

British court rules Guantánamo detainee David Hicks entitled to UK citizenship

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28 December 2005

In a politically embarrassing decision for the Australian government, a British High Court has ruled that Australian citizen David Hicks, who has been incarcerated in Guantánamo Bay for almost four years, has the right to a UK passport.

Justice Lawrence Collins told a London court on December 13 that Home Secretary Charles Clarke had “no power in law” to deprive Hicks of a British passport and that he “must be registered” as soon as possible. The decision overrules the Blair government’s attempts to prevent the Australian, whose mother was born in England, from obtaining UK citizenship.

Hicks was captured by Northern Alliance forces in Afghanistan in December 2001 and handed over to the US military for a \$15,000 bounty. He has been charged with attempted murder, conspiracy and aiding the enemy, and is due to face a Guantánamo trial next year, pending a Supreme Court appeal hearing on the legality of the US military hearings.

Hicks, who has been subjected to ongoing interrogation and physical and psychological abuse, has courageously protested his illegal incarceration and pleaded not guilty to all charges.

The attempt to secure a British passport for 30-year-old Hicks is because he has been totally abandoned by Canberra. From the outset, the Howard government has actively collaborated in the illegal detention of the young Australian as part of its total commitment to the Bush administration’s so-called “war on terror”.

Canberra has sanctioned the incarceration of Hicks in Guantánamo, most of it in solitary confinement, slandered him as a member of Al Qaeda, a dangerous terrorist and worse, and rejected overwhelming evidence that US interrogators tortured him. These violations of Hicks’s basic rights constitute war crimes under the Geneva Conventions.

The Howard government has taken unprecedented legal action to prevent Freedom of Information access to its correspondence with Washington on Hicks’s detention. Appeals to the government by his father, as well as military and civilian lawyers and the Australian Law Council, have fallen on deaf ears.

Canberra has also unconditionally endorsed Hicks’s prosecution in a US military commission, claiming that the show-trial procedures will be “fair”. In fact, with the exception of the Bush administration, it is the only government in the

world to have publicly supported these blatantly undemocratic hearings.

Lawyers for Hicks have declared the British court ruling an important legal victory and that the Blair government was now obliged to demand his release from Guantánamo as it had previously done with nine other British prisoners.

Major Mori, Hicks’s American military lawyer, said: “Hopefully he is one step closer to ending this nightmare that has existed for him for the past four years....”

“I don’t want to speculate on what the [US] administration’s decisions are going to be—all I know is the UK says military commissions are not tolerated for their citizens. David Hicks will now be a British citizen and he should be afforded the same benefit,” Mori said.

Hicks’s Australian lawyer, David MacLeod, told the media that if Hicks could secure entry to Britain “it would be quickly discovered that he was not guilty under UK laws”. He could then return to Australia.

Terry Hicks, David’s father, however, was more cautious: “I’m not going to jump up and down yet until he walks through the front door. I think we’ve still got a battle on our hands, although I hope I’m wrong.”

The tactic of seeking Hicks’s freedom from the Guantánamo Bay hellhole by becoming a British citizen is fraught with problems.

The Blair government has already announced that it will appeal the court decision, effectively delaying further action on Hicks’s citizenship until early next year. Even if the government loses this appeal, further obstacles could be placed in his way.

Before he can be considered a UK citizen, Hicks must be visited in Guantánamo and officially sworn in by a British government official. No civilians, however, are allowed into the US military jail or to see any prisoner without Pentagon permission. US officials could therefore prevent British officials from seeing Hicks for months.

Last month, for example, the Bush administration refused to permit UN representatives to visit Guantánamo simply because they wanted to speak with inmates. Such are the conditions inside the prison that an estimated 200 inmates are involved in a hunger strike over their illegal detention and ongoing

isolation. One of the protesting prisoners has become so desperate that he has reportedly attempted suicide on ten different occasions.

The Blair government could also attempt to revoke Hicks's citizenship, using unsubstantiated US allegations to claim that he constitutes a security risk in Britain.

While Hicks's lawyers point to the release of UK prisoners from Guantánamo, this only occurred because the Blair government came under considerable pressure from detainees' families, as well as human rights organisations and a section of the legal establishment.

Moreover, the Blair government has drawn a distinction between British citizens and longstanding British residents. It has ignored appeals to assist residents even if they have lived most of their lives in Britain. There are at least six UK residents involved in the Guantánamo hunger strike.

The Howard government responded to the UK court ruling by declaring the issue "a matter for Britain" but it quickly called for Washington to begin the military trials without delay.

"We would like to see him before the military commission as soon as possible," Prime Minister John Howard told the media on December 14. In other words, the Pentagon should quickly activate its show trials and hand down its pre-determined verdict, thereby circumventing any possibility of Hicks being released as a British citizen.

These sentiments were repeated a day later by Human Services Minister Joe Hockey and Foreign Minister Alexander Downer, along with new smears against Hicks.

Hockey declared that Hicks should not be allowed into Australia until or unless he faced a US military trial. Without a shred of evidence, he declared: "This guy trained to blow up Australian citizens and other citizens of the world".

These unsubstantiated allegations are a continuation of the Howard government's concerted efforts to vilify Hicks.

Foreign Minister Alexander Downer, who has regularly denounced Hicks as "dangerous terrorist", told ABC radio that the government would block any attempt by Hicks to reenter Australia if he secured British citizenship. "In so far as he's a British citizen, then he would have to make application to come to Australia if he wished to do so and that's something we would consider if the circumstances ever arose," he said.

Downer's comments are yet another example of the Howard government's contempt for democratic rights. In his determination to persecute Hicks, Downer is now calling into question the status of thousands of Australians who currently hold dual citizenship and come and go from Australia as they please.

These rash declarations indicate that the Howard government is rather nervous about the British court ruling. It faces increasing opposition over its refusal to defend Hicks and other Australian citizens and is still smarting from the Pentagon's sudden release of Australian citizen Mamdouh Habib from Guantánamo Bay on January 28.

Habib was captured by Pakistani police while visiting that country in October 2001 and then illegally transferred or "rendered" by US forces to Egypt, where he was beaten and subjected to electric shock, water torture, drugs and forced to sign false confessions. He was eventually transferred to Afghanistan and Guantánamo Bay in 2002, where he was held for almost three years and again subjected to physical and psychological abuse.

White House officials had assured Australian government officials that Habib would be charged and put before a military commission trial. Having spent three years demonising Habib, Canberra was unexpectedly told by the Pentagon that it could not charge the 50-year-old father of four from southwest Sydney and that he would be freed.

Late last week, a few days after the British court ruling on Hicks, Habib's lawyers launched high court action against the Howard government, Australian Security and Intelligence Organisation Director General Dennis Richardson and Australian Federal Police Commission Mick Keelty alleging the complicity of their officers in his kidnap, false imprisonment and torture.

Habib is suing these officials and seeking compensation for injuries and "psychological shock and distress" caused by his illegal detention. He has also named Alistar Adams, an Australian consular official in Pakistan, who, Habib claims, was a witness to his imprisonment and torture in Pakistan in October 2001.

Habib's statement of claim asserts that because he was an Australian citizen, the government had a legal responsibility to take all reasonable steps to stop him being "kidnapped, abducted, wrongfully arrested, assaulted, tortured, unlawfully interrogated or inhumanely treated" during his detention without charge by foreign governments.

While the case will not be heard until next year, it could well reveal more damning information about the Howard government's complicity in Washington's criminal actions against Australian citizens.



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