

Judge orders release of Guantánamo detainee Mohammed Jawad

Jerry White
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A federal judge Thursday ordered the US government to release Guantánamo detainee Mohammed Jawad, who has been illegally imprisoned in the US military concentration camp for nearly seven years. Jawad, who was as young as 11 or 12 when the US military seized him in Afghanistan, is the youngest of several prisoners in Guantánamo who were captured as juveniles and accused of “war crimes” against the US.

US District Judge Ellen Huvelle ruled that the government had no legal grounds to hold Jawad and ordered the Justice Department to release him by August 21 and have him transferred to the custody of the Afghan government.

Last week, the Justice Department acknowledged it lacked any evidence to justify holding Jawad as an “enemy combatant.” Nevertheless, the Obama administration attempted to block his release, with government attorneys asking the judge for more time to consider whether to pursue a criminal case against him.

On Thursday, government lawyers filed papers saying the administration was prepared to release Jawad in three weeks to an unnamed country, presumably Afghanistan. However, they reiterated that Attorney General Eric Holder was still considering filing civilian criminal charges against Jawad, which could stop his repatriation or force his return to the US for a future trial.

According to accounts of the hearing, Judge Huvelle criticized the government for a “continuing pattern” of delay by both the Bush and Obama administrations. “Enough has been imposed on this young man to date,” the judge said, referring to the “horrible, long, tortured history” he has faced.

“We’re cautiously optimistic that his nearly seven-year illegal detention and abuse is almost at an end,”

said Jonathan Hafetz, the American Civil Liberties Union attorney representing Jawad.

Jawad, who was born in an Afghan refugee camp in Pakistan, was arrested in December 2002 and accused of throwing a grenade at a US military convoy, injuring two American soldiers and their Afghan translator in Kabul. Afghan police beat Jawad and extracted a “confession” before turning him over to US forces. The young boy was held at the notorious Bagram Air Force Base for several weeks before being shipped to Guantánamo in early 2003.

Once at the Cuban prison camp, Jawad was placed in solitary confinement for 23 hours a day in an 8 X 10 foot cell and subjected to further torture. In December 2003, he attempted to kill himself. In May 2004, two months after the military announced it had ceased its illegal program of sleep deprivation—which guards dubbed the “Frequent Flier” program—Jawad was subjected to the same treatment, being woken up every 2 hours and 55 minutes, and moved to a new cell. Records show guards moved him from cell to cell 112 times within a two-week period, requiring him to be shackled, moved, and unshackled on average once every two hours and 50 minutes.

Writing in a May 19, 2009 article in the *Jurist*, Sahr MuhammedAlly, an attorney and senior associate at Human Rights First, recounted Jawad’s appearance before a military judge at a pre-trial military commission proceeding at Guantánamo in March 2008.

“Jawad said soldiers accused him of knowing about the September 11, 2001 terrorist attacks. He said he needed to know the reason that he was being held in prison, and he needed the world to hear him because his pleas of innocence had gone no further than his cell. He asked the judge: ‘Is it in the US Constitution how to

treat a 16-year-old with justice? I want justice and fairness.'

"During the proceedings I observed, Jawad appeared agitated and told the court that he had 'been punished a lot.' He described how he was coercively interrogated for hours on end in sealed rooms, sometimes after being woken up from sleep at 2 a.m. or 3 a.m., subjected to bright lights for 24 hours, threatened that he would spend his whole life in Guantánamo, and falsely promised that he would be able to get out. He also mentioned that he was moved from different camps and different cells and said that he could not remember how long he was in a particular camp. He seemed to have lost track of time. He told the court that he was promised books so he could study and told that he would be transferred to Camp 4, where he would be able to mingle with other detainees, but that these promises were not kept. During the hearing, he appeared confused and held his hand to his head several times while stating that he could not remember. He asked why he was in Guantánamo and kept saying that he wants to go home. He told the court that he is 'a human being' and asked the court whether this was 'justice.'"

Jawad's lawyer during the military commission, Air Force Major David Frakt, later said, "No one actually knows the full scope of the abuses at Guantánamo" and that "all of these allegedly comprehensive investigations were whitewashes. This is only the tip of the iceberg. This program was approved at the highest levels... It suggests that people had simply lost their ability to distinguish right from wrong."

Judge Huvelle, who had been assigned to review Jawad's habeas corpus petition, had previously ruled that his confession was inadmissible as evidence. During the July 16 hearing, she denounced the government's case as an "outrage" and challenged the Justice Department to produce its supposed witnesses against Jawad.

Judge Huvelle said, "[E]ither there is a witness who is going to put this guy there, subject to real cross examination like a real case instead of all this intelligence and attributing it to people who are either cooperators, unknown, unidentified...[S]even years and this case is riddled with holes... The United States Government knows it is lousy."

The judge added that she would not delay her case so

the government can "pull this rug from under the court at the last minute" by moving Jawad into the civilian criminal justice system.

The Jawad case has revealed the essential continuity between the Obama administration and its Republican predecessors when it comes to trampling on basic democratic rights in the name of the so-called war on terror.

The White House is seeking to circumvent the Supreme Court's ruling last year that granted Guantánamo detainees the right to contest their imprisonments in habeas corpus suits by insisting it has the right to maintain their detention even if the courts rule they are being held illegally.

Judges in the Federal District Court in Washington are preparing rulings on around 200 cases of Guantánamo detainees. Given the trumped up character of the charges against the detainees, federal judges have ruled for them in 26 cases and for the government only five times.

Of the 26 detainees who have won their cases, however, 17 remain at Guantánamo. In most cases, the administration has claimed it cannot find countries willing to provide adequate security assurances to the US. At the same time, it has hypocritically feigned concern that the "human rights" of the detainees could not be ensured if they were released to other countries.

Last week, Jonathan Hafetz of the American Civil Liberties Union told the *New York Times* that the Obama administration's effort to shift detainees into the criminal courts as their habeas corpus cases unraveled was reminiscent of the Bush administration's repeated changes of strategy in the courts. "Every time [Jawad] is on the verge of winning and proving his innocence, the government seeks to change the rules of the game," Hafetz said.



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