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## UK DETAINEES AT GUANTANAMO BAY: APPLICATION FOR JUDICIAL REVIEW

Mr Justice Richards heard an application on Friday, 15 March in the High Court for permission for a judicial review of the Foreign and Home Secretaries' handling of the detention of [redacted] in Guantanamo Bay. The hearing began with a request for adjournment so the case could be considered alongside similar applications to be made by lawyers on behalf of the other [redacted] UK detainees. Mr Justice Richards refused this on the grounds that this should have been considered by the Claimant's Counsel beforehand and that the cases should be heard on their individual not collective merit.

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**Judgement**

On the [redacted] case, after a long day (mostly taken up by the Claimant's submission), Mr Justice Richards ruled that ;

- To the extent that the court had jurisdiction at all the issue was non-justiciable ie one of policy for the Government and not one for the courts. He judged against an attempt, as he put it, to blur domestic and international law and give rights to individuals which only States could exercise.

**Claimant's Case**

The bones of the Claimant's case were that ;

- [redacted] had been wrongly denied POW status and that HMG had failed to achieve recognition of that status under Article 45 of the Geneva Convention.
- [redacted] had been wrongly interrogated by the Security Service in violation of international law
- [redacted] had been wrongly denied legal access and that HMG had not taken the necessary steps to correct this
- the UK had duty to protest at the physical circumstances in which [redacted] was being held
- HMG should not work further with the US authorities until the latter had given an undertaking not to seek the death penalty.

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: WILLIAM E LANFAIR UNCLASSIFIED  
DATE/CASE ID: 16 NOV 2004 200303827

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The Claimant's Counsel focussed on the first three of the above and the activity and in-activity of HMG and its representatives. By linking [redacted] circumstances and the work of members of the FCO and Security Service, Counsel sought to argue the relevance of domestic law. Similarly, Counsel also sought to suggest that HMG had a duty of care under domestic law to fulfil individual's rights provided under international law.

#### Defendant's Case

In reply, HMG Counsel argued that the conduct of the UK's international relations was not justiciable in the UK courts. Specifically, Counsel argued that ;

- HMG had no consular authority in Guantanamo Bay under the UK/US bilateral Consular Convention given that Camp X-Ray fell outside a consular district listed in the Convention and the US had made it clear that it would not agree to its subsequent inclusion
- it was entirely legitimate to ask questions of [redacted] to fulfil the states responsibility to protect national security
- [redacted] rights under the HRA and ECHR did not extend beyond the UK or the territories of the parties to them ie not Guantanamo Bay.

Mr Justice Richards was very clear in his judgement. His ruling, and advice that that the other detainees' applications be lodged and handled in the normal way, gave a clear signal of their fate (and of any appeal, a request for which was not made at the time). But for publicity reasons if nothing else, We expect the appeal and applications to be made. They are unlikely to be heard before Easter.

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