

DETENTION OF MURAT KURNAZ AT GUANTANAMO BAY, CUBA

Background

Murat Kurnaz is a 22-year-old Turkish citizen who was born and raised in Bremen, Germany. He has been detained by the United States military for over three years, *incommunicado*, mostly at Guantanamo Bay Naval Base, Cuba, on the grounds that he is an “enemy combatant.”

Mr. Kurnaz was raised to practice Islam in a peaceful manner and continues to do so. He has no interest or even real understanding of politics or political causes; his belief in Islam is based on a devotion to the message of the Koran and a commitment to live a pure, ascetic and peaceful life. As Mr. Kurnaz came of age in Bremen, he experienced a religious awakening to his Muslim faith and wished to better conduct himself as a Muslim, especially as he prepared for his new wife to join him in Germany. In October 2001, Mr. Kurnaz took what he believed would be his last opportunity before his new wife arrived to study Islam intensively. He chose to go to Pakistan to connect with a peaceful evangelical group called Jama’at al-Tablighi.

After less than two months in Pakistan, Mr. Kurnaz, with an obvious Western appearance, was pulled off a bus during a routine stop by Pakistani police. We suspect that the police unit may have been paid a bounty by the U.S. military for this capture. After being transported to Afghanistan and held there for some time by the U.S. military, Mr. Kurnaz was eventually transported to Guantanamo Bay in March 2002.

There are no allegations that Mr. Kurnaz ever entered Afghanistan or intended to, or that he ever held a weapon before or during his travels. Mr. Kurnaz has sworn that he did not support and was not associated with Al Qaeda or the Taliban regime and the United States government has offered no evidence that could substantiate any such accusations. Indeed, very recently declassified evidence demonstrates that the U.S. government has actually concluded that Mr. Kurnaz has no association with Al Qaeda or the Taliban and no intentions to commit terrorism against the U.S. The ongoing purpose of his continuing detention can only be to justify his initial imprisonment.

Mr. Kurnaz’s mother, Rabiye Kurnaz, initially contacted German human rights attorney Bernhard Docke once she learned of her son’s imprisonment by U.S. forces. Mr. Docke subsequently sought counsel to represent Mr. Kurnaz in the United States. A petition for habeas corpus relief was filed in federal court on July 2, 2004, challenging Mr. Kurnaz’s detention under the U.S. Constitution and international law. A copy of Mr. Kurnaz’s habeas corpus petition is enclosed as Exhibit 1. The U.S. government opposed this petition and moved for dismissal of these proceedings. On January 31, 2005, Judge Joyce Hens Green issued a ruling, attached to this cover memorandum, denying the government’s motion for dismissal. She ruled that Mr. Kurnaz and other detainees have valid claims under the U.S. Constitution and the Third Geneva Convention. Importantly, Judge Green’s opinion singled out Mr. Kurnaz’s detention as an extreme example of an illegal detention. The government has now appealed Judge Green’s order. Unfortunately, on February 3, 2005, and before Mr. Kurnaz’s lawyers could file any papers in court demanding his release, Judge Green stayed her ruling pending further appellate

review. The proceedings will likely be halted for at least six months, subjecting Mr. Kurnaz to ongoing injustice.

In January 2005, the U.S. military informed us that all detainees would undergo a new military review process, called the Administrative Review Board (ARB). Unlike the Combatant Status Review Tribunals (CSRTs), by which the military designated 99% of the detainees, including Mr. Kurnaz, "enemy combatants," the ARB process purports to determine only whether detainees are still a "danger to the United States, its interests or its allies." As Judge Green herself concluded, the CSRT proceedings were fundamentally a sham, lacking in any of the basic due process requirements that would entitle the U.S. to hold someone indefinitely. We are uncertain whether the ARB proceedings will, like the CSRT, serve as window dressing for the U.S. military agenda or whether it might actually result in the release of a number of detainees that the U.S. is no longer interested in holding. In any event, on February 1, 2005, we provided the ARB with a substantial submission, demonstrating that Mr. Kurnaz in no way supports or is affiliated with terrorist organizations and is otherwise no threat at all to the United States or its allies. Some of the documents we provided to the ARB are enclosed with this cover memorandum as exhibits.

I first visited with Mr. Kurnaz at Guantanamo Bay Naval Base in October 2004, at which time we spoke at length in multiple interviews. I found Mr. Kurnaz to be an exceedingly personable and sincere individual and learned much about the case during this visit. I again met with Mr. Kurnaz in late January 2005, mainly investigating the conditions of his confinement and uncovering numerous, disturbing allegations of torture.

THE ALLEGATIONS AGAINST MURAT KURNAZ

The United States' Unclassified Reasons For His Detention Are Preposterous

There are **no allegations** that Mr. Kurnaz entered into or intended to enter into Afghanistan or that he ever held a weapon. Nevertheless, the U.S. Government has offered two unclassified grounds for detaining Mr. Kurnaz as an “enemy combatant”:

- (1) Mr. Kurnaz’s friend and associate, Selcuk Bilgin has “engaged in suicide bombing” and is possibly the “Elanatus suicide bomber.”
 - **Selcuk Bilgin is alive and well, never engaged in suicide bombing, and was never criminally charged.** In addition, the Bremen prosecutor confirmed that they have never suspected Mr. Bilgin of being engaged in any way in suicide bombing and have closed their investigation into him for lack of evidence.
 - In addition, Judge Green of the U.S. District Court in Washington D.C. held that this is insufficient evidence to hold Murat, because nowhere does the U.S. government allege that he “even had knowledge of his associate’s planned suicide bombing, let alone establish that the detainee assisted the bombing in any way.” Nor does it show that Mr. Kurnaz “planned to be a suicide bomber himself, took up arms against the United States, or otherwise intended to attack American interests.” (Green Opinion at 62).
- (2) Mr. Kurnaz traveled with, associated with and received “food and lodging” from the Jama’at al-Tablighi, an organization the U.S. alleges supports terrorism.
 - The U.S. government clearly misunderstands the Tablighi’s. Counsel for Kurnaz have submitted letters to the U.S. military from three experts on South Asian Islamic religion from United States universities who argue that the Tablighi’s are avowedly peaceful and detest politics and especially hate terrorist policies or organizations. The experts explain that, for this reason and because the group is so large and disorganized, “it is implausible to believe that the Tablighis support terrorism or are in any way affiliated with other terrorist or ‘jihadi’ movements such as the Taliban or Al Qaeda”. (Professor Barbara Metcalf, Director of the Center for South Asian Studies, University of Michigan.)
 - Furthermore, all the experts explain that that Mr. Kurnaz’s actions in Pakistan with the Jama’at al-Tablighi – by traveling in groups from city to city and sleeping in mosques, for learning, prayer, and personal faith—is entirely consistent with the Tablighi’s basic mission. It has nothing to do with terrorism.
 - In addition, Judge Green held that Mr. Kurnaz’s mere association with the Jama’at al-Tablighi cannot demonstrate that one holds terrorist views. She writes, “although [Mr. Kurnaz] admits to briefly studying with JT, there is no

unclassified evidence to establish that his studies involved anything other than the Koran. (Green Opinion at 63).

**Judge Green Has Determined that Mr. Kurnaz is Innocent
of Any Charges that Could Justify His Detention**

- Judge Green ruled that **“the Court does not find that the unclassified evidence alone is sufficiently convincing in supporting the [U.S. Government’s] conclusion that he is a member of Al Qaeda ... In fact... even if all of the unclassified evidence were accepted as true, it alone would not form a constitutionally permissible basis for the indefinite detention of [Mr. Kurnaz].”**
- She also concluded that **the only piece of classified evidence used against Mr. Kurnaz is worthless: “it fails to provide significant details to support its conclusory allegations, does not reveal the sources for its information, and is contradicted by other evidence in the record.”** (Green Opinion at 63)

**Recently Declassified Documents Demonstrate that the U.S. Government
Knows That Mr. Kurnaz Has No Connection to Terrorism and Should be Released**

- Mr. Azmy has seen the documents describing the classified bases for Mr. Kurnaz’s detention. **According to Mr. Azmy, “the entirety of this file clearly reveals that the U.S. government has specifically concluded that Mr. Kurnaz has no connection to terrorist activities or to Al Qaeda or the Taliban and that he should therefore be released.”**
- Recently declassified evidence from Mr. Kurnaz’s “secret” file demonstrates that not only is Mr. Kurnaz innocent, but that the U.S. government knows he is innocent and does not belong at Guantanamo. Statements from his “secret” file include:
 - **“CITF [Command Information Task Force] has no definite link/evidence of detainee having an association with al-Qaida or making any specific threat toward the U.S.”** (Kurnaz Classified File, Exhibit R-17)
 - **“The Germans confirmed that this detainee has no connection to an al-Qaida cell in Germany.”** (Kurnaz Classified File, Exhibit R-17)
 - **CITF is not aware of any evidence that Kurnaz has knowingly harbored any individual who was a member of al-Qaida or who has engaged in, aided or abetted, or conspired to commit acts of terrorism against the U.S., its citizens or its interests.”** (Kurnaz Classified File, Exhibit R-18)

Since there is **no good reason to hold him**, it is up to the German government to demand from the United States his release from the **brutal, lawless, camps of Guantanamo**.

TORTURE ALLEGATIONS & CONDITIONS OF CONFINEMENT

Conditions of Confinement

- For over three years, Mr. Kurnaz has endured severe, degrading, and inhumane treatment while detained in Guantanamo Bay, Cuba. Mr. Kurnaz is forced to live in a small cage where he is held virtually *incommunicado* with the outside world. Throughout his detainment, he has been isolated from human contact; denied adequate food, exercise, or medical care; meaningful access to his family and loved ones; and the opportunity to fully exercise his religious beliefs. Far worse, however, is the physical, mental, and sexual torture he has endured.

Torture in Afghanistan

- At Kandahar Air Force Base, Mr. Kurnaz endured brutal treatment. For weeks, Mr. Kurnaz was forced to wear only shorts in the winter and endure freezing cold temperatures. During interrogations, the U.S. military forcibly dunked his head underwater to simulate drowning, sent electric shocks through his feet, pointed a gun at his head and threatened to shoot; and beat him repeatedly. As punishment for not admitting to the U.S. theory that he was affiliated with Mohammed Atta, Mr. Kurnaz was hung up with his hands over his head for days at a time.

Starvation

- Twice, Mr. Kurnaz was denied food for numerous days and left only to drink water from his cell. The first time, he was not given food for 6 consecutive days. The second times, he was not given food for 11 days and eventually was hooked up to an IV feeding tube.

Religious Humiliation

- Interrogators repeatedly used methods of religious and sexual humiliation to torment Mr. Kurnaz. For example, Mr. Kurnaz was taunted by women in lingerie and propositioned sexually. He witnessed U.S. military personnel kick and degrade the Koran, insult Islam, and taunt his faith.

Forced Medication

- Mr. Kurnaz was injected three times with a substance that made him tired for weeks. The injection made him so tired he could only stay awake to eat. The exhaustion lasted several days, sometimes over two weeks. Mr. Kurnaz believes that the injection was given to men who are healthy or who exercise often to slow them down and destroy their regimen.

IN RE GUANTANAMO DETAINEE CASES –
MEMORANDUM OPINION AND ORDER
DENYING RESPONDENTS’ MOTION TO DISMISS
OR FOR JUDGMENT AS A MATTER OF LAW

On January 31, 2005, United States District Court Judge Hens Green issued an opinion addressing the continuing detention of approximately fifty detainees, including Mr. Kurnaz. The case originated when detainees held as “enemy combatants” in Guantanamo Bay, Cuba, filed habeas corpus petitions against the United States government, asserting that their detention violates the U.S. Constitution, treaties, statutes, regulations, common law, and international law. The government then moved to dismiss these cases.

In her January 31, 2005 Memorandum Opinion and Order, Judge Green denied the Government’s motion to dismiss, holding that the detainees have stated valid claims under the Fifth Amendment of the United States Constitution and the Third Geneva Convention. Further, she ruled that the CSRT proceedings utilized by United States to determine whether a detainee is an “enemy combatant” deprive the detainees of due process of law.

Judge Green’s opinion was originally issued in two versions. The official classified version was only available to those with appropriate security clearance. In the publicly available unclassified opinion, the classified information was redacted. On March 7, 2005, the complete official opinion was declassified, revealing the particular inadequacy of the charges against Mr. Kurnaz.

Judge Green provided several reasons for her ruling that the detentions are unconstitutional: (1) the CSRT procedures fail to provide detainees with access to the material evidence upon which the tribunal assessed their “enemy combatant” status; (2) in the alternative, the detainees are not offered the assistance of counsel in the CSRT, who may have access to the material evidence; (3) in some circumstances, the CSRT definition of “enemy combatant” is too vague and overbroad; and (4) the CSRTs fail to properly handle several detainees’ accusations of torture.

Significantly, Judge Green dedicated a large portion of her opinion (both redacted and unredacted) to a specific discussion of Mr. Kurnaz’s case, far more than for any other detainee. It is clear she is particularly outraged by his detention.

Judge Green used Mr. Kurnaz as an “illustration of the fundamental unfairness” of the CSRTs. Memorandum Opinion and Order at 48. First, after stating the facts of his arrest and the CSRT’s conclusion as to his “enemy combatant” status, Judge Green noted that the government based its decision “on unclassified evidence and [] one classified document . . . Exhibit R19.” *Id.* at 49. Second, Judge Green held that even if all of the unclassified evidence were accepted as true, it alone is insufficient to support the CSRT’s determination that Mr. Kurnaz belonged to al Qaeda. *Id.* at 49 n.34. Thus, she recognized, the one classified document, Exhibit R19, must have “formed the most important basis for the CSRT’s ultimate determination.” *Id.* at 49. Exhibit R19, she notes, must be discounted, because it “fails to

provide significant details to support its conclusory allegations [that Mr. Kurnaz is a member of al Qaeda], does not reveal the sources for its information, and is contradicted by other evidence in the record.” *Id.* at 63 n.36.

Disregarding Exhibit R19, Judge Green reviews in detail the remainder of the classified basis for Mr. Kurnaz’s detention. This review leads her to conclude that **the evidence demonstrates that Mr. Kurnaz is innocent and that the U.S. government is aware of his innocence.** Judge Green quotes from the recently unclassified information from Murat’s file which disclose the following exculpatory statements:

- **“CITF has no definite link/evidence of detainee having an association with Al Qaida or making any specific threat against the U.S.”**
- **“The Germans confirmed that this detainee has no connection to AQ.”**
- **“CITF is not aware of any evidence that Kurnaz . . . harbored any individual . . . who has engaged in, aided, abetted, or conspired to commit acts of terrorism against the United States.”**

The U.S. government completely ignored this evidence, and as a result, its determination that Mr. Kurnaz is an “enemy combatant” is false.

Judge Green not only establishes Mr. Kurnaz’s innocence, but also rules the entire CSRT procedure unconstitutional. Because Exhibit R19 was not given to Mr. Kurnaz, he was denied fair opportunity to challenge it and “to contest the material allegations against him.” *Id.* at 50, 52. Further, Judge Green notes that while she understands the government’s interest in not disclosing classified evidence to the detainees, there must be some balancing of interests. A proper balance, she holds “requires the disclosure of all relevant classified information to the petitioners’ counsel who have the appropriate security clearances.” *Id.* at 52-53. In Mr. Kurnaz’s case, because he was neither provided with the classified Exhibit R19, nor was he availed of the assistance of counsel in the CSRT proceeding, his detention is deemed unlawful. *Id.* at 54-55.

Lastly, Judge Green notes the flaw of the “enemy combatant” definition itself. Also using Mr. Kurnaz as an illustration, she holds that the unclassified evidence that the CSRT used in designation him an enemy combatant “fall short of establishing that . . . [he] took any action or provided any direct support for terrorist actions against the U.S. or its allies.” *Id.* at 62. In fact, Judge Green recognizes that Mr. Kurnaz neither assisted nor had any knowledge of any terrorist activities. *Id.* Thus, she infers that “[a]bsent other evidence, it would appear that the government is indefinitely holding . . . [Mr. Kurnaz] – possibly for life – solely because of his contacts with individuals [i.e., Selcuk Belgin] or organizations [i.e., Jama’at-Al-Tabliq] tied to terrorism and not because of any terrorist activities that the detainee aided, abetted, or undertook himself.” *Id.* at 63-64. “Such detention,” she concludes, is a “violation of due process.” *Id.* at 64.

This decision is a positive development in the Guantanamo Bay detainee cases. Indeed, it is remarkably favorable to Mr. Kurnaz, who was singled out by Judge Green. But Judge Green’s conclusion only confirms in law what has been obvious in fact: Mr. Kurnaz is innocent and must be released from his imprisonment at Guantanamo. Unfortunately, because the U.S. government has sought appeal of this ruling and has obtained a stay of the proceedings in the district court,

we now cannot directly petition the court for his rightful release. As a result, we hope you agree that serious diplomatic pressure must be exerted on the U.S. government to release Mr. Kurnaz.

Finally, attached as Exhibit 6 are letters in support of Mr. Kurnaz from family and friends who are convinced of his innocence and desperate to welcome him home.