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## **Finding New Homes for Cleared Guantánamo Prisoners** **by Andy Worthington**

In a recent article, “[75 Guantánamo Prisoners Cleared For Release; 31 Could Leave Today](#),” I examined the implications of an announcement that 75 of the remaining 223 prisoners in Guantánamo have been cleared for release. This came by way of [a list posted in the prison](#), identifying the prisoners by nationality, and a statement by a military spokesman, Navy Lt. Cmdr. Brook DeWalt, who explained, “It was an opportunity to just provide better communication. There's a lot of information out there and you get a lot of things from a lot of different angles. It helps put it in a more succinct context for them [the prisoners].”

The list is based on the deliberations of an interagency Task Force, [established by President Obama](#) on his second day in office, to determine who should be released and who should continue to be held, and in my article I looked at the cases of 31 of the prisoners (26 Yemenis, three Saudis, and two Kuwaitis, one of whom has [since been released](#)), pointing out that, in theory, there was no reason for them not be released immediately.

However, I also pointed out that members of Obama’s own administration had told the [New York Times](#) that the government was afraid of releasing the Yemenis (even though they had been cleared for release) because Guantánamo itself might have radicalized [them], exposing [them] to militants and embittering [them] against the United States,” and I should also have added, as former military defense attorney Maj. David Frakt pointed out to me in an email, that the men’s release is also dependent on the whims of Congress, where lawmakers “passed a law this summer that requires the administration to give Congress 15 days notice before releasing anyone from Guantánamo.”

Nevertheless, although congressional obstruction may well be an additional complication (which I discussed in another article last week, “[Lawyer Blasts ‘Congressional Depravity’ On Guantánamo](#)”), it remains apparent that the route out of Guantánamo for these 31 men ought to be easier than it is for the other 44 prisoners cleared for release, as these are men who cannot be repatriated either because of fears that they will face torture or other ill-treatment (including

arbitrary detention and show trials) on their return or because (in the cases of two Palestinians) they are, effectively, stateless refugees.

### **Who are the 44 prisoners?**

Of these 44 prisoners, 15 had their release ordered by judges in U.S. District Courts, as a result of the habeas corpus petitions that were authorized by the Supreme Court in an extraordinarily important ruling in June 2008. Thirteen of these men are Uighurs — Muslims from China’s oppressed Xinjiang province, whose [release was ordered](#) by Judge Ricardo Urbina a year ago, and whose plight I have written about extensively (particularly [here](#) and [here](#)) — and the others are an Algerian, [Sabir Lahmar](#), whose release was ordered last November, and [Abdul Rahim al-Ginco](#), a young Syrian, tortured and imprisoned by al-Qaeda and the Taliban, whose release was ordered in June this year.

The other 29 are as follows: nine Tunisians, six more Algerians, three more Syrians, two Egyptians, two Uzbeks, two Palestinians, an Azerbaijani and a Tajik. Although their names have not been provided, the identities of the majority of these men can be deduced by a process of elimination (there are, for example, only two Egyptians, two Uzbeks, and one Azerbaijani in Guantánamo), and, in addition, the decision to release the Tajik prisoner, Umar Abdulayev, is known about because it was announced in July.

As [I explained at the time](#), this decision was distressing to Abdulayev and his lawyers for two reasons: firstly, because when government lawyers announced that they would “no longer defend his detention,” they also announced that they “want[ed] U.S. diplomats to arrange to repatriate him,” even though Abdulayev is terrified of returning to Tajikistan because he was threatened by Tajik agents who visited him in Guantánamo; and secondly, because the Task Force’s decision also led the Justice Department to ask a judge to drop Abdulayev’s habeas petition, prompting his lawyers to point out 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.”

This is actually a widespread problem for those cleared for release who fear repatriation, not only because recent rulings by the Court of Appeals have [removed a number of judicial safety nets](#) established by judges to prevent the enforced repatriation of a number of prisoners in Guantánamo (for whom the “stigma” of “being accused of being a terrorist by the United States” is of grave importance), but also because, in a wider sense, the Obama administration is unwilling to state openly that any prisoner was seized by mistake (as one of the prisoners’ lawyers recently explained to me, no lawyer would advise admitting responsibility, as it would open the floodgate to compensation claims). As a result, the administration is doing nothing to facilitate the work of Daniel Fried, the senior diplomat employed in March 2009 as the Special Envoy to Guantánamo,

whose unenviable task it is to persuade other countries to accept released prisoners from Guantánamo.

Even putting aside for a moment the difficulties caused by the refusal of the Court of Appeals and Congress to accept cleared prisoners into the United States (which fuels a reluctance to help in European countries, as Fried acknowledged in [a recent interview with the BBC](#)), there are disturbing signs that this reticence on the part of the administration to state openly and categorically that colossal mistakes were made by the Bush administration is also undermining the very decisions made by Obama's own Task Force.

Recently, for example, when Swiss officials visited Guantánamo to investigate the cases of four men cleared for release, in an attempt to work out if they would be prepared to accept any of these men, they returned, not with an honest appraisal, but with weighted conclusions that could only have been presented to them by the U.S. military, who had, in effect, opened up their files and shown them material which purported to be evidence, but which, in other prisoners' habeas petitions, has been demonstrated, [time](#) and [again](#), to be nothing more than false allegations made by other prisoners (under duress or as a result of bribery) or by the prisoners themselves, multiple levels of unacceptable hearsay, and "mosaics" of intelligence that do not stand up to independent scrutiny.

According to [reports in the Swiss media](#), the government representatives concluded that, of the four men they investigated, two Uighurs were "low-risk," even though they are no risk at all, having persuaded the Bush administration to drop its claims that they were "enemy combatants," and having been cleared by military review boards under the Bush administration, by a U.S. District Court, and by the Obama administration's Task Force, and two other men, an Uzbek and a Palestinian — also cleared by Bush-era military review boards and by Obama's Task Force — were considered "medium-risk" and "high-risk."

### **What has the Task Force been doing for eight months?**

Beyond these absurd discrepancies, which do nothing to help Obama's cause, the other conclusion I draw from an analysis of the Task Force's figures is that after eight months of reviewing the prisoners' cases, it has made very little progress, despite detailed consultations with lawyers and other experts, despite detailed searches for information relating to the men, which was scattered throughout numerous departments and agencies in a disturbingly incoherent manner, and despite the establishment of a database bringing all the available information together in one place.

Although exact numbers are impossible to work out, it is clear that, of the 29 men cleared by the Task Force, all but nine (at most) were actually approved for transfer, between 2006 and 2008, by Administrative Review Boards at Guantánamo. When Obama came to power, eight Tunisians, five Algerians, four Uzbeks, three Palestinians, an Egyptian, a Libyan, and Umar

Abdulayev, the Tajik, had all been approved for transfer. Some tweaking has taken place — a Palestinian has been removed from the list, and the Azerbaijani, Poolad Tsiradzho, has been added, plus an Algerian, an Egyptian, two Libyans and three Syrians — and, in addition, it is possible that the Task Force has shifted position on a few of those approved for transfer under Bush.

However, when added to the 14 or so Yemenis discussed in the last article, this figure of 25 or so prisoners is hardly a triumph for the Task Force, and indicates, yet again, that when it comes to Guantánamo, the President's bold start in January, when he issued his executive order regarding the closure of the prison, has been steadily eroded by confusion, extreme caution, and indecision.

If this damned icon of the dark years of George W. Bush, Dick Cheney, Donald Rumsfeld and their close advisors is ever to close, it is time for Barack Obama, Eric Holder, and Robert Gates to regroup and to accept that confusion plays only into the hands of those [haunted by the ghost of Dick Cheney](#), and that clarity is required. Moreover, despite lawyers' fears of new waves of litigation, this clarity has to involve the nation's leaders acknowledging why the District Courts have ruled, in 79 percent of the habeas petitions before them, that the men in question are neither terrorists nor soldiers and should be released.

The truth is out there —and I am only one of many writers who have been [explaining it](#) for the last four years — but I will spell it out again: the majority of the prisoners were seized for bounty payments by U.S. allies, were never screened according to the Geneva Conventions to determine whether or not they were combatants of any kind, and are held not because of anything resembling evidence, but through a shamefully poor attempt to build up a case against them in the isolation of Guantánamo, through a combination of torture, coercion, and bribery, and the use of raw intelligence masquerading as facts.

Everyone in Guantánamo deserves better than this: both [the few dozen men](#) who are genuinely accused of involvement with al-Qaeda, the 9/11 attacks, and other acts of international terrorism, who should face trials for their alleged crimes, and the majority of the prison's population, whose release is still being prevented, or made horrendously complicated, by both the Executive and the lawmakers in Congress — some innocent men, and others who were soldiers in a now almost-forgotten civil war between the Taliban and the Northern Alliance, whose ongoing detention is based not on any notions of justice, but on the lingering legacy of the Bush administration's mistaken decision to equate al-Qaeda with the Taliban.

**Note:** For more information on the prisoners cleared for release, see my article, "[Guantánamo's refugees.](#)"

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