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EDITORIAL

Justice Too Long Delayed

Of the many examples of the Bush administration's abusive and incompetent detainee policies, one of the most baffling is the case of Mohammed Jawad. Mr. Jawad, an Afghan, was no older than 17 and likely even younger when he was captured in 2002 and thrown into indefinite detention at Guantánamo Bay, Cuba.

Seven years, one suicide attempt and untold hours of physical and mental torture later, he remains there, a wrecked young man held on an allegation that he hurled a grenade at two American servicemen and their interpreter — without any credible evidence that he actually did or that he is a grave threat to American security.

In a belated victory for justice, a federal judge recognized that tragic fact last week and ordered the government to release Mr. Jawad.

Judge Ellen Huvelle of the Federal District Court for the District of Columbia was rightly offended by the government's repeated attempts to delay the proceeding and the flimsiness of its case. Her ruling, granting Mr. Jawad's petition for habeas corpus, seeks to end a legal and human travesty perpetrated by the Bush team but, sadly, still being furthered under President Obama.

Last year, the prosecutor assigned to try this case before a Guantánamo military commission resigned, saying he could not ethically proceed and had come to doubt Mr. Jawad's guilt. A military judge later refused to admit the confessions that Mr. Jawad's Afghan captors had tortured out of him, eviscerating the government's case.

To its credit, the Obama Justice Department has conceded defeat in the habeas proceeding and will not pursue an appeal of Judge Huvelle's decision. But lawyers from the new administration had no business opposing Mr. Jawad's habeas petition in the first place. It should not have taken months and a formal motion to suppress the so-called evidence derived from torture to recognize that his military detention is illegitimate.

Judge Huvelle's order gives the government until Aug. 22 to release Mr. Jawad so that he can be repatriated to Afghanistan, which has requested his immediate return. It remains to be seen whether that will happen. It is troubling that Attorney General Eric Holder is exploring the possibility of trying to effectively negate the judge's order by filing criminal charges based on mysterious witness statements that the Justice Department claims were "not previously available."

Mr. Holder should heed Judge Huvelle's stern warning that bringing criminal charges now would raise serious issues, including the violation of Mr. Jawad's right to a speedy trial, his mental competency and his status as a juvenile subjected to torture. Even if the government succeeded in securing a conviction — highly unlikely — the sentence would almost certainly be limited to the seven hellish years Mr. Jawad has already served.

There is a broader concern, too. Mr. Obama has assigned Mr. Holder the critical task of reviewing the files of Guantánamo detainees to distinguish those having only weak evidence against them from truly dangerous prisoners. We hope the handling of the Jawad case is not representative of how that review is going.

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