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## **Judge Orders Release of Algerian from Guantánamo (But He's Not Going Anywhere)** **by Andy Worthington**

On Friday, District Court Judge Gladys Kessler ordered the release from Guantánamo of Farhi Saeed bin Mohammed, a 48-year-old Algerian, after granting his habeas corpus petition. Her ruling has not yet been declassified, so the reasons for her decision are not yet clear, but it is significant that the ruling now brings to 31 the number of prisoners who have successfully challenged the basis of their detention in U.S. courts. In contrast, just eight prisoners have lost their habeas petitions, meaning that the success rate in the prisoners' legal challenges now stands at 80 percent.

It is also likely that her ruling will, as in all the other successful petitions, involve lambasting the government for relying on statements made by other prisoners whose unreliability has been noted by the authorities, and who were either tortured, coerced, or bribed, or on statements made by the prisoners themselves while subjected to grueling and often abusive conditions. It also seems probable that the ruling will refute the government's claims that its rag-bag of hearsay, innuendo, and snippets of intelligence is coherent enough to constitute real evidence.

As reported in the [\*Miami Herald\*](#) by Carol Rosenberg, who was the first journalist to write about the story, bin Mohammed has been represented for four years by Boston lawyer Jerry Cohen, who said that his client "fled his homeland and lived between Britain, France, and Italy as an itinerant laborer in the 1990s before going to Afghanistan months before the 9/11 attacks. He fled the U.S. invasion to Pakistan, where he was captured and sent to Guantánamo in February 2002." Cohen added, "He's an easy guy to like, and certainly not the worst of the worst and not even close to it."

According to the Pentagon, bin Mohammed, who was a conscript in the Algerian army from 1981 to 1983, lived and worked illegally in Rome using a stolen French passport. As Rosenberg noted, he was also "fingering by another detainee for having stayed in an al-Qaeda safehouse in Afghanistan," a typical, unsubstantiated allegation that has provoked skepticism in many of the habeas judges. The Pentagon also claimed that he trained in Afghanistan, after traveling there from Europe, but as Cohen maintained, "He never fought anyone anywhere, never handled a weapon since his service in the Algerian army."

This is a fair précis of the government's supposed case against bin Mohammed, which contained no actual allegations of militant activity when the first "Unclassified Summary of Evidence" was compiled in 2004. In that short document, it was noted that bin Mohammed stated that he traveled to Afghanistan to find a wife (apparently a Swedish woman recommended by a Moroccan friend in England), and, in an attempt to portray him as a danger, the Pentagon resorted to claiming that he visited two "known extremist mosques" in London.

It was only later that further allegations emerged, made by other prisoners whose reliability has presumably been called into doubt by Judge Kessler. His first annual Administrative Review Board, in March 2005, featured an unsubstantiated claim that he "received weapons training at the Bagram Front," and another claim that he "saw Osama bin Laden" while attending a funeral in Kabul shortly after the 9/11 attacks, and in his review the following year it was reported that "Another detainee identified [him] as an individual who trained at the Algerian camp and they eventually traveled to Kandahar." It was also noted, in this second review, that he only saw bin Laden because he and a friend "happened to be passing by on the street and stopped to attend the funeral."

By the time of his third review, in March 2007, the authorities had evidently secured the services of another unreliable informer, and claimed that, even though bin Mohammed was only in Afghanistan for a few months before the 9/11 attacks, and had clearly spent time in both Jalalabad and Kabul, he "reportedly attended training at al-Qaeda's Durunta and al-Farouq Training Camps," and was, therefore, "a suspected member of al-Qaeda."

Sadly for bin Mohammed, it is unlikely that his victory will lead to his release from Guantánamo anytime soon. Although Judge Kessler ordered the government "to take all necessary and appropriate diplomatic steps to facilitate petitioner's release forthwith," and also "ordered the Justice Department to give her an update on his status or release by Dec. 17," Carol Rosenberg added that, according to Jerry Cohen, he "fears return to his homeland," and "seek[s] resettlement in a third country, where he would like to work in construction and marry."

This is a depressingly familiar story. Of the 31 prisoners cleared in the last 13 months, 12 still remain at Guantánamo. Some, like the [seven remaining Uighurs](#) (Muslims from China's Xinjiang province), cannot be repatriated because of fears that they will be tortured in their homeland, while others, like [Fouad al-Rabiah](#), a Kuwaiti who was tortured until he made a false confession that was used by the government to justify his ongoing detention until a judge saw through it, remain only because the government is dragging its heels over his release. The Kuwaiti government would have him back tomorrow, and his lawyers have been obliged to threaten the government with contempt of court in an attempt to secure his release.

Judge Kessler's ruling comes at an inconvenient time for the administration, which has [just conceded that it will miss](#). President Obama's [deadline of January 22, 2010](#), for the prison's closure, although many Americans may not notice, as they are likely to remain transfixed by the unprincipled right-wing assault on the administration's decision to [bring five prisoners to New York](#) to face a

federal court trial for their alleged involvement in the 9/11 attacks, including Khalid Sheikh Mohammed, the self-confessed mastermind of the attacks. This is a shame, as Farhi Saeed bin Mohammed is a more typical prisoner than [Khalid Sheikh Mohammed and his co-defendants](#).

Because of [congressional obstruction](#), the administration is currently prevented from bringing any Guantánamo prisoner to the U.S. mainland for any reason other than to be put on trial, leaving around 175 of the remaining 215 prisoners in a disturbing limbo that closely resembles the conditions in which they were held throughout the long years of the Bush administration. Around half of these men have been cleared for release, and the others have been tarred by the administration as being “too dangerous to release,” but impossible to put on trial because of difficulties with the evidence against them (in other words, because it was obtained through torture or coercion, or is as unreliable as the supposed evidence against bin Mohammed).

It is not known to which category bin Mohammed belonged, although he had been cleared by an Administrative Review Board before the Bush administration left office, and it seems likely, therefore, that he was also probably cleared by the Obama administration’s interagency Task Force, which has been reviewing the prisoners’ cases all year, and which [announced last month](#) that seven of the remaining nine Algerians at Guantánamo had been cleared for release.

Sadly, however, his court victory, which probably means that he has now been cleared for release on three occasions, does not guarantee that he will finally regain his freedom. Like the Uighurs and dozens of other prisoners from countries including Algeria, China, Libya, Syria, Tunisia, and Uzbekistan, he cannot be repatriated because of fears that he will be tortured on his return, and must wait to see if another country can be found that is prepared to take him, while the government responsible for his long and unjust detention continues to wash its hands of all responsibility, hiding behind Republican fear-mongering and refusing to allow cleared prisoners to be re-housed in the United States.

Without a concerted effort by the administration, by lawmakers, or by the American people to address their responsibility for these men, Farhi Saeed bin Mohammed will be left to reflect that it actually makes no difference whether you have been cleared for release on three occasions, or whether you are still regarded as a threat, despite the lack of any credible evidence against you, as the end result is the same: you will, in the end, remain at Guantánamo, possibly for the rest of your life, while those who could do something about your plight either ignore the fact that there is no evidence against you, and continue to smear you as a terrorist, or remain paralyzed by inertia.

*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).*