

# Supreme Court backs Bush against Gulf War POWs

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The US Supreme Court decided last week not to accept an appeal from a group of American soldiers who had won a lawsuit against the regime of Saddam Hussein, charging they were tortured while held prisoner during the 1991 Persian Gulf War. The court action, taken at the urging of the Bush administration, overturns an award of \$959 million in damages.

The position taken by the White House and Department of Justice in this case reveals the real attitude of the leaders of American imperialism toward the soldiers they send into battle. The Bush administration initially encouraged the lawsuit, using it as a club against the Iraqi government. Once control of Iraq's resources passed into the hands of the United States, however, Washington's posture changed abruptly, and the claims of the former POWs were rudely set aside.

The lawsuit arose out of the experiences of 17 former POWs from the 1991 war in which the US and a half-dozen allies attacked the Iraqi forces which had occupied Kuwait in August 1990. Most of the prisoners were airmen shot down over Iraq, captured by Iraqi forces and imprisoned, in many cases under terrible conditions.

Typical was the case of the lead plaintiff in the suit, Lt. Col. Clifford Acree, pilot of a plane shot down by a surface-to-air missile January 17, 1991, the first day of Operation Desert Storm. He ejected from the plane, suffering a neck injury. Captured, blindfolded and handcuffed, he was beaten into unconsciousness, suffering a broken nose and skull fracture. During 47 days of captivity, he lost 30 pounds.

Other prisoners said they were beaten, starved and subjected to electric shock treatment. Many of them were held in Abu Ghraib prison near Baghdad, notorious for mass murder and torture under Saddam

Hussein, notorious again for torture and murder of prisoners under George W. Bush.

In 1996, the Republican-controlled Congress passed an anti-terrorism bill including a provision called the Flatow Amendment, named for a 20-year-old American, Alisa Flatow, killed in a bus bombing in Israel carried out by Islamic Jihad, a Palestinian group. The amendment permitted Americans to file a damage suit in an American court against a terrorist group or a state sponsor of terrorism for actions carried out overseas.

In April 2002, the 17 prisoners and 37 family members filed suit against Iraq, seeking damages. Their lawyers argued that the suit was authorized under the Flatow Amendment, since Iraq had been on the State Department's list of state sponsors of terrorism in 1991, when the POWs were tortured. The Bush administration did not oppose the suit, because at the time it served its diplomatic purposes in the period leading up to the US invasion.

In July 2003, Federal District Judge Richard Roberts ruled in favor of the POWs—the government of Iraq not having replied to the suit—and he awarded them \$959 million in damages from the \$1.7 billion in Iraqi property that had been sequestered by the US government as part of the sanctions regime against the oil-rich nation.

Two weeks later, the Bush administration moved to set aside the award, contending that with the success of regime change in Iraq, it was no longer in the US national interest to compensate the 1991 POWs. The White House proposed to use the sequestered Iraqi property to finance the new US occupation regime in Baghdad.

The administration cited provisions in the emergency legislation passed after the US conquest of Iraq,

providing \$80 billion for military operations and reconstruction. One provision in the bill authorized Bush to suspend sanctions against Iraq that had been in effect since the 1990 invasion of Kuwait. The Justice Department claimed that this clause gave Bush the power to remove Iraq from the State Department list of state sponsors of terrorism and to set aside the monetary award to the 1991 POWs.

In June 2004, a unanimous US Court of Appeals panel set aside the lower court's decision, ruling that the Flatow Amendment applied to organizations and governments, not to countries. Since Saddam Hussein was no longer in power, the award was moot, and the POWs would get nothing. They appealed to the Supreme Court, submitting a brief arguing that the Appeals Court decision "will effectively close the doors of justice for victims of terror unless reviewed and corrected by the court."

The Bush administration responded that the courts must defer to the executive branch on foreign-policy decisions. Iraq was now "a state subject to our protection," and a billion-dollar judgment against it would "hinder crucial foreign policy objectives."

White House spokesman Scott McClellan, asked about the case in November 2003, struck a pose of sympathy, declaring, "No amount of money can truly compensate these brave men and women for the suffering that they went through at the hands of this very brutal regime and at the hands of Saddam Hussein." It turned out, however, that "no amount of money" was the literal position of the Bush administration.

Lawyers for the former POWs offered to settle for a much smaller award, but one still significant for the individuals involved, many of whom still suffer from physical and psychological aftereffects of their treatment. The Justice Department refused even to discuss a settlement, and the Supreme Court's one-line decision upholding the administration means that the POWs will get nothing.

The case raises important legal issues. The US is signatory to international agreements that prohibit absolving perpetrators of torture of their legal liability. In other words, the US government is obliged, under international law, to uphold the rights of the POW plaintiffs against the overthrown Iraqi regime.

The POW lawsuit has been backed by the

Washington Legal Foundation, a right-wing legal services group, and by the National POW-MIA Foundation, which has long promoted the mythology of missing POWs from the Vietnam War. These groups, usually allies of the Bush administration, have found themselves given short shrift in this dispute.

These groups have complained that a double standard is being applied by the administration, which has suggested that Iraqi victims of US torture at Abu Ghraib in 2003-2004 should receive compensation, while opposing compensation for US victims of Iraqi torture at the same facility a dozen years earlier.

The Abu Ghraib connection, however, underscores the real concern of the Bush administration, which is not so much the diversion of \$1 billion in funds from Iraqi reconstruction, but a legal process by which victims of torture overseas can sue their torturers in US courts.

Accepting this procedure would set an ominous precedent, from the perspective of Bush, Cheney, Rumsfeld and Rice, since it would suggest that these officials could be hauled into US courts by the victims of American torture in Iraq, Afghanistan, Guantánamo Bay or the secret concentration camps set up by the CIA as part of Bush's "war on terror."



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