

# United States Senate

WASHINGTON, DC 20510

August 19, 2010

Rt Hon Alex Salmond MSP  
First Minister of Scotland  
St Andrew's House, Regent Road, Edinburgh EH13DG

Dear First Minister Salmond,

We appreciate your reply dated 15 August in relation to our request for more information, dated August 10th.

We note the suggestion by Scottish Cabinet Secretary for Justice Kenny MacAskill that Senator Menendez "*appears now to be acting on his own account, rather than on behalf of the foreign relations committee.*"<sup>1</sup> That misses the point. All of the undersigned Senators, including Senator Menendez, are acting on behalf of their constituents and the families of those who perished in the Lockerbie bombing. These families deserve nothing less than a thorough investigation and, as Senate Foreign Relations Committee Chairman Sen. John Kerry made clear, a public airing of the facts.

The one and only goal in investigating this matter is clear: the full disclosure of all facts surrounding the release of Abdelbaset Ali Mohmed al-Megrahi. UK Prime Minister David Cameron has made it known that al-Megrahi's release was "*completely and utterly wrong.*"<sup>2</sup> An independent investigation with subpoena power, fully supported by both the UK and Scottish governments, is ultimately the best avenue to address the concerns that we and the families of the victims have raised. Until such an inquiry is launched, we will not stand by as an injustice remains very much alive in a villa in Tripoli. The American people – and, indeed, the people of 21 nations who suffered the loss of their loved ones – require nothing less.

In that spirit, we asked in our letter dated August 10<sup>th</sup> for full disclosure of all medical records related to al-Megrahi so that the families of the victims could make an informed judgment about the merits of Secretary MacAskill's compassionate release of the aforementioned terrorist. We are disappointed that you have thus far not done so nor have you been willing to ask the Libyan Government to provide for the release of said records. We note that al-Megrahi himself has called for the release of all documents related to his appeal.<sup>3</sup> We would be most appreciative if you would reconsider your position on whether to formally ask the Libyan Government or al-Megrahi himself to authorize the release of his medical records.

Though you have consistently claimed that all relevant information has been shared on al-Megrahi's release, we believe more critical information remains undisclosed. Below please find specific questions that we believe still need to be answered.

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<sup>1</sup> <http://news.scotsman.com/politics/Senator-39misunderstands39-says-MacAskill.6476199.jp>

<sup>2</sup> <http://www.cbsnews.com/stories/2010/07/19/world/main6692558.shtml>

<sup>3</sup> <http://scotlandonsunday.scotsman.com/news/Senators-to-issue-whistleblower-call.6475760.jp>

## Medical

In September 2008, al-Megrahi was diagnosed with prostate cancer. There was an “*informal mid-estimate of 18-24 months*” by specialists who estimated al-Megrahi’s remaining time before death.<sup>4</sup> According to these specialists, the approximate date of death would thus be March 2010.

- Why did Secretary MacAskill ultimately disregard the advice of these specialists if the earliest al-Megrahi would die was March 2010?
- We again ask for the names, medical training, number of patients seen and treated with prostate cancer, for each specialists, consultants, and palliative care teams. We also ask for the results of all laboratory tests, X-rays, scans and associated examinations, as well as accompanying notes.

On November 5, 2008, First Minister Salmond replied to Libyan Secretary Al-Baghdadi Ali Al-Mahmoudi’s October 27 letter by noting the parameters around compassionate release and the prisoner trade agreement. Salmond referenced an October 27 meeting attended by Scottish Director General for Justice and Communities Robert Gordon, Libyan Minister for Europe Abdulati Alobidi, and Libyan Foreign Minister Mousa Kousa, with Gordon commenting that it had been a “very positive meeting.”

- Why was this meeting positive? What transpired?
- We ask that you provide us full notes of this meeting.

On November 18, 2008, Mr. Gordon, Scottish Deputy Director of Criminal Justice Directorate George Burgess, and Director of Health and Care of the Scottish Prison Service Dr. Andrew Fraser met with Libyans Alobidi, Libyan Charge d’ Affairs Omar Jelban, and another official. Mr. Alobidi expressed disappointment with a High Court ruling on November 14 regarding Al-Megrahi’s request for interim liberation; the ruling stated that Al-Megrahi had to remain in prison while his appeals were underway. The ruling also stated the following about al-Megrahi’s physical condition:

*“The applicant, with the exception of some mild discomfort, remains at present symptom-free. He is sleeping and eats well. He remains independent with his daily living activities in the prison where he is held. In terms of physical support required, at this time no additional help appears to be necessary; nor has any been requested.”*<sup>5</sup>

Mr. Alobidi said that because the ruling had referred to a three month limit (of likely death), “*the hands of Scottish Ministers would be tied.*”<sup>6</sup> He added that al-Megrahi had refused to see his doctor earlier that day, apparently unhappy that the doctor’s report had not made a sufficient case to persuade the court to grant interim liberation. Mr. Gordon and Dr. Fraser said that it would be important for al-Megrahi’s relationship with the unnamed physician to be restored.

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<sup>4</sup> Redacted medical assessment dated 10 August 2009, section e, paragraph 4

<sup>5</sup> <http://www.scotcourts.gov.uk/opinions/2008HCJAC68.html>

<sup>6</sup> Document entitled “Note of Meeting – Meeting held at Meridian Court, Glasgow, on 18 November at 3:30pm”

Mr. Gordon told the Libyans that the criteria for compassionate release referred to three months but that this was not a “*hard and fast rule.*”<sup>7</sup> He also downplayed the court’s decision on interim liberation, saying it did not restrain Ministerial decision making on compassionate release. Moreover, Mr. Gordon said that the process for a prisoner transfer agreement could begin “*even if all the conditions for transfer (eg the requirement for finality) were not met at the point the application was made.*”<sup>8</sup>

Mr. Alobidi added that al-Megrahi’s death in a Scottish prison would be bad for relations between the UK and Libya.

- This meeting – and subsequent meetings – involving Dr. Fraser and Libyan officials show that Dr. Fraser was knowledgeable of and involved in the political dimensions of al-Megrahi’s release. Did Dr. Fraser make a recommendation for compassionate release based on the medical facts at hand or did these political considerations play a role as well? We believe that this is an area that should be explored in an independent inquiry.
- This meeting also shows that the Libyans, along with al-Megrahi, were frustrated by the “three month rule” and needed a doctor to show that al-Megrahi was suffering from physical symptoms regarding his ability to physically move.
- Why was Mr. Gordon so concerned about Libyan opinion that he would seemingly downplay the court’s decision on interim liberation, noting the lack of restrictions that were actually in place on a Ministerial decision for compassionate release or a prisoner transfer? Mr. Gordon went so far as to suggest that the Scottish Government could consider a prisoner transfer request even if all conditions for transfer were not met.
- How did Mr. Gordon and Dr. Fraser improve al-Megrahi’s relationship with the unnamed doctor? Did the doctor feel pressured to improve the relationship? Who was this doctor?

In June and July of 2009, four unnamed specialists examined al-Megrahi. They included two consultant oncologists and two consultant urologists from the Scottish National Health Service. Consensus among the specialists regarding al-Megrahi’s lifespan “*moved to the lower end of expectations from 10 months ago;*”<sup>9</sup> in other words, al-Megrahi would die no sooner than March 2010. Moreover, “*no specialists ‘would be willing to say’ whether or not prognosis was more or less than three months*” as of late July 2009, only three weeks before al-Megrahi was released by Secretary MacAskill.<sup>10</sup>

- Were the specialists who saw al-Megrahi in June and July of 2009 the same as those who evaluated al-Megrahi in September 2008 and throughout his treatment? How many doctors and specialists in total treated or opined on the diagnosis or treatment of al-Megrahi?

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<sup>7</sup> *ibid*

<sup>8</sup> *ibid*

<sup>9</sup> *ibid*, paragraph 5

<sup>10</sup> *ibid*, paragraph 6

- Why did Secretary MacAskill give minimal consideration to the advice he was given by the clinical specialists in late July 2009 when they indeed believed that al-Megrahi was estimated to live through March 2010? Why did he give minimal consideration to the fact that none of the specialists were willing to say whether or not al-Megrahi had three months or less to live?
- Why did Dr. Fraser give minimal consideration of this same advice from the specialists who had more training on the ailment than Dr. Fraser himself? Why bother employing the minds of specialists if their perspective would ultimately be minimized?

On July 22, 2009, Mr. Gordon met with Mr. Jelban to continue with further talks regarding al-Megrahi's release on compassionate grounds. Also in attendance was Dr. Fraser, who said a blood test taken to assess the activity of the disease confirmed that the disease activity was rising. Different treatment options had been discussed, and a new treatment had been embarked upon. Mr. Burgess and Mr. Gordon later discussed timelines and logistics of a compassionate release.<sup>11</sup>

- What new treatment had Dr. Fraser embarked on if the disease activity was rising? What were the treatment options discussed?
- If Secretary MacAskill didn't make a decision on whether he'd grant compassionate release to al-Megrahi until August 19, 2009, why were Mr. Burgess and Mr. Gordon discussing the timelines and logistics of such on July 22, 2009?

On July 24, 2009, Secretary MacAskill received an application for compassionate release from al-Megrahi. Secretary MacAskill stated, "*He [al-Megrahi] was diagnosed with terminal prostate cancer in September 2008, and I have been regularly updated on the progress of his illness...*"<sup>12</sup>

- How many regular updates did Secretary MacAskill receive? What did they report?
- We again ask for unredacted copies of each of those updates.

On August 3, 2009, an unnamed individual examined al-Megrahi. The individual found that al-Megrahi's clinical condition had declined significantly over the week prior (period July 26–August 3). The clinical assessment, therefore, was that a three month prognosis was then a reasonable estimate for the patient. Al-Megrahi was told that his future treatment would be "*symptom-control*" and both he and his family were aware that a cure was not an option.<sup>13</sup>

- Why was the unnamed individual given more weight than four specialists who were trained to treat prostate cancer? What training or clinical perspective did he or she have that the specialists did not?

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<sup>11</sup> Partially redacted document entitled, "Note of meeting with the Libyan Government: 22 July 2009"

<sup>12</sup> Document entitled "Official Report 24 August 2009," Col 18994

<sup>13</sup> Redacted medical assessment dated 10 August 2009, Section 4, Subsection F, Paragraph 2

- What tests or examinations did the unnamed individual order and review that the specialists did not have access to during the period of July 26– August 3 when al-Megrahi’s condition was alleged to have deteriorated? What exactly were the symptoms of the significant deterioration?
- We again ask for the name, medical training, notes, and numbers of patients seen and treated with prostate cancer, for the unnamed physician. We also ask for the results of all laboratory tests, X-rays, and associated examinations requested and considered during the period of July 26– August 3.

On August 4, 2009, the prison-based social work report – later included in the evaluation for al-Megrahi’s release – was completed by an unnamed Senior Social Worker at HMP Greenock. The report was heavily redacted.

- We ask for a fully unredacted copy of all sections of the social work report, to include background information, family circumstances, accommodation, and potential release plans.

On August 6, 2009, Secretary MacAskill met with al-Megrahi in HMP Greenock prison. During the meeting, al-Megrahi spoke of “*the likelihood that he will need to commence chemotherapy soon.*”<sup>14</sup>

- Which of al-Megrahi’s doctors ordered or suggested chemotherapy? Why?
- Did Secretary MacAskill tell or ask al-Megrahi’s primary care physician, the specialists, or Dr. Fraser about the planned chemotherapy? If indeed chemotherapy is a treatment designed to cure a patient of cancer or extend their life, why would al-Megrahi need chemotherapy if treatment was supposed to be limited to “*symptom-control,*” as Dr. Fraser noted in his final medical report? Moreover, did Secretary MacAskill or any of the doctors or specialists associated with al-Megrahi’s care ask about the expected lifespan of a patient beginning chemotherapy after the failure of hormone therapy?
- We also ask for a list of people who visited al-Megrahi at HMP Greenock from September 1, 2008 to his release in August 2009. In this list, we ask for the date of visit, purpose of visit, and duration of stay.

On August 10, 2009, the medical evaluation was submitted by Dr. Fraser. Though partially redacted, it summarized many points noted above. Additionally, the report relayed that clinicians who had assessed al-Megrahi had commented on his relative lack of symptoms when considering the severity and stage of his underlying disease. Also, the report highlighted that al-

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<sup>14</sup> Document entitled “Restricted – Advice to Ministers, AL-MEGRAHI, Note of meeting Wednesday 6 August 2009”

Megrahi's "*condition [of prostate cancer] did not restrict or remove Mr. Megrahi's ability to carry out any particular tasks.*"<sup>15</sup>

- Did Minister MacAskill query any of the specialists about al-Megrahi's relative lack of symptoms and total freedom of movement? Did Minister MacAskill ask any of the specialists if the relative lack of symptoms and total freedom of movement suggested al-Megrahi only had three months or less to live?
- A full medical release – to include results of blood tests, x-rays, body scans, and notes – will assist us in better understanding why al-Megrahi had a relative lack of symptoms and was not restricted or removed from carrying out any particular tasks. We again ask for a full release of al-Megrahi's medical records.

On August 20, 2009, Minister MacAskill made his decision public, that he was declining the release of al-Megrahi under the prisoner transfer agreement but releasing him instead on grounds of compassion.<sup>16</sup>

- As a condition of his compassionate release, al-Megrahi is supposed to provide monthly medical reports to Scottish officials. We ask that you provide us copies of these monthly medical reports.

### Legal

In July 2009, the Scottish Prison Services had obtained information on the proposed place of detention in Libya.<sup>17</sup>

- When did the SPS begin discussions with the Libyan Government on the proposed place of detention? Who from SPS was involved? What information or requirements did they relay to the Libyan Government? What was promised?

On August 5, 2009, the Governor of HMP Greenock, Malcolm Milennan, submitted his assessment of al-Megrahi, as required for compassionate release consideration. Mr. Milennan believed it highly unlikely that al-Megrahi would reoffend and opined that the prisoner's prognosis was extremely bleak.<sup>18</sup>

- What was the evidence used to sustain Mr. Milennan's belief that al-Megrahi would not reoffend with physical or material support given that he was unrepentant of his crime?

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<sup>15</sup> Redacted medical assessment dated 10 August 2009, Section 4, Subsection F, Paragraph 4

<sup>16</sup> Document entitled "Official Report 24 August 2009" Col 190002

<sup>17</sup> Document entitled "*Restricted – Advice to Ministers, Memo,*" from Secretary MacAskill on 14 August 2009

<sup>18</sup> *Ibid*, Section 6, Subsections D and F

On August 24, 2009, during Parliamentary questioning, Secretary MacAskill said, "*When Mr. al-Megrahi chose to make representations in person, clear advice was given to me that that request could hardly be denied.*"<sup>19</sup>

- Who gave Secretary MacAskill that "clear advice?"

On August 24 2009, Secretary MacAskill said that "...*Assurances were given to me by the Libyan Government, and I regret that they were not upheld*" regarding the celebration al-Megrahi received upon returning to Libya.<sup>20</sup>

- What assurances did MacAskill ask for? And why did he do so if, in fact, Secretary MacAskill made his decision to release al-Megrahi "*without consideration of political, economic, or diplomatic considerations?*"<sup>21</sup>

### Foreign Relations

On June 22, 2009, Mr. Burgess wrote the unnamed head of the North Africa Team for the Foreign and Commonwealth Office requesting clarification regarding whether the UK made an agreement with the US that al-Megrahi would serve his entire sentence in the Scotland. The letter is partially redacted.

- We again ask for a fully unredacted copy of this letter.

On July 16, 2009, Minister MacAskill wrote to the UK Secretary for Foreign and Commonwealth Affairs to ask for clarification regarding whether the UK made an agreement with the US that Mr. al-Megrahi would serve his entire sentence in the Scotland. While the UK wrote a letter on July 3rd saying no such agreement existed, Secretary MacAskill noted that the Foreign and Commonwealth Office did not provide any documentation to support this view. The document is heavily redacted.

- We again ask for a fully unredacted version of the letter.
- What conversations were held between Scottish officials and UK Foreign and Commonwealth Office between May 5 and July 6, 2009?

On July 31, 2009, Qatari Minister for International Cooperation and Acting Minister of Business and Trade Khalid bin Mohammed al-Attiyah wrote to Secretary MacAskill regarding al-Megrahi.

- This correspondence is missing. We ask for a copy of this letter.

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<sup>19</sup> Document entitled "Official Report 2 September 2009" Col 19025

<sup>20</sup> Document entitled "Official Report 24 August 2009" Col 19006

<sup>21</sup> Document entitled "Official Report 24 August 2009" Col 19005

In closing, we highlight two final issues you raised in your letter. First, you asked us to confirm that the allegation that BP influenced Scottish Ministerial decisions as related to al-Megrahi's release is without foundation. Unfortunately, the record of facts is incomplete and we are left with circumstantial evidence that shows commercial influences likely played a role in the release of al-Megrahi. We certainly know that BP lobbied the UK Government in 2007 regarding the Prisoner Transfer Agreement (PTA), fearing that delay in ratification could have a "negative impact" on BP's exploration agreement with Libya.<sup>22</sup> Former UK Ministers Miliband and Straw have both gone on the record stating that trade – most especially the BP / Libya deal – was a major consideration as they and your government negotiated the particulars of the PTA with Libya.<sup>23 24</sup> Indeed, dozens of letters confirm that both you and Secretary MacAskill were in constant contact with these and other UK officials during the same period of time regarding the same issue – al-Megrahi and the PTA. While we acknowledge that your government made clear your opposition to al-Megrahi being included in the agreement, we also note your March 18, 2008 letter to then-UK Minister Jack Straw. You concluded the letter by stating that your Scottish Government would "simply have to deal with the consequences" of the failure to exclude al-Megrahi from the PTA.<sup>25</sup>

What is now uncertain is how your government dealt with those consequences. Predictably, this is an outcome of releasing redacted documents and not allowing sworn testimony by critical witnesses as chosen by an independent investigator with subpoena authority who is fully supported by your and Prime Minister Cameron's governments. It is also an outcome of your government's unwillingness to review whether a decision to release al-Megrahi was in fact correct when faced with the fact that he is still alive one year after release. An admission of error of judgment and fact would be a critical step in the right direction in repairing relations with the families and in building a better precedent for future considerations of similar cases. We call on you to do so.

Finally, you noted in your last letter that Scottish Ministers are accountable only to the Scottish Parliament and people. We absolutely concur and would find it unacceptable to suggest anything else. Indeed, the rightful pride of the Scottish people is that they can demand accountability of their government. However, as has been outlined above, there is an abundance of outstanding issues that you are unable to address when questioned by the Scottish people, let alone the US Senators who are representing the concerns of the families of 189 American victims. The fact remains that the people of Scotland, the people of the UK, and indeed families in 21 nations that lost loved ones deserve to have full disclosure of all facts related to the mistaken release of al-Megrahi.

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<sup>22</sup> <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/7892770/US-senators-demand-BP-records-on-Libya-lobbying.html>

<sup>23</sup> <http://www.telegraph.co.uk/news/newstoppers/politics/6140801/Jack-Straw-admits-Lockerbie-bombers-release-was-linked-to-oil.html>

<sup>24</sup> <http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm091012/debtext/91012-0005.htm>

<sup>25</sup> Letter from Scottish First Minister Alex Salmond to UK Justice Minister Jack Straw, dated 18 March 2008

Until the Scottish and UK governments launch a truly independent and comprehensive investigation, we will continue to work aggressively on behalf of the families that we represent.

Sincerely,



ROBERT MENENDEZ  
United States Senator



FRANK R. LAUTENBERG  
United States Senator



CHARLES SCHUMER  
United States Senator



KIRSTEN E. GILLIBRAND  
United States Senator