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## **Farce at Guantánamo** **by Andy Worthington**

In 2007, after four rounds of administrative reviews at Guantánamo, Hedi Hammamy, a Tunisian prisoner, born in 1969, was cleared for release, having satisfied the Pentagon that he no longer represented a threat to the United States or its allies and no longer possessed any ongoing intelligence value. He was not released, however, because, although the U.S. government had secured a “diplomatic assurance” from the government of the Tunisian dictator Zine El Abidine Ben Ali, which purported to guarantee that returned prisoners would be treated humanely, two prisoners returned in June 2007 were apparently mistreated in Tunisian custody and were then [imprisoned](#) after what were regarded by human rights observers as show trials.

This prompted a district court judge to [prevent the return](#) of a third Tunisian in November 2007, with the result that this man, Lotfi bin Ali, and several other cleared Tunisians — including Hedi Hammamy — have languished in Guantánamo ever since, as the State Department has tried in vain to find a third country prepared to accept them.

In the surreal world of Guantánamo, the annual reviews — which rely largely on classified evidence that is not disclosed to the prisoners and cannot, therefore, be challenged by them — were introduced by the Bush administration as a rebuke to the Supreme Court, which granted the prisoners habeas corpus rights (the right to ask a judge why they were being held) in June 2004. It was not until last June (almost exactly four years later) that the Supreme Court once more addressed the prisoners’ habeas rights, [ruling as unconstitutional](#) the provisions in two pieces of legislation — the Detainee Treatment Act of 2005, and the Military Commissions Act of 2006 — which had purported to strip the prisoners of their habeas rights in the intervening years.

As a result, the first court reviews of the Guantánamo prisoners’ cases only finally took place last November, nearly seven years after the prison opened, when Judge Richard Leon, an appointee of George W. Bush, surprised the administration by granting the habeas appeals of [five Bosnian prisoners](#) of Algerian origin and ordering their release after ruling that the government had failed to justify their detention. Since then, Judge Leon has also ordered the release of [Mohammed El-Gharani](#), a Saudi resident of Chadian origin, who was just 14 years old when he

was seized by Pakistani soldiers in a raid on a mosque in Pakistan and subsequently sold to U.S. forces.

However, Judge Leon also ruled, in four other cases, that the government had established, “by a preponderance of the evidence,” that a sixth Bosnian Algerian, the Yemeni [Moaz al-Alawi](#), [Hisham Sliti](#) (a Tunisian), and another Yemeni, [Chaleb al-Bihani](#), had been correctly designated as “enemy combatants” and could continue to be held. In articles at the time, I took exception to these rulings, for three particular reasons: firstly, because it appeared that none of the men had actually engaged in terrorist activities, and secondly, because the definition of an “enemy combatant” was inappropriately broad, and, instead of focusing on individuals who had contributed directly to the planning and execution of terrorist attacks, persisted in conflating al-Qaeda with the Taliban, even though the first is a terrorist group, and the latter — though widely reviled — was in fact the government of Afghanistan.

The definition of an “enemy combatant” that was chosen by Judge Leon before the habeas hearings began (and that was plucked from several different versions proposed by the Pentagon over the years) declared that an “enemy combatant” was someone who “was part of or supporting Taliban or al-Qaeda forces, or associated forces that are engaged in hostilities against the United States or its coalition partners,” and also included anyone “who has committed a belligerent act or has directly supported hostilities in aid of enemy armed forces.”

My third reason for taking exception to Judge Leon’s rulings is based on the [release from Guantánamo](#) of another Yemeni prisoner, [Salim Hamdan](#), who was sent home last November to serve out the last month of a short sentence he had been given by a military jury last summer, after a trial at Guantánamo in the military commission system invented by [Dick Cheney](#) and his close advisers. Hamdan had actually been one of several drivers for Osama bin Laden, but his release, after a trial of the government’s own devising, made a mockery both of the government’s rationale for continuing to hold prisoners who were regarded as less significant (essentially, the majority of the 241 prisoners still held), and, it should be noted, of the rulings by Judge Leon in the cases of prisoners who had no connection with al-Qaeda and had never even met Osama bin Laden.

Nevertheless, last Thursday, over two months since his last ruling, Judge Leon decided that Hedi Hammamy had been correctly designated as an “enemy combatant,” and could, therefore, continue to be held for an unspecified amount of time. This was in spite of the fact that, just three weeks ago, the new administration of Barack Obama [made a decision](#) to stop using the term “enemy combatant,” and, in addition, amended the definition of the prisoners so that only those whose support for the Taliban or al-Qaeda was “substantial” were supposed to be held.

As I noted at the time, the situation faced by the “Nobodies Formerly Known As Enemy Combatants” — as the Justice Department had not given them a new designation — was little improved, as the government considered “substantial” support to include those who “have not

actually committed or attempted to commit any act of depredation or entered the theatre or zone of active military operations,” and others who had not raised arms against anybody but had “stay[ed] at al-Qaeda or Taliban safehouses that are regularly used to house militant recruits.”

However, Judge Leon appears not only to have failed to observe the new government’s semantic shift, but also to have attempted to weave unconnected events into a coherent whole in his appraisal of the government’s evidence. Hammamy, who was seized in Pakistan in April 2002, lived in Italy before traveling to Pakistan, and Judge Leon used an allegation that he was “a member of an Italy-based terrorist cell that provided support to various Islamic terrorist groups” as the basis for presuming that he had therefore arrived in Pakistan in connection with terrorism, even though the charges leveled against him in Italy — of “supporting terrorism, in part, by furnishing false documents and currency” — had not been tested in a court of law.

As Leon himself noted, “a judicial finding from a foreign government of Hammamy’s involvement in that terrorist cell would be clearly preferable to a U.S. government agency’s review and evaluation of that government’s investigative reports.” Nevertheless, he concluded that, “in the absence of any reason to question its accuracy, the report deserves, at a minimum, a rebuttable presumption for these limited purposes,” even though, to my mind, this was a conclusion bedeviled with caveats.

Judge Leon was clearly persuaded to regard the unsubstantiated Italian allegations as trustworthy because he concluded that they tied in with another claim put forward by the government, regarding Hammamy’s identity papers, which were apparently “found after the Battle of Tora Bora in the al-Qaeda cave complex.” As with the Italian allegation, which he has persistently refuted, Hammamy has always denied being in Tora Bora, and has claimed that his papers were in fact stolen from him and that the government has evidence that this is the case.

Critically for Hammamy, however, Judge Leon was not persuaded, and dismissively noted that he had failed “to account for how his identity papers somehow mysteriously traveled the hundreds of miles from the point of their theft in Pakistan to the highly secluded mountain hideaway of Tora Bora in Afghanistan,” adding, “While theoretically it is *possible* that this supposed thief was heading for Tora Bora himself, common sense dictates that such a conclusion is not in the least likely.”

With Judge Leon’s ruling, Hedy Hammamy finds himself in a unique — and uniquely disturbing position — in Guantánamo’s long and ignoble history. As one of his lawyers, Cori Crider of the legal charity [Relieve](#) explained to me,

While this doesn’t change the military’s opinion that Hedi Hammamy is transferable, it certainly isn’t going to help him in the political context. Being found subject to military detention is not remotely the same thing as a criminal conviction, but that won't stop right-wing elements in potential resettlement states from conflating the two issues.”

There is, moreover, a troubling subtext to Hammamy's case, as it is worth bearing in mind that it is President Obama's Justice Department, and not that of George W. Bush, which is now shepherding the Guantánamo case files. It is possible, therefore, that the new administration is playing a game of political football with the prisoners, content to defend a detention that it has already decided to end in order to avoid racking up too many losses in court.

As so often in the last seven years and three months, it appears that Guantánamo has precious little to do with justice, and is, instead, a place where politics holds sway. For Hedi Hammamy, the price is his continued detention, with no end in sight, and the knowledge that the decisions made by the review boards at Guantánamo are — as many of the prisoners have maintained over the years — almost unutterably hollow.

**Note:** Throughout his detention, Hedi Hammamy has been identified by the Pentagon as Abdulhadi bin Haddidi.

*Andy Worthington is the author of [The Guantánamo Files: The Stories of the 774 Detainees in America's Illegal Prison](#) (published by Pluto Press) and serves as policy advisor to the Future of Freedom Foundation. Visit his website at: [www.andyworthington.co.uk](http://www.andyworthington.co.uk).*

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