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Appeal court tells British ministers to ask US to end Yunus Rahmatullah's seven-year ordeal at notorious Afghan prison



Yunus Rahmatullah was handed over by British forces to US troops in Iraq. Photograph: PA

The government has been ordered by three senior judges to secure the release of a Pakistani man captured by British special forces and held by the US in [Afghanistan](#)'s notorious Bagram jail without trial for more than seven years.

The judges ruled that Yunus Rahmatullah, 29, who was handed over by the SAS to American

forces in Iraq in 2004 and then taken to Bagram, is being unlawfully detained. They ordered a writ of habeas corpus to be issued so he can be freed.

The Master of the Rolls, Lord Neuberger, Lord Justice Maurice Kay, and Lord Justice Sullivan, said the case raised important principles of law. Their court ruling is the latest in a series relating to the treatment of detainees in Iraq and Afghanistan that have been highly critical of the Foreign Office and Ministry of Defence.

The judges rejected a claim by a senior MoD official, Damian Parmenter, that granting a writ for habeas corpus would be "futile".

Kay said: "On the face of it [Rahmatullah] is being unlawfully detained and [British ministers] have procedures at their disposal ... to enable them to take steps which could bring the unlawful detention to an end."

The judges referred to memorandums of understanding signed by Britain and the US which specifically refer to the rights of prisoners of war and detained civilians enshrined in the Geneva conventions and international humanitarian law.

The MoD, after initial denials, admitted in 2009 that Rahmatullah – who at the time it did not identify but said was a member of a proscribed organisation linked to al-Qaida – had been handed over to the US and subsequently rendered to Bagram.

Last year, a US detainee review board said he was "not an enduring security threat". However, he remains in Bagram, described by one senior judge quoted in the ruling as "a place said to be notorious for human rights abuses".

Foreign Office and MoD officials now face the prospect of having to tell the US to release Rahmatullah. However Lord Neuberger said there was "a substantial case for saying that the UK government is under an international legal obligation to demand the return of the applicant, and the US government is bound to accede to such a request."

The legal charity Reprieve, which has fought to secure the man's release, described the ruling as "historic" and "unique". It was the first time any civilian legal system had penetrated Bagram, "a legal black hole", it said. Reprieve said Rahmatullah had only recently made telephone contact with his family and that his "physical and mental state" was described as "catastrophic".

Reprieve's legal director Cori Crider said: "The court is quite right – once the UK takes a prisoner it cannot simply wash its hands of him."

A spokesman for lawyers Leigh Day, which represented the prisoner in the court hearing, said: "Mr Rahmatullah is ... prevented from speaking with or instructing lawyers. Instructions to act on his behalf were received through his cousin, who has intermittent communication with the client through the International Committee of the Red Cross."

Rahmatullah's solicitor Jamie Beagent, said: "This judgment affirms that our client remains the responsibility of the UK under international law. The government must now accept its responsibilities and seek the return of Mr Rahmatullah from US detention, under the terms of its agreements with the [United States](#) ."

He added: "We hope that the writ of habeas corpus will finally bring to an end our client's nightmare of indefinite detention without charge in appalling conditions at Bagram."

Though Rahmatullah is in US custody, the UK is the "detaining authority pursuant to the memorandum of understanding struck between the UK and US" during the Iraq invasion, Leigh Day said. British ministers remained "responsible" for Rahmatullah under the Geneva conventions.

"The ancient writ of habeas corpus is a right under English law that dates back to the Magna Carta," added the Leigh Day spokesman. "It may be issued on behalf of any prisoner unlawfully detained so as to bring him (originally, his actual person; now more often just the facts of the case) before the high court, and his release ordered."