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US Court of Appeals blocks release of Guantánamo Uighurs as government resorts to 'scare tactics'

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Faced with a clear and principled judicial order to release into the USA 17 Uighur detainees unlawfully held at Guantánamo, the US administration has resorted to scaremongering in its bid for unfettered power over how it runs detentions at the US Naval Base in Cuba. Meanwhile, a federal appeals court has blocked, at least temporarily, the men's release into the USA.

On 7 October 2008, Judge Ricardo Urbina of the District Court for the District of Columbia (DC) ordered the government to release into the USA the 17 Uighur detainees still held at Guantánamo. The government had earlier conceded that the 17 men are not "enemy combatants", the label it has attached to them for almost seven years to justify their indefinite detention without charge or trial. Judge Urbina ruled that the men's indefinite detention was unlawful, and ordered their release "because separation-of-powers concerns do not trump the very principle upon which this nation was founded – the unalienable right to liberty".

Most of the 17 Uighurs were taken into custody in Pakistan in late 2001 having fled there from Afghanistan after the Uighur camp to which they had fled from China was bombed by US forces. They are alleged to have been sold by Pakistani forces to the USA for US\$5,000 a head. The detainees were transferred to Guantánamo in 2002.

The Uighurs cannot be returned to their native China because they would face a serious risk of torture or execution there. The US administration argues that it should be allowed to keep them at Guantánamo until it finds a country willing to accept them, however long it takes. It has not succeeded in finding such a solution in more than four years of trying.¹ The US administration says that it has approached and re-approached almost 100 countries.

While the US government clearly considers there are no security considerations that should prevent other countries taking the Uighurs in, it portrays them as dangerous individuals when the question of the USA accepting them arises. The US Department of Justice responded to Judge Urbina's order with a press release saying that the ruling presented "serious national security concerns", and emphasised that "these Uighurs" had received "weapons training at camps in Afghanistan". The White House issued a public statement that if the ruling was allowed to stand, other Guantánamo detainees, "including sworn enemies of the United States suspected of planning the attacks of 9/11" could use it to "seek release into our country". Pushed for a response at a press briefing on 8 October, a State Department spokesperson said that he "would not dispute the statement from the White House".

¹ The US administration cleared 10 of the 17 Uighur detainees for release as long ago as 2003. Another five were cleared for release from Guantánamo in 2005, and the remaining two in 2006 and 2008.

On 7 October, the administration filed an emergency motion seeking a stay of Judge Urbina's order. Its petition to the US Court of Appeals for the DC Circuit asserts that failure to stay the order "threatens to cause significant and irreparable harm to the United States and the general public", and compliance with the order would "pose a serious security risk". The 13-page petition variously characterizes the 17 Uighurs as individuals who "engaged in weapons training at a military camp sponsored by the Taliban as part of an organized attempt to attack a sovereign government"; "sought to wage terror on a sovereign government"; "trained for armed insurrection against their home country"; "sought to wage organized and armed warfare against the Chinese Government and continue to harbour hostile views toward China"; and who "received weapons training at a camp in Taliban-controlled Afghanistan where they prepared to attack Chinese interests".

The US lawyers for the Uighurs have accused the government of resorting "to scare tactics in the form of innuendo and unsubstantiated, exaggerated, and false rhetoric aimed at painting [the Uighur detainees] as dangerous men, including the astonishing assertion, never before made in three years of litigation through all levels of the federal system, that these men were preparing to 'wage terror on a sovereign government'. Nothing in the record justifies that statement." Judge Urbina himself noted that the US government had neither charged the Uighurs with any crime nor presented any "reliable evidence that they would pose a threat to US interests." Judge Urbina recognized that one or more of the Uighurs had "acquired weaponry skills at 'training camps' in Afghanistan after fleeing China", adding that he would "not draw adverse inferences based on other unsubstantiated allegations".

In June 2008, the DC Circuit Court of Appeals wrote in the case of one of the Uighur detainees that it is "undisputed that he is not a member of al Qaida or the Taliban, and that he has never participated in any hostile action against the United States or its allies". Judge Urbina noted that the US government has conceded that that ruling applies to all 17 of the Uighurs equally, and that "there are no material factual differences" between their cases.

Judge Urbina concluded that the government had "stymied its own efforts" to find another country to take the Uighur detainees by "insisting (until recently) that they were enemy combatants, the same designation given to terrorists willing to detonate themselves amongst crowds of civilians". He wrote that "the court's authority to safeguard an individual's liberty from unbridled executive fiat reaches its zenith when the Executive brings an individual involuntarily within the court's jurisdiction, detains that individual and then subverts diplomatic efforts to secure alternative channels for release".

The government's response to Judge Urbina's ruling – portraying the Uighurs as individuals who sought to "wage terror" – can once again only put obstacles in the way of the third country solutions for which it claims to be searching. In the absence of such solutions, and if Judge Urbina's ruling is not enforced, the only alternative, according to the government, is indefinite detention in Guantánamo.

As long ago as June 2008, the Chairman and Ranking Member of the US Congressional Subcommittee on International Organizations, Human Rights and Oversight – Representatives Bill Delahunt and Dana Rohrabacher – called on the administration to release the Uighur

detainees into the USA. In his 7 October order, Judge Urbina noted that there were individuals and organizations "prepared to support the Uighurs upon resettlement in the United States by providing housing, employment, money, education and other spiritual and social services". The US administration should urgently reflect on its own failure to adopt a humanitarian approach to resolve a problem of its own making.

On 8 October, the US Court of Appeals for the DC Circuit blocked the release into the USA of the 17 Uighur detainees, granting the government's emergency motion for a stay. The court has said that the purpose of the stay is to give it sufficient opportunity to consider the administration's not-yet filed appeal for a delay of the Uighurs' entry to the USA while it pursues a full appeal against Judge Urbina's order. The Court has given the government until the afternoon of 10 October to file its "motion for stay pending appeal", adding that this "administrative stay" should "not be construed in any way as a ruling on the merits of that motion". Lawyers for the detainees must then file their response by 14 October, and any government reply to that must be filed with the Court by the afternoon of 16 October.

In June 2008, ruling that the Guantánamo detainees have the constitutional right to habeas corpus (*Boumediene v. Bush*), the US Supreme Court wrote that "the costs of delay can no longer be borne by those who are held in custody".

These men have borne the costs of nearly seven years in indefinite detention without charge or trial, including periods in the harsh conditions of Guantánamo's Camp 6.² Remedy is years overdue. The government should drop its opposition to Judge Urbina's order, bring the Uighur detainees into the USA, and work to find lawful, fair, safe and durable solutions in all their cases. It should stop its scaremongering.

See also

USA: Justice Years Overdue: Federal court hearing for Uighur detainees in Guantánamo, 7 October 2008, <http://www.amnesty.org/en/library/info/AMR51/110/2008/en>.

USA: Federal judge orders release of Uighurs held at Guantánamo, government appeals, 8 October 2008, <http://www.amnesty.org/en/library/info/AMR51/111/2008/en>.

Please take action: <http://www.amnesty.org/en/library/info/AMR51/112/2008/en>.

INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM

² See USA: Cruel and inhuman: conditions of isolation for detainees at Guantánamo Bay, April 2007, <http://www.amnesty.org/en/library/info/AMR51/051/2007>.