

By Andy Worthington

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**Note:** This article is published as part of “Guantánamo Habeas Week” (introduced [here](#)), which also features [an interactive list of all 47 rulings to date](#) (with links to my articles, the judges’ unclassified opinions, and more).

On March 25, as I explained in a recent article, “[Guantánamo and Habeas Corpus: The Torture Victim and the Taliban Recruit](#),” Chief Judge Royce C. Lamberth of the District Court in Washington D.C. denied the habeas corpus petition of Mukhtar al-Warafi, a Yemeni who was 27 years old when he was seized in northern Afghanistan in November 2001. As I explained in that article, according to the available records:

[Al-Warafi] [survived a massacre](#) in a mud-walled fortress, Qala-i-Janghi, where hundreds of prisoners — mostly, but not all foot soldiers for the Taliban — had been taken after surrendering to the Northern Alliance. According to a statement read out by a military officer assigned to represent him at a review board at Guantánamo, al-Warafi studied medical procedures in Yemen, “had nothing to do whatsoever with the Taliban,” and went to Afghanistan “to help provide medical assistance to the poor and the public.”

As I also noted, “It is certain that Judge Lamberth will not have been convinced by al-Warafi’s story, and will not have accepted his statement that, although he admitted traveling to Khawaja Ghar in Afghanistan and carrying an AK-47, he said that he had it for self-defense and that it was given to him by a doctor he worked with at a clinic, nor his statement that he provided first aid at the al-Ansar clinic in Kunduz, for all types of people, but not ‘to wounded soldiers.’”

Now that Judge Lamberth’s unclassified opinion has been made publicly available ( [PDF](#) ), it is indeed fair to say that he was not entirely convinced by al-Warafi’s explanation of how he came to be in Afghanistan, and what he was doing there. It remains, nonetheless, a depressing

outcome, for a variety of reasons that I will elucidate below, but which, to provide a brief flavor of what is wrong with much of the existing framework for detaining men at Guantánamo on a legal basis, involves a familiar failure to distinguish between those involved with al-Qaeda (a terrorist organization) and the Taliban (the government of Afghanistan at the time of the US-led invasion of Afghanistan).

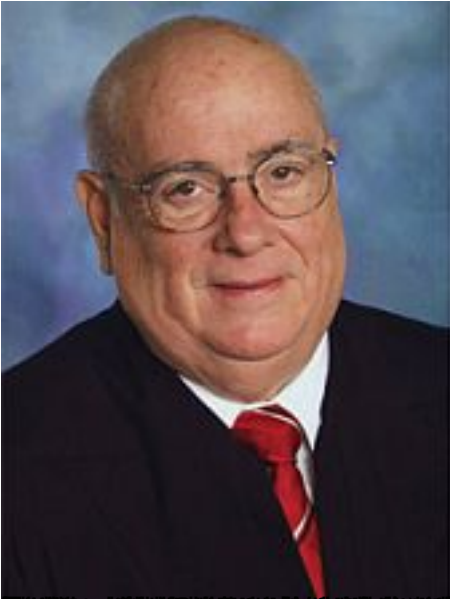
More shockingly, the ruling also relies on a refusal to exclude from detention those who worked as medical personnel, because of legislation passed by Congress under George W. Bush (which still applies under Barack Obama), and which prevents those seeking habeas relief from calling upon the protections of the Geneva Conventions.

In addition, in his concluding remarks, Judge Lamberth also echoed another judge who, last December, made a point of injecting dissent into his own ruling by stating that he did not believe that the man whose ongoing detention he had just approved constituted a threat to the security of the United States.

For the judges ruling on the habeas cases, the advice — or lack of it — given to them by the Supreme Court, when, in June 2008, it [granted the prisoners constitutionally guaranteed habeas corpus rights](#), has led to certain difficulties, particularly regarding the extent of involvement with al-Qaeda or the Taliban that is required to continue to deprive prisoners of their liberty.

Different definitions have been put forth, but in common with many other judges, Judge Lamberth explained that he was drawing on the detention standard put forward by Judge John D. Bates in *Hamdani v. Obama* ( [PDF](#) ), which only authorizes the ongoing detention of prisoners who were “part of the Taliban, al-Qaeda or associated enemy forces.”

### **Mukhtar al-Warafi’s story**



[The Washington Post](#) - [Judge: Detention of medic at Guantánamo is 'not a good idea'](#)