

## GUANTANAMO BAY

# Freed captive sues U.S. over detention

■ A Syrian ex-detainee is suing the Obama administration for his 'Kafkaesque nightmare' in Afghanistan and Guantánamo.

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In a first for a former Guantánamo captive freed by a federal judge, a Syrian man now living in Europe is suing the U.S. government for damages from what he calls a "Kafkaesque nightmare."

The 44-page lawsuit by Abdul Razak al Janko, 32, described a decade-long odyssey of detention — first in Taliban-era Afghanistan, where he was tortured as an alleged pro-American Israeli spy, and later in U.S. military prisons that ignored or misdiagnosed his history as a torture victim.

In addition, Janko alleges that U.S. soldiers urinated on him on his May 2002 arrival at Guantánamo, where he was subsequently subjected to solitary confinement and sleep deprivation, and beaten by a rapid-reaction force. He said he attempted to commit suicide 17 times in despair.

President Barack Obama's administration had no comment.

"We're reviewing the suit and will respond in court," said Dean Boyd, spokesman for the Justice Department's National Security Division.

Federal courts rebuffed an earlier bid by former Guantánamo captives to sue the Bush administration for compensation, a

case called *Rasul v. Rumsfeld*. That case was brought by four men who were released years ago through a diplomatic deal between the United States and Britain's Tony Blair government.

Janko, however, is armed with a June 22, 2009, victory in his habeas corpus petition. It is one of so far just 38 wins since the U.S. Supreme Court ruled in June 2008 that the Constitution covers a Guantánamo captive's right to file false imprisonment petitions in federal courts.

### JUDGE'S DECISION

Judge Richard J. Leon, a President George W. Bush appointee, wrote in his 13-page decision that the Syrian's detention as a war prisoner "defies common sense" in part because he had been held and tortured by the Taliban or al Qaeda in the 18 months prior to his capture by U.S. troops in Afghanistan.

Janko was released four months later and, according to the lawsuit, seeks damages to cover his medical expenses from physical and psychological damage in U.S. custody as well as punitive damages.

It says he "still has scars and other evidence of this physical torture and ill-treatment such as loss of bodily functions and inability to sleep."

It was filed by Venice, Calif., attorney Paul L. Hoffman, who seeks jury trial in the same Washington, D.C., courthouse where Leon ordered Janko set free.

The lawsuit doesn't

specify where Janko went but says he was released on Oct. 7, 2009.

At the Center for Constitutional Rights in New York, attorney Shayana Kadidal says Janko is the first man who was released through a Guantánamo habeas petition to file a civil case.

The rights organization has championed Guantánamo litigation for years and tracks the habeas petitions still being decided among the 174 captives now at the prison camps in southeast Cuba.

Veteran Guantánamo defense lawyer David Remes, who has nothing to do with either the *Rasul* or Janko case, says the Syrian's lawsuit may have a better chance than the British attempt.

In December 2009, the U.S. Supreme Court declined to hear the case brought by the so-called Tipton Three and a fourth British citizen.

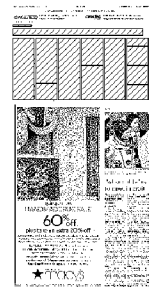
All four had been freed in a diplomatic deal, not by court order.

"The strongest case is going to be one where a court ruled a person wasn't lawfully held in the first place," he said.

### PRECEDENT

Remes, who has defended 17 Yemenis at Guantánamo through the years, and won some releases, says one need look no further than Canada to find a precedent for an unjustly detained war-on-terror captive receiving compensation.

Canada paid Canadian



Maher Arar a \$10.5 million settlement for Ottawa's role in his 2002 rendition by the United States to Syria, where Arar was tortured and held for 10 months.

A Canadian inquiry found that the Royal Canadian Mounted Police had

passed along erroneous information about Arar that set the rendition into motion.

The United States, however, has not acknowledged mistreatment of detainees at Guantánamo beyond what it says were scattered episodes of

guards and interrogators misunderstanding the boundaries of behavior.

Such suits, said Remes, "may be the only way to hold the responsible officials accountable for their crimes in public office.