Federal judge says US Department of Justice must give priority to Guantánamo cases

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12 July 2008

Senior Judge Thomas F. Hogan of the United States District Court warned Justice Department attorneys on Tuesday to make the habeas corpus cases of Guantánamo Bay detainees their top priority. “The time has come to move these forward,” Hogan declared, “Set aside every other case that’s pending in the division and address this case first.”

Hogan’s comments were made during the first hearing to determine whether detainees are being held lawfully since the Guantánamo prison camp began operating nearly seven years ago. The July 8 hearing came in the wake of last month’s 5-4 ruling by the US Supreme Court, which found that Guantánamo Bay detainees could file habeas corpus petitions challenging the legality of their imprisonment.

Hogan, anything but a defender of democratic rights—in 2006 he ruled the FBI’s raid on Democratic Congressman William Jefferson’s Capitol Hill office was legal, and in 2005 ordered *New York Times* columnist Judith Miller to jail after her refusal to reveal confidential sources in the Valerie Plame case—was appointed by the US District Court for the District of Columbia on July 2 to “coordinate and manage proceedings in all Guantánamo Bay cases.” Following the initial hearings, Hogan will determine the schedule by which the hundreds of cases will go before the courts.

Tuesday’s hearing marked yet another judicial setback in the Bush administration’s attempt to keep the cases of Guantánamo detainees within the confines of a secretive military tribunal system.

Attorneys for the Justice Department sought during the three-hour proceedings to delay further progress in detention appeals, explaining they would need at least eight weeks to brief new attorneys joining their rapidly expanding legal team and to reexamine and add to evidence against detainees. Responding to these and other requests for time in which to add to the evidence initially used to hold Guantánamo detainees, Judge Hogan said, “If [the evidence] wasn’t sufficient then they shouldn’t have been picked up.”

Attorneys with the Center For Constitutional Rights (CCR), arguing on behalf of detainees, said the delays proposed by the Justice Department would be a violation of their clients’ habeas corpus rights. The CCR’s Gitanjali Gutierrez told the court, “Our clients have been sitting in Guantánamo for years. After all this, the writ of habeas corpus will be rendered meaningless.” The CCR requested Judge Hogan order the Justice Department to turn over evidence within two weeks.

Following the hearing, another CCR attorney, Shayana Kadidal, expressed doubts, and not without some justification, that many detainee cases would ever reach the courts, saying that once they are ordered to make evidence available, the Bush administration would likely try to release detainees to keep evidence of Guantánamo criminality from coming to light in the courts.

The suppression of evidence regarding the systematic torture of those imprisoned at Guantánamo Bay has long been a major concern of the Bush administration. Just days prior to last month’s Supreme Court ruling upholding the habeas corpus rights of detainees, a “Standard Operating Procedure” manual in which Guantánamo officials were instructed to destroy interrogation records was made public by the defense team of Omar Khadr, a Canadian national held for six years at the notorious prison camp. Should evidence of the torture and abuse inflicted on Khadr and his fellow detainees not be destroyed, it would leave top officials in the Bush administration vulnerable to prosecution for

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war crimes.

Even if lawyers succeeded in bringing detainees' habeas corpus appeals to the courts and winning a victory, it would still not necessarily mean the detainees' return to freedom. Though a federal judge may decide there is insufficient evidence to hold a defendant any longer, the Bush administration maintains the right to decide where to release them. Detainees could very well be released to countries known to practice torture or remain imprisoned in conditions similar to those they have endured for the past six years.

With the habeas corpus proceedings still in the future, the Justice Department claims it has already cleared 20 percent of Guantánamo Bay detainees of any wrongdoing but is still holding them in custody. Administration officials are currently in talks with the government of Yemen in hopes of sending a number of detainees to that country, in order to prevent their cases coming before federal judges. Roughly 100 of the remaining 270 prisoners held at Guantánamo are Yemeni nationals. Discussions are moving slowly, as the Bush administration is taking care to ensure that any detainees sent to Yemen would not be freed, but would enter the justice system there or remain otherwise detained.

Freed by the courts or not, the ultimate fate of detainees is left to the discretion of the Bush administration.

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