



## **GOP raises red flag on Supreme Court nominee's Guantánamo work**

**JORDAIN CARNEY**  
**MARCH 14, 2022**

Republicans are raising a red flag over Supreme Court nominee Ketanji Brown Jackson's work on behalf of Guantánamo Bay detainees.

Her work is coming up in closed-door meetings with Jackson as she sits down with GOP senators and Republican members of the Senate Judiciary Committee, previewing a likely Republican line of attack during high-profile committee hearings next week.

Sen. Josh Hawley (R-Mo.), one of several GOP senators on the panel seen as having White House ambitions, said he raised the issue with her during his meeting and that it would likely come up again during the hearing.

“We did talk ... about her representation of Guantánamo Bay detainees. I expressed some concern about this,” Hawley said, adding that he thought her work on Guantánamo Bay cases while in private practice was “interesting” and “a little concerning.”

“I imagine that that will be something we'll want to ask her about. ... I'm going to have some more questions about that,” Hawley added.

Sen. John Cornyn (R-Texas) predicted that Jackson would face questions on her work related to Guantánamo Bay detainees.

“I think you'll hear more about her Guantánamo Bay representation,” Cornyn said.

He subsequently said that he raised the issue during his meeting with Jackson because he “was curious how she got the case because it might make a difference to me whether it was something she sought out.”

Senate Republicans aren't the only ones highlighting Jackson's work on behalf of Guantánamo Bay detainees.

The Republican National Committee (RNC) spotlighted the issue, arguing that Jackson's "advocacy" goes "beyond just giving them a competent defense."

"Despite Jackson's claim that she did not get to choose her clients as a public defender, she continued to advocate for Guantanamo terrorists when she went into private practice," the RNC said.

The Guantánamo Bay military prison, which opened in 2002 on a U.S. naval base in Cuba to house terrorism suspects after the 9/11 attacks, has largely fallen off the public radar.

But it's been the subject of fierce legal disputes and a constant gridlock between Democratic presidential administrations that have pledged to close it and members of Congress putting restrictions in place that make it harder to do so.

Jackson previously worked as a public defender in Washington, D.C., from 2005 to 2007, in the wake a landmark Supreme Court decision related to Guantánamo Bay detainees.

During that time, her cases included work on behalf of Khi Ali Gul, a now-former prisoner at Guantánamo Bay, in the case *Khi Ali Gul v. Bush*. Jackson listed the case as one of the 10 most significant of her career in her responses to the Senate Judiciary Committee's questionnaire for her Supreme Court nomination.

After going to private practice, Jackson also worked on Supreme Court amicus briefs in cases related to Guantánamo Bay detainees including *Boumediene v. Bush*, on behalf of groups supporting challenging the Defense Department's detention review system.

Republican senators are less critical of her work done while she was a public defender, noting she was assigned her cases, but have questions about her views overall and cases that she was involved in after going into private practice. Hawley said that Jackson was able to go into detail about the cases and "went into some length."

"I imagine she'll be able to talk about it in some detail at the hearings and I think that will be good. I think we'll need to hear about that," Hawley said.

Sen. Thom Tillis (R-N.C.), a member of the Judiciary Committee, said that he understood public defenders "defend any number of cases" but said that he was trying to better understand her thinking.

"We're going to have to take a look at the record. ... What we're trying to do is glue together any sort of patterns that would kind of lead to an assumption about predisposition on future cases," Tillis said.

Jackson, if she's confirmed, will be the first Supreme Court justice who worked as a public defender.

The Biden administration and Senate Democrats have focused on trying to diversify the bench, not only on gender or race — with Jackson poised to become the first Black woman on the Supreme Court — but also with a nominee’s professional background.

Asked by The Hill about the GOP’s criticism of her detainee work, Sen. Dick Durbin (D-Ill.), the chairman of the Senate Judiciary Committee, said that Jackson “played a very minor role” while in private practice on the detainee-related cases.

“But let’s be very candid about this, in the United States of America we try to make sure everyone has a right to counsel. The Republicans seem to forget that if it involves representing a controversial defendant,” Durbin said.

A White House official noted that Jackson's detainee cases were assigned to her both as a public defender and while at Morrison & Foerster, while in private practice. The official added the group of formal federal judges that Jackson wrote an amicus brief for while in private practice was arguing that the Framers wouldn't have intended "to permit reliance on evidence that had be extracted from torture during criminal trials."

"This was in alignment with the position of many bipartisan leaders — the Obama-Biden Administration, many Democrats, and a number of Republicans and libertarians, like the Cato Institute, one of the other organizations she filed an amicus brief on behalf of," the official added.

The same Republican senators who are signaling concern about her work largely support keeping Guantánamo Bay open, with attempts to close the military prison stymied by Congress. The detention camp has been the subject of decades-long court battles over the legal rights of those imprisoned and sparked condemnation by advocates for due process and human rights violations.

It won’t be the first time Republicans have homed in on Jackson's work tied to Guantánamo Bay detainees.

Sen. Ben Sasse (R-Neb.), a member of the Judiciary Committee, submitted follow-up questions to Jackson during her nomination to be a judge for the U.S. Court of Appeals for the D.C. Circuit — widely viewed as the second most powerful court in the country — asking why she worked on Guantánamo Bay cases during her time as a public defender and if she was assigned the cases if she considered resigning.

Jackson noted that while she was working on the *Khi Ali Gul v. Bush* case that her brother was deployed as a U.S. Army infantryman in Iraq.

“I was keenly and personally mindful of the tragic and deplorable circumstances that gave rise to the U.S. government's apprehension and detention of the persons who were secured at Guantanamo Bay,” Jackson wrote.

Jackson added that legal ethics rules require that she defend her client and not undermine their interest so “it would be inappropriate for me to comment on whether I disagreed with Khi Ali Gul, found his alleged crimes offensive, or considered resigning my position as an assistant federal public defender based on any such disagreement or offense.”

Sen. Chuck Grassley (R-Iowa) also raised the issue during her 2012 hearing to be a district judge, telling Jackson during her hearing, “I have questions about your views on the rights of detainees, and that in turn causes some concern about how you will handle terrorism cases that may come before you if you are confirmed.”

Jackson, in response to Grassley’s questions, said that she believed terrorists posed a danger to the United States and that the United States was at war against terrorists.

“In all of those situations,” Jackson added, in reference to her previous work on Guantánamo-related cases, “the views that were expressed were the views of my clients that I represented them in that capacity and the briefs did not necessarily represent my personal views with regard to the war on terror or anything else.”