

PUBLIC

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Further information on UA 278/08 (AMR 51/112/2008, 08 October 2008) – Legal concern

USA 17 Uighur detainees held at Guantánamo

Seventeen Uighurs remain in indefinite military detention in the US Naval Base at Guantánamo Bay in Cuba more than a month after a federal judge ruled that their continued detention was unlawful and ordered their release into the USA. The government obtained an emergency stay of the order from a higher court, which will now hold oral arguments on the issue on 24 November.

On 7 October, Judge Urbina of the District Court for the District of Columbia (DC) ordered the government to release into the USA the 17 Uighurs whom the government had earlier conceded are not “enemy combatants”, the label it had attached to them for years to purport to justify their indefinite detention without charge or trial. A majority of the Uighurs have been cleared for release since 2003.

The USA has accepted that the Uighurs cannot be returned to their native China because they would face a serious risk of torture or execution there. However, it has been unable to find a country willing to accept them in more than four years of trying. It says it has approached and re-approached nearly 100 countries. Clearly, the only current way to end the indefinite detention of the Uighurs is for them to be released into the USA. The administration is refusing to countenance such an outcome, however, and has turned to the US Court of Appeals for the DC Circuit to overturn Judge Urbina’s order and allow the detainees to be held at Guantánamo pending emergence of the third country solution that has eluded the US government for years.

The US administration argues that Judge Urbina’s order should be reversed because “unless otherwise authorized by law, no court has the power to review the Executive’s decision to exclude an alien from this country”. Judge Urbina had recognized the sensitivity of judicial intervention in “a field normally dominated by the political branches”, but pointed out that it was the government that had taken the Uighurs to Guantánamo; had not charged them with any crime or presented any “reliable evidence that they would pose a threat to US interests”; and it is the government that has “stymied” its own efforts to find a third country solution by labelling the Uighurs until recently as “enemy combatants”. Judge Urbina also noted that there were individuals and organizations ready and willing to support the Uighurs upon resettlement in the USA “by providing housing, employment, money, education and other spiritual and social services”.

Judge Urbina had asked the government what threat the Uighurs would pose if released into the USA, but the government did not produce any evidence of such a threat. Now, in its bid to have the order overturned, it has portrayed the Uighurs as dangerous individuals, who “sought to wage terror on a sovereign government” and who had received “weapons training” in Afghanistan after they fled there from China. A Court of Appeals judge has since noted that the government had presented “no evidence” that the Uighurs pose a threat to the US national security “or the safety of the community or any person”. She added that the fact that one or more of the Uighurs received training in firearms “cannot alone show they are dangerous, unless millions of United States resident citizens who had received firearms training are deemed to be dangerous”.

The government argues that even if the Uighurs “were standing at the Nation’s borders”, they would likely not be allowed in on security grounds, under the broadly worded US immigration law. Even if the Uighurs were “somehow entitled to be brought into and released in the United States”, the government argues, they would be subject to immediate and indefinite detention under immigration law pending removal from the USA.

The government has asserted that “negotiations are ongoing regarding the possibility of their resettlement in third countries”. It argues that a decision requiring the government to release the Uighurs into the USA could complicate such negotiations. If the 17 Uighurs were brought to the USA, it suggests, “even our friends and allies might be less likely to participate in resettlement efforts for petitioners (or, indeed, for any other detainee)”. The fact is, however, that any such efforts by the US State Department – unsuccessful for years – have already been undermined by the government’s own conduct – its prior labelling of the detainees as “enemy combatants” and its more recent campaign of innuendo labelling them as dangerous.

In its briefs to the Court of Appeals, the government has painted a benign picture of the conditions in which the Uighurs are now “housed” in Guantánamo’s Camp Iguana: “special communal housing with access to all areas of the camp, including an outdoor recreation space and picnic area”, sleeping quarters “in an air conditioned bunk house”, and “the use of an activity room equipped with various recreational items, including a television with VCR and DVD players”. The Uighurs also “have access to special food items, shower facilities, and library materials”. While the Uighurs’ current conditions are less harsh than those they have endured previously, particularly in Camp 6, they are incarcerated nonetheless. They are isolated from the outside world, surrounded by fencing and razor wire, monitored by armed guards and 24-hour camera surveillance, and with only a small space for recreation. They are shackled to the floor for visits with lawyers.

For further information, see 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>; USA: US Court of Appeals blocks release of Guantánamo Uighurs as government resorts to ‘scare tactics’, 10 October 2008, <http://www.amnesty.org/en/library/info/AMR51/113/2008/en>; and USA: Indefinite detention by litigation: ‘Monstrous absurdity’ continues as Uighurs remain in Guantánamo, 12 November 2008, <http://www.amnesty.org/en/library/info/AMR51/136/2008/en>.

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

- expressing concern that the Uighurs remain in indefinite detention at Guantánamo, and that the government continues to litigate to keep them there pending the third country solution that has eluded the USA for years;
- expressing concern at the US administration’s unsubstantiated portrayal of the Uighurs in its litigation strategy as dangerous individuals, innuendo that can only work against third country solutions;
- welcoming the local community support in the USA that has been pledged to help the Uighurs adjust to life outside Guantánamo;
- calling on the US government, in the name of humanitarianism and justice, to release the Uighur detainees into the USA, and to work to ensure fair, safe and lasting outcomes for these men.

APPEALS TO:

The Honorable Gregory G. Katsas, Assistant Attorney General, US Department of Justice
950 Pennsylvania Avenue NW, Room 3141, Washington, DC 20530-0001, USA

Fax: +1 202 307 6777 or +1 202 616 8470

Email: Gregory.Katsas@usdoj.org

Salutation: Dear Assistant Attorney General

John Bellinger, Legal Adviser, US Department of State, 2201 C Street NW, Washington, DC 20520, USA

Fax: + 1 202 647 7096

Salutation: Dear Mr Bellinger

President George W. Bush, The White House, 1600 Pennsylvania Avenue NW, Washington, DC 20500, USA

Fax: +1 202 456 2461

Email: president@whitehouse.gov

Salutation: Dear Mr President

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

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 24 December 2008