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What Does It Take to Get out Of Obama's Guantánamo?

by Andy Worthington

On August 21, District Court Judge Gladys Kessler granted the habeas corpus petition of Mohammed al-Adahi, a Yemeni prisoner in Guantánamo who was 39 years old when he was seized on a bus in Pakistan. I described the broad outline of al-Adahi's story in my book [*The Guantánamo Files*](#) as follows:

Married with two children, al-Adahi had never left the Yemen until August 2001, when he took a vacation from the oil company where he had worked for 21 years to accompany his sister to meet her husband.... As he told his tribunal, "In Muslim society, a woman does not travel by herself." After flying to Karachi, they traveled to Kandahar, where his brother-in-law was living. Al-Adahi stayed in Afghanistan for a month, "to ease his sister's transition to life in Afghanistan," and then made his way back to Pakistan, where he was arrested by soldiers while traveling on a bus. "They were capturing everybody with Arabic features," he said. "I gave them my passport and that shows that I'm an Arab. They said, 'why don't you follow us, we need you at the Center.' From that point on they brought us over here."

As I explained in [an article following Judge Kessler's ruling](#), the government's case against al-Adahi rested on claims, acknowledged by Judge Kessler, that he "had close familial ties to prominent members of the jihad community in Afghanistan." The brother-in-law, for example, was "a prominent man in Kandahar," who had fought the Russians in Afghanistan, and Judge Kessler also noted that it was "undisputed" that Osama bin Laden "hosted and attended [the] wedding reception in Kandahar," that al-Adahi "was briefly introduced to bin Laden," and that "A few days later, al-Adahi met bin Laden again and the two chatted briefly about religious matters in Yemen."

Crucially, however, Judge Kessler ruled that it did not follow, as the government tried to assert, that al-Adahi "was part of the inner circle of the enemy organization al-Qaeda." Accepting

that there was no reason to doubt that al-Adahi's visit was, as he stated, to accompany his sister to her wedding (and also to receive medical treatment for a back problem), and also noting that he had not tried to hide the fact that he had met bin Laden, she proceeded to demolish the government's "central accusation": that al-Adahi's brief attendance at al-Farouq (the main training camp for Arabs, associated with Osama bin Laden in the years before 9/11) helped to confirm that he occupied "some sort of 'structured' role in the 'hierarchy' of the enemy force." As I explained at the time:

Noting his claim that he "pursued training at al-Farouq to satisfy 'curiosity' about jihad, and because he found himself in Afghanistan with idle time," she took particular exception to the government's claim because, "After seven to ten days at al-Farouq, the camp leaders expelled al-Adahi for failing to comply with the rules." Referring, incredibly, to the case of Abdul Rahim al-Ginco, the Syrian who was tortured by al-Qaeda (and whose case the Justice Department had pursued in the habeas courts until it was [thoroughly humiliated](#) by Judge Richard Leon in June), the government's lawyers attempted to claim that, because al-Adahi was not imprisoned and tortured as a spy after he was expelled (like al-Ginco), this proved that he was being given preferential treatment because of his ties to al-Qaeda. However, Judge Kessler concluded instead that it was more likely that he "was being protected by a concerned family member" with considerable influence, and that "it most certainly is not affirmative evidence that al-Adahi embraced al-Qaeda, accepted its philosophy, and endorsed its terrorist activities."

She was also dismissive of an allied claim — that al-Adahi was an instructor at al-Farouq in February 2000 — noting that the only source for this allegation was another prisoner at Guantánamo, for whom "the record contains evidence that [he] suffered from 'serious psychological issues,'" and dismissed another claim — that al-Adahi was a bodyguard for bin Laden — by pointing out that this claim had been made by another prisoner who "suffers from serious credibility problems that undermine the reliability of his statements." It seems probable, from references to a "report of torture by the Taliban" in the case of this witness, that he was Abdul Rahim al-Ginco, who, as Judge Kessler noted, admitted in August 2005 that he had "lied in the past." She also noted that "interrogators had expressed concern that he was being manipulated by another detainee," and quoted from a report stating that "before being placed next to that detainee [he] had never made any of the claims that he made to interrogators, including the accusation against al-Adahi."

This should really have been the end of the story, but incredibly, after Judge Kessler concluded her ruling by ordering the government to "take all necessary and appropriate

diplomatic steps to facilitate [al-Adahi's] release forthwith," the Justice Department chose instead to challenge the ruling, filing a Notice of Appeal on September 21.

No one knows how long it takes for an appeal against a habeas ruling to crawl back through the courts, as only a few have been mounted to date. Several of the eight prisoners who have lost their habeas petitions have mounted appeals, but only one, on behalf of [Belkacem Bensayah](#), an Algerian whose habeas petition was denied in November 2008, has begun to be heard by the Court of Appeals, and those hearings only began this September. On the government's side, only one appeal has been mounted — against the successful habeas petition in March of [Yasim Basardah](#), another Yemeni and [a well-known and contentious informer](#) within Guantánamo. The stumbling progress in this case, involving a cross-appeal and an appeal to the Supreme Court, was reported by [SCOTUSblog](#) six weeks ago.

To this extent, Mohammed al-Adahi is more fortunate, as, last Thursday, Judge Kessler issued a Memorandum Order ([PDF](#)), holding the government in contempt, which, although essentially toothless, may be provocative enough to persuade senior officials to drop its unnecessary appeal and release him.

Judge Kessler explained that her decision to hold the government in contempt stemmed from al-Adahi's Merits hearing back in June. Although the proceedings were closed to the public, to allow for the presentation of classified material, Judge Kessler was determined to "afford the public and the press an opportunity to observe the greatest possible portion of [al-Adahi's] testimony," and therefore "instructed 'the Government, through the appropriate agency, [to] videotape [al-Adahi's] testimony and maintain copies of the complete testimony as given, as well as a redacted version of that testimony.'"

On July 23, the government admitted that al-Adahi's testimony "had not been videotaped." His lawyers responded with a Motion for Sanctions, which included a request for his release "as a sanction for the Government's failure to comply with the Order." In response, Judge Kessler's contempt ruling last week noted that the Court "may 'punish,' at its discretion, 'disobedience of resistance to its lawful writ, process, order, rule, decree, or command' through the issuance of a contempt citation," adding that "Courts have classified contempt as either criminal or civil, depending on the character or purpose of the sanctions imposed."

She refused to accept criminal contempt on the part of the government, which requires "both a contemptuous act and a wrongful state of mind," because the government "does not dispute that the Court's Order was clear, nor does it deny that it violated the Order." As an explanation, the government stated that "the Order was violated 'due to oversight and miscommunication,' and that its actions were 'inadvertent.'" This may strike some observers as a rather unlikely explanation, given that Judge Kessler made one very specific order, which was completely ignored, and it is tempting, therefore, to accept an allegation made by al-Adahi's

lawyers: that the government acted “to conceal the brutality of Guantánamo from the general public.”

However, Judge Kessler ruled that, because there was no proof that the government’s omission was “intentional,” the only appropriate course of action was to hold the government in civil contempt. This, she noted, did not allow her to order al-Adahi’s release, because it was impossible to “demonstrate prejudice,” and also failed to make up for the loss of the videotaped recording, because “a picture is truly worth 1,000 words, and the full import of [al-Adahi’s] testimony cannot be gained from the cold, dry transcript alone.” However, she arranged for a transcript of the testimony to be “posted to [the U.S. District Court Public Information Page](#) for Guantánamo Bay Cases,” and also ordered the government to submit, within 30 days, “a detailed explanation of all steps it has taken to ensure that such errors shall not occur in future.”

The best that can be hoped for, therefore, is that the government and the authorities at Guantánamo will not be able to overlook — or ignore — any future Order to videotape a prisoner’s testimony, which would provide the public with an “opportunity to observe an actual Guantánamo Bay trial,” as Judge Kessler noted.

In the end, however, it is disappointing that this opportunity has been lost, and that the government has escaped without any actual punishment, and without being obliged to release Mohammed al-Adahi. I can only hope, as I mentioned above, that Judge Kessler’s actions have, as she clearly intended, put pressure on the government to abandon its appeal, and to let this man return to his family, after nearly eight lost years in Guantánamo.

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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