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USA: Judge orders Guantánamo detainee released after seven and a half years in detention without charge

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On 22 June 2009, a US federal judge ordered the immediate release of Abdul Rahim Abdul Razak al Gincio (Abdul Rahim al Janko), a 31-year-old Syrian national of Kurdish origin who has been held in US military custody without charge or trial for nearly seven and a half years.

Abdul Rahim al Janko has spent most of the past decade incarcerated. Prior to being taken into US custody in Afghanistan in January 2002 he had been imprisoned by the Taleban for almost two years. After the US invasion of Afghanistan, he was held in the US air base in Kandahar before being transferred in late April or early May 2002 to the US Naval Base in Guantánamo Bay in Cuba, where he remains.

Judge Richard Leon, on the US District Court for the District of Columbia (DC), ruled that the US government had failed to show, even under the relatively low threshold of “by a preponderance of the evidence”, that it could lawfully continue to detain Abdul Rahim al Janko. The US administration had argued that it could hold him under the Authorization for Use of Military Force (AUMF), a broadly-worded resolution passed by US Congress on 14 September 2001 authorizing the President to “use all necessary and appropriate force” to respond to the attacks in the USA three days earlier. The AUMF was passed with little actual debate, and no discussion of or express provision for detentions, and was exploited by the administration of President George W. Bush to authorize a range of human rights violations, including secret detention and unfair trials by military commission. Amnesty International has called for revocation of the AUMF.

Under the Bush administration, the detainees at Guantánamo were held as “enemy combatants”. While the new administration has dropped the term “enemy combatant” from the Guantánamo litigation, it has claimed similar detention power to that asserted by its predecessor. On 13 March 2009, the US Justice Department proposed a revised “definitional framework” for the purposes of the Guantánamo litigation. Under the AUMF, it claimed,

“The President has the authority to detain persons that the President determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, and persons who harboured those responsible for those attacks. The President also has the authority to detain persons who were part of, or substantially supported, Taliban or al-Qaida forces or associated forces that are engaged in hostilities against the United States or its coalition partners, including any person who has committed a belligerent act, or has directly supported hostilities, in aid of such enemy armed forces”.

Judge Leon said that he did not know why the new administration had dropped the “enemy combatant” term, but that in any event he did not need to decide whether to adopt the revised definition. This was because the administration was arguing that when he was taken into US custody, Abdul Rahim al Janko was a “part of” the Taleban or *al-Qa’ida*, the same phrasing as contained in the definition of “enemy combatant” Judge Leon had decided upon before the new administration took office.

Prior to being taken into US custody, Abdul Rahim al Janko had been imprisoned by the Taleban. In a declaration signed in January 2009, he recalled that in early 2000, “first in Kabul, and later in

Kandahar, the Taliban, as well as Al Qaeda officials, subjected me to severe torture and threats of death during long and painful and frightening interrogation sessions". He said that the torture included "severe beatings, electric shock, being hung from the ceiling, water torture, striking the bottom of my feet with clubs, striking my hand with the butt of a gun, and sleep deprivation". He added that "they also extinguished cigarettes onto my legs".¹ He said that he "falsely confessed to being a spy for the United States and Israel", and that his "confessions" were videotaped. After "three months of torture", Abdul Rahim al Janko said he was transferred to Sarpusa prison in Kandahar in May 2000 and held there until the Taleban abandoned the prison in December 2001 after the US military intervention in Afghanistan. The following month, Abdul Rahim al Janko was taken into US custody.

Meanwhile, several videotapes had been found in the rubble of suspected *al-Qa'ida* operative Mohammed Atef's house near Kabul bombed in a US air strike on 16 November 2001. In January 2002 in the USA, Attorney General John Ashcroft and FBI Director Robert Mueller held a press conference about the tapes. The Attorney General said that they "depict young men delivering what appear to be martyrdom messages from suicide terrorists", although there was no specific targets or timing indicated. He named one of the five as "Abd Al-Rahim", and stated that the men "may be trained and prepared to commit future suicide terrorist attacks".² In his ruling seven and a half years later, Judge Leon noted that

"Originally, the Government and the US media mistook Janko as one of a number of suicide martyrs based on videotapes at an al Qaeda safehouse. The tape involving Janko, however, was actually an al Qaeda torture tape."

Abdul Rahim al Janko said that after he was identified as one of the men on the videotapes, the interrogators at the Kandahar air base "began treating me very badly", including "striking me on the forehead; threatening to remove my fingernail; sleep deprivation; exposure to very cold temperatures; exercise to exhaustion doing sit-ups, push-ups, and running in chains; stress positions for hours at a time; use of police dogs; and rough treatment to take me to interrogation, although I did not resist or use violence".

At his Combatant Status Review Tribunal (CSRT) hearing in Guantánamo on 4 December 2004 – nearly three years after he was taken into US custody in Afghanistan – Abdul Rahim al Janko told the military panel that he was not an "enemy combatant" but someone who had been taken "from prison to prison". The CSRT decided that he was an "enemy combatant", however. In 2005, the Administrative Review Board (ARB) listed as a "primary factor" favouring his continued detention the videotape obtained in Mohamed Atef's house, consisting of statements Abdul Rahim al Janko said were false and coerced under torture.

On 9 October 2007, the Bush administration filed its brief to the US Supreme Court in *Boumediene v. Bush* seeking to have the Court rule that narrow judicial review of CSRT decisions was an adequate substitute for habeas corpus. In support of its position that the CSRT was a fair system, the government cited Abdul Rahim al Janko's case. On 12 June 2008, the Supreme Court ruled against the government, finding that the Guantánamo detainees had the constitutional right to challenge the lawfulness of their detention in US District Court. The Court said that "the costs of delay can no longer be borne by those who are held in custody. The detainees in these cases are entitled to a prompt habeas corpus hearing". It took another year for Abdul Rahim al Janko to receive such a hearing on the merits of his claim that he was unlawfully held.³

In the habeas corpus proceeding, the US administration maintained that Abdul Rahim al Janko was "part of" *al-Qa'ida* and/or the Taleban prior to his imprisonment in 2000. The evidence it provided for this was that he had travelled to Afghanistan; that he had stayed at a Taleban guesthouse for five days; and that he had attended an *al-Qa'ida* training camp for about two weeks. According to Judge Leon, the US administration "contends, in essence, that the extreme treatment Janko was subjected to over a substantial period of time thereafter was *not* sufficient to vitiate that relationship" and that he was therefore still "part of" the organizations when he was taken into US custody in January 2002. "I disagree! [emphasis in original]", wrote Judge Leon, adding that the government's position "defies

common sense". "To say the least", Judge Leon wrote, "five days at a guesthouse in Kabul combined with eighteen days at a training camp does not add up to a longstanding bond of brotherhood", and "extreme treatment" of the sort suffered by Abdul Rahim al Janko surely "evinces a total evisceration of whatever relationship might have existed!" [emphasis in original]. Judge Leon concluded that "absent proof to the contrary – which is totally lacking here, no remnant of that pre-existing relationship appears to have survived". There were no grounds for the USA to continue holding the detainee, and Judge Leon ordered the government "to take all necessary and appropriate diplomatic steps to facilitate his release forthwith".

Amnesty International urges the US administration not to appeal Judge Leon's ruling and to take immediate steps to comply with it. It must ensure that Abdul Rahim al Janko's release complies with the USA's international obligations not to forcibly transfer him to any country where he would be subject to torture or other cruel, inhuman or degrading treatment or other human rights violations, or where he would be put at risk of being transferred onward from that country to a risk of violations elsewhere.⁴

Amnesty International remains concerned that in a number of habeas corpus cases, even after District Court judges have ordered the immediate release of Guantánamo detainees as unlawfully held, the detainee has remained in indefinite detention for months. In a major national security speech on 21 May 2009, President Obama referred to their cases, noting that "the United States is a nation of laws, and we must abide by these rulings". Yet, Chadian national Mohammed el Gharani, first taken into custody by the USA when he was 14 years old, was not released from Guantánamo until 11 June 2009, five months after his immediate release was ordered by a federal court. Even then, although the US Department of Justice noted the judicial order, it stated that the release was the result of executive review of the case.⁵ Lakhdar Boumediene, whose immediate release was ordered by a US District Court judge on 20 November 2008 was only released from Guantánamo on 15 May 2009. Even then, the government appeared not to be acting pursuant to the judicial order, but as a matter of executive discretion. In the statement announcing the release, the Justice Department said that, as directed by President Obama, "the interagency Guantánamo Review Task Force conducted a comprehensive review of Boumediene's case. As a result of that review, Boumediene was approved for transfer to France".⁶ There was no mention of the District Court order. When the Justice Department announced the transfer to Bermuda of four Uighur men on 11 June 2009, whose immediate release into the USA had been ordered eight months earlier, it said that they were "subject to release as a result of court orders", but also made clear that their transfer was ultimately the result of executive discretion rather than judicial authority.⁷ Thirteen other Uighurs remain in Guantánamo despite the judicial order for their release in October 2008.⁸

Immediate cessation of an ongoing human rights violation is an essential element of the right under international law to an effective remedy.⁹ In this case, Abdul Rahim al Janko's prompt and safe release from unlawful detention by the USA is the beginnings of remedy. The USA should also ensure that he has effective access to reparation for any human rights violations to which he has been subjected, including arbitrary detention and torture or other cruel, inhuman or degrading treatment. In addition to compensation, reparation can include, for example, rehabilitation, changes in relevant laws and practices, as well as bringing to justice the perpetrators of human rights violations.¹⁰ International law requires such accountability, and a "failure to investigate allegations of violations could in and of itself give rise to a separate breach of the [International] Covenant [on Civil and Political Rights]".¹¹

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

- ¹ *Al Ginco v. Bush*, Declaration of Abdul Rahim Abdul Razak al Ginco. In the US District Court for DC, 7 January 2009.
- ² Attorney General news conference with FBI Director regarding terrorist tapes, 17 January 2002, Department of Justice.
- ³ USA: Detainees continue to bear costs of delay and lack of remedy, April 2009
<http://www.amnesty.org/en/library/info/AMR51/050/2009/en>
- ⁴ See, for example, UN Human Rights Committee, General Comment No. 31, Nature of the general legal obligation imposed on States Parties to the [International] Covenant [on Civil and Political Rights]. UN Doc.: CCPR/C/21/Rev.1/Add.13. (2004) (“the article 2 obligation requiring that States Parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed”). The USA ratified the ICCPR in 1992.
- ⁵ United States transfers two Guantánamo detainees to foreign nations, US Department of Justice news release, 11 June 2009.
- ⁶ United States transfers Lakhdar Boumediene to France. US Department of Justice news release, 15 May 2009.
- ⁷ United States Resettles Four Uighur Detainees from Guantánamo Bay to the Government of Bermuda, US Department of Justice news release, 11 June 2009.
- ⁸ For more on the case of the Uighurs, and litigation over US courts’ own interpretation of their powers to order release, including release into the USA, see Amnesty International Urgent Action update, 8 May 2009, <http://www.amnesty.org/en/library/info/AMR51/062/2009/en>, and see also, USA: USA: Human rights must transcend party politics, 15 June 2009, <http://www.amnesty.org/en/library/info/AMR51/076/2009/en>.
- ⁹ UN Human Rights Committee, General Comment No. 31, *op. cit.*, para. 15.
- ¹⁰ *Ibid.*, para. 16.
- ¹¹ *Ibid.*, para. 15.