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USA

Who are the Guantánamo detainees?

**Cruel. Inhuman. Degrades us all.
Stop torture and ill-treatment in the 'war on terror'**

CASE SHEET 4 UPDATE

Australian detainee: David Hicks

Full name: David Hicks
Nationality: Australian
Age: 29
Family status: Single with two children aged 10 and 11
Occupation: Horse trainer/Jackaroo

Background

David Hicks, a former horse trainer/jackaroo from Adelaide, south Australia, converted to Islam after training with the Kosovo Liberation Army in Kosovo. According to his father, after David Hicks returned to Australia he decided to go abroad to further his Islamic studies and to learn ancient Arabic. He travelled to Pakistan to study in a madrassa, an Islamic school.

Following the 9/11 attacks in the USA, he telephoned his father from Kandahar, Afghanistan, to tell him that he was going help the Taliban defend Kabul from the Northern Alliance. He was captured on 9 December 2001 near Kunduz in Afghanistan by the Northern Alliance.

"Thank you to everyone who has sacrificed time and effort in supporting me. I can't thank you enough... Hope to see you back in Australia"

David Hicks in a letter to supporters in Australia

The Northern Alliance allegedly subjected David Hicks to ill-treatment before handing him to the US authorities. After he was interrogated by US and Australian officials aboard the *USS Peleliu*, he was transported to Guantánamo Bay in January 2002.

David Hicks is currently the only Australian national detained at Guantánamo Bay, after the release of Mamdouh Habib in January 2005.

Allegations of torture

In 2002 David Hicks submitted a report to the International Committee of the Red Cross (ICRC) outlining abuses by US officials that he suffered in Guantánamo. Although restricted in the details he was allowed to give, Stephen Kenny, David Hicks' former Australian legal consultant said that this report referred to "specific incidences that I believe were not just the actions of individual guards, but rather a well known activity that must have been authorized by some reasonably high-up people in the chain of command of the US forces."

"I have been beaten before, after and during investigations. I have been menaced and threatened, directly and indirectly, with firearms and other weapons before and during investigations."

David Hicks

In August 2004 David Hicks gave a sworn affidavit to his military lawyer, Major Michael Mori. Declassified in December, the affidavit makes disturbing allegations about David Hicks' treatment and the treatment of other detainees in US custody. It lists a number of techniques allegedly used by US interrogators that amount to torture or other cruel, inhuman and degrading treatment.

David Hicks alleges that he:

- was repeatedly beaten, once for eight hours, including while restrained and blindfolded;
- was forced to take unknown medication;
- was subjected to sleep deprivation "as a matter of policy";
- was not allowed to leave his cell in Camp Echo to exercise in the sunlight between July 2003 and March 2004.

The US Department of Defense says it is investigating the allegations of beatings. However, the official who announced the investigation sought to discredit David Hicks' claims by stating that they "seem[ed] to fit the standard

operating procedure in Al Qaeda training manuals". David Hicks' allegations echo claims that have come not only from detainees, but also from non-detainee sources, including FBI agents who have said they witnessed abuses in Guantánamo.

David Hicks also alleges that he witnessed the activities of the Immediate Response Force, which he described as a squad of soldiers who enter the cells of "uncooperative" detainees in order to "brutalize" them, often using attack dogs. According to the affidavit, David Hicks witnessed members of the squad entering cells because detainees were praying or had refused medication, and that the detainees were seriously injured. He says religious detainees have been stripped naked and dragged around their cells, and have been forced to view pornographic materials in order to break their will.

Family

David Hicks has been held incommunicado for long periods. Letters to his family have reportedly been restricted, and he could not speak to his lawyer until 12 December 2003, almost two years after he arrived at Guantánamo Bay. During this time he was transferred from Camp Delta to Camp Echo where, according to his father, he was "completely isolated. The cells are painted white and they don't see anyone".

On 29 June 2004 David Hicks was allowed for only the second time to talk to his family on the telephone. He briefly met his father, for the first time in five years, in August 2004.

"We had a few letters and there have been some messages via Major Mori [David Hicks' US Army appointed lawyer], but that's it."

Terry Hicks, David Hicks' father

Legal developments

David Hicks was one of the first Guantánamo detainees to be charged in preparation for trial by military commission. He faces charges of "conspiracy to commit war crimes", "attempted murder by an underprivileged belligerent" and "aiding the enemy".

In August 2004 David Hicks was brought before a military commission panel for a pre-trial hearing. After being read the charges, he said to the presiding officer: "Sir, on all charges, I plead not guilty". His trial was set for 10 January 2005. However, the tribunals were suspended following the November 2004 ruling in a US federal court in *Hamdan v Rumsfeld* that the detainee in that case should have been presumed to have been a prisoner of war until a competent tribunal determined otherwise, as required by Article 5 of the Third Geneva Convention. As a prisoner of war, a detainee could only be tried in the same manner as US soldiers, ie he should face a court martial. The judge also ruled that even if the detainee was not a prisoner of war, the military commission procedures were unconstitutional, particularly the fact that the defendant could be excluded from certain proceedings. The US government has appealed this ruling. Military commission proceedings have been suspended pending the outcome of this appeal.

After a June 2004 Supreme Court ruling that detainees have the right to petition for habeas corpus in US courts (*Rasul v Bush*), lawyers representing David Hicks filed a petition with the US District Court in Washington DC. The petition challenged his long detention, the absence of charges, and numerous aspects of his detention, including the allegations that he had been tortured.

The first judge on the DC District Court to interpret the *Rasul* decision, Judge Richard Leon, ruled in favour of the executive authority of the US President during war time, holding that the Guantánamo detainees had no right to challenge the lawfulness of their detention. Two weeks later, Judge Joyce Hens Green gave a contrasting opinion. She rejected the government's argument that the detainees have no substantive rights, concluding that they must have more than just the procedural right "to file papers in the Clerk's Office". Specifically, she held that the detainees had the US constitutional right not to be deprived of liberty without due process of law. The government is seeking to have a higher court, the US Court of Appeals for the District of Columbia Circuit, resolve the conflict between Judge Leon's and Judge Green's opinions in its favour. Meanwhile, the legal limbo of the detainees continues, with no detainee having yet had the lawfulness of his detention judicially reviewed.

Whatever the outcome of the appeal currently before the Court of Appeals, the case is likely to be appealed to the US Supreme Court. This would likely be the case in the *Hamdan v Rumsfeld* case as well what-ever the outcome of the current appeal that is pending.

Australian and US authorities

On 25 November 2003 the US and Australian governments separately issued news releases announcing that any trials by military commission of Australian detainees would be fair. The Australian Minister for Foreign Affairs and Attorney General said that their government had "reached an understanding with the US concerning procedures

which would apply to possible military commission trials of the two Australian nationals...” This included an agreement not to seek the death penalty against them. Even though the tribunals would not meet internationally recognized standards for fair trial and are beset by fundamental flaws, the Australian government was satisfied with the military commission system, and welcomed the fact that David Hicks was to be tried by one.

As the subsequent legal stalemate has continued, the Australian government has become more vocal in expressing its concern about the continued detention of David Hicks. Unnamed government sources have expressed concern about the lack of evidence against David Hicks and that he remains held without any judicial review. One official reportedly said: “We are very frustrated. The process is taking much longer than people might reasonably have expected. We don’t want this guy [David Hicks] in limbo forever”.

TAKE ACTION FOR DAVID HICKS

Write to the US authorities:

- Stating that David Hicks and all other detainees must be given full and fair trials – not by military commission – or released;
- Seeking assurances that there will be a full and impartial investigation into the allegations of torture and ill-treatment of David Hicks and other detainees in Guantánamo Bay, and that all those found responsible will be brought to justice;
- Calling for the US government to set up a commission of inquiry into “war on terror” detentions.

Write to the Australian authorities:

- Calling on them to ensure that David Hicks receives a full and fair trial or is released immediately;
- Expressing concern that Australian officials were present at the interrogation of David Hicks and cooperated in his transfer to Guantánamo Bay;
- Urging the Australian authorities to withdraw support for the military commissions as they are contrary to international standards on fair trials;
- Seeking assurances that, if returned to Australia, David Hicks will be released or charged, and that information extracted using torture will not be used as evidence;
- Urging them to support AI’s call for an independent inquiry into “war on terror” detentions.

Write to:

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If you want to take further action on this case, please contact your national AI office

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