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USA: Federal judge orders release of Uighurs held at Guantánamo, government appeals

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In a landmark ruling on 7 October 2008, a US federal judge ordered the government to release into the USA the 17 Uighur detainees still held in the US Naval Base in Guantánamo Bay, Cuba.¹ The government had earlier conceded that the 17 men are not “enemy combatants”, the label it has attached to them for almost seven years to justify their indefinite detention without charge or trial.

Judge Ricardo Urbina of the US District Court for the District of Columbia in Washington, DC, ordered that the 17 detainees be brought to his court at 10am on 10 October. The Uighurs would then be released, with the assistance of members of the local Uighur community, religious groups and refugee settlement agencies who have offered their support to help the detainees adjust to their lives outside Guantánamo. Judge Urbina also set a hearing for 16 October to determine the conditions of the Uighurs’ release, and ordered that an official from the US Department of Homeland Security be present at that hearing.

Of the more than 500 detainees released from Guantánamo since detention operations began there in January 2002, none has been released by judicial order, all by executive discretion. Except in the case of Yaser Hamdi, who was transferred from Guantánamo to military custody in South Carolina in April 2002 after it was discovered that he had US citizenship, no Guantánamo detainee has been transferred to the US mainland.

After the hearing, the US Department of Justice announced that it was filing an emergency motion for a stay of Judge Urbina’s order pending an appeal to the Court of Appeals for the DC Circuit. The case could yet go to the US Supreme Court.

The government had argued to Judge Urbina that it should be allowed to keep the Uighurs at Guantánamo until it found a country willing to accept them, however long that could take. The Uighurs cannot be returned to their native China because they would face a serious risk of

¹ The mainly Muslim Uighur community is the majority ethnic group in the Xinjiang Uighur Autonomous Region in the northwest of China. See, for example, Amnesty International Urgent Action, USA: Uighurs held in Guantánamo Bay, Fear of forcible return/Fear of torture/Fear of execution, 4 December 2003, <http://www.amnesty.org/en/library/info/AMR51/147/2003/en>.

torture or execution there. The US government says that, despite “extensive diplomatic efforts”, it has been unable to find any other country willing to take them. It is now more than four years since then Secretary of State Colin Powell said that the USA would not return the Uighurs to China and was “trying to find places for them” in “all candidate countries”.

In its press release after Judge Urbina’s ruling, the Justice Department said that “although the United States no longer treats these Uighurs as ‘enemy combatants’ of the United States and has been seeking to transfer them out of Guantánamo Bay and to appropriate foreign countries willing to accept them, the government does not believe that it is appropriate to have these foreign nationals removed from government custody and released into the United States”.

The US administration argued against judicially ordered release into the USA on the grounds that “the admission of aliens is a quintessential sovereign function reserved exclusively to the political branches of Government”. It has claimed the authority to continue to detain those it no longer considers “enemy combatants” under the executive’s “necessary power to wind up wartime detentions in an orderly fashion”. Judge Urbina rejected this, saying that whatever authority the government had to detain the men had “ceased”.

The government’s decision to appeal is the latest illustration of the pursuit of unfettered executive power that has characterized the USA’s conduct in the “war on terror” and led to systematic human rights violations, including arbitrary detention and torture and other ill-treatment.

The government should comply with Judge Urbina’s order, drop its appeals, bring the Uighur detainees into the USA, and work to find lawful, fair, safe and durable solutions in all their cases.

Most of the 17 Uighurs were taken into custody in Pakistan in late 2001 having fled there from Afghanistan after the Uighur camp to which they had fled from China was bombed by US forces. They are alleged to have been sold by Pakistani forces to the USA for a substantial bounty. The detainees were transferred to Guantánamo in 2002.

See also *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>.

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