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## Will Europe Take the Cleared Guantánamo Prisoners?

by Andy Worthington

As rumors continue to fly regarding Barack Obama’s plans to [close](#) the notorious “war on terror” prison at Guantánamo Bay, one country in the European Union, Portugal, took the opportunity offered last Wednesday by the 60th anniversary of the [Universal Declaration of Human Rights](#) — one of whose Articles declares, “Everyone has the right to seek and to enjoy in other countries asylum from persecution” — to announce that it was prepared to accept prisoners cleared from Guantánamo who are unable to be repatriated, and to urge other EU countries to do the same.

In a letter to other EU leaders, Luís Amado, Portugal’s foreign minister, declared,

The time has come for the European Union to step forward. As a matter of principle and coherence, we should send a clear signal of our willingness to help the U.S. government in that regard, namely through the resettlement of detainees. As far as the Portuguese government is concerned, we will be available to participate.

The Portuguese offer addresses a problem that has plagued Guantánamo for years, and that is, moreover, one of the major obstacles to Barack Obama’s [promise](#) to close the prison: what to do with the prisoners who have been cleared for release from Guantánamo after multiple military reviews but who cannot be freed because of international treaties preventing the return of foreign nationals to countries where they face the risk of torture?

These men, numbering at least 60 of the remaining 255 prisoners, are from such as Algeria, China, Libya, Tunisia, and Uzbekistan. They are no longer regarded as a threat to the United States or its allies, but they remain in Guantánamo because, until now, only one country has stepped forward to give new homes to cleared prisoners. Albania accepted eight cleared prisoners — [five Uighurs](#) (Muslims from China’s oppressed Xinjiang province) in May 2006, and [three others](#) (an Algerian teacher, an Egyptian cleric and a refugee from the former Soviet Union) in December 2006.

A week after Barack Obama's election victory, a number of human rights groups — including Amnesty International and Human Rights Watch — [launched a campaign](#) in Berlin aimed at persuading European governments to accept cleared prisoners, but until the Portuguese government spoke out last week, the response had been lukewarm.

On November 13, Amnesty International [announced](#) that Switzerland had refused asylum applications by three cleared prisoners from Algeria, China, and [Libya](#), and on December 12 the [Irish Times](#) confirmed that Justice Minister Dermot Ahern had stated that the Irish government was “not contemplating the resettlement of any Guantánamo inmates,” apparently dashing the hopes of Uzbek refugee Oybek Jamoldinovich Jabbarov, who was sold to U.S. forces in Afghanistan seven years ago, that he might finally be released from Guantánamo.

In addition, the legal-action charity [Reprieve](#), whose lawyers represent around 30 Guantánamo prisoners, has so far failed to interest the British government in accepting the return of Algerian national [Ahmed Belbacha](#), even though he lived in the UK for two years and only left Algeria because he was threatened by Islamist militants, and has also had no success in persuading the French government to accept [Nabil Hadjarab](#), a former resident with family in France, and in resettling [six Tunisians](#) and an [Egyptian](#) who had all been residents in Italy. One other country, Sweden, which was widely perceived as sympathetic to refugees, dashed all hopes that it would lead the way in repatriating Guantánamo prisoners in June this year, when it refused asylum to [Adel Abdul Hakim](#), one of the five Uighurs freed in Albania. Hakim had applied for asylum in November 2007, after securing a visa to visit his sister, who is part of a Uighur community in Stockholm.

One of the major obstacles to European support, of course, has been the Bush administration's unwillingness to accept responsibility for its own mistakes by working to secure the release of cleared prisoners into the United States. For several years, State Department officials have been touring the world, attempting to persuade third countries to accept some of these men, but without success. Their failure is partly because the administration refuses to concede that any prisoners seized in the “war on terror” are innocent men captured by mistake — choosing instead to refer to them as “No Longer Enemy Combatants” or “enemy combatants” who have been “approved for transfer” — but it is also because the administration has taken a hectoring tone with other countries, chastising them for failing to help, rather than addressing them in a conciliatory manner.

Unfortunately, comments made since the Portuguese announcement by the State Department's legal adviser, John Bellinger, have done nothing to suggest that the prevailing attitude has changed. Speaking to [Reuters](#), Bellinger called Luis Amado's letter “extraordinarily significant.” He revealed, “It is the first time that any country except Albania has privately or publicly stated that they are prepared to resettle Guantánamo detainees who are not their own nationals.” This was not strictly accurate, as [Germany](#), [Spain](#), and the [UK](#) have also accepted the

return of legal residents, but what made Bellinger's comments particularly troubling was when he added, "It really is the first crack in the ice of what has been European opposition to helping with Guantánamo in any way. For five or six years there has been consistent criticism but no constructive offers to help ... Europe need to stop simply calling for its closure but to step up and actually help with its closure."

As a result of these unhelpful comments, it seems probable that the plight of Guantánamo's refugees in limbo is unlikely to change until Barack Obama takes over from George W. Bush in January, when he will, hopefully, be able to muzzle State Department criticism of U.S. allies and secure cooperation as part of his honeymoon period. However, good will alone may not be enough to persuade other countries to help the new -resident to close Guantánamo. Speaking to the [Washington Post](#), Jennifer Daskal, senior counterterrorism counsel for Human Rights Watch, suggested that the Portuguese announcement might be "the start of a trend," but added that she believed European cooperation would hinge on a willingness by the United States to take cleared prisoners as well. "The new Obama administration," she said, "is going to have to jump-start this by accepting some of the detainees."

In particular, President Obama will need to address the plight of the 17 remaining Uighurs in Guantánamo. With the exception of [five Bosnian Algerians](#), whose release was ordered last month by federal district court Judge Richard Leon, after he was allowed to review the government's evidence against the men, and ruled that the administration had failed to establish a case for holding them, the Uighurs are the only prisoners at Guantánamo who have been cleared of being "enemy combatants."

In June, when an appeals court was finally allowed to review the case against one of the men, [Huzaiifa Parhat](#), the judges demolished the government's allegations, ruling that Parhat's status as an "enemy combatant" was invalid, and comparing the government's evidence to a nonsense poem by Lewis Carroll, the author of *Alice's Adventures in Wonderland*. In the months that followed, the government abandoned trying to prove that any of the Uighurs were "enemy combatants," and when their case reached the Washington, D.C., district court in October, Judge Ricardo Urbina [ruled](#) that their continued detention was unconstitutional, and ordered their release into the United States, as no other country had been found that would accept them.

Unfortunately for the Uighurs, the government, which was still drunk on the dreams of unfettered executive power that had sustained it for over seven years, refused to accept that the Supreme Court's [momentous ruling](#) in June, which granted the Guantánamo prisoners "the privilege of habeas corpus to challenge the legality of their detention," also held that "a court's power under the writ must include 'authority to ... issue ... an order directing the prisoner's release.'"

Effectively arguing that the whims of the executive trumped the ruling of a judge, the government also attempted to resuscitate claims that the Uighurs were involved in militancy,

even though it had been established without a doubt that they had only one enemy — the Chinese government — and even though the administration itself had abandoned any claims of militancy when it accepted that none of the men were “enemy combatants.”

The appeals court judges have yet to deliver a final ruling on the Uighurs, but in the meantime it became apparent last week, in comments that John Bellinger made to the [BBC](#), that he supports the government’s unprincipled and unjustifiable opinions, when he stated that the Uighurs were “properly detained,” because, although they “wanted to fight the Chinese,” they “were in training camps.”

Bellinger’s words not only suggest, incredibly, that the administration believes it is justified in holding anyone as an “enemy combatant” who has attended any kind of military training camp (even those that have no connection whatsoever with al-Qaeda or the Taliban); they also cut off any hope that another country will be prepared to accept the Uighurs. For Barack Obama to succeed in closing Guantánamo, he will not only need to repudiate opinions like these, but will also need to find the courage to follow Judge Urbina’s ruling that holding the Uighurs is unconstitutional, and to secure their release to the communities in Washington, D.C., and Tallahassee, Florida, which have already made [detailed plans](#) to welcome them. Anything less, and his mission to close Guantánamo and regain America’s moral standing may well be doomed.

*Andy Worthington is the author of [The Guantánamo Files: The Stories of the 774 Detainees in America’s Illegal Prison](#) (published by Pluto Press). Visit his website at: [www.andyworthington.co.uk](http://www.andyworthington.co.uk).*

**This article was originally published in December 2008.**