

Guantánamo detainee, acquitted on 284 of 285 charges, faces 20 years

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19 November 2010

In a blow to the Obama administration's effort to manipulate the civilian justice system to achieve guilty verdicts for alleged terrorists, a New York City jury on Wednesday unexpectedly acquitted a Guantánamo detainee, Ahmed Khaifan Ghailani, on 284 of 285 charges. The case was related to the 1998 terrorist attacks on US Embassy in Dar es Salam, Tanzania, which killed at least 11 people and injured another 85.

Ghailani, 36, was convicted of only one charge, conspiring to destroy government buildings. The 12-member jury was unconvinced by government charges related to allegations of murder. Ghailani nonetheless faces a sentence of 20 years to life in prison.

Ghailani, who is Tanzanian, was abducted from Pakistan in 2004 along with his wife and children. He was then turned over to the Central Intelligence Agency, which transported him to "black site" prisons, including one in Poland, and then ultimately to Guantánamo Bay in Cuba in 2006. Like most prisoners caught up in the global dragnet known as the war on terror, Ghailani was repeatedly tortured by US intelligence personnel during his imprisonment.

From any ethical and rational legal standpoint, this makes information extracted from Ghailani by his interrogators inadmissible in court, and, indeed, all of the proceedings against him illegitimate. However, the presiding Federal District Court judge in the case, Lewis A. Kaplan, earlier in the year overruled defense requests that the trial be dismissed because Ghailani had been tortured. Kaplan also quashed another motion requesting dismissal because the court proceedings, taking place six years after his arrest, violated Ghailani's right to a speedy trial.

The Ghailani case was handpicked by the Obama administration to test whether or not the civilian court

system could be entrusted to produce guilty verdicts in terrorism cases, with Attorney General Eric Holder all but guaranteeing it would be prosecuted to a successful conclusion. It was to serve as a trial run for the prosecution in federal court of Khalid Sheikh Mohammed, the alleged ringleader of the 9/11 terror attacks. Mohammed was extensively tortured—it is documented that he was waterboarded at least 183 times. The Ghailani verdict now makes it more likely that Mohammed will face a military tribunal.

While the one count against Ghailani may well result in a life sentence, the government's failure to convince jurors of the other 284 charges was quickly seized on by the media and both Republicans to assert that alleged terrorists should be processed at drumhead military tribunals such as the one at Guantánamo Bay.

As always, this was dressed up in the hysterical language of "national security." Republican Senate Minority Leader Mitch McConnell said in a speech from the floor of the Senate that the verdict is "all the proof we need that the administration's approach to prosecuting terrorists has been deeply misguided and indeed potentially harmful as a matter of national security."

"The Obama administration recklessly insisted on a civilian trial for Ahmed Ghailani, and rolled the dice in a time of war," said Liz Cheney of the pro-torture group Keep America Safe (and the daughter of the former vice president Dick Cheney.) "It's dangerous. It signals weakness in a time of war."

The verdict was also criticized among Obama's Democratic and liberal allies. Virginia Senator Jim Webb said in a statement that the case shows that "those charged with crimes of war and those who have been determined to be dangerous law-of-war detainees do not belong in our courts, our prisons or our

country.”

The *New York Times* struck at the same theme, asserting that “the result may again fuel debate over whether civilian courts are appropriate for trying terrorists.” For the “newspaper of record,” decisions that do not realize the pre-designed aims of the state are illegitimate.

The *Times* blamed the result on Judge Kaplan’s refusal to hear testimony from Hussein Abebe, who the government claims was prepared to tell the court he had sold large quantities of the TNT used to blow up the embassy at Dar es Salaam, Tanzania. Ghailani revealed Abebe’s name while he was tortured at Guantánamo.

There were also those who celebrated the case as an example of the effectiveness of the US justice system. Ghailani’s lawyer, Peter Quijano, called Wednesday’s verdict “a reaffirmation that this nation’s judicial system is the greatest ever devised [and] is truly a system of laws and not men,” he said.

This is absurd. Had Ghailani been convicted on all counts, the celebration of the supposed greatness of the US judicial system would have been trumpeted even more. In fact, the court case was largely pro forma. As Judge Kaplan himself declared, the defendant’s status as an “illegal enemy combatant”—a legal chimera invoked by the US under both Bush and Obama—meant that whatever happened in federal court, Ghailani would remain “a prisoner of war until hostilities between the United States and Al Qaeda and the Taliban end, even if he were found not guilty.”

Obama ran for office on the promise to quickly close down the Guantánamo prison camp, and soon after his inauguration he issued an executive order that it be closed within one year. The Obama campaign articulated concerns among elements in the US foreign policy establishment that America’s standing abroad was threatened by the Guantánamo prison camp, which will be forever associated in the popular consciousness with torture, men bound hand and foot on their knees wearing orange jumpsuits, unsheltered from the sun. Obama and his powerful backers hoped to effect a change in appearance, while continuing nearly all of the Bush administration’s “war on terror” policies.

Even this symbolic change has proven impossible, however. Guantánamo remains open with 170 prisoners, and the Obama administration appears set to end the civilian judicial system’s role in the

prosecution of alleged terrorists, with Attorney General Holder earlier this year suspending civilian trials for 9/11 suspects that were scheduled to take place in Manhattan. It is noteworthy that the White House has so far been silent in the face of the criticism of its handling of the Ghailani case.

If ruling circles find even heavily rigged civilian trials for alleged terrorists intolerable, it is not because of the supposed dangers they pose to the population.

A separate system of justice is being constructed under the control and discipline of the military, immune to the Constitution, Bill of Rights, and Geneva Conventions, in which hearsay evidence and evidence solicited through torture will be admissible. The president and the executive branch arrogate to themselves the right to declare anyone in the world, even US citizens, enemy combatants and subject to arrest, rendition, torture and indefinite detention without trial—that is, if the president does not order summary assassination instead, a right the Obama administration has also proclaimed.

There is no room in this setup for the vestiges of an independent judiciary or the rule of law. What is being built, in short, is the judicial machinery of a military dictatorship. This will inevitably be deployed against those in the US and abroad who resist the policies of the American ruling class.



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