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legal updates...

GUANTÁNAMO DETAINEES AND GOVERNMENT LAWYERS FILE BRIEFS IN SUPREME COURT CASE DETERMINING DETAINEES' RIGHTS TO BRING SUITS IN FEDERAL COURT

The U.S. Supreme Court will hear a consolidated case this term that will once again decide the issue of Guantánamo detainees' right to challenge their detention in federal court. This case combines *Al Odah v. United States* and *Boumediene v. Bush*. *Al Odah* consists of the first 11 habeas corpus petitions filed after the landmark Supreme Court decision in *Rasul v. Bush* in 2004; *Boumediene* is on behalf of six humanitarian workers taken to Guantánamo after the Bosnian courts ordered local authorities to release them.

On August 27, 2007, the Center for Constitutional Rights and co-counsel filed briefs in the case, arguing that detainees held in U.S. custody possess fundamental constitutional rights, and that the processes which exist are insufficient to vindicate their rights. On October 9, 2007, the government filed its opposition brief in the case.

Al Odah revisits many of the fundamental issues previously decided by the Supreme Court in CCR's case *Rasul v. Bush* in 2004, when the high court determined that detainees have a right to access the federal courts to challenge their detention. Since *Rasul*, the government has argued that, despite the ability of detainees to bring cases, they have no rights to be vindicated in U.S. courts. Moreover, since *Rasul*, Congress has passed two laws which attempt to remove the right of detainees to challenge their detention through habeas corpus - the Detainee Treatment Act in 2005, and the Military Commissions Act in 2006.

COURT OF APPEALS HEARING "DTA PETITIONS"; GOVERNMENT

CONSIDERING NEW COMBATANT STATUS REVIEW TRIBUNALS

In the Detainee Treatment Act and the Military Commissions Act, the U.S. Congress limited the rights of Guantánamo detainees to file habeas petitions to challenge the legality of their detention, and provided an inadequate alternative remedy which lawyers are currently challenging in court. The alternative remedy - a "DTA petition" - provides that detainees can file a petition to challenge their "enemy combatant" determinations in the Court of Appeals of the D.C. Circuit. The enemy combatant determinations resulted from Combatant Status Review Tribunals (CSRTs) in 2004.

In the early petitions, the Court of Appeals has demonstrated the inadequacy of this remedy. On July 20, the Court of Appeals held that the government would be compelled to provide the complete record of a detainee - all the "government information" - to both the judge and the detainee's lawyer; yet this July ruling also imposed severe limitations on the communication between attorneys and detainees. The government strongly challenged this ruling, citing the disruption that would be caused by the need to gather and provide all government information. On October 3, the Circuit Court refused to rehear this issue. In response to the government's concerns about the difficulty of compiling all government information for individual petitioners, the court suggested that the government could resolve this problem by convening new CSRTs.

On October 9, the U.S. military stated that it was considering the possibility of reconvening CSRTs for some or all detainees. Recently, two military officers who had sat on prior CSRTs in 2004 expressed strong criticism of the inadequacy of these processes. One of these men, Lt. Col. Stephen Abraham, also voiced strong opposition to the convening of new CSRTs. Said Abraham:

"Ultimately, conducting new CSRTs - even discussing the possibility - repudiates every prior assertion that the original CSRTs were valid acts. They are, in essence, both a hypocritical act as well as an act of moral cowardice."

CCR ATTORNEYS TO VISIT FORMER "GHOST" DETAINEE

On September 28, 2007, attorneys with the Center for Constitutional Rights (CCR) filed a visit request with the Defense Department to see their client, Majid Khan, who was transferred one year ago from secret CIA detention to Guantánamo. Mr. Khan and 13 other detainees were transferred from CIA detention where they were held in secret and subjected to coercive interrogation for years without official acknowledgement that they were even in US custody. Two attorneys from the Center expect to finally meet their client after a year of fighting for access. This visit will mark the first visit by civilian attorneys to Guantánamo to meet with any of the former ghost detainees designated by the U.S. government to be "high-value detainees" and imprisoned in a separate facility from the other detainees.

In September, most of the former "ghost" detainees currently at Guantánamo were provided a form by the U.S. Department of Defense notifying them of their right to an attorney. In most cases, detainees had been held for years prior to being offered access to counsel. None has yet visited with counsel.

LAWYERS SEEK TO PREVENT THE TRANSFER OF SOME DETAINEES TO COUNTRIES IN WHICH THEY WILL BE TORTURED

Lawyers, in consultation with their clients, have worked to protect the small number of refugees at Guantánamo from being transferred to countries in which they will be sub-

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jected to torture. A relatively small number of detainees - approximately 50 - are at risk of grave human rights abuses if they are repatriated to their home countries. In the last two months, there have been at least two important developments in the efforts to protect Guantánamo's refugees.

On September 24, 2007, CCR submitted a petition to the US Supreme Court asking it to intervene in the case of a Libyan Guantánamo client and prevent his transfer to Libya, where he would likely be tortured and possibly killed. The client's detention at Guantánamo - and the U.S. government's false and unsubstantiated allegations that he was associated with a group hostile to the Qadhafi regime - put him at grave risk of indefinite detention, torture, and death if forcibly returned to Libya. The petition asks the Supreme Court to issue an injunction in his case to prevent his transfer to Libya. In December 2006 and again in February 2007, the U.S. government declared its intention to transfer the detainee to Libya, notwithstanding his fears of severe persecution if he were forcibly returned. The U.S. State Department reports that, in Libya, "security personnel routinely tortured prisoners during interrogation or as punishment" and that suspected political opponents and religious Muslims face brutal repression by Libyan authorities.

In another related development, a district court judge granted a preliminary injunction on behalf of Tunisian Guantánamo detainee blocking his transfer to Tunisia, where he feared that he would be subjected to persecution and torture if returned. The Tunisian prisoner was allegedly captured for a bounty and was cleared for release in 2005; however, he was tried *in absentia* in Tunisia and sentenced to 20 years in prison. He expressed to his lawyers that he did not want to be repatriated to Tunisia because of the risks he would face if returned. On October 2, 2007, a district court judge held that "it would be a profound miscarriage of justice" if the court allowed the government to transfer the man to Tunisia despite the grave risks to his life and safety.

FEDERAL DISTRICT COURT JUDGE REVERSES DISMISSALS OF DETAINEES' CASES

On Friday, October 5, District Court Judge Ricardo Urbina reinstated 16 lawsuits filed by detainees at Guantánamo Bay challenging their detention at the U.S. naval base there. Urbina had dismissed the petitions in September despite the pending *Al Odah/Boumediene* cases, which will determine the future of all of the petitions for habeas corpus filed by Guantánamo detainees. Following Urbina's dismissals, the Department of Justice warned detainees' attorneys - including CCR attorneys and volunteer habeas counsel - that they would be barred from visiting their clients unless they filed new cases under the Detainee Treatment Act and agreed to far more restrictive parameters for legal visits and letters.

Detainees' attorneys quickly filed a motion for reconsideration, which Urbina granted on October 5, noting his concern about the actions of the Department of Justice. "This court expresses no small concern over the Department of Justice precipitously disrupting petitioners' access to their counsel," Urbina wrote.

The 16 cases now return to their prior status - on hold, pending the Supreme Court's decision in *Al Odah v. United States* and *Boumediene v. Bush*.

COURT OF APPEALS HEARS CASE BY FORMER DETAINEES

On September 14, 2007, CCR co-counsel argued the appeal of the first case filed by Guantánamo detainees seeking to hold U.S. officials accountable for the physical, psychological, and religious torture and abuse at Guantánamo. The civil case - *Rasul v. Rumsfeld* - was filed by the Center for Constitutional Rights along with co-counsel in October 2004 on behalf of four British citizens who were unjustly held for more than three years.

Rasul v. Rumsfeld was filed in October 2004 in D.C. Circuit Court on behalf of British citizens Shafiq Rasul, Asif Iqbal, Rhuheh Ahmed and Jamal al-Harith. While at Guantánamo, they were subject to repeated beatings, sleep deprivation, extremes of hot and cold, forced nudity, death threats, interrogations at gunpoint, menacing with unmuzzled dogs, religious abuse, and racial harassment. None of

the four had ever been a member of a terrorist group or taken up arms against the United States. The suit charges then-Secretary of State Donald Rumsfeld and the Pentagon chain of command with approving interrogation methods that they knew were in violation of U.S. and international law.

CCR and co-counsel's appeal before the D.C. Circuit Court of Appeals seeks to overturn a February 2006 D.C. district court decision that dismissed the plaintiffs' constitutional, Alien Tort Statute (ATS), and Geneva Convention claims and found that the defendants were entitled to qualified immunity as they were acting within the scope of their employment in authorizing or condoning "aggressive interrogation techniques." However, in a May 2006 decision, D.C. District Court Judge Ricardo Urbina upheld the plaintiffs' right to claims of religious abuse under the Religious Freedom Restoration Act, a law that was passed with overwhelming congressional support.

update on releases...

Nine detainees were recently transferred from Guantánamo. On September 27th one Mauritanian detainee, Mohamed Lemine Ould Sidi Mohamed, was transferred home to Mauritania and has since been freed.

On September 29th six Afghans, one Yemeni, and one Libyan were transferred out of Guantánamo to their home countries. In the past, those transferred to Afghanistan have been held in custody of the Afghan government for a short amount of time and then released shortly thereafter. We also recently learned that the Yemeni government has released the four Yemeni detainees who were transferred out of Guantánamo in July of 2007.

In total, there are approximately 330 detainees in Guantánamo. A total of approximately 785 detainees, overall, have been held at Guantánamo since 2002. There have been 445 detainees transferred from Guantánamo to their home countries or countries of resettlement in the last six years.

advocacy updates...

MEMBERS OF EUROPEAN PARLIAMENT SUPPORT RESETTLEMENT FOR GUANTÁNAMO'S REFUGEES

On September 26, 2007, at a press conference held at the European Parliament in Strasbourg, 68 members of the European Parliament supported a call by CCR and the International Federation for Human Rights (FIDH) for European Union countries to resettle Guantánamo detainees at risk of being transferred to countries where they are likely to face persecution or torture.

EU leaders have condemned the lawlessness of the Guantánamo detentions on numerous occasions. Yet, to date, only Albania - one of the poorest countries in Europe - has accepted a small number of Guantánamo's refugees who could not safely be returned to their home country. In early August, in a landmark policy change, the British government also called for the release of five non-nationals and their resettlement in the UK. Four of these men had previously applied for or been granted asylum due to fears of persecution in their home countries.

FIDH, CCR, and a multiparty coalition of European Members of Parliament called upon all EU member States to intervene and ask the U.S. authorities to resettle in EU countries Guantánamo detainees who are either trapped at Guantánamo because they have nowhere to go, or who will be returned to torture or persecution in their home countries.

MAJORITY OF SENATORS SUPPORT HABEAS CORPUS DESPITE REPUBLICAN FILIBUSTER

On September 19, 2007, the U.S. Senate voted on an amendment to restore the right to habeas corpus for Guantánamo and other detainees, introduced by Senators Arlen Specter, Patrick Leahy and Christopher Dodd as an amendment to the Defense Authorization Bill.

The 56-43 vote signaled the support of a majority of Senators for the ancient right of habeas corpus, suspended by the Military

Commissions Act of 2006. However, that majority vote failed to reach the votes necessary to defeat a Republican filibuster against the amendment. In the U.S. Congress, a filibuster can prevent the closure of debate if there is not the support of 60 Senators.

The Center for Constitutional Rights released the following statement following the vote:

"The Center for Constitutional Rights, which represents many of the detainees at Guantánamo Bay and coordinates the work of more than 500 pro bono attorneys working on the detainee cases, applauds the principled decision of 56 senators today to support the restoration of the right of habeas corpus to detainees held in U.S. custody.

"We saw today that a majority of our senators realize that stripping away a basic right such as habeas corpus from anybody means that everyone's rights are at stake.

"This is but one small step that Congress must take to restore the Constitution after the passage of last year's damaging Military Commissions Act, and to ensure that justice is served for the detainees at Guantánamo Bay. While this was not enough support to overcome a Republican filibuster, it is an important sign that there is increasing support for restoring the rule of law. We must preserve an individual's right to challenge an executive detention. In a democracy, no President should have the right to label someone, lock them up and throw away the key."

YEMENI PRESIDENT CALLS FOR RELEASE OF YEMENI DETAINEES

During a visit to the United States, Yemeni President Ali Abdullah Saleh called for the release and repatriation of all remaining Yemeni detainees held at Guantánamo Bay. Ninety-four Yemeni detainees remain at the U.S. naval base's detention facility.

In other news, Yemeni authorities have released four former Guantánamo detainees after more than three months in prison

since their return to Yemen. The released detainees were identified as Fawazi Noaman Hamoud, Ali Muhsen Saleh Nasser, Sadeq Mohammad Saeed Isameel and Hani Abdu Musleh Shulan. Amnesty International has appealed to President Ali Abdullah Saleh to release Guantánamo returnees who are being held in Yemeni prisons without charges or trial.

NEW YORK TIMES REPORTS ON SECRET TORTURE MEMOS

On October 4, 2007, *The New York Times* reported that the U.S. government is still holding people at CIA black sites after purporting to end the program a year ago, and is generating secret memos to propagate a program of so-called "enhanced interrogation techniques" that in reality qualify as torture and cruel, inhuman and degrading treatment.

According to the report, in 2005, despite previous public statements declaring torture to be "abhorrent both to American law and values and international norms," the Justice Department drafted two internal memos providing a legal justification for brutal interrogation methods.

The first of these secret memos was allegedly approved personally by then-Attorney General Alberto Gonzales over the objections of then-Deputy Attorney General James Comey. It provided explicit authorization to barrage terror suspects with a combination of painful physical and psychological tactics, including head-slapping, simulated drowning and frigid temperatures," the *Times* report said.

In a second secret memo produced in the summer of 2005, the Department of Justice argued that CIA interrogation methods did not violate pending legislation that would prohibit "cruel, inhuman or degrading treatment." Prior memos from the Justice Department authorizing "enhanced interrogation techniques" had previously come to light; however, these new memos were produced following the exposure of the abuse of prisoners at Abu Ghraib, the resulting scandal, and the Bush administration's disavowal of torture.

military commissions updates...

NEW CHARGES FILED AGAINST DETAINEE UNDER MILITARY COMMISSIONS ACT

On October 11, 2007, military prosecutors filed charges against Mohammad Jawad, a Pakistani detainee who was living in Afghanistan at the time he was picked up and taken into U.S. custody. Jawad is accused of attempted murder, for his alleged involvement in throwing a hand grenade at a U.S. military jeep carrying military personnel in Afghanistan in 2002.

Jawad is the fourth detainee to be charged under the Military Commissions Act of 2006, the law that created the current military commissions procedure as well as containing a host of other provisions affecting detainees' rights to access the courts and obtain a hearing. In unsealed portions of Jawad's Combatant Status Review Tribunal (CSRT) held at Guantánamo, he alleges that he confessed to participating in the grenade attack after torture by Afghan police and guards.

To date, no full military commissions have yet taken place. The first detainee to be charged, David Hicks, arranged for a plea agreement in which he pled guilty to several charges in exchange for a 9-month sentence, after which he was returned home to Australia; he served this sentence after five years of imprisonment without trial. The next two detainees to be charged, Salim Hamdan and Omar Khadr, had the charges against them dismissed by a military judge; however, these charges were recently reinstated by an appeals panel. (See below.)

Military commissions under the MCA do not satisfy fundamental due process requirements, and their procedures differ markedly from criminal trials and courts-martial under military law. Evidence obtained through coercion may be used against defendants, and secret evidence is allowed against defendants. Crimes not considered war crimes may be tried by military commission. In addition, there is no

right to a speedy trial nor is the accused required to be informed of the charges against him or her within any particular time frame.

CHIEF MILITARY PROSECUTOR RESIGNS AFTER REPORTS OF DISPUTES WITH OFFICIALS

On October 5, 2007, chief military prosecutor Col. Morris Davis resigned his position immediately following reports of internal Pentagon debates about the military commissions and charging detainees.

According to press reports, forces within the Pentagon were pressuring Col. Davis and his staff of prosecutors to produce new charges against detainees quickly, and to include bold terrorism accusations that would draw positive public attention to the military commissions process, which has been widely criticized by the legal community, the press and the public.

Col. Davis asserted that attempts by superiors to exert control over the types of charges filed damaged the integrity of the process. Davis' statements indicate that the level of influence exerted by military officials over the prosecutions is high, as well as the potential influence of political concerns on the military commissions.

The dispute within the Pentagon about the military commissions illustrates the fragility and complications of the military commissions process, a process that circumvents many legal protections and rights detainees would receive in federal criminal courts, and with far more expansive charging authority than courts-martial under military law, and indicates that disputes within the government about the future of the military commissions process continue.

MILITARY CHARGES REINSTATED AGAINST KHADR AND HAMDAN; APPEALS TO FOLLOW

On September 24, 2007, the new Court of Military Commissions Review ruled that a military judge must reinstate the charges

against 20-year-old Canadian Guantánamo detainee Omar Khadr, which he had dismissed in a June ruling due to a fundamental procedural flaw in the Guantánamo military commission process.

Khadr, like all other detainees at Guantánamo, was designated an "enemy combatant" however, his Combatant Status Review Tribunal made no determination as to whether he was an "unlawful" combatant, a distinction necessary for prosecution under the Military Commissions Act. However, the review court's ruling allows the military commission itself to rule on a defendant's combatant status before proceeding to a commission.

The review court's decision reinstates the charges against Khadr, who was picked up in Afghanistan when he was 15 years old, and Salim Hamdan, another detainee whose case was dismissed, and opens the door for the filing of new military commissions charges. Khadr's attorneys have filed an appeal with the U.S. Court of Appeals, seeking to overturn the Court of Military Commissions Review's decision.

about the news briefing..

This news briefing is produced monthly by the Center for Constitutional Rights, the New York City-based non-profit legal and educational organization dedicated to protecting and advancing the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights. CCR coordinates the representation of detainees at Guantánamo Bay with a network of over 500 pro bono habeas counsel. It is translated into Arabic and available online at

<http://www.ccrjustice.org/reports/Guantanamo-newsletter>

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