

More Hypocrisy at Guantanamo

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A guest post from Jonathan Hafetz at the Brennan Center:

Even as criticism of Guantánamo mounts, Guantánamo's underlying hypocrisy endures. That hypocrisy manifested itself again last week in a little-noticed decision by Washington, D.C. District Judge John D. Bates. The decision involves Abdul Hamid Abdul Salam al-Ghizzawi, a Libyan citizen transferred to the base in 2002 after, he alleges, Afghan warlords sold him for bounty. Like the hundreds of other Guantánamo detainees held as "enemy combatants," al-Ghizzawi has never received a hearing on his habeas corpus application. In a recent filing, he complained that the government was refusing to provide him with adequate medical care and had denied him treatment for a severe liver condition that was jeopardizing his health.

Judge Bates denied relief, finding the treatment al-Ghizzawi had received was adequate. But his reasoning highlights the fundamental injustice at the heart of Guantánamo: Bates suggested that al-Ghizzawi's claim should be analyzed under the same legal standard applied to convicted prisoners under the Eighth Amendment, which prohibits "cruel and unusual punishment." That requires a prisoner to establish that government officials were "deliberately indifferent" to his "serious medical needs"—in other words, that the officials "knowingly and unreasonably disregarded an objectively intolerable risk of harm to the prisoner's health or safety." Negligence does not suffice. This heightened standard is justified because convicted prisoners are being punished for crimes and cannot expect the same level of care as those living in the world outside. But that justification falls apart at Guantánamo, where hundreds of detainees, like al-Ghizzawi, have been jailed for years without even being charged with any wrongdoing, let alone convicted of any offense.

Bates' opinion ignores the underlying injustice that pervades al-Ghizzawi's case and Guantánamo generally: The United States has imprisoned him for more than five years without charge or a fair hearing. Worse, after the Defense Department's status review tribunal initially found al-Ghizzawi was not an "enemy combatant," the Defense Department ordered a "do-over." (Where, lo and behold, the tribunal found al-Ghizzawi an "enemy combatant.") So, if, al-Ghizzawi is distrustful of Guantánamo's medical staff, as Bates noted, he has good reason: He knows the status review tribunals are a sham and the results rigged.

Bates treated al-Ghizzawi like any other prisoner in any American jail who has been afforded his right to a trial under the U.S. Constitution. What Bates ignored, and what others too often forget, is that Guantánamo detainees have never had their day in court.