

How Guantánamo Can Be Closed

Obama's promise to close the prison

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In a [previous article](#), Andy Worthington, author of [The Guantánamo Files](#), examined the reasons why Barack Obama must stick to his election promise to close the “War on Terror” prison at Guantánamo Bay, focusing on the Bush administration’s callous disregard for domestic and international laws, its pursuit of unfettered executive power, the disturbing effects of its policy of offering bounty payments for al-Qaeda and Taliban suspects, the equally disturbing ramifications of its refusal to screen prisoners according to the Geneva Conventions, and the corrupt tribunals established at Guantánamo to rubber-stamp the prisoners’ designation as “enemy combatants.” This second article examines how Barack Obama’s promise to close the prison can be fulfilled.

The 50 prisoners cleared for release

Of the 255 prisoners currently held at Guantánamo, around 50 have been “approved for transfer” — many for at least three years — but they remain in Guantánamo, mostly imprisoned in conditions that would task the resilience of the most hardened convicted criminals on the US mainland, for two particular reasons. The first is because they are from countries with notoriously poor human rights records (including China, [Libya](#), Syria, [Tunisia](#) and Uzbekistan) or unstable regimes like [Iraq](#), and cannot be returned because of international treaties preventing the return of foreign nationals to countries where they face the risk of torture. The second reason is that the administration’s insistence that they are still “enemy combatants” (or are “no longer enemy combatants”) has deterred other countries from accepting them. Even though State Department representatives have been touring the world for the last three years in an attempt to relocate some of these men, the only third country that has been prevailed upon to accept any of them is [Albania](#), which took eight former prisoners in 2006.

I am reliably informed that there are certain career officials in the State Department who

have been anxiously awaiting a new administration, in the expectation that it will facilitate greater cooperation between the United States and its allies in Europe, and that some of these countries might now agree to help the United States out of the hole dug by the Bush administration, which regularly made matters worse by criticizing other countries for not helping out. In August 2007, for example, President Bush [stated](#), “I did say it should be a goal of the nation to shut down Guantánamo,” but added, “I also made it clear that part of the delay was the reluctance of some nations to take back some of the people being held there.”

To this end, several prominent human rights and legal organizations — including Amnesty International, Human Rights Watch and the Center for Constitutional Rights — launched a [campaign](#) in Berlin on November 10 aimed at persuading European countries to accept cleared prisoners from Guantánamo. This is laudable, as it is clearly intolerable that these men remain imprisoned at Guantánamo (and, as it stands, makes Barack Obama’s mission to close the prison impossible), but if the President-Elect really wants to do the right thing, which will also send out a positive message to the United States’ allies abroad, then he should make the first move by allowing the 17 remaining Uighurs at Guantánamo (Muslims from China’s Xinjiang province, who had fled to Afghanistan to escape Chinese persecution) to settle in the United States.

The Uighurs scored a major victory this summer, after the [Supreme Court ruled](#) that the Guantánamo prisoners had constitutional habeas corpus rights. This ruling unlocked hundreds of habeas cases that had stalled in the lower courts following the passage of the Detainee Treatment Act of 2005 and the Military Commissions Act of 2006, which purported to strip the prisoners of the habeas rights granted by the Supreme Court in 2004. When the first of these cases, that of a Uighur prisoner called Huzaifa Parhat, was finally reviewed by the Court of Appeals in Washington D.C., the [judges ruled](#) that Parhat’s designation as an “enemy combatant” was invalid, and derided the government’s “evidence” as being akin to a nonsense poem by Lewis Carroll, the author of *Alice’s Adventures in Wonderland*.

In the months that followed, the cases against all 17 Uighurs crumbled, as the government admitted that it would “serve no purpose” to continue trying to prove that Parhat was an “enemy combatant,” and then did the same for his 16 compatriots. In October, when Judge Ricardo Urbina of the US District Court in Washington D.C. held a hearing to determine what should happen to the Uighurs, he declared, “Because the Constitution prohibits indefinite detentions without cause, the continued detention is unlawful.” Furthermore, because no third country had been found that would accept the men, he [ordered their release](#) to the care of communities in the Washington D.C. area, and Tallahassee, Florida, who had put together detailed plans for their [resettlement](#) in the United States.

This was a proud moment for American justice, but the Uighurs never made it to Washington D.C. or Tallahassee. Instead, the government appealed, the Justice Department wheeled out its old and discredited allegations about the men being connected to terrorism (thereby stymieing attempts to find a third country to take them), and, in a brief filed for hearings next week, [asserted](#) that the executive branch “has authority to hold aliens in detention even if they are not considered enemies of the US,” adding, for good measure, “even if the detention is indefinite, it is still lawful.”

This is clearly an intolerable situation. As the only prisoners at Guantánamo who have ever persuaded the Bush administration to drop its claims that they are “enemy combatants,”

the Uighurs deserve the lifeline extended to them by Judge Urbina. If the appeal goes against them, the new administration should make their release into the United States a priority.

The 80 prisoners scheduled to face trial by Military Commission

President-Elect Obama has already [pledged](#) to repeal the Military Commissions Act, which revived the Bush administration's deeply flawed "terror trials" after the Supreme Court ruled them illegal in June 2006. This should be a priority after January 20, 2009, and should be accompanied by a thorough and independent review of the cases against the 80 or so prisoners facing (or scheduled to face) a trial by Military Commission.



What's important to note is that the administration's figure can be whittled down without any difficulty. Of the 17 prisoners currently facing trial by Military Commission, for example, two — [Omar Khadr](#) (photo, left) and [Mohamed Jawad](#) — were juveniles when they were seized, and should have been rehabilitated rather than punished under the terms of the [Optional Protocol](#) to the UN Convention on the Rights of the Child (on the involvement of children in armed conflict). Moreover, significant doubts have been expressed about the quality of the evidence against them, with legitimate claims made by their military defense attorneys (and, in Jawad's case, by his former prosecutor, who [resigned](#) in September) that evidence vital to the defense was deliberately suppressed. In addition, another three of the 17 are, at best, [minor Afghan insurgents](#) who are not accused of killing US forces, and have no connection with al-Qaeda. All these prisoners should be released.

Others who have expressed doubts about the Pentagon's figures are senior officials who spoke to the [New York Times](#) in 2004, when a total of 749 prisoners had been held at Guantánamo. In interviews, the *Times* explained, "dozens of high-level military, intelligence and law-enforcement officials in the United States, Europe and the Middle East said that contrary to the repeated assertions of senior administration officials, none of the detainees at the United States Naval Base at Guantánamo Bay ranked as leaders or senior operatives of al-Qaeda. They said only a relative handful — some put the number at about a dozen, others more than two dozen — were sworn Qaeda members or other militants able to elucidate the organization's inner workings."

To these can be added some, or perhaps the majority of the ten prisoners transferred to Guantánamo from secret CIA prisons in September 2004, the 14 "high-value detainees" — including [Khalid Sheikh Mohammed](#) and the other alleged 9/11 conspirators — who were transferred in September 2006, and two of the six prisoners who arrived at Guantánamo between March 2007 and March 2008. These prisoners — somewhere between 35 and 50 in total — are the only ones who should be moved to the US mainland to face trials in federal courtrooms.

There will inevitably be problems — protecting confidential intelligence sources, for example, and, in particular, dealing with evidence obtained through torture — but I can see no other alternative. The trials as they stand are an abomination, permeated with systemic pro-prosecution bias, and capable of handing down a life sentence only in a one-sided show trial (that of [Ali Hamza al-Bahlul](#)), which passed largely unnoticed in the week before the Presidential election.

Holding prisoners forever without charge or trial is clearly an untenable solution, as it simply perpetuates the Bush administration's crimes, and [recent suggestions](#) — by both Democrats and Republicans — that another new trial system should be instigated, or that a form of “preventive detention” should be introduced, are just as redolent of the arrogance of the Bush years, and indicate that those proposing them have learned nothing from the abuse of the Constitution over the last seven years.



In addition, one extra problem that President Obama may have to deal with as soon as he takes office concerns [Salim Hamdan](#), the driver for Osama bin Laden who was convicted of material support for terrorism (but cleared of conspiracy) in a trial that took place over the summer. Hamdan was [sentenced](#) to five-and-a-half years' imprisonment, but his judge, Navy Capt. Keith Allred, allowed for time served since he was first charged, which means that he will have finished serving his sentence by the end of the year. Allred has refused to bow to pressure from the Defense Department, which attempted to claim that he had no right to allow time served to be taken into account, but the Pentagon may yet assert that it has the right to continue holding Hamdan as an “enemy combatant,” even after his sentence is over.

Like the plight of the Uighurs, this is completely unjustifiable, as Hamdan was convicted by a military jury in a trial of the administration's own devising, but if the outgoing President insists on holding Hamdan after his sentence is served, President Obama will have to ensure that he is allowed to return to his family in Yemen.

The 125 prisoners who are “too dangerous” to be released

The notion that prisoners can be “too dangerous to release but not guilty enough to prosecute” is another hallmark of the Bush administration's disdain for the law, but this, too, has been embraced by enthusiasts for a new policy of “preventive detention.” The rationale is, however, also unjustifiable. As I hope to have demonstrated in my previous article, in which I dissected the failures of the interrogators at Guantánamo to distinguish between genuine intelligence and false confessions produced through the use of torture, coercion or bribery, there is no reason to elevate these prisoners to even the lowest rungs of a terrorist hierarchy, and every reason to follow the conclusions reached by senior military and intelligence officials: that no more than 35 to 50 of the prisoners had any meaningful

connection with al-Qaeda.

There is, at present, some hope that these prisoners' habeas reviews will demonstrate the weakness of the government's evidence against these 125 prisoners. In the case of six Bosnians accused of plotting to blow up the US embassy in Sarajevo, for example, their habeas review began with the government [dropping the claim](#) (which, it should be noted, was dismissed by the Bosnian government in January 2002, before the men were kidnapped and sent to Guantánamo), and it seems probable that other cases will also see the government dropping its "evidence," before the judges can conclude, as the appeal court judges did in the case of Huzaifa Parhat, that it is no more reliable than the nonsense poetry of Lewis Carroll.

I can only hope that the habeas reviews continue to force the government to drop more of its redundant claims against the prisoners, as my research has illuminated, above all, how the protestations of innocent men — and of Taliban foot soldiers recruited to fight an inter-Muslim civil war that began long before 9/11 and had nothing to do with al-Qaeda — have been overshadowed with disturbing regularity by allegations made by unnamed "senior figures in al-Qaeda," interrogated in unknown circumstances, or by other prisoners who have made false confessions, often on a colossal scale, in the hope of securing more favorable treatment. Stark examples of both of these practices are available [here](#) and [here](#), but many more are reported in *The Guantánamo Files*, and what they demonstrate, above all, is how the entire "War on Terror" detention program, as executed at Guantánamo, was designed to do away with the presumption of innocence, and was, instead, focused solely on confirming preordained guilt.

The 125 prisoners in question are from a variety of nations — a few dozen of the remaining Afghans, several dozen more from the countries of North Africa and the Gulf — but up to half are from the largest remaining group at Guantánamo: the Yemenis. Unlike the 130 Saudis, who were mostly released from Guantánamo in 2006 and 2007, after the Saudi government instigated a rehabilitation program (involving religious retraining and support in finding wives and employment), which met with the approval of the US authorities, only 13 of the 108 Yemenis in Guantánamo have been released, even though they, like the Saudis, were, for the most part, a mixture of Taliban foot soldiers and humanitarian aid workers and missionaries, caught up in an indiscriminating dragnet.

The problem, as has been repeatedly stated, is that the US authorities claim that they are not convinced that the Yemeni government will be able to guarantee that the men will not continue to pose a threat to the United States. For their part, as the [Houston Chronicle](#) reported on Saturday, "Yemeni officials say they're ready to try many of the men and imprison those who are convicted, but they complain that US officials refuse to share evidence with them." The Yemeni foreign minister, Abu Bakr al-Kirbi, explained, "Based on the information we have, some of the Guantánamo prisoners have nothing to do with terrorism. We cannot imprison them without a court sentence. We cannot do something that is against our laws. We are accountable to our own public."

Al-Kirbi is undoubtedly right that some of the men pose no threat to anybody, and cannot be detained without reason, but to break the deadlock both sides need to sit down and hammer out a deal — perhaps one that involves judge Hamoud Al-Hitar, the head of Yemen's Dialogue Committee, which, as the [Yemen Times](#) reported last December, "aims at steering extremists away from violence through a number of dialogue sessions." Al-Hitar's program is widely credited as the inspiration for the Saudis' successful rehabilitation program, and it

would surely, therefore, make sense for the US and Yemeni governments to work out how to come up with a suitable program for Yemen that will enable Barack Obama to close Guantánamo.

Then we can move on to what lies behind Guantánamo: the unaccountable prisons in Afghanistan and Iraq, which hold an estimated 39,000 prisoners, and the unknown number of prisoners still held in secret CIA custody, or rendered to torture in third countries, who constitute "America's Disappeared."

Andy Worthington is the author of [The Guantánamo Files: The Stories of the 774 Detainees in America's Illegal Prison](#) (published by Pluto Press/the University of Michigan Press).

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