

PUBLIC

AI Index: AMR 51/027/2009

19 February 2009

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

USA 17 Uighur detainees held at Guantánamo

On 18 February, the US Court of Appeals overturned the District Court ruling ordering the release into the USA of 17 Uighurs held without charge at the US Naval Base in Guantánamo Bay, Cuba. The 17 men have been held in the base for more than seven years, with most of them cleared for release since 2003.

On 8 October 2008, Judge Ricardo Urbina of the District Court for the District of Columbia (DC) had ruled that the detention of the Uighurs was unlawful as "the Constitution prohibits indefinite detention without just cause." The Bush administration had conceded that the Uighurs were not "enemy combatants" (even under its own definition of the concept), and had accepted that they could not be returned to their native China because they would face a serious risk of torture or execution there. However, it had been unable to find a country willing to accept them in more than four years of trying.

Noting that the USA's "extensive diplomatic efforts" to find a third country solution had come to nothing, that the 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 the support they would need after their release, Judge Urbina ordered that they be freed into the USA. The Bush administration appealed Judge Urbina's order to the Court of Appeals for the DC Circuit.

In its decision on 18 February, the Court of Appeals said that under US Supreme Court precedent, "it is not within the province of any, unless expressly authorized by law, to review the determination of the political branch of the Government to exclude a given alien." In the case of the 17 Uighurs, it continued, "the Executive Branch has determined not to allow them to enter the United States." The question, then, was which law had "expressly authorized" Judge Urbina to set aside this executive decision and order the Uighurs to be released into the USA. The Court of appeals found no such law.

It noted that Judge Urbina had invoked the principle "where there is a right, there is a remedy." However, the Court of Appeals asserted that "we do not believe the maxim reflects federal statutory or constitutional law. Not every violation of a right yields a remedy, even when the right is constitutional." It added that, "whatever the force of this maxim, it cannot overcome established law that an alien who seeks admission to this country may not do so under any claim of right."

These 17 men have been subjected to arbitrary and indefinite detention for years. Arbitrary detention is absolutely prohibited under international human rights law. Detainee access to a court to challenge the lawfulness of detention and to be ordered released if that detention is deemed unlawful is a basic requirement of international human rights law. At the same time, under international human rights law no-one may be denied effective remedy for violations of their human rights.

Immediately releasing the Uighur detainees into the USA would end the gross violation of their human rights entailed by their continued unlawful and indefinite detention even after the order for their release. 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 not be used any longer as an excuse to deny these men the remedy they have sought and are owed – and were granted by Judge Ricardo Urbina.

In a footnote, the Court of Appeals said that it was expressing "no opinion on whether the Executive Branch may ignore the immigration laws and release petitioners into the United States without the consent of Congress." Certainly under international law, neither a country's domestic laws nor its structure of government may be invoked as justification for failure to comply with international legal obligations. All three branches must work, whether in collaboration or independently, to ensure full respect for international law at all times. The new administration can provide these men with the remedy the previous administration denied them.

On 22 January, President Barack Obama signed an executive order committing his administration to closing the Guantánamo detention facility "as soon as practicable." Bringing the Uighur detainees into the USA, and working to find lawful, fair, safe and lasting solutions in all their cases, would have the added benefit of showing other governments, whose assistance the USA has sought and will again seek in resolving the Guantánamo detainee issue, that the USA is prepared to play its part in bringing an end to the Guantánamo detentions in a lawful manner, and "as soon as practicable," as President Obama has ordered.

See *USA: Right to an effective remedy – Administration should release Guantánamo Uighurs into the USA now*, 19 February, <http://www.amnesty.org/en/library/info/AMR51/023/2009/en>. See also, *USA: The promise of real change. President Obama's executive orders on detentions and interrogations*, 30 January, <http://www.amnesty.org/en/library/info/AMR51/015/2009/en>.

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

- expressing regret at the Court of Appeals ruling overturning the District Court's order for the release of the Uighur detainees detained indefinitely at Guantánamo for some seven years;
- noting that under international law, neither a country's domestic laws nor its structure of government may be invoked as justification for failure to comply with international legal obligations;
- noting that immediately releasing the Uighur detainees into the USA would end the gross violation of their human rights entailed by their continued unlawful and indefinite detention;
- welcoming the local community support in the USA that has been pledged to help the Uighurs adjust to life outside Guantánamo;
- pointing out that releasing the Uighurs into the USA can only send a positive signal to those governments whose assistance the new administration will seek in taking released detainees who cannot be returned to their home countries;
- calling on the US government, in the name of humanitarianism and justice, to release the Uighur detainees into the USA immediately, and to work to ensure fair, safe and lasting outcomes for these men.

APPEALS TO:

The Honorable Eric Holder, Attorney General, 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

The Honorable Robert Gates, US Secretary of Defense, 1000 Defense Pentagon, Washington DC 20301, USA

Fax: +1 703 571 8951

Salutation: Dear Secretary of Defense

Gregory Craig, Counsel to the President, The White House, 1600 Pennsylvania Avenue NW, Washington, DC 20500, USA

Fax: +1 202 456 2461

Salutation: Dear Mr Craig

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 2 April 2009.