

Australia: Former Guantánamo prisoner denied passport again

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Former Australian Guantánamo Bay prisoner Mamdouh Habib was last month again denied his right to a passport by the Labor government on the grounds that he was “likely to engage in conduct that might prejudice the security of Australia or a foreign country”. The foreign minister has wide-ranging powers under Section 14 of the Australian Passports Act to deny or cancel passports on that basis.

Since 2001, more than 40 Australians have had their passports cancelled under Section 14. The refusal to grant Habib a passport came in a letter from the Department of Foreign Affairs and Trade (DFAT), which claimed that the decision was based on a report by the Australian Security and Intelligence Organisation (ASIO).

The allegation that someone is “likely to engage in conduct that might prejudice the security of Australia or a foreign country” is arbitrary and anti-democratic. No evidence is required to prove the allegations. The accused, in fact, is presented with a classic Catch-22. He or she has no right to examine the reasons for the decision, because ASIO and the government can claim that would also compromise “national security”.

During more than three years of legal action, Habib and his lawyers have been excluded from court proceedings, barred from seeing key documents and prevented from hearing direct evidence from intelligence and other officials or cross examining them.

Habib’s passport was first cancelled in 2005 by the Howard government, after the 56-year-old father of four was released without charge from Guantánamo Bay and repatriated to Australia. The government, which publicly branded the Australian citizen as a “dangerous terrorist,” actively collaborated in Habib’s illegal detention by Pakistani, Egyptian and US authorities from October 2001 until early 2005.

Arrested by Pakistani authorities in October 2001, just after the September 11 terrorist attacks in the US, Habib was sent via “extraordinary rendition” to Egypt. In April 2002, he was transferred to Bagram airbase in Afghanistan and a few weeks later to Guantánamo Bay where he remained until early 2005 when he was released without charge.

Habib was tortured in all three countries. This included beatings, electric shocks, sleep deprivation, pepper spray, drugs, and water-boarding. Phillip Ruddock, the attorney general, claimed that he knew nothing about Habib’s rendition to Egypt in late 2001 and infamously declared that sleep deprivation was “not torture”.

Habib is one of hundreds of people illegally detained and tortured as part of the US-led “war on terror”. Amnesty International, the International Red Cross and numerous other human rights organisations have condemned Guantánamo and called for its closure. US President Obama claimed that he would close the infamous prison if elected in 2008 but nothing has changed. More than 170 people are still incarcerated in the facility in violation of their basic rights, the Geneva Conventions and international law.

Another Australian victim is David Hicks, who was arrested by the US military in Afghanistan and then illegally transferred to Guantánamo. Hicks was tortured during his imprisonment and told that unless he pleaded guilty to various crimes before a US military court he would remain imprisoned for years. After being convicted in a kangaroo court in Guantánamo, he was transferred to an Australian prison in May 2007 and eventually released in December, more than five years after he was seized in Afghanistan. Hicks and Habib have both been subjected to intelligence surveillance and media harassment since their release.

In opposition, Labor provided unwavering bi-partisan support for the “war on terror” and the raft of associated anti-democratic laws introduced by the Howard government.

Following its election in November 2007, the Rudd government maintained the legislation and continued the assault on democratic rights.

Habib's efforts to obtain a passport have been blocked at every turn. In June last year Habib was told by the Department of Foreign Affairs and Trade that his application was "under consideration". Five months later he was informed that ASIO was "assessing" the application, and in April this year he was told by the Australian Government Solicitor that the assessment was "still being finalised".

A month later Habib won an appeal to the High Court, which ordered the Administrative Appeals Tribunal to rehear his application. But in July, Habib received a letter from the Inspector-General of Intelligence and Security demanding he attend an interview. He had already been interviewed in January by ASIO officers, who claimed they only wanted to discuss his activities since his release.

Habib was allowed to take his wife and son to the interview but was told he could not tell anyone about the proceedings. The ASIO officers began asking Habib about his views on the US-led invasions of Iraq and Afghanistan and his attitude to Osama bin Laden. He refused to answer, stating that he been asked these questions constantly during his illegal detention by the US military and the interview broke up.

As Habib told the media last month: "These people kidnap me, they torture me, they ruin my life for nine years. And I'm still a security risk—what security risk? It's not fair to take my rights away from me, all my life, for nothing, it's incredible."

Since 2007, the Labor government has maintained the same stance as its predecessor in covering up Canberra's complicity in Habib's incarceration and torture. In May last year, the Labor government was asked in parliament whether ASIO was still monitoring Habib and whether the intelligence agency had a representative in Egypt at any time during Habib's detention in that country. Then climate change minister Penny Wong, who was delegated by the attorney-general to reply, refused to answer the questions on the grounds of "national security".

A week before Habib was denied his right to a passport, NSW Supreme Court Justice Peter McClellan ruled that despite Habib being libelled by the Murdoch-owned *Daily Telegraph* in February 2005, he should receive no more than \$5,000 damages because his reputation was not

"significantly damaged".

The article alleged that Habib had lied about being tortured during his illegal detention by US, Pakistan and Egyptian authorities. The comment was an attempt to undercut mounting evidence of the Howard government's direct involvement in the illegal rendition, detention and torture of Habib.

Contrary to the newspaper's claims, there is considerable evidence establishing that Habib was tortured. Habib is currently suing the Australian government for compensation over its refusal to defend his rights as an Australian citizen. In March this year he successfully rebuffed attempts in the Federal Court by the former Rudd Labor government to squash the case. (See: "Australian court allows Guantánamo torture compensation case to proceed")

Justice McClellan initially dismissed the defamation case in 2008. He ruled that four of the newspaper's allegations against Habib were true and claimed that the *Daily Telegraph* article was "in the public interest". In March this year, however, the NSW Court of Appeals found that Habib had been defamed and the case was returned to the NSW Supreme Court for the damages to be determined.

Habib's lawyers argued that Justice McClellan should not adjudicate on the damages hearing because of his previous decision in favour of the Murdoch newspaper. McClellan rejected this objection. Habib's lawyers will be appealing the minimal damages ruling, which not only fails to adequately compensate Habib but will encourage the *Telegraph* to maintain the steady stream of innuendo they have hurled against Habib in the past five years.

The author also recommends:

Federal appeals court adopts Obama "state secrets" doctrine to block torture case
[9 September 2010]

Obama's victory for torturers
[10 September 2010]



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