

SEP demands immediate release of Australian citizen David Hicks from Guantánamo

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On March 1, after more than five years of detention in Guantánamo Bay, Australian citizen David Hicks was formally charged by the American military with “providing material support for terrorism”. He will be arraigned before a military commission later this month—the first prisoner to be tried before the Pentagon’s modified kangaroo courts.

The charge against Hicks is a damning indictment of the Bush administration and the Howard government and further exposes the criminality of the entire operation at Guantánamo as well as the bogus “war on terror”. For five years, the Australian government has vilified Hicks and adamantly refused to demand his return to Australia in order to demonstrate its complete political loyalty to the White House.

Now Hicks is being charged with a vague and sweeping crime, which was invented by the Pentagon after the US Supreme Court ruled in July 2006 that Washington’s military commissions were unconstitutional. It is not listed as a war crime in the Geneva Conventions or the laws of war. To prosecute anyone under this basis is a legal travesty, which violates the US Constitution and the Australian Criminal Code and would be thrown out of any ordinary court.

Australian Prime Minister John Howard, however, still maintains that Hicks will receive a “fair trial”. The 31-year-old prisoner will appear before military commissions that breach basic norms of legal process. Prisoners can be removed from the trial at any time, defense cross examination of witnesses is tightly restricted and evidence obtained by torture and hearsay testimony can be admitted. The commissions are designed for only one purpose—to secure guilty verdicts to justify the “war on terror” and the illegal US-led occupations of Afghanistan and Iraq.

The decision to indict Hicks on this trumped up charge is a further demonstration that he is no terrorist. As a rather disoriented working class youth, he converted to Islam and became involved in the Balkans war in 1999 on the side of the NATO-backed Kosovo Liberation Army. Recruited by Islamic fundamentalists, a cause he has since publicly disavowed, he traveled to Afghanistan in 2001 and became a supporter of the Taliban regime.

In late November 2001, Hicks was captured by Afghanistan’s Northern Alliance, which reportedly sold him for a \$1,000

bounty to the American military. He was tortured and abused by US interrogators on USS Peleliu, USS Bataan and in an American air base in Afghanistan during December before being dispatched, bound and gagged, to Guantánamo in January 2002, where he has remained, mostly in solitary confinement, ever since.

Howard now indignantly declares that he is “angry” and “concerned” over Hicks’s lengthy detention. No one should be deceived by this play-acting, which becomes increasingly shrill as the forthcoming federal election approaches. Howard is desperately trying to deflect widespread popular opposition to his government’s criminal treatment of Hicks, as well as deep-seated hostility to its support for the Bush administration’s military adventures.

From the outset, the Howard government deliberately demonised Hicks. Australian Foreign Minister Alexander Downer denounced the young man as a “dangerous terrorist”, declaring: “We are an ally of the United States and we agree with them [their treatment of Hicks]. They’re perfectly entitled to take tough action.” Howard and other senior ministers described Hicks as an “Al Qaeda terrorist”, prejudging his case and openly flouting the presumption of innocence.

The Howard government openly admitted that it could not charge Hicks with any crime under Australian law, yet perversely argued that, for this precise reason, he had to remain in Guantánamo. In other words, in a bizarre inversion of justice, Hicks had to be locked up until the Pentagon concocted a crime with which to charge him.

The Australian government’s stance gave carte blanche to the Bush administration and the Pentagon. For the first two years of Hicks’s imprisonment he was denied any access to a lawyer. Howard ignored appeals by the Hicks family and suppressed complaints made by Hicks to Australian officials that he had been abused and tortured by US interrogators. Attorney General Philip Ruddock even declared that sleep deprivation, to which Hicks had been subjected, was “not torture”.

The Howard government mounted a high-level legal action to prevent Freedom of Information access to its correspondence with Washington over Hicks’s detention and became the only government in the world not to demand the release of its citizens. Canberra went so far as to pass specific legislation

endorsing the US military commissions, insisting that they “respect basic principles in our criminal justice system”.

At one point, Howard told the media that Hicks had “committed more serious offences than most” other detainees in Guantánamo. But what were these “serious offences”? Prosecution attempts to have Hicks charged with attempted murder on March 1 were rejected by the convening authority of the military commissions due to lack of evidence and two other charges, including conspiracy, imposed in 2004, were dropped after they were ruled invalid by the US Supreme Court.

Once again Howard stands exposed as a liar. His ability to weather the growing political storm over the issue during the past five years has been, in large measure, due to the support of the Labor opposition, which is also committed to the “war on terror”.

While hundreds of thousands of Australians have demanded Hicks’s immediate release, Labor has never seriously challenged the Howard government over Hicks’s continuing detention. Since 2001 when Hicks was captured, the Labor Party has had five leadership changes—Kim Beazley, Simon Crean, Mark Latham, Beazley again, and now Kevin Rudd—and none has called for his immediate release and repatriation.

Latham called for retrospective legislation to allow Hicks to be tried in Australia. Beazley, rather than demand Hicks’s release, declared that he should be tried in a US civil court. Other Labor MPs have insisted that Hicks be placed under a government control order—part of anti-terror legislation enacted in 2005—that imposes severe curfew and other restrictions on the activities of any so-called terrorist suspect.

The attitude of the Labor Party was epitomised by Beazley’s reaction to the release in January 2005 of Mamdouh Habib, the second Australian citizen held in Guantánamo. Like Hicks, Habib was vilified as a hardened terrorist and a threat to society. He was let go without charge and returned to Australia, not because of, but despite, the Howard government.

Far from seizing on the case to denounce the government, Beazley directed Labor senators to prevent Habib from appearing before the Senate to testify on his torture and abuse in Pakistan, Egypt and Guantánamo. “I’m not in the business of making this bloke a hero,” Beazley told the media. “He shouldn’t have opportunity to give evidence to a Senate committee and we shouldn’t waste a minute on him.”

Very belatedly the Labor Party has decided to try to cash in on mounting support for Hicks’s immediate repatriation. Last October the New South Wales (NSW) state attorney-general, Bob Debus, joined his Labor counterparts in other states in endorsing a statement, pompously entitled the “Fremantle Declaration”, which criticised the Howard government for failing to protect Hicks’s rights and declared its commitment to the Geneva Conventions. It offered no explanation for Labor’s silence over the previous five years and failed to call for Hicks’s release.

Not surprisingly, Debus has not taken the opportunity in the

current NSW state election to even comment on the Pentagon’s decision to charge Hicks or the Howard government’s support for the legal charade. NSW Labor governments have been in the forefront of assisting the Howard federal government in implementing anti-terror legislation and imposing their own anti-democratic laws.

The SEP’s candidates in the New South Wales elections reject the blatant frame-up of Hicks and demand his immediate release and the closure of Guantánamo. Hicks must be repatriated and provided with full compensation for his illegal detention and with ongoing medical treatment to help him fully recover from the physical and psychological torture he has endured over the past five years.

In a detailed legal opinion issued last November, six leading Australian legal experts and former judges argued that the proposed US military commissions “contravene the standards for a fair trial under Australian law” and therefore “counselling or urging” a trial before such a body “would constitute a war crime under the Australian Criminal Code,” which incorporates the Geneva Conventions. The SEP calls for Howard, Ruddock and Downer to be indicted on this charge.

The SEP urges all those who want to take forward the struggle against militarism and war, and in defence of basic democratic rights, including the immediate release of David Hicks, to support and participate in our campaign for the NSW state elections and to vote for the SEP candidates on Saturday—James Cogan for Heffron, Patrick O’Connor for Marrickville, Noel Holt for Newcastle and Group D, boxes 1-15 below the line, for the Legislative Council.



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