

US court orders release of six Guantánamo detainees after seven years

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After seven years of detention without trial, and more than four years of legal battles, a US court this week finally ordered the release of five Algerian-born detainees from Guantánamo Bay. The judge instructed the US government to take all necessary and diplomatic steps to facilitate their release "forthwith."

There is no guarantee, however, that the men will be freed. The White House, through the Justice Department, immediately issued a statement disagreeing with the ruling and indicating it may appeal to the US Court of Appeals in Washington, which has generally endorsed the Bush administration's policies. To this day, despite years of litigation, no prisoner at Guantánamo has been released as a result of a judge's order.

More than 200 habeas corpus petitions remain before the US courts. This case, the first to be decided, is a damning exposure and indictment of the Bush administration, which has fought for years to keep the five incarcerated, despite having no evidence that the men, who were arrested in Bosnia in 2001—far from the fighting in Afghanistan—had committed any offense, or even had any intention of doing so.

Having previously opposed their release all the way to the US Supreme Court, the White House fought to the bitter end over the past several months in the District Court for the District of Columbia, filing no fewer than 650 pages of exhibits and a 55-page narrative, all highly classified, to seek to defeat the prisoners' habeas corpus petition.

Nevertheless, Judge Richard Leon, himself a conservative Bush appointee, caustically dismissed the material, saying that while it was sufficient for intelligence purposes, it was too "*thin* a reed" (judge's italics) to justify detention.

The only allegation against the men—that they had planned to travel to Afghanistan to join Al Qaeda—was

made by a single "unnamed source," who was not called to testify. Moreover, the government provided no information about how the secret information was obtained, and no corroborating evidence of the entirely hearsay accusation.

It was the first ruling of its kind since the Supreme Court on June 12 ruled by a 5-4 margin that Guantánamo prisoners could file habeas corpus petitions challenging the legality of their confinement. One of the five detainees, Lakhdar Boumediene, prevailed in that opinion, known as *Boumediene v. Bush*, but had to go back to the District Court to petition for release. (See "US Supreme Court upholds habeas corpus for Guantánamo Bay prisoners")

Apart from a brief initial opening session, the entire hearing before Judge Leon was conducted behind closed doors, without any opportunity for public scrutiny of the evidence or the proceedings. The petitioners themselves were barred from attending, seeing the evidence, or even consulting their lawyers. Two gave statements via video links from Guantánamo.

On this basis, the judge upheld the detention of a sixth man, claiming that it was "established by preponderance of evidence it is more likely than not" that he "planned to go to Afghanistan and to facilitate the travel of any others to do the same."

Of the five other men, the judge declared: "To say the least, this is an unusual case." In fact, the handling of their case was all too typical of the official methods employed in the ongoing "war on terror" to obliterate fundamental legal and democratic rights. Acting on the alleged authority of President Bush as the commander-in-chief of the armed forces, the US authorities flouted the men's acquittal by a Bosnian court, seized and secretly rendered them to the Cuban naval base, arbitrarily designated them "enemy combatants," and declared that they had no rights whatsoever under US or international law.

The six men all lived legally in Bosnia, either as Bosnian citizens or permanent residents, and had never fought or been near a battlefield. Local authorities arrested them after the September 11, 2001, terrorist attacks, at the behest of US forces who said they had linked the men to a plot to attack the American embassy in Sarajevo. The US refused to share its intelligence with Bosnian prosecutors, and courts there ordered the men released for insufficient evidence. Despite this, local officials helped US forces spirit the men out of the country to Guantánamo.

In January 2002, President Bush referred to the case in his State of the Union address as one of the justifications for war and the adoption of police-state measures to combat terrorism. "Our soldiers, working with the Bosnian government, seized terrorists who were plotting to bomb our embassy," he said. Yet earlier this year, the administration's lawyers dropped that claim. Instead, they asserted that the Algerian Bosnians planned to travel to Afghanistan to take up arms.

Boumediene and his fellow detainees initially filed for habeas corpus in July 2004, after the Supreme Court ruled in *Rasul v. Bush*, also by a slim 5-4 margin, that indefinite detention at Guantánamo Bay was contrary to the US Constitution and international law. However, Judge Leon dismissed their application in January 2005, ruling that they had "no rights that could be vindicated in habeas corpus proceedings." The Supreme Court ultimately reversed that decision, three-and-a-half years later, in this June's *Boumediene v. Bush* case.

While Judge Leon has now, in the light of June's ruling, ordered the release of five prisoners, he accepted the power of the president to arbitrarily define and determine who is an "enemy combatant"—itself a category that flies in the face of international law, including the Geneva Conventions on the conduct of war. The judge accepted the Department of Defense definition drafted for the Combatant Status Review Tribunals—the military drumhead courts at Guantánamo.

By this Pentagon test, anyone can be thrown into military detention if they have "committed a belligerent act" or "directly supported hostilities in aid of enemy armed forces." Both legs of this definition are extraordinarily vague and open to political manipulation.

Judge Leon also said the administration only had to prove its allegations against the men by a "preponderance of evidence"—a lower standard than the proof beyond a reasonable doubt required for a criminal conviction. Even by these rules, however, Judge Leon said there was no

case against the five men.

Civil libertarians said Thursday's decision confirmed that the cases against the Guantánamo prisoners would not stand up if they were examined by an independent judge. Vincent Warren, executive director of the Center for Constitutional Rights, said, "For seven years, the Bush administration sought to avoid the courts because it had no evidence and sought instead to create a lawless prison. We must note that justice here, however, comes seven years too late."

Last month, another federal judge ruled that 17 Chinese Muslims held at Guantánamo should be released, but in that case, the administration had conceded the prisoners were not enemy combatants. These prisoners have yet to be released because the Bush administration will not allow them to enter the United States, even though they face possible persecution if returned to China. Their case goes before an appeals court next week.

The rights group Amnesty International said the latest Boumediene decision "strikes another blow to the Bush administration's deeply flawed policies of indefinite detention, ill-treatment and injustice." Any celebration of Judge Leon's verdict as a vindication of the American legal system would be decidedly premature. Not only has the Bush administration signaled its intention to appeal, but more than 250 people remain inside Guantánamo, only two of whom have been tried. And while President-elect Barack Obama has pledged to shut down the prison camp, that does not mean the detainees would be freed if it were closed. (See "Obama and Guantánamo")



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