



Written by [Joe Wolverton, II, J.D.](#) on December 26, 2011

## Federal Judge Dismisses Lawsuit of Former Gitmo Prisoner

On December 22, a judge from the United States District Court for the District of Columbia issued an order granting a motion to dismiss a complaint filed by Abdul Rahim Abdul Razak al Janko (left), a former prisoner at the Navy's Guantanamo Bay Detention Facility in Cuba.



In the suit, Janko, a Syrian national, alleges that while detained at the Guantanamo Bay facility he was subjected to torture by agents of the United States government and armed forces.

The plaintiff was held in Afghanistan by U.S. military forces in January 2002 and imprisoned in Guantanamo Bay, Cuba, from May 2002 until October 2009.

In June 2009, Janko was released from detention after a judge determined that the government failed to establish plaintiff's lawful status as an "enemy combatant." Accordingly, his habeas corpus petition was granted and he was released from American custody on October 7, 2009.

Nearly one year after his release from Guantanamo, Janko filed a complaint seeking damages against 26 individual defendants, 100 unnamed "Jane" and "John Doe" defendants, and the United States, alleging that he was subjected to abusive treatment while detained by the U.S. military both in Afghanistan and at Guantanamo.

According to the [opinion published by the court](#), Janko "the first detainee who was released pursuant to a successful habeas petition to seek damages for the acts he says occurred while in U.S. custody."

Janko's history of detention and torture did not begin with his apprehension by the U.S. military in Afghanistan, however.

Around January 2000, he emigrated from the United Arab Emirates to Afghanistan. After a brief stay at a Taliban guesthouse he attended the al Farouq training camp only to be accused by his al Qaeda superiors of being a spy sent by the United States and Israel.

While in the custody of the Taliban, Janko was tortured so severely by al Qaeda that he gave a false "confession" that he was an American spy.

After "confessing," Janko was imprisoned by the Taliban for over 18 months at the notorious [Sarpusa prison](#) in Kandahar, Afghanistan.

In January 2002, American armed forces learned from a British journalist of Janko's location at the prison (which, by that time, had been abandoned) and they took him into custody, transporting him to the U.S. detention facility at the Kandahar Air Force Base.

Upon investigating Janko's background, the military "'mistook [AI] Janko as one of a number of suicide martyrs based on videotapes captured at an al Qaeda safehouse." The sad fact that escaped the



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government's investigators was that the tape they watched that convinced them that Janko was a member of al-Qaeda was "actually an Al Qaeda torture tape." Unconvinced, Janko was forthwith transported to Guantanamo Bay for his role as an "enemy combatant."

After finally being freed, Janko filed suit alleging that U.S. forces used "abusive interrogation techniques," such as "striking his forehead; threatening to remove his fingernails; sleep deprivation; exposure to very cold temperatures; ... humiliation; ... and rough treatment." He also claims that unidentified servicemen "urinated upon him when he first arrived in Guantanamo."

Named defendants in the suit include over 100 such John and Jane Does, Donald Rumsfeld, Robert Gates, and Paul Wolfowitz.

In dismissing the suit for damages, Judge Richard Leon wrote:

War, by its very nature, victimizes many of those caught in its wake. Innocent civilians are invariably killed, and sometimes even mistakenly imprisoned. Our legal system was never designed to provide a remedy in our Courts for these inevitable tragedies, especially in a conflict like this where terrorists cunningly morph into their surroundings.

Additionally, he sets forth a separation of powers basis for his decision, writing:

The Congress has specifically barred the Judicial Branch from reviewing "any aspect of the detention ... treatment ... or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination," 28 U.S.C. § 2241(e)(2). For this Court to circumvent such a clear directive from our Legislative Branch would be an utter disregard of the limitations of our judicial power.

There are currently two other former Guantanamo detainees who have filed suit seeking compensation for harm received during alleged torture session at the facility.

As Jurist reports:

In July 2010, the UK High court allowed a lawsuit filed by former Guantanamo Bay detainees alleging that the UK government was complicit in their torture to proceed. In April of last year, former Guantanamo detainee Adel Hassan Hamad filed a lawsuit in the US District Court for the Western District of Washington against the US government and more than a dozen government officials, claiming he was tortured.

As a candidate for president, Barack Obama promised to shutter the Guantanamo Bay facility. On March 7, 2011, however, President Barack Obama signed an [executive order](#) changing the manner in which the cases of prisoners detained at Guantanamo Bay would be handled.

This order and consequent policy shift represented an outright renegeing on his campaign promises.

In the order, the President calls for review of several cases, but insists that those imprisoned must remain so because they "in effect, remain at war with the United States."

Despite the president's radical repositioning on the issue, the White House maintains that the administration is "committed to closing the detention facility at Guantanamo Bay."

After his habeas corpus petition was granted in October 2009, Janko was [quietly released to Belgium](#). He is the third former Guantanamo detainee to be transferred to that country. For his safety, the government of Belgium requested the United States not disclose Janko's identity at the time of release.



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He now lives as a permanent legal resident in Antwerp, Belgium, under an assumed name and as a dependent of the welfare system.



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