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Judge Orders Release from Guantánamo of Kuwaiti Charity Worker by Andy Worthington

By sheer coincidence, I had just been alerted to the publication of a number of documents relating to the ongoing habeas corpus cases of the Guantánamo prisoners last Thursday, and was reading, with mounting disbelief, the government’s supposed case against Khalid al-Mutairi ([PDF](#)), one of the last four Kuwaiti prisoners, when I received an email notifying me that District Court Judge Colleen Kollar-Kotelly had just granted his habeas petition and ordered the government to “take all necessary and appropriate steps to facilitate” his release “forthwith.”

The story received little attention in the media, partly because everyone was focused on the case of [Mohamed Jawad](#), the Afghan whose [release was also ordered last Thursday](#) by Judge Ellen Segan Huvelle, after Judge Huvelle had [launched a blistering attack](#) on the government’s cruelty and incompetence for pursuing a case in which the majority of the supposed evidence had been ruled as inadmissible because it was extracted through torture.

Another reason for the media’s failure to report Judge Kollar-Kotelly’s ruling is that the full ruling is not yet available, but as it is apparent from the Amended Factual Return that I was reading last week that the government’s case against al-Mutairi was also “riddled with holes” (to quote Judge Huvelle’s opinion of the case against Jawad), I’m going to take this opportunity to dissect the case against Khalid al-Mutairi, for its reliance on dubious witnesses, its reliance on discredited connections between charities in Afghanistan and al-Qaeda, and other unsubstantiated inferences about his activities, in much the same way that I expect Judge Kollar-Kotelly did last week.

Why the government’s own case indicates that Khalid al-Mutairi traveled to Afghanistan for charity work

Khalid al-Mutairi, an unmarried citizen of Kuwait, was 26 years old when he was seized crossing the border from Afghanistan to Pakistan, but has always maintained that he traveled to Afghanistan a few days after the 9/11 attacks (and three and a half weeks before the U.S.-led coalition invaded Afghanistan) to fund the building of a mosque. Much of this is corroborated in

the government's own submission, in which it is stated that, after dropping out of high school, he worked as a clerk for the Ministry of the Interior from 1993 to 2000, and, in 1999, hired an Afghan carpenter "to build 'a small room in the desert which he intended to use as a place to gather with his friends.'" The government added that, during the completion of this project, he told the carpenter that "someday he would like to build a mosque in Afghanistan."

In the spring of 2001, after the carpenter had returned to Afghanistan, "he contacted al-Mutairi and suggested that it would be a good time to build the mosque they had previously discussed since there was a large piece of land in [name of place redacted] that was not being used." According to the U.S. government, al-Mutairi "explained that building this mosque would bring him a 'reward from God.'"

He subsequently made arrangements to fly out to Afghanistan, arriving just a few days after the 9/11 attacks. The U.S. government tried to make this sound suspicious, stating that he "claimed he had no prior knowledge of the September 11 terrorist attacks, and that the fact that he made his travel arrangements to Afghanistan shortly after the attacks was a coincidence," but as there is not a single shred of evidence to indicate that al-Mutairi should have had any reason to have "prior knowledge" of the 9/11 attacks, this statement serves only as an attempt to conjure up suspicions out of nowhere.

After traveling to Afghanistan via Iran, where he took a taxi to the border, al-Mutairi met up with the Afghan carpenter, and explained that, because he had brought \$15,000, and was told that the mosque would only cost \$9,000 to build, his friend suggested that they travel to Kabul "to visit the al-Wafa organization in order to donate some of the remaining money to one of their charitable projects." He stated that he gave \$2,000 to the organization, which, his friend said, would be used "to buy food and clothing to distribute to refugees," and then, presumably shaken by the declining sense of security in Afghanistan (although this was not stated in the government's submission), decided to return home, but was told that the borders had already been sealed.

He then explained that he stayed in Kabul, at the house of a friend of the carpenter, for another three weeks, "at which point his bag with his passport and some money was stolen," and then hired an Afghan guide to take him to the border with Pakistan, which was where, after asking to be taken to the Kuwaiti embassy, he was "instead taken to a Pakistani jail."

Although there were doubts about the exact sequence of events surrounding al-Mutairi's departure from Afghanistan (the government noted that in April 2002, he said that he was seized while being treated for frostbite in a Pakistani hospital, and, in April 2007, "contended that the Pakistani authorities took his passport and did not return it"), there was nothing in the narrative to indicate that, as the government claimed, al-Mutairi was "a member of and has supported al-Qaeda and the Taliban, and is thus an enemy of the United States."

The government's futile case against the al-Wafa organization

This assertion by the government relied almost exclusively on al-Mutairi's brief involvement with the Saudi charity al-Wafa in Kabul, and what makes it so problematical is that although al-Wafa was "named by the President as a Specially Designated Global terrorist" on October 26, 2001," because of its supposed connections to al-Qaeda, the U.S. government has failed to establish that any of the several dozen prisoners held at Guantánamo over the years because of their connections with al-Wafa was involved in terrorism or any kind of militancy whatsoever. The majority, who, like al-Mutairi, had some involvement in the organization's demonstrable work providing humanitarian aid to the Afghan people, were released from Guantánamo in 2006 and 2007, and even those in positions of authority — Abdul Aziz al-Matrafi, the organization's founder and director, and Ayman Batarfi, a Yemeni doctor — have seen the cases against them collapse. Al-Matrafi was [repatriated in December 2007](#), and, after a series of stormy habeas hearings earlier this year, in which the government suffered severe criticism for its failure to provide necessary information to the defense team, Batarfi was [cleared for release](#) by President Obama's own Guantánamo Task Force in March.

Despite this, the government's submission in Khalid al-Mutairi's case continued to rely on the unsubstantiated rumors of al-Wafa's involvement with terrorism. It was noted that al-Mutairi had met Batarfi in Kabul, and that Batarfi "worked for Osama bin Laden procuring medical supplies, and, pursuant to bin Laden's request, treating wounded al-Qaeda fighters during the al-Qaeda retreat from Tora Bora," even though the government clearly accepted in March that Batarfi procured medical supplies for medical reasons alone (and did not do it for bin Laden) and that he was only caught up in the Tora Bora campaign by accident.

In fact, the government noted in its submission in al-Mutairi's case that Batarfi "claimed that al-Wafa did not support al-Qaeda," and its allegations about the significance of Abdul Aziz al-Matrafi were also discredited, not only because of al-Matrafi's repatriation, but also because, in statements that appear to be attributed to him in al-Mutairi's Amended Factual Return, he told U.S. interrogators that there was "no relationship between al-Qaeda and al-Wafa, and that al-Qaeda disliked al-Wafa and thought that Arabs in Afghanistan should be fighting the jihad instead of conducting humanitarian issues with al-Wafa." Al-Matrafi also explained that, although he had met with bin Laden as part of his work in Afghanistan, he told him that "al-Wafa's position was to be in Afghanistan to assist the Afghani people only and was not there for political reasons."

Unsubstantiated rumors and hearsay masquerading as evidence

The rest of the government's case against Khalid al-Mutairi was equally risible. In one of many redacted passages in the Amended Factual Return, it was asserted that another prisoner in Guantánamo had claimed that he "came to Afghanistan for Jihad." Although the passage relating

to this claim was censored, it was apparent from al-Mutairi's response, in which he "contended that he had angry words" with the prisoner responsible for making the allegation, and "claimed that not everything [he] said about other detainees was true." He was probably referring to one of several well-known liars in Guantánamo, whose allegations have been dismissed by judges in previous habeas cases (see, for example, the cases of [Mohammed El-Gharani](#) and [Alla Ali Bin Ali Ahmed](#)).

Another spurious witness alleged that al-Mutairi was involved with Lashkar-e-Tayyiba, the Pakistani terrorist group whose focus is primarily on the conflict in Kashmir, but as this allegation comes from a single source, and bears no relation whatsoever to al-Mutairi's own movements, as acknowledged by the government, it seems certain that this was also dismissed, in a brusque manner, by Judge Kollar-Kotelly. This supposed witness, who, according to the government, "participated in 21 days of training at a Lashkar-e-Tayyiba training camp in Pakistan, reported that Petitioner has ties to LeT, attended their annual meeting in Punjab, Pakistan, and has a point of contact at the LeT headquarters in Pakistan."

The final part of the government's feeble "mosaic" of intelligence regarding al-Mutairi concerned the fact that his name and personal details were found on various websites, including one described as al-Qaeda's official website, "which contained information regarding the capture of Taliban and al-Qaeda fighters who crossed the border from Afghanistan into Pakistan." Unfortunately for the government, it does not take much investigation to realize that such claims are worthless, and that there is no way of establishing whether this proves membership of al-Qaeda and/or the Taliban, or whether it merely proves that details of the prisoners were leaked after their capture, and that eager propagandists, like those of al-Qaeda, manipulated the information with as little regard for the actual circumstances of the men's capture as that demonstrated by the U.S. military.

It is time for the Justice Department to behave with courage and responsibility

I hope that, when Judge Kollar-Kotelly's ruling is published in full, the rest of the media will pay attention to the dismal case put forward by the government. It may be rather less dramatic than the case of Mohamed Jawad, but it provides a succinct and alarmingly clear example of how, six months after taking power, the Obama administration has failed to do anything to prevent Bush-era lawyers in the Justice Department from continuing not only to build cases against prisoners based on nothing more than post-capture innuendo, hearsay, and exaggeration, but also to put these cases in front of judges who then dismiss them with a clearly articulated sense of scorn and incredulity that tarnishes the Justice Department's credibility.

Since the Supreme Court [ruled last June](#) that the prisoners had constitutionally guaranteed habeas corpus rights, 33 cases have been ruled on by judges, in spite of the persistent obstruction by Justice Department officials, under both the Bush and the Obama administrations, and in 28 of

those cases they have decided that the government has failed to establish, “by a preponderance of the evidence,” that it had any justification for holding the prisoners.

This success rate for the prisoners — 85 percent — is a demoralizing statistic for anyone foolish enough to cling to the Bush administration’s claims that Guantánamo held “the worst of the worst,” but for those of us who have been explaining for years that the truth is far different, and that, in fact, the majority of the prisoners were bought for bounty payments and were never adequately screened to ascertain whether or not they were actually combatants of any kind, the District Court judges are providing compelling evidence of this shameful truth.

It is depressing for America’s reputation that, in some cases — like that of Khalid al-Mutairi — it has taken over seven and a half years for anyone in a position of authority to point this out, but what is even more depressing is that the Justice Department shows no sign of waking up to its repeated humiliations, by casting even a faintly objective eye over its tissue-thin evidence, and dropping pending cases before it is humiliated still further.

I understand that this reluctance may have something to do with not wanting to play into the hands of Republicans, who are eager to portray the Obama administration as weak on national security, but sometimes the government should have the courage to face its detractors and to stand up and state, unambiguously, that it respects the rule of law and that the Bush administration’s failure to abide by existing laws not only endangered America by stirring up hatred against its innovative detention policies in the “War on Terror,” but also that these detention policies were a failure on a colossal scale. Like the courts, the government should be prepared to stand up and be counted, and to say that it is unforgivable that, nearly eight years after the 9/11 attacks, the United States is still holding men who had nothing to do with terrorism whatsoever.

As a reminder, these men include [the Uighurs](#), Chinese prisoners whose only “crime” was to oppose the oppression of the Chinese Communist government; Mohammed El-Gharani, seized in a random raid on a mosque in Pakistan at the age of 14; Alla Ali Bin Ali Ahmed, seized from a student house in Pakistan; [Abdul Rahim al-Ginco](#), who was tortured by al-Qaeda and imprisoned by the Taliban as a spy; Mohamed Jawad, also a teenager when seized, whose confessions were extracted through the use of torture; and finally — for now — Khalid al-Mutairi, a charity worker caught up on the fringes of a non-existent plot involving a Saudi charity and al-Qaeda.

There are more cases like this, of men still held in Guantánamo, and it is time for the Justice Department to spare a thought for them, and to stop defending the policies of one of the most useless, inept, and arrogant governments in the whole of American history.

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.

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