

Center for Constitutional Rights - December 14, 2009-Today, the United States Supreme Court refused to review a lower court's dismissal of a case brought by four British former detainees against Donald Rumsfeld and senior military officers for ordering torture and religious abuse at Guantánamo. The British detainees spent more than two years in Guantanamo and were repatriated to the U.K. in 2004.

The Obama administration had asked the court not to hear the case. By refusing to hear the case, the Court let stand an earlier opinion by the D.C. Circuit Court which found that the Religious Freedom Restoration Act, a statute that applies by its terms to all "persons" did not apply to detainees at Guantanamo, effectively ruling that the detainees are not persons at all for purposes of U.S. law. The lower court also dismissed the detainees' claims under the Alien Tort Statute and the Geneva Conventions, finding defendants immune on the basis that "torture is a foreseeable consequence of the military's detention of suspected enemy combatants." Finally, the circuit court found that, even if torture and religious abuse were illegal, defendants were immune under the Constitution because they could not have reasonably known that detainees at Guantanamo had any Constitutional rights.

Eric Lewis, a partner in Washington, D.C.'s Baach Robinson & Lewis, lead attorney for the detainees, said, "It is an awful day for the rule of law and common decency when the Supreme Court lets stand such an inhuman decision. The final word on whether these men had a right not to be tortured or a right to practice their religion free from abuse is that they did not. Future prospective torturers can now draw comfort from this decision. The lower court found that torture is all in a days' work for the Secretary of Defense and senior generals. That violates the President's stated policy, our treaty obligations and universal legal norms. Yet the Obama administration, in its rush to protect executive power, lost its moral compass and persuaded the Supreme Court to avoid a central moral challenge. Today our standing in the world has suffered a further great loss."

The four former detainees - Shafiq Rasul, Asif Iqbal, Ruhel Ahmed, and Jamal Al-Harith - were held from 2002 to 2004 at Guantánamo before being sent home to England without being charged with any offense. They filed their case in 2004 seeking damages from former Secretary of Defense Donald Rumsfeld and senior American military officers for violations of their constitutional rights and of the Religious Freedom Restoration Act, which prohibits infringement of religion by the U.S. government against any person. Their claims were dismissed in 2008 by the Court of Appeals for the District of Columbia Circuit when that court held that detainees

have no rights under the Constitution and do not count as "persons" for purposes of the Religious Freedom Restoration Act.

Last year, the Supreme Court granted the men's first petition, vacated the Court of Appeals decision and ordered the D.C. Circuit to reconsider its ruling in light of the Supreme Court's historic decision in *Boumediene v. Bush*, which held that Guantánamo is de facto U.S. territory and that detainees have a Constitutional right to habeas corpus.

On remand, the D.C. Circuit reiterated its view that the Constitution does not prohibit torture of detainees at Guantánamo and that detainees still are not "persons" protected from religious abuse. Finally, the Court of Appeals held that, in any event, the government officials involved are immune from liability because the right not to be tortured was not clearly established.

A second petition filed with the Court on August 24, 2009 pointed out that the Court of Appeals decision stands in conflict with all of the Supreme Court's recent precedent on Guantánamo and attacked the notion that the prohibitions against torture and religious abuse were not clearly established in 2002 when the petitioners were imprisoned.

Center for Constitutional Rights Senior Attorney Shayana Kadidal, co-counsel on the case, said, "We are disappointed that the Supreme Court has refused to hold Secretary Rumsfeld and the chain of civilian and military command accountable for torture at Guantánamo, and that the Obama administration sought to block torture victims from having their day in court. Where can these men seek justice now for the terrible things that were done to them? The entire world recognizes that torture and religious humiliation are never permissible tools for a government, yet our highest court seems to think otherwise."