

Detention of an Afghan at Guantánamo Bay Is Ruled Unlawful

The decision does not assure the release of the prisoner, who was captured in 2007; Uyghurs who won a similar case languished at the prison for years.



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WASHINGTON — A federal judge has ruled that the United States has no legal basis for holding an Afghan man at Guantánamo Bay because although he fought on the side of a militia in Afghanistan, he was not part of Al Qaeda.

U.S. District Court Judge Amit P. Mehta found that the detainee, Assadullah Haroon Gul, who was captured in Afghanistan in 2007 as a member of an Islamic militia, did not qualify as a member of Al Qaeda or an associated force, the legal basis for detention at Guantánamo Bay.

The ruling on a petition of habeas corpus, however, does not assure his release any time soon. In 2008, a federal judge ruled that 17 Muslims from China of the Uyghur minority were unlawfully detained at Guantánamo Bay but, as an oppressed minority, could not go home. The Uyghurs then languished at the prison for years while the Obama administration sought nations to receive them. The last three Uyghurs were sent to Slovakia for resettlement in 2013.

“What the ruling means is that Mr. Gul’s detention is illegal,” Tara J. Plochoki, a lawyer for the prisoner, said on Wednesday. “The grant of the writ does not mean the judge can order the government to put him on a plane to Kabul, but the government is required to obey court orders and to comply, it must release him.”

The White House declined to comment on the decision. A spokeswoman for the Justice Department, which has been defending the president’s authority to detain him at Guantánamo Bay, said lawyers were still considering whether to appeal.

The decision essentially doubles down on the dilemma of how to release Mr. Haroon, who earlier this month was approved for transfer by the Periodic Review Board, an interagency panel that determines whether and how a detainee can safely be transferred to the custody of another country. Repatriation could require seeking security assurances from the Taliban, which U.S. officials have said they would not do. The Taliban took control of Afghanistan in August as the government collapsed.

Mr. Haroon, who is about 40, was captured by Afghan forces while serving as a commander of the Hezb-i-Islami militia, which fought with the Taliban and Al Qaeda against the American and allied invasion of Afghanistan. He is held at Guantánamo under the name Haroon al-Afghani.

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His lawyers argued that his war ended in 2016 when the militia made peace with the U.S.-allied Afghan government of President Ashraf Ghani. The foreign ministry of Afghanistan had filed a brief in the case seeking his return before the Ghani government fell to the Taliban, depriving the U.S. government of a partner with whom to negotiate security arrangements and a repatriation deal.

The judge rejected the argument of Mr. Haroon’s lawyers that hostilities had ended in Afghanistan, a separate basis for seeking his release.

Ms. Plochoki said that Mr. Haroon’s wife, daughter, brother and elderly mother live in Afghanistan and that he “is desperate to get home” to make sure his daughter gets an education. The Taliban barred women and girls from going to school the last time they were in power. He grew up in a refugee camp in Pakistan, she noted. That being the case, the United States might consider sending him there if he is not allowed to return to Afghanistan.

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1989. They used brutal public punishments, including floggings, amputations and mass executions, to enforce their rules. Here's more on their origin story and their record as rulers.

The U.S. military currently holds 39 detainees at the prison complex at Guantánamo Bay, 12 of whom have been cleared for release through the parole-style board — if diplomats can reach security agreements that satisfy Defense Secretary Lloyd J. Austin III, who has to certify such arrangements to Congress. Meantime the United States still considers the detainees cleared for release to be lawfully held wartime prisoners. It has simply concluded that, with certain security assurances, they are eligible for transfer to the custody of another government.

But now Mr. Haroon is different from the rest. He not only has been approved for transfer by the board but is also the only prisoner there whose detention a court has found to be unlawful. The court does not have the authority to dictate how the government should comply with his order.

Judge Mehta, for example, could not order the government to put him on a plane and repatriate him because that would amount to the judiciary inserting itself in the functioning of foreign affairs. Courts previously have held that a federal judge lacks the authority to order the transfer of a Guantánamo detainee to the United States.

Earlier this week, another lawyer for Mr. Haroon, Eric Lewis, urged the State Department to appoint a special envoy to coordinate the transfers of detainees from Guantánamo Bay, an approach adopted by the Obama administration in its failed effort to end detention operations at the base. Cleared men, he said in a statement, should be sent “home or to countries that are willing to assist.”

For now, the discussions with other countries are being handled by the State Department’s Bureau of Counterterrorism, under the direction of an acting coordinator, John T. Godfrey.