

PUBLIC

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Further information on UA 278/08 (AMR 51/112/2008, 08 October 2008) and updates (AMR 51/137/2008, 12 November; AMR 51/013/2009, 26 January 2009; AMR 51/027/2009, 19 February 2009) – Legal concern

USA 17 Uighur detainees held at Guantánamo

Seven months after a federal judge ruled their detention unlawful and ordered their immediate release into the USA, 17 Uighurs remain in indefinite detention at the US Naval Base in Guantánamo Bay, Cuba. The 17 men have been held without charge in the base for more than seven years.

On 8 October 2008, Judge Ricardo Urbina of the District Court for the District of Columbia (DC) ruled that the detention of the Uighurs was unlawful. The Bush administration had conceded that the Uighurs were not "enemy combatants" (even under its own definition of the concept), and had cleared all of them for release. It had accepted that they could not be returned to their native China because they would face a serious risk of torture or execution there, but had been unable to find another country to take them. Noting that years of diplomatic efforts to find a third country solution had come to nothing, that the US government was unable to point to any security risk posed by the Uighurs, and that there were individuals and organizations in the USA ready and willing to provide the Uighurs support after their release, Judge Urbina ordered that they be freed into the USA. The Bush administration appealed to the Court of Appeals for the DC Circuit. After it took office on 20 January, the new administration did not move to have the appeal dismissed.

On 18 February, the Court of Appeals ruled in *Kiyemba v. Obama* that Judge Urbina had overstepped his authority. In the case of the 17 Uighurs, it continued, "the Executive Branch has determined not to allow them to enter the United States." Lawyers for the Uighurs have appealed to the Supreme Court to overturn the *Kiyemba* ruling (see background).

The 17 Uighurs have been subjected to arbitrary and indefinite detention for years. Under international human rights law, they have the right not only to challenge the lawfulness of detention and to be ordered released if that detention is deemed unlawful, but also to effective remedy for violations of their human rights. Immediately releasing the Uighur detainees into the USA would end the ongoing gross violation of their human rights. This would not preclude the US authorities from continuing their diplomatic efforts to find a third country solution, but the current absence of that solution must no longer be used to justify denying these men the remedy they have sought and are owed – and were granted by Judge Urbina.

BACKGROUND INFORMATION

On 22 January 2009 President Barack Obama signed an executive order requiring his administration to close the Guantánamo facility within a year and to review the cases of the detainees to determine what should happen to them. Three and a half months later, one Guantánamo detainee has been released and none has been charged by the new administration. In late March, members of the executive review team went to Guantánamo to interview the Uighur detainees, reportedly in order to assess whether they could be released.

The new administration has sought to exploit the *Kiyemba v. Obama* ruling of the Court of Appeals. The Justice Department has argued that the ruling "forecloses the possibility of a court order directing the Government to transfer a detainee into the United States", and as such there will be no remedy available in many cases beyond the administration's "diplomatic efforts to find an appropriate receiving country". This is tantamount to an assertion that the executive may ignore an order for release of a detainee judicially determined to be unlawfully held for as long as it takes to negotiate a return to his country of origin or to find

a third country solution. This would strip the detainees of their right to meaningful judicial review, and the authority of the court, “without delay”, to order the release of a detainee unlawfully held, as required under Article 9(4) of the International Covenant on Civil and Political Rights, and the right to an effective remedy for anyone whose rights under the Covenant have been violated (Article 2 of the ICCPR).

Lawyers for the Uighur detainees have appealed the *Kiyemba* ruling to the Supreme Court. If allowed to stand, they argue, the decision would “eviscerate” the *Boumediene v. Bush* ruling of June 2008 in which the Supreme Court had ruled that the Guantánamo detainees were entitled to a “prompt” habeas corpus hearing to challenge the lawfulness of their detention. Given the signs that the Justice Department aims to extend its use of the *Kiyemba* ruling beyond the Uighur cases to other Guantánamo detainees, “at stake”, the petition to the Supreme Court argues, is whether *Boumediene* will remain as a landmark ruling or end up as “a curiosity”. The Justice Department is due to file its response brief in the Uighur case by 29 May.

On 15 April 2009, in another case, a District Court judge ordered the release of a Yemeni detainee as unlawfully held in Guantánamo but cited the *Kiyemba* decision as curtailing her power of remedy. Lawyers for that detainee have called on the Supreme Court to immediately rule in the *Kiyemba* case that federal judges have the power to order that detainees unlawfully held in US custody be conditionally released into the USA.

On 7 May 2009 some legislators in US Congress introduced a bill, dubbed the “Keep Terrorists Out of America Act”, aimed at blocking the release or transfer of any Guantánamo detainee to the USA without the agreement of the governor and legislature of the destination US state. Another bill aims to prevent the transfer of Guantánamo detainees to detention facilities in Virginia.

FURTHER RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:

- calling on the US government, in the name of humanitarianism and justice, to release the 17 Uighur detainees into the USA immediately, and to work to ensure fair, safe and lasting outcomes for these men;
- expressing deep concern that 17 Uighur detainees remain in indefinite detention at Guantánamo, seven months after a federal judge ruled their detention unlawful and ordered their release into the USA;
- welcoming the local community support in the USA that has been pledged to help the Uighurs adjust to life outside Guantánamo;
- noting that releasing the Uighurs into the USA can only send a positive signal to those governments whose assistance the USA is asking to take released detainees who cannot be returned to their home countries.

APPEALS TO:

President Barack Obama, The White House, 1600 Pennsylvania Avenue NW, Washington DC 20500, USA

Email: president@whitehouse.gov

Fax: + 1 202 456 2461

Salutation: Dear Mr President

Attorney General Eric Holder, US Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530-0001, USA

Fax: +1 202 307 6777

Email: AskDOJ@usdoj.gov

Salutation: Dear Attorney General

Secretary of Defense Robert Gates, 1400 Defense Pentagon, Washington DC 20301, USA

Fax: + 1 703 571 8951

Email: Robert.gates@osd.mil

Salutation: Dear Secretary of Defense

COPIES TO: diplomatic representatives of the USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 19 June 2009.