

# GHAILANI'S SPEEDY TRIAL CHALLENGE

Ahmed Ghailani's lawyers have moved to have his indictment dismissed because he was denied a speedy trial. As a reminder, Ghailani is being tried for his involvement in the African embassy bombings, under an indictment first filed in 1998. His lawyers are arguing that the government held and interrogated Ghailani for 57 months (with two years in a Black Site) before they moved to try him on that indictment that was pending during that entire period of detention.

At the end of the day, certain things appear to be irrefutable: (1) the delay was caused by deliberate Government action which would knowingly deprive Mr. Ghailani of his right to a Speedy Trial; (2) the reason to cause this delay was the Government's desire to interrogate Mr. Ghailani extensively about matters that involved the same entity and co-conspirators that were part of the charged indictment; and (3) by being able to interrogate Mr. Ghailani for as long as they did and in the manner and under the conditions that they did, the Government obtained the information it sought, without having to enter into a voluntary and binding plea agreement that could have allowed the Government to obtain the same information that the Government sought but after he was arraigned and provided counsel in the Southern District of New York.

In short, and in the interests of national security, the Government got what it desired, when it desired, but at the expense of denying Mr. Ghailani his Constitutional right to a Speedy Trial on the pending Indictment.

Now, the motion is going to be unique among potential Article III defendants, since no other detainees are known to have pending indictments in an Article III court. But it will be an early read on whether and how abuse will be introduced into these cases. There are extensive pages describing Ghailani's treatment—all of which have been redacted in the public filing. The motion notes in footnote 5 that,

We also note that due to the limitations of the Classified Information Protective Order, dated, July 21, 2009, issued in this case, the defense has been unable to directly discuss the information contained in these summaries with Mr. Ghailani and are required to rely instead upon the Government's summaries of what occurred.

This seems to suggest that the lawyers themselves are only getting summaries of the treatment Ghailani underwent, but they are then limited to substitutions for those summaries themselves (though I will try to clarify this). To provide a public description of what might have happened to Ghailani, then, his lawyers had a civilian defense counsel from the Office of Military Commissions submit a declaration about the known details of the interrogation program to lay out the kinds of treatment Ghailani might be subject to. (Note, she focuses on the August and September 2004 approvals signed by Dan Levin, at least one of which almost certainly pertains to Ghailani personally).

So Ghailani has—through this Speedy Trial challenge—introduced evidence about his torture. But it's behind three different screens of redaction to prevent Americans from knowing how he was treated.