

7 March 2025

Press Release

BHRC welcomes appeal decision that alleged admissions in Guantanamo case were tainted by torture

For immediate release 7th March 2025

Following a trial observation in the case of *United States of America v Al-Nashiri*, the Bar Human Rights Committee of England and Wales (“**BHRC**”) submitted an amicus brief to the Court of Military Commissions Review (“**CMRC**”), which hears appeals from the Guantanamo Camp Justice cases.¹

On 18th August 2023 the Military Commission in the case gave a ruling on the Defendant’s motion for the suppression (or exclusion) of statements made by Mr Al-Nashiri to US Government officials in January 2007 after he was officially returned to the Guantanamo Bay detention facility following four years in black sites where he was subjected to the Enhanced Interrogation Techniques programme. In a scathing and significant judgment, the Military Judge concluded that those statements would not be admissible at trial as they were derived from the previous torture and psychological abuse to which Mr Al-Nashiri was subjected. The US Government appealed.

The BHRC brief, drafted by Stephen Cragg KC (then BHRC Chair) and Jodie Blackstock (BHRC Treasurer) submitted that international law requires the exclusion of evidence obtained as a result of torture and highlighted the caselaw and UN instruments on the rights of detainees in the context of interrogation following torture.²

The CMRC in a decision made on 30th January 2025 but only declassified and published on 5th March 2025 denied each appeal ground raised by the US Government, finding the trial judge’s decision to be available to him on the facts and applicable law.³ The CMRC accepted his reasoning that a “contract” borne of psychological conditioning had been formed between the CIA and detainees kept in black sites between 2002 and 2006, that if detainees did not cooperate, they would be tortured. This was reinforced by “maintenance visits” by psychologists who reminded detainees of those obligations in order to avoid returning to the “hard times”. The CMRC held (at p28) that: “*The contract essentially brought forward to the present all the coercive conditions that appellee endured while in CIA custody.*”⁴ As such, interviews conducted by FBI agents (who would have appeared to Mr Al-Nashiri to just be further interrogators in a long line of US interrogators, some of whom had tortured him) were just as coercive as those conducted in the black sites, given the risk of torture Mr Al-Nashiri had been conditioned to expect if he did not talk.

Without the alleged confession evidence, the case against Mr Al-Nashiri now appears to be limited almost entirely to very weak identification evidence contained in hearsay notes of US agents, taken under highly dubious conditions in the prison compound of the notorious Yemeni Political Security Office.

Jodie Blackstock said, “*While BHRC has grave concerns that after nearly 25 years, the pending trials at Guantanamo Bay can ever be fair, the Military Commissions have underscored the abhorrence to evidence both obtained, and tainted by, torture, and that this should always be excluded as a means of providing reliable evidence to support a conviction.*”

ENDS.

NOTES TO EDITORS

1. The Bar Human Rights Committee of England and Wales (BHRC) is the international human rights arm of the Bar of England and Wales, working to protect the rights of advocates, judges and human rights defenders around the world. BHRC is concerned with defending the rule of law and internationally recognised legal standards relating to human rights and the right to a fair trial. It is independent of the Bar Council. For more information on the Bar Human Rights Committee (BHRC), visit our website at <http://www.barhumanrights.org.uk>
2. The BHRC *amicus* brief is available here <https://barhumanrights.org.uk/bhrc-submits-al-nashiri-amicus-brief-to-the-court-of-military-commission-review/>. BHRC trial observation report from October 2022 in the case of Al-Nashiri is available here <https://barhumanrights.org.uk/guantanamo-report-2023/>
3. The decision of the CMRC is available here [https://www.mc.mil/Portals/0/pdfs/alNashiri23-005/23-005%20Al%20Nashiri%20\(Jan%2030%202025\)_PUBLIC.pdf](https://www.mc.mil/Portals/0/pdfs/alNashiri23-005/23-005%20Al%20Nashiri%20(Jan%2030%202025)_PUBLIC.pdf)
4. *United States of America v Al-Nashiri* CMCR 23-005 (2025), pg 28: [https://www.mc.mil/Portals/0/pdfs/alNashiri23-005/23-005%20Al%20Nashiri%20\(Jan%2030%202025\)_PUBLIC.pdf](https://www.mc.mil/Portals/0/pdfs/alNashiri23-005/23-005%20Al%20Nashiri%20(Jan%2030%202025)_PUBLIC.pdf)
5. For an interview with our spokesperson, please contact Sahar Sadoughi, Project Officer on coordination@barhumanrights.org.uk

Bar Human Rights Committee of England and Wales (BHRC), 57-60 Lincoln’s Inn Fields | London WC2A 3LJ
Chair: Michael J Ivers KC | Vice-Chairs: Joanne Cecil KC & Grainne Mellon

coordination@barhumanrights.org.uk | www.barhumanrights.org.uk
+44 (0) 204 534 1879 | +44 (0) 770 697 8384