



december 2007

legal updates...

Supreme Court Hears Arguments in Key Guantánamo Case

On December 5, 2007, the U.S. Supreme Court heard arguments in the key Guantánamo case, *Al Odah v. United States / Boumediene v. Bush*. The case marks the third time the case of the detainees has come to the Supreme Court. In each prior case, the Supreme Court decided against the government and for the men detained at Guantánamo.

In 2004, in the case *Rasul v. Bush*, the highest court in the United States decided that a non-citizen detained based only on the President's assertion that he is an "enemy combatant" – must have an opportunity to challenge his detention in court through a fundamental remedy known as *habeas corpus*. In 2006, in *Hamdan v. Rumsfeld*, the Supreme Court ruled that the President does not have the authority to establish military trials that violate U.S. laws.

In *Al Odah / Boumediene*, the case that was heard on December 5, the detainees at Guantánamo again urged the Supreme Court to recognize their right to challenge their detention in a U.S. court.

The detainees at Guantánamo have received support in this case from a broad range of people including former federal judges, former military officers, former diplomats, legal historians, and 383 British and European parliamentarians. All assert that the men detained at Guantánamo in U.S. custody have a right to bring a challenge to their detention within U.S. courts.

At the time of the argument, and in the day before, there were protests and vigils in cities and towns across the United States. Many people in Boston, New York, Washington D.C., as well as many smaller towns, protested the continued detention of hundreds of men in Guantánamo without charge or trial for nearly six years.

Saudis, Afghans, Jordanians Repatriated from Guantánamo Bay

On November 5, eight Afghans and three Jordanians were returned to their home countries.

On November 9, 14 Saudi citizens were repatriated from Guantánamo Bay to Saudi Arabia. The total number of Saudis who were ever held in Guantánamo is approximately 129. Following this repatriation, only approximately 22 Saudis remain at the detention camp.

The three Jordanian detainees returned home have been released. After their return to Saudi Arabia, Saudi detainees are generally released after a short period in detention. Afghan detainees, on the other hand, face an uncertain fate and potential long-term detention after their transfer from Guantánamo to Afghan custody. Many recently released Afghan detainees are being returned to a newly constructed "security wing" of Pule-Charkhi prison. This wing of the prison was built by the U.S. government and the U.S. is involved in interrogations and security there.

Guantánamo Detainee Case Proceeds in European Court of Human Rights

Boumediene and others v. Bosnia and Herzegovina is the first case on behalf of Guantánamo prisoners before an international tribunal. It is also the first case to address the issue of what the responsibility is of other countries that assisted the U.S. in transferring men to Guantánamo. The case was brought by the law firm of WilmerHale, the U.S. attorneys for the detained men. In November, several organizations filed documents to the court supporting the detainees in the case. The organizations who offered their support were the Center for Constitutional Rights (CCR), Interights, and the International

Commission of Jurists.

The petitioners in the case are Bosnian Algerians detained in Guantánamo for nearly six years. They are some of the same men who were involved in the case that was heard by the U.S. Supreme Court on December 5. The men were first detained in Bosnia after the United States government sent a letter to the Bosnian government requesting their detention. After an extensive investigation in Bosnia produced no evidence to justify the arrests, the judge of Bosnia's Supreme Court ordered the men to be released for lack of evidence. However, immediately upon their release, the men were transferred to Guantánamo where they have been detained without charge since January 2002.

One of the issues the European Court of Human Rights will rule on is whether Bosnia has an obligation to do more to try to get its citizens and residents out of Guantánamo. The Bosnian government helped put the men in Guantánamo when it delivered them to U.S. authorities immediately after they had been cleared of any wrongdoing by a Bosnian court. This is the first case that addresses the responsibility of a country for these violations. The European Court of Human Rights is one of the strongest and most respected international human rights tribunals, and its decisions are enforceable.

U.S. Supreme Court Rejects Algerian Detainee's Petition

On November 13, the U.S. Supreme Court refused to consider the case of a Guantánamo Bay detainee fighting U.S. plans to return him to Algeria. Ahmed Belbacha, an Algerian held in Guantánamo, stated that his life was in danger, and that he would face torture and persecution if returned to Algeria.

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Belbacha is eligible for release from Guantánamo, but is seeking asylum in a safe third country. "Belbacha cannot safely return to Algeria," his lawyers wrote in asking the Supreme Court to take the case. Belbacha was an accountant in Algeria, but fled to Pakistan after facing threats against his life and enforced military service.

There are approximately fifty men detained in Guantánamo who cannot be returned to their home countries for fear of torture or persecution. Half of these men have been cleared for release but have no country that has agreed to accept them.

ADVOCACY UPDATES

Attorneys for Man Detained in CIA Secret Detention for Years Ask to Provide Information About Secret Detention to U.S. Congress

On November 1, CCR attorneys sent a letter to U.S. Senators asking them for an opportunity to present information on the experiences of Majid Khan. Khan, a former "ghost detainee," was held in CIA secret custody for several years. He was transferred in September 2006 to Guantánamo. He had been denied access to attorneys for one year after his arrival at Guantánamo. In October 2007, Khan met for the first time with his attorneys. His attorneys are subject to stringent restrictions on their ability to discuss Khan's experiences in CIA secret detention.

Shortly after their return from Guantánamo Bay, the two lawyers who met with Khan asked the Senators for a meeting to discuss Khan's experiences in CIA secret detention. No meeting has taken place yet.

Despite Position on Waterboarding and Torture, Mukasey Confirmed as Attorney General

Despite his controversial position on waterboarding and torture, Michael Mukasey was confirmed on November 8 as Attorney General, replacing Alberto Gonzales. Mukasey was confirmed by a 53-40 vote. His confirmation followed weeks of public debate sparked by his refusal to label waterboarding and other "enhanced interrogation techniques," torture. Waterboarding is controlled drowning. Water is poured over the face of the victim so that it is forced into the lungs. It has been reported that the U.S. government has used waterboarding on detainees in CIA secret detention. It is reportedly one of the coercive interrogation tactics that President Bush has authorized, even though these tactics have been categorized as torture. Mukasey's refusal to label waterboarding as torture was widely seen as an attempt to prevent prosecution against those government officials responsible for ordering the use of torture techniques at Guantánamo Bay and in CIA secret detention.

2003 Guantánamo Manual Leaked, Reveals Lack of ICRC Access

On November 16, the 2003 Standard Operating Procedures Manual for Camp Delta at Guantánamo Bay Naval Base was released on the Internet. It was released through an anonymous leak on the website, wikileaks.org. (The manual can be downloaded from the CCR website, www.ccrjustice.org.) The manual describes many of the details of the operation of Guantánamo at the time. It includes rules about everything from mail and facilities operations to medical care, religious practice, and interrogations.

The manual restricts Red Cross access to Guantánamo prisoners. This is a direct violation of Common Article III the Geneva Convention of 1949. The manual states that "All detainees will have a level of ICRC contact designated for them" - the four levels being "No Access," "Restricted," "Unrestricted," and "Visual." Yet the Geneva Convention on the treatment of prisoners of war states that the ICRC "shall have access to all premises occupied by prisoners of war," be able

to interview the prisoners without witnesses present, and that the "duration and frequency of these visits shall not be restricted."

CCR Launches "Beyond Guantánamo" Campaign

The Center for Constitutional Rights launched a new campaign, "Beyond Guantánamo." This campaign is intended to build public pressure upon the U.S. Government to shut down Guantánamo and ensure basic Constitutional rights. The CCR campaign includes multimedia presentations, videos, an extensive media campaign, and action items, including a campaign to send a copy of the U.S. Constitution to President Bush. More than 30,000 people have responded to this campaign saying that they are angered that President Bush has undermined the U.S. Constitution during his presidency.

The "Beyond Guantánamo" campaign is designed to draw attention to the many ways—at Guantánamo and elsewhere—the current U.S. administration has engaged in an assault upon basic constitutional and human rights, and to educate people about how they can work to restore the Constitution and move "beyond Guantánamo."

about the news briefing..

This news briefing is produced monthly by the Center for Constitutional Rights, which coordinates the representation of detainees at Guantánamo Bay with a network of over 500 pro bono habeas counsel. It is translated into Arabic and Dari and is available online at <http://www.ccrjustice.org/learn-more/reports/Guantanamo-newsletter>

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