

ENGLAND GAVE US HABEAS CORPUS ONCE BEFORE...

Can they do it again?

The British human rights organization today won a habeas corpus petition for their client, Yunus Rahmatullah, who has been detained at Bagram for 7 years, in the English Court of Appeal.

The Master of the Rolls, Lord Neuberger, Lord Justice Maurice Kay, and Lord Justice Sullivan, said the case raised important principles of law. Their court ruling is the latest in a series relating to the treatment of detainees in Iraq and Afghanistan that have been highly critical of the Foreign Office and Ministry of Defence.

The judges rejected a claim by a senior MoD official, Damian Parmenter, that granting a writ for habeas corpus would be “futile”.

Kay said: “On the face of it [Rahmatullah] is being unlawfully detained and [British ministers] have procedures at their disposal ... to enable them to take steps which could bring the unlawful detention to an end.”

[snip]

Though Rahmatullah is in US custody, the UK is the “detaining authority pursuant to the memorandum of understanding struck between the UK and US” during the Iraq invasion, Leigh Day said. British ministers remained “responsible” for Rahmatullah under the Geneva conventions.

The decision relies on the Memoranda of Understanding regarding detainees signed between

the Brits and the US. The Iraqi one signed in 2003 notes, among other things, that,

Any prisoners of war, civilian internees, and civilian detainees transferred by a Detaining Power [the UK on the present facts] will be returned by the Accepting Power [the US on the present facts] to the Detaining Power without delay upon request by the Detaining Power. [brackets original]

And while the British government claims that MOU is no longer in effect, the judges aren't buying it.

It is true that Mr Parmenter says that the Ministry of Defense believes that the first MoU is spent. However, in the light of the terms of the two MoUs, that expression of opinion is not enough to dissuade me that it is inarguable that, if the first MoU applied to a person when he was handed over, it was not intended to be disappplied simply because the second MoU was entered into or because hostilities ceased.

And after rehearsing the requirements of the Geneva Conventions (and emphasizing that the Brits had to sign these MOUs in the first place because George Bush said the Conventions didn't apply with al Qaeda), the ruling includes this implicit threat.

It is unnecessary (and would be inappropriate) to address the question whether, by not taking that course [of demanding the US release Rahmatullah], it might, conceivably, be said that as a result of the combination of section 1 of the 1957 Act and Article 130 of Geneva IV, the UK Government could be aiding or abetting a "grave crime".

That may not make the British request that we

release Rahmatullah sufficiently persuasive to make it happen. But it sure does clarify the issues at hand, doesn't it?

Update: English v. British corrected per chetnolian.