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Federal Court Rules that Bagram Prisoners May Challenge Detention

On April 2, 2009, federal judge John D. Bates ruled that three prisoners held at Bagram Air Force Base by the U.S. military in Afghanistan have a constitutional right to challenge their detention in U.S. federal courts – the right to habeas corpus.

Judge Bates stated in his ruling that the three detainees challenging their detention in the lawsuit are “virtually identical” to detainees held at the Guantanamo Bay Naval Base. Guantanamo detainees’ right to habeas corpus was secured in June 2008, when the U.S. Supreme Court held in *Boumediene v. Bush* that they have a constitutional right to challenge their detention.

The Bush administration had argued that because Bagram detainees were held in an active combat zone they should have no right to review in the federal courts. The Obama administration was given an opportunity to change its position and renounce those arguments, but declined to do so. In issuing this ruling, Judge Bates rejected those arguments. The three detainees whose cases will be allowed to go forward are not Afghan citizens and were captured outside Afghanistan and brought to Bagram by the United States. (For a fourth detainee, an Afghan citizen detained outside Afghanistan, the judge ordered additional briefing, and his case will not be allowed to proceed immediately.) The three men have been held for over six years without trial or charge. The opinion held that the military should not be allowed to hide detainees from the courts by bringing them from elsewhere into a combat zone for detention.

The ruling is the first extension of *Boumediene* to another overseas detention facility run by the United States military. The opinion states that the rights of detainees in such facilities will be determined on a case-by-case basis, considering factors such as whether the detainee is a citizen of the country in which the prison is located, the extent of U.S. control over the prison, the location of capture, and the length of deten-

tion.

Spanish Judge Initiates Criminal Investigation into Bush Administration Lawyers

Spanish judge Baltazar Garzon initiated an investigation of torture and war crimes by six U.S. officials on March 28, 2009, requesting that a prosecutor examine a complaint filed by Spanish attorneys against the U.S. officials.

The U.S. officials named in the complaint are former Attorney General Alberto Gonzales, John Yoo, the author of the infamous “torture memos” authorizing circumvention of the Geneva Conventions; Douglas Feith, former undersecretary of defense; William Haynes II, former general counsel for the Department of Defense; Jay Bybee, former director of the Office of Legal Counsel; and David Addington, chief of staff of former Vice President Dick Cheney.

The prosecutor must issue recommendations regarding whether a case should be opened and the jurisdiction of the court, and is expected to respond within the coming month.

Garzon in the past launched a prosecution of former Chilean dictator Augusto Pinochet, who was arrested in Britain as a result of an arrest warrant filed in the Spanish prosecution of him for his crimes.

Federal Judge Orders Detainee Released in Habeas Corpus Hearing

Guantanamo detainee Yasin Muhammed Basardh, a Yemeni man, was ordered released on March 31, 2009 by U.S. federal judge Ellen Segal Huvelle. A one-page judgment ordering Basardh’s release was issued, in which the judge stated that her reasoning for the decision (which remains classified) was explained in a closed hearing earlier in the day.

The ruling in Basardh’s case brings the total to 24 Guantanamo detainees who have been ordered released in habeas corpus

hearings. Of this 24, 21 remain in Guantanamo and have neither been repatriated nor resettled in a safe third country. 29 habeas cases have been heard to date, and over 200 have been filed in total.

Government Review Clears Guantanamo Detainee for Transfer

On March 30, 2009, the Department of Justice and the attorneys representing Yemeni Guantanamo detainee Aymen Saeed Batarfi agreed to stay his habeas corpus case, as he has been cleared for transfer by the inter-agency review of Guantanamo detainees ordered by the Obama administration. If he is not transferred within 30 days, he may resume his habeas corpus case.

Earlier in the year, the federal judge hearing Batarfi’s petition, Judge Emmet Sullivan, denounced the government’s conduct in the case, noting that numerous classified documents regarding Batarfi had been withheld from the court.

Confidential Red Cross Report Reveals Torture in Secret CIA “Black Sites”

A secret report prepared by the International Committee of the Red Cross concluded that the CIA practiced torture and cruel, inhuman and degrading treatment against the men covertly held in “ghost” detention in its secret “black sites.”

The report was produced in 2007 and remained confidential until a copy was obtained by journalist Mark Danner, who described its contents in a lengthy article in the New York Review of Books. The article, published on March 15, 2009, detailed the report’s revelations regarding the torture of CIA detainee Abu Zubaydah, among others.

The ICRC report had been submitted to the CIA and top Bush administration officials but was barred from public release. Danner did not state how he obtained the report. The ICRC did not disavow its authenticity, but
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condemned the leak. The report contained detailed descriptions of extensive torture at the hands of CIA interrogators, utilizing interviews conducted after the CIA prisoners were moved to Guantanamo Bay in September 2006.

Obama Administration Files First Claimed Definition of Detention Authority

On March 13, 2009, the Obama administration filed its first definition of its claimed authority to detain men at Guantanamo Bay. The filing ended the use of the term "enemy combatant" as a mechanism to describe those who it claimed the ability to detain. It also abandoned the most controversial claims to power to detain made by the Bush administration, which had argued that the president had the power as commander-in-chief of the armed forces to detain prisoners militarily even without any approval from Congress.

The Obama administration claims that its authority to detain comes from Congress' post-9/11 Authorization to Use Military Force (AUMF) rather than from any inherent presidential authority. The new definition proposed to the Court by the Obama administration suggests that individuals who were part of or "substantially supported" Taliban and Al Qaeda forces may be detained, as well as anyone "directly" supporting hostilities against U.S. forces. In both instances, the quoted terms represent a narrowing of the Bush administration definitions. Moreover, the new filing emphasizes that "unwitting or insignificant support" will not qualify as "substantial" support for purposes of justifying detention.

Attorneys representing Guantanamo detainees challenged the new definition in a filing on March 27, 2009, noting that the AUMF states nothing explicit about detention powers and does not expand presidential authority to detain beyond the traditional boundaries of the law of war, under which most detainees still at Guantanamo would be considered civilians and not subject to detention without charge.

Ireland and Brazil indicate willingness to accept Guantanamo refugees

On March 20, 2009, Ireland indicated that it was joining Lithuania, France, Portu-

gal, Germany, Finland, Switzerland and Sweden among European countries indicating their willingness to accept former Guantanamo detainees. European officials have also, in recent weeks, stated that they need additional information from the United States before assuming responsibility for resettlement, and indicated that the U.S. should also accept some of the men for resettlement. Also, on March 4, Brazil's top human rights official stated that Brazil is also potentially willing to resettle Guantanamo detainees needing humanitarian protection.

On March 11, the Obama administration appointed Daniel Fried, a senior diplomat and the former assistant secretary of state for European affairs as a special envoy on Guantanamo. He is expected to focus on resettlement issues.

Approximately 60 of the detainees currently held in Guantánamo cannot lawfully be sent back to their countries of origin because they face a risk of persecution or torture. They come from countries including Algeria, China, Libya, Russia, Syria, Tajikistan, Tunisia, and Uzbekistan. Others are stateless and have no country to which they can return.

Thus far, only Albania has accepted refugees from Guantánamo, accepting eight men in 2006. The U.S. has claimed that it is unable to find other safe third countries to accept the Guantánamo detainees at risk for persecution, and has resisted efforts to resettle detainees in the U.S., despite a federal judge's order to do so in the case of seventeen Uighurs (a Muslim ethnic minority from China) who are classified as non-enemy combatants.

Rights Groups Submit Allegations Against NATO Supreme Commander General Craddock Regarding Force Feeding in Guantanamo

On April 2, 2009, human rights groups submitted a formal communication to United Nations Special Rapporteurs naming U.S. Army General Bantz John Craddock, NATO Supreme Allied Commander Europe, responsible for the unlawful and unethical force-feeding of detainees on hunger strike at the Guantanamo Bay prison. President Obama recently nominated a successor to Craddock who

is awaiting confirmation.

As USSOUTHCOM Commander, General Craddock oversaw the Guantanamo detention center where torture, prolonged arbitrary detention, and other abuses occurred. In particular, General Craddock approved and had command responsibility over the unlawful and unethical force-feeding of detainees on hunger strike.

Guantanamo hunger strikers protesting their abusive detention conditions and lack of rights were and continue to be brutally force-fed through abnormally large nasal tubes while strapped into a six-point restraint chair. In 2006, General Craddock suggested that the restraint chair method served as an "effective deterrent" to hunger striking, and went so far as to joke that at least hunger strikers got to choose the flavor of the lozenges used to soothe irritation caused by the feeding tubes.

While General Craddock's replacement has been announced by the Obama administration, the groups note that the commander replacing him, U.S. Admiral James Stavridis, is the current commander that replaced Craddock in 2006. In that capacity, he has authority over Guantanamo and is responsible for having allowed and continuing to allow unlawful force-feeding to take place.

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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