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## **Obama's Failure to Deliver Justice to the Last Tajik in Guantánamo** **by Andy Worthington**

Two weeks ago, the indefatigable Carol Rosenberg of the [Miami Herald](#), Guantánamo's most dedicated reporter, outlined the story of Umar Abdulayev, the last Tajik prisoner in Guantánamo, who has been cleared for release from the prison on two occasions — once by a military review board under the Bush administration, and six weeks ago by the Obama administration's inter-departmental Guantánamo Task Force, established by President Obama on his second day in office.

In what appeared to be a shining but all too uncommon example of practical behavior by the Obama administration's Justice Department — which has generally been content to court humiliation by contesting unjust and unwinnable cases in front of District Court judges in habeas corpus hearings (as demonstrated [here](#) and [here](#)) — lawyers informed Judge Reggie Walton on June 3 that they “will no longer defend his detention, and want U.S. diplomats to arrange to repatriate him.”

However, as Abdulayev's lawyers explained, there were two fundamental problems with this decision. The first, as Andrew Moss explained to me last week, is that the Task Force's decision led immediately to a request from the Justice Department to indefinitely stay Abdulayev's habeas appeal, on the basis that “there was now nothing more the court could do” for him. As Moss explained, “The court granted that request over our opposition,” which was based on the fact that the Task Force's decision was “not a determination that [Abdulayev's] detention was or was not lawful,” and that it therefore “does nothing towards removing the stigma of being held in Guantánamo or being accused of being a terrorist by the United States.”

The result, as Andrew Moss stated bluntly, is that the writ of habeas corpus, [recognized for the prisoners](#) by the U.S. Supreme Court last June, is “effectively suspended.”

This is a disturbing development, not only because it deprives Abdulayev of the opportunity to be cleared publicly by a court (as opposed to being cleared by an unaccountable Executive review that reaches its conclusions in private), but also because it does not address a second problem for Abdulayev; namely, that he is terrified of being returned to Tajikistan. As

another of his lawyers, Matthew O'Hara explained, "he's told us he'd rather stay another seven years in Guantánamo than go back to Tajikistan." In court filings, as Carol Rosenberg explained, Abdulayev has claimed that he was visited at Guantánamo by Tajik intelligence agents who made him "a sinister offer: Spy on Muslim radicals in the former Soviet Republic in exchange for his release." When he refused, he said, "the agents threatened retribution."

Rosenberg noted that eleven Tajiks have already been repatriated from Guantánamo, and I can confirm that some were subsequently freed on their return to Tajikistan. One, Muhibullo Abdulkarim Umarov, was interviewed by McKenzie Funk for an extraordinary story in *Mother Jones*, "[The Man Who Has Been To America](#)," in the fall of 2006, and another, Abdul-Karim Ergashev, [announced in July 2007](#) that he intended to sue President Bush for his wrongful imprisonment.

However, at least two former prisoners, Muqit Vohidov and Rukniddin Sharopov, who were repatriated in March 2007, received [jail sentences of 17 years](#) in "high-security penal colonies" (aka labour camps) for "serving as mercenaries in Afghanistan" — where they were accused of aiding the Taliban by fighting for the Islamic Movement of Uzbekistan (IMU) — and for taking part in "illegal border crossing," and, as Rosenberg described it, Umar Abdulayev has claimed that they were actually imprisoned because, like him, they "rebuffed agents' recruitment efforts."

As a result, Matthew O'Hara told Rosenberg that Abdulayev doesn't want to leave Guantánamo "unless a third country agrees to give him asylum," and suggested that he was "twice cursed — not only because he rebuffed the overtures of the [Tajik] security forces but because he carries 'the stigma of having been held at Guantánamo,'" although it is not yet clear whether the administration will respect his wishes. As Rosenberg explained, Justice Department spokesman Dean Boyd "refused to address Abdulayev's specific claims," but said that, broadly, speaking, "the United States doesn't send foreigners with a credible fear of torture to another nation." In a statement, he declared, "The U.S. government is working to make appropriate arrangements to carry out these transfers in a manner consistent with national security and foreign policy interests of the United States, as well as U.S. policies concerning humane treatment."

### **Umar Abdulayev's statements in Guantánamo**

Certainly, no third country should have any fear of Umar Abdulayev. Now 30 years old, he has been "a cooperative captive" throughout his seven years in Guantánamo, and is now held in Camp 4, where prisoners who are not regarded as a threat are allowed to live communally. In addition, as Rosenberg explained, he "did not take part in hunger strikes that swept through the prison camps in the first few years," and "consistently went before panels of senior officers to challenge the allegations against him."

Throughout his long years in Guantánamo, these allegations have involved claims that, as Rosenberg put it, “he was in league with al-Qaeda, the Taliban and a Tajik terror movement,” but in response he has always claimed that he was “just a refugee who worked in construction.”

Abdulayev did not make the final cut of my book [\*The Guantánamo Files\*](#), but I included his story in [an additional online chapter](#), in which I explained that he “had left his war-torn country and moved to Afghanistan with his family in 1992, and had then moved to a refugee camp outside Peshawar in 2000.” At Guantánamo, he explained,

When we were in Afghanistan, no matter where we went, there were always wars. Since my father was killed, we always obeyed my mother; it was my mother’s decision to move to Pakistan because she said it was at least a peaceful country with no war going on. My father was killed a long, long time ago. Because of this, we have to listen to our mother; it is our culture.

He also explained that he was seized in a bazaar in December 2001 by operatives of Pakistan’s Inter Services Intelligence Directorate (ISI), who asked him for a bribe which he couldn’t pay, and then seized him and imprisoned him. It was at this point that his story became what I described as “particularly bizarre.”

Abdulayev stated that, after being beaten, he was forced to copy various documents including three hand-written notebooks containing information on weapons systems, counter-intelligence, chemistry, and poisons. Following a close investigation of the publicly available documents relating to his case, it seemed probable to me that the notebooks were his own, because, at one point, he apparently admitted that he had copied the information while he was a student at a madrassa (a religious school), but while this may have reflected badly on the madrassa in question, indicating that it was training students for violent jihad, it was also clear that the U.S. authorities had not managed to come up with any information to indicate that he was involved, in any way, with terrorist activities or any form of militancy against U.S. forces.

It also seemed to me that the truth was probably stated by Abdulayev at his tribunal, when he said,

The Pakistanis are making business out of this war, including myself. The detainees are not being captured by U.S. forces, but are being sold by the Pakistani government. They are making [up to] \$10,000 to sell detainees to the U.S.... they knew that the more evidence they created, the more dangerous they made me, the more money they would make from the Americans.

Until last week, I was unaware that any further information about Abdulayev's story was publicly available, but Carol Rosenberg's article provided a link to a nine-page declaration by Abdulayev himself ([PDF](#)), which, presumably, played a major part in persuading the Obama administration not to contest his habeas appeal.

### **Umar Abdulayev's story, in his own words**

After reiterating that he fled the civil war in Tajikistan with his family in 1992, when he was 13 years old, Abdulayev explained that they lived in northern Afghanistan with other Tajik refugees, and added that, in 1994, his father was shot and killed on the Tajik-Afghan border, while attempting to "investigate the situation" in Tajikistan, having heard "pleas on the radio from the Tajik government, urging Tajik refugees to return home."

For the next seven years, the rest of the family remained in Afghanistan, "relying upon aid from international refugee organizations," but in early 2001, his mother took the whole family — Abdulayev and his two younger sisters and two younger brothers — to Pakistan, "in order to escape the escalating violence and unrest in Afghanistan." They lived in "a government-sponsored refugee camp named Camp Babu," near Peshawar, which "comprised mostly of families, and was principally for Afghan refugees."

It was here, on November 25, 2001, that Abdulayev was seized by Pakistani police and handed over to Pakistani intelligence officials. In a gut-wrenching statement, Abdulayev said, "I never saw my family again, and to this day, I have not heard from them or been able to contact them."

After repeating the story about being forced to copy "specific passages about weapons and explosives from books that the intelligence officials gave to me," Abdulayev explained that, after about a month, he was told that he would be returned to his mother, but was taken instead to Kohat jail. From there he was flown, with 25 to 30 other men, to the U.S. prison at Kandahar airport, where his ordeal in American custody began.

Recounting a story that is all too familiar from the accounts of other prisoners held at Kandahar, Abdulayev stated:

In Kandahar, we were abused by U.S. soldiers, who beat us, pushed us, yelled at us, ridiculed us, and placed us under extremely bright lights during interrogations. We were forced to wear chains, handcuffs and leg irons and then made to run, which left scars on my ankles. While they did this, the American soldiers sometimes dragged us up against barbed wire. We were often forced to wear bags on our heads. On certain occasions, we were made to hold our arms out in front of us for lengthy periods of time. If we dropped our arms, we would be made to hold our arms out longer, or we were beaten. On one occasion, a soldier knocked us to the ground,

and then he and other soldiers walked on our backs. The soldiers would make us kneel on the ground while we were chained; they would then pull our feet out from under us from behind so that our faces would smash into the ground. The soldiers would also pull our arms up while they were chained behind our backs, and repeat this tactic until a man would finally cry out in pain.

He also explained that, on one occasion, “a soldier grabbed the overalls I was given to wear, tore off the buttons in front, ripped off my overalls, and left me and other prisoners naked. The soldiers then yelled at us, took pictures of us, and beat us.” In addition, he said, “our sleep was constantly disrupted at night. Every thirty minutes or so, soldiers came into where we were being held and screamed at us, searched us, and made us kneel in the cold in the open air. We were not given warm clothing, except for children’s-sized mittens and hats that the Red Cross brought us sometime much later after we arrived.”

He also reported that he and other prisoners were stripped naked before soldiers “forcibly shaved our hair and beards,” and that they were then “made to walk from one place to another while totally naked,” and also explained that “the soldiers made fun of our religion, and yelled and screamed at us when we prayed. We were also beaten while we prayed. The soldiers threw our Korans in the toilet where there was fecal matter. The soldiers also had dogs walk over our Korans.”

After a month in Kandahar, Abdulayev was flown to Guantánamo on February 11 or 12, 2002. He described conditions on the flight as “unbearable, as we sat on benches chained to the floor and wore very tight handcuffs.” He added, “We were made to wear blackened goggles over our eyes, headphones over our ears, and masks over our faces,” and also explained, “We were not permitted to use the bathroom, and some of the men who were prisoners had no choice but to urinate or defecate on themselves.”

Describing his time in Guantánamo, after his arrival, which involved further beatings, and being “made to kneel on the gravel in the very hot sun,” it was clear that he managed to avoid the worst of the “enhanced interrogation techniques” that were applied to numerous prisoners, particularly between 2002 and 2004, but it was also apparent that his seven-year imprisonment was brutally isolating. “I have been held in solitary confinement and required to remain in my cell for at least 22 hours a day,” he said. “I have been allowed very limited time for recreation, and that time is often held at night in small cages. There is no opportunity to interact with other prisoners other than at the limited recreation times and by shouting through cell doors. There is no opportunity to work, to receive any education, and there is no regular access to any reading materials other than a Koran.”

Abdulayev also spoke in detail about the visits from the Tajik agents, which took place on three separate occasions, between 2002 and 2005. “On these visits,” he said, “the Tajik agents

threatened me with imprisonment, torture, and death upon my return from Guantánamo to Tajikistan.” Explaining the offer to become a spy, he said, “In exchange for my service, the Tajik officials told me they would take care of me, give me money, get me a house, and find my family. I refused. The Tajik officials then told me that if I was not with them that I would have problems: they would imprison me, torture me, and even ‘get rid of’ me.”

It was on this first visit, he said, that the two prisoners who received 17-year sentences on their return to Tajikistan were also threatened, and he also added details about how he was threatened on the agents’ third visit. “They again asked if I wanted to work with them,” he said. “I refused again, and they told me I would see what would happen to me when I got back to Tajikistan.”

### **A bitter conclusion**

Even leaving aside for a moment the disturbing evidence provide by Umar Abdulayev that — over the course of three years — agents were invited to visit him from a country that, although independent, has a poor human rights record and remains closely connected to Russia, the Obama administration’s refusal to allow him to clear his name in a habeas court and its refusal to rule out returning him to Tajikistan (described in the latest State Department advisory as “a nominally constitutional, democratic and secular republic”), is a sign that, despite over seven years of senseless imprisonment, the Obama administration is still shielding the Bush administration from clear demonstrations of the colossal failures of its “war on terror” detention policies, and is committed to sidelining the courts in favor of its own Executive review, making a mockery of the prisoners’ Supreme Court-recognized habeas rights along the way. In addition, as Andrew Moss explained to me, perhaps the most disturbing aspect of the Task Force’s decision to “approve” Abdulayev’s release is that the decision “does not effectuate release ... there is no guarantee or indication that a transfer can be effectuated in a timely manner, or at all, for that matter.”

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

**This article was originally published in July 2009.**