

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JOHN DOE,

Petitioner,

v.

GEN. JAMES N. MATTIS,
in his official capacity as SECRETARY OF
DEFENSE,

Respondent.

No. 17-cv-2069 (TSC)

ECF 106-3

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~~UNDER SEAL~~

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DECLARATION OF DONALD J. GUTER

I, Donald J. Guter, hereby declare:

1. I am currently the president and dean of South Texas College of Law Houston in Houston, Texas.
2. I formerly served in the U.S. Navy for 32 years, retiring in 2002 as a Rear Admiral, Judge Advocate General's Corps (JAGC).
3. In the JAGC, I served as trial counsel, legislative counsel, special counsel to the Chief of Naval Operations, and, ultimately, the Judge Advocate General of the U.S. Navy, a position I held from 2000–2002.
4. The 1949 Geneva Conventions, U.S. Army Field Manual, and law-of-war principles clearly prohibit the U.S. military from doing harm to or unnecessarily exposing to harm protected individuals who come under U.S. control during armed conflict, regardless of how such persons come under its control.
5. Consistent with the successful accomplishment of its mission, the U.S. military must move such persons in its custody or under its control away from a combat zone if necessary to keep them out of danger. The U.S. military also cannot unnecessarily expose such persons to danger while transporting them and, if it is detaining the person, it must do so in conditions that are as favorable to the detainee as practicable under the circumstances.
6. Additionally, by transporting any such individual, the U.S. military cannot increase the difficulty of his return to his country of citizenship.

~~—UNDER SEAL—~~

7. As a result of these principles, the U.S. military cannot release any such individual, against his will, in a place that it knows or should know is or could be dangerous to him.
8. These obligations apply by law to all protected individuals in U.S. custody or control (*i.e.*, lawful combatants and civilians). These obligations have historically applied, and in my view should continue to apply, as a matter of policy to all other individuals in U.S. custody regardless of their status. Further, all individuals in U.S. custody must be treated as protected individuals unless and until a competent tribunal has determined their status to be otherwise. It is my understanding that, to date, the Petitioner in this case has not received a hearing before a competent tribunal.
9. Reciprocity is central to the U.S. military's understanding and application of its obligations towards prisoners in its custody. Based on my military training and experience, it is critical both to American values and to the safety of our own servicemembers that we treat actual or alleged enemy fighters as we want our adversaries to treat our own servicemembers and citizens upon capture.
10. As a military lawyer and servicemember, I would be deeply troubled if a foreign power picked up a U.S. military person, a civilian contractor, or an ordinary citizen on a battlefield or in some other dangerous location, placed that person in a safe environment (even temporarily), and then released that person in a manner that endangered his safety. During my military service, I would have vigorously protested if our military command planned to release a suspected enemy fighter in that manner.
11. If the U.S. military's only choice were to hold a combatant or suspected combatant who is no longer of interest, or to release that person to an unsafe place against his will, I would strongly advise the government and relevant military commander to continue to hold that person until we could find a place, a country, or an acceptable nongovernment organization that agrees to keep him free from harm.
12. In the case of an American citizen, I would advise the military to bring the citizen home to the United States, provided he is not returned against his will (unless he is being extradited lawfully).
13. Based on publicly available information not only about the overall violence in Syria, but also about the fluidity of the situation there, and the risk that even areas in which there is presently no fighting could turn violent again, it would be contrary to my understanding of U.S. policy and practice and create a dangerous precedent to return an American citizen to that country. I am not aware of any precedent for releasing a U.S. citizen into such an environment.
14. Given the totality of the circumstances, I find it unreasonable to release an American citizen against his will in a war-torn country such as Syria, after the United States has detained him for nine months.

~~—UNDER SEAL—~~

15. My concerns about the proposed release are exacerbated by my understanding that the U.S. citizen in question has no passport and will have to risk his safety to leave the country and perhaps even to survive. My understanding is that there is a U.S. embassy and/or consulate in the country where the U.S. citizen is presently detained, but not in Syria, and that if the U.S. citizen were released in Syria, he would have to illegally smuggle himself out of Syria in order to access a U.S. embassy or consul.
16. Under the circumstances of this case as I understand them, the government's claim that it lacks the resources to continue to hold the U.S. citizen in question does not provide a reasonable basis to release the citizen in Syria, especially when the United States could return him to this country.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this 19th day of June, 2018



Donald J. Guter