

# US Supreme Court refuses to hear Guantanamo detainee's habeas corpus appeal

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On Monday, the US Supreme Court refused to hear a challenge to the government's indefinite detention of an inmate at the infamous Guantanamo Bay prison camp. Moath al-Alwi has been imprisoned and tortured for nearly two decades without ever having been convicted of any crime. The court's action is for all practical purposes a repudiation of basic democratic rights and a tacit endorsement of the regime of abductions, renditions, torture, secrecy and indefinite detention without trial that has been erected in the course of the "war on terror."

Moath al-Alwi, a Yemeni citizen, has been detained at the US camp in Cuba since January 17, 2002. Al-Alwi was born and raised in Saudi Arabia but left for Afghanistan between late 2000 to early 2001. The American government contends that he intended to join the fight against the US and its allies. He was in northern Afghanistan in October 2001 at the onset of the US invasion. Al-Alwi subsequently fled to Pakistan, while the United States offered bounties for "suspicious" people in the area. He was captured at the Pakistan border by bounty hunters, who often captured and sold people to US forces based on their Arab ethnicity, shortly after the US invasion of Afghanistan.

Al-Alwi was deemed an "unlawful enemy combatant," a pseudo-legal category used by the Bush administration to avoid designating individuals as prisoners of war or criminal defendants. Prisoners of war are entitled to certain protections under the Geneva Convention and international law, while criminal defendants enjoy certain rights under the US Constitution and the American legal system, such as the right to an attorney, the right to a speedy and public trial, the presumption of innocence, the right to be tried by a jury, and other democratic legal principles and protections.

Having been designated an "unlawful enemy combatant" outside the protection of any existing legal framework, al-Alwi was transported to the Guantanamo Bay camp soon after his capture. The US military is alleging that al-Alwi was associated with both Al Qaeda and the Taliban, that he undertook military or terrorist training in Afghanistan, and that he served as a personal bodyguard of Osama Bin Laden.

However, he has never been formally charged, let alone convicted, of any crime in connection with these accusations.

In al-Alwi's first habeas corpus petition in 2008 against the Bush administration, he argued that the United States wrongly categorized him as a Taliban or Al Qaeda fighter "based on flimsy evidence that courts of law would not credit under ordinary standards of proof." The evidence against him, his attorneys argued, consisted of acts such as briefly staying at guest houses that the US deemed to be associated with terrorist organizations. Furthermore, al-Alwi asserted that interrogation reports that were used against him were the result of torture: he was "threatened" and "humiliated throughout the period these statements were reported."

Al-Alwi's first petition was denied on the grounds that it was "more probable than not that [al-Alwi] was 'part of or supporting Taliban or Al Qaeda forces' both prior to and after the initiation of U.S. hostilities in October 2001." A second petition filed on his behalf was denied in 2011, during the Obama administration. While his habeas corpus petitions have been denied, no court has ever found that al-Alwi actually engaged personally in any violent acts against the US or its allies.

In his most recent petition, al-Alwi's lawyers argued that the government's authority to detain him, supposedly granted under the Authorization for Use of Military Force (AUMF), has unraveled due to the end of the conflict, for all practical purposes, in Afghanistan. The AUMF was unanimously passed in the Senate, while only one member of the House opposed it, just a week after the September 11 terrorist attacks. Originally presented as a short-term authorization to use force against those responsible for the attacks, this legislation has been invoked ever since to justify limitless wars of aggression as well as sweeping attacks on democratic rights within the US.

According to his lawyers, al-Alwi is "one of twenty-six men who remain imprisoned indefinitely at Guantanamo Bay without charge or trial."

Al-Alwi is one of many long-term hunger strikers at Guantanamo. While in captivity, he participated in major hunger strikes organized in 2005 and 2013 by detainees to protest their innocence and the conditions of their confinement. Participants in the first strike demanded that the US government cease the inhumane treatment, in violation of the Geneva Conventions, of the detainees. According to Andy Worthington, author of *The Guantanamo Files*, at least 80 captives dropped below 100 pounds during the strike.

Prison authorities responded to the strikes, which the government called “voluntary fasting,” by force-feeding captives. In this procedure, the victim was strapped down to a chair by the arms, legs, and head. Feeding tubes were then roughly forced up the nose and down the throat with no anesthetic. According to one account, the tube often had bile and blood still on it from the previous victim. The victim was then forced to remain strapped down until the forcibly-fed nutrients were digested to prevent self-induced vomiting.

Al-Alwi, who was last recorded weighing just 98 pounds, described the force-feeding as “an endless horror story.”

Al-Alwi was also one of the detainees shot with “less than lethal” ammunition under the discretion of Colonel John Bogdan, appointed warden in 2013. Under Bogdan’s administration, Guantanamo guards fired on prisoners for the first time. Al-Alwi described being shot by rubber-coated steel bullets in April 2013 as he and other detainees were preparing for communal prayer. He alleges that he was hit more than four times and his wounds were never properly treated.

Successive administrations—Bush, Obama and Trump—have used the “war on terror” to advance the outright assault against democratic rights and norms. In 2004, in *Hamdi v. Rumsfeld*, the Supreme Court found that while detainees still had the right to habeas corpus, their special status as unlawful enemy combatants disqualified them from protections granted in the Geneva Conventions or international law. Although some rights under the US Constitution have been formally recognized for detainees, in a limited procedural sense, the petitions that the detainees have filed have repeatedly been denied.

The Supreme Court’s denial of certiorari on Monday is particularly striking in that only four out of the nine justices need to agree to hear a case for it to be argued in the court. The court’s refusal to hear al-Alwi’s challenge means that at least one of the four nominally “liberal” justices on the court voted with the five-member far-right bloc.

In a statement filed together with the Supreme Court’s decision not to hear the case, Justice Stephen Breyer wrote that it is “past time to confront the difficult question” posed by the unlimited and indefinite duration of the “war on

terror.”

While Breyer wrings his hands about the legal implications of the case, his statement is far from a ringing and principled affirmation of fundamental democratic principles. The liberal justices have generally accepted the framework of the “war on terror” for the past two decades, and therefore have no principled foundation upon which to offer any resistance. Accordingly, quoting from previous decisions, Breyer is only able to express the concern that the “war on terror” has an “unconventional nature” that is “unlike those of the conflicts that informed the development of the law of war,” such that the Court’s “understanding” of what the AUMF authorized “may unravel.”

Breyer continues: “As a consequence, al-Alwi faces the real prospect that he will spend the rest of his life in detention based on his status as an enemy combatant a generation ago, even though today’s conflict may differ substantially from the one Congress anticipated when it passed the AUMF.”

In any legal system in which fundamental democratic principles carried an ounce of weight, a judge in receipt of al-Alwi’s habeas corpus petition would order his immediate and unconditional release, given that the government has held him for almost 20 years without ever charging or convicting him of any crime. Indeed, it is those who imprisoned and tortured him, in violation of domestic and international law, who should be arrested and facing trial. The Supreme Court’s refusal to even hear al-Alwi’s petition on Monday corresponds to the inexorable lurch by the entire political establishment towards dictatorship and barbarism.



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