

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).

Despite the Bush administration’s fearsome rhetoric regarding Guantánamo — that it contained “the worst of the worst” terrorists, who, as a result, should be held indefinitely without charge or trial — attempts to back up these allegations with evidence have, for the most part, failed dismally. This is partly because the majority of the men held were not seized by US forces on the battlefield, as alleged, but were rounded up by the US military’s allies, in Pakistan as well as Afghanistan, at a time when bounty payments averaging \$5,000 a head were being paid for al-Qaeda or Taliban suspects. However, the failures can also be ascribed to overreaction on the part of the Bush administration, and to a system of torture and coercion — and, in some cases, bribery — designed to produce confessions that, as a result, are overwhelmingly unreliable.

By the time George W. Bush left office in January 2009, 532 of the 779 prisoners held at Guantánamo had been released, and only three men had been tried and convicted of any crimes. These took place in the Military Commission trial system established by Vice President [Dick Cheney](#) in November 2001, which was revived by Congress in 2006 after the Supreme Court ruled it illegal, and the results were as follows:

- David Hicks, an Australian, [accepted a plea bargain](#) in March 2007, admitting to “providing material support to terrorism” in exchange for dropping his well-documented claims that he was abused in US custody. As a result, he received a nine-month sentence and was returned to Australia, where he is now a free man.

- In August 2008, Salim Hamdan, a driver for Osama bin Laden, was [convicted of providing material support to terrorism](#), and [given a five-and-a-half year sentence](#)

. Allowing for time already served since he was first charged, he served just five months, returning to Yemen in November 2008, where he, like Hicks, is [now a free man](#)

- The third man to be convicted, Ali Hamza al-Bahlul, [received a life sentence](#) in November 2008 for producing a recruitment video for al-Qaeda, but his trial was [a hopelessly one-sided affair](#), in which he refused to mount a defence, and the verdict is [currently being appealed](#)

In addition, by the time Bush left office, judges in the US District Courts had also begun considering the habeas corpus petitions of the prisoners. The prisoners' right to ask a judge why they were being held was unprecedented in wartime, but the Supreme Court granted the prisoners habeas rights in June 2004, because the justices recognized that they were not being held as prisoners of war protected by the Geneva Conventions, but as “enemy combatants,” who had been given no way of challenging their detention if they claimed that they had been seized by mistake. Congress subsequently stepped in to take away these rights, but they were [reaffirmed in June 2008](#), when the Supreme Court ruled that Congress had acted unconstitutionally.

The first rulings were made in the four months before Bush left office, and the District Court judges empowered to rule on the prisoners' detention had more bad news for the government. The Courts delivered rulings on the habeas corpus petitions of 26 prisoners, granting the petitions of 23 of these men, and only refusing them in three cases.

Under President Obama, the Courts have delivered 21 more rulings, and although the balance has swung slightly less against the government, with the prisoners winning eleven of these petitions, and the government winning ten, the only valid conclusions that can be drawn again reflect badly on the government (see “ [Guantánamo Habeas Results: Prisoners 34, Government 13](#) ” for links to all these rulings).

In the cases won by the prisoners, judges have demonstrated, time and again, that the government's supposed evidence is largely unreliable, and consists primarily of information extracted through [the torture or coercion of the prisoners themselves](#) , or through the torture, coercion or bribery of [other prisoners](#)

. Moreover, even in the cases won by the government, little evidence has been produced to demonstrate that the men in question were anything more than low-level Taliban recruits, who had traveled to Afghanistan to take part in a long-running civil war (in which the enemy was the Northern Alliance, who were also Muslims), and who should, as result, have been held as prisoners of war,

[protected by the Geneva Conventions](#)

from “cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment.”

Despite the government's many setbacks, senior officials in the Obama administration, which has largely been content to consider the Bush administration's body of tortured, coerced or bribed evidence against the men as somehow reliable, must have been hoping for confirmation of its policies on March 22, when Judge James Robertson delivered his ruling on the habeas corpus petition of Mohamedou Ould Slahi (described in court documents as Mohamedou Ould Salahi).

The case of Mohamedou Ould Salahi



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