

Faces of Guantánamo:
Indefinite Detention



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Introduction

On January 11, 2012, the Tenth Anniversary of the opening of the detention facility at Guantánamo Bay, the legal and symbolic status of the prison has shifted. For most of its early existence, Guantánamo's practice of indefinite and incommunicado detention was an exceptional outlier, a radical departure from America's stated commitment to constitutionalism and human rights. More than any Bush administration policy, Guantánamo represented the arrogation of excessive executive power, the abandonment of law and human rights, anti-Muslim bias and hysteria—a toxic mix that produced a regularized system of torture, abuse and dehumanization.

As a presidential candidate and in his first days in office, Barack Obama himself understood Guantánamo to be anomalous, illegal and dangerous, often speaking eloquently about the exception it represented to American values and the damage it did to America's reputation in the world. Indeed, in his second day in office, President Obama issued an Executive Order to shutter Guantánamo's dreadful gates.

Now, ten years after its opening and three years after the president promised to close it, Guantánamo is becoming a normal and potentially permanent feature of American law and policy. The normalization of indefinite detention without trial is a tragic development for American institutions and for the individual men (and their families) who remain inextricably trapped in its noxious web.

In this Report, CCR identifies how Guantánamo changed from exceptional to normal, and profiles the painful stories of the 171 remaining men who are now entering their second decade of indefinite detention without charge or trial.

President Obama's Decision to Continue Indefinite Detention Without Charge or Trial

On his second day in office, President Obama signed an Executive Order requiring that Guantánamo be closed within one year. Soon after, he established a Guantánamo Review Task Force made up of high-ranking members of the Defense Department, State Department, Justice Department, National Security Council and CIA. This inter-agency task force reviewed the cases of all of the 240 then-remaining Guantánamo detainees.

In a major speech delivered at the National Archives in May 2009, President Obama announced the Task Force's findings. At the outset, he called for Guantánamo to be closed. He recognized that, "instead of serving as a tool to counter terrorism, Guantánamo became a symbol that helped Al Qaeda recruit terrorists to its cause. Indeed," Obama said, "the existence of Guantánamo likely created more terrorists around the world than it ever detained." The Task Force made certain recommendations to aid the President's goal of closing Guantánamo. First, it recommended that

126 detainees be cleared for transfer from Guantánamo on the grounds that they never had or no longer posed a threat to the United States.¹ Second, the Task Force recommended that 44 detainees be slated for trial in civilian courts or in the flawed military commission system the Obama administration decided to revive after initially suspending it.

The Task Force's most disturbing recommendation was that 48 prisoners should be imprisoned indefinitely without any trial—not even in a flawed commission proceeding. Obama asserted that this was because these men were “too dangerous to transfer but not feasible for prosecution” in “either federal court or a military commission.” Who are such people? Obama suggested that “[e]xamples of that threat include people who have received extensive explosives training at Al Qaeda training camps, commanded Taliban troops in battle, expressed their allegiance to Osama bin Laden, or otherwise made it clear that they want to kill Americans.”

This asserted premise for indefinite detention was brazen, unprecedented and thoroughly illegitimate. First, as a factual and conceptual matter, such a category is a null set. There can be no individual that is “too dangerous” unless the asserted dangerousness can be evidenced by some prior bad act sufficient to justify a criminal prosecution. Put another way, if receiving “explosives training” at an Al Qaeda camp was not serious enough or sufficiently connected to acts of terrorism, one cannot be considered dangerous enough to justify an indefinite deprivation of liberty. Second, Obama's public pronouncements about the supposed activities which rendered detainees too dangerous to release, had never been tested objectively; confessions of such activity may well have been extracted through the use of torture or other forms of coercion. Thus, the basis for the President's speculation turns on evidence that was often old, coerced, based on hearsay, and thus substantially unreliable.²

Most importantly, accepting indefinite detention crosses America over a dangerous Rubicon: permitting government officials to predict an individual's future dangerousness through secret, untestable and potentially illegitimate criteria is incompatible with the most elementary principles permeating this country's constitutional tradition. Individuals imprisoned by the government (outside of temporally and geographically-limited context of a genuine battlefield capture) must either be given a fair trial or released.

Obama tried to assuage concerns about this dramatic departure from American legal and human rights norms by announcing that “we must have clear, defensible and lawful standards for those who fall in this category. We must have fair procedures so that we don't make mistakes. We must have a thorough process of periodic review, so that any prolonged detention is carefully evaluated and justified.” The proposal thus displaced the well-worn guarantees of an independent criminal

¹ For a discussion of the fate of 89 remaining prisoners who have been “cleared for transfer,” but still languish in Guantánamo, see CCR's companion report, “Faces of Guantánamo: Resettlement,” which is available at ccrjustice.org/closegtmo/resettlement

² For a discussion of the use of torture and coercion at Guantánamo, see CCR's companion report, “Faces of Guantánamo: Torture,” which is available at ccrjustice.org/closegtmo/torture

process in favor of a novel internal deliberation process conceived, implemented and reviewed by the very military and Executive Branch officials announcing that these men are too dangerous to release.

Two years later, in March 2011, the Obama administration introduced an outline for that “process of periodic review.” Yet no regulations or other details have been disclosed to date concerning how the review process will work in practice. All requests from detainee counsel for this information have been ignored or rebuffed by the government.

In addition to reinforcing the very basis upon which George W. Bush established Guantánamo, this speech set Obama’s own distinctive justification for indefinite detention. He cannot claim to have inherited such justifications from Bush. Meanwhile, two of the 48 men consigned to indefinite detention have since died at Guantánamo.

The Consignment of Yemeni Detainees to Indefinite Detention

Although Obama’s Guantánamo Review Task Force cleared 28 Yemeni nationals for immediate transfer or repatriation, in 2010 the Obama administration chose to block their rightful release. The catalyst for this decision was the hysterical reaction, primarily from those on the political right, following the capture of an alleged would-be plane bomber Umar Farouk Abdulmutallab on a plane bound for Detroit on Christmas Day 2009. Although he is Nigerian, Abdulmutallab had allegedly been recruited for this action in Yemen. In response to the hysteria that greeted news of his Yemeni connection, Obama once more capitulated to pressure, announcing a moratorium on the release of any Yemenis. This moratorium is still in place today, with no sign of when, if ever, it will be lifted.

Thirty other Yemenis are also indefinitely detained. When the Guantánamo Review Task Force issued its report, the authors conjured up a new classification for these men—“conditional[]” detention –which the Task Force claimed justified holding them until the security situation in Yemen improved. However, no mention was made of how or when this required improvement would be assessed. Thus, these 30 Yemenis, and the 28 discussed above, are all being detained indefinitely without charge or trial.

The D.C. Circuit Court of Appeals' Transparent Hostility to Habeas Corpus Claims Brought by Guantánamo Detainees

In June 2008, the United States Supreme Court ruled in *Boumediene v. Bush* that Guantánamo prisoners have constitutionally-guaranteed habeas corpus rights and that, therefore, all the prisoners must have a “meaningful” opportunity to challenge the legal and factual basis of their detention. As a result, the District Court of the District of Columbia began adjudicating the merits

of numerous habeas petitions, entertaining claims that prisoners were factually innocent of the allegations against them; that testimony produced against them was based on torture, coercion and hearsay and thus profoundly unreliable; and that the legal definition of “enemy combatant” proffered by the Executive Branch was too broad. The District Court concluded that the government bore the burden of proving by a “preponderance of the evidence” that a detainee was “part of” Al Qaeda or the Taliban, such that the individual was subject to such organization’s quasi-military chain of command. Guantánamo prisoners and their advocates believed that this standard was not sufficiently narrow. Nevertheless, under the District Court’s view, this standard did limit the government’s detention power and compelled the conclusion that numerous detainees could not legally be imprisoned in Guantánamo. Indeed, in approximately the first 9 months after *Boumediene*, there were 31 successful habeas petitions, and prisoners enjoyed nearly a 75% victory rate at the District Court level. But this success ended when the D.C. Circuit Court began deciding appeals.

In a series of rulings since 2010, a number of D.C. Circuit Court judges viewed the detainee legal cases through an inappropriate, political lens. By force of some of these judges, the D.C. Circuit has whittled away at the District Court’s decision that detention can only be justified if the prisoners were “part of” Al Qaeda and/or the Taliban. It has suggested that the already-low “preponderance of evidence” standard used by the District Court is still too high, and that the government’s evidence should be presumed to be correct. It has recommended that hearsay and battlefield intelligence reports be given the presumption of accuracy, despite the fact that this material is prone to being unreliable. Not one of the decisions by the D.C. Circuit has upheld a successful habeas petition by a detainee or conclusively overturned a habeas ruling in favor of the government. In promulgating such dramatically pro-government rulings and effectively denying every habeas petition it has seen, the D.C. Circuit has ordered the District Court to rubber stamp detention decisions made by the Executive Branch. This is decidedly not the function of the historic writ of habeas corpus and appears to be in open defiance of the Supreme Court’s decision in *Boumediene* mandating “meaningful” habeas review.

Senior Judge A. Raymond Randolph is one of the judges involved in this ideological skepticism of the habeas process. Judge Randolph is renowned for supporting each of the three Bush-era rulings on Guantánamo that were later overturned by the Supreme Court, and he has shown open contempt for *Boumediene* and the rights of detainees. In a speech at the Heritage Foundation in October 2010, entitled “The Guantánamo Mess,” Judge Randolph compared the justices in *Boumediene* to characters in *The Great Gatsby* by F. Scott Fitzgerald. “They were careless people,” he read. “They smashed things up ... and let other people clean up the mess they had made.” Judge Randolph finds himself on a great number of judicial panels reviewing Guantánamo habeas decisions. He authored one opinion which turns on its head the traditional role of an appellate court by rejecting as implausible in the aggregate the detailed factual findings of a District Court judge that had concluded there was insufficient evidence linking a detainee to Al Qaeda. There is no precedent for such a dramatic usurpation of the lower court’s role, and no basis for this ruling other than Judge Randolph’s own disdain for claims of Guantánamo detainees.

Another like-minded D.C. Circuit Court judge is Senior Judge Laurence Silberman who, in April

2011, while turning down an appeal by Yemeni prisoner Yasein Esmail, wrote:

In the typical criminal case, a good judge will vote to overturn a conviction if the prosecutor lacked sufficient evidence, even when the judge is virtually certain that the defendant committed the crime. That can mean that a thoroughly bad person is released onto our streets, but I need not explain why our criminal justice system treats that risk as one we all believe, or should believe, is justified. When we are dealing with detainees, candor obliges me to admit that one cannot help but be conscious of the infinitely greater downside risk to our country, and its people, of an order releasing a detainee who is likely to return to terrorism.

This outburst was particularly troubling—but also revealing. First, Judge Silberman undermined the fundamental principle that the accused must be released if there is insufficient evidence to secure a conviction. Thus, for Judge Silberman, the men held at Guantánamo are somehow exempted from rights afforded to the rest of the human race. Second, Judge Silberman talked about detainees being “likely to return to terrorism,” when most were never involved in terrorism in the first place.

These judicial predispositions have resulted in an architecture of rulings that effectively cast this category of litigants outside the protection of the laws. To ensure these detainees cannot meaningfully challenge their detention, judges on the D.C. Circuit have rejected the legitimacy of international law, accepted the admissibility of unreliable hearsay evidence, adopted an overly-attenuated legal definition of the Executive’s detention authority, and otherwise contorted itself to justify the continued detention of individuals who are innocent of any wrongdoing. Under the D.C. Circuit’s thinking, the possibility that a detainee stayed in a guesthouse that was allegedly associated with members of Al Qaeda and/or the Taliban is enough to justify ongoing detention, even where that possibility is supported by highly attenuated hearsay evidence.

Thus the Court, acting contrary to the role of the judiciary developed over centuries of adjudicating habeas corpus petitions, has acted to support and amplify the Executive’s power to detain.

Congress' Continuing Overreaction

To be sure, blame for the normalization of Guantánamo and indefinite detention cannot be laid only at the feet of the President or a court. Congress, too, has played a prominent and particularly shameful role. During the Bush Administration, Congress repeatedly acceded to the President’s desire to expand presidential detention powers and limit the rights of detainees. For example, in 2006, at the behest of the Bush Administration, Congress passed the Detainee Treatment Act, which attempted to strip the courts of jurisdiction to hear habeas petitions brought by Guantánamo detainees. Similarly, the Military Commissions Act of 2007 attempted to strengthen provisions limiting habeas corpus review (which was ruled unconstitutional by the Supreme Court in

Boumediene v. Bush) and authorized the President to try detainees via military commissions.

Since 2008, Congress has not been nearly as accommodating to the Obama presidency. Instead, it has consistently impeded the Obama administration's attempts to close Guantánamo. For example, Congress has attempted to block funding to try suspected 9/11 conspirators and other suspected terrorists in U.S. courts, blocked the release of concededly innocent detainees to U.S. soil, and has even blocked the administration's attempts to transfer detainees to third countries.

In December 2011, Congress passed a set of repressive detainee-related provisions as part of a National Defense Authorization Act of 2012 (NDAA). Among other things, the NDAA authorizes the indefinite detention, without trial, of individuals the Executive determines have provided "substantial support" to Al Qaeda, the Taliban or associated forces, and requires the military detention of any non-citizen suspected of being part of Al Qaeda, even where the individual is apprehended in the United States. These provisions effectively ratify indefinite detention as a feature of American law and designate the entire world—including the United States—as a "battlefield."

A third provision of the NDAA prohibits the president from transferring a detainee to another country—even those 89 detainees the Guantánamo Review Task Force determined should no longer be detained—unless the Defense Department can certify with near certainty that no harm will result from the transfer or affirmatively waives this certification requirement on national security grounds. This provision will prove to be particularly damaging to the prospects of current Guantánamo detainees. Congress is thus doing its part to make Guantánamo and indefinite detention permanent.

These are just some of the faces of the U.S. government's indefinite detention policy entering their second decade of imprisonment without charge or trial:

Adnan Farhan Abdul Latif

Adnan Farhan Abdul Latif, born in 1976, is one of 19 Yemenis currently held in Guantánamo whose release was recommended by the authorities, as was revealed in the military files released by WikiLeaks in April 2011. In Adnan's file, dated January 17, 2008, Rear Admiral Mark H. Buzby, the commander of Guantánamo at the time, recommended him for "Transfer Out of DoD Control," and noted that he had previously been recommended for "Transfer Out of DoD Control" on December 18, 2006.



In July 2010, Adnan's habeas corpus petition was granted by Judge Henry H. Kennedy, Jr., who noted that "the Department of Defense determined in 2004 that Latif 'is not known to have participated in combatant/terrorist training,'" and that "respondents determined in 2007 that Latif should be transferred away from Guantánamo Bay 'subject to the process for making appropriate diplomatic arrangements for his departure.'"

In granting his habeas petition, Judge Kennedy ruled that the government had failed to establish that he could continue to be detained. The judge noted that it was "undisputed that in 1994, he sustained head injuries as the result of a car accident and the Yemeni government paid for him to receive treatment at the Islamic Hospital in Amman, Jordan." Adnan said that "his treatment was incomplete," and that, in 2000, he met a man who "promised to arrange free medical care for him in Pakistan." Adnan said that he then traveled to Afghanistan, where he was told that he would be able to receive medical treatment, and was then seized as he fled to Pakistan after the U.S.-led invasion. The U.S. government alleged that the man Adnan met was an Al Qaeda facilitator, and that he attended a military training camp in Afghanistan. However, Judge Kennedy ruled that Adnan had "presented a plausible alternative story to explain his travel."

In addition, as has been noted in two reports by Amnesty International, Adnan's mental health issues have led to several attempts to commit suicide, and he has also spent time in the psychiatric ward in Guantánamo.

Despite all of the above, the government appealed Adnan's successful habeas petition, which was vacated by the D.C. Circuit Court in October 2011, when the majority judges went further than before in demanding that information produced by the government be regarded as reliable, this time asserting that intelligence reports should be given "a presumption of regularity" unless the prisoner can rebut the report "with more convincing evidence of his own." This prompted a

sharply worded dissent from Judge David Tatel, who stated that there was no reason whatsoever for his colleagues to make such an assumption about intelligence reports, which were “produced in the fog of war by a clandestine method that we know almost nothing about,” and that to do so “would, in effect, inappropriately shift the burden of proof to” the prisoner to disprove the government’s claims.

It is hoped that an appeal in Adnan’s case will prompt the Supreme Court to intervene to clarify detention standards and to rein in the Circuit Court’s overreach, but in the meantime, Adnan is still being held, over five years since he was first cleared for release.

Abdul Rahman Al-Qyati

His face is gentle, and somehow, after nearly ten years of imprisonment, serene and friendly. His hair and beard have grayed just a bit over the five years that we have known one another—too much so for a young man in his 30’s—but he is attractive and . . . gentle. He is a humble man, fond of poetry. He used to write his own poetry, but does not much anymore. He wrote a poem about birds for my young daughter, but the U.S. Government—which insists on calling him “ISN 461” instead of by his name—ordered that it remain classified, so she has never seen her poem. His perspectives on life and circumstance are a true inspiration to me. His ability to accept the profoundly perverse fate foisted upon him is bewildering to me. He still laughs easily. He is my friend now, as much as my client.

Abdul Rahman was born and raised in Saudi Arabia, but because his father was born in Yemen, he is considered a Yemeni by the U.S. officials imprisoning him. This makes all the difference, as most of the Saudi detainees have long ago been released back to their country as a result of political deal-making. Yemenis, however, are given especially unfavorable treatment at Guantánamo. There is a presidential directive currently in place prohibiting the release of any Yemeni detainees, even if they have been “cleared for transfer” after executive review of their files. So Abdul Rahman sits, imprisoned and innocent. The only “evidence” the U.S. claims against him comes from “confessions” extracted from him under brutal, unimaginable, inhuman torture inflicted upon him by American agents following his capture at a mosque in Afghanistan. In other words, there is no credible evidence against him at all.

Abdul Rahman is an innocent man. His unjust imprisonment threatens to silence the poetic voice of a beautiful man. Still, he remains gentle. I can only hope that my own children develop the character and serenity that he consistently demonstrates.

—Darold Killmer, Counsel for Abdul-Rahman

Ghaleb al-Bihani

Ghaleb al-Bihani, born in 1980, a native of Saudi Arabia and citizen of Yemen, was one of the first prisoners to have his habeas corpus petition denied. In January 2009, Judge Richard Leon ruled that he could continue to be detained at Guantánamo, even though he was only allegedly a kitchen aide for Arab forces supporting the Taliban. Ghaleb appealed this ruling, but when a three-judge panel of the D.C. Circuit Court ruled on his appeal in January 2010, Judges Janice Rogers Brown and Brett M. Kavanaugh (both nominees of George W. Bush) not only upheld Judge Leon's ruling, but also claimed that it was "mistaken" to argue that the president's war powers, granted by statutes including the Authorization for Use of Military Force, were "limited by the international laws of war."

In August 2010, a full panel of nine judges reviewed the January 2010 ruling, and declined to endorse the claims about war powers made by Judges Brown and Kavanaugh, but Ghaleb was still being held. In April 2011, his last hope, the Supreme Court, also let him down, refusing to consider his petition for certiorari. As a result, it appears that an alleged kitchen aide, who was never accused of having raised arms against U.S. or allied forces, can be held indefinitely at Guantánamo.

Mohammed al-Adahi

Mohammed al-Adahi, born in 1962, is a Yemeni, whose case is emblematic of the way in which the D.C. Circuit Court has gutted habeas corpus of all meaning. Married with two children, al-Adahi had never left Yemen until July 2001, when he took a vacation from the oil company where he had worked for 21 years to accompany his sister to her wedding in Afghanistan. Afterwards, as he traveled through Pakistan to take a plane home, he was seized on a bus and sent to Guantánamo.

In August 2009, Judge Gladys Kessler granted al-Adahi's habeas corpus petition, ruling that the government had not established that, as alleged, he "was part of the inner circle of the enemy organization al-Qaeda," even though there was "no question that the record fully supports the Government's allegation that Petitioner had close familial ties to prominent members of the jihad community in Afghanistan," and that his brother-in-law was, apparently, "a prominent man in Kandahar," and even though it was "undisputed" that Osama bin Laden "hosted and attended [the] wedding reception in Kandahar," and that al-Adahi "was briefly introduced to bin Laden."

Drawing on al-Adahi's own statements, who she saw testify live from Guantánamo, Judge Kessler accepted that there was no reason to doubt his explanation about why he traveled to Afghanistan, and noted that he had freely admitted to briefly meeting Osama bin Laden. She also refused to accept his brief attendance at the al-Farouq training camp as evidence of anything sinister, acknowledging that he "pursued training at al-Farouq to satisfy 'curiosity' about jihad, and because he found himself in Afghanistan with idle time," and noting in particular that the camp leaders expelled him after seven to ten days "for failing to comply with the rules," which included a ban on smoking.

Other ludicrous allegations—that al-Adahi was an instructor at al-Farouq in February 2000 (18 months before his arrival in Afghanistan) and that he was a bodyguard for bin Laden—were dismissed because Judge Kessler identified that both claims had been made by a prisoner for whom “the record contains evidence that [he] suffered from ‘serious psychological issues,’” and another prisoner who “suffers from serious credibility problems that undermine the reliability of his statements.”

Instead of releasing him, however, the government appealed and, in July 2010, Judge Randolph reversed Judge Kessler’s ruling, which Judge Randolph described as “manifestly incorrect—indeed startling.” Judge Randolph claimed that Judge Kessler had considered each piece of evidence on its own merits, instead of as part of a whole, and described this as a “fundamental mistake that infected the court’s entire analysis.” Judge Kessler had, in fact, examined the evidence as part of what the government contended was a “mosaic” of intelligence, to be viewed as a whole, rather than being examined in isolation, but had found the “mosaic” to be unpersuasive. In a startling departure from precedent, Judge Randolph gave no credence to Judge Kessler’s opportunity to see al-Adahi testify live and subject to the government’s cross examination.

Responding to the ruling, in which Judge Randolph also indicated that he believed the “preponderance” standard used in the habeas cases to be too high, one of Mohammed al-Adahi’s attorneys, John A. Chandler, “criticized the appeals court for reassessing the evidence being used to hold al-Adahi instead of assessing the trial court’s ruling for errors of law,” as was noted in an article at the time. Chandler explained, “The appellate court pretty clearly wanted to find he was al-Qaeda and substituted their judgment on the facts for the judgment of the trial court, when the trial court is supposed to make decisions of fact.”

These were entirely valid complaints, but disturbingly Judge Randolph has prevailed. Since his ruling in the case of Mohammed al-Adahi, every habeas corpus petition since July 2010 has been denied, as the lower court judges have been obliged to follow Judge Randolph’s order to give more credence to the government’s unverified allegations than they had been doing. In addition, five other successful petitions have been either reversed (like al-Adahi) or vacated, and sent back to the lower court to reconsider.

Musa'ab Al Madhwani

Musa'ab Al Madhwani was everybody's favorite kid in school, and his nieces' and nephews' favorite uncle. Musa'ab was the class clown, now forced to quickly grow up. He has been imprisoned at the U.S. Naval Station in Guantánamo Bay, Cuba for virtually his entire adult life.



Musa'ab was captured by Pakistani police in September 2002, while trying to get home to his native Yemen. He was severely beaten by Pakistani authorities, and then taken to two CIA-run torture prisons in Afghanistan. At the “Dark Prison”—so known because prisoners were held in permanent darkness—Musa'ab and others were held in squalid conditions, deprived of food and clean water, bombarded with loud music and horrible noises, and otherwise physically and mentally tortured in ways that seem unimaginable.

Musa'ab was then sent to Guantánamo, where the only opportunity he had to tell of his treatment came in 2005, when a military official asked him during a review board hearing, “Are you holding anything back from the interrogators?” He replied, “That is impossible, because before I came to the prison in Guantánamo Bay I was in another prison in Afghanistan, under the ground [and] it was very dark, total dark, under torturing and without sleep. It was impossible that I could get out of there alive. I was really beaten and tortured.” Under the coercion of torture, Musa'ab made false confessions that are now used to justify his imprisonment. But even the most unthinkable persecution has not crushed his love of life. Musa'ab now uses his comedic gift to try and lighten the hearts of the men with whom he is imprisoned.

Astoundingly, when Federal District Court Judge Thomas F. Hogan ruled against Musa'ab's habeas petition in December 2009, Musa'ab's first response was to comfort his grief-stricken lawyers. And we were grief-stricken; it is still impossible to understand how any rational court could have ruled against this innocent man. Inexplicably, Judge Hogan predicated his ruling on Musa'ab's own statements made in the coercive Guantánamo review board hearings, while ruling that the numerous additional coerced statements Musa'ab had made to interrogators shortly after his arrival at Guantánamo were legally unreliable. These, he said, were tainted by torture, but he refused to accept that the same was true of Musa'ab's later coerced statements, despite ample evidence to the contrary.

The notion that Musa'ab could be labeled a “terrorist” is inconceivable to all who know him. Even the judge who ruled against him found that Musa'ab is not a threat to the United States. Repeatedly questioning whether there is any real basis for his continued detention, Judge Hogan found that Musa'ab's record, including the government's own documents, “do[es] not give any basis for his continued detention” but instead shows he is “a lot less threatening” than scores of detainees the government had recently released. The court agreed with an official government agent's own assessment of Musa'ab as a young, naive, unemployed Yemeni who should be returned home. But despite these explicit findings, Judge Hogan believed his “hands [were] tied” by the “law as writ-

ten,” which he interpreted as requiring him to approve Musa’ab’s continued detention.

In spite of these profound injustices, Musa’ab does not blame the American people for any of the treatment he has suffered, and holds no grudge against them. The generosity of Musa’ab’s character is reflected, too, in every member his family. His family is very poor, yet during our visit with them in Yemen, his brother insisted on buying us gift after gift, and his sister gave me the clothes out of her own closet. Now, Musa’ab’s eyes cloud with sentimentality when I visit wearing his sister’s dress. He may well never see her, or the rest of his family, again. Memories of Musa’ab fade from the minds of his nieces and nephews. But even as our legal system has been perverted to the point of futility and my value to him as a lawyer has run dry, I will continue to visit Musa’ab, as he has become a part of my family.

—Mari Newman, Counsel for Musa’ab

Saeed Hatim

Saeed Hatim, born in 1976, is one of 19 Yemenis currently held in Guantánamo whose release was recommended by the authorities, as was revealed in the military files released by WikiLeaks in April 2011. In Saeed’s file, dated January 3, 2008, Rear Admiral Mark H. Buzby, the commander of Guantánamo at the time, recommended him for “Transfer Out of DoD Control,” and it was noted that he had previously been recommended for “Transfer Out of DoD Control” on January 9, 2007.



In December 2009, Saeed’s habeas corpus petition was granted by Judge Ricardo Urbina, who ruled that the government had failed to establish that he could continue to be detained. The government alleged that he was an al-Qaeda member who had trained at al-Farouq (the main training camp for Arabs in Afghanistan), but Saeed denied that he had ever enrolled at the camp, claiming that he admitted otherwise only because he had been tortured before he was taken to Guantánamo. Judge Urbina did not rely on the tainted statements, and also held that even if believed, they showed only that he enrolled at the camp, but “did not like anything about the training,” and then faked a fever so that he could leave.

The other main claim against Saeed—that he had fought for Al Qaeda at Tora Bora, the site of a showdown between Al Qaeda and the U.S. in December 2001—was ruled out because it was made by one of Saeed’s fellow prisoners, who, Judge Urbina said, had “exhibited an ongoing pattern of severe psychological problems while detained at GTMO.” Judge Urbina also cited an interrogator, who, in May 2002, stated, “I do not recommend [redacted] for further exploitation due in part to mental and emotional problems [and] limited knowledgeability,” and also noted that Saeed’s accuser had attempted to hang himself in his cell in February 2003, and had again tried to commit

suicide in March 2003, “saying that he had received ‘command hallucinations’ to do so.”

Nevertheless, Saeed was not released. The government appealed, and in February 2011 his successful habeas corpus decision was vacated on appeal by a three-judge panel, including Judge A. Raymond Randolph. In its ruling, the Court noted, “The district court ruled that the military could detain only individuals who were ‘part of al-Qaida or the Taliban,’ and that Hatim did not fit that description. That ruling is directly contrary to *Al-Bihani v. Obama*, which held that ‘those who purposefully and materially support’ al-Qaeda or the Taliban could also be detained.”