

Guantánamo Must Close

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Two decades after 9/11, the US prison at Guantánamo Bay still holds detainees who have been charged with no crime. The crimes of Gitmo must end and the base must be returned to the Cuban republic.

Zayn al-Abidin Muhammad Husayn has lost many things over the course of the disastrous US “war on terror.” As one of the thirty-nine remaining detainees in Washington’s extralegal prison at Guantánamo Bay, Cuba, he has lost touch with the outside world for nearly two decades.

Presumably, too, he has lost some sense of well-being, and not merely for the psychological and physical distress that imprisonment provokes by design. He was the first prisoner to be subjected to the CIA’s “[enhanced interrogation](#)” program at an agency black site, making his legacy distinctly sinister among his cohort.

His case is thus notorious among the [780 men and children](#) who have been held at Guantánamo. He was the first to be waterboarded, subjected to forced nudity, deprived of sleep for days on end, and held in a box no larger than a human coffin for long stretches of time.

The same fate befell countless others, but his case, detailed at length in the 2012 Senate Intelligence Committee’s report on torture, is perhaps especially haunting for the precedent that it set. When al-Abidin Muhammad Husayn entered CIA custody following his capture in a US-Pakistani raid in March 2002 in Faisalabad, Pakistan, he still had his left eye. By the time he was transferred from a black site to Gitmo four years later, he had lost that, too.

Mistaken Identity

At the time of his torture, the CIA believed al-Abidin Muhammad Husayn, whom they referred to as Abu Zubaydah, to be the number-three-top-ranking leader of Al Qaeda. As with so many pretenses and declarations that the US government has conjured since September 11, 2001, the agency was incorrect. Allegations of his connection to Al Qaeda have been [discredited](#) by both the US Senate Select Committee on Intelligence and the UN

Security Council.

The roots of such claims are likely to be found in his role [facilitating](#) the travel of a number of militant Islamic fighters in Afghanistan during the early 1990s, after the guerrilla force known as the Mujahideen had purged the country of Soviet forces. The United States had spent over \$2 billion arming the Mujahideen, making Washington and al-Abidin Muhammad Husayn allies of sorts, however opaque the nature of that coalition.

On July 15 of this year, I sat in a conference room at the Pentagon and watched fifteen minutes of his most recent Guantánamo Periodic Review Board (PRB) hearing, which was beamed in live from the base in eastern Cuba. For many years, the PRB referred to him as Abu Zubaydah, but at this hearing they used his legal name in lieu of the wartime moniker. Revealing the simultaneously patronizing and intimate relationship that the national-security state has with its remaining Guantánamo detainees, the board ultimately came to call him by his first name, Zayn.

Zayn is perhaps most physically identifiable for the eyepatch that has for many years covered the space where his left eye used to be. On the day of his hearing, however, the eye patch was absent. There was an elegance to him as he waited in the courtroom, flanked by a government-appointed personal representative on one side and an Arabic-language translator on the other. His white shirt was pressed, his beard and hair trimmed neat. He sat taciturn, gazing downward through a pair of round glasses, passing prayer beads between his thumb and forefinger.

Understandably, he was trying to make the best possible physical impression on the Board, which was convened somewhere in Virginia and composed of officials from the departments of Defense, Justice, State, and Homeland Security, as well as the Office of the Director of National Intelligence and the Joint Chiefs of Staff. At the opening of the unclassified portion of the hearing, which journalists were permitted to observe from the Pentagon, a PRB official reiterated the entity's primary function.

They were not assembled to determine the "lawfulness of Zayn's detention," the official stressed, but rather to decide whether, nineteen years after his capture and total disconnection from the outside world, he still posed a threat to US national security. Should the board consider a detainee a "continuing significant threat to the security of the United States," his ongoing detention would be deemed necessary.

The hearing's opening qualification — that the legality of his detention is not up for decision — should hardly be considered startling at this point, however disturbing such tacit acceptance might be. Zayn is one of countless men still held at Guantánamo who has never been charged with a crime.

Legal Limbo

A month to the day after the hearing, images streamed out of Kabul as the Taliban reclaimed the Afghan capital. The "war on terror" was ostensibly drawing to a close, with the seemingly interminable and devastating US intervention in Afghanistan as its longest and perhaps most flagrantly failed instantiation. At least 240,000 Afghans have died in the conflict, a large number of them civilians, and Washington ultimately replaced the Taliban with the Taliban.

Yet even as the forever war meets its nihilistic denouement, the illegal detention at

Guantánamo forges on, a bleak national-security plight of Washington's own making. Barack Obama never made good on his campaign promise and 2009 [executive order](#) to close the prison, and while one of the forty men who was being held there when Joe Biden took office has since been transferred to his home country of Morocco, it is unclear how the current administration will contend with the thirty-nine men who remain.

An empire needs enemies beyond its gates, and Washington has proved exceptionally skilled at making them.

The military commissions war court established at the base to adjudicate the fates of those facing charges is currently handling the cases of twelve men — three facing proposed charges, seven facing active charges, and two who have been convicted. Another ten of the remaining so-called enemy combatants are still held in law-of-war detention without facing charges at all. They are now recommended for transfer to another country, which will oversee the relevant security measures.

The last seventeen neither face charges nor have been recommended for transfer or release. At this point in the prison's history, this last category may be the most extreme state of legal limbo a Guantánamo detainee could face. It is also the [category](#) in which Zayn al-Abidin Muhammad Husayn finds himself.

Despite Washington's flagrant bypassing of international law in the decades after September 11, war is by no means a lawless paradigm. And as scholar Nasser Hussain [has argued](#), Guantánamo is not the lawless place some imagine it to be; rather, it is a space in which emergent laws proliferate to fit the needs of a belligerent government seizing upon a state of exception.

The legal status of the men still held at Gitmo is murky by design, not only because it is unlawful to indefinitely detain a person without charging him with a crime, but because the [judicial apparatus](#) at the base seeks to try civilians within the framework of a military court.

Enemies at the Gates

The way that such practices were implemented is itself a vestige of US invasions long past. The United States coercively obtained a lease to the territory on which Guantánamo sits as part of the agreement ending its first military occupation of Cuba in 1902 — another two US military interventions would storm the island before long. The lease had no termination date and could be annulled only with the agreement of both governments. When the agreement was renegotiated in 1934, following a period of tumultuous regime change on the island, it once again cemented a lease of the Cuban territory in perpetuity.

An overseas military presence with no termination date sounds not unlike “forever war,” but the connection is deeper still. In the immediate aftermath of 9/11, when the Bush administration added Cuba to its “Axis of Evil” list, it began kidnapping and illegally detaining men and boys on territory that it claimed was under Cuban jurisdiction and therefore not subject to US law.

This is more than mere historical rhyme. There is a troubling conclusion to be drawn from the 120 years that the United States has coercively occupied the base at Guantánamo. The potential culmination of Washington's post-9/11 forever wars hardly marks the end of the propensity for unceasing extraterritorial militarism. Much like the resistance that a long history of US economic, political, and military intervention provoked in Cuba before and

after the island's 1959 revolution, the destabilization and antipathy that US empire sows rarely comes to a peaceable and tidy conclusion.

An empire needs enemies beyond its gates, and Washington has proved exceptionally skilled at making them. As historian Ada Ferrer notes in her new book, [Cuba: An American History](#), Alberto Mora, the Cuban American general counsel for the US Navy, [described](#) Guantánamo as one of the greatest causes of US combat deaths in Iraq, "as judged by [its] effectiveness in recruiting insurgent fighters into combat."

The US government is remarkably adept at forging the conditions by which it justifies its interventions. In December 2001, US secretary of defense Donald Rumsfeld [refused](#) a negotiated peace deal with the Taliban. Instead of accepting a settlement with a government that itself hoped to rid Afghanistan of Al Qaeda and was concerned with gaining recognition from Western governments, Washington engaged in twenty years of warfare that caused unimaginable loss of life. This was not because wresting Osama bin Laden from Taliban-ruled Afghanistan by other means was unfeasible. Washington wanted a war.

As recent images of the humanitarian crisis that US intervention wrought in that country have underlined, Washington's global crusade against terror has certainly not made the world a safer place. The hundreds of thousands of lives lost, the trauma and devastation that do not end when US combat boots leave Iraqi or Afghan soil, constitute America's legacy for the people it promised to liberate.

Incommunicado

Where does this leave Zayn al-Abidin Muhammad Husayn, who never swore allegiance to Osama bin Laden, and whose purported links to Al Qaeda have been debunked by the US government itself? Whatever connections or intelligence he was suspected of possessing at the time of his capture and torture are now, like the war on terror itself, two decades old. He has no network to facilitate and no information from the outside world to withhold.

His representatives believe that the PRB's decision to categorize al-Abidin Muhammad Husayn as an ongoing national-security threat, and therefore unfit for transfer or release, is a matter of self-preservation. As his attorney wrote in his most recent PRB [statement](#):

The CIA has a great deal of reason to want Abu Zubaydah to be held incommunicado for the rest of his life. That is because the fabrication of the facts used to justify the creation of the torture program would no longer be held incommunicado.

While the UN National Security Council argues that he was never affiliated with Al Qaeda and is unlikely to affiliate with the organization in the future, it is understandable if a man kidnapped, tortured, and illegally imprisoned for almost two decades might harbor some antipathy towards the United States.

Ultimately, Zayn al-Abidin Muhammad Husayn is a danger to US interests because his release might allow him to enumerate, in his own words, what the CIA did to him at its black sites all those years ago. If that is a threat to American safety, it is most certainly one of Washington's own making.

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