

Australian, British and US lawyers challenge detention of Guantanamo Bay prisoners

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In an internationally coordinated campaign, Australian, British and the US lawyers have launched a wide-ranging legal challenge to the Bush administration's detention of prisoners captured in Afghanistan and currently being held in Guantanamo Bay, Cuba. Attorneys representing three of the 300 Camp X-Ray prisoners—David Hicks from Australia and Shafiq Rasul and Asif Iqbal from Britain—filed a law suit in a US federal court in Washington on February 22 declaring that their clients were being held illegally and in violation of US and international legal conventions.

The litigation is being conducted as a petition for a writ of habeas corpus, that is, a request by a person in custody for a court to examine the fairness of his or her imprisonment. It names US President George W. Bush, Secretary of Defense Donald Rumsfeld and two senior officials from the Guantanamo Bay naval base—Brigadier General Michael Lehnert and Colonel Terry Carrico—as respondents.

The lawyers want the US Federal Court to order the release of the three detainees from unlawful custody and to grant them the right to legal counsel in private and unmonitored discussions with their attorneys. The attorneys have also called on the US military to cease all interrogations, direct or indirect, while the litigation is pending. Most importantly, the Federal Court is being asked to declare Bush's November 13 Military Order, under which the detainees are being held, unlawful and in violation of the US Constitution and other domestic and international legal conventions.

Lawyers Joseph Margulies of Minneapolis, Michael Ratner from the New York-based Centre for Constitutional Rights and Stephen Kenny from South Australia, are representing 26-year-old David Hicks. They were appointed at the request of David's father, Terry Hicks. Asif Iqbal and Shafiq Rasul are represented by New Orleans attorney Clive Stafford-Smith and London-based lawyer Gareth Pierce. Iqbal, who is only 20-years-old, and 24-year-old Shafiq Rasul are from Tipton, West Midlands, in England, the children of Pakistani immigrants.

A joint press statement by the detainees' lawyers declared: "The core contention of the litigation is that the United States cannot order indefinite detention without due process. The detainees have the right to challenge the legality of their detention in court."

Joseph Margulies told reporters: "There are few principles more firmly established in our law than the prohibition against arbitrary, indefinite detention. The President of the United States and the executive branch simply cannot hold a person for the rest of his life, without legal process, without judicial review, without being charged and without counsel, particularly when the possible outcome [is] the imposition of the death penalty."

South Australian lawyer, Stephen Kenny, said the legal action was in response to "a clear violation of an individual's human rights." "If David Hicks has broken any laws," Kenny told the *World Socialist Web Site*, "he should be charged and given the opportunity to defend those charges. But after three months' imprisonment he hasn't been charged with anything. Much as Rumsfeld might want, we don't have rules that allow you to be

imprisoned simply because the government or one of its allies doesn't like you."

Clive Stafford-Smith, one of the two lawyers representing Iqbal and Rasul, is a member of the Louisiana Crisis Assistance Centre, which provides legal representation to death-row prisoners. He said the detainees should be given the same legislative rights as John Walker Lindh, who is being tried in a US civil court. "The argument that people held in Guantanamo Bay have no rights means [the government] could just take out a gun and shoot them. We are asking that citizens of the United States' closest ally receive the same treatment as Americans," he said.

The legal documents explain that Hicks was captured in Afghanistan on December 9 by Northern Alliance troops fighting the Taliban and handed over to the US military on December 14. After being interrogated by the US military and Australian Federal Police he was transferred on January 12 to Guantanamo Bay. The US military has provided no information whatsoever about when or where Iqbal and Rasul were captured. Mohammed Iqbal, Asif Iqbal's father, and Skina Basil, Shafiq Rasul's mother, were not contacted by the British Foreign Office until January 21, when they were informed that their sons were being detained at Camp X-Ray.

The petition's *Statement of Facts* declares that the detainees had no involvement—"direct or indirect"—in the September 11 terrorist attacks against the US or "any act of terrorism attributed by the US to Al Qaeda or any other terrorist group". Nor did they, prior to their capture in December, attempt to cause any harm to American personnel. Their detention, the litigation states, is therefore illegal under the September 18, 2001 Joint Resolution of Congress authorising Bush to "use force against nations, organisations or persons" that planned or abetted the September 11 terrorist attacks. The Joint Resolution, the petition says, "did not authorise the indefinite detention of persons seized on the field of battle".

The legal action, the first direct challenge to US President Bush's November 13 Military Order, declares that the order is illegal on several grounds: it was not authorised or directed by Congress; is beyond the scope of the Joint Resolution on September 18; and by disallowing any legal challenge violates Article I of the US Constitution and international human rights laws.

"The Military Order," the litigation explains, "vests the President with complete discretion to identify the individuals that fall within its scope. It establishes no standards governing the use of his discretion. Once a person has been detained, the Order contains no provisions for him to be notified of the charges he may face. On the contrary, the Order authorises detainees to be held without charges. It contains no provision for detainees to be notified of their rights under domestic and international law, and provides neither the right to counsel, nor the right to consular access. It provides no right to appear before a neutral tribunal to review the legality of detainees' continued detention, and no provision for appeal to an Article III court. In fact, the Order expressly bars review by any court. Though the Order directs respondent Rumsfeld to create military

tribunals, it sets no deadline for his task. And for those detainees who will not be tried before a tribunal, the Order authorises indefinite and unreviewable detention, based on nothing more than the President's written determination that an individual is subject to its terms."

The petition says that since gaining control of the detainees, "the United States military has held them virtually *incommunicado*. They have been, or will be, interrogated repeatedly by agents of the United States Departments of Defense and Justice, though they have not been charged with an offense, nor have they been notified of any pending or contemplated charges. They have made no appearance before either a military or civilian tribunal of any sort, nor have they been provided counsel or the means to contact counsel. They have not been informed of their rights under the United States Constitution, the regulations of the United States Military, the Geneva Convention, the International Covenant on Civil and Political Rights, or the American Declaration on the Rights and Duties of Man. Indeed, the respondents have taken the position that the detainees should not be told of these rights. As a result, the detained petitioners are completely unable either to protect, or to vindicate, their rights under domestic or international law."

As evidence, the lawsuit establishes that the only communications allowed between the prisoners and their families since they were captured were a brief letter from David Hicks to his father asking for legal assistance; a US government summary of a letter written by Rasul to his parents in Britain requesting a lawyer; and a message from Iqbal to his family through the Red Cross, when he was detained in Afghanistan. The Hicks, Iqbal and Rasul families have no idea as to the current condition of their sons or whether they are even aware of the legal action now being taken on their behalf.

The action charges Bush, Rumsfeld, Lehnert and Carrico with violating "due process" and "rights of appeal" clauses in the US Constitution, the Declaration of Rights and the International Covenant on Civil and Political Rights. The clauses establish that no one can be "deprived of life, liberty or property without due process of law," including legal representation and appeal rights.

As Article XXV of the Declaration of Rights states: "Every individual who has been deprived of his liberty has the right to have the legality of his detention ascertained without delay by a court, and the right to be tried without undue delay or, otherwise, to be released. He also has the right to humane treatment during the time he is in custody."

The combined Australian-British-US litigation not only demonstrates that these and other basic rights have been trampled on by the Bush administration but that the continued detention without charge of the Camp X-Ray prisoners violates US military regulations, the US War Powers Clause and the Geneva Convention.

A ruling on the application is not expected for two to three weeks. Legal experts say the case will be difficult for the Bush administration to dismiss because the petitioners are relatives of the detainees. Last month, a US District Judge in Los Angeles rejected a civil rights lawsuit by a 17-member coalition of lawyers, journalists, professors and religious leaders on the grounds that they had no direct relationship with the detainees. The judge also ruled that because the prisoners were being held on Cuban soil, US courts had no sovereignty over them.

The current litigation, which is expected to be the first of a number of cases brought by relatives of detainees, counters government claims that US constitutional rights do not apply at Guantanamo Bay by pointing to the fact that the US has occupied the area since 1903 and "repeatedly declared its intention to remain there indefinitely." Offences committed by civilians and foreign nationals living in Guantanamo Bay, the petition states, "are brought before federal courts on the mainland, where respondents enjoy the full panoply of Constitutional rights."

Public criticism in Britain and Australia is beginning to mount over the unlawful and inhumane detention of the prisoners. Last week lawyers

acting for Feroz Abbasi, one of the five British prisoners at Guantanamo Bay, announced they would take legal action in Britain's High Court against the Blair Labour government unless it ensured that the detainees were given legal counsel and other basic rights. The British Law Society and the Bar Council's human rights committee have written to Prime Minister Tony Blair demanding that he act to ensure that the detainees be given access to lawyers.

In Australia, sections of the media have begun to raise concerns about the treatment of David Hicks. A *Sydney Morning Herald* editorial on February 26 called for Hicks to be repatriated. "The longer Mr Hicks and others in his position are held without charge, without trial, the greater the damage to broader freedoms. ... Is it that Mr Hicks's real threat is to the US version of events in Afghanistan, a challenge to the validity of George Bush's orders permitting indefinite detention of foreigners captured in a third country and their trial by a closed US military tribunal? Mr Hicks should be dealt with firmly and fairly under Australian law. By failing to repatriate him so that that can happen, the Australian Government is complicit in the erosion of civil liberties which this case is coming to represent," the newspaper said.

A "Fair Go For David" committee has been established in South Australia to raise financial and political support to secure Hicks' release. Trudy Dunn, a spokesperson for the group now reported to have 8,000 members, said that despite biased media coverage and the refusal of Australia's Howard government to demand Hicks' basic rights, "more and more people are questioning the inhumane detention and treatment of David." She said that members of the group were concerned over the continued interrogation of Hicks by the US military and warned that "prisoners can be made to admit anything if the methods of interrogation are extreme enough and applied over a long period."

Despite growing international condemnation, the US government still refuses the Camp X-Ray detainees legal access and is continuing interrogations in breach of the Geneva Convention. Two weeks ago Donald Rumsfeld told the US media that the Pentagon was preparing a "range of options" for the Camp X-Ray detainees. This included trial by military tribunals, indefinite detention or return to their native countries. Rumsfeld made clear, however, that repatriation of any prisoners was conditional on guarantees that they would be prosecuted at home.

The Solicitor General Theodore Olson will represent the Bush administration and the military in the US Federal Court action in Washington. Olson, whose wife was killed in the September 11 hijack bombings, is a member the Republican Party's extreme rightwing. He was a key figure in the political conspiracy to impeach former US President Bill Clinton and played a central role in the judicial action that handed Bush the presidency in December 2000, arguing before the US Supreme Court that the American people had no constitutional right to elect the president.



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