear implication is that counsel or similarly-inclined third parties would risk criminal sanctions for providing any assistance to Barre based on his detention at Guantánamo

² See Motion for Summary Affirmance at 9-10.

The district court dismissed in a one-sentence judgment relying entirely on Judge Hogan's opinion of April 1, 2010. *See* Judgment, Dkt. 174, *Barre v Obama*, Civ. Action No. 08-1153 (D.D.C. April 30, 2010).

and designation as an "enemy combatant." It simply defies credulity to contend that this does not cause a redressable injury as a collateral consequence of Barre's continued inability to confront the false allegations against him. At the very least, he should have a chance to present those specific claims of collateral consequences—which neither the district court nor the government's response addressed—to the district court for consideration in light of the *Gul* panel's decision.

Moreover, a summary affirmance without individualized consideration of the unique factual circumstances of this case will likely result in the filing of additional petitions for reconsideration *en banc* and for certiorari. Notwithstanding the government's claims,⁴ the parties' mutual interest in judicial economy will not be served by summary affirmance.

For the foregoing reasons, Mr. Barre respectfully requests that this Court continue to hold this appeal in abeyance pending final resolution of *Gul v. Obama*, No. 10-5117, or in the alternative, remand the case to the district court.

Respectfully submitted,

/s/ sdk

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See Motion for Summary Affirmance at 11.

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Dated: September 9, 2011

CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2011, I caused the foregoing Opposition to Motion for Summary Affirmance to be filed with the Court and served on counsel for all parties, including without limitation counsel listed below, by using the appellate CM/ECF system.

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