

افغانستان آزاد – آزاد افغانستان

AA-AA

چو کشور نیاشد تن من مباد بدین بوم ویر زنده یک تن مباد
همه سر به سر تن به کشتن دهیم از آن به که کشور به دشمن دهیم

www.afgazad.com

afgazad@gmail.com

European Languages

زبان های اروپایی

<http://www.washingtonpost.com/opinions/obama-turns-back-the-clock->

Obama turns back the clock on Guantanamo

By Baher Azmy

August 16

New rules from the Obama Justice Department threaten to return Guantanamo Bay to the legal black hole it was in during the early days of the George W. Bush administration. The rules, which began trickling out in May, are to be reviewed Friday in a hearing before a federal judge in Washington. They restrict lawyers' access to detainees who have lost their initial habeas corpus petitions. The effect would be to wrest control of attorney-client access away from the courts and give the military nearly complete discretion to dictate if and when attorneys can visit detainees, how many attorneys may work on a case, what information lawyers may obtain and use in representing their clients, and where and how this information can be used.

In other words, far from [closing the prison camp as he promised](#), President Obama is steadily returning Guantanamo to the secretive and hopeless internment camp that he vilified as a candidate.

Since the Guantanamo prison opened in 2002, its defining features have been the denial of judicial oversight and its exclusion of lawyers. The George W. Bush administration chose this location to house "enemy combatants" because officials thought the island military base — and treatment of detainees — would be beyond the scrutiny of the courts. After the Supreme Court rejected this strategy in its 2004 ruling in *Rasul v. Bush*, lawyers streamed down to the base. It soon became clear that not only had most detainees been abused but also that most should never have been detained at all. More than 600 of the nearly 800 Muslim men once held at Guantanamo have been released since *Rasul*.

In 2008, the court's ruling in *Boumediene v. Bush* reaffirmed that detainees had a right to meaningful judicial review of the factual and legal basis of their detention. *Boumediene* reopened the courts to detainees, and habeas challenges resumed after years of being put on hold.

In the first three years after *Boumediene*, most detainees won their cases in lower courts, underscoring the weakness of the Bush administration's detention decisions. But over the past year, the U.S. Court of Appeals for the D.C. Circuit has reversed all of those decisions and imposed legal standards that make it virtually impossible to win a habeas case. Meanwhile, the Supreme Court's refusal to review the D.C. Circuit's defiance of the promise in *Boumediene* — despite a plea raised this year in seven separate appeals — signals the end of meaningful judicial oversight of Guantanamo.

And the Justice Department's new rules are bringing Guantanamo full circle. In a [court filing this month](#), the Obama administration showed its faulty reasoning, arguing that in the absence of active habeas petitions, lawyers do not need guaranteed access to their clients or to classified information necessary to pursue their claims. Obama officials, like the Bush administration before them, say that the government should have unfettered control over Guantanamo.

But there is no plausible legal or military justification to punish these detainees in this way. Guantanamo remains thousands of miles from any active hostilities. More to the point, amid the thousands of attorney-client visits that have occurred over the past eight years, there has been no credible report of any disclosure of classified information or harm to national security.

The Obama administration's backtracking, taken with the D.C. Circuit's evisceration of *Boumediene* and the president's failed promise to close the prison, are shifting the status quo at Guantanamo to the pre-*Rasul* era, when Guantanamo was iconic for denying human beings legal rights or access to the outside world.

This development is as unsurprising as it is dangerous. In 2004, the Supreme Court was motivated to ensure judicial supervision over detention operations at Guantanamo by revelations about torture at Abu Ghraib as well as by concerns about detention without charge or trial. Today, most people think Obama has [ended torture at Guantanamo](#). It does not follow, however, that there is no longer a need for judicial oversight. Conditions and treatment at the prison improved precisely because of attorney and judicial oversight. Abuses could easily return absent proper vigilance. Still, the more fundamental problem at Guantanamo has always been [indefinite detention](#) without charge or trial — itself a form of torture.

Torture was President Bush's legacy at Guantanamo. I hope that President Obama's legacy will not be that he legitimized indefinite detention without charge and made Guantanamo a place where the United States sends Muslim detainees to grow old and die.