

# Center for Constitutional Rights

## Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

<https://ccrjustice.org/home/what-we-do/our-cases/hicks-v-united-states>

## Campaign and Advocacy

On February 18, 2015, the U.S. Court of Military Commission Review issued a [decision](#) vacating David Hickss conviction.

### [David Hicks](#)

*Hicks v. United States* was an appeal on behalf of former Guantanamo detainee David Hicks asking the U.S. Court of Military Commission Review to overturn his conviction for providing material support for terrorism, a charge that was invalidated in 2012 when the D.C. Circuit ruled in *Hamdan v. United States (Hamdan II)* that material support was not, and had never been, a crime under the international laws of war. The D.C. Circuit, sitting *en banc*, reached the same conclusion in 2014 in *Al Bahlul v. United States (Bahlul)*. Starting with these rulings, the military commissions system set up by the Bush Administration in 2001 to confer a veneer of legitimacy to Guantanamo began to unravel. David Hicks was the first person to be charged in the initial iteration of these military tribunals. Like Guantanamo itself, this quasi-court system has been an affront to the rule of law and has enabled the U.S. government to evade accountability for torture and unlawful detentions. *Hicks v. United States* is part of CCRs broader effort to challenge these abuses.

For more on the military commissions system and its undoing, see our [factsheet](#).

David Hicks, an Australian citizen, was one of the first men brought to Guantanamo, where he was tortured and held for almost six years. In 1999, Hicks, then 23 years old, converted to Islam and left his homeland to wander the world. His travels took him to Afghanistan, where, shortly after 9/11, he was sold to the U.S. military by the Northern Alliance for a bounty and sent to Guantanamo. In 2002, with representation from the Center for Constitutional Rights and co-counsel Joseph Margulies, he filed one of the first habeas corpus petitions challenging the government's authority to detain individuals at Guantanamo indefinitely without due process. In 2007, under increasing pressure from the Australian government to return its citizen, the U.S. government offered Hicks a plea deal. Desperate to leave Guantanamo after more than five long years of abuse and torture, and knowing that pleading guilty to a war crime would likely be the only sure way out of prison, he accepted the offer and pled guilty to a single material support violation, despite having never fired a weapon, and returned to Australia. He lived under a suspended sentence of seven years imprisonment, and continues to suffer the burdens and disabilities of his military commission conviction. For more on his story, see our [client profile](#).

As of this date, the only two convictions the government has obtained by trial under the military tribunals at Guantanamo have now been vacated (*Hamdan*) or remain unresolved following vacatur (*Al Bahlul*). In the wake of these decisions, we argued that Hickss conviction should be invalidated on two grounds: (1) as a matter of law the military commission could not convict him for material support; and (2) his guilty plea was involuntary because it was obtained under torture. On February 18, 2015, the U.S. Court of Military Commission Review struck down David Hicks's conviction in a unanimous ruling.

CMCR issues a decision vacating Hickss material support conviction

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The government announces the same day that it would not appeal the decision.

CCR files reply brief in further response to the CMCRs November 20, 2014 order

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The government files its response to the CMCRs November 20, 2014 order

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The government concedes that Hickss conviction is constitutionally invalid but argues that the CMCR is powerless to remedy this fundamental miscarriage of justice because Hicks waived his appeal rights.

CCR files a notice of supplemental authority in further response to the CMCRs November 20, 2014 order

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CCR notes that the Convening Authority for Military Commissions had recently dismissed the material support charges in the case *United States v. Noor Uthman Muhammed* as required in the interests of justice and under the rule of law.

CCR files a response to the CMCRs November 20, 2014 order

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CCR argues that under *Al Bahlul* Hicks's material support conviction must be vacated as a matter of law because he is actually innocent of any offense.

CMCR issues [order](#) lifting stay and directing parties to brief question of whether *Al Bahlul* decision requires vacatur of Mr. Hickss conviction

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CMCR issues order continuing stay pending entry of mandate in *Al Bahlul*

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Government files opposition to our motion to lift stay and vacate conviction

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CCR files motion to lift stay entered by CMCR on March 7, 2014, and vacate Hicks's material support conviction based *Al Balul* ruling

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The D.C. Circuit's July 14, 2014, decision in *Al Bahlul* held that material support is not a war crime and cannot be tried by military commission.

CMCR issues order, on its own motion, reconsidering governments motion to stay case pending further court review in *Al Bahlul* and orders case held in abeyance pending further order of the court

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CCR files notice in further response to CMCRs December 4, 2013 order regarding jurisdiction and government opposes on February 28, 2014

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Parties file briefs on jurisdiction

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The parties file opening briefs on jurisdiction on December 19, 2013, and answer briefs on January 10, 2014.

Government files motion to stay appeal pending further court review in *Al Bahlul*, or in the alternative to modify briefing schedule and address in first instance only CMCR authority to decide appeal

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CCR files appeal on Hickss behalf in U.S. Court of Military Commission Review (CMCR), arguing his conviction for material support must be vacated under *Hamdan v. United States (Hamdan II)*

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In *Hamdan II*, the D.C. Circuit held that Salim Hamdan's conviction for material support was unlawful because it was not a war crime at the time of his alleged offense. A few months later, the D.C. Circuit vacated the conviction of another Guantnamo detainee in the case *Al Bahlul v. United States*, on the government's own admission that none of the charges in that case material support, conspiracy, and solicitation could be considered war crimes under the D.C. Circuit's decision in *Hamdan II*. In this appeal, we seek to have Hickss conviction before the Court of Military Commission Review overturned because it was based on a charge now recognized as impermissible.

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