

Judge orders release of Guantanamo Bay force-feeding videos

Thomas Gaist
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US District Court Judge Gladys Kessler has ordered the limited release of classified video recordings of the force-feeding of Guantanamo Bay inmate Abu Wa'el Dhiab.

In a statement to the court supporting release of the tapes, Dhiab said, "I want Americans to see what is going on at the prison today, so they will understand why we are hunger-striking, and why the prison should be closed. If the American people stand for freedom, they should watch these tapes. If they truly believe in human rights, they need to see these tapes."

"We are very gratified by this decision, which will enable the American people to see with their own eyes the sorts of abuses that are being heaped on these peacefully hunger-striking detainees," Dhiab's lawyer Jon Eisenberg told the Associated Press.

Dhiab was among more than 100 detainees who participated in the largest hunger strike in the history of the Guantanamo Bay detention camp. At least 45 of the strikers have been subject to force-feeding since the strike began in 2013. The videos slated for release cover Dhiab's force-feeding sessions between April 9, 2013 and February 19, 2014.

Dhiab has been detained by the US without charges for more than 12 years, since early 2002, despite being cleared for release in 2009 by the Obama administration's Guantanamo Review Task Force (GRTF). In a Habeas Corpus petition filed in July 2005, Dhiab maintained that his indefinite detention without trial violated both the US Constitution and international law, and that inhuman conditions inside the Guantanamo facility violated the Fifth Amendment. He continues to refuse food to protest his indefinite detention.

Judge Kessler's order, issued in the case of *Abu Wa'el Dhiab v. Barack H Obama, et. al.*, came in

response to efforts by a number of media outlets to get the military's tapes unsealed, including the Associated Press, Bloomberg, CBS, First Look Media and the *Washington Post*. If the order stands, the tapes will be released to the media but not made directly available to the public, and will be heavily redacted.

US government attorneys sought to block the release of the tapes, arguing that they could be used for anti-US propaganda which would "inflame Muslim sensitivities overseas" and help prisoners to resist the feeding regimen.

Kessler rejected the government's arguments, calling them "unacceptably vague," "speculative," and "just plain implausible." Kessler noted that by attempting to close the hearings, the Department of Justice was asserting its authority to determine which hearings are open to the public, unilaterally arrogating to itself the powers of the judiciary.

"The Government's arguments, if accepted, would displace the Court's power to seal its own record, putting that authority in the Government's hands alone," wrote Kessler.

Kessler also rejected the government's claim that withholding the tapes was consistent with "longstanding policy to protect detainees from public curiosity, consistent with the Geneva Conventions," holding that this argument sought to twist rules established by the Geneva Convention so as to prevent exposure of potential war crimes.

"The Government's claim, if accepted, would turn the Third Geneva Convention on its head. Rather than a source of rights to humane treatment, Article 13 would become a means to shield from public view treatment that Mr. Dhiab (and other detainees) believe to be inhumane," Kessler wrote.

Kessler's order points to the breakdown of capitalist

democracy in the US and the rise of unchecked executive power. In a ruling from 1986 cited by Kessler, Fourth Circuit Court judges stated they were “troubled by the notion that the judiciary should abdicate its decision-making responsibility to the executive branch whenever national security concerns are present.”

“History teaches us how easily the spectre of a threat to ‘national security’ may be used to justify a wide variety of repressive government actions. A blind acceptance by the courts of the government’s insistence on the need for secrecy... would impermissibly compromise the independence of the judiciary and open the door to possible abuse,” the Fourth Circuit argued in the 1986 ruling.

Although Kessler quoted these lines as a warning, in reality they summarize an already existing state of affairs. Since taking office, the Obama administration has increasingly entrenched the sweeping executive powers promulgated by the Bush administration after 9/11. The executive branch of the US government now routinely spies on and even carries out the drone murders of its own citizens without any meaningful judicial process, in direct violation of the US Constitution and Bill of Rights.

Despite her criticisms of the government, Kessler held that under certain conditions the US government may violate the democratic protections established in the Bill of Rights, arguing that it is the responsibility of the judiciary “to ensure that any efforts to limit our First Amendment protections are scrutinized with the greatest of care.”

In a July 2013 opinion, Kessler appealed to the Obama administration to stop the feeding, calling it “a painful, humiliating and degrading process,” while maintaining that congressional prohibitions against interference by the courts in the affairs of the Guantanamo Bay installation prevented her from taking further action.

Kessler noted in her opinion that Obama is empowered as Commander-in-Chief with “the authority—and power—to directly address the issue of force-feeding of the detainees at Guantanamo Bay.”

Kessler ruled in May 2014 that the force-feeding could continue, reversing a brief injunction she had issued to halt the feeding. Kessler described the ruling at the time as involving an “anguishing Hobson’s

choice,” saying that “Mr Dhiab’s physical condition was swiftly deteriorating,” and that force-feeding was therefore necessary to save Dhiab’s life.

The May 2014 ruling authorized Dhiab’s lawyer to view some 130 videos of his force-feeding sessions, including “all videotapes made between April 9, 2013 and February 19, 2014 that record both Forcible Cell Extractions and subsequent enteral feeding.” The very existence of these tapes was denied by the Obama administration until Kessler’s ruling confirmed that the military was creating and stockpiling the recordings.

The administration and the military likely sought to conceal the tapes out of fear of public outrage against the ghastly force-feeding methods, which are virtually indistinguishable from torture. In a process universally characterized by victims as “agonizing,” prisoners are strapped down by their wrists, legs, and head, feeding tubes are inserted “nasogastrically” through their noses, down their throats and into their stomachs. Standard reactions to the practice include gagging, wrenching and bleeding through the nose and mouth.

US military personnel at Guantanamo Bay routinely insert the tubes twice per day, rather than leaving them inside the prisoners, in an effort to maximize pain and terrorize others from joining the hunger strikers, according to media reports.



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