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After 7 Years, Judge Orders Release of Guantanamo Kidnap Victims

by Andy Worthington

On Thursday, in the U.S. District Court in Washington, D.C., Judge Richard Leon, an appointee of President George W. Bush, delivered a major blow to the outgoing administration's "war on terror" detention policies by ordering the immediate release of five Algerian-born Bosnian prisoners at Guantánamo, after concluding that the government had provided no credible evidence that, as was alleged, the men intended to travel to Afghanistan to take up arms against U.S. forces.

The case of the Bosnian Algerians has long been one of the more surreal episodes in Guantánamo's long and undistinguished history of wanton cruelty and intelligence failures. The [story began](#) (PDF) in October 2001, when the U.S. embassy in Sarajevo asked the Bosnian government to arrest six men — Lakhdar Boumediene, Mohammed Nechla, Hadj Boudella, Mustafa Ait Idr, Sabir Lahmar and Belkacem Bensayah (all aged between 32 and 40) — because of a suspicion that they were involved in a plot to bomb the U.S. embassy. The Americans' request took the form of a diplomatic note, which contained no evidence to support the allegation, and the Bosnians refused to comply until the Americans threatened to close their embassy and withdraw peacekeeping forces unless the men were arrested. Human-rights activist Srdjan Dizdarevic [noted](#) that "the threats from the Americans were enormous. There was a hysteria in their behavior."

Unwilling to defy the Americans, the Bosnians then arrested the men, but after a three-month investigation, in which they conducted extensive searches of their apartments, their computers and their documents, they found "literally no evidence" to justify the arrests. The Bosnian Supreme Court ordered their release, and, with rumors circulating that the Americans were going to seize them anyway, the Bosnian Human Rights Chamber ruled that they had the right to remain in the country and were not to be deported. On the night of January 17, 2002, a huge crowd of supporters gathered outside the prison in Sarajevo to protect them on their release, but riot police dispersed the crowd with tear gas, and at dawn, as the men emerged, they were seized by American agents, hooded, handcuffed and rendered to Guantánamo.

After they arrived in Guantánamo, the embassy plot was never mentioned. Instead, the six men were subjected to relentless allegations that they were associated with al-Qaeda. Although they had all traveled to Bosnia during the 1992-95 civil war to fight on behalf of the oppressed Muslim population, they were then granted citizenship, married Bosnian women and spent the next six years working with orphans for various Muslim charities, including the Red Crescent — and, in the case of Lahmar, an

Islamic scholar, the Saudi High Committee for Relief — and maintained that they had no connections whatsoever with terrorism.

When lawyers were finally allowed to meet the men, following the Supreme Court's ruling, in June 2004, that the Guantánamo prisoners had habeas corpus rights (the right to ask a judge why they were being held), they discovered that a possible source of the allegations against the men was Lahmar's embittered ex-brother-in-law, who had run a "smear campaign" against him. The only allegation that they were unable to counter — because the U.S. authorities refused to substantiate it — was that Bensayah had made 70 phone calls to Afghanistan after the 9/11 attacks and was "the top al-Qaeda facilitator" in Bosnia.

On Thursday, seven years and one month after the men were first arrested by the Bosnian authorities, and six years and ten months after they were cleared and then kidnapped by U.S. agents and flown to Guantánamo, Judge Leon finally addressed the allegations against the men in a U.S. courtroom. This unconscionable delay was the result of legislation passed in the wake of the Supreme Court's habeas verdict in June 2004 (the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006), which purported to strip the prisoners of the habeas rights upheld by the Supreme Court. It was not until June this year, when the Supreme Court revisited the prisoners' rights, and [ruled](#) that their habeas rights were constitutional, that the cases of the Bosnian Algerians — and of most of the 255 prisoners still held in Guantánamo — made their way to the District Court.

In his Memorandum Opinion ([PDF](#)), issued on November 20, Judge Leon's crucial verdict concerned the government's allegation that the men had "planned to travel to Afghanistan to take up arms against U.S. and allied forces," and that this constituted "support" of al-Qaeda under the definition of an "enemy combatant" that Judge Leon had [decided](#) four weeks previously (it is a sign of the chaotic imprecision of the government's detention policies that no single definition existed until Leon ruled that an "enemy combatant" is someone "who was part of or supporting Taliban or al-Qaeda forces, or associated forces that are engaged in hostilities against the U.S. or its coalition partners. This includes any person who has committed a belligerent act or has directly supported hostilities in aid of enemy armed forces").

Countering this, the prisoners contended that the government had "not shown by a preponderance of the evidence that any of the petitioners planned to travel to Afghanistan to engage U.S. forces, and, even if the government had shown that petitioners had such a plan, a mere plan, unaccompanied by any concrete acts, is not — as a matter of law — 'supporting' al-Qaeda within the meaning of the Court's definition of 'enemy combatant.'"

Ruling on behalf of the prisoners, Judge Leon declared that the government had "failed to show by a preponderance of the evidence that any of the petitioners, other than Mr. Bensayah, either had, or committed to, such a plan." He explained that the government had relied "exclusively on the information contained in a classified document from an unnamed source," but stressed that this information — "the only evidence in the record directly supporting each detainee's alleged knowledge of, or commitment to, this supposed plan" — was inadequate, because, although the government had "provided some information about the source's credibility and reliability," it had not "provided the Court with enough information to adequately evaluate the credibility and reliability of this source's information." As an example, Leon pointed out that "the Court had no knowledge as to the circumstances under which the source obtained the information as to each petitioner's alleged

knowledge and intentions.” He also noted that “the Court was not provided with adequate corroborating evidence that these petitioners knew of and were committed to such a plan,” and added, with a clear note of regret, that “due to the classified nature of government’s evidence, I cannot be more specific about the deficiencies of the government’s case at this time.”

Judge Leon also noted that, although the source’s information was “undoubtedly sufficient for the intelligence purposes for which it was prepared,” it was manifestly “not sufficient” as the basis for detaining the men as “enemy combatants.” Referring to *Hamdi v. Rumsfeld* (a case dealing with the detention on the U.S. mainland of a U.S. citizen initially held at Guantánamo, which was decided by the Supreme Court in June 2004, at the same time as *Rasul v. Bush*, which granted the prisoners habeas rights), he concluded, “To allow enemy combatancy to rest on so thin a reed would be inconsistent with this Court’s obligation under the Supreme Court’s decision in *Hamdi* to protect petitioners from the risk of erroneous detention.”

And then, after sidestepping the question of whether committing to a plan to travel to Afghanistan to fight U.S. forces would be enough to constitute “support” for al-Qaeda, Judge Leon delivered the final blow. Declaring that, “because the government has failed to establish by a preponderance of the evidence the plan that is the exclusive basis for the government’s claim that Messrs. Boumediene, Nechla, Boudella, Ait Idr, and Lahmar are enemy combatants, the Court must, and will, grant their petitions and order their release.”

There was, however, some consolation for the government, as Judge Leon also ruled that, in Belkacem Bensayah’s case, the government had provided “credible and reliable evidence,” from a number of sources, “linking Mr. Bensayah to al-Qaeda and, more specifically, to a senior al-Qaeda facilitator,” and also stated, “There can be no question that facilitating the travel of others to join the fight against the United States in Afghanistan constitutes direct support to al-Qaeda in furtherance of its objectives and that this amounts to ‘support’ within the meaning of the ‘enemy combatant’ definition governing this case.”

Even so, it would scarcely be possible to underestimate how crucial Judge Leon’s verdict is in discrediting the government’s basis for holding prisoners for nearly seven years without charge or trial, for three particular reasons: it assumes enormous symbolic resonance as the first habeas case to be decided in a courtroom; it comes at a time when Barack Obama’s transition team is beginning to look at a [review](#) of the Guantánamo cases; and it was delivered with some stern advice for the government from Judge Leon himself.

Evidently drawing on his disdain for the quality of the classified information used to detain the five men for nearly seven years, Judge Leon [implored](#) the Justice Department, the Defense Department and the intelligence agencies not to appeal his verdict, which would “at a minimum, constitute another 18 months to two years of their lives.” He added, “It seems to me that there comes a time when the desire to resolve novel, legal questions and decisions which are not binding on my colleagues pales in comparison to effecting a just result based on the state of the record.”

While I will not be content with Judge Leon’s ruling until Lakhdar Boumediene, Mohammed Nechla, Hadj Boudella, Mustafa Ait Idr and Sabir Lahmar have actually been released from Guantánamo and are reunited with their wives and children, I am also obliged to draw the attention of readers to the extraordinary brutality to which these men have been subjected in the last six years and ten months,

and to ask if their release — when it comes — will be sufficient to eradicate the administration’s crimes.

As three British prisoners — Shafiq Rasul, Asif Iqbal and Rhuhel Ahmed, the so-called “Tipton Three” — explained ([PDF](#)) after their release from Guantánamo in 2004, the Bosnian Algerians “were treated particularly badly. They were moved every two hours. They were kept naked in their cells. They were taken to interrogation for hours on end. They were short-shackled for sometimes days on end. They were deprived of their sleep.” All the men were routinely abused, but Mustafa Ait Idr seems to have been singled out for [particularly harsh punishment](#).

During one cell search, “guards stuffed his face into the toilet and repeatedly pressed the flush button,” and on another occasion “a garden hose was pushed into his mouth and the water turned on until [it] came out of his mouth and nose and he couldn’t breathe.” During an assault by the Extreme Reaction Force (ERF), a group of armored guards responsible for dealing brutally with even the most minor infringements of the rules, he had two knuckles broken, and was thrown onto crushed stones while a man jumped on the side of his head with his full weight, which led to him suffering a stroke that left one side of his face paralyzed. Despite requesting a hospital visit after this assault, he did not receive medical treatment for ten days.

Even after the sleep deprivation, isolation and use of painful stress positions came to an end, the men were not free from pointless interrogations and false allegations. At the time I was writing my book, [The Guantánamo Files](#), new allegations had sprung up to plague them, of which the most ludicrous was a claim that Hajj Boudella was with Osama bin Laden during the Tora Bora campaign in Afghanistan in November 2001, when of course, he was in jail in Sarajevo, but the real reason that the men were still in Guantánamo was because of the authorities’ belief that they had ongoing intelligence value.

This was unexpectedly revealed by Condoleezza Rice in March 2005, when she responded to a request for their release from the Bosnian prime minister by stating that it was not possible because “they still possess important intelligence data,” and it was explicitly stated by Mustafa Ait Idr in the military tribunal at Guantánamo in 2004 that concluded that he was being correctly detained as an “enemy combatant.” Ait Idr explained, “The interrogator told me I was there to give up information” about Arabs living in Bosnia, to which he replied, “The story on the outside was I was captured because of terrorism, and now here you are telling me you want me to give up information about rescue organizations and Arabs and how the Arabs are living.”

Judge Leon may have done the right thing, but harvesting false allegations and holding prisoners to mine them for their supposed intelligence value remain an intrinsic part of the regime at Guantánamo, and it is crucial that the government’s supposed evidence is tested as thoroughly in future habeas cases. The prisoners at Guantánamo, who have always sought nothing more than a day in court, deserve nothing less as the seventh anniversary of the opening of Guantánamo approaches.

Andy Worthington is the author of [The Guantánamo Files: The Stories of the 774 Detainees in America’s Illegal Prison](#) (published by Pluto Press). Visit his website at: www.andyworthington.co.uk.

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