

American ISIS Fighter Held for Two Months Without an Attorney



Summary: *An American caught fighting for ISIS is being held in Iraqi without an attorney for two months.*

An American citizen accused of fighting with the Islamic State has been held by the U.S. government for two months without a lawyer. The man, taken from a Syrian battlefield, agreed to talk with FBI agents but “felt he should have an attorney present.”

The man, who has not been identified, has not been charged. He had surrendered to U.S.-backed fighters in Syria back in September. He is being held in Iraq right now as an unlawful enemy combatant.

The American Civil Liberties Union filed a court order, challenging the detainment and refusal to legal counsel. They are requesting to act on his behalf to provide him access to legal counsel. Senior staff attorney Jonathan Hafetz at ACLU in New York argued before U.S. District Judge Tanya Chutkan that the man was in a legal “black hole.”

The judge questioned Justice Department attorney Kathryn Wyer if the detainee had been advised of his constitutional rights or requested an attorney. Wyer wouldn’t answer the questions so Judge Chutkan ordered the government to provide an answer by 5pm. The government delivered a 2-page response before the deadline.

The response said, “The individual stated he understood his rights and said he was willing to talk to the agents, but also stated that since he was in a new phase (of questioning), he felt he should have an attorney present.” They further explained in the response that the detainee was told by the agents that it was not known when he would be able to get an attorney, of which he responded that “it was OK and that he was a patient man.”

The detainee later changed his mind and stated he no longer wanted to talk with FBI agents. He has not been questioned since he made that request. Hafetz said, “This admission by the government reinforces our demand that the citizen be given access to a lawyer, which is his fundamental right under the Constitution. The Trump administration’s position that it can lock up an American in secret without charges or the ability to challenge the detention in court is not how our legal system works.”

Wyer explained that the government had not decided what to do with the detainee yet but was working “diligently.” She cited case law allowing a reasonable period of time for figure out a detainee’s status. The judge countered, “Two and a half months?”

The International Committee of the Red Cross has visited the detainee twice but has not disclosed the details of their visit. Their mission is not to obtain legal counsel for detainees. Hafetz said there was no suggestion that the man wanted to or could contact relatives or even if his relatives would be willing to risk retaliation by obtaining a lawyer for him.

The case is quite the quandary for the government, as law professor Stephen Vladeck at the University of Texas at Austin explained. He said, “The Pentagon wants the Justice Department to prosecute him, but Justice officials have been reluctant to take custody of him without more evidence. The man, meantime, has languished in an Iraqi jail ... but with no contact with the outside world beyond two visits from the Red Cross.”

Do you think terrorists deserve the same constitutional rights? Share your thoughts with us in the comments below.

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