

Australian families of Guantanamo Bay prisoners denounce US court ruling

Richard Phillips
23 August 2002

Lawyers and families of Guantanamo Bay detainees are preparing appeals against a July 31 US District Court decision upholding the Bush administration's illegal detention and interrogation of hundreds of prisoners at the US military base in Cuba.

In a Washington court, Judge Colleen Kollar-Kotelly rejected a writ for *habeas corpus* from lawyers representing 27-year-old Australian David Hicks, Safiq Rasul and Asif Iqbal from Britain, and 12 Kuwaitis captured in Afghanistan. Her decision allows the Bush administration to indefinitely incarcerate 564 prisoners, who have not been charged with any crime but have been denied legal counsel and visiting rights since late last year.

Attorneys representing Hicks and the two British prisoners first filed the suit on February 22. Lawyers representing families of the 12 Kuwaiti prisoners later joined the legal action.

Hicks, from Adelaide in South Australia, was seized by Northern Alliance forces in Afghanistan last December and handed over to the US military. He was interrogated for weeks and then flown, bound, blindfolded and gagged to Guantanamo Bay's Camp X-Ray.

The British prisoners—24-year-old Safiq Rasul and 21-year-old Asif Iqbal—travelled to Pakistan to visit relatives last year. Lawyers for the men said they were kidnapped by Taliban forces and later taken into US military custody in Afghanistan in December. The 12 Kuwaiti detainees were involved in Kuwaiti government-endorsed charity work in Pakistan and Afghanistan. They were kidnapped by villagers seeking bounties and transferred to the US military.

Lawyers for 46-year-old Mamdouh Habib, an Australian father of four, are joining their legal appeal. Pakistani police seized Habib in October and, under US direction, transported him to Egypt where he was held incommunicado and interrogated for five months. He was shifted to a US military prison in Afghanistan in April and relocated to Camp X-Ray in early May.

Kollar-Kotelly declared that American courts had no legal authority over Guantanamo Bay because it was “outside the sovereign territory of the United States”. This ludicrous claim denies the fact that the US has leased Guantanamo Bay from Cuba since 1903 and exercises full legal and military control over the naval base. The lease, which was renewed in 1934, grants the US “complete jurisdiction and control” over the enclave.

The judge said *habeas corpus* writs—applications for a court to examine the legality of a prisoner's detention—were “not

available” to foreigners held at such locations. She said the prisoners were not being deprived of due process because they had not been charged with any offence under US law. Kollar-Kotelly also rejected submissions that the prisoners were being held in contravention of the Geneva Convention, the International Covenant on Civil and Political Rights and the US Constitution.

She claimed the prisoners had “rights under international law” and that “diplomatic channels remain an ongoing and viable means to address the claims raised by these aliens”. She suggested that the prisoners' home governments should pursue these rights. But the Guantanamo Bay detainees have been denied their rights under the Geneva Convention because the US government has refused to classify them as “prisoners of war,” labelling them “unlawful combatants”. Moreover, the Australian government has fully supported the Bush administration's actions.

Attorneys representing the Kuwait prisoners did not request the immediate release of their clients but called on the court to direct the US government to inform the men of the charges against them and allow family and legal access. Judge Kollar-Kotelly dismissed this out of hand, stating: “Without question, this prayer for relief is nothing more than a frontal assault on their confinement.”

US lawyers, Barbara Olshansky and Steven Watt from the Center for Constitutional Rights, which is representing Hicks and the British prisoners, denounced Kollar-Kotelly's ruling.

Olshansky commented: “[Kollar-Kotelly] says that they have access to international law, but it isn't clear how they would ever get it if they can never see their lawyers or have any form of due process.” Watt said the ruling referred to “rights under international law” yet there was “nowhere to enforce these rights”. Action through diplomatic channels by Hicks' family had been blocked because Australia's government had “effectively washed their hands of him”.

Australian lawyer Stephen Kenny, who represents the Hicks family, said that neither he nor the family would give up, “simply because this is such a blatant abuse of human rights”. He reported that many detainees have been moved from Camp X-Ray to another prison known as Camp Delta, where the conditions remain brutal. Each prisoner is housed in a small metal construction, about the size of a small garden shed. They are not permitted to speak to anyone and only allowed two 15-minute exercise sessions a week.

Australian Prime Minister John Howard and Attorney General Daryl Williams told the local media they would not appeal the US court ruling and were not concerned that Hicks and Habib could be

detained indefinitely without access to lawyers and family members.

When Terry Hicks, David's father, challenged Howard on talkback radio, Howard claimed the detention was "not unreasonable in the current circumstances". Hicks pointed out that his son had not been charged with anything and that the Australian government was obliged to secure his repatriation. Howard replied: "We are satisfied on the information I've been given about his physical wellbeing. We are satisfied that according to the laws of war, what the Americans did was correct." Hicks was cut off after he pointed out that the US had not officially declared war against Afghanistan.

The Howard government has maintained this stance, knowing that Hicks and Habib have committed no offences under Australian law. On August 18, the Melbourne *Age* newspaper reported that Australian police and security agencies had spent almost \$750,000 investigating whether Hicks and Mamdouh Habib could be charged with any Australian offence. In Senate hearings earlier this year, the Australian Secret Intelligence Organisation (ASIO) admitted spending \$574,000 and the Australian Federal Police \$171,000 before concluding that no charges could be laid.

Terry Hicks told the *World Socialist Web Site*: "If David was detained in a war then he should be under the rules of the Geneva Convention and have his rights as a prisoner of war. I was quickly cut off on this."

Commenting on the court decision, Hicks said: "We were disappointed, but not surprised by the ruling. The judge's logic is ridiculous, particularly when she said the courts have no authority over the territory they control. This is crazy. Who has authority there? The Cuban government certainly doesn't. The judge also said that David and other Guantanamo Bay prisoners have access to international law but they have no rights whatsoever, as the last seven months have shown.

"Daryl Williams and Foreign Minister [Alexander] Downer have mouthed off against David, accusing him of being a terrorist and so on, but they never looked into the background of this issue. They could say we don't agree with what David is supposed to have done but let's get him back and try and find out what really happened. Instead, we have a government with the audacity to say there are no charges against David and we don't really know whether he is guilty or not, but it doesn't matter because the Americans are holding him."

Hicks said the Howard government was making a "big mistake if it thought that we are going to give up. We will keep the pot boiling on this until David is released because this is a question of basic democratic rights. We have support here and internationally with lots of positive letters, phone calls and emails. I get people stopping me in the street to give moral support.

"The government should realise that things are starting to swing around here and even in America. More and more people are not keen to support Bush's military action against Iraq and the Australian population is starting to voice opposition. If Australia gets involved in a war with Iraq then all they will do is create the conditions for more terrorist attacks. September 11 was not an accident—it came about because of the way the US has conducted its foreign policy in the Middle East."

In a letter sent to his family in early July, David Hicks rejected allegations made by Florida Republican Ileana Ros-Lehtinen that the young man had threatened to kill Americans. Ros-Lehtinen, who visited Camp X-Ray in January, claimed to have been told about the threats by prison officials. Senior Australian officials immediately repeated these unsubstantiated but widely reported allegations.

"I am shocked at some of the lies circulating in the media about me," Hicks wrote, "this makes me angry. One story was about how I slipped my hands out of the handcuffs in the plane coming over here to Cuba from Afghanistan, fighting and yelling to the Americans 'I will kill you'. Of course this is a load of crap. My interrogators admitted that the story was a lie."

Stephen Hopper, who is representing Mamdouh Habib, told WSWS the US court ruling was an "outrage". "Mamdouh Habib is an innocent Australian who was not a member of the Taliban in Afghanistan or the Al Qaeda network. He was arrested in Pakistan, and not on the Afghanistan-Pakistan border as the Howard government first claimed. He never espoused violence against any American or US property and was not involved in any fighting.

"The Howard government knows this but still backs the US government's attacks on basic legal principles and human rights all down the line. All we are asking is that if the US has any allegation against Mamdouh Habib and David Hicks, please back it up with evidence, lay charges and have a judicial review. The fact that they are not doing that while throwing around all sorts of allegations, makes their actions highly suspicious."

Maha Habib, Mamdouh's wife, said: "I'm very bitter about the Howard government's attitude. I've not seen my husband for almost a year and yet the government says this is OK. How can that be? They know my husband is innocent, they know all the suffering we're going through and all the bills and financial difficulties we face, yet they do nothing for my husband.

"I have four children, including a very young girl who needs looking after but now I have to try and find day care for her and do some sort of work. My oldest boy is studying for his HSC [Higher School Certificate] and he is also trying to get a part-time job. How are we going to survive? I want to know how Howard can sleep at night."



To contact the WSWS and the
Socialist Equality Party visit:

wsws.org/contact