Guantanamo Bay detainee returned to Spain

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Last month Hamed Abderrahman Ahmad, the only Spaniard held in detention at the US prison camp Guantanamo Bay, was repatriated to Spain at the request of senior judge Baltasar Garzon.

Ahmad is the first detainee to be handed over to a foreign power for prosecution. He is to face charges that he belonged to a Spanish Al Qaeda cell, which allegedly helped plan the September 11, 2001 terrorist attacks on New York.

Ahmad, from the Spanish enclave of Ceuta in Morocco, was arrested by the Pakistani army in November 2001. He was handed over to US forces in Afghanistan before being sent to the US base on Cuba, where he remained for two years before Garzon's extradition application.

Garzon stated that the Spanish government was legally obliged to pursue extradition against Ahmad and three other men who are not Spanish citizens because evidence existed against them in Spain. Their alleged crimes, he said, were "at least partly" planned in Spain—strengthening the case for extradition. He argued that Guantanamo Bay, being under US control, fell within the 1971 extradition treaty between the two countries.

The US has agreed to return Ahmad, a Spanish citizen, but no deal has been reached on the other three prisoners whose extradition was sought.

Upon his transfer to Spain, Garzon ordered that Ahmad undergo medical and psychological examinations before being questioned. This was welcomed by Ahmad's defence lawyer, Javier Nart, who described it as making the detainee into a human being again. Garzon refused to grant bail.

Nart has condemned conditions in the camp, calling it "out of bounds" for human rights. He described the camp as a gulag where Ahmad was held "like a caged animal".

The designation "unlawful combatants" was used rather than prisoners of war in order to deny the detainees any legal rights. No evidence exists against many of them, beyond what they have told their captors during interrogation. It is doubtful that such "confessions", extracted from prisoners under duress and denied access to their families and lawyers, would stand up in an international court.

Ahmad's family has welcomed his return. They have now seen each other for the first time since his arrest. Although the family were happy to have him back his sister Nashiba said, "We will be happier when Guantanamo ceases to exist." She pointed to the hundreds of prisoners still kept in the camp.

The most telling condemnation of the camp came when Nart said that in all his career, "I never thought I would have to be pleased that a client of mine was accused with a serious offence."

Nart welcomed Ahmad's chance to defend himself against specific charges, saying that was "the proper way, not just putting people in jail like animals."

Ahmad's return was an important move politically for both the US and Spain. Of the nearly 650 prisoners detained without trial at Guantanamo Bay for the last two years, he is the first to be handed over to a foreign power for prosecution. US Secretary of State Colin Powell announced the move, which he called "the first of a number of turnovers that will be happening in the near future."

Announcing the establishment of an administrative review panel, Pierre-Richard Prosper, the US Ambassador At Large for War Crimes Issues, said he expected to see more "outright releases" in future, as well as cases which would move to US military tribunals.

In his statement Powell made clear that a section of the American ruling class were concerned about international criticism of the ongoing detention without charge. He also made quite clear the tenuous legal basis

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on which the detention has been conducted. He spoke of a number of detainees where the US military forces have concluded their inquiries. Powell's aim was to meet a minimum criterion for international scrutiny by repatriating prisoners "for whatever action their countries wish to take, or just to release them."

This is in stark contrast to US Defence Secretary Donald Rumsfeld, who only a few days earlier was defending the "unusual" detentions as a "security necessity". He said the detainees were "enemy combatants and terrorists who are being detained for acts of war against our country, and that is why different rules have to apply."

This is what makes the repatriation of Ahmad so important. For all that this is seen as an opportunity to reassert legal norms, he has been returned in large part because the Spanish government is determined to press on with its hunt for Al Qaeda suspects. Many of those arrested have been released on bail because of lack of evidence.

The Spanish government has been one of the staunchest allies of US foreign policy over the last year. Prime Minister Jose Maria Aznar backed the US-led invasion of Iraq in the face of massive opposition from the Spanish people, and committed some 1,300 troops on the ground. Powell cited "many conversations" and "good cooperation with the Spanish government" as contributing to the decision to send Ahmad back.

Spain was also one of the most loyal adherents of the "war against terror", which allowed it to introduce increasingly anti-democratic legislation ostensibly aimed at Basque separatists. Under this flag of convenience, Madrid has effectively criminalised some aspects of political debate. Even proposing a referendum on further autonomy for Spain's regions, for example, can carry a prison sentence.

Under Spanish anti-terrorist legislation, Ahmad can be held for four years without charge pending investigation of the case. Their loyal allies in Madrid are unlikely to embarrass the US. Garzon has given every indication that he will pursue the case. In return the Spanish government is handed a public relations coup of being seen as trustworthy to handle "its own" detainees.

The Spanish ruling class is divided over whether to ally itself with the US or the European Union. The EU has this week voted overwhelmingly to call on Washington to put an immediate end to the "legal limbo" faced by the Guantanamo detainees. While it spoke of the "invaluable" relations with the US, the nonbinding resolution called for trial by a fair and competent authority as the fight against terror "cannot be waged at the expense of basic shared values, such as the fight for human rights and civil liberties." Aznar's loyalty to Washington has placed Spain at the sharpest point of tensions between Europe and America.

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