

LATIF: THE ADMINISTRATION BLEW UP HABEAS WITH A DETAINEE THEY DETERMINED COULD BE TRANSFERRED

There are a few more details that need to be readily available about Adnan Farhan Abd al Latif, the Yemeni Gitmo detainee whose habeas corpus petition led DC Circuit Judges Janice Rogers Brown and Karen Henderson to gut habeas. Most importantly, almost two years before the Administration used an unreliable intelligence report to justify his detention, the Bush Administration had determined he could be transferred out of DOD control.

DOD Recommended Transfer of Latif in 2006

Latif's Gitmo file makes that clear.

JTF-GTMO recommends this detainee for Transfer Out of DoD Control (TRO). JTF-GTMO previously recommended detainee for Transfer Out of DoD Control (TRO) on 18 December 2006.

So on December 18, 2006, DOD determined they should transfer of Latif. On January 17, 2008, they determined they should transfer of Latif. (This is a point Judge Henry Kennedy made in his ruling, citing slightly different documents.) Presumably in January 22, 2010, Latif was among the 30 Yemeni detainees the Gitmo Task Force determined designated for "conditional" detention:

30 detainees from Yemen were designated for "conditional" detention based on the current security environment in that country. They are not approved for repatriation to Yemen at this time, but

may be transferred to third countries, or repatriated to Yemen in the future if the current moratorium on transfers to Yemen is lifted and other security conditions are met.

The Bush Administration had designated 15 detainees for transfer; the Obama Administration transferred 6 of those in December 2009, before the UndieBomber attack, Mohammed Odaini got sent back in 2010 after winning his habeas petition, and one more Yemeni got transferred to a third country. Which suggests that Latif is among the unlucky 7 detainees whom both the Bush and Obama Administrations believe could be sent home, if it weren't for the security situation in Yemen.

In other words, Latif remains in Gitmo because our partner in Yemen, Ali Abdullah Saleh, doesn't control the country, and because Umar Farouk Abdulmutallab tried to blow up a plane, not because Latif himself represents a big threat.

Nevertheless, the Administration insisted on making a case, based on a dodgy intelligence report, to legitimize their continued detention of a man whom they had already decided could be transferred.

TD-314/00684-02 Is the Document Being Used to Hold Latif

As I laid out here, they did so primarily with an intelligence report from early 2002 that sorted through a large number of detainees turned over to the US by Pakistan in late 2001.

By comparing Latif's Factual Return to his Gitmo File, we can be almost certain that this report is the cable numbered TD-314/00684-02. Here are the files both documents—the Factual Return and the Gitmo File—reference in unredacted form, with the information cited to that document.

March 6, 2002, ISN 156 SIR: Said he was not Bangladeshi, lived in Ebb, some high school, odd jobs. Hadi took him to hospital in Jordan. Began

traveling to Afghanistan summer 2001. Traveled Sanaa to Karachi to Quetta to Kandahar. Once in Kandahar went to mosque to find Ibrahim. Stayed with him 3 days. Captured traveling to Pakistani border in December 2001. Surrendered so as to be taken to Yemeni Embassy to go home. Used Al Jallil, Hady was medical person.

April 26, 2002, ISN 156 FD-302: Said born in Yemen around 1981. Used Al Galeel. 16 at time of accident. Had some high school, worked odd jobs.

May 29, 2002, ISN 156 FD-302: Indicated "Latif" was family name. Lived in Ebb. Lived with family in al-Udayn. Used Galeel as a name. Unable to afford further treatment in Jordan. Traveled from Sanaa to Karachi to Quetta to Kandahar. 14 at time of accident.

May 29, 2002, ISN 156 SIR: Lived in Ebb. "Lied" about being Bangladeshi in past. 16 at time of accident.

October 4, 2002, ISN 156 FD-302: Used Galeel.

May 18, 2003, ISN 156 FD-302: Denied being al Baydani (the name on a KSM-related register). Described who arranged trip to Jordan. Gave passport to Alawi so he could check him into hospital.

June 16, 2004, ISN 156 Assessment: Said something about passport.

July 25, 2005, ISN 156 Interrogation: Claimed Allal was name of someone else captured.

In addition to these documents, there's a February 2002 "Knowledgeability Brief," a January 9, 2004 report, and CSRT-related documents cited in his Factual Return, and a June 13, 2003 report and transcripts from a Yemeni delegation dated July 2, 2005. But the most cited reports—those listed above—appear in both Latif's Gitmo File and his Factual Return. Save one document, references to which are redacted, said to include his admissions, and covering things like his birth, how he met

Alawi, and presumably the bulk of the redacted paragraphs in the Factual Return.

We know the government claims to show Latif fought with the Taliban in those paragraphs. But as I have shown, all the information in Latif's Gitmo file relating to fighting with the Taliban derives entirely from TD-314/00684-02. So it's almost certain the Administration relied on the same document in the Factual Return they relied on in his Gitmo report.

Note, too, this is consistent with something Kennedy wrote in his ruling. He describes the kinds of evidence cited to support Latif's detention.

The evidence in this case includes Form 40s ("FM40s"), Summary Interrogation Reports ("SIRs"), Intelligence Information Reports ("IIRs"), Memoranda for Records ("MFRs"), Field Documents ("FD-302s"), and [redacted].

We've seen reports of all those types cited in unredacted form, so the last item in that series must be another type of report, as a TD cable would be.

TD-314/00684-02 Reported that Latif Was Bangladeshi

I noted this detail in this post, but the point deserves more attention. Latif's Factual Return notes that some of the records on him use an ISN indicating he is Bangladeshi.

Ala'dini's full ISN is ISN-US9BA-00156 (DP), in which the number 156 is Ala'dini's unique identifier and the BA designation indicates the nationality that Petitioner for a time had claimed. See ISN 156 Knowledgeability Brief (Feb. 2002); ISN 156 SRI (May 29, 2002) (indicating petitioner repeatedly lied about his country of origin (Bangladesh) and gave a fake name in all past interviews). Petitioner Ala'dini, to be

clear, has since claimed that he is a national of Yemen. E.g., ISN 156 ISN 156 SIR (March 6, 2002).

So Latif told the US he was Yemeni on March 6, 2002, which appears to be his first substantive interview of him after he arrived in Gitmo on January 17, 2002. We know TD-314/00684-02 precedes that because the Appeals Court Opinion describes that it was written in the "fog of war," whether in Pakistan or Kandahar. So the notion that Latif was Bangladeshi must derive from the interview that formed the basis for TD-314/00684-02.

Now, the government claimed Latif lied about his nationality. Though note that the report they cite for that claim is a DOD report written on May 29, 2002. An FBI 302 with the same date is not cited to support that claim. Did DOD and FBI interview Latif together? If so, why did the DOD interrogator conclude he was lying without the FBI Agent doing so (if that is the case)? (Note, the reports also have a seeming discrepancy on what age Latif was when he had his accident, though in his CSRT Latif makes clear he wasn't tracking these things in Western timeframes and even in his CSRT there was a confusion over timing due to his translator.) In addition, there's a redacted reference right after the Factual Return says Latif was born in Yemen. Is that redacted reference to TD-314/00684-02 as seems to be the case for most of these redacted references? If so, how could Latif have told interrogators he was born in Yemen and traveled from Sanaa, but have them record that he's Bangladeshi?

Now, it's possible someone would lie about being Bangladeshi as a way to explain foreignness in Pakistan without admitting to being an Arab (even assuming interrogators couldn't tell the difference based on appearance). But as the Gitmo File of Mubarak Hussain Bin Abul Hashem—one of just two Bangladeshis ever held at Gitmo—makes clear, none of the other detainees captured with Latif were or appear to have

claimed to be Bangladeshi.

In late 2001 and early 2002, a total of 195 detainees in Pakistani custody were interviewed in Peshawar and Kohat, PK, by teams composed of US interrogators. On 4 January 2001, the detainee [Hashem] was turned over to US custody. Out of the 195 detainees captured and turned over to US custody by Pakistani authorities, the detainee was the only one from Bangladesh. The rest were Arab mujahideen attempting to flee Afghanistan and US troops.

Moreover (and this is the part that boggles my mind), how could you conduct an interrogation, presumably in Arabic, believing the subject was from Bangladesh, and be credible? While it's possible a religiously educated Bangladeshi would speak Arabic, the language of the Quran (Hashem, who was trained in a madrassa and then a Quran school might be such a Bangladeshi), you'd still want to do the interview on secular issues in his native tongue, wouldn't you? Did they interview Latif in Urdu or Pashto (languages which it seems unlikely he'd speak, as a high school educated Yemeni who had spent just months in Afghanistan)? Or Arabic, his own language?

I just don't understand how it's possible to record that Latif was Bangladeshi and have the interview be treated as credible.

Now, I suspect that this issue is one of the three redacted things David Tatel's dissent lists as the obvious factual errors in the report. Indeed, the syntax would be consistent with him making the same observation I just did, that you couldn't record that Latif was born in Yemen and traveled from Sanaa and yet also conclude he was Bangladeshi (though given how extensive the redaction is, it could be any of a number of things).

But it seems to me the Bangladeshi detail,

whether a result of Latif lying or—more likely—a result of real confusion on the part of interrogators trying to sort through 195 detainees with no documentation, goes right to the heart of whether this document should be treated with a presumption of regularity. I simply can't think of any way an interrogator could record that Latif was Bangladeshi, for whatever reason, and at the same time have conducted a credible interview.

Yet, in spite of all that, the Administration argued they could detain Latif on the basis of this report alone. And Judge Janice Rogers Brown said they should be allowed to do so.

The writ of habeas corpus is being gutted in this country because the Administration holds a bunch of Yemenis against whom they don't have credible evidence, but also don't have a safe place to send them. This is not about evidence and the law, but about a civil war in one of our allies' countries. And for that we're dismantling the legal guarantees our Constitution guarantees.