

Obama moves to block court access for detainees in Afghanistan

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On Friday, the Obama administration announced it would appeal a federal district court ruling that would have granted three prisoners held in Afghanistan at the Bagram Air Base the right to sue for their release in US courts. The Justice Department also made a court filing requesting that District Judge John D. Bates halt the current habeas corpus cases of the men, pending the appeal.

The three men were abducted by, or at the behest of, the US in other parts of the world before being transported to Afghanistan, and have been held for more than six years without charges or access to any sort of judicial review. Fadi al Maqaleh and Amin al Bakri, both of Yemen, and Redha al-Najar, of Tunisia, have faced barbaric conditions during their imprisonment. The case of a fourth prisoner, Afghan citizen Haji Wazir who was seized in Dubai, is still pending.

On April 2, Bates ruled that the habeas corpus cases could go forward. His ruling was “quite narrow,” in his own words, affecting the status of about 5 percent of Bagram’s approximately 600 prisoners.

Bates ruled that non-Afghan citizens seized outside of Afghanistan have the same right to judicial review as that afforded Guantánamo prisoners last year by the US Supreme Court in the case of *Boumediene v. Bush*. (See “Court rules detainees in Afghanistan can challenge imprisonment”)

Though the ruling does not affect the American military’s practice of seizing Afghan men and boys, incarcerating them without charges and subjecting them to indefinite detention, it could present legal obstacles to the extraordinary rendition of suspects caught in the global dragnet known as “the war on terror,” including those kidnapped from neighboring Pakistan.

In its filing, the Obama administration argued that because Bagram is “in a theater of war where the nation’s troops are in harm’s way,” prisoners held there have no habeas corpus rights. Legal proceedings “would divert the military’s attention and resources at a critical time for operations in Afghanistan,” the administration added.

Aside from the absence of a congressional declaration of war against Afghanistan, the strategists of the “war on terror” claim that hostilities have no foreseeable end, meaning that this war’s prisoners may be held indefinitely. Moreover, while claiming that prisoners at Bagram have no right to US courts because they are jailed in a theater of war, Washington insists that their incarceration is not governed by the international laws of war, including the Geneva Conventions on the treatment of prisoners of war.

What animated Judge Bates’ ruling pertained to the Justice Department’s claim that the Bagram prisoners lose constitutional protections because their jail happens to be in a war zone, when the prisoners in question had, in fact, been imported to Afghanistan. As the *New York Times* points out, “evidence suggests it was the prospect that Guantánamo detentions might be subject to judicial oversight that caused the military to divert captives to Bagram instead.”

Bates, a conservative Bush appointee, pointed to the obvious fallacy in the administration’s claims. “It is one thing to detain those captured on the surrounding battlefield at a place like Bagram,” he wrote. “It is quite another thing to apprehend people in foreign countries—far from any Afghan battlefield—and then bring them to a theater of war, where the Constitution arguably may not reach.”

In its filing, the Justice Department reiterated a no less absurd claim—that the US has neither *de jure* nor

de facto sovereignty over Afghanistan, and therefore cases should not proceed in American courts. In fact, the Bagram prison camp is attached to a major US military base. The government of Afghanistan is a puppet regime installed by, and completely dependent upon, the US. Its sovereignty is a fiction. US and NATO forces control Kabul, the nation's airspace and its major transportation routes, and operate at will throughout the country, except those parts that are controlled by anti-US insurgents and warlords.

The prison camp at Bagram has been overshadowed by Guantánamo Bay. Yet Bagram houses more inmates and there are known instances of extreme torture. The Bagram prisoners have never been accorded any rights—not even the military tribunals that the Bush administration created for the Guantánamo detainees.

In 2002, two Bagram inmates died as a result of beatings they sustained during US military “interrogations.” The two men had their wrists chained to ceilings above them, and US soldiers repeatedly beat them over periods lasting days, at the same time denying them medical treatment.

Other evidence has surfaced from Bagram of humiliations including forced nudity, denial of food and prolonged exposure to cold temperatures. A recently leaked International Committee of the Red Cross (ICRC) report confirms that US interrogators continued to use such methods of torture between 2003 and 2006 at CIA prison “black sites” around the world.

Obama's moves to maintain illegal detention without judicial review at Bagram expose the cynicism and hypocrisy of his much vaunted plan to shut down the prison camp at Guantánamo Bay. As he escalates the war in Afghanistan and Pakistan and continues to employ the criminal methods of the Bush administration, including rendition and indefinite detention, Obama wishes to reserve the right to continue to add prisoners to Bagram, the “larger, more secretive military detention facility,” according to the *Times*.

Obama's plans for Bagram represent yet another example of “continuity” between his administration and that of his predecessor. In May, the Bush administration announced plans for a \$60 million prison complex at Bagram, which would occupy 40 acres on the base and house up to 1,100 prisoners.

Tina Foster, the director of International Justice

Network, which has been representing the three Bagram detainees involved in the federal case, denounced the Justice Department filing.

“Though he has made many promises regarding the need for our country to rejoin the world community of nations,” her statement declared, “by filing this appeal, President Obama has taken on the defense of one of the Bush administration's unlawful policies ... President Obama today becomes complicit in the unjust and illegal detention of our clients.”

The court filing attempting to block the habeas corpus ruling is the third example in one week of the Obama administration's efforts to maintain the extralegal military and intelligence apparatus built up in the Bush years.

On April 9, Leon Panetta, the director of the Central Intelligence Agency, issued an internal memo declaring the Obama administration's opposition to the investigation of intelligence personnel who carried out torture under the Bush administration.

On April 3, in court arguments, the Obama administration advanced a broader defense of “state secrets” than that advocated by the Bush administration. In *Jewel v. National Security Agency*, the Obama Justice Department not only defended the Bush administration's warrantless wiretapping program, but urged that litigation challenging such programs be shut down on the blanket ground that it could imperil national security.



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