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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

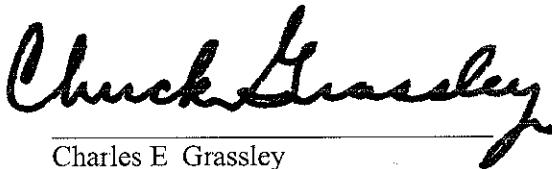
the release of five U.K. citizens (four of whom were already dead on return to the British embassy) For unknown reasons, the Administration allowed this release to go through despite President Reagan's executive order (NSDD 207) prohibiting negotiations with terrorists. A July 2009 letter from Senators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


We believe the best avenue is to try Daqduq 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 Daqduq is left in the custody of the Iraqi government, AAH will successfully negotiate his release. There is little doubt that Daqduq will return to the battlefield and resume his terrorist activities against the United States and our interests.

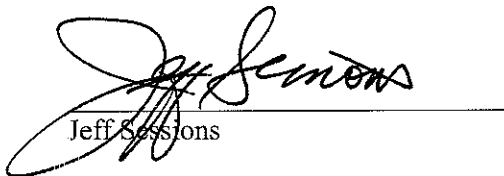
We request that you respond to the following questions:

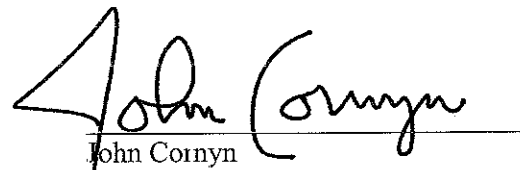
- 1.) When was the Department of Justice informed by the FBI that a criminal investigation into the actions of Daqduq and his role in the death of U.S. soldiers in January 2007 had been initiated? Was the Department involved in this decision to initiate a criminal investigation; if so, who made the decision to do so? Has Daqduq 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 Daqduq'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 Daqduq 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 Daqduq's detainee status and when were they completed?
- 5.) Was the Department of Defense consulted or questioned about the possibility of transferring Ali Mussa Daqduq 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