

Families of Guantanamo Bay prisoners launch US Supreme Court appeal

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Families of four of the more than 660 prisoners held at the US naval base in Guantanamo Bay, Cuba have intensified their action against the Bush administration and its flagrant breach of democratic rights. On September 2, their lawyers lodged an appeal with the US Supreme Court over the illegal imprisonment of two Australian citizens, David Hicks and Mamdouh Habib, and Safiq Rasul and Asif Iqbal from Britain.

The prisoners, who have not been charged with any offence, have been held in Guantanamo Bay in solitary confinement for over 18 months. They have been denied all legal rights, including any direct contact with their families or access to their own lawyers, and are subjected to constant interrogations by the US military. Their detention is in defiance of the Geneva Convention, the International Covenant on Civil and Political Rights and the US Constitution. It has been denounced by Amnesty International and a broad range of human rights and international legal bodies.

In early 2002, families of the four prisoners began separate court actions to secure a civil court trial or release of the men. When lower courts dismissed these attempts, the cases were brought together for a Washington District Court appeal. This court, however, rejected the appeal on March 11, 2003, ruling that the prisoners had no right to be tried before an American civil court, or given any other protection recognised under the US Constitution, because Guantanamo Bay was “outside US sovereign territory”.

This farcical ruling turns reality on its head. America began leasing Guantanamo Bay in 1903 and has complete legal, political and military control over the territory. The US government controls all movement in and out of the base and any crimes committed there are prosecuted in the US state of Virginia, where defendants, including foreign nationals, enjoy all constitutional and legal rights.

Lawyers representing the four prisoners will argue that Hicks, Habib, Iqbal and Rasul are innocent victims of the Bush administration’s “war against terrorism”.

Northern Alliance forces in Afghanistan seized David Hicks in early December 2001; Rasul and Iqbal were captured in Pakistan. The young men were later handed over to the US military and flown—bound, blindfolded and gagged—to Guantanamo Bay in early 2002.

Mamdouh Habib, who travelled to Pakistan from Australia in July 2001 to look for an Islamic school for his children, was seized by local police in early October of that year and sent to Egypt where he was imprisoned and held incommunicado for five months. In April 2002 he was turned over to the US military in Afghanistan and then transferred to Guantanamo Bay.

The brief declares that the US government “has created a prison on Guantanamo Bay that operates entirely outside the law” and that the Washington appeals court ruling is in violation of the US Constitution. Calling on the Supreme Court to reverse this decision, the brief comments that the Bush administration’s “disdain for the principles of justice and the rule of law is unprecedented in [US] history”.

“[B]ecause they have been deemed outside the jurisdiction of an American court,” it continues, the prisoners’ circumstances “may not only continue indefinitely, they may deteriorate: the United States may beat prisoners, as it has apparently done in other facilities, or it may transfer them to other countries where beatings are commonplace. Or it may simply forget them, in the vain hope that the world will as well.”

The legal action compares Guantanamo Bay to the American section of Berlin immediately after World War II, the Trust Territories of the Pacific Islands (Marshall Islands) and the Panama Canal Zone, where US law and constitutional rights have been applied to citizens and non-residents alike.

The Supreme Court is under no legal obligation to hear the case but is expected to make a decision on the appeal sometime in the next two months. While the Bush administration has a month to file a legal response, Defense Secretary Donald Rumsfeld made it abundantly clear at a Washington press conference on September 11 that the government has no intention of observing the Geneva Conventions or any other internationally-recognised rights for war prisoners.

Rumsfeld told the media that Guantanamo Bay prisoners could be held indefinitely. “Our interest is in not trying them and letting them out,” he declared. “Our interest is in—during this global war on terror—keeping them off the streets, and so that’s what’s taking place.”

The US military was prepared to put some of the prisoners before military courts, he continued, if President Bush gave the orders. “We have the apparatus arranged, ready, and we have a very fine group of advisers as to how to do it in the event it has to be done,” he said. “But for the moment, we don’t have any

candidates.”

Rumsfeld’s “apparatus” is the military-style “kangaroo courts” being organised by the Bush administration to try selected prisoners. All military tribunal proceedings and their personnel will be controlled entirely by the US government. This includes the judges, prosecutors and defence lawyers, who are all military officers.

The guilt or innocence of those dragged before these courts will be determined on the basis of a two-thirds majority by a panel of three to seven judges. Any statement extracted from the detainees under interrogation and without the presence of their lawyers is admissible as evidence, with no right of appeal to any higher court. Even if prisoners are found innocent of charges, the US can still continue to hold them indefinitely in Guantanamo Bay.

These tribunals are such a legal travesty that America’s National Association of Criminal Defense Attorneys has said that it would be “unethical” for any defence lawyer to have anything to do with them.

Meanwhile, the US government is expanding Guantanamo Bay, with the construction of some additional cells and a concrete interrogation building. Prisoners are currently housed in 8-foot by 6-foot cells and only allowed out for interrogations or brief exercise sessions. The interrogations, which can take place at any time of the day or night, are currently conducted in trailers on the edge of the prison camp.

Rumsfeld’s statement that the US military has no one to bring before these courts is extraordinary. In late June, the Bush administration announced that David Hicks, two British citizens—Moazzam Begg and Feroz Abbasi—and three other unnamed detainees could be the first of six prisoners brought before a military tribunal.

In early July, under conditions of growing opposition in Britain and Australia to the Guantanamo Bay detentions, the Howard and Blair governments held a series of meetings in Washington with the US government. British and Australian officials claimed that the military court proceedings would be “fair” and that they had won various concessions. This included an agreement that Hicks, Begg and Abbasi would not be executed if found guilty and that they could serve any sentence in their home countries.

But six weeks on, it is not clear whether the Bush administration is going to put any of the detainees on trial. Questioned in parliament late last week, Australia’s Attorney-General Daryl Williams admitted that he did not know when or if David Hicks would be charged or brought before a tribunal. “At this time, there is no indication if, or when, he will be tried,” Williams said.

He also said he did not know how long Hicks or Mamdouh Habib would be detained before charges were laid. “[T]hese matters are the subject of ongoing discussions between the government and the US,” Williams declared.

The Howard government has been the most slavish backer of the Bush administration’s “war on terrorism” and its assault on basic democratic rights. It has declared that the US military tribunals will be “fair,” refused to provide Hicks and Habib with any consular or legal support, stonewalled their families in Australia and, without presenting a shred of evidence, declared that the two men are “terrorists”.

According to an article in the May 4 edition of the *Times*, the Howard government has refused US requests to take custody of Hicks and put him on trial in Australia. One of the reasons is that the 28-year-old has not committed any crime under domestic law.

Moreover, the spurious character of the Howard government’s allegations against Mamdouh Habib were further underlined last month when Alan Ashton, a New South Wales state Labor MP, released information about a high-level police investigation into the 48-year-old Australian citizen and father of four.

The police report, which was prepared by the protective security group, a forerunner of the state’s counter-terrorism group, found that he represented no security risk. It was sent to Ashton in September 2001, just before Habib was detained in Pakistan. The police letter stated that there was “no information on hand to support . . . concerns that Habib had a predisposition to carry out an act of violence towards any persons or government body”.

Habib was investigated after he contacted the local police, Ashton and the NSW Police Minister in early 2001 over allegations that he had been physically assaulted by radical Islamic elements in southwest Sydney.

Ashton has given no satisfactory explanation as to why he contacted the NSW police when Habib made the complaints or why he remained silent about the police report for almost two years when the Australian citizen was being illegally imprisoned by the US. Notwithstanding these questions, the NSW police report is further evidence that the Howard government’s claim that Habib was involved in terrorist activities is utterly bogus.

The Australian government has no interest in securing the release of its citizens from Guantanamo Bay. In line with its unwavering support for the Bush administration, it is using the so-called war against terrorism to justify its own political agenda, internationally and in Australia. This involves the revival of neo-colonialism in the Pacific region and a full-scale assault on the democratic rights of its citizens at home, including the implementation of wide-ranging powers of arrest and detention for ASIO, Australia’s secret police.

A public meeting entitled “Justice for Hicks & Habib” is being held in Sydney on September 20 at the Trades Hall, 4 Goulburn Street. The meeting, which begins at 6 p.m., is to take forward the campaign for the release and repatriation of David Hicks and Mamdouh Habib. Among those speaking will be David’s father, Terry Hicks and Maha Habib, the wife of Mamdouh Habib.



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