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# United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*  
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

May 16, 2011

The Honorable Eric H. Holder, Jr.  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Dear Attorney General Holder,

We are deeply concerned that the Administration and the Department of Justice are moving forward with plans to prosecute Ali Mussa Daqduq in federal court for clear violations of the laws of war that occurred in Iraq. We strongly believe that it has always been the default presumption of this Administration and the Department to adjudicate all terror suspects and enemy combatant cases in Article III courts. Last week, during your testimony before the Senate Judiciary Committee, you essentially confirmed this presumption. We believe that favoring federal prosecutions over military commissions is flawed; in particular, the facts of this case indicate an erroneous process for determining whether referral to Article III courts is appropriate and in the best interests of our national security.

Ali Mussa Daqduq, a Lebanese national and Senior Hezbollah Field Commander with ties to Iran, is clearly a high value target and the highest ranking Hezbollah operative currently in custody. In fact, during a July 2007 coalition forces public briefing, Brigadier General Kevin Bergner identified Daqduq as a senior Hezbollah operative having a pedigree with Lebanese Hezbollah and Iran's Qods Force. Daqduq, a 24-year veteran of Hezbollah, commanded both a Hezbollah special operations unit and Hezbollah leader Hassan Nasrallah's security detail.

In 2005, Daqduq was directed by senior Lebanese Hezbollah leadership to go to Iran and work with the Qods Force to train Iraqi extremists. Daqduq trained these Iraqis on the use of explosively formed penetrators (IEDs), mortars, rockets, and other terrorist tactics. These tactics included instruction on how to conduct intelligence and kidnapping operations.

In January 2007, Daqduq orchestrated a brazen kidnapping in Karbala, Iraq, that resulted in the executions of five U.S. military personnel while in captivity. Daqduq has also coordinated the kidnapping and execution of U.S. citizens and British nationals in Iraq. Given Daqduq's ties to Hezbollah, these kidnappings are hardly a surprise. Since 2000, Hezbollah has attempted to kidnap Israeli Defense Force soldiers and was successful in capturing two Israeli soldiers in 2006.

In March 2007, Daqduq was captured in Iraq by U.S. military personnel. Also taken into custody were two brothers, Laith and Qais al Khazali, who were trained by Daqduq and founded Asaib Ahl al Haq (aka League of Righteousness and AAH). Numerous documents were found on Daqduq at the time of his capture, included a 22-page planning guide. These items, along with the corroborated interrogations of Qais and Laith Khazali, detail the Qods Force's role in the Shia terror cells inside Iraq.

In 2009, AAH demanded that both Khazali brothers be released from custody. Despite evidence implicating them in the Karbala attack, U.S. representatives in Iraq released the brothers in exchange for

the release of five U.K. citizens (four of whom were already dead on return to the British embassy). For unknown reasons, the Administration allowed this release to go through despite President Reagan's executive order (NSDD 207) prohibiting negotiations with terrorists. A July 2009 letter from Senators Sessions and Kyl to you on this matter remains unanswered.

We believe the best avenue is to try Daquduq before a military commission, rather than in a federal civilian court. His actions clearly defy the laws of war. Moreover, we are concerned that if Daquduq is left in the custody of the Iraqi government, AAH will successfully negotiate his release. There is little doubt that Daquduq will return to the battlefield and resume his terrorist activities against the United States and our interests.

We request that you respond to the following questions:

- 1.) When was the Department of Justice informed by the FBI that a criminal investigation into the actions of Daquduq and his role in the death of U.S. soldiers in January 2007 had been initiated? Was the Department involved in this decision to initiate a criminal investigation; if so, who made the decision to do so? Has Daquduq been advised of any Miranda rights? If so, when were those given?
- 2.) Have you or your designee either at the Deputy Attorney General or Associate Attorney General level consulted with the Department of Defense to determine if Daquduq's actions constituted a crime of war, rather than just a violation of federal law (e.g. 18 USC 1114)?
- 3.) Has the Department determined that Daquduq will be prosecuted in a federal civilian court? If so, who made that determination and what is the reasoning behind this decision?
- 4.) What, if any, reviews were conducted of Daquduq's detainee status and when were they completed?
- 5.) Was the Department of Defense consulted or questioned about the possibility of transferring Ali Mussa Daquduq to the Guantanamo Bay detention facility or other suitable Department of Defense facility where high value detainees are currently held? If not, why not and who made the decision to not inquire about the possibility of transfer to Guantanamo Bay or another facility?

Sincerely,

  
Charles E. Grassley

  
Orrin G. Hatch

  
Jeff Sessions

  
John Cornyn

  
Tom Coburn

# United States Senate

WASHINGTON, DC 20510

July 21, 2011

The Honorable Leon Panetta  
Secretary of Defense  
1000 Defense Pentagon  
Washington, DC 20301-1000

Dear Secretary Panetta:

We write to you today to strongly oppose the reported transfer of an extraordinarily dangerous senior Hezbollah operative, Ali Mussa Daqduq, from U.S. military custody to the Government of Iraq. We believe such a transfer puts in jeopardy the safety of our troops in Iraq.

Daqduq, as you know, is the highest ranking Hezbollah operative currently in our custody. In 2005, Daqduq was directed by senior Hezbollah leadership to go to Iran and train Iraqi extremists. Daqduq trained these Iraqis on the use of explosively formed penetrators, mortars, rockets, and other terrorist tactics and is suspected of orchestrating a brazen kidnapping in Karbala, Iraq, in 2007 that resulted in the murder of five U.S. military personnel. If he is released from custody, we firmly believe he will seek to harm or kill more American servicemen and women.

Our concern is that Iraq's current legal regime could allow for Daqduq to return to the fight either as a result of an inability to detain and prosecute him under Iraqi criminal laws, ineffective incarceration, or other challenges. We know that matters such as these remain the subject of ongoing discussions with our Iraqi partners, but we believe that the potential transfer of Daqduq to Iraqi authority could pose an unacceptable risk to U.S. national security interests.

While we may not all be in agreement on long term plans for Guantanamo Bay, that debate does not mitigate the fact that with the absence of a proposal from the Administration on how to proceed with detainees if the detention facility at Guantanamo Bay is closed, it appears that Guantanamo Bay is the only available detention facility. It is absolutely clear that the policy option that most reduces the risk to Americans' safety is the one the Administration apparently refuses to consider—law of war detention at Guantanamo with or without trial by military commission. We urge the Administration to closely evaluate the legal authority available to bring Daqduq's case before a military commission.

If he is released from United States custody, there is little doubt that Daqduq will return to the battlefield and resume his terrorist activities against the United States and our interests. For this reason, we urge you to take whatever steps you can to block Daqduq's transfer to the Iraqi Government and out of U.S. custody.

Thank you for your prompt attention on this matter.

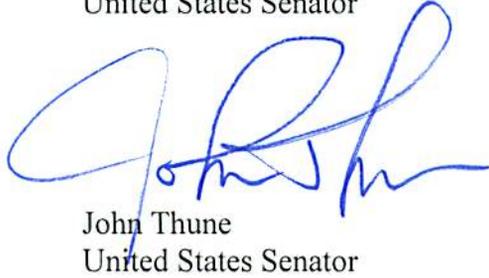
Sincerely,



John McCain  
United States Senator



Mitch McConnell  
United States Senator



John Thune  
United States Senator



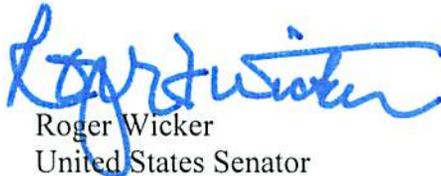
James Inhofe  
United States Senator



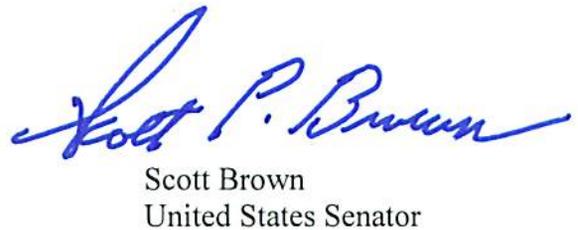
Jeff Sessions  
United States Senator



Saxby Chambliss  
United States Senator



Roger Wicker  
United States Senator



Scott Brown  
United States Senator



Kelly Ayotte  
United States Senator



Lindsey Graham  
United States Senator



David Vitter  
United States Senator



Chuck Grassley  
United States Senator

Orrin Hatch  
United States Senator

Richard Burr  
United States Senator

Roy Blunt  
United States Senator

Marco Rubio  
United States Senator

Jon Kyl  
United States Senator

Joseph Lieberman  
United States Senator

Mark Kirk  
United States Senator

Susan Collins  
United States Senator

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## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

BRUCE A. COHEN, *Chief Counsel and Staff Director*  
KOLAN L. DAVIS, *Republican Chief Counsel and Staff Director*

July 29, 2011

The Honorable Eric H. Holder, Jr.  
Attorney General of the United States  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

Dear Attorney General Holder,

On May 2, 2011, you appeared before the Senate Judiciary Committee and were asked specifically about the Department of Justice's plan to prosecute Ali Mussa Daqduq, a case with which you said you were unfamiliar. Following that hearing, on May 16, 2011, five members of the Committee wrote to you conveying our strong opposition to the possible transfer of Daqduq to the United States for trial as a common criminal defendant or to the custody of the Iraqi government. To date, we have not received a response to this letter and are deeply troubled by reports that Daqduq may now be released into Iraqi custody. Although the transfer has been temporarily halted, this plan should be permanently withdrawn.

As you are aware, Daqduq is responsible for a violent raid in 2007 that killed members of coalition forces in Iraq, including five American soldiers. Many more soldiers would have surely died if not for the heroic actions of Silver Star recipient PFC Johnathon Millican, who sacrificed his life to block an explosion from a live grenade during this raid. This attack was a clear violation of the laws of war and demonstrated Daqduq's skill, sophistication, and dedication proving the high level of threat that he poses to our soldiers. Transferring Daqduq to Iraqi custody unnecessarily risks his return to the battlefield against the United States if he is released by the Iraqi government or escapes from custody, both of which are substantiated concerns. As the Los Angeles Times recently reported, the Iraqi government released 50 prisoners jailed for crimes including murder, kidnapping, and attacks on American troops. Furthermore, the United States should not abandon our responsibility to pursue justice for this man by outsourcing that duty to Iraq.

The administration's policies regarding the prosecution of high risk terrorists are illogical and disturbing. In 2009, this administration chose to negotiate the release of Daqduq's comrades, the Khazali brothers, with AAH, a terrorist organization. These same negotiations had already been refused by the Bush Administration because the Iraqis would not commit to prosecuting the two men who were also implicated in the brazen 2007 attack orchestrated by Daqduq. General Petraeus described these men as key members of a network of extremist cells, yet this administration helped procure their release. A July 2009 letter to you on this matter also remains unanswered.

The Honorable Eric H. Holder, Jr.  
July 29, 2011  
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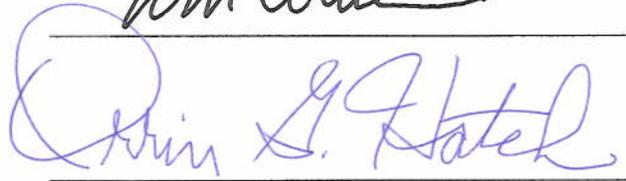
We have every reason to doubt that justice will be served if Daqduq is handed over to Iraq. It has been over ten weeks since we first raised our objections to transferring Daqduq to American soil or to the custody of the Iraqi government. Your failure to respond to that letter and the related July 2009 letter signals this administration's desire to leave Congress in the dark while it pursues a reckless course of action in the handling of high value targets. We reaffirm our opposition to the transfer of Daqduq to the Iraqi government or to the United States and continue to believe, as stated in our previous letter, that Daqduq should remain in U.S. military custody for purposes of interrogation, detention, and, if necessary, prosecution before a military commission. In addition, we request a prompt to response to the two aforementioned letters.

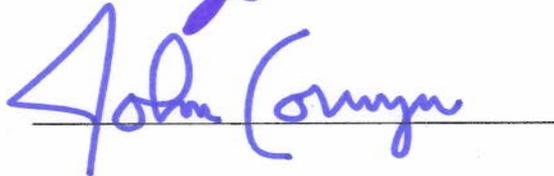
Sincerely,

  
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