



NIMJ BRIEFS ON THE GUANTÁNAMO MILITARY COMMISSIONS

Detainee Torture

Rulings:

- *United States v. Jawad*, 1 M.C. 334 (2008) (Ruling on Motion to Dismiss – Torture of the Detainee)

Allegations of torture and other forms of coercive interrogation techniques used by U.S. interrogators against detainees at Guantanamo Bay, Cuba, detention facilities in Afghanistan, and CIA “black sites” plague the prosecution of certain detainees. In one high profile case, the Convening Authority for the military commissions, Judge Susan Crawford, refused to refer charges against Mohammed al-Qahtani because of the torture he suffered while in U.S. custody. He continues to be held in detention at Guantanamo.

In *United States v. Jawad*, 1 M.C. 334 (2008), the defense argued that charges should be dropped because the torture inflicted on Mohammed Jawad violated his due process rights. The claim asserted Jawad was subjected to an intentional sleep deprivation program and other abusive treatment at Guantanamo and in Afghanistan. *Id.*

Judge Henley provided details about the use of the so-called “frequent flyer” program at Guantanamo. “As early as November 2003, Joint Task Force-Guantanamo Bay personnel (JTF-GTMO) used a sleep deprivation measure to disorient selected detainees thought to have important intelligence data, disrupt their sleep cycles and biorhythms, make them more compliant and break down their resistance to interrogation. Pursuant to this technique, euphemistically referred to as the ‘frequent flyer’ program, a detainee would be repeatedly moved from one detention cell to another in quick intervals, usually at night.” *Id.* The program was eventually “discontinued” in March 2004. *Id.* Jawad was subjected to the “frequent flyer” in May 2004 after the commander at Guantanamo ordered the cessation of the program. Further, Jawad was subjected to the program despite the fact he “was of no intelligence value to any government agency” and was not interrogated. *Id.* at 335.

Jawad made other allegations of abuse. On one occasion, he was beaten, kicked, pepper-sprayed and suffered a broken nose, all because he did not comply with a guard’s instructions. *Id.* The ruling also detailed Jawad’s conditions of confinement. These included “excessive heat, constant lighting, loud noise, linguistic isolation, and, on at least two separate occasions, 30 days of physical isolation.” *Id.* Judge Henley indicated that it does not appear Jawad suffered any permanent injury. A mental competency board convened pursuant to Rule for Military Commission (R.M.C.) 706 found that Jawad was “not currently suffering from a mental disease or defect and has sufficient mental capacity to

understand the nature of the proceedings against him and cooperate intelligently in his defense.” *Id.*

Judge Henley ruled that, “under the circumstances, subjecting this accused to the ‘frequent flyer’ program...constitutes abusive conduct and cruel and inhuman treatment.” *Id.* at 336. The fact that the commander of the Guantanamo Bay detention facility ordered the disuse of the program before Jawad was subject to the program indicated that this was “not simple negligence but flagrant misbehavior.” *Id.* However, Judge Henley refused to dismiss the charges. Other remedies existed, “including, but not limited to, sentence credit towards any approved period of confinement, excluding statements and any evidence derived from the abusive treatment, and prohibiting persons who may have been involved in any improper actions against the accused from testifying at trial.” *Id.* at 336-337.

In August 2009, all charges against Jawad were dismissed, and he was released in Afghanistan.