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## **A Child at Guantánamo: The Unending Torment of Mohamed Jawad by Andy Worthington**

In all the [recent hysteria](#) about the supposed dangers posed by the remaining 240 prisoners at Guantánamo, it has been easy to forget that sensible appraisals of the number of individuals with any meaningful connection to terrorism have long indicated that no more than a few dozen of those still held should be regarded as any kind of significant threat and that, therefore, the prison still holds over 200 prisoners who, at best, were low-level Taliban soldiers with a strong dislike of U.S. foreign policy, and, at worst, should never have been held at all.

To listen to [Dick Cheney](#), or to some self-serving politicians who are prone to similar hyperbole, you would think that every one of the remaining 240 prisoners is just itching to return to the fictional battlefield conjured up in last week's conveniently leaked Pentagon report about recidivism rates ([PDF](#)), which, while published uncritically by the [New York Times](#), has been comprehensively trashed by reporters for the [New American](#), [Fairness and Accuracy in Reporting](#), [Firedoglake](#) and many other media outlets.

On Friday, the *Times* finally made up for its lopsided reporting, allowing Peter Bergen and Katherine Tiedemann of the New America Foundation to write [an op-ed](#) whittling the Pentagon's figure of 74 (14 percent of the prison's total population) down to somewhere between 12 and 20, and all the commentators cited above have also pointed out that, in any case, the recidivism rate in U.S. federal prisons is somewhere between 60 and 70 percent.

### **The prisoners in Guantánamo are human beings, not statistics**

Moreover, behind all the bluster and the reckless use of statistics are 240 human beings, who, for the most part, have now been imprisoned for over seven years with little, if any opportunity to answer back. Over the last year or so, I have done my best to profile some of these men: those "[approved for transfer](#)" from Guantánamo after multiple military review boards (many of whom are now having their cases appraised yet again, this time by [the Obama administration's inter-departmental review](#)), the [25 prisoners cleared for release](#) by U.S. courts (including [the Uighurs](#) and former child prisoner [Mohammed El-Gharani](#)), after judges ruled in their habeas

corpus cases that the government had failed to establish a case against them, and others whose cases are [remarkably similar](#) to those dismissed by the U.S. courts.

Last week, however, I was reminded of another of these prisoners, one of several put forward for trial in the [military commission trial system](#) conceived by Dick Cheney and his legal counsel, David Addington, in November 2001, who, it seemed to me after detailed examination of their cases over the last two years, should also have been approved for release from Guantánamo, rather than being put forward for the kind of “war crimes” trials that, if valid at all, should surely have been reserved for the handful of prisoners who were accused of being involved in terrorist attacks on the United States.

These prisoners include [Omar Khadr](#), a Canadian who was just 15 years old when he allegedly threw a grenade that killed a U.S. soldier (although his defense team discovered, 18 months ago, that there had been a cover-up of information indicating that Khadr did not throw the grenade), and [a handful of Afghans](#), who, like Khadr, were, at most, minor insurgents in a war zone, rather than terrorists plotting atrocities on U.S. civilians.

However, the man I was particularly reminded of — although he, like Omar Khadr, was not a man when he was first seized — is [Mohamed Jawad](#), a young Afghan, accused of throwing a grenade at a jeep containing two U.S. soldiers and an Afghan interpreter in December 2002, whose long road to justice stalled in January, when the Obama administration [froze all proceedings](#) in the tribunals for four months (and is [now seeking](#) another four-month freeze).

### **How the case against Mohamed Jawad collapsed**

This was particularly harsh on Jawad because, over the previous few months, his military defense lawyer, Maj. David Frakt, had demonstrated to the judge’s satisfaction that the only material that the government was relying on as evidence of Jawad’s involvement in the attack — a confession extracted from him soon after his capture by Afghan forces, and another extracted the day after by U.S. forces — were inadmissible because they had been obtained through death threats that constituted torture.

On October 28, the judge, Army Col. [Stephen Henley found](#) that there was “reason to believe Jawad was under the influence of drugs at the time of his capture and forced confession,” and also “accepted the accused’s account of how he was threatened, while armed senior Afghan officials allied with U.S. forces watched his interrogation.” He stated that he believed Jawad’s account of an interrogator telling him, “You will be killed if you do not confess to the grenade attack. We will arrest your family and kill them if you do not confess.” He also made a point of stating that he was accepting Jawad’s account because the government had failed to provide “timely disclosure of evidence” for his trial, which was scheduled to begin on January 5, 2009.

In response, Maj. Frakt noted that Col. Henley was explicitly rejecting the administration's notorious attempts to redefine torture, and congratulated the judge for "adopting a traditional legal definition of torture, rather than making one up."

Three weeks later, Col. Henley dealt another blow to the prosecution's case by ruling that [a second confession](#), made in U.S. custody the day after his Afghan confession, was also inadmissible, because "the U.S. interrogator used techniques to maintain 'the shock and fearful state' associated with his arrest by Afghan police, including blindfolding him and placing a hood over his head." As Col. Henley explained in his ruling,

The military commission concludes the effect of the death threats which produced the accused's first confession to the Afghan police had not dissipated by the second confession to the U.S. In other words, the subsequent confession was itself the product of the preceding death threats.

### **How Mohamed Jawad's case prompted his prosecutor's resignation**

These were not the only blows to the credibility of Jawad's case. In September, his prosecutor, [Lt. Col. Darrel Vandeveld](#), had become so disenchanted by systemic failures in the prosecutors' office that he resigned, explaining that he had gone from being a "true believer to someone who felt truly deceived," and damning the commissions as a dysfunctional system, which, both through accident and design, prevented the disclosure of evidence essential to the defense, thereby ensuring that no fair trial was possible.

Lt. Col. Vandeveld also described how evidence proving that Jawad was a juvenile at the time of his capture, that he was tricked into joining an insurgent group and was drugged before the attack, and that two other men had confessed to the crime, had been deliberately suppressed, and also explained that his proposal to negotiate a plea arrangement for Jawad's release, which would have involved "a short period of additional custody ... devoted to rehabilitating him and preparing him to reintegrate into civilian society," was dismissed out of hand.

In a submission accompanying Jawad's habeas corpus claim in January this year, Lt. Col. Vandeveld [laid out his criticisms](#) in even more detail, describing at length the "chaotic" state of the prosecutors' office, and explaining how he discovered evidence relating to Jawad's abuse at Bagram and in Guantánamo, where he was subjected to a sleep deprivation program, which involved moving prisoners from cell to cell every few hours (over a two-week period, in Jawad's case) and which was known, euphemistically, as the "frequent flier program." He also noted that Jawad's continued detention was "something beyond a travesty," and stated that he "should be released to resume his life in civil society, for his sake, and for our own sense of justice and perhaps to restore a measure of our basic humanity."

In addition, when Col. Henley excluded Jawad's first confession because it had been extracted through torture, Lt. Col. Vandeveld [explained](#) why the government no longer had a case

against him. The confession, he said, was “among the most important evidence for his upcoming war crimes trial,” and he added, “To me, the case is not only eviscerated, it is now impossible to prosecute with any credibility.”

With all this evidence eviscerating the government’s case against Jawad, you would be forgiven for thinking that, seven months later, he would have been repatriated to Afghanistan, to begin to pull together the pieces of his shattered life. Instead, however, he is still in Guantánamo, with no sign of whether his habeas corpus review will be successful, or if President Obama intends to haul him up before a military commission once more.

### **Was Mohamed Jawad just 12 years old when seized?**

In an attempt to inject fresh life into Jawad’s moribund case, another member of his defense team, Marine Maj. Eric Montalvo, last week visited Afghanistan in an attempt to “create political pressure to move the case forward,” as the [Associated Press](#) explained, because President Obama’s “decision to close Guantánamo and reconsider how detainees should be tried has indefinitely stalled their case in the United States.”

Announcing, “We were in a winning posture in the trial, so to now come along and change the rules in the middle of the game, who knows what’s going to happen,” and adding that Jawad’s case was “somewhat of an embarrassment to the American judicial system,” Maj. Montalvo deposited a petition at Afghanistan’s Supreme Court last Monday, acknowledging that a ruling by the Court would “not have legal authority in the United States,” but hoping that it might raise calls for Jawad’s release by ruling that “Afghanistan’s constitution at the time did not allow for the extradition of prisoners to another country, making the transfer to Guantánamo illegal.”

However, the most shocking detail to emerge from Maj. Montalvo’s visit to Afghanistan was his announcement that recent research indicated that Jawad was not 16 or 17 when seized (in contrast to the Pentagon’s claim that he was 18), but that he was in fact just 12 years old. Like many of the dirt-poor, illiterate prisoners in Guantánamo, Jawad himself has no idea when he was born, but Maj. Montalvo said that, after representatives of the Afghan Independent Human Rights Commission visited his family, they were able to “estimate how old Jawad is because they recall he was born in a refugee camp in Pakistan about six months after his father was killed in the battle of Khost,” part of the bloody civil war that followed the Soviet withdrawal in 1989, which took place in the winter of 1990-91.

Asked to comment on this latest claim, a Pentagon spokesman, Navy Cmdr. Jeffrey Gordon, maintained that a bone scan, taken at Guantánamo, indicated that Jawad was 18 at the time of his capture, but even before this latest announcement, his defense team — and Lt. Col. Vandeveld — had disputed this claim. Maj. Frakt acknowledged to the AP that Jawad’s family “might not know his age” and that “they would have an interest in making him seem younger,” but he defended the latest estimate of his age, stating that it was “supported by records showing Jawad was only 5-

foot-3 and 124 pounds when he arrived at Guantánamo in February 2003, [but] is now roughly 5-foot-9 and 165 pounds.”

In an email exchange with me on Saturday, Maj. Frakt added that the U.S. authorities were in contact with Jawad’s family for six years through the International Committee of the Red Cross, although they “apparently never bothered to ask them his age,” and defended Maj. Montalvo's efforts to try to determine his age as “the first real concerted attempt that has been made.” He also pointed out that the government “definitely considered Jawad a minor when they transported him to Guantánamo,” because Larry C. James, the author of [Fixing Hell: An Army Psychologist Confronts Abu Ghraib](#), wrote that he “was sent to accompany minors on the flight from Afghanistan.”

As the AP noted, the estimate of Jawad’s age, if confirmed, would make him “one of the youngest detainees ever sent to Guantánamo.” This is certainly true, but as I have reported previously, [at least 22 juveniles](#) — including an Afghan boy who was probably just 11 years old when he was seized — have been held at Guantánamo throughout its long history, and in the end, whether Jawad was 12 or 17 at the time of his capture, what matters most is that he was never treated with the kind of care that is appropriate for juvenile prisoners — as stipulated by the [UN Optional Protocol](#) on the Rights of the Child (on the involvement of children in armed conflict), to which the United States is a signatory — and, even more importantly, that he is still held, even though it is clear that the government has no case against him.

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