

Amanda Lynn Jacobsen  
U.S. counsel for abu Zubaydah

---

European Parliament, Brussels  
Committee on Civil Liberties, Justice and Home Affairs hearing on:  
“What is new on the alleged CIA illegal detention and transfer of prisoners in Europe?”  
Tuesday 27 March 2012

---

Thank you very much for having me here today.

My name is Amanda Jacobsen. I am an American attorney, and I represent current Guantánamo Bay prisoner, and former CIA secret “black site” prisoner, Zayn al Abidin Muhammad Husayn (a man who is commonly known as abu Zubaydah).

I have been representing abu Zubaydah since 2007, after he was transferred to the United States naval base in Guantánamo Bay Cuba out of secret CIA custody and first permitted to have the representation of a lawyer. I represent him in a *habeas corpus* claim, challenging the legality of his ongoing detention, and I also represent him, along with cooperating counsel, in other related matters, including in ongoing litigation in Europe. In my capacity as his lawyer, I have been visiting him in Guantánamo Bay, every few months for the last several years.

I am here today to speak to you on his behalf. That is to say, I am here today to speak on behalf of one of the victims of the illegal detention and rendition program.

I am one of very few people with whom he is allowed to speak. I should note, however, that everything that I know about him from speaking with him directly – both about him as a person and about his situation – is presumptively classified by the U.S. government. Accordingly, there is very little that I am permitted to say, in this public hearing, based on what I know from him of his experience.

Today’s hearing asks the question: “What’s new on the alleged CIA illegal detention and transfer of prisoners” in Europe. Sadly, however, what I have to tell you is that, from my client’s perspective, nothing is really new. Years are passing, accountability continues to be lacking, and all the while my client languishes in an isolated prison cell indefinitely.

I appreciate this gathering here today, because more broadly there seems to be a widespread belief that the moment has passed, the news reels have moved on, there’s no real sense of urgency, people have become jaded, indifferent even to the injustice that was suffered, but for my client the injustice persists, and the need for accountability is now.

Tomorrow, March 28, 2012, marks exactly 10 years – an entire decade – that my client has been held in prison. People are often surprised to learn that in 10 years of being

imprisoned, my client has never been charged with any kind of crime, whatsoever, let alone found guilty of one. There's been no court finding that he needs to be in prison at all.

Back in 2002, shortly after abu Zubaydah was seized and rendered away to secret prisons and tortured, high level United States government officials, including the President of the United States himself, stated publicly that my client was the "number three man" in al Qaeda, al Qaeda's chief of operations, a key facilitator, a top lieutenant, working for Osama bin Laden himself. They said he was personally involved in the attacks of September 11 and every other major al Qaeda operations, and that he knew the details of al Qaeda's future plans of attack.

All of this – all of these allegations – are false. Abu Zubaydah was not even a member of al Qaeda, let alone its number three man. He was not involved in September 11, nor in the planning or execution of any other al Qaeda attacks. Quite simply, he wasn't who the US government said he was.

This may be surprising. But it is not controversial. The US government has explicitly conceded in abu Zubaydah's *habeas corpus* case that it does not maintain these original allegations against my client. This is not the basis on which he is being detained any longer.

In Europe, there have been two investigations related to the treatment of my client: one in Lithuania and the other in Poland.

Information concerning Lithuania's role in the CIA rendition and detention program first became public in August 2009 – that is more than 2 years after the European Parliament's report on this issue.

In January 2011, an investigation into these allegations by the Lithuanian Parliamentary Committee on National Security and Defense concluded that CIA aircraft did land in Lithuania. The Committee also concluded, that Lithuania received requests to build prisons for the purpose of holding detainees, and that these facilities were built.

The Committee found that the conditions for the illegal rendition and detention of persons like my client were present in Lithuania, but the Committee stopped short of determining that illegal activity actually took place. Without looking further, the investigation was simply closed. And the Committee took its rest, claiming simply that it would be impossible to elucidate the situation further.

NGOs, such as Reprieve and Amnesty, have put forth evidence that supports a finding in particular that my client, abu Zubaydah, was secretly rendered and imprisoned in Lithuania. Nonetheless, the Lithuanian government did not consider this evidence and has steadfastly refused to reopen the investigation. On behalf of abu Zubaydah, my co-counsel and I have, therefore, filed a complaint, seeking relief before the European Court of Human Rights. So, that's where things stand in Lithuania.

In Poland, although reports emerged in 2005 that there were secret CIA prisons within the country, the investigation did not start until 2008. Now, in 2012, the investigation has still yet to reach conclusion.

What's more, without warning, last month, the case was taken from the prosecutor's office in Warsaw and transferred hundreds of kilometers away to a different group of prosecutors in Kraków. At this late stage in the investigation, removal of the prosecutors, who are familiar with the case, and transfer to new prosecutors, who lack familiarity with the facts, will undoubtedly lengthen the investigation. Despite requests both from the media and from abu Zubaydah's counsel, no explanation has been provided for why this transfer was necessary. Notably, this is not the first time that something like this has happened in the Polish investigation: in 2011, the key prosecutor investigating the case was also inexplicably removed from the case, at a time when he was reported to be nearing conclusion.

As a result of ongoing impediments, such as this, counsel for abu Zubaydah are now also currently preparing a complaint before the European Court of Human Rights on abu Zubaydah's behalf concerning his treatment in Poland.

In addition to the fact that the investigation is not promptly being carried out, the Polish investigation also suffers from several other problems. I'll point out three:

The first issue is about my client's access to the investigation. It is well-established in case law of the European Court of Human Rights in Strasbourg that the obligation to conduct an effective investigation includes the obligation to provide the victim with effective access to the investigation. Without sufficient information conveyed to the victim himself, the victim will not be able to assist in the investigation in a meaningful and useful way, and the victim's right to participation will be rendered illusory.

Notably, in 2010, abu Zubaydah was granted victim status in relation to the Polish investigation. However, neither my client, nor I, nor his Polish counsel have been given sufficient access to the investigation. In Poland, my co-counsel is Bartek Jankowski. Mr. Jankowski acts as local Polish counsel on behalf of abu Zubaydah, although he has not personally met abu Zubaydah, and does not have access to the same information from abu Zubaydah himself that I do.

To date, Mr. Jankowski has been permitted to see only a portion of the Polish investigation file. (Some portion of the file, the Polish government has said they will not show him at all – because they say it's too secret or doesn't concern him. Another portion, the Polish government has conceded that abu Zubaydah's Polish counsel can see – his U.S. counsel, such as myself, are not permitted to see any of it – but even this portion that they have conceded he should see, Mr. Jankowski has not been permitted to see in its entirety yet.) After many failed attempts and months of waiting to gain access, Mr. Jankowski was finally able to schedule a date and a time, when he would be permitted to see this portion of the file, but just before that date arrived, is when the entire

file was inexplicably transferred to Kraków, preventing him once again from reviewing it.

As concerns that portion of the file that Mr. Jankowski has seen, the secrecy regime under which he must operate is – as kindly as I can put it – patently absurd. When Mr. Jankowski is reviewing a portion of the file, he not only lacks access to a computer on which to write legal submission, he is not even permitted paper and pen. This is because he is not permitted to write down anything he sees in the file. If he writes down anything, at any point, he can be subject to criminal liability. There are thousands of pages to review, and he cannot even write a note to himself, so that when he comes back to the secure facility later, he can recall what he's read. What's more, he cannot refer to any of these documents in a legal pleading because even this minimal reference in a legal submission to something he has seen in the file would be considered a violation. This rule seriously impairs the ability of the victim's counsel to contribute to the investigation.

Moreover, after reviewing the file, abu Zubayah's Polish counsel is not permitted to speak about the substance of any of the information he has seen in the investigation file with anyone who has not seen the file himself. The irony of this is that this includes abu Zubaydah himself. As a victim in this case, abu Zubaydah has permission to see the file: he has the same right to see the file as his Polish counsel (in fact, according to Mr. Jankowski, it is only on the basis of abu Zubaydah's right of access that Mr. Jankowski is able to see any portion of the file at all); however, since abu Zubaydah continues to be imprisoned in Guantánamo Bay, Cuba, and cannot travel to Poland, and see the file for himself, his Polish counsel is not permitted to share any of that information with him.

In other cases, access to investigatory files for Guantánamo Bay detainees, has been provided to victims, by giving the victim's U.S. security cleared counsel access to the file. In both the case of Binyam Mohammad and the case of Shaker Aamer -- the government of the United Kingdom transmitted even classified records to the U.S. secure facility for counsel there to review. And the same could and should be done here. In this case, by providing access to the investigatory file to myself and abu Zubaydah's other U.S. security cleared counsel, those of us who have been meeting with abu Zubaydah for years, would be able to review the file and could at least seek through U.S. channels to provide information relevant to the investigation.

The second issue with the Polish investigation is that the investigation suffers from a serious lack of transparency. Beyond the obligation to make information available specifically to the victim, and to allow the victim to provide insight to the prosecutor in response to that information, there is also an obligation (recognized by the Strasbourg court) for such investigations to be as transparent as possible, to make the public aware of the proceedings.

Within the portions of the investigatory file that Mr. Jankowski has been granted access, he believes that nothing – and I will repeat nothing -- he has seen so far in the

investigatory file needs to be kept secret. Everything he has seen, he believes belongs rightly in the public domain, and yet, everything is subject to heightened secrecy. This makes the secrecy regime I described all the more absurd. Unlike in other countries, in Poland, there is no formal process for Mr. Jankowski to request that secret information be declassified and made available to the public. According to Mr. Jankowski, the Polish secrecy laws are not subject to any kind of court review.

As a result, far too much information is withheld from the public. Even requests made for the disclosure of a legal opinion, regarding international legal principles governing the detention, rendition, and torture of suspected terrorists, has been denied by the Polish government. This legal opinion is a document which, it is safe to assume, could be disclosed in its entirety. But even documents that cannot be produced in their entirety could be provided with redaction. Even summaries are better than nothing. Without a doubt, greater transparency can and should be provided.

Third, and finally, I come back to the lack of any resolution to the investigation. According to the limited review of the investigatory file that has been permitted to abu Zubaydah's Polish counsel, sufficient evidence has been gathered, such that decisions could be taken – charges could be drafted – yet the Prosecutor has made no announcement of charges having been brought and no formal court indictment has been issued.

This very morning, just before the start of this hearing, there has been a news story suggesting that the former head of intelligence was charged in January, just before the case was transferred to Kraków, although the Prosecutor has not yet acknowledged these charges, nor referred them for formal indictment.

The proceedings are at a point, according to Mr. Jankowski, where there is little room left, but to make these important decisions. And yet, oddly, after all the work of the prosecutors to get the case to this point (for four years of investigation from 2008 to 2012), it is at this point that the case has been transferred from them. Without any public explanation.

Although the Polish government may wish to point to a lack of cooperation by the U.S. as an impediment, I understand from Mr. Jankowski that even without U.S. contribution, there is sufficient evidence to bring charges against the Poles who were involved in illegal activity.

In light of this information, I ask the European Parliament to call on the national governments (both Polish and Lithuanian) to push forward in reaching the difficult decisions, and to do so now.

I ask you to call on these nation states to provide meaningful access to the victim, abu Zubaydah himself. Including by sharing secret documents with not only his Polish

counsel, but also security-cleared U.S. counsel (like myself) who have direct access to abu Zubaydah.

In addition, I ask you to call on the governments to make more information publicly available.

The urgency of these requests (the need for accountability) is felt by my client.

Despite his mistreatment, in ten years, my client has not sought damages. Rather, he has asked only that justice be done, that the public know truly who he is (and who he isn't), that people care about what is being done in secret with the power of their governments, and that those who are responsible for his illegal treatment be held accountable.

This is necessary not only to give hope to my client, but also because if we allow the rule of law to be flouted, if we do not press for accountability for those who violate the rule of law, we guarantee this will happen again.

Thank you very much. I'd be happy to answer any questions you might have in the question and answer session.