

# DC CIRCUIT, WANT TO RETHINK THAT HABEAS RULING?

Back in May, the DC Circuit decided that detainees at Bagram Air Force base were not entitled to habeas corpus because, since the base is in an active war zone, it would be unduly burdensome for the government to hold a real hearing.

I'm wondering if the DC Circuit would like to rethink that decision?

After all, in July, the Afghans proved themselves capable of holding a trial in the very same base in which Americans claim to be helpless to do the same, relying on assistance from US military lawyers who claim to be unable to hold their own meaningful hearings.

The chief judge asked God's forgiveness if he had reached the wrong decision, and then he sentenced four members of an Afghan family charged with making bombs: two brothers to 10 years in prison and two other family members to time already served.

The courtroom, deep inside the American-run detention center in Parwan, erupted. The prosecutors complained that the sentences were too light, and the defense lawyers protested that they were too heavy; one of the defendants, Masri Gul, said he had not been allowed to examine the evidence; and the guards tried to quiet everyone.

[snip]

The American military made a great effort to showcase the bomb-making trial as a symbol of the transfer of authority, inviting Afghan and Western news media. However, the judges' verdict

seemed to depend in large part on crucial forensic work primarily from American technicians, and over all, Americans will continue to play a substantial role in decisions about the transfer of detainees. So far, Afghan and American officials have identified 110 cases for Afghan trials.

If a bunch of US military lawyers are already actively involved in hearings in Afghanistan (ones they're proud enough to turn into a press spectacle), and if Afghans can pull a trial off, then doesn't it follow the American military can muster some kind of real review of detainees?

Add in the fact that—as Spencer describes it—this base is looking more and more like an American exurb, down to the traffic jams and the road named Disney.

More notable than the overstuffed runways is the over-driven road. Disney Drive, the main thoroughfare that rings the eight-square-mile base, used to feature pedestrians with reflective sashes over their PT uniforms carrying Styrofoam boxes of leftovers out of the mess halls. And those guys are still there.

But now the western part of Disney is a two-lane parking lot of Humvees, flamboyant cargo big-rigs from Pakistan known as jingle trucks, yellow DHL shipping vans, contractor vehicles and mud-caked flatbeds. If the Navy could figure out a way to bring a littoral-combat ship to a landlocked country, it would idle on Disney.

Expect to wait an eternity if you want to pull out onto the road. Cross the street at your own risk.

Then there are all the new facilities. West Disney has a fresh coat of cement -- something that's easy to come by, now

that the Turkish firm Yukcel manufactures cement right inside Bagram's walls.

There on the flightline: the skeletons of new hangars. New towers with particleboard for terraces. A skyline of cranes. The omnipresent plastic banner on a girder-and-cement seedling advertising a new project built by cut-rate labor paid by Inglett and Stubbs International.

If we're going to build infrastructure for a permanent empire in Afghanistan, then we ought to build in all the things empires bring, like real judicial systems.

Seriously. With all this building and trialing and whatnot, the DC Circuit now looks like a collection of chumps buying a transparent government lie about the ability to hold hearings. Isn't it time to rethink habeas in Afghanistan?