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Judge Is Urged To Intervene For Detainee Held in Iraq

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WASHINGTON, Feb. 7 -- Lawyers for a 44-year-old naturalized American citizen have been pressing a federal district judge to intervene in their client's case, saying that he had been arrested and held in Iraq for more than a year without being charged or given access to a lawyer.

But the Justice Department, in its first formal response, said on Tuesday that the prisoner, Shawqi Ahmad Omar, was not a businessman who was in Iraq simply looking for construction contracts, as his lawyers assert. He is, department officials said in a brief, a close associate of Abu Musab al-Zarqawi, the leader of Al Qaeda in Iraq, and he may be guilty of war crimes.

In its papers, the officials said that Mr. Omar had been captured in Baghdad harboring an Iraqi insurgent and four Jordanian foreign fighters who entered Iraq illegally and admitted that they went there to fight American forces.

The officials added that the Jordanians said that Mr. Omar was plotting to kidnap foreigners from Baghdad hotels, using his fluency in English gained during his years in the United States. The government said that when he was arrested, his house contained weapons and materials for making improvised bombs.

Mr. Omar's lawyers have asked Judge Ricardo M. Urbina to review his case, which they have asserted has resulted in wide-scale violations of the rights to which he is entitled as a United States citizen. They have also asked Judge Urbina to block any transfer of Mr. Omar to Iraqi government custody, which they said would be a ruse by the United States to avoid federal court jurisdiction.

The Justice Department argued that Mr. Omar was not in military custody, the basis under which his lawyers say a federal judge has jurisdiction over his case. The officials asserted that he was held by the Multi-National Force, a coalition of 27 nations that is assisting Iraq at the request of the United Nations.

To support that argument, the Justice Department included an affidavit from Maj. Gen. John D. Gardner, who describes himself as the commander of detainee operations for the multinational force. While there are, in fact, other nations represented in the military coalition in Iraq, the detention system run by the military in Baghdad is widely regarded as an essentially American-led system. General Gardner has been described regularly in news reports as commander of the American-managed detention system in Iraq.

Nonetheless, the case of Mr. Omar -- an American citizen arrested in Iraq by the military authorities -- presents a new situation for the courts, which are already grappling with several questions involving the conflict between national security interests and civil liberties. Courts have had to deal with issues involving American citizens arrested in the United States and Afghanistan and those held at Guantanamo Bay, Cuba, but Mr. Omar's case appears to be the first one before a federal court of an American citizen detained in Iraq.

Jonathan Hafetz of the Brennan Center for Justice at New York University, one of several American lawyers representing Mr. Omar, said before the government filing that "neither we nor his family know why he is being held." He added, "We're asking the court to provide him with the due process rights he is entitled to as an American citizen."

Mr. Hafetz said that Mr. Omar's wife had been told by American consular officials that her husband was to be transferred to Iraqi custody. "As an interim matter, we're trying to prevent any middle-of-the-night transfer to circumvent the federal court's jurisdiction," Mr. Hafetz said.

The lawsuit, which was filed against the secretary of the Army, is being brought in Mrs. Omar's name because her husband is unavailable to sign papers, the lawyers said.

The papers filed on Mrs. Omar's behalf say that her husband had gone to Iraq after the overthrow of Saddam Hussein in hope of obtaining contracts on reconstruction work. His lawyers say that Mr. Omar was born in Kuwait to Jordanian parents and he served in the Minnesota National Guard and became a citizen in 1986. The government said he retained his Jordanian citizenship as well.