

JUDGE KESSLER TO PRESIDENT OBAMA: WILL YOU SAVE GITMO DETAINEES FROM “PAINFUL, HUMILIATING, AND DEGRADING” TREATMENT?

In my post describing the emergency suit to stop force-feeding at Gitmo before Ramadan, I suggested it might be unlikely for the DC District Court judges to accept a challenge about prison conditions. That is exactly what happened: Judge Gladys Kessler rejected the request on jurisdictional grounds.

But along the way, she made it clear she doesn't buy government claims that force-feeding people is really the best medical care.

Despite the statements contained in the Declaration submitted by the Government in support of its Opposition to the Application claiming that “[t]he health care provided to the detainees being held at JTF-GTMO rivals that provided in any community in the United States and is comparable to that afforded to our active duty service members. Detainees receive timely, compassionate, quality healthcare and have regular access to primary care and specialist physicians,” it is perfectly clear from the statements of detainees, as well as the statements from the organizations just cited, that force-feeding is a painful, humiliating, and degrading process. [my emphasis]

At which point she made clear who really bears responsibility for this continued treatment.

Even though this Court is obligated to dismiss the Application for lack of jurisdiction, and therefore lacks any authority to rule on Petitioner's request, there is an individual who does have the authority to address the issue. In a speech on May 23, 2013, President Barack Obama stated "Look at the current situation, where we are force-feeding detainees who are holding a hunger strike. . . Is that who we are? Is that something that our founders foresaw? Is that the America we want to leave to our children? Our sense of justice is stronger than that." Text of President Obama's May 23 Speech on National Security (Full Transcript), Wash. Post, May 23, 2013, available at 2013 WLNR 12700673.

Article II, Section 2 of the Constitution provides that "[t]he President shall be the Commander in Chief of the Army and Navy of the United States ... " It would seem to follow, therefore, that the President of the United States, as Commander-in-Chief, has the authority—and power—to directly address the issue of force-feeding of the detainees at Guantanamo Bay. [my emphasis]

Kessler's use of the term "degrading" is particularly notable. Article 16 of the Convention Against Torture reads, in part,

Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture

A federal judge has just determined that force-feeding Gitmo detainees amounts to degrading treatment.

Will the President act to end this degrading treatment, or will he publicly fail to meet our obligations under the Convention Against Torture?