

JUDGE: ONE NIGHT AT A ZUBAYDAH-RELATED GUEST HOUSE NOT GROUNDS FOR INDEFINITE DETENTION

As McClatchy reported yesterday, Judge Henry Kennedy granted a the habeas petition of a Yemeni man, Mohamed Hassan Odaini, several weeks ago. That brings the total number of men held at Gitmo who have won habeas petitions to 36.

Kennedy's ruling reveals not just his exasperation with the government's arguments, but also the absurd lengths to which the government is going to try to keep some of these men at Gitmo. While much of the ruling remains classified, the government is effectively trying to argue that Odaini must remain at Gitmo because he spent one night at a guest house with alleged ties to Abu Zubaydah (that night happened to be the night the US raided the house and captured its inhabitants), and that one night is all the proof they need to argue that the of evidence showing he's just a student must be a cover story to hide an affiliation with al Qaeda.

As Kennedy lays out in detail, 12 other Gitmo detainees discussed the safe house in ways that were consistent with Odaini's own story, and eight of them specifically identified him as a student who had been at the house for just a day or so before the raid. At least six times—starting back in 2002—different people associated with his detention declared him to be appropriate for release. That includes a June 2009 notice from the Gitmo Task Force that he could be transferred (which is not necessarily release, mind you). Yet between a stay and the moratorium on the release of Yemeni detainees put in place after the Christmas bombing attempt, Odaini remains in custody.

But, the government still argues that Odaini's detention is legal—based partly on the fact that he was at that guest house when they raided it.

Pursuant to an order the Court issued in advance of the merits hearing in this case, the parties identified the issues in dispute and structured their presentations to address each issue in turn during the hearing. Accordingly, respondents first argued that Odaini's stay in Issa House supports the conclusion that he is lawfully detained and second that his version of events is so implausible as to further support denial of the writ of habeas corpus. Both arguments fail.

Respondents insist that Odaini's presence at Issa House demonstrates that he is part of the Al Qaeda-affiliated network of a man named Abu Zubaydah. They vehemently argue that the fact that the occupants of Issa House allowed Odaini to come inside demonstrates that he was, like them, part of this network.

Much of the discussion surrounding the government's argument is redacted. But it's clear that at least part of it—apparently, the government's theory of guest houses—is based on dubious expertise. Following one passage that is redacted, Kennedy wrote,

Based on this statement, respondents argue that the Court should find that Odaini is part of Al Qaeda and therefore lawfully detained. The Court will not do so. It is standard practice to tell jurors evaluating expert testimony that if "they [find] that the opinion is not based on sufficient education or experience, ... the reasons supporting the opinion are not sound, or ... the opinion is outweighed by other evidence, [they may] completely or partially disregard the opinion."

Which raises the question of whether the redactions serve to hide classified information—or the government’s own dubious claims about the culture of guest houses (one of the few other unredacted passages in this section refute the claims made in the redacted section about the security of guest houses).

The government also appears to have projected interrogators’ own questions onto detainees as knowledge. This passage, for example, seems to be a response to government claims that Odaini must have known Abu Zubaydah because along the course of his interrogation he came to recognize a photo and the name of Abu Zubaydah because he had been shown it so frequently by previous interrogators.

Odaini also denied ever having seen Abu Zubaydah. JE 7 at 1 (“(Odaini] was shown a photograph of Abu Zubaida. [Odaini] advised that he recognized the photograph because previous Interviewers showed it to him. [Odaini] stated that he heard of the name Abu Zubaida from previous American Interviewers.”).

Ultimately, Kennedy argues that the presence of potentially bad people at the safe house does not mean that Odaini himself is bad.

Kennedy then goes onto refute the government’s arguments that some minor inconsistencies in Odaini’s story (such as that his father got him a cheaper medical visa to Pakistan rather than a student visa) means he must be lying to cover up the fact that he’s an al Qaeda sympathizer. One way Kennedy does so is to point out that the government, which seized on a very small inconsistency in what one of eight safe house inhabitants said about Odaini, yet—as Kennedy notes—can’t even keep their own records accurately.

The Court notes here for the purpose of emphasizing that the documents that serve as evidence in this case contain

errors, whether of translation or reporting, that two of the interrogation reports in the record indicates that Odaini was born in April rather than September.

But what really appears to piss off Kennedy is the government's insistence that any inconsistency is proof that Odaini is telling a cover story to hide an affiliation with al Qaeda—in spite of the fact that they have zero evidence that he has ties to al Qaeda.

Respondents argue that this visa and Odaini's statements about it demonstrate that he is a liar. It is only possible—and barely possible—to reach this conclusion if one begins with the view that Odaini is a part of Al Qaeda and searches for a way to believe that allegation regardless of its inconsistency with an objective view of the evidence. Odaini has said repeatedly that his father arranged for his passport and visa, so anything questionable about those documents cannot be imputed to Odaini, who was a seventeen-year-old high school student at the time they were obtained.

Kennedy finally has to remind the government that the absence of evidence about al Qaeda does not constitute evidence of a cover-up to hide an al Qaeda affiliation.

Respondents also argue that Odaini's assertion that he was a student is a cover story the occupants of lssa House had agreed to use. Only by refusing to deviate from a predetermined conclusion could this explanation of consistent statements from so many men over so many years seem at all reasonable. This theory ignores the fact that several occupants of the house did not claim to be students but nevertheless said that

Odaini was a student. See 1f 18 at2;JE 53at3; JE 46 at 9, 15. Furthermore, to find that Odaini's version of events is a cover story in the complete absence of information suggesting that he was anything other than a student would render meaningless the principle of law that places the burden of proof on respondents rather than Odaini.

Remember how we got into the Iraq War based on false claims that Iraq must have WMD because every explanation they offered (such as that the mobile trailers were used for helium balloons and that the aluminum tubes were used for rockets) must be a cover story? The government is still making the same crappy argument about cover stories.

Update: Andy Worthington corrected me on one really crucial point in this post: Odaini wasn't at the guest house with Abu Zubaydah; he was just at a guest house the government claims was associated with Abu Zubaydah! Here's Andy's post for more details. I've updated this post accordingly.