

Dropped Charges, Overturned Convictions, and Delayed Trials in Guantanamo Military Commissions

Those eager for swift justice against accused terrorism suspects have at times called for sending suspects to the military commission system in Guantanamo based on fears that suspects may be acquitted in a civilian court. But the track record of the Guantanamo military commissions demonstrates that they offer anything but swift justice. Charges are routinely dropped or overturned, and the few cases awaiting trial are mired in delays that have dragged on for years.

Federal courts, by contrast, have proven both swift and effective at prosecuting terrorism cases.¹ Over 660 individuals have been convicted of terrorism-related crimes in federal courts since 9/11,² in contrast to the eight convictions in the military commissions (three of which have been overturned completely and one partially). Yes, suspects may be acquitted in federal courts, but that is true in any criminal prosecution, including military tribunals.³

Below are examples of Guantanamo military commissions cases that show the dysfunction of the commissions system.

Failed Charges

Mohammed Jawad: Charged with attempted murder in violation of the law of war and attempt to cause serious bodily injury. Both charges were dropped after a judge suppressed Jawad's

statements from the time of his capture because he was tortured, and because he had won his *habeas* petition.⁴ He has not since been charged with any war crimes.

David Hicks: Charged in 2004 with conspiracy, attempted murder, and aiding the enemy.⁵ These charges were dropped in 2006. When he was charged again in 2007, he was only charged with providing material support for terrorism, since the commissions' convening authority concluded there was no "probable cause" to justify the attempted murder charge.⁶

Binyam Mohamed: Accused of training and plotting attacks on targets in the United States, including a plan to detonate a "dirty bomb,"⁷ and charged with conspiracy and material support for terrorism in 2005. The charges were dismissed in 2006. He was charged again in 2008, only for those charges to be dismissed the same year.⁸ He has not since been charged with any war crimes.

Ghassan Abdallah al-Sharbi: Accused of participating in al Qaeda training and providing other services for the group. He was charged in 2005 with conspiracy to commit terrorism, but the charges were dropped in 2006. He was then charged in 2008 with conspiracy and providing

¹ <https://www.humanrightsfirst.org/resource/myth-v-fact-trying-terror-suspects-federal-courts>.

² <https://www.humanrightsfirst.org/resource/federal-courts-continue-take-lead-counterterrorism-prosecutions>.

³ <https://www.ushmm.org/wlc/en/article.php?ModuleId=10007073>

⁴ <https://fas.org/sgp/crs/natsec/R41163.pdf>

⁵ <http://www.smh.com.au/articles/2004/06/11/1086749867034.html>

⁶ <https://www.sbs.com.au/news/david-hicks-charged>

⁷ <http://www.nytimes.com/2008/10/31/us/31gitmo.html>

⁸ <http://www.mc.mil/CASES/MilitaryCommissions.aspx>

material support for terrorism. These charges were dropped in 2008. He was charged again in 2009 with conspiracy and material support, and the charges were dismissed the same year.⁹ He has not since been charged with any war crimes.

- ☑ **Sufiyan Barhoumi:** Charged in 2005 with conspiracy and material support, but the charges were dropped in 2006. He was charged again in 2008 with the same crimes, but these charges were dropped in 2009.¹⁰ Barhoumi was cleared for transfer out of the prison by the Guantanamo Periodic Review Board in 2016.¹¹ Before this, he begged the military commission to try him for any crime, so he could plead guilty and receive a release date.¹²
- ☑ **Mohammed Hashim:** Charged in 2008, with spying and material support for terrorism. These charges were dropped later the same year.¹³ He has not since been charged with any war crimes.
- ☑ **Jabran Said bin al Qahtani:** Charged in 2005 with conspiracy.¹⁴ This charge was dropped in 2006 when the Supreme Court found that the military commissions were illegal.¹⁵ He was charged again in 2008 with conspiracy and

providing material support for terrorism.¹⁶ These charges were dropped later the same year.¹⁷ He was charged a third time in 2009. This third batch of charges was dropped in 2013.¹⁸ He was transferred to Saudi Arabia in 2017.

- ☑ **Noor Uthman Muhammed:** Charged in 2008 with conspiracy and providing material support for terrorism.¹⁹ These charges were dismissed later the same year.²⁰ Later, in 2011, Muhammed was charged with material support for terrorism and pleaded guilty the same year.²¹ The Pentagon overturned his conviction in 2015.²²
- ☑ **Mohammed al-Qahtani:** Al-Qahtani, the alleged “20th 9/11 hijacker,” had his charges dismissed in the military commissions because of his torture by U.S. military interrogators at Guantanamo Bay.²³

Overtured Charges

- ☑ **David Hicks:** Pleaded guilty in 2007 to providing material support for terrorism.²⁴ In 2015, the Court of Military Commission Review overturned his conviction.²⁵

⁹ <http://www.mc.mil/CASES/MilitaryCommissions.aspx>, <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article92789632.html>

¹⁰ <http://www.mc.mil/CASES/MilitaryCommissions.aspx>

¹¹ http://www.prs.mil/Portals/60/Documents/ISN694/160809_U_ISN694_FINAL_DETERMINATION_PUBLIC.pdf

¹² <https://www.wsj.com/articles/SB10001424127887324069104578527012686080732>

¹³ <http://www.mc.mil/CASES/MilitaryCommissions.aspx>

¹⁴ <http://www.mc.mil/Portals/0/pdfs/alQahtaniMCO1/d20051104qahtani.pdf>

¹⁵ <http://www.andyworthington.co.uk/2008/06/03/guantanamo-trials-critical-judge-sacked-british-torture-victim-charged/>

¹⁶ [http://www.mc.mil/Portals/0/pdfs/alQahtani/Qahtani%20\(Government%20Sworn%20Charges\).pdf](http://www.mc.mil/Portals/0/pdfs/alQahtani/Qahtani%20(Government%20Sworn%20Charges).pdf)

¹⁷ <https://www.theguardian.com/world/2008/oct/21/guantanamo-usa>

¹⁸ [http://www.mc.mil/Portals/0/pdfs/alQahtani/Qahtani%20\(Dismissal%20without%20Prejudice\).pdf](http://www.mc.mil/Portals/0/pdfs/alQahtani/Qahtani%20(Dismissal%20without%20Prejudice).pdf)

¹⁹ <https://www.reuters.com/article/idINIndia-33744620080523>

²⁰ <http://www.theguardian.com/world/2008/oct/21/guantanamo-usa>

²¹ <https://www.nytimes.com/interactive/projects/guantanamo/detainees/707-noor-uthman-muhammed>

²² <https://www.defense.gov/News/News-Releases/News-Release-View/Article/605346/findings-and-sentence-disapproved-in-us-v-noor-uthman-muhammed/>

²³ <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/13/AR2009011303372.html>, <http://www.nytimes.com/2008/05/14/washington/14gitmo.html>

²⁴ <http://www.nytimes.com/2007/03/27/washington/27gitmo.html>

²⁵ <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article10651907.html>

- ☑ **Salim Hamdan:** Found guilty in 2008 of material support for terrorism. In 2012, a U.S. Court of Appeals overruled the conviction because material support was not a war crime at the time of his conviction.²⁶
- ☑ **Ali Hamza al Bahlul:** Convicted in 2008 of conspiracy, soliciting murder, and material support for terrorism.²⁷ The material support and solicitation convictions were overturned in 2014 and the conspiracy conviction was overturned in 2015.²⁸ The conspiracy conviction was reinstated in 2016.²⁹
- ☑ **Noor Uthman Muhammed:** Charged in 2011 with material support for terrorism and pleaded guilty the same year, as noted above.³⁰ The Pentagon overturned his conviction in 2015.³¹

Cases Still Awaiting Trial

- ☑ **The 9/11 Defendants:** The five defendants in the 9/11 case were initially charged in 2008,³² but those charges were dropped as part of an unsuccessful effort to bring the case to federal court. New charges were filed in 2011³³ and the case has been in pre-trial hearings since. The case has been riddled with procedural confusion and government interference, and it is still not clear when the trial will begin.

- ☑ **Abd al-Rahim al-Nashiri:** Similarly, al-Nashiri—the alleged planner of the USS *Cole* bombing—has had his case stuck in pre-trial since charges were re-filed in 2011.³⁴ Part of the delay, as with the 9/11 case, has been repeated governmental interference with attorney-client privilege. Additionally, the judge in the case abated the proceedings indefinitely on February 16, 2018.³⁵
- ☑ **Abd al Hadi al-Iraqi:** Hadi was charged in military commissions in 2014 for alleged crimes related to al Qaeda attacks in Afghanistan and Pakistan.³⁶ The case has languished in pre-trial hearings, due to confusion over defense attorney security clearances and other procedural disputes, and Hadi's health issues.³⁷

By contrast, federal courts have handled complex terrorism prosecutions, including of high-profile terrorism suspects captured abroad, smoothly and efficiently. For example, Suleiman Abu Ghaith, Osama bin Laden's son-in-law and an al Qaeda spokesman, was captured, brought to trial, and convicted in just over a year.³⁸ Federal courts, which have decades of experience trying terrorism cases, backed by established law and practices, present a far better option for handling suspected terrorists than the military commission system at Guantanamo.

²⁶ <http://www.mcclatchydc.com/news/politics-government/article24738802.html>

²⁷ <https://www.reuters.com/article/us-guantanamo-hearings/bin-ladens-publicist-gets-life-in-prison-idUSTRE49R5OZ20081103>

²⁸ <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article23853043.html>

²⁹ <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article109396027.html>

³⁰

<https://www.nytimes.com/interactive/projects/guantanamo/detainees/707-noor-uthman-muhammed>

³¹ <https://www.defense.gov/News/News-Releases/News-Release-View/Article/605346/findings-and-sentence-disapproved-in-us-v-noor-uthman-muhammed/>

³² <http://news.bbc.co.uk/2/hi/americas/7437164.stm>

³³

<http://www.cnn.com/2011/CRIME/05/31/us.ksm.charges/index.html>

³⁴

<http://www.cnn.com/2011/US/04/20/terror.suspect.charges/index.html>

³⁵ <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article200496069.html>

³⁶ <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article1967012.html>

³⁷ <https://www.humanrightsfirst.org/blog/gitmo-detainee-fights-new-legal-team-right-speedy-trial>, <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article197315374.html>

³⁸ <https://www.humanrightsfirst.org/press-release/abu-ghaith-guilty-verdict-demonstrates-effectiveness-federal-courts>