

THE GOVERNMENT CONTINUES TO PLAY REDACTION GAMES WITH LATIF

I've now read all the documents the government issued and reissued on April 30 in some detail (District Court Opinion; Circuit Opinion; Cert Petition; Government Response; Latif Reply). As I've noted, in addition to releasing their own response to Adnan Farhan Abd al Latif's cert petition, the government also released less-redacted versions of the previous filings in the case.

As it turns out, the government primarily released a lot of stuff that would make Janice Rogers Brown's opinion look less batshit crazy, if you ignore that they had been hiding her Wizard of Oz analogy in the name of national security. For example, it released information making it clear that all the government's data on whether Latif is married or not is inconsistent, which of course is all blamed on Latif.

The ploy seems to have worked; Ben Wittes, who seems unconcerned that three reports on Latif (his DOD intake form and two conflicting reports from the same interview at Gitmo) prove that such intelligence reports cannot practically be afforded the presumption of regularity without the government's own case files—and frankly, their case here—falling apart, now thinks “Judge Brown's reading of [the evidence against Latif] strikes me as very likely preferable to the one the district court adopted.”

That said, with the newly released information, I'm increasingly convinced they're using the redaction process not to protect national security, but to cheat.

The redactions get worse to make it harder to find problems with the government's recruiter

story

There are a few examples where in this round, the government has actually redacted more information on the second round—mostly information on Ibrahim al-Alawi starting on page 10 in the District Court opinion (compare the “less redacted version” with the original release). Since this stuff is all already available in other documents, this mostly amounts to pettiness, but it does serve to hide a central part of the government’s argument. They claim the similarities between Latif’s story about the charity worker Ibrahim al-Alawi and the known al Qaeda recruiter Ibrahim Balawi (who is usually called Abu Khalud) provides corroboration for the government’s story. Yet none of the eight or so detainees recruited by Abu Khalud IDed Latif. And—as I hope to show—the records on these other detainees suggest they should have been able to, if Abu Khalud and al-Alawi were really the same guy. In other words, while this redaction doesn’t limit the amount of information out there, it does make it harder for people to quickly see how flimsy one crucial part of the government’s argument is.

Adding half a line in the redaction process

More curious appears on page 1 (PDF 68) of the Tatel’s opinion. There appear to be about half a line—which is redacted—that has been added to the third and fourth line of the opinion. As a result, Tatel’s reference to “(the Report)” is shifted onto the next line and the alignment of the entire rest of the paragraph changes.

Here’s the original release:

TATEL, *Circuit Judge*, dissenting: The government’s “primary” piece of evidence, Appellants’ Br. 10, is a single report: [REDACTED] (the Report)
[REDACTED] After carefully laying

And here’s the latest release:

TATEL, *Circuit Judge*, dissenting: The government's "primary" piece of evidence, Appellants' Br. 10, is a single report:

(the Report)

After carefully laying out the parties' arguments about

Now, the space is about what a reference to the document name—TD-314/00684-02—would take up on the line. Maybe they've simply added that. But still, what's the protocol for just adding something into the record just before SCOTUS reviews it? Did Tatel approve this addition?

Hiding Latif's explanations for how TD-314/00684-02 implicated him

There's another apparent redaction that—if I'm right about its content—serves to prevent us from seeing a thoroughly unclassified but nevertheless critical part of Latif's (or perhaps just David Tatel's) argument. There are repeated discussions of Latif's theory for how TD-314/00684-02 got so screwed up as to implicate him in fighting for the Taliban. Kennedy discusses it at 14—though almost all the explanations remain redacted. Rogers Brown summarizes these at 4, though one clause remains redacted.

But Latif says his statements were misunderstood or, alternatively, [redacted] were misattributed to him.

There's a long discussion on 26 in Rogers Brown and on 24-25 (PDF 92-93) in Tatel. All of these have been newly released in significant part. Except for a key part of Tatel's argument.

About halfway down Rogers Brown's 26, she argues that Tatel's explanation doesn't fully explain the presence of exculpatory information along with the inculpatory information in the report.

The dissent also fails to account for Latif's incriminating statements about being escorted to the Taliban and receiving weapons training, and does not explain why, if these inculpatory

statements were produced by government agents filling gaps in their comprehension “with what [they] expected to hear,” id. at 25, those agents would invent the counterintuitive claim that Latif “never fired a shot” during his time on the front lines with the Taliban .

She makes it clear that Tatel has argued that the multiple step process of translation, note-taking, and transcription created some gaps in the comprehension of the personnel doing the report, and that they may have filled in those gaps by including “what [they] expected to hear.”

The thing is, if you refer to Tatel’s page 25 (PDF 93), this very logical explanation—particularly given that all this occurred after the Pakistanis had presumably told the Americans Latif was a fighter—is redacted. Now, I have no idea whether this is Latif’s explanation—that interrogators interrogated Latif, having been told by Pakistanis he had fought in Kabul, and the interrogators or translator then interpreted what Latif said as all referring to combat rather than his own explanation about medical care.

Now it may be that the government redacted this passage from Tatel because it includes too much speculation, and redacted the other references to Latif’s explanation because it suggests the Pakistanis may have had a role in the confusion. The latter, at least, would be a typical redaction hiding the role of our partners, though the government reply is more explicit that all this took place in Pakistan. But it all shows that the government is hiding one of the central arguments in this case—one that would implicate the chaotic process at the Pakistani border in late 2001 that resulted in so many detainees who didn’t need to be in Gitmo, including, apparently, Latif.

And the thing is, we know this happens, even in the comparative calm of Gitmo. In this post, I compared the actual language from TD-314/00684-02 which what is sourced to it in Latif's Gitmo file. Look what happened in that translation process.

Subject met Ibrahim Al-((‘Alawi)) from Ibb during 2000. ‘Alawai talked about jihad and Afghanistan and convinced subject that he should travel to Afghanistan. Subject did not know if ‘Alawi had actually participated in any jihad activity himself. Subject departed home in early August 2001, travelled by car to San’a, then by airplane to Karachi. He took a taxi to Quetta, then crossed into Qandahar where he went to the grand mosque, where he met ‘Alawi. He went to ‘Alawi’s house, where he remained for three days.

Detainee admitted Ibrahim Aliwee convinced detainee to travel to Afghanistan for jihad and admitted staying at Abu Khulud’s residence for a short period in Kandahar. [my emphasis]

The passage from the Gitmo file should only include information that appears in the reports it's sourced to. But this Abu Khulud claim is sourced to TD-314/00684-02 and a DOD interrogation report from March 2002; we know that neither records Latif "admitting he stayed with Abu Khulud." But the analyst writing the report, having "assessed" that Ibrahim al-Alawi is Ibrahim Balawi, simply asserted that Latif had admitted, effectively, that they are the same person, something Latif has always denied.

Do the judges and Latif's team even know what TD-314/00684-02 says about Latif's friend?

Finally, there's a hint of another redaction that may be still more troubling. There's an odd reference that was newly revealed on page 21 of

Rogers Brown's opinion.

Some of the information gleaned from Latif's interview is redacted, including information about [few words redacted] the name of a friend who accompanied him to Jordan for medical treatment.

Let's take a step back. We know from the Petition Cert table of contents that TD-314/00684-02 is about 19-20 pages long, and most of it is redacted (though there is an error noticeable on the first page). The government has ostensibly redacted it to hide information about the at least 3 Saudis and one Syrian detained based partly (in the case of one of the Saudis, entirely) on the report who have since been freed, not to mention the fact that most if not all of detainees still held based on the report are four Yemenis, unable to be released because of instability in Yemen, not the evidence against them. That is, most of the redactions serve to hide information on other detainees.

But this passage from Rogers Brown seems to suggest that when she reviewed the report while writing her October 14, 2011 opinion, there were portions about Latif—in addition to all the information on other detainees—that remained redacted.

The Rogers Brown sentence noting these redactions was itself redacted in the first release of the Circuit Opinion. So was the following passage in the Kennedy opinion (click to enlarge).

[Redacted block]

After those lines, a paragraph reads:

Subject is a high school graduate. He had 4000 Pakistani rupees in his pocket. He had no U.S. contacts. His only previous travel was to Jordan, accompanying [Redacted] a friend injured during the Yemeni Civil War. For medical treatment of an injury to his hand.

Id. [Redacted] paragraph reads in its entirety: "Subject claimed no knowledge of any imminent or future terrorist threats to U.S. or any other interests." *Id.*

That block quote must be the passage Rogers

Brown refers to (in places where she and others refer to it—as on page 24—she uses ellipses in place of the redacted passage). The name of the friend—as well as perhaps a description of him—is redacted in our copy, but it’s not clear whether it was redacted in what Kennedy was looking at or not. That is, it’s not clear whether that redaction we see here is a redaction in the report as well as Kennedy’s opinion or just the latter. But Rogers Brown’s language appears to suggest that parts of TD that pertain to Latif remain redacted for the judges (and while he couldn’t address anything about content, when I asked, Latif counsel David Remes did say they got only what the judges got).

In any case, it’s hard to understand what justification the government has for redacting this passage now. In an attempt to prove Latif changed his story, Latif’s factual (PDF 16) return appears to have shown two names for the friend he said traveled with him to Jordan so he could receive medical care, and includes an unredacted reference to Hady, which seems to be the same as the name the Gitmo files uses, Hassan Hadi (though note that that Hadi reference is cited to the same March 6, 2002 interrogation, so there’s a spelling discrepancy that may derive from another appearance of this same name).

...and that a friend in Yemen named [redacted] was either driving the truck that was in the accident and arranged for his (Ala’dini’s) treatment in Jordan, see ISN 156 FD-302 (May 29, 2002); or that “Hady” was otherwise a medical person, see ISN 156 SIR (March 6, 2002); or instead that a man named [redacted]—ostensibly the same recruiter described above—arranged for Petitioner Ala’dini’s treatment in Jordan, see ISN FD-302 (May 18, 2003).

But the actual reference in TD-314/00684-02 and therefore its redaction may well be more

interesting.

His only previous travel was to Jordan, accompanying [redacted] a friend injured during the Yemeni Civil War. For medical treatment of his hand.

Even with the redaction, the passage makes Rogers Brown's claim—"it lacks a clear antecedent"—grammatically suspect. But I find it particularly interesting that TD-314/00684-02 claims Latif's friend had been injured in the Yemeni Civil War, whereas Latif maintains he was injured in a truck his friend used for transporting grapes.

The Yemeni Civil War (which lasted from May to July 1994) would time to Latif's injury; he had been unconscious for a month after the injury in 1994, and was admitted to the Jordanian hospital on July 9, 1994, meaning he was probably injured in May or June, 1994. So it could in fact be plausible the head wound—Latif's, not his friend's—was a result of fighting. That might actually provide a closer tie to al Qaeda (whether real or introduced by the expectations of the interrogator), but it would also give Latif a closer tie to the Ali Abdullah Saleh government (though we know a Yemeni delegation to Gitmo met with Latif in July 2005 but there's no reference to the Civil War in this Gitmo file).

All of which might be interesting, but the government has chosen to treat the information as totally irrelevant to Latif's detention. Maybe they're hiding a name and description that could not plausibly have ties to Latif. Maybe they're hiding Hadi's name for some bizarre reason. But the fact that they're simply taking it out of the discussion by redacting it (for us, if not for the judges and Latif's team), seems pretty suspect.

Scott Horton did a piece the other day, tracing how our embrace of secret justice more and more resembles that of the Soviet Union. He points to

Latif's case—to redaction games like the ones the government is playing here—as a prime example.

The type of secrecy that lies at the heart of *Latif* cannot be reconciled with justice—it is political by nature, and it is motivated by a sense of political vulnerability. Courts embrace such secrecy at the risk of forfeiting their claims to impartiality and fairness, and of harming America's institutions and reputation.

This is, no matter what the government claims, a terribly weak case; even if the government believes Latif had ties to the Taliban, they have no real evidence of it. But to hide that fact, they continue to play games with their unilateral redactions—purportedly in the name of national security but demonstrably to hide that the wizard behind the curtain is just a powerless feeble old man.