



AFGHANISTAN  
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# Kafka in Cuba, a Follow-Up Report: Afghans Still in Detention Limbo as Biden Decides What to do with Guantanamo

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## EXECUTIVE SUMMARY

There have been three United States presidents since President George W. Bush opened the detention camp in Guantanamo Bay, Cuba, to hold those suspected of involvement in the 'War on Terror' without trial or charge as criminal suspects, or according to the Geneva Conventions as prisoners of war. President Barak Obama tried to close the camp. President Donald Trump supported it. President Joe Biden has now inherited the almost two decades old camp with its remaining 40 inmates and needs to decide what to do with it. This report is published as the new Biden administration reviews its policy on Guantanamo with the stated "goal and... intention" of closing the camp.

How to close Guantanamo and what to do with its 40 detainees overall is beyond this paper's remit. Rather, it focuses on the two Afghans still there, Asadullah Harun Gul and Mohammad Rahim, two men from Nangrahar, neither of whom was detained on the battlefield, but rather, respectively, (probably) by Afghanistan's intelligence service, the National Security Directorate (NDS), and Pakistan's Inter-Services Intelligence (ISI). Rahim was the last person whom the CIA tortured and rendered to Guantanamo, as detailed in the Senate's 2014 report on the CIA's torture programme. Harun has also given credible reports of torture at Bagram and Guantanamo. As this report will explore, the US has not published the detail of its accusations against either man. However, the *types* of evidence on which its allegations are based can be seen in some publicly available documents. In these, we find hearsay, 'double hearsay' – what a person claimed another person told them about the detainee – testimony from those who were tortured or in detention and unverified and unprocessed intelligence reports. In the case of Rahim, it looks likely that the only information the CIA had about him came from the ISI when it transferred him into US hands.

The paltry basis for US allegations is all too familiar from documents that were published concerning accusations and evidence against six other Afghans, who together with Harun and Rahim, were the subject of a major AAN 2016 investigation: 'Kafka in Cuba: The Afghan Experience in Guantanamo'. These six Afghans were all transferred to the Gulf in 2016 and 2017, part of the Obama administration's push to reduce the number of those detained in Guantanamo as far as possible before his second term ended. Unlike the two Afghans still in Guantanamo, there are many published Guantanamo documents about these six men, either leaked or published after Freedom of Information Requests and litigation. These documents are bewildering to read, full of strange, nonsensical, often contradictory assertions and littered with factual errors, gross misunderstandings and fantastical allegations, including belonging to non-existent terrorist groups. It is like entering an alternate universe. Significantly, the types of evidence cited to back up these claims are the same as for Harun and Rahim and include hearsay, testimony obtained under duress and unverified and unprocessed intelligence reports. Because there are almost

no published Guantanamo documents about Harun and Rahim, we cannot know exactly the US allegations or evidence against them. Still, the files of the six Afghans which can be scrutinised provide no confidence that US assertions about Harun and Rahim are any more robust.

The US reluctance to allow its allegations against those held in Guantanamo to be properly and publicly scrutinised has made it difficult to challenge Bush's contention that the men held there are the 'worst of the worst'. The author undertook such a deep scrutiny of the cases against the eight Afghans in 2016 to try to understand whether they were indeed such bad people. One of her conclusions was that trying to make sense of the allegations against them was of little use in understanding why they had been detained. Rather, looking at who handed them over to the Americans or informed on them sheds far more light. In the early years after 2001, the US military and CIA conducted mass, arbitrary detentions in their bid to find someone who might locate al-Qaeda leader Osama bin Laden. Their practice of paying for intelligence and detaining on the basis of tip-offs galvanised waves of false claims. Afghan commanders allied with the US exploited the US military and CIA to target their personal enemies. The Pakistani state also handed over 'terrorists', again for money or reasons of politics. None of the eight men under study were captured on the battlefield and for most, consideration of factional antagonisms and financial interests of informants or those who handed them over helps make sense of why they were initially detained. After that, bad luck, rather than anything else, explained why they were rendered to the detention camp in Cuba. 'Kafkaesque' is an overused adjective but is absolutely fitting to describe what has happened to these men; their experiences are all too reminiscent of the protagonist in Franz Kafka's 1914 novel, 'The Trial', who is arrested and prosecuted by a distant, inaccessible authority for a crime which neither he nor the reader is ever told of.

This new report builds on the 2016 research, including following Harun and Rahim's manifold attempts, through the justice system and the court of public opinion, to try to get themselves out of Guantanamo. Their fate is a subset of the fates of the forty men of all nationalities still held in the prison camp now waiting to see what President Biden will decide to do about Guantanamo. It is also bound up with wider decisions about American policy towards their homeland.

On 29 February 2020, the US signed an agreement with the Taliban in the Qatari capital, Doha, to withdraw US and other international troops from Afghanistan in exchange for guarantees from the Taliban over foreign jihadist groups, including al-Qaeda, and to start talks with the Kabul government to end the war. Part of that deal was an agreement by the US that the Afghan government – which was not a party to the Doha agreement – should release 5,000 Taliban prisoners. Kabul was unhappy about this, but the US pressurised it to release the prisoners. Regardless of anything else, therefore, the continued US detention of Harun and Rahim in the wake of the Doha deal is an anomaly. It is impossible to conceive that these two men are more dangerous than the thousands of Taliban prisoners just released. The anomaly is most egregious in Harun's case, given that he belonged to a group, Hezb-e Islami, which signed its own peace deal with the Kabul government, with the full endorsement of Washington, four years ago. Now that President Biden has



announced the full withdrawal of US troops, there is even less rationale for holding on to these two men.

This report also provides an update on the six Afghans who were transferred out of Guantanamo in the last months, weeks and indeed, sometimes hours of the Obama presidency. Two were sent to Oman and were quickly resettled. Their families were allowed

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**So much of what has befallen the eight men under study was determined not by anything they did or did not do but by American politics grounded in fear, ignorance and fantasy, and of power unchecked by law.**

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to join them, but they have not been allowed to return home to Afghanistan. Four were sent to the United Arab Emirates (UAE), where, despite promises of liberty and resettlement, they were held again in indefinite detention. They remained incarcerated until their eventual repatriation in late 2019/early 2020. One died several months after getting home. AAN was given two reasons for the decision not to repatriate, that the Obama administration took national security more seriously than Bush had done and was, therefore, more thorough in assessing risk before it authorised transfers, and that Congress had blocked the transfers for party political reasons. These men's stories are also

important to tell, given how the harm done to them in Guantanamo was exacerbated by the US decision to send them to the Gulf. Moreover, understanding why they were not simply sent home, as all previous 209 Afghans transferred out of Guantanamo had been, is important for understanding the choices now facing the Biden administration.

Relevant, as well, in this context is asking why, despite Obama's stated aim of closing Guantanamo, his Justice Department took every opportunity to block detainees' petitions for habeas corpus – when the government must justify its detention of a person to a court or release them. The Justice Department used discredited and worthless 'evidence' to block petitions, fought to keep evidence secret and used 'testimony' obtained from those who had been tortured, and used procedural issues to delay proceedings for years. Not opposing habeas writs would mean that detainees could be released, regardless of any objections by Congress, but it would also mean recognising that detaining individuals outside a system of law is wrong. Obama's first Special Envoy for Guantanamo Closure Dan Fried has called this the 'original sin' of Guantanamo and pinpointed this as what made it so difficult to deal with the detention camp:

*... Guantanamo was neither grounded in the laws of war nor in criminal justice. And once you have established a system outside of either international or US law, which this was, then it's very hard to reintegrate it back into a legal framework.*

Obama's failure to close Guantanamo was not only about Congress blocking him. It was also a result of his administration clinging to the US state's right, or need, as they saw it, to continue to deprive individuals of their liberty outside a system of law. It meant that ultimately, he managed only to fine-tune Bush's system at Guantanamo, not overturn it, to minimise the problem by reducing the number of detainees held there, but not resolve it. If Biden's "goal and... intention" really is to close Guantanamo, he will have to tackle this original sin head on.

This study traces the travails of the last eight Afghans to be held in Guantanamo as a new American president takes office in the hope that it will help provide context for US decision-making over the two Afghans still in Guantanamo. The report sheds light on the randomness of Afghans' fates, which led some to Guantanamo and others not, and to some being released and others not. So much of what has befallen the eight men under study was determined not by anything they did or did not do but by American politics grounded in fear, ignorance and fantasy, and of power unchecked by law. Understanding these dynamics, separating real from imagined risk, tracing the real harm done to those in Guantanamo and those transferred to the Gulf and then forgotten about, may be useful for the new administration whose stated aim is to close the prison camp down.



Mariam looking at photos of her father Harun Gul, who was detained while she was still in the womb.  
Photo: Tolonews, 2020

## AIMS AND OUTLINE OF THE REPORT

This report is published as the new Biden administration reviews its policy on Guantanamo with the stated “goal and... intention” of closing the camp.<sup>1</sup> It aims to deepen understanding of why individual Afghans were rendered to Guantanamo and the systems that kept them there, despite the US failing to explain why it thought they were a risk to US national security. While the question of how to close Guantanamo and what to do with its 40 detainees overall is beyond the scope of this paper,<sup>2</sup> it does endeavour to provide context to the Biden team, in particular over what to do with the two Afghans America has now held in indefinite detention for 14 years.

This report builds on the author’s 2016 study of the eight Afghans then still held in Guantanamo, ‘Kafka in Cuba: The Afghan Experience in Guantanamo’;<sup>3</sup> all also feature in this current study. 25 fresh interviews have been conducted with former detainees, family members, lawyers, US and Afghan government officials, and journalists. Where available, new documentation from petitions for habeas corpus and from Guantanamo’s assessment body, the Periodic Review Board, are also cited. The author brings to this research her extensive knowledge of Afghanistan and personal experience of living in the country during the Taleban era and immediately after, and of work over many years on detentions in the context of the Afghan war.<sup>4</sup> For a list of the author’s relevant, previous research, see Annex 1.

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- 1 The quotes are from White House spokeswoman Jen Psaki. National Security Council (NSC) spokeswoman Emily Horne has also said, “We are undertaking an NSC process to assess the current state of play that the Biden administration has inherited from the previous administration.” The NSC would “work closely,” she said, “with the Departments of Defense, State, and Justice to make progress toward closing the GTMO facility, and also in close consultation with Congress.” Matt Spetalnick, Trevor Hunnicutt, Phil Stewart ‘Biden launches review of Guantanamo prison, aims to close it before leaving office’, Reuters, 12 February 2021, <https://www.reuters.com/article/us-usa-biden-guantanamo-exclusive-idUSKBN2AC1Q4>.
  - 2 For one considered look at how the new administration could close Guantanamo, see Hina Shamsi (Director of the American Civil Liberties Union’s National Security Project), Rita Siemion (Director, National Security Advocacy at Human Rights First), Scott Roehm (Washington Director, Center for Victims of Torture), Wells Dixon (Senior Staff Attorney, Center for Constitutional Rights), Ron Stief (Executive Director, National Religious Campaign Against Torture), Colleen Kelly (co-founder, September 11th Families for Peaceful Tomorrows); ‘Toward a New Approach to National and Human Security: Close Guantanamo and End Indefinite Detention’, Just Security, 11 September 2020, <https://www.justsecurity.org/72367/toward-a-new-approach-to-national-and-human-security-close-guantanamo-and-end-indefinite-detention/>.
  - 3 Kate Clark, ‘Kafka in Cuba: The Afghan Experience in Guantanamo’, Afghanistan Analysts Network, November 2016, <https://www.afghanistan-analysts.org/en/special-reports/kafka-in-cuba-new-aan-report-on-the-afghan-experience-in-guantanamo/>.
  - 4 The author was the BBC Kabul correspondent 1999-2002 and continued to make reporting trips to Afghanistan every year thereafter, including stints of up to four months, until her current work with AAN, which began in 2010. Her biography can be found on the final page of this report.

The report is organised as follows.

## **1. A BRIEF BACKGROUND ON GUANTANAMO AND US DETENTIONS IN AFGHANISTAN**

This section looks at the mass, indiscriminate detention by US forces of Afghans in the post-2001 period and how some of those detained found themselves rendered to Guantanamo. It briefly considers how detainees found themselves in a system set up to be outside criminal law and the Geneva Conventions.

## **2. THE SIX AFGHANS SENT TO THE GULF – OUT OF GUANTANAMO, BUT NOT TO LIBERTY**

This chapter summarises the cases against the six Afghans who were transferred out of Guantanamo in 2016 and 2017 and sent to the UAE and Oman. It traces what has happened to the men since, the two now resettled in Oman but unable to return home and the four who, despite promises of liberty and resettlement, were transferred to further indefinite detention in the UAE, or ‘Guantanamo East’, as some have called it. These four men were eventually repatriated in 2019/2020, mainly through one Afghan official’s efforts. This chapter considers life after Guantanamo and how trauma persists.

## **3. WHY THE SIX WERE NOT REPATRIATED AND WHAT THIS SAYS ABOUT OBAMA’S FAILED GUANTANAMO POLICY**

The report then asks why these six men were not just sent home, given that all 209 Afghans previously released from the detention camp were repatriated. This is an important question as Biden will face many of the same choices and obstacles as Obama did over transfers. This chapter considers two explanations. The first is that the Obama administration took national security more seriously than its predecessor and was, therefore, more hesitant to free detainees. As background, this section considers the proportion of Afghans sent home from Guantanamo who went on to join the insurgency. The second explanation is that Obama was blocked by Congressional politics. This chapter also investigates the baffling question of why Obama’s Justice Department blocked detainees’ habeas petitions, without apparent scruple, to keep them locked up in Guantanamo, despite Obama’s stated intention of closing the camp.

## **4. THE TWO AFGHANS STILL IN GUANTANAMO: ASADULLAH HARUN GUL AND MOHAMMED RAHIM**

The fourth chapter of the report considers the two Afghans still held in Guantanamo, Asadullah Harun Gul and Mohammed Rahim. It presents the allegations against them and considers what grounds there might be for their detention. It gives an update on their experiences since the publication of the 2016 report. Harun, a member of Hezb-e Islami, has gone to court to argue he should no longer be considered a combatant in the wake of



the 2016 peace agreement reached by that faction with the Kabul government. The Afghan government supports him in his bid to be released; this is the first example known to the author where Kabul has supported an Afghan detained in Guantanamo in his habeas petition. Rahim, classed by the US as a 'high-value' detainee, faces bleaker prospects for leaving the camp. He has also been suffering from suspected cancer for more than two years but has been unable to get proper medical treatment at Guantanamo.

## 5. CONCLUSION: WHAT NEXT FOR THE DETAINEES WITH BIDEN AS PRESIDENT

The paper concludes with a look at the options facing the new Biden administration, given its stated aim of closing Guantanamo. It describes how little has changed since Biden was vice-president. It argues that insisting on the continued detention of the last two Afghans in Guantanamo because of the risk they pose would be outlandish after Washington pressurised the Kabul government to release 5,000 Taleban prisoners last year, as part of the US deal with the Taleban and especially so now that Biden has decided to withdraw all US troops. In this context, the anomaly of detaining Harun Gul after his Hezb-e Islami faction reached a US-supported peace deal with the Kabul government is even more striking. This chapter looks at the mechanisms for release, including the possibility that Biden could decide not to oppose habeas petitions to facilitate transfers. It underlines the importance of the Afghan government supporting its nationals.

# CHAPTER 1

## A BRIEF BACKGROUND ON GUANTANAMO AND US DETENTIONS IN AFGHANISTAN



US soldiers body-search a man after stopping his vehicle which had picked up a load of wheat at the Pakistani border, Wazakhwa district, Paktika Province. Photo: Robert Nickelsberg/Getty Images, 13 September 2004.

**IN TOTAL,** 225 Afghans were sent to the Guantanamo Bay detention camp, starting in January 2002.<sup>5</sup> They were just a fraction of the thousands, perhaps tens of thousands of Afghans detained during the early years of the United States intervention. Among those rendered to Guantanamo were many Taliban, including some senior military men. Yet many of those accused of being members of al-Qaeda or the Taliban were, in fact, ordinary people – shepherds, taxi drivers and shopkeepers. There were locally-significant non-Taliban and even anti-Taliban figures, as well as children, including victims of sexual abuse, the very elderly and infirm, and individuals with mental disabilities.

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**The American practice of detaining on the basis of tip-offs and paying for intelligence galvanised a wave of false claims.**

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The instances of jaw-dropping intelligence failures behind these arrests are legion. The American practice of detaining on the basis of tip-offs and paying for intelligence galvanised a wave of false claims. Afghan commanders allied with the US exploited the US military and CIA to target their personal enemies. The Pakistani state also handed over ‘terrorists’, again for money or reasons of politics. The resulting mass,

arbitrary arrests were accompanied all too often by torture by the US military and/or CIA. The testimony obtained occasionally led to further detentions. Arrests were often made in the hope that detainees might help locate al-Qaeda leader Osama bin Laden. In the early years after 2001, the US was also intent on hunting down what it called ‘Taliban remnants’, even though, in terms of active fighting forces, these did not really exist. Most Taliban had accepted defeat, as the author wrote in her 2016 report:

*There would be no Taliban ‘resistance’ to speak of until early 2003 and even that was very patchy and extremely local; it took several years for the insurgency to really take off. In reality, for anyone who knew Afghanistan and was there in late 2001, the opposite was true. The Taliban’s defeat had been total. Barely a single Afghan had rallied to their cause and the collapse they had suffered – military, political and psychological – had been swift and absolute.<sup>6</sup>*

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5 Men from 49 nationalities have been held in Guantanamo. The biggest contingent was Afghans (220), followed by Saudis (135), Yemenis (115) and Pakistanis (72). ‘Countries of Citizenship’, ‘The Guantanamo Docket’, *The New York Times*, <https://www.nytimes.com/interactive/projects/guantanamo/detainees/by-country>.

6 Clark, ‘Kafka in Cuba [see FN 3], 9.

Those rendered to Guantanamo found themselves in the strangest of systems. Their detentions were never embedded in a system of law, whether criminal or according to the Geneva Conventions governing prisoners of war. Instead, the detainees fell into a legal black hole, denied their most basic rights, such as habeas corpus, which has been recognised for centuries, or to have legal counsel. It was not until 2006, and after litigation, that the secrecy surrounding the detentions was lifted to some extent and the names of the detainees were released to the public, and by extension, their families.

The Guantanamo detentions were never about deciding guilt or innocence but were aimed at extracting information and subsequently assessing threat.<sup>7</sup> Yet, for inmates, it has felt as if their guilt was assumed and that they had to try to prove their innocence, but without the means to do so, as they would have had in a court of law. At the various assessment boards' hearings, detainees have not been allowed to bring witnesses or scrutinise the evidence against them. In some cases, they have not even been told the exact allegations against them. As to the various petitions for habeas corpus, judges acted with lower judicial standards than if they were overseeing a criminal case. They have presumed the government to be truthful, barely questioning far-fetched allegations or correcting gross factual errors. They have let the government present evidence kept secret from the petitioner and present testimony obtained by those who were tortured, and allowed the government to repeatedly delay petitions, often for years, and without penalty. Judges have spent months, or even years, making decisions. Inmates have faced the US state asserting that they are dangerous individuals without ever being allowed properly to scrutinise allegations or defend themselves.

With a system so stacked against the detainees, it took years for even the flimsiest allegations to be countered and detainees released, but by the start of 2016, when this author began her original research into the Afghan experience in Guantanamo, there were just eight out of the original 220 Afghans still incarcerated. Those last eight men can be split into two groups. The first comprises six men rendered to the prison camp in the early years of the American intervention, in 2002 and 2003, all of whom were eventually transferred to the Gulf in 2016/17. The second comprises just the two Afghans who remain in Guantanamo, whose fates currently hang in the balance, to be determined by the new Biden administration.

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7 The slight exception to this were the military commissions, but they were also subject to excoriating criticism. See, for example, Steve Vladeck, 'It's Time to Admit That the Military Commissions Have Failed', Lawfare, 16 April 2019, <https://www.lawfareblog.com/its-time-admit-military-commissions-have-failed>. See also, Human Rights Watch's, 'The Guantanamo Trials' (undated), <https://www.hrw.org/guantanamo-trials>.



## CHAPTER 2

# THE SIX AFGHANS SENT TO THE GULF: OUT OF GUANTANAMO, BUT NOT TO LIBERTY



US soldiers detain a man in a village in Khost province for questioning over former Taleban in the area.  
Photo Robert Nickelsberg/Getty Images, 2004.

## THE SIX AFGHANS who were transferred from Guantanamo to the Gulf in

2016/2017 are: Wali Mohammed, Abdul Zahir, Obaidullah, Bostan Karim, the now late Hamidullah and Mohammed Kamin (spellings as per the one most commonly used in their US files). There is a reasonable amount of documentation about their cases in the public domain. They include, firstly, documents related to hearings held in Guantanamo from 2004 onwards that were released after Freedom of Information Requests and litigation.<sup>8</sup> Second are classified internal assessments made between 2002 and 2004 detailing the nature of allegations and evidence against 765 detainees, which Wikileaks published in 2011. Third are the various documents released during habeas petitions made by three of these six men, and documents released by the Periodic Review Board, the Obama-era body set up to review “whether the continued detention of a detainee is warranted.”<sup>9</sup> All six of the men in this group were eventually deemed “not to represent a continuing significant threat to the security of the United States such that their continued detention is warranted” and transferred out of Guantanamo in 2016 and early 2017, four to the UAE and two to Oman. The four in the UAE were repatriated in December 2019 and January 2020.

Each of the cases against these six detainees is bewildering. None were detained on the battlefield. The cases against them rely largely on ‘unsafe’ types of evidence that would not be permissible in a criminal court, including: hearsay; ‘double hearsay’, that is, what a person reported hearing another say about the detainee; testimony from anonymous sources and other detainees, some obtained under duress, including torture; ‘confessions’ allegedly made after torture, and unverified and unprocessed Intelligence Information

8 The bodies were the military-staffed Combatant Status Review Tribunals (CSRTs) which determined if detainees were what the Bush administration described as ‘enemy combatants’ and, from March 2005, Administrative Review Boards (ARBs) which determined on a yearly basis whether detainees continued to be a threat to the United States or its allies. It took a two-year battle by the Associated Press, using multiple FOIA requests and three lawsuits, to get the boards’ documents released. The first release of documents by the Pentagon in 2005 was heavily redacted; names and other information were blacked out. It was only in 2006 that the full texts, summaries and transcripts of the proceedings of both boards, were released. This was also when the names of those held in Guantanamo were, for the first time, published. See Clark, ‘Kafka in Cuba’, [see FN 3] 17-18 for details.

9 See Section 2 of Executive Order 13567--Periodic Review of Individuals Detained at Guantánamo Bay Naval Station Pursuant to the Authorization for Use of Military Force, 7 March 2011, <https://obamawhitehouse.archives.gov/the-press-office/2011/03/07/executive-order-13567-periodic-review-individuals-detained-guant-namo-ba>. This was the order which set up the Periodic Review Board system. The board was to make assessments every three years as to whether each Guantanamo inmate still posed a threat to the US. Unlike the CSRTs and ARBs, it has civilian as well as military personnel. It began hearings three years behind schedule, on 11 November 2013, and made its first decision on 9 January 2014. Documents related to the reviews are published, albeit some in redacted form, on the Periodic Review Board website: <http://www.prs.mil/ReviewInformation/initialreview.aspx>. For more information, see Jennifer K Elsea and Michael John Garcia: ‘Wartime Detention Provisions in Recent Defence Authorization Legislation’, Congressional Research Services, 23 June 2014, <http://fas.org/sgp/crs/natsec/R42143.pdf>.

Reports, called IIRs for short; these documents typically carry warnings that they are not reliable.<sup>10</sup> As will be seen in the thumbnail sketches of the men's cases presented below, their files are full of gross factual errors and misunderstandings.

To answer why they ended up in Guantanamo, for most of the six, rather than looking at the allegations against them, it makes more sense to consider their tribal and factional affiliations and who handed them over to the Americans or informed on them. For most, is it only consideration of factional antagonisms and financial interests that makes intelligible the question of why they were detained and rendered to Guantanamo.

The thumbnail sketches below summarise the much fuller information given about each case in AAN's 2016 report; they are provided now along with information about what has happened to the men since 2016. The US authorities give each detainee an ISN or Internment Serial Number; these are mentioned in this report, as they are unique, whereas the spellings of names on the US documents vary widely; the ISNs are the only reliable way of identifying detainees.

Photos in this section are from the classified Guantanamo assessments, published by Wikileaks in 2011.

## 2.1 THE CASES AGAINST THE SIX AFGHANS TRANSFERRED TO THE GUL



1. **Haji Wali Mohammed**, ISN 560, 55 years old from Baghlan, money changer at the Central Money Market in Kabul. Detained in Pakistan 26 January 2002; handed over to US forces February 2002; rendered to Guantanamo 30 April 2002; habeas petition denied; transferred to the UAE 19 January 2017 where incarcerated; repatriated in early 2020 after **18 years in detention**.

Wali Mohammed was accused of being a financial backer of the Taleban and al-Qaeda. Yet he had been detained and bankrupted by the Taleban when they were in power after a joint arbitrage venture with the Central Bank went badly wrong; this sort of deal was not itself controversial and, indeed, is still commonplace in today's Afghanistan. The accusation that he was anything other than a publicly-known figure with a legal money exchange and gold importing business rested on hearsay – the reports of foreign intelligence agencies and one detainee saying what

10 According to a former US intelligence officer quoted in a court paper relating to Wali Mohammed's habeas petition, the Intelligence Information Report (IIR), is a "generalized reporting vehicle that collects unprocessed and unverified summaries of claims made to U.S. intelligence agencies, usually by foreign sources." These raw intelligence reports, says the Federal Bureau of Investigation, usually bear cautions such as: "WARNING: THIS IS AN INFORMATION REPORT, NOT FINALLY EVALUATED INTELLIGENCE." IIRs are heavily quoted in the files of Guantanamo detainees. See *Traverse in Support of Petition for the Writ of Habeas Corpus, Mousavi v. Obama, In Re Petition Of Haji Wali Mohammed Morafa No. 05-1124 (RMC) (Redacted)*, (D.D.C. 15 Jan. 2010) Also, see Chapter 3, Sources of Information and the Shifting Legal Landscape, in Kate Clark, 'Kafka in Cuba', 16-21, especially Box 2 on page 20 [see FN 3].

another detainee had allegedly told him about Wali Mohammed.

He himself believes he was framed by the Pakistani intelligence agency, the ISI, to protect one of its agents who owed him money.

Wali Mohammed challenged his detention with a petition for habeas corpus in 2005, but only got a hearing in 2013, after repeated procedural delays and permission given to the government to use secret evidence; he even had to petition to see his own passport and the seven pages of notes he had written for his interrogators about his financial arrangements and debts. The judge took three years to make her ruling. In June 2016, she dismissed the government's assertion that he was an al-Qaeda financier as "not credible." However, she ordered his continued detention because, she said, he was a member of and had supported not only the Taliban – despite the Taliban government having arrested and bankrupted him – but also Hezb-e Islami. Wali Mohammad's sister is married to the nephew of Hezb-e Islami's leader. Yet even if that was relevant to what Wali Mohammad himself had done, Hezb was not an insurgent group at the time of his detention, and 14 years later when the judge gave her habeas judgement, it was about to sign a peace deal with the Afghan government.<sup>11</sup>

The Periodic Review Board at Guantanamo cleared Wali Mohammed for transfer in September 2016, noting, bizarrely, as he had by then been in American custody for 14 years, that his "business connections and associations with al Qaeda and the Taliban pre-date 9/11 and appear to have ended."<sup>12</sup>



2. **Abdul Zahir**, ISN 753, 49, from Logar, *choki dar* (doorman), accused of being a translator for an al-Qaeda commander. Detained by US forces July 2002; rendered to Guantanamo 27 October 2002; transferred to Oman 16 January 2017 and resettled, but unable to return home to Afghanistan. **15 years in detention.**

Abdul Zahir was detained after an anonymous tip-off that he had chemical weapons stored at his house. This turned out to be untrue. However, in custody it was revealed that, before 9/11, he had worked as a *choki dar* and occasional translator for an Arab commander, Abdul Hadi al-Iraqi (real name Nashwan al-Tamir), who was also taken to Guantanamo.

During the Taliban regime, this would have been an uncontroversial job, but the US military accused Zahir of being a "trusted member" of al-Qaeda.

The Periodic Review Board, ruling 13 years later, said he had been "probably misidentified" and had had only "a limited role in Taliban structure and activities."<sup>13</sup>

11 Hezb-e Islami was to sign the peace agreement just over three months later. See Borhan Osman, 'Peace With Hekmatyar: What does it mean for battlefield and politics?' Afghanistan Analysts Network, 26 September 2016, <https://www.afghanistan-analysts.org/en/reports/war-and-peace/peace-with-hekmatyar-what-does-it-mean-for-battlefield-and-politics/>.

12 For Wali Mohammed's full profile, see Kate Clark, 'Kafka in Cuba', [see FN 3], 22-30

13 For Zahir's full profile, see Kate Clark, 'Kafka in Cuba', [see FN 3], 30-32.

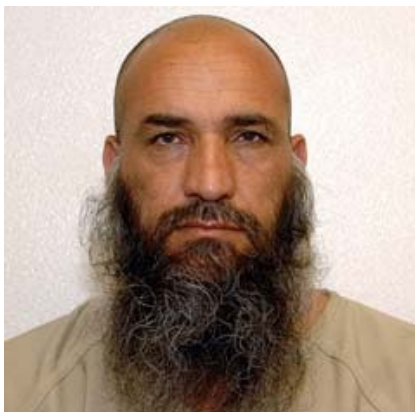




3. **Obaidullah**, ISN 762, 40, from Khost, shopkeeper, accused of being a member of an al-Qaeda IED cell. Detained by US forces July 2002; rendered to Guantanamo 28 October 2002: habeas petition denied; transferred to the UAE 14 August 2016, where incarcerated; repatriated in December 2019 after **17 years in detention**.

Obaidullah was detained after an anonymous tip-off accusing him of being an al-Qaeda bomb-maker. He had confessed to being a member of a cell but retracted this soon after arriving in Guantanamo, saying he had been tortured.

Evidence for the torture was presented later as part of his habeas petition; the government chose not to contest his claims of torture. Instead, they dropped any allegations based on his 'confession'.<sup>14</sup> During a long-running habeas petition, much of the evidence against Obaidullah was shown to be dubious, untrue or obtained under torture. For example, blood in a car he had driven was alleged to be from wounded members of his IED cell, but turned out to have been from his wife in labour. Yet, the many such inconsistencies, wrong assumptions and errors in the government's allegations revealed during the habeas petition made no difference to the judge's acceptance of the government's evidence. In the end, the case rested on the original, anonymous tip-off by someone whose identity has never been revealed to Obaidullah and which he could not question, and his alleged links with the next detainee in this study, Bostan Karim. Whatever evidence that was not discounted or undermined during Obaidullah's various hearings pointed to him having been, at most, a low-level Taliban insurgent (something he admitted after his return to Afghanistan in 2020<sup>15</sup>). However, nothing backed up the US claim of links with al-Qaeda or explained why it had deemed it necessary to incarcerate such a junior insurgent for so many years.<sup>16</sup>



4. **Bostan Karim**, ISN 975, 51, from Paktia, businessman – he had a shop selling plastic flowers in Khost – and member of an Islamic missionary organisation, Jamat al-Tabligh, accused of being a leader of the al-Qaeda IED cell Obaidullah was alleged to belong to. Detained by Pakistan August 2002; handed over to US February 2003; rendered to Guantanamo 6 March 2003; habeas petition denied; transferred to Oman 16 January 2017 and resettled there, but unable to return home to Afghanistan. **15 years in detention**.

14 During his petition for habeas corpus, evidence was presented that Obaid had been subject to sleep deprivation and physical abuse at Forward Operating Base Chapman and that a service member had been punished for having another service member photograph him as he struck Obaid in the head with a rifle. See 'Declaration of Richard Pandis', 8 February 2012, <https://s3.amazonaws.com/s3.documentcloud.org/documents/291075/obaydullah-pandis-decl.pdf>, 7-9, and Clark, 'Kafka in Cuba', [see FN 3], 38-40.

15 'Ex-GITMO Prisoner: "My World Was Very Small"', Tolonews, 1 January 2020, <https://tolonews.com/afghanistan/ex-gitmo-prisoner-%E2%80%9Cmy-world-was-very-small%E2%80%9D>.

16 For Obaidullah's full profile, see Clark, 'Kafka in Cuba', [see FN 3], 32-42.

Karim's case file contains the most glaring mistakes and muddled accusations of the eight. The evidence from Pakistan suggesting he was a terrorist consisted of his possession of a satellite phone and US dollars, both normal for a trader from Khost province to carry at that time. The previous detainee on this list, Obaidullah, was a former business partner of Bostan Karim (they had fallen out) and had, under torture, named a 'Karim' as co-conspirator; the US assumed this was Bostan Karim, even though Karim is a very common name and, moreover, Obaidullah has a brother called Faizal Karim. The US accused Bostan Karim of being the leader of the al-Qaeda IED cell to which it accused Obaid of belonging.

While there was some evidence that Obaidullah may have been a low-level insurgent, there was no evidence against Karim. However, the assumed guilt of each man was cited by judges considering their habeas petitions as evidence incriminating the other. The judge in Obaidullah's case said his "long-standing personal and business relationship with at least one al Qaeda operative [i.e. Boston Karim]" was one reason why he must also have been an al-Qaeda member.<sup>17</sup> The judge in Bostan Karim's case quoted that fellow judge, saying that Obaidullah was more likely than not "a member of an al Qaeda bomb cell committed to the destruction of [US] and Allied forces" as evidence against Karim.<sup>18</sup>

The US military had also decided that the quietist, apolitical missionary organisation to which Karim and millions of other South Asians belong, Jamat al-Tabligh, was a front for al-Qaeda and membership automatically pointed to guilt. Jamat al-Tabligh is not on the US government's list of terrorist organisations,<sup>19</sup> and as Karim testified, he had been targeted by the Taliban when in power because of his membership of Jamat al-Tabligh. The group regularly come under fire from jihadists because of its quietist approach.<sup>20</sup> (The assumption that Jamat al-Tabligh is a front for al-Qaeda was also used against Wali Mohammed and Obaidullah.)

An example of the many factual errors and far-fetched allegations against Karim was, as evidence of him being "a veteran extremist," a source said he had an uncle who had fought in the "Afghan-Russian war" with Hezb-e Islami "one of the seven Al Qaeda terrorist groups operating in Pakistan." Hezb-e Islami was one of the seven Afghan mujahedin

17 Judge Leon in denying Obaidullah's motion for relief (i.e. denying his appeal based on what his lawyers said was new, exculpatory evidence. *Obaydullah v. Obama*, No. 08-1173 (R.J.L), slip. op. (D.D.C. 30 January 2013), accessed November 2016 via a now inactive link in Alan Z. Rozenshtein, 'New D.C. District Court Orders in Obaydullah and Alhag Guantánamo Habeas Cases', *Lawfare*, 1 February 2013, <https://www.lawfareblog.com/new-dc-district-court-orders-obaydullah-and-alhag-guant%C3%A1namo-habeas-cases>.

18 *Bostan v. Obama*, 05-883 (RBW), (D.C.C 12 October 2011), (habeas denied), [https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2005cv0883-287](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2005cv0883-287), 15.

19 See the State Department's Bureau of Counterterrorism list of designated 'Foreign Terrorist Organisations', <https://www.state.gov/j/ct/rls/other/des/123085.htm>.

20 Accused of being a member of both the Taliban and al Qaeda, he told his Combatant Status Review Tribunal in 2004: "First of all, I am not a member of the Taliban and I'm not a member of al-Qaida. I'm a business man. I have two stores. In one store, I sell plastic flowers. In the other store, I rent furniture and dishes for special occasions. I am a missionary; I go house-to-house, village-to-village, spreading my religion." Transcript of Karim's Combatant Status Review Tribunal 2004, 1, see Clark 'Kafka in Cuba', [see FN 3], 42.

groups fighting against the Soviets in Afghanistan, seven years before al Qaeda was even established. The US had supported this struggle, including funding Hezb-e Islami.<sup>21</sup>

5. **Mohammed Kamin**, ISN 1045, 43, from Khost, imam. Detained by Afghan forces 14 May 2003 and handed over to the US; rendered to Guantanamo 21 November 2003; transferred to the UAE, 14 August 2016, where incarcerated; repatriated to Afghanistan in December 2019 after **16 years in detention**. (No picture available.)

Kamin's was the flimsiest of all the eight cases. He was detained by Afghan forces in Khost City<sup>22</sup> who told the US he had a GPS device with suspicious grid points stored on it. The US deemed the make of Kamin's watch suspicious; the Casio F91 has been used in IEDs but is also a global bestseller. The allegations against Kamin were garbled. He was accused of being a member or affiliate of five different terrorist groups of different nationalities, not all of which actually existed: al-Qaeda (pan-Islamic), the 'Afghan Coalition Militia' (did not exist), 'North African Extremist Network' (did not exist), the Taliban (Afghan), Harakat ul-Mujahedin (Pakistani) and Jaish-e Muhammad (Pakistani). The US did not explain why or how this was even possible. The US military asserted that Kamin had met "the Taliban Supreme Leader" after the war against the Soviets, when Kamin was aged between 11 and 16 years old and Mullah Omar was a village mullah in Sangisar, Kandahar province, several days' journey across multiple frontlines away.<sup>23</sup>



6. **Hamidullah**, ISN 1119, (1962-2020), from Kabul, a property and second-hand car dealer from a prominent Hezb-e Islami family. Detained by US and Northern Alliance forces July 2003<sup>24</sup>; rendered to Guantanamo 21 November 2003; transferred to the UAE, 14 August 2016; repatriated in December 2019 after **16 years in detention**; died May 2020 in Kabul.

Hamidullah's files show the US thought he had been plotting to bring the Afghan king, Zahir Shah, back to power, although why this should have been problematic or the act of an insurgent is not explained. The co-conspirators named

21 For Bostan Karim's full profile, see Clark, 'Kafka in Cuba', [see FN 3], 42-47.

22 The force is not specified in US documents. However, it seems likely it was the 25<sup>th</sup> Division of the army, which went on to become the Khost Protection Force, an armed group with a long and continuing history of abuses and association with the CIA. See Kate Clark 'CIA-backed Afghan paramilitaries accused of grave abuses: new Human Rights Watch report', Afghanistan Analysts Network, 31 October 2019, <https://www.afghanistan-analysts.org/cia-backed-afghan-paramilitaries-accused-of-grave-abuses-new-human-rights-watch-report/>.

23 For Kamin's full profile, see Clark, 'Kafka in Cuba', [see FN 3], 47-50.

24 The author's 2016 report quoted Hamidullah's 2008 Assessment that he was detained on 31 July 2003 by the "Afghan National Army" and handed over to "the NDS and US forces." In an interview given after he returned to Afghanistan, he said a joint US and Northern Alliance force had detained him. Shadi Khan Saif, 'Former Guantanamo inmate relates painful ordeal', Anadolu agency, 1 January 2020, <https://www.aa.com.tr/en/life/former-guantanamo-inmate-relates-painful-ordeal/1689346>. 'Northern Alliance' is commonly used as shorthand for the Shura-ye Nizar network of the Jamiat-e Islami faction, dominant within the Northern Alliance, which captured Kabul in 2001.

in the files included groups and individuals who are anti- and pro-monarchist, anti- and pro-American, moderate and extreme, and several that are mutually antagonistic.<sup>25</sup>

Hamidullah's files are also full of factual errors. For example: the famous Jamiat-e Islami commander and now MP, Mullah Izzat, is said to be a member of Jamiat's arch enemy, Hezb-e Islami; Taleban commander Mawlawi Kabir whom Hamidullah was said to have "identified" was reported as having been in the Afghan National Army (he was not) at a date before the army was founded; Hamidullah's father, a Hezb-e Islami stalwart, was said to have been a founding member of the Taleban (he was not). Not only are these 'facts' wrong, but the truth was common knowledge. Anyone with access to the internet could have readily discovered these errors. Hamidullah's looked to be a clear case of a man handed over to the US military by his factional enemies within the new Afghan administration, as his family was Hezb-e Islami and the security forces in Kabul at that time were controlled by their enemies, Jamiat-e Islami.<sup>26</sup>

In deciding that the six men could leave Guantanamo, the Periodic Review Board, the Obama-era body set up to scrutinise cases against detainees, did not formally decide the allegations against any of them were untrue. Rather, it found the men no longer represented a danger to the United States warranting continued detention. All six were transferred out of Guantanamo in 2016 and January 2017, part of the Obama administration's drive to get as many detainees out before he left office (after he had failed to close the prison camp itself). The decision not to repatriate is dealt with in detail later in the following chapter. The US sent two of the men to Oman, where they were released after several months, but, so far, have not been allowed to return to Afghanistan. The other four were transferred to the UAE, where they went into further arbitrary detention and only freed when they were repatriated to Afghanistan three years later.

## 2.2 THE FATE OF THE FOUR AFGHANS SENT TO THE UAE, AKA 'GUANTANAMO EAST': WALI MOHAMMED, OBAIDULLAH, KAMIN AND HAMIDULLAH

All four Afghans sent to the UAE were incarcerated on arrival and remained so, mainly in the maximum security al-Razeen prison, in Abu Dhabi, until the Afghan government obtained their repatriation, three years later. Yet, when they left Guantanamo, they and their lawyers believed any fresh detention would only be very temporary and they were to be resettled and at liberty. Abdul Musawer Wali, son of former Kabul money changer Wali Mohammed, described how their joy turned to despair:

*[My father] was delighted when he left Guantanamo, that he was being released. And I was promised by my father's lawyer that, in nine months time, my father would be*

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25 They were: the Iranians, the Taleban, the anti-monarchist Hezb-e Islami, the pro-king, but notoriously moderate mujahedin faction Mahaaz-e Milli, which had not fought since 1992, several pro-US, government politicians from the Jamiat-e Islami party and a royalist, pro-American politician.

26 For Hamidullah's full profile, see Clark, 'Kafka in Cuba', [see FN 3], 50-54.



*given a home in Dubai and we could go there too. He is now inconsolable. His voice has changed... weaker than when he was in Guantanamo.*<sup>27</sup>

We spoke to several other family members at this time and all described their bewilderment at the new situation, with their relatives still detained, phone calls infrequent and visits difficult. Abdul Musawer Wali described how he could not afford to visit his father.

Obaidullah's brother, Fazl Karim, said the Emirati government had encouraged the family to move to the UAE and even given some money to help with renting a house there, but the family's visas were not extended to allow them to stay.<sup>28</sup> Omar Khan, father of the imam from Khost, Mohammed Kamin said he had been able to visit his son for two hours twice during a 20-day visit in 2018 but had not been able to afford to send Kamin's wife and son to visit.<sup>29</sup> He said the Emirati authorities said they would reimburse his ticket, but had not. Some Afghans living in Dubai had helped him with the costs of the trip.

Hamidullah, speaking after his eventual repatriation in December 2019 said his time in the UAE had been worse even than in Bagram, the main US detention site in Afghanistan,<sup>30</sup> and Guantanamo:

*It was un-Islamic and against human rights. We were told in Guantanamo about transferring us to the UAE, and a rosy picture was painted for us for our six-month stay in the UAE, so we approved and agreed to this offer by the U.S. Foreign Ministry. But as soon as we landed in the UAE, the Americans freed our hands and handed us over to UAE officials. We were bundled into a car and our clothes were torn off. We were shocked because we expected to be treated as guests rather than prisoners. Later, we were moved to a UAE prison facility, and our clothes were again torn off to be replaced with different ones. We were given new clothes and forced into another cell. We were naked and handcuffed for even five-minute toilet breaks. This behavior continued for more than two months. When things got worse and prisoners started protesting, we were moved to another facility with toilets inside our room.*<sup>31</sup>

The expectation of freedom and then continuing, indefinite incarceration was a psychological body blow for the men and their families. Conditions in the UAE were also, in some ways, more difficult than in Guantanamo where detainees at least had had visits from their lawyers and the International Committee of the Red Cross (ICRC), which had also facilitated communication with families when the men were in Guantanamo.<sup>32</sup> The situation was even more frustrating, another lawyer Garry Thomas told *The Washington Post*, than

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27 Author interview, Kabul, 26 September 2018.

28 Author interview by phone, 10 October 2018.

29 Author interview by phone, 10 October 2018.

30 Security detainees detained by US forces were taken to Bagram, which is just north of Kabul, where they were held in detention without charge until March 2013 when Afghanistan re-gained control of the detention facility. For details of the US system of indefinite detention, its use of torture, and the lengthy process of handing Bagram over to the Afghan authorities, see Kate Clark 'Thematic Dossier VII: Detentions in Afghanistan – Bagram, Transfer and Torture', Afghanistan Analysts Network, 20 December 2014, <https://www.afghanistan-analysts.org/publication/aan-thematic-dossier/thematic-dossier-vii-detentions-in-afghanistan-bagram-transfer-and-torture/>.

31 Saif, 'Former Guantanamo inmate', [see FN 25].

32 Author Interview with one of the detainees' lawyers who asked not to be identified, via phone, 8 August 2018.

it had been when clients were in Guantanamo. “Before, we could at least file a petition for habeas corpus, we could at least get on a plane and go to Guantanamo. We at least had procedures, even if they were kangaroo procedures,” he said. “This is deeply frustrating because there is no process.”<sup>33</sup> Many lawyers found the new situation painful, after having built up relationships with clients over many years of working *pro bono*. One, who asked to remain anonymous, said:

*Never have I worked longer or harder for a client (nor done better work, even), but I’m afraid we did him no good at all.... The UAE has been entirely unresponsive to detainee counsel, though we’re trying to press government officials – we can’t put ‘legal’ pressure on the [Emirati] government, though, which limits the pressure we can generate. At this point, I have no news about [names client]. The situation is really distressing.*<sup>34</sup>

The black hole of UAE incarceration, not just of Afghans, but also 18 Yemenis and a Russian also transferred there from Guantanamo, who are still held there, led one journalist to wonder if the aim was always to enable Guantanamo inmates to be held indefinitely, but off the US books:

*There is no constituency backing them. There have been no demands from the Kabul government. No one cares about them. All those who went to the UAE at the end of Obama administration – ‘Guantanamo East’ as some call it – I think they [the US administration] cut a deal to keep them there. Even though rehab was promised, not one person has been resettled.*<sup>35</sup>

It is quite possible the four Afghans might still be incarcerated in the UAE, but for the efforts of one man, Zia ul-Haq Amarkhel, chairman of the commission charged with implementing the 2016 peace agreement with Hezb-e Islami. Amarkhel told AAN that they had been working initially only to secure the release of Hamidullah. He comes from a prominent Hezb-e Islami family in Kabul – his father was the religious scholar, Mullah Sayed Agha Tarakhel, who died while Hamidullah was in Guantanamo – and his party had been lobbying

33 Missy Ryan, ‘After over a decade at Guantanamo, these men were supposed to go free. Instead, they’re locked in a secretive center in the UAE’, *The Washington Post*, 29 April 2018, [https://www.washingtonpost.com/world/national-security/freed-from-guantanamo-former-us-prisoners-disappear-from-view-overseas/2018/05/28/8b07d3bc-584f-11e8-858f-12becb4d6067\\_story.html?utm\\_term=.c281c460f0f6](https://www.washingtonpost.com/world/national-security/freed-from-guantanamo-former-us-prisoners-disappear-from-view-overseas/2018/05/28/8b07d3bc-584f-11e8-858f-12becb4d6067_story.html?utm_term=.c281c460f0f6).

34 Email to author, 14 January 2019.

35 Author interview with American journalist following national security issues who asked not to be named, Washington DC, 22 May 2019. For names and details of those transferred to the UAE, see *The New York Times*, ‘Guantánamo Docket’, <https://www.nytimes.com/interactive/projects/guantanamo/transfer-countries/united-arab-emirates>. See also a letter to the UAE sent in October 2020 by a group of United Nations experts expressing their concern about “the secrecy surrounding the terms and mode of implementation of this resettlement programme agreed between the UAE and the United States” and that, “instead of undergoing a rehabilitation programme, or otherwise be released, that these men have been subjected to continuous arbitrary detention at an undisclosed location.” The experts said the Yemeni detainees were “at risk of being forcibly repatriated to their native Yemen amid an ongoing armed conflict and a profound humanitarian crisis.” Press release from the UN Office of the High Commissioner for Human Rights: ‘UAE: UN experts say forced return of ex-Guantanamo detainees to Yemen is illegal, risks lives’, Geneva, 15 October 2020, <https://www.pressreleasepoint.com/uae-un-experts-say-forced-return-ex-guantanamo-detainees-yemen-illegal-risks-live>.

for his return.<sup>36</sup> Looking into his case, Amarkhel said, they discovered there were three other former Guantanamo Afghan detainees held in the UAE.<sup>37</sup> The government managed to secure the release of all four men in late 2019/early 2020, dealing directly with the UAE government. Amarkhel said he did not know if it had contacted the Americans before agreeing to release the men back to Afghanistan.

## 2.3 THE FATE OF THE TWO AFGHANS IN OMAN: ABDUL ZAHIR AND BOSTAN KARIM

Bostan Karim, the owner of a plastic flower shop in Khost, and *choki dar* Abdul Zahir from Logar initially fared far better in Oman than the Afghans sent to the UAE. They have been treated as per official Omani policy, as described by the spokesman for the Omani embassy in London and are on a “rehabilitation programme for people from Guantanamo,” now four to five years old where “[w]hat happens usually is that they are brought to live in Oman and reunited with their families.”

Both men have been resettled and their families have joined them. Abdul Zahir’s brother, Abdul Qaher, said this happened after an initial three or four months’ detention. The Omani authorities gave Abdul Zahir a house and brought his family to join him.<sup>38</sup> They include his three sons (16, 18 and 22 years old), the youngest of whom could not remember his father; all are now studying in a madrassa. The Omani government is supporting the family as Zahir cannot work. In Guantanamo, his files show, he suffered from “chronic lower back pain, sciatica,” and had undertaken hunger strikes. He also had “a history of major depressive episodes” there.<sup>39</sup>

Bostan Karim is also now living with his family in Oman. Lal Gul, director of the Afghanistan Human Rights Organisation and a prisoners’ rights activist, said he had married a second wife while he was in Oman and she was still in Afghanistan. “The wife was sent to him when he was still in prison [in Oman],” said Lal Gul, “They are happy. They have started normal life.”<sup>40</sup> There has been no word from either woman as to how they felt about this.

Despite the fact that, of all the eight Afghans under study, the two sent to Oman have fared relatively better, they have still not been allowed home. Abdul Zahir’s brother told AAN, “He has a good life [in Oman], but it isn’t better than Afghanistan. It would have been better if he could have come here. He wanted to, but it was not allowed. It looks like a permanent ban. He misses Afghanistan.”<sup>41</sup>

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36 Kate Clark, ‘Freed at Last: Three Afghans sent to Guantanamo in 2002 and 2003 are finally home’, 23 December 2019, Afghanistan Analysts Network, <https://www.afghanistan-analysts.org/en/reports/rights-freedom/freed-at-last-three-afghans-sent-to-guantanamo-in-2002-and-2003-are-finally-home/>.

37 Interview, via WhatsApp, 23 December 2019, with follow-up, via WhatsApp, 16 January 2020.

38 Author interview by phone, 10 October 2018.

39 Zahir Guantanamo Assessment, 2008, 1. See Clark ‘Kafka in Cuba’ [see FN 3], 33.

40 Author interview Kabul, 26 September 2018.

41 Author interview by phone, 10 October 2018. [see FN 39].

The Omani authorities have not responded to a request for an interview about the travel ban and whether it is permanent or not. When AAN asked Amarkhel about it, he said the men had to be allowed to come home: “It is against our constitution,” he said. “We have to protect humanity.”<sup>42</sup> Unfortunately, though, unless a highly placed government official takes it upon themselves to pursue such cases, it is difficult to imagine their status changing or their being allowed to return home. The author has again raised these cases with Afghan government officials who said they would look into them.

## 2.4 LIFE AFTER GUANTANAMO

The six detainees who left Guantanamo in 2016 and early 2017 were each imprisoned for between 14 and 18 years, without trial or opportunity to challenge the allegations against them or to clear their names, and without knowing when and if they would ever be released. Four were transferred to the UAE and were then unexpectedly detained for a further three years, again without trial and after having been led to believe they would be freed and re-settled. Two of the six are still unable to return home to Afghanistan. This experience alone has done immeasurable harm to them and their families, but there is also the torture that at least four of the six men have given credible accounts of, and in one of the cases with supporting evidence.<sup>43</sup>

For the families of the detainees, typically, when the men were captured, they effectively disappeared. Obaidullah’s family, for example, told his lawyer it was two and a half years before they learned where he was.<sup>44</sup> Detainees missed children growing up and children who were babies or infants when their fathers were detained have spent most of their life without a father present. Hamidullah’s youngest child, now in his early twenties, was only five years old when his father was detained, a night he says he remembers, having seen it “with my own eyes.”<sup>45</sup> When Obaid was detained in 2003, his daughter had been born just two days previously. The US asserted that blood found in the car he had taken

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42 Author interview, via WhatsApp, 16 January 2019[see FN 38].

43 Wali Mohammed has testified that he was tortured in Pakistan, Bagram, Kandahar and Guantanamo, Obaidullah in Camp Chapman in Khost province and at Bagram airbase (the US government later withdrew his ‘confession’ from its evidence against him, rather than contest the torture claims in court), Karim in Bagram and Kamin, according to his defence counsel, may have been ‘softened up’ by Afghan forces on the American payroll in Khost. After his release, Hamidullah described how US soldiers at Bagram “would completely undress us and put us in chains whenever we wanted to go to the toilet. They would shout in our ears, force us on the shoulders [sic], and parade us naked to the shower” and that in the UAE detainees were “naked and handcuffed for even five-minute toilet breaks.” Saif, ‘Former Guantanamo inmate’, [See FN 25]. Zahir has not said publicly whether or not he was tortured. As to the other two Afghans featured in this study, Harun Gul has testified to being tortured in Bagram and Guantanamo, and the torture of Mohammad Rahim is detailed in a Senate report on the CIA’s detention and interrogation programme. See Clark, ‘Kafka in Cuba’, [FN 3], 22, and for detail of the torture of Rahim in particular, The Senate Select Committee on Intelligence, ‘Study of the Central Intelligence Agency’s Detention and Interrogation Program’, 12 December 2014, [http://gia.guim.co.uk/2014/12/torture-report-doc/torture\\_report.pdf](http://gia.guim.co.uk/2014/12/torture-report-doc/torture_report.pdf), 167-169.

44 Author interview with Katie Taylor, 14 September 2018, via Skype.

45 ‘A senior member of Hezb-e-Islami Afghanistan has been released from Guantanamo Bay after 18 years’, Shafaqna (in Dari), 29 December 2019, <https://af.shafaqna.com/FA/357300>.



his wife to hospital for the delivery was from wounded members of his IED cell, a mistake only rectified after his lawyers hired an investigator to go to Afghanistan. That baby is now a teenager. While in UAE custody, a family visit resulted in a second pregnancy for his wife and they also now have a son.

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**Detainees missed children growing up and children who were babies or infants when their fathers were detained have spent most of their life without a father present.**

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While the men were incarcerated, close family members died, Abul Zahir's mother just a year before his release. "She was very anxious," Zahir's brother told AAN, "and she had a heart problem because of the grief [over her son's absence]."<sup>46</sup> Kamin's father told AAN that, in the long years of separation, they had lost even the photos of their son. After Wali Mohammed was detained, his oldest son travelled to Kabul to try to regain his father's currency exchange shop which another trader had seized. He was killed in a car accident

while travelling back. Like some of the other detainees' families, Wali Mohammed's was thrown into poverty by his detention. Losing their main breadwinner and then their only grown-up brother meant his remaining sons (from different mothers) grew up in their maternal uncles' households, one in Peshawar and one in Kandahar. One, Abdul Musawer, told AAN he has not been able to study beyond 12<sup>th</sup> class because of poverty.<sup>47</sup>

For those detainees able to return to Afghanistan, the homecoming has not been easy. Hamidullah was to live only for a further five months before dying in Kabul.<sup>48</sup> One of Wali Mohammed's sons told us his father was too ill to speak, having become sick after returning from the UAE. He and his father are now living in Kabul.<sup>49</sup> Kamin is back living in his village in Khost and his father said he was well, but when we spoke, Kamin was away taking a sick relative to Pakistan. Since then, we have been unable to get through on the phone. We managed to speak directly to Obaidullah. He initially said he wanted an interview to 'set the record straight, after what he thought had been distorted coverage and unfair editing of interviews by Afghan outlets. In the end, he decided not to be interviewed. He suspected that journalists – and AAN – were involved in a plot, asking for interviews so that the US could locate and re-arrest him. He feared again being "chased by

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46 Author interview with Abdul Qaher [see FN 39].

47 Author interview with Abdul Masawer [see FN 48].

48 Hezb-e Islami released the following statement (translated from original Pashto): "Al-Hajj Hamdullah Tarakhel, son of Sheik-ul Hadith Mawlavi Sayed Agha Tarakhel, who was released some time ago after spending 18 years in Guantanamo jail, passed away last night. The late Hamdullah Tarakhel released five months ago, after spending 18 years in the prisons of Guantanamo and the UEA. His funeral will be held on Tuesday in Kabul and will be buried after that." 20 May 2020, <https://www.facebook.com/199493823435561/posts/3155408904510690/>.

49 Phone call by AAN colleague, 27 October 2020.

the Americans.”<sup>50</sup> Obaidullah’s fear seems reasonable, given he has spent almost half his life in detention for unfathomable reasons.<sup>51</sup>

Such fear is one of an array of responses typically seen in former detainees. Reprieve’s Katie Taylor and Polly Rossdale, who have both worked on the organisation’s programme to help former detainees adjust to life outside Guantanamo, have written at length about the trauma of detention and how it persists after liberation.<sup>52</sup> They say symptoms typically suffered by the ex-detainees are familiar as well-known consequences of torture. They include persistent insomnia, memory loss, inability to concentrate, confusion, anger and an inability to trust. Yet, they write, the particular harm done by conditions in Guantanamo goes even further:

*In Guantánamo mistrust and paranoia have also arisen as a result of specific circumstances: sensory deprivation, isolation, inhumane treatment, humiliation and attacks to identity, the indefinite nature of the detention, administrative and legal practices that exert psychological control, a profound sense of personal injustice, opacity and deception. A lack of confidence is especially noteworthy. According to Reprieve clients, interrogators often pretended to be a doctor or the Red Cross (ICRC) or a detainee’s defence lawyer. All lawyers have to be U.S. citizens in order to obtain the security clearance required to work in Guantánamo but Reprieve clients reported that when they first met an American who introduced themselves as their lawyer, it was hard to trust that they were indeed who they said they were. Some also reported being put on a plane and told they are going home, only to be returned to their cell or moved to another part of the camp. Paranoia and mistrust after many years of experiencing such practices are logical responses to illogical events.*

Rossdale and Taylor describe how former detainees got used to being able to ask only for tiny things from guards, such as toilet paper or better food and, afterwards, “would focus on seeking to improve the minutiae of daily living conditions, rather than securing a suitably protective legal status.” Having also learned to interact with only a handful of people in Guantanamo, former detainees can find the outside world overwhelming, “‘I could not deal with [normal] people,’” one former detainee told the two authors.

Taylor told AAN that three factors could help ex-detainees recover from Guantanamo.

*Family support is huge.... Secondly, time. It really is a matter of time and that has to be safe time - not under threat of prison, deportation or other arbitrary things...It takes time for men to recover. [I’ve seen men that] when they first got out, I honestly felt quite pessimistic about their prospects, but after three to four years, such a transformation can happen, it’s really heartening. Thirdly, adaptability or capabilities. This is to do with them as individuals. All of us have our own pockets of resiliency.*<sup>53</sup>

50 Phone calls by AAN colleague, 20 and 27 October 2020, 1 November 2020.

51 We tried also to speak to the former detainees in Oman and/or their families to get an update on their situation, but they declined, feared giving interviews and ‘being chased’. Phone calls by AAN colleague in October 2020.

52 Polly Rossdale and Katie Taylor, ‘An Account of ‘Life after Guantánamo’: a rehabilitation project for former Guantánamo detainees across continents’, in *Torture*, vol 37, no 3, 2017, 44-58.

53 Author interview [see FN 45].

## CHAPTER 3

# WHY THE SIX WERE NOT REPATRIATED AND WHAT THIS SAYS ABOUT OBAMA'S FAILED GUANTANAMO POLICY



Guantanamo detainee attending a 'Life Skills' class.  
Photo: Michelle Shephard/Pool/AFP, 2009

**EVERY** other Afghan released earlier from Guantanamo – 209 individuals – was sent home and allowed to live freely.<sup>54</sup> From an Afghan perspective, it is difficult to understand why the last six were not also repatriated. Conditions in Afghanistan were not substantially different from when Afghans were sent home in earlier years: 35 repatriations in 2007, eight in 2008, six in 2009 and four in 2014 (more on whom below). Change had come, however, not in Afghanistan, but the US. It seems important to look at why the six were not simply repatriated in some detail, given that their transfers to third countries may be a template for what the Biden presidency does now and the experience for the detainees was so damaging. AAN was given two explanations of why repatriation did not happen.

### 3.1 EXPLANATION 1: THE OBAMA ADMINISTRATION TOOK THE ISSUE OF ‘RECIDIVISM’ SERIOUSLY

Obama’s first Special Envoy for the Closure of Guantanamo Bay, Daniel Fried (2009-2013) told AAN that he and his team had taken the security implications of transfers more seriously than the Bush administration had.

*They sent 198 Guantanamo detainees back to Afghanistan. They did so on the assumption that the war was over or ending. That turned out to be a mistaken assumption and it was not due to nefarious logic, but they just wanted to close [Guantanamo] and Afghans can take care of security as they want, but it didn’t work. Many who were repatriated joined the fight.... [W]e realised one of the problems with the transfer policy was that they had moved them without proper security measures, because they had assumed the war was over. So the thinking was we can’t just let them go back to Afghanistan. It was a security problem and it was a political problem.<sup>55</sup>*

That many Afghan detainees returned to Afghanistan and joined the insurgency is true. Those returned included several senior Taliban commanders. The same poor understanding that led to US forces detaining men and youths who had nothing to do with the Taliban or al-Qaeda also led the US to release senior Taliban commanders without ever knowing their real identities. Such ignorance was only boosted by the US insistence that detainees’ names were classified (this only changed in 2006 after legal action forced the US to publish the names of those it held in Guantanamo). The senior Taliban released unwittingly included several whom human rights activists had long demanded

<sup>54</sup> 220 Afghans were rendered to Guantanamo. Three died in custody.

<sup>55</sup> Author interview by phone, 22 January 2019.



should be on trial for war crimes.<sup>56</sup> Several mid-ranking commanders freed by the Karzai administration, after they were transferred into its custody, went on to become significant battlefield commanders.<sup>57</sup>

One ‘order of magnitude’ estimate of the number of Afghan Guantanamo detainees who, once released, went on to fight against the government and international forces comes from Michael Semple of Queen’s University Belfast.<sup>58</sup> He stressed that he knows of no returning detainee not previously affiliated with the Taleban who joined the insurgency. In other words, detention does not seem to have ‘radicalised’ the previously non-aligned. Based on his work tracking the careers of Taleban, he estimated that about a hundred of the Afghan detainees rendered to Guantanamo, that is about half, had been members of the Taleban before the regime’s collapse and, of these, about half joined the insurgency after they were released.<sup>59</sup>

Set against what might seem a high rate of ‘recidivism’ of one in four Afghans is that, by the time they were released, many of the detainees were returning to a country where the actions of the US military, CIA and US-allied Afghan commanders and politicians was sparking rebellion. Such actions by US forces included mass arbitrary detention, torture and practices such as publicly stripping detainees.<sup>60</sup> Senior Taleban figures seeking amnesties had been double-crossed and detained. Many Afghans – individuals, tribes and communities – had found themselves at odds with the post-2001 authorities because of old enmities or because they were from the ‘wrong’ tribe or faction. Some were labelled ‘al-Qaida’ or ‘Taleban’ as an excuse for this exclusion. Karzai refused to allow a Taleban political party, which some in the movement had hoped would be a vehicle for including

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56 They included Mullah Shahzada, who had commanded the Taleban strike force which massacred more than one hundred civilians in Yakawlang district of Bamiyan in December 2000/January 2001. Despite the Bush administration refusing to release the names of detainees in Guantanamo, human rights activists had realised he was there and had pressed for him to be tried. He was released in 2003 and returned to Afghanistan where he recruited men for the insurgency. He was killed the following year. Activists also pressed for Mullah Fazl Mazlum to be put on trial; as Taleban chief of the army staff, he had command responsibility for several massacres of civilians and the Taleban’s scorched earth policy in Shomali in 1999; Fazl was eventually one of five Taleban exchanged for captured US serviceman, Bowe Bergdahl in 2014. For details of allegations, see The Afghanistan Justice Project, *Casting Shadows: War Crimes and Crimes against Humanity: 1978-2001 Documentation and analysis of major patterns of abuse in the war in Afghanistan*, 2005, 61-114, [https://www.opensocietyfoundations.org/sites/default/files/ajpreport\\_20050718.pdf](https://www.opensocietyfoundations.org/sites/default/files/ajpreport_20050718.pdf), especially 126-153; Kate Clark ‘Releasing the Guantanamo Five? 1: Biographies of the prisoners’, Afghanistan Analysts Network, 9 March 2012, <https://www.afghanistan-analysts.org/en/reports/rights-freedom/releasing-the-guantanamo-five-1-biographies-of-the-prisoners-first-posted-09-03-2012/>; Kate Clark, ‘Releasing the Guantanamo Five? 2: Kafka in Cuba’, Afghanistan Analysts Network, 11 March 2012, <https://www.afghanistan-analysts.org/en/reports/rights-freedom/freeing-the-guantanamo-five-2-kafka-in-cuba-first-posted-11-03-2012/>.

57 Mid-level commanders Abdul Qayum Zaker and Abdul Rauf Khadem were transferred to Afghanistan’s Pul-e Charkhi jail in Kabul in 2007. The Karzai administration freed both men in 2008. They went on to join the insurgency, rising through the ranks to leadership positions.

58 Author interview, via WhatsApp, 20 March 2019.

59 Al-Jazeera also sought to map out the variety of paths Afghans have taken following their release from Guantanamo, although without distinguishing between former Taleban and other Afghans. See Jennifer Felton: ‘After repatriation, ex-Guantanamo Afghans pursue variety of life options’, al-Jazeera, 27 January 2016, <http://america.aljazeera.com/articles/2016/1/27/guantanamo-afghans-repatriation-life.html>.

60 Particularly if this was done in public, former detainees often named this as their first grievance. Author interviews with former detainees for BBC in 2003-05.

Taleban in the new dispensation.<sup>61</sup> All of this created a sense of injustice and sparked rebellion among many Afghans, both Taleban and non-Taleban, as did the high levels of corruption in the new, US-supported administration.

Even so in the immediate post-2001 years, there was a strong and determined yearning for peace. This meant that early calls from some Taleban leaders to start a 'jihad' were dismissed, including by former Taleban. When some Afghans did take up arms against the government of Hamed Karzai and his foreign backers, they typically did so reluctantly, after trying and failing to secure political inclusion and respect from the new authorities. When dissatisfaction eventually turned to rebellion, the Taleban, which was also gradually forming up and gaining strength from discontented former members, were able to 'piggyback' on this unhappiness, taking advantage of local hostility to the government to begin operations. A pattern, of government and foreign military actions driving local, armed rebellions, was seen across the country. It is well-documented.<sup>62</sup>

A counter-factual look at the rate of 'recidivism' among Afghan Guantanamo detainees therefore, would, acknowledge that if the US had not taken such an inept, indiscriminate and violent approach to detentions or propelled into power and then supported such a predatory and non-inclusive government, former Taleban returning from Guantanamo might not have had an insurgency to join. Moreover, once the insurgency had started, former Taleban arriving back on Afghan soil faced difficult choices. Their social and political networks were with their former comrades, many of whom were now in armed opposition to the government. Often, they also faced persecution by tribal or factional enemies in power. Even so, despite the pressure to join the insurgency, perhaps only half of returnees previously affiliated with the Taleban took up arms.

By the time Special Envoy Daniel Fried took up his newly created post in 2009, Afghan rates of recidivism were, in any case, mainly of historic interest. By then, the vast bulk of Afghan detainees had already left Guantanamo and gone home. Only seventeen out of the original 220 Afghans remained in detention.

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61 The party, Khuddam ul-Furqan was only allowed to register in 2005, after the insurgency had begun. See Kate Clark: 'Another Hit at the High Peace Council: Arsala Rahmani Killed (amended)', Afghanistan Analysts Network, 13 May 2012, <https://www.afghanistan-analysts.org/another-hit-at-the-high-peace-council-arsala-rahmani-killed-amended/>.

62 See, for example, accounts of: Kandahar – Anand Gopal, 'The Battle for Afghanistan: Militancy and Conflict in Kandahar', New American Foundation, November 2010, [https://static.newamerica.org/attachments/4336-the-battle-for-afghanistan/kandahar\\_0.685663454461452584d08faeae6d538b.pdf](https://static.newamerica.org/attachments/4336-the-battle-for-afghanistan/kandahar_0.685663454461452584d08faeae6d538b.pdf); Uruzgan – Martine Van Bijlert; 'Unruly Commanders and Violent Power Struggles: Taliban Networks in Uruzgan', Chapter 7 in Antonio Giustozzi (ed) *Decoding the New Taliban: Insights from the Afghan Field*, Columbia University Press/Hurst, 2009, 158; Loya Paktia – Kate Clark, '2001 Ten Years on (3): The fall of Loya Paktia and why the US preferred warlords', Afghanistan Analysts Network, 24 November 2011, <https://www.afghanistan-analysts.org/2001-ten-years-on-3-the-fall-of-loya-paktia-and-why-the-us-preferred-warlords/>; the north – Antonio Giustozzi and Christoph Reuter, 'The Insurgents of the Afghan North' Afghanistan Analysts Network, April 2011, 46-7, <https://www.afghanistan-analysts.org/publication/aan-papers/the-insurgents-of-the-afghan-north/>, and; multi-provincial analysis and more general descriptions – Anand Gopal, *No Good Men Among the Living: American, the Taliban and the War through Afghan Eyes*, New York, Metropolitan Books Henry Holt and Company, 2014; and Stephen Carter and Kate Clark 'No Shortcut to Stability Justice, Politics and Insurgency in Afghanistan', Chatham House, December, 2010, [https://www.chathamhouse.org/sites/default/files/public/Research/Asia/1210pr\\_afghanjustice.pdf](https://www.chathamhouse.org/sites/default/files/public/Research/Asia/1210pr_afghanjustice.pdf).

## 3.2 EXPLANATION 2: REPUBLICAN HOSTILITY TO OBAMA

The second explanation as to why Afghans ceased to be repatriated lies in Republican hostility to Barak Obama and his goal of closing Guantanamo Bay. After the Republicans gained a majority in the House of Representatives in 2011,<sup>63</sup> Congress began to impose stringent conditions on transfers using the annual Authorisation of Defence Act (NDAA), which controls funding and transfers became much more infrequent after 2011.<sup>64</sup>

Fried described the Republicans as suddenly discovering their ‘qualms’ about Guantanamo transfers only after Obama became president and wanted to shut the prison camp. Obama could have threatened to veto the bills unless the provisions on transfers were removed. Yet, as Connie Bruck wrote in *The New Yorker*, he chose not to.<sup>65</sup> Instead, he acquiesced to his administration being tightly restricted by the new rules: detainees could only be transferred to a country if it fulfilled a list of criteria,<sup>66</sup> including that no earlier transferred detainee “had subsequently engaged in any terrorist activity” after release to that country.<sup>67</sup> These restrictions could be waived, but only if the Secretary of Defence personally certified to Congress that the transfer was in the national security interest and “alternative actions would be taken to mitigate the risk of recidivism.”<sup>68</sup> In other words, the acts made one person responsible for what a transferred detainee might do in the future. Successive secretaries of defence, wrote Bruck, balked at signing waivers:

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63 Elsea and Garcia, ‘Wartime Detention Provisions’, [see FN 9], 30.

64 The Republicans took control of the House of Representatives in 2011 and the Senate in 2015.

65 Connie Bruck ‘Why Obama has failed to close Guantanamo’, *The New Yorker*, 1 August 2016, <https://www.newyorker.com/magazine/2016/08/01/why-obama-has-failed-to-close-guantanamo>.

66 Elsea and Garcia list these criteria: “Under the requirements of Section 1028 of the 2011 NDAA, in order for a transfer to occur, the Secretary of Defense was required to first certify to Congress that the destination country or entity: was not presently a designated state sponsor of terrorism or terrorist organization; maintained control over each detention facility where a transferred detainee may have been housed; was not presently facing a threat likely to substantially affect its ability to control a transferred detainee; agreed to take effective steps to ensure that the transferred person did not pose a future threat to the United States, its citizens, or its allies; agreed to take such steps as the Secretary deemed necessary to prevent the detainee from engaging in terrorism; and agreed to share relevant information with the United States related to the transferred detainee that may affect the security of the United States, its citizens, or its allies.” Elsea and Garcia, ‘Wartime Detention Provisions’, [see FN 9], 30.

67 Elsea and Garcia, ‘Wartime Detention Provisions’, 30. Afghanistan was not one of the countries to which transfers were banned (they were Somalia, Libya, Yemen and Syria), but it was on the list of those which needed to be ‘certified’ to receive transferred detainees [see FN 9].

68 “Under the requirements of Section 1028 of the 2011 NDAA, in order for a transfer to occur, the Secretary of Defense was required to first certify to Congress that the destination country or entity: was not presently a designated state sponsor of terrorism or terrorist organization; maintained control over each detention facility where a transferred detainee may have been housed; was not presently facing a threat likely to substantially affect its ability to control a transferred detainee; agreed to take effective steps to ensure that the transferred person did not pose a future threat to the United States, its citizens, or its allies; agreed to take such steps as the Secretary deemed necessary to prevent the detainee from engaging in terrorism; and agreed to share relevant information with the United States related to the transferred detainee that may affect the security of the United States, its citizens, or its allies.” Elsea and Garcia, ‘Wartime Detention Provisions’, [see FN 9], 30.

*Fried continued to negotiate transfers. [Secretary of Defence] Gates [2006-2011], did not approve a single one. Neither did his successor, Panetta [2011-2013]. “As Secretary, that provision required that I sign my life away,” he told me.<sup>69</sup>*

David Manners-Weber has described just how effective the new law was in suppressing transfers:

*...no one wants to be accused of having American blood on their hands.... Congress effectively weaponized this fear of blame through an obscure bureaucratic procedure—the certification requirement—to thwart one of President Obama’s key foreign policy priorities: closing Guantanamo Bay.<sup>70</sup>*

Over the next two and a half years, wrote Bruck, “only eight detainees left Guantánamo: five were released by court order, and three died.” In 2014, restrictions were loosened a little (Congress decided it did not need *written* certification) and this resulted in an “uptick of transfers.”<sup>71</sup> However, even then, says Manners-Weber, although Secretary of Defence Chuck Hagel (2013-2015) and, after him, Ash Carter (2015 to January 2017), did certify some transfers, it was not “without significant delay and arm-twisting.”

Four Afghans who had been cleared for transfer in 2010 were finally due to be transferred in 2014. As Savage reports, in October 2014, the new Afghan government led by Ashraf Ghani gave the security guarantees necessary for the transfer to go ahead, that the detainees would be monitored once they were on Afghan soil. However, then US military commander in Afghanistan General John F Campbell expressed “concerns that the detainees might attack American or Afghan troops,”<sup>72</sup> although what marginal difference he thought four possible Taleban might have made to the raging insurgency is curious.<sup>73</sup> The transfer was again delayed and the four were only finally repatriated in December of that year.

The hesitation about these four men’s transfer illustrates the bizarre difference between how Afghans detained in Afghanistan and Guantanamo were dealt with, something which, according to Savage, quoting Obama advisor Ben Rhodes, the American president was fully

69 Bruck, ‘Why Obama’, [see FN 66].

70 David Manners-Weber, ‘Guantanamo, Certification, and the Fear of Blame’ Lawfare, 17 May 2018, <https://www.lawfareblog.com/guantanamo-certification-and-fear-blame>.

71 Elsea and Garcia, ‘Wartime Detention Provisions’, [see FN 9], 4.

72 Charlie Savage, *Power Wars: The Relentless Rise of Presidential Power and Secrecy*, revised edition 2017, First Back Bay Books (originally published in 2015 by Little Brown and Company), 528.

73 The marginal additional risk posed by four Taleban fighters cannot be calculated by assessing what extra strength they would have brought to the Taleban’s fighting force, given that estimates of its size have never made with any confidence. The strength of the insurgent force can be pictured by the scale of the conflict, as judged by casualties caused by it: in 2014, 43 US service personnel were killed (this excludes deaths from ‘non-hostile causes’) as well as (to late October) an estimated 4,380 Afghan police and soldiers; and 2,643 civilians. For US and ANSF casualties, see Ian S Livingston and Michael O’Hanlon, ‘Afghanistan Index Also including selected data on Pakistan’, Brookings, 10 February 2015, <https://www.brookings.edu/wp-content/uploads/2016/07/index20150210.pdf>, Figures 1.17 and 1.12; for civilian casualties, see UNAMA and UNHRHR ‘Afghanistan Annual Report 2014 Protection of Civilians in Armed Conflict’, Kabul, February 2015, <https://unama.unmissions.org/sites/default/files/2014-annual-report-on-protection-of-civilians-final.pdf>, 41.



aware.<sup>74</sup> In 2013, in the wake of the US finally transferring control of Afghan detainees held in Bagram to the Afghan government,<sup>75</sup> Obama had pointed out to Rhodes, reported Savage:

*...an irony about the politics of detainees.... The dozens of lower-level detainees stuck at Guantanamo were essentially identical to the hundreds of such detainees the United States was handing over to the Afghan government. These Bagram transfers took place virtually without political controversy, but each transfer out of Guantanamo was put under a political microscope.*<sup>76</sup>



Former detainee Obaidullah back in Afghanistan after spending almost half his life in detention.  
Photo: Tolonews, January 2020

The extreme caution about releasing detainees during the Obama years was a mirror image of US actions in the first years after 2001. Then, no American service person wanted to be responsible for failing to detain someone who might know where Osama was. The result was mass indiscriminate detentions. Now, the fear of being responsible for possibly releasing someone who might carry out a spectacular attack against US forces in

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<sup>74</sup> Savage, *Power Wars*, [see FN 73], 531.

<sup>75</sup> For detail, see Clark 'Thematic Dossier: Detentions' [see FN 31].

<sup>76</sup> Savage, *Power Wars*, [see FN 73], 531.

Afghanistan was hampering the release of any Afghan with the bad luck to have ended up in Guantanamo.

In 2016, the last year of Obama's eight years in office, Congress again tightened conditions for transfers,<sup>77</sup> but, this time, the political will was there to get as many detainees out of Guantanamo before Obama left office in January 2017; he had failed to close the detention camp but would reduce the number of detainees as far as possible. Now transfers were being signed off. In those final months, six of the Afghans studied in this report were transferred out of Guantanamo, sent not home, but to the Gulf. One international lawyer working on Guantanamo, who asked not to be named, said the rationale for this probably had nothing to do with Afghanistan *per se*, but stemmed from time constraints. She said that in the last months of the Obama presidency, the imperative was just to get everyone who had been cleared for transfer out – to anywhere. “Everyone knew,” she said, “that if they [the cleared detainees] didn't get out, they'd be stuck.”<sup>78</sup> Getting certification to send Afghans home, it seems, might have been possible, but it would have required time; the lack of an internment option in Afghanistan may also have been an obstacle, the lawyer thought.<sup>79</sup> Detainees and their lawyers believed that nowhere could be worse than Guantanamo. Dan Fried, by then a former Envoy for the Closure of Guantanamo has a similar understanding that policy had been shaped by haste:

*... by the end of the Obama administration, the politics around Gitmo were so poisonous, getting anyone out under any conditions [was so difficult], and if they got trapped there, it was going to get harder and harder. So long as they weren't being sent to a place where they would be tortured, even the Bush administration wouldn't do that, so we sent no-one to Syria or Libya.*<sup>80</sup>

### 3.3 DEALS BETWEEN THE US AND THE UAE AND OMAN

The details of the deals done by the US with third countries for them to take detainees have never been released, but State Department cables published by Wikileaks revealed Special Envoy Fried's intense diplomatic efforts to persuade multiple countries to accept Guantanamo inmates. *Der Spiegel* described this as “downright bazaar, with offers of accepting prisoners being made in exchange for development aid or a visit by President Barack Obama.”<sup>81</sup> Those approached included various members of the European Union who wondered why, if the detainees the US was seeking to transfer were so ‘low risk’, the

<sup>77</sup> Elsea and Garcia, ‘Wartime Detention Provisions’, [see FN 9], 1.

<sup>78</sup> Author interview, via WhatsApp, 22 February 2019.

<sup>79</sup> Karzai had fought US pressure to begin internment (detention without trial) when he was gaining control of Afghan detainees in Bagram, an issue analysed in Clark ‘Thematic Dossier: Detentions’ [see FN 31].

<sup>80</sup> Author interview [see FN 56].

<sup>81</sup> ‘Leaked Cables Reveal True US Worldview’, *Der Spiegel*, 28 November 2010, <http://www.spiegel.de/international/world/foreign-policy-meltdown-leaked-cables-reveal-true-us-worldview-a-731583.html>.

US did not want to re-settle them on its own territory.<sup>82</sup> “Obama called in favours,” one journalist who followed the subject said. “Different arrangements with different people. For example, the ‘brotherly Arabs’ of the GCC [Gulf Cooperation Council] met with Obama who said, ‘I need you guys to do this for me.’”<sup>83</sup>

Oman and the UAE both described their decision to take third country nationals as being ‘humanitarian’.<sup>84</sup> When taking in the two Afghans and eight Yemenis from Guantanamo, Oman announced that they would give them “a temporary residence.”<sup>85</sup> The UAE spoke about “these individuals and their families [going] through the rehabilitation programme.”<sup>86</sup> US and Afghan government officials speaking to AAN in 2016 also referred to the detainees going through the Emirati ‘deradicalisation’ programme.<sup>87</sup> A lawyer for one of the four detainees sent to the UAE recalled:

*According to a State Dept official, they had received assurances [from the UAE] before they transferred men from Guantanamo, that they would be in a half-way house, not necessarily a prison – it was never described to us or the detainees as a prison – that they would be going through a rehabilitation/reintegration programme, so as not to become radicalised and learning life skills after having been in prison for so long. That was our understanding... a series of gradual steps to be completed within a year, with increasing freedom and likely released to their families.<sup>88</sup>*

At the time, the Afghan ambassador to the UAE, Abdul Farid Zikria, thought the detainees were on their way home and thanked the UAE for its help in this, “We wanted to do it one step at a time,” he told the media. “Eventually they will be transferred to Afghanistan.”<sup>89</sup> Once the men were home, the ambassador said, the government would work on integrating and reconciling them with society.

82 For example, Axel Delvoie, Deputy Director for Multilateral Affairs at the Belgian Ministry of Foreign Affairs is recorded as expressing concern to Fried “that the USG [US government] is itself reluctant to release detainees into the United States, and that resettled detainees may pose a security threat to Belgium.” The cable also said Delvoie was interested “in knowing which of the detainees will be released in the United States.” ‘Special Envoy Dan Fried Discusses Guantanamo Detainees with Belgian Officials 09BRUSSELS742\_a, State Department cable from Brussels marked ‘confidential’, 29 May 2009, published by Wikileaks, [https://wikileaks.org/plusd/cables/09BRUSSELS742\\_a.html](https://wikileaks.org/plusd/cables/09BRUSSELS742_a.html).

83 Author interview, New York, 22 May 2019, [see FN 36].

84 See ‘Sultanate Receives 10 Detainees Released from Guantanamo Foreign Ministry States’, 16 January 2017, Oman News Agency, accessed 21 February 2019, but no longer available; statement referred to in Jon Gambrell ‘Oman says it accepts 10 Guantanamo Bay detainees’, Associated Press, 16 January 2017, <https://apnews.com/0c475390c15b448ea110fbd6fb1c9322> and ‘UAE receives 15 Guantanamo prisoners for humanitarian reasons’, 16 August 2016, Emirates News Agency, <http://wam.ae/en/details/1395298862670>. The fifteen detainees transferred to the UAE comprised 12 Yemenis plus the Afghans, Obaidullah, Kamin and Hamidullah.

85 ‘Sultanate Receives’, Oman News Agency, [see FN 85].

86 ‘UAE receives 15 Guantanamo prisoners for humanitarian reasons’ Emirates News Agency, [see FN 85].

87 Author interviews, Washington DC, 28 October 2016; email from Department of State spokesperson Pooja Jhunjhunwala who said she could not discuss the specific assurances they receive from foreign governments, 8 September 2016.

88 Author interview by phone, 8 August 2018. [see FN 33].

89 Shireena al-Nowais, ‘15 Guantanamo detainees sent to UAE in major transfer’, *The National*, 16 August 2016, <https://www.thenational.ae/uae/15-guantanamo-detainees-sent-to-uae-in-major-transfer-1.138617>.

Yet, said the lawyer for one of the four, “After some time, we learned... it was a prison. It was not at all what [my client] thought he was going to when he agreed to leave Guantanamo.” In May 2018 when *The Washington Post* spoke to the lawyers of most of the ex-Guantanamo detainees of different nationalities who had been sent to the UAE, “few, if any” had gone through the talked-about deradicalisation programme. None had been released, “despite what attorneys said were informal assurances that they would be out within about a year.”<sup>90</sup> None of the family members who spoke to AAN mentioned their relatives being in anything like a programme. Rather, they said the detainees were first taken to prison and then to a ‘waiting place’ or ‘shelter’, in what they thought was progress towards release, resettlement and family reunion, before being moved back into prison.

Katie Taylor from the legal campaigning organisation Reprieve said she did not think anyone would have agreed to leave Guantanamo if they knew it was only to go into further, indefinite detention:

*What the US government was selling, really, was resettlement, permanent integration into new countries. It's difficult because whatever arrangements the US had with [the] host government were confidential. They were bilateral agreements which are not available for us and we don't know what's in them. We don't know what the US was requiring, what level of stringent monitoring, for example, or worse was required.<sup>91</sup>*

Lawyers have told AAN that after the US strikes a deal with a third country, it takes no action if that deal is not carried out as per the agreement. “We have seen this with lots of different individuals in lots of different contexts,” one lawyer said. “The deals were fairly – I can’t say informal, as they took a long time to negotiate – but they were not binding. This was not like a treaty.”<sup>92</sup> The difficulties of following up on the fate of detainees leaving Guantanamo were exacerbated when President Trump closed the Office of the Special Envoy for Guantanamo Closure: it had drafted and negotiated diplomatic agreements with nations receiving cleared detainees and had used to respond to enquiries. As a McClatchy investigation found out, since closing the office, the US has lost track of several former detainees, including one who had travelled from Uruguay to “a terrorist-held part of Syria” (he was Syrian).<sup>93</sup> Harun’s lawyer at that time, Shelby Sullivan-Bevis, said the Envoy’s office role had been crucial.

*While at first the change seemed to take hold in name alone, it soon became clear that former employees of that office (suddenly disbursed throughout the State Department) were not authorized to negotiate such deals, did not respond to inquiries from country desks as to the status of their cleared nationals, and eventually, the Trump State*

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90 Ryan, ‘After over a decade’, [see FN 34].

91 Author interview by Skype, 14 September 2018, [see FN 45].

92 Author interview [see FN 79].

93 Carol Rosenberg, ‘Trump closed an office that tracked ex-Gitmo inmates. Now we don’t know where some went’, McClatchy, 13 November 2018, <https://www.mcclatchydc.com/news/nation-world/national/national-security/guantanamo/article220993900.html>.



*Department went as far as to demote and dismiss former Envoy's Office staff, forbidding them to work on former detainee affairs altogether.*<sup>94</sup>

That last envoy, Lee Wolosky, told McClatchy he had continued to receive phone calls from foreign envoys and other concerned people, even after he left government at the close of the Obama administration because “they have no one to talk to in the U.S. government.”<sup>95</sup>

AAN's requests for information from the State Department about the conditions in which the six men sent to the Gulf were kept, whether the US felt any duty of care towards former detainees and why they had not simply been repatriated produced a meagre response from its Counter-Terrorism (CT) Bureau. It said only that it was “actively attempting to prevent the re-engagement of former Guantanamo Bay detainees in terrorist activities,” did not say whether it had stipulated a travel ban but hoped detainees would “permanently resettle into their countries of transfer.” It referred questions about the continuing detention of former detainees in the UAE and conditions there to the UAE government.<sup>96</sup> The UAE made no response to AAN requests for an interview.

### 3.4 HABEAS CORPUS: ANOTHER ROUTE TO LIBERTY?

The decision to hold the war on terror detainees in Guantanamo Bay, Cuba, was aimed at putting them outside the jurisdiction of US courts. This strategy soon faced a legal challenge and in 2004, the Supreme Court ruled in *Rasul v Bush* that the detainees did have the right to petition in federal courts for habeas corpus. The ruling also meant they could access legal counsel and, for the first time, have a connection with the outside world. A spate of habeas petitions ensued.

Petitions were soon suspended, however, while courts decided procedures, until finally in 2008, the Supreme Court ruled that the Guantanamo detainees must have a “meaningful judicial review.” Even after this, though, petitions were bogged down in procedural matters – done deliberately by the government, one lawyer told AAN, to keep clients detained.<sup>97</sup> While this tactic was understandable under the pro-Guantanamo Bush administration, the Justice Department under Obama, who wanted to close Guantanamo, persisted in this course of action.<sup>98</sup> It defended the government's detention of each and every detainee as a matter of policy. It used what, in any normal court system, would have been discredited and worthless ‘evidence’ to block petitions, fought to keep evidence secret and used delaying tactics. Neither state nor courts faced any penalty for delays, which meant petitions could and did take years to hear and rule on. Kamin's petition for habeas took six years, Wali Mohammed's took 11 years; both were ultimately rejected. Appeal court

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94 Transcript of public session of Periodic Review Board, Harun Gul, 28 March 2017, [https://www.prs.mil/Portals/60/Documents/ISN3148/FullReview1/20170328\\_U\\_ISN\\_3148\\_HEARING\\_TRANSCRIPT\\_PUBLIC\\_SESSION\\_PUBLIC.pdf](https://www.prs.mil/Portals/60/Documents/ISN3148/FullReview1/20170328_U_ISN_3148_HEARING_TRANSCRIPT_PUBLIC_SESSION_PUBLIC.pdf).

95 Rosenberg, ‘Trump closed’; [see RN 94].

96 Email to author from State Department press officer quoting the CT Bureau's response, 19 February 2019.

97 Defence lawyer who asked not to be named. Author interview by Skype, 26 January 2015.

98 *Boumediene v. Bush*, 553 U.S. 723 (2008).

rulings even agreed with the government that judges were bound to *presume* government evidence was accurate.<sup>99</sup> Perhaps most shockingly, the Justice Department sought to use – and was often allowed to by the courts – ‘confessions’ and ‘testimony’ obtained by those who had been tortured. The key determinant in deciding whether to accept such testimony was assessing how ‘voluntarily’ it had been given: Can a lapse of time between torture and confession make it ‘voluntary’ or, if the torture was carried out by one entity

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**“Letting the court rule that we don’t have a right to detain this guy would be like admitting that we were wrong to detain him in the first place. And by extension, that we were wrong to set up Guantanamo. And we can’t admit that.”**

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(a different US agency or a foreign agency), can a later confession given to a different entity be deemed to have been freely given?<sup>100</sup> The author’s scrutiny of several habeas petitions in her ‘Kafka in Cuba’ report showed the courts almost always failed to question government evidence that was contradictory, dubious or had been shown in court to be false.

“Careful judicial fact-finding,” one 2012 study found, was “replaced by judicial deference to the government’s allegations,” with the “government winning every petition.”<sup>101</sup> Following the denial of seven habeas appeals in 2010, *The New York Times* described the development of “substantive,

procedural and evidentiary rules” as “unjustly one-sided in favor of the government” and said the rejected appeals had made it “devastatingly clear” that the current court system in the US “has no interest in ensuring meaningful habeas review for foreign prisoners.”<sup>102</sup>

Mohammad Rahim’s former defence lawyer, Carlos Warner, described the situation as so bad that, “[n]o legitimate courts or actual due process exist in Guantánamo.”<sup>103</sup> Rahim decided that, giving the record of America’s courts, it was a highly unlikely path to freedom

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99 The rulings were made in *Adahi v. Obama*, 613 F.3d 1102 (D.C. Cir. 2010); *Latif v. Obama*, 666 F.3d 746, 748 (D.C. Cir. 2011). For discussion of how this changed judges’ reading of evidence, see Benjamin Wittes, Robert M Chesney, Larkin Reynolds and The Harvard Law School National Security Research Committee, ‘The Emerging Law of Detention 2.0: The Guantanamo Habeas Cases as Lawmaking’, Brookings, April 2012, [http://www.brookings.edu/~media/research/files/reports/2011/5/guantanamo-wittes/05\\_guantanamo\\_wittes.pdf](http://www.brookings.edu/~media/research/files/reports/2011/5/guantanamo-wittes/05_guantanamo_wittes.pdf). Judges have also accepted raw intelligence from the government as evidence and multiple pieces of evidence, each individually too weak to pass muster, which together produce a ‘mosaic’ pointing to culpability. See Wittes et al, *The Emerging Law of Detention* [see FN 73].

100 Wittes et al, ‘The Emerging Law of Detention’, [see FN 73], 92.

101 Mark Denbeaux, Jonathan Hafetz, Sara Ben-David, Nicholas Stratton, and Lauren Winchester, ‘No Hearing Habeas: D.C. Circuit Restricts Meaningful Review’, Seton Hall University School of Law, 1 May 2012, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2145554#](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2145554#).

102 ‘The Court Retreats on Habeas’, *The New York Times* editorial, 13 June 2012, <https://www.nytimes.com/2012/06/14/opinion/the-supreme-court-retreats-on-habeas.html>.

103 ‘Navigating a “Legal Black Hole”: The View from Guantanamo Bay’, Carlos Warner, *Akron Law Review*, 31-51, <https://ideaexchange.uakron.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1026&context=conlawnow>, 37.

and stopped pursuing his habeas petition. The other Afghan still in Guantanamo, Harun Gul, is still pursuing his.

Why was there such a breach between Obama's stated aim of closing Guantanamo and the actions of his Justice Department? One inkling came recently in interviews concerning Moroccan Abdul Latif Nasser, who was cleared to leave Guantanamo in July 2016 and was among those whom the Office for Closing Guantanamo was trying its mightiest to get out of Guantanamo before President Trump took office. According to an investigation by WNYC Studio's Radiolab, the office managed to secure an agreement to transfer him to Morocco, but it was just too late for the deadline; it was less than 30 days before Trump took power and Congress needed 30 days' notice before a transfer could take place.<sup>104</sup> However, there was one way around Congressional blocks; they did not apply if a release or transfer came about because of a court ruling. Nasser's lawyer, Shelby Bevis-Sullivan, realised that if the government did not oppose his petition for habeas corpus, he could still be transferred. And as Nasser was already cleared for transfer, in a decision signed off by the Attorney General, Secretary of State, Secretary of Homeland Security, Director of National Intelligence and the Chairman of the Joint Staff, what possible objection could there be?

Radiolab spoke to two people present in a meeting in the Situation Room at the White House, called to decide whether or not to oppose Nasser's habeas petition. Almost every official present, the two interviewees said, did not want the habeas petition opposed, knowing that if the government did nothing, he could be repatriated. "We're talking about someone's liberty," recalled National Security Council staffer, Ian Moss. "An individual who at that point had been detained for 14 years. We have an opportunity to do what we can to transfer him. We should seize that opportunity if that's what our policy is." However, the two interviewees said the Department of Justice insisted the writ be opposed – meaning that Nasser would probably stay in Guantanamo for at least another four years. Radiolab reporter Latif Nasser summarised the Justice Department's argument:

*... no matter what we think about Abdul Latif's specific case – and we all agree he should go home – we have to fight the motion. Letting the court rule that we don't have a right to detain this guy would be like admitting that we were wrong to detain him in the first place. And by extension, that we were wrong to set up Guantanamo. And we can't admit that. And you can imagine a larger argument here. Legally, the War on Terror is still ongoing. We still live in a world of people trying to hurt us who wear no uniform, belong to no nation, and don't fight by the rules. And so we still need to be able to say who is and who isn't a threat and then to be able to act on it without having to justify ourselves.<sup>105</sup>*

104 See episode 6 in WNYC Studio's Radiolab podcast series, 'The Other Latif', first broadcast 17 March 2020, <https://www.wnycstudios.org/podcasts/radiolab/articles/other-latif-episode-6> (audio and transcript).

105 There would actually have been a precedent for the government not opposing habeas, when in October 2013 the Justice Department told the court considering the case of Ibrahim Idris that it did "not oppose the Court's issuance of the writ of habeas corpus"; this meant Idris could be repatriated to Sudan. See Wells Bennet 'USG Drops Opposition to Granting the Writ in GTMO Habeas Case', Lawfare, 2 October 2013, <https://www.lawfareblog.com/usg-drops-opposition-granting-writ-gtmo-habeas-case>.

The harm done to individuals by the policy of always opposing habeas petitions is immense and yet it is difficult to see how it has protected US security in any way. Take for example, Wali Mohammed's eleven years in court which led ultimately to the judge rejecting the government's notion that he was an al-Qaeda financier, but accepting the government's assertion that he had supported the Taleban and Hezb-e Islami and therefore his detention was justified; this was despite his arrest and bankruptcy by the Taleban, and even though Hezb-e Islami was not an insurgent group at the time of his detention (see pages 11-12 of this report). As the author concluded in her 2016 study:

*All in all, it looks very thin. It appears that the US government has expended enormous efforts over many years scraping the barrel of its intelligence reporting to find something to justify Wali Mohammed's detention to the court. However, if its assertion, which the court accepted, that Wali Mohammed's activities had amounted to him being "part of, or substantially supporting" the Taleban and Hezb-e Islami, then the same could be said of tens of thousands of Afghans, possibly more. They would include many senior and midlevel members of the current Afghan administration. This is an immensely broad reading of the US presidential power to detain. Rather than Wali Mohammed having actually been any threat to anyone, he was extremely unlucky to have been sent to Guantanamo and to have ended up in limbo there when so many other Afghans with similar backgrounds are free and prospering.<sup>106</sup>*

The Obama administration's policy decisions over transfers and habeas petitions detailed in this chapter remain significant, not only for revealing how four Afghans spent extra years in indefinite detention after leaving Guantanamo and two have still not managed to get home, but how the government worked to block detainees having a meaningful judicial review of their detentions. These decisions are also critical for understanding the choices Biden now has over policies that will affect the fate of those still held in Guantanamo. They include the two Afghans who are the subject of the next chapter.

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106 Clark 'Kafka in Cuba', [see FN 3], 28.



## CHAPTER 4

# THE TWO AFGHANS STILL IN GUANTANAMO: ASADULLAH HAROON GUL AND MOHAMMED RAHIM



A detainee listens as his Combatant Status Review Tribunal Notice is read out. The tribunals were a move by the Bush administration to block detainees' access to habeas corpus after the Supreme Court had ordered they could petition the federal courts.

Photo: Randall Damm/US Department Of Defence/AFP, 2004.



**THE SECOND** group under study comprises two men, Asadullah Harun Gul (called Harun al-Afghani in Guantanamo) and Mohammed Rahim (called Rahim al-Afghani in Guantanamo) who remain in Guantanamo. Both were detained in 2007 when the US military and CIA faced an actual insurgency and understood Afghanistan better than in the early years. Even so, gross intelligence failures were still possible, as illustrated by a 2010 investigation by this author into the use of intelligence in targeted killings.<sup>107</sup> Because these two men were rendered to Guantanamo later, there is far less public information about their cases than the six Afghans who were sent to the Gulf. There is no publicly available summary or transcript of the Bush-era classified hearings and only one partial classified assessment (for Harun) in the tranche of documents published by Wikileaks.<sup>108</sup> Much of the detail of Rahim's case in particular, given he is classed as a 'high value' detainee is classified. However, there is some documentation on both men from their habeas petitions and, in this, the *type* of evidence is revealed. It again comprises hearsay evidence, including the testimony of other detainees, some of it obtained under torture and some of it 'double hearsay' and unverified and unprocessed Intelligence Information Reports (IIRs). Harun 'confessed' to some things, but has alleged he was tortured, making his testimony unsafe.<sup>109</sup> The torture of Rahim is a matter of public record, detailed in the US Senate's report on the CIA's use of torture.<sup>110</sup>

Nothing in the public domain backs up US claims against either man. Like the other six Afghans featuring in this report, neither Harun or Rahim were captured while engaged in

107 Kate Clark: 'The Takhar Attack: Targeted killings and the parallel worlds of US intelligence and Afghanistan', Afghanistan Analysts Network, May 2011, [http://www.afghanistan-analysts.org/wp-content/uploads/downloads/2012/10/20110511KClark\\_Takhar-attack\\_final.pdf](http://www.afghanistan-analysts.org/wp-content/uploads/downloads/2012/10/20110511KClark_Takhar-attack_final.pdf) investigated the killing of ten civilians campaigning in the 2010 parliamentary elections in an air strike by the US military. It discovered US intelligence had conflated the identities of the candidate's agent and a Taleban commander, and failed to carry out even the most basic background checks.

108 Harun's 'Guantanamo Joint Task Force Assessment only Assessment, 2007', can be read at WikiLeaks, <https://wikileaks.org/gitmo/pdf/af/us9af-003148dp.pdf>, (some pages missing) and *The Guardian*, <http://www.theguardian.com/world/guantanamo-files/US9AF-001348DP>, although some names and identifying numbers redacted.

109 Harun Gul's petition for habeas corpus included the following statement: "During his captivity in a military facility in Afghanistan, Mr. Gul's captors blindfolded, shackled, and hung him by the arms while they were still cuffed behind his back, stripped and tortured him. He was kept alone and naked in a cell without even a bucket as a toilet... During interrogations [in Guantánamo] prison authorities shackled Mr. Gul for up to twelve hours without water or food in a position that allowed him to neither fully stand nor sit, preventing any sleep. That sleep deprivation torture still plagues his nights nine years later." Gul v. Obama, No. 16-cv-01462, (D.D.C. 15 July 2016), accessed November 2019 via Reprieve website (no longer available). These allegations are consistent with methods known to have been practiced and documented in reports such as 'Committee on Armed Services United States Senate Inquiry into the Treatment of Detainees in U.S. Custody', 20 November 2008, [http://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final\\_April-22-2009.pdf](http://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final_April-22-2009.pdf), and Senate 'Study of CIA Detention', [see FN 44]. See Clark 'Kafka in Cuba', [see FN 3], 14, 15, for more details.

110 See Senate 'Study of CIA Detention', 167-169 [see FN 44] and Clark 'Kafka in Cuba', [see FN 3] 58-59.

military combat. Harun was probably handed over to the US by the NDS, Rahim by the Pakistani intelligence agency, the ISI.

The Afghan government had, until very recently, shown little or no interest in its nationals in Guantanamo. Asked in early 2019, the Afghan ambassador to Washington told this author she had received no instructions about the two detainees still in Guantanamo,<sup>111</sup> while a spokesman for the Foreign Ministry thought those detained overseas were the responsibility of the Ministry of Justice and did not respond further to the author asking him to confirm that the Ministry of Justice liaised with foreign governments, rather than this being a consular duty.<sup>112</sup> Harun also wrote in April 2020:

*I do not know how much longer I can maintain my sanity here. Indeed, I am very sad that my own government has never sent a delegation to visit me, or even made contact. I tried writing to President Ashraf Ghani in 2017, but I never received any response. I wrote to the Afghanistan ambassador to Washington. It makes me wonder whether they care about me, or whether I am totally forgotten by the people in power.*<sup>113</sup>

This has changed in recent months, with the Afghan Ministry of Foreign Affairs submitting an amicus brief<sup>114</sup> in February 2021 supporting Harun's petition for habeas corpus and arguing he should be released.<sup>115</sup> As far as the author is aware this is the first time Kabul has supported an Afghan detainee in Guantanamo in his petition for habeas corpus and sought, in the words of the amicus brief which cites the Afghan constitution, to "protect the rights of the citizens of Afghanistan outside the country." When the author asked about the other Afghans who are still not home – Mohammad Rahim, who is also still in Guantanamo, and Bostan Karim and Abdul Zahir, at liberty in Oman, but still not able to travel to Afghanistan, the author found that officials did not know about them, but wanted information. In itself, this is a step forward.

The Taliban have displayed no interest in non-Taliban detainees at Guantanamo. When the movement had the bargaining chip of captured US serviceman Bowe Bergdahl in its hands, its only efforts were made to get Taliban members freed, negotiating a prisoner swap of five Taliban for Bergdahl and refusing to include at least one non-Taliban Afghan

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111 Email sent to author from Roya Rahmani, 26 March 2019.

112 The ambassador to Washington told this author she had received no instructions about the two detainees still in Guantanamo [see FN 112], while a spokesman for the Foreign Ministry thought those detained in Guantanamo and the UAE were the responsibility of the Ministry of Justice; he did not respond further to the author asking him to confirm that the Ministry of Justice liaised with foreign governments over Afghans detained overseas, rather than this being a consular or foreign ministry duty. WhatsApp message from Sebghatullah Ahmadi, 13 March 2019.

113 Asadullah Haroon (ISN 3148, Guantánamo Bay) 'Watching others go Free', 3 April 2020, text of an essay translated and supplied to the author by Harun's lawyers.

114 An *amicus curiae* or 'friend of the court' is a non-party to a case who assists the court by providing relevant information, expertise, or insight – what is known as an 'amicus brief'.

115 'Brief Of Amicus Curiae Ministry of Foreign Affairs of the Islamic Republic of Afghanistan in Support Of Petitioner Asadullah Haroon "Al Afghani" Gul (ISN 3148)', 9 February 2021, in Petition for Habeas Corpus, Gul v. Trump, No. 16-cv-01462V.

whose supporters had lobbied for his inclusion.<sup>116</sup> This was also further evidence that the eight men under study were innocent or insignificant players.<sup>117</sup>

In this section, the cases of the last two Afghans in Guantanamo will be looked at separately as there is fresh information on each of them.

The first photo in this section, of Harun Gul, is from his classified Guantanamo assessment. The other three photos were supplied by detainees' family members and include photos of Harun and Rahim in Guantanamo and one of Rahim teaching in an Afghan refugee camp in Pakistan (centre back in a pacol).

## 4.1 THE CASE AGAINST ASADULLAH HARUN GUL



**Asadullah Harun Gul** (known in Guantanamo as Harun al-Afghani) ISN 3148, 40, from Nangrahar, trader, accused of being a Hezb-e Islami commander and al-Qaeda courier. US says NDS detained him 4 February 2007 and handed him over (NDS denies this); rendered to Guantanamo 22 June 2007; habeas petition ongoing; **still in Guantanamo, 14 years in detention.**<sup>118</sup>

The US alleges Harun was a senior Hezb-e Islami commander who coordinated numerous, albeit unspecified attacks, and was a courier for al-Qaeda. The US has never provided any evidence of his association with al-Qaeda beyond strings of allegations sourced almost entirely to Harun himself or other detainees. His alleged torture makes any of his own testimony unsafe, as is testimony obtained from others in detention. In 2016, when the author looked into his case, what information then in the public realm suggested he was, at most, a group commander, which is a very 'small fish'. The practical importance of detaining a junior player, either for disrupting operations or getting intelligence, was questionable.<sup>119</sup>

It seems likely that Harun is probably only still in Guantanamo because he got legal counsel so late. He only saw a lawyer, Sullivan-Bevis from Reprieve, just four days before his first Periodic Review Board hearing on 16 June 2016. She thinks this made it too late for him to plead his case adequately. The board hinted that if he got his case together and was

<sup>116</sup> The non-Taleb was known to the movement, but was still rejected by its negotiators for inclusion on the Bergdahl exchange list. Ironically, the US continued to detain him for many years, partly on the grounds that he was a senior member of the Taleban.

<sup>117</sup> The source for a recent article claiming the Taleban had demanded the release of the two Afghans still in Guantanamo in negotiations in Doha was weak – an advocate of Guantanamo detainees' liberty, rather than a member of the Taleban. Moreover, the timing of this reported demand made little sense; the Taleban would have needed to make such a demand when negotiating with the US (i.e. pre-February 2020), not now when they are negotiating with the Afghan government, which does not hold the men. See: Murtaza Hussain, 'Sticking Point in Afghan Peace Talks: Two Forever Prisoners at Guantánamo', *The Intercept*, 11 January 2021, <https://theintercept.com/2021/01/11/afghanistan-guantanamo-prison-taliban-peace-talks/>.

<sup>118</sup> The author provided expert testimony in Harun Gul's habeas hearing in the summer of 2019.

<sup>119</sup> See Clark, 'Kafka in Cuba', [see FN 3], 55-57.

more ‘candid’ about his wrongdoing, it might look at things differently. It encouraged him to “continue to work with his family and representatives on his future plans and to be forthcoming with the Board in future reviews.”<sup>120</sup>

It is also only since Harun got a lawyer that more of his side of the story has been heard. Most of this has come through his petition for habeas corpus which was made on 15 July 2016.<sup>121</sup> His petition argued that the facts of the US government’s case were wrong: he was never a member of the Taleban or al-Qaeda, had not caused or attempted to cause harm to American personnel or property and had had “no involvement in any act of international terrorism attributed by the United States to al-Qaeda, the Taliban, or any other terrorist group.” The petition said he had been detained in Afghanistan while he was on a business trip. Sullivan-Bevis has said elsewhere that his is a case of mistaken identity:

*...he was seized by Afghan forces during a routine work trip to sell honey at a local market in Afghanistan. He was passed to the U.S. military and rendered to Guantánamo Bay in 2007. Haroon is the victim of mistaken identity; mistaken for a local fighter of the same name.”<sup>122</sup>*

Three years on and the habeas petition rumbles on, as Guantanamo habeas cases have all tended to do, bogged down in procedural issues and delays. There was one potentially significant event, however. On 26 September 2016, Harun’s faction, Hezb-e Islami, signed a peace deal with the Afghan government, with the backing of the US.<sup>123</sup> Even after this, the US government was still justifying Harun’s detention based partly on his membership of Hezb-e Islami, which it called “an associated force in the relevant timeframe.”<sup>124</sup> On 18 June 2018, Harun’s lawyers argued, as part of habeas proceedings, that for the “purposes of litigation,” he conceded membership of Hezb-e Islami, but asserted that, after the peace deal, this could no longer be a basis for his detention and he should be released.<sup>125</sup>

120 Harun Final Determination, Periodic Review Board, 14 July 2016, [http://www.prs.mil/Portals/60/Documents/ISN3148/160714\\_U\\_ISN3148\\_FINAL\\_DETERMINATION\\_PUBLIC.pdf](http://www.prs.mil/Portals/60/Documents/ISN3148/160714_U_ISN3148_FINAL_DETERMINATION_PUBLIC.pdf).

121 Habeas Petition Gul v. Obama, [see FN 110], 3.

122 Sullivan-Bevis said, “Afghan National Directorate of Security forces burst with guns into the rural guesthouse where he was staying outside Jalalabad and threw a bag over his head.” Amos Barshad, ‘Guantánamo, Forever’, The Marshall Project, 28 February 2018, <https://www.themarshallproject.org/2018/02/28/guantanamo-forever>.

123 See Borhan Osman, ‘Peace With Hekmatyar: What does it mean for battlefield and politics?’, Afghanistan Analysts Network, 29 September 2016, <https://www.afghanistan-analysts.org/peace-with-hekmatyar-what-does-it-mean-for-battlefield-and-politics/>.

124 Respondents’ Third Supplemental Factual Return, Gul v. Trump, No. 16-cv-01462 (APM) (D.C.C 3 February 2017), Redacted, 2. The basis in US law for detaining people in Guantanamo is the 2001 Authorization of the Use of Military Force which (still) gives the US president the authority to “use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001.” Following subsequent legal challenges, the courts ruled that members of al-Qaeda and of “associated forces” could be detained, but not someone who was (to quote the ruling in Bostan Karim’s habeas petition) an “independent... [a] freelancer.” Bostan v. Obama (habeas denied) [see FN 19], quoting Sulayman v. Obama, 729 F. Supp. 2d 26, 33 (D.D.C. 2010) (alteration in original)), 9.

125 Petitioner Request for Briefing Schedule, Gul v. Trump, No. 16-cv-01462 (APM) (D.C.C 18 June 2018), <https://www.documentcloud.org/documents/5018852-Petitioner-Request-for-Briefing-Schedule-06-18.html>, 1.



On 10 October 2018, the US government withdrew its reliance on Harun's membership of Hezb-e Islami "as a legal justification for his detention."<sup>126</sup> It did reserve the right, however, to cite his (alleged) "activities undertaken as part of HIG on behalf of or in support of al-Qaida."<sup>127</sup> It remains to be seen whether Harun's lawyers can successfully argue that the courts should treat this case more narrowly, by only looking at the allegation that he coordinated activities with al-Qaeda.<sup>128</sup>

A fresh development has come recently. On 5 February 2021 when Harun's lawyers filed the amicus brief from the Afghan government which argued that the 2016 peace agreement with Hezb-e Islami meant Harun should be freed: "Haroon should be released because all hostilities between Hezb-e-Islami Gulbuddin ("HIA") and the United States have ceased."<sup>129</sup> The brief contended that, in the wake of Afghanistan agreeing to release many Taliban prisoners as agreed in the deal between the United States and the Taliban, the US should also release Harun in recognition of Kabul's 2016 peace agreement with Hezb-e Islami. The government also argued that:

*...Haroon should be released, notwithstanding any loose ties HIA is alleged to have once had to Al Qaida. Haroon, a junior HIA member, could not have been a simultaneous member of HIA and Al Qaida, nor could he have been responsible for any loose liaison with Al-Qaida. HIA formally cut all ties with all extremist group pursuant to the 2016 peace agreement. Any information that Haroon may have once had about any previous liaisons would no longer be useful because Haroon has been in U.S. custody since 2007. In tacit recognition of this reality, the United States has already released all other members of HIA, including those with alleged ties to Al-Qaida. No legitimate claim can be made to treat Haroon differently.<sup>130</sup>*

126 Notice of Withdrawal of Reliance on Certain Exhibits in the Factual Return and on Certain Legal Justification for Detention, in the Writ of Habeas Corpus, Gul v. Trump, <https://www.documentcloud.org/documents/5018854-3148-HIG-Notice-FINAL-10-04-2018-as-Filed.html>, 1.

127 Notice of Withdrawal Gul v. Trump, [see FN 127], 1.

128 See more discussion of the legal ramifications of the US government's move in Harry Graver 'Government Shifts its Rationale for Holding Al-Afghani at Guantanamo', Lawfare, 24 October 2018, <https://www.lawfareblog.com/government-shifts-its-rationale-holding-al-afghani-guantanamo>.

129 'Amicus Brief in support of Haroon Gul', [see FN 116], 3. It was strange that the Afghan government abbreviated Hezb-e Islami Gulbuddin, the usual designation of the part of the faction that fought as insurgents, not to the usual 'HIG', but 'HIA'. That is the normal abbreviation for Hezb-e Islami Afghanistan, the part of the faction led by Abdul Hadi Arghandiwal and not by Gulbuddin Hekmatyar. HIA was registered as a political party in 2005 and has had members in many senior posts in government.

130 Amicus Brief in support of Haroon Gul', [see FN 116], 4.



That this move has come now appears to be a result of lobbying by Hezb-e Islami, Afghan media reporting of Harun's plight which has raised his profile, and Foreign Minister Hanif Atmar deciding the government should actively pursue the case.<sup>131</sup>

More information about Harun, himself, has come from his various Periodic Review Board reviews in March 2017, August 2018 and November 2020. Lawyer Sullivan-Bevis has described to the board "an educated man who speaks five languages despite the hardships of growing up in a Pakistani refugee camp."

*Haroon is inarguably one of the most politically informed and socially liberal men in Guantanamo today and I see no indication that his behavior or statements over the last decade contradict that assertion. If this review is intended to be a true evaluation of the threat he poses today, as opposed to a forum for confession to all of the allegations that the government believes to be true, I see no reason that this hearing would not result in a positive determination.*<sup>132</sup>

In both 2017 and 2018, despite the 2016 peace agreement, the board was still citing his membership of Hezb-e Islami as grounds for his continuing detention:

*The detainee's membership and leadership position in Hezb-e-Islami (HIG), extensive time spent fighting Coalition forces, and prior associations with al Qaida... Continued questions regarding the detainee's current mindset and ideology as it relates to HIG, leaving the board with concerns regarding his susceptibility to recruitment.*<sup>133</sup>

At the most recent hearing in September 2020, the board said Harun was less forthcoming about "his role within HIG and al Qaida."<sup>134</sup> It said his "lack of candor" made it difficult to "assess his current threat level" and encouraged him to address this issue ahead of his next file review. Sullivan-Bevis has said she believes the board wants contrition and an apology, but Harun refuses to admit to something he is not guilty of.<sup>135</sup>

Harun's lawyers have released articles and essays he has written in an apparent attempt to humanise him, given the US demonization of their client and its failure to give him any proper, public opportunity to defend himself. In these essays, Harun has written of his "mostly pointless life" in Guantanamo, where he says he wakes early, prays and then does a couple of hours of exercise – running in circles, 100 sit-ups, and attempts at 50 push-ups,

131 Information in this paragraph from interviews with two foreign ministry officials via WhatsApp, 25 February 2021.

132 Periodic Review Board Hearing Transcript, Harun al-Afghani, 28 March 2017 [see FN 95].

133 'Periodic Review Board Unclassified Summary of Final Determination [for Harun Gul]', 9 August 2018, [https://www.prs.mil/Portals/60/Documents/ISN3148/SubsequentFullReview1/20180809\\_U\\_ISN3148\\_FINAL\\_DETERMINATION\\_PUBLIC.pdf](https://www.prs.mil/Portals/60/Documents/ISN3148/SubsequentFullReview1/20180809_U_ISN3148_FINAL_DETERMINATION_PUBLIC.pdf).

134 Final Determination of Harun al-Afghani, ISN 3148, 18 September 2020, [https://www.prs.mil/Portals/60/Documents/ISN3148/Subsequent%20Hearing%20200918\\_UPR\\_ISN3148\\_SH2\\_FINAL\\_DETERMINATION\\_PRB.pdf](https://www.prs.mil/Portals/60/Documents/ISN3148/Subsequent%20Hearing%20200918_UPR_ISN3148_SH2_FINAL_DETERMINATION_PRB.pdf). A file review of Harun Gul's case was also made between August and November 2018 and again the Board deemed it necessary to continue his incarceration. See 'Periodic Review Board Guantanamo Detainee Profile', 9 August 2018, [https://www.prs.mil/Portals/60/Documents/ISN3148/FileReview3/20180809\\_U\\_ISN\\_3148\\_GOVERNMENTS\\_UNCLASSIFIED\\_SUMMARY\\_PUBLIC.pdf](https://www.prs.mil/Portals/60/Documents/ISN3148/FileReview3/20180809_U_ISN_3148_GOVERNMENTS_UNCLASSIFIED_SUMMARY_PUBLIC.pdf); Memorandum for the record Periodic Review Board File Review: Haroon al-Afghani (3148), 7 November 2018, [https://www.prs.mil/Portals/60/Documents/ISN3148/FileReview3/20181107\\_U\\_ISN\\_3148\\_MFR\\_PRB\\_PUBLIC.pdf](https://www.prs.mil/Portals/60/Documents/ISN3148/FileReview3/20181107_U_ISN_3148_MFR_PRB_PUBLIC.pdf).

135 See Barshad, 'Guantánamo, Forever' [see FN 123].

although this “is very painful because of the damage to my shoulder from the torture I went through.”<sup>136</sup> He said he memorises the Quran, writes home at least once a week, and reads, reads: “*Solitary*, the book by the African-American man who spent more than 40 years in isolation as punishment in a Louisiana prison,” Harun writes, “puts my own suffering in some perspective.”<sup>137</sup> There is now no one in Guantanamo he can speak to in Dari or Pashto. Translators in those languages are kept on, he says, but he is not allowed to see them (and the only other Afghan, Rahim, as a high-value detainee, is kept apart from ‘ordinary’ detainees). “I am in danger of losing my language,” he writes.<sup>138</sup>

Lawyer Sullivan-Bevis has also released information about his family, especially his one child, Mariam, who was born after he was incarcerated and is now a teenager. In artwork produced in Guantanamo, Sullivan-Bevis says he paints her repeatedly, copying a photo and “incorporate[ing] his daughter’s name into almost every piece.”<sup>139</sup> Sullivan-Bevis called Harun a “reflective man,” who “talks of little else beside his daughter – and the guilt he feels at having left her effectively fatherless.”<sup>140</sup>

### 4.3 THE CASE AGAINST MOHAMMED RAHIM



**Mohammed Rahim**, ISN 10029, 56, from Nangrahar, former used-car salesman, accused of being a personal facilitator and translator for Osama bin Laden. Detained by Pakistan February 2007; rendered to Afghanistan and tortured by the CIA; rendered to Guantanamo March 2008; classified as a high value detainee, so is held under particularly stringent security and extremely little information about him has been released; **still in Guantanamo, 14 years in detention.**

At the time of Rahim’s rendition to Guantanamo, the CIA announced it had captured one of Osama bin Laden’s “most trusted facilitators,” “a tough, seasoned jihadist” who had “bought chemicals for one attack on U.S. forces in Afghanistan,” a man who was “best known in counter-terror circles as a personal facilitator and translator” for bin Laden and

136 Haroon, ‘Watching others go Free’ [see FN 114].

137 The book he refers to is Albert Woodfox, *Solitary: Unbroken by Four Decades in Solitary Confinement*, New York, Black Fox, 2019.

138 Guantánamo ISN 3148 (aka Asadullah Haroon), ‘I AM A SERIAL NUMBER’, *Afghanistan Times*, 5 April 2020, <http://www.afghanistantimes.af/i-am-a-serial-number/>. On 4 April 2021, Rahim and the other high-value detainees were reported as having been moved to the same facility as ordinary detainees; their new conditions are not yet known. Carol Rosenberg ‘Military Closes Failing Facility at Guantánamo Bay to Consolidate Prisoners’, *New York Times*, <https://www.nytimes.com/2021/04/04/us/politics/guantanamo-bay-prisoners.html?action=click&module=Well&pgtype=Homepage&section=Politics>.

139 Kate Clark, ‘A Son of Nangrahar Paints the Sea: Afghan artwork from Guantanamo’, *Afghanistan Analysts Network*, 2 November 2017, <https://www.afghanistan-analysts.org/a-son-of-nangrahar-paints-the-sea-afghan-artwork-from-guantanamo/>.

140 From ‘Statement by Shelby Sullivan-Bennis, Private Counsel for Haroon ‘al-Afghani’ Gul, ISN 3148’, to the Periodic Review Board, on 2 March 2017, [https://www.prs.mil/Portals/60/Documents/ISN3148/FullReview1/20170328\\_U\\_ISN\\_3148\\_PRPCSTATEMENT\\_PUBLIC.pdf](https://www.prs.mil/Portals/60/Documents/ISN3148/FullReview1/20170328_U_ISN_3148_PRPCSTATEMENT_PUBLIC.pdf).

who had “helped prepare Tora Bora as a hideout for bin Laden in December 2001.”<sup>141</sup> It is difficult to square these claims about Rahim with what was revealed in the Senate’s 2012 report on the CIA’s use of torture. In this, his multiple days-long bouts of sleep deprivation, slapping and dietary manipulation are detailed. We learn also that the CIA’s interrogation of Rahim had “resulted in no disseminated intelligence report.”<sup>142</sup> The interrogation was such a failure it triggered an internal review. This found that part of the problem was that his interrogators had lacked knowledge about him and had had no incriminating evidence to present to him.<sup>143</sup> It looks feasible, then, that the only information the CIA had about Rahim were allegations passed on by the ISI, the Pakistani intelligence agency, which had originally detained him.

Rahim has said that, at Guantanamo, he described to FBI interrogators his work as a translator for senior members of al-Qaeda before 9/11 and that he helped some Arabs escape into Pakistan after the US invasion.<sup>144</sup> Beyond that, his and the US’s version of events diverge. The US says he had a central role in al-Qaeda, working as a financial advisor and arms dealer, that he transported “tens of thousands of dollars” for the 9/11 mastermind Khalid Sheikh Muhammad, travelled to Iran to help Gulbuddin Hekmatyar re-enter Afghanistan (strange because he is from a different mujahedin faction), coordinated “the movement of bin Laden’s wives and families” and ordered al Qaeda supporters to assassinate the US ambassador in Afghanistan.<sup>145</sup>

The sources for the pre-9/11 allegations are two other Guantanamo detainees, including Harun, also featured in this report, who has testified to having been tortured, and “other [unnamed] witnesses.” The sources of the post-9/11 allegations are based on hearsay, some of it testimony obtained under torture or duress, and unverified and unprocessed intelligence reports.

Rahim’s former lawyer, Carlos Warner, has castigated the way the US state can say whatever it likes about his client, but because Rahim is classed as a high value detainee, he is legally gagged from speaking about most aspects of his case because that would reveal ‘classified information’. He cannot publicly say why he thinks Rahim is innocent or even discuss the government’s allegations with him, and this, he says, impedes his ability even to conduct an investigation:

*Imagine trying to get to the bottom of a bar fight that resulted in a death. I can’t tell my client who was killed or why the Government says he’s involved. I can’t even tell him when the assault occurred or in what bar the assault took place. I certainly cannot interview or cross-examine his accusers. Moreover, I can’t visit the bar or talk to any other witness to the fight. I am also prohibited from speaking with the coroner or any of the investigating officers. Sometimes, the Government will say “we have important*

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141 Jonathan Karl, ‘CIA: We got Bin Laden Translator’, ABC News, 14 March 2008, <http://abcnews.go.com/Blotter/story?id=4453407&page=1>.

142 Senate ‘Study of CIA Detention’, [see FN 44], 167.

143 Senate ‘Study of CIA Detention’, [see FN 44], 167.

144 Factual Return, Rahim v. Obama, No. 1:09-cv-01385 (PLF), 6-7 (D.D.C. 7 January 2010), redacted, [copy with author], 8.

145 Factual Return, Rahim v. Obama, [see FN 145], 19-21.

*evidence about your client regarding our allegation, but we can't tell you what that evidence is." Sometimes, the Government just tells the judge without telling or notifying me at all. All of my communications with my client are observed and recorded. All of my legal correspondence is read and inspected by the Government. Guantanamo has been referred to as "Kafka-esque," and that reference is right. "Catch-22" also aptly describes the legal malaise that is currently called Guantanamo habeas corpus. Nothing in my legal training prepared me for this endeavor.<sup>146</sup>*



Rahim made a plea for habeas corpus but did not pursue it. Writing in 2014, Warner said that, after D.C. Circuit decisions ordering lower courts to presume government evidence was accurate, and that the courts had no power to order the release of a petitioner who had won his petition for habeas "there is not a viable legal process available to the detainees seeking release."<sup>147</sup> As a result, he said, "I

have focused my efforts on extrajudicial political and diplomatic solutions. This is the only avenue that makes sense given the current state of the law."

At Rahim's last hearing in November 2019, the Periodic Review Board determined that it remained necessary to detain him, claiming he posed a "continuing significant threat to the security of the United States."<sup>148</sup> Like most of those still at Guantanamo, he now boycotts proceedings. Inmates believe it is pointless for them to attend, another detainee's lawyer said, as the board would never decide to transfer them.<sup>149</sup> In Rahim's file review on 9 August 2018, the board repeated what it had said previously:

*After reviewing relevant new information related to the detainee as well as information considered during the prior review, the Board, by consensus, determined that no significant question is raised as to whether the detainee's continued detention is warranted.<sup>150</sup>*

AAN asked Rahim's then lawyer, Carlos Warner, what "relevant new information" there was. "We have a lot to say about his case, his condition and his prospects," he said, and referring to Rahim's 'high-value status' which blocks him from revealing classified information said: "Unfortunately, we are restrained from providing much information."<sup>151</sup>

146 Warner 'Navigating', [see FN 104], 37.

147 Warner, 'Navigating', [see FN 104], 73-74. For details of the D.C. Circuit court's decisions, see Warner, 73, and Clark, 'Kafka in Cuba', [see FN 3], 16-17, 19.

148 Unclassified Summary of Final Determination of Muhammad Rahim, ISN 10029, 21 November 2019, [https://www.prs.mil/Portals/60/Documents/ISN10029/SubsequentHearing1/191121\\_UPR\\_ISN10029\\_SH1\\_FINAL\\_DETERMINATION\\_PRB.pdf?ver=2019-12-20-095245-507](https://www.prs.mil/Portals/60/Documents/ISN10029/SubsequentHearing1/191121_UPR_ISN10029_SH1_FINAL_DETERMINATION_PRB.pdf?ver=2019-12-20-095245-507).

149 Author interview Katie Taylor, London, 2 December 2019.

150 'Guantanamo Detainee Profile', Haroon al-Afghani, 9 August 2018 [see FN 135].

151 Email from Carlos Warnerto author, 11 January 2019.

Warner emailed the author some letters, which had been written by Rahim to him, saying, “His words are stronger than ours.”<sup>152</sup> Warner had released earlier letters, also stamped ‘unclassified’, to journalists and had apparently revealed a man with a quirky sense of humour despite his lengthy incarceration, who was up-to-date with American popular culture and politics.<sup>153</sup> This is the sort of information which the author would normally hesitate to reference, but in a context where the government can say what it pleases about Rahim and he and his lawyer are not able – they say – to adequately answer allegations because of his high value status, it seems reasonable to publish these details. Warner’s tactic is a deliberate attempt to show his client’s personality to the American public using one of the few avenues open to him.

The later letters still mix a jokey outlook with more serious moments. Rahim advises his lawyer affectionately on his love life: Warner’s girlfriend is wrong, he says, Warner is only 45 per cent grey-haired and looks “distinguished, like [George] Clooney.” (17 March 2017).<sup>154</sup> He refers to icons of American popular culture – basketball player LeBron James, former athlete and transgender woman Caitlyn Jenner and TV show South Park (15 March 2017) – and also speaks about the censorship he lives under, how bizarrely the only ‘western news’ they get at the prison camp is the Russian state-controlled RT channel. “Funny how RT likes Trump and doesn’t talk about Guantanamo any more.... This is all fake news, propaganda.” (15 March 2017). In a letter not published before, from 27 April 2016, he also reveals he is banned from watching Netflix: “I understand they are afraid of my words,” he writes, “but why do they restrict what I see?” Rahim admits he cannot “watch the news anymore. Every story is more scary – and I am here. I am scared for everybody. I chose to turn it off.” (15 March 2017).

He acknowledges his legal situation is bad, but says, “the camp commander is a good man, who treats us humanly... I know many Americans are good.” (15 March 2017). He also criticises the Periodic Review Board system – saying it just wants contrition. He believes the real reason he has been placed in the ‘high value’ category is not because of anything he did, but because of what was done to him:

*How come they make me admit to things in order to get out? I am an innocent man.  
Parole comes after a trial, not before. They are holding me because I was tortured.  
Please give me a fair hearing, with my lawyer. (27 April 2016)*

Rahim contends that the US continues to detain him because of the crimes it committed against him – and not the other way round. The numbers give some credence to this. All the 17 detainees classified as high value were rendered to Guantanamo by the CIA and almost all – 14 – are documented as having been tortured during interrogation.<sup>155</sup>

On 15 August 2018, Rahim wrote to Warner about what a doctor told him were suspected growths in his lungs, liver and kidney.

<sup>152</sup> Email from Warner, 11 January 2019 [see FN 152].

<sup>153</sup> Jenifer Fenton, “‘Detained but ready to mingle’: Gitmo’s lonely heart on Tinder and Trump’, al-Jazeera, 11 September 2015, <http://america.aljazeera.com/articles/2015/9/11/gitmo-prisoner-detained-but-ready-to-mingle.html>.

<sup>154</sup> In his email to the author on 11 January 2019 [see FN 152], Warner attached Rahim’s letters.

<sup>155</sup> Senate ‘Study of CIA Detention’, [see FN 44].



*“I cannot have a biopsy or surgery here in Camp 7 [where ‘high value detainees are held’]. I am prepared for death, but do not want to die. I want to live. Please help me make sure I’m getting the cancer treatment I need. Please find me a doctor in the US.”*

The latest information is that he has yet to have either a biopsy on the growths, nor an MRI scan, although this was reportedly offered, but then rescinded.<sup>156</sup>

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<sup>156</sup> Aina Khan, ‘Stuck in Guantanamo for 12 years, Afghan inmate’s health at risk’, al-Jazeera, 19 December 2019, <https://www.aljazeera.com/news/2020/12/19/afghan-detainee-at-guantanamo-prison>.

## CHAPTER 5

# CONCLUSION: WHAT NEXT FOR THE DETAINEES WITH BIDEN AS PRESIDENT



Sehar Bibi and Ibrahim with photos of their son, Haroon Gul, in their home in Shamshatu refugee camp Pakistan.

Photo: Aftab Khan, 21 January 2021

**AS THE NEW** Biden administration ponders what to do with Guantanamo, it will find that little has changed from when the president was vice-president. Donald Trump never explicitly ruled out anyone leaving Guantanamo,<sup>157</sup> but the political drive to reduce numbers ended abruptly when he became president. In the last four years, the Periodic Review Board has judged just one person safe to be transferred, a Yemeni man in the final weeks of the Trump presidency.<sup>158</sup> He has joined the four men cleared for transfer in 2010 and one who was cleared in 2016 who remained in Guantanamo throughout Trump's term despite the US government having stated they were no longer a threat to US security. Just one detainee has left Guantanamo, the Saudi Ahmed al-Darbi who was transferred after a plea agreement allowing him to serve a jail sentence in his home country.<sup>159</sup> It could be argued that the near cessation to the Periodic Review Board approving transfers is because the more 'straightforward' cases had been dealt with. If that was the case, however, Harun should also have fallen into the category of 'low-hanging fruit'; in earlier times, if he had had the support of lawyers, he should have found a more sympathetic reception from the panel. Transferring anyone would have been difficult anyway because of Trump's closure of the Office of the Special Envoy for Guantanamo Closure. For the last four years, no-one has been tasked with negotiating diplomatic agreements with nations to receive detainees cleared for transfer. These are all reasons why Biden will find just one detainee fewer than when he was vice-president.

President Biden also faces a virtually unchanged political and legal landscape. Obama's Executive Order (13492) ordering the closure of the camp signed when he took office on 22 January 2009,<sup>160</sup> was replaced by an executive order signed by Trump when he took office on 30 January 2018, 'Protecting America Through Lawful Detention of Terrorists'(13823),

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157 As Harun Gul's then lawyer, Sullivan-Bevis commented in Barshad, 'Guantánamo, Forever' [see FN 123].

158 Announcing that Said Salih Said Nashi could be transferred after 14 years in detention, the board said it "considered his low level of training and lack of leadership position in Al Qaeda or the Taliban ... candor regarding his activities in Afghanistan and with Al Qaeda, and ... efforts to improve himself while in detention, to include taking numerous courses at Guantánamo." See his 'Periodic Review Board Unclassified Summary of Final Determination', [https://www.prs.mil/Portals/60/Documents/ISN841/SubsequentHearing1/201029\\_UPR\\_ISN841\\_SH1\\_FINAL\\_DETERMINATION\\_PRB.pdf](https://www.prs.mil/Portals/60/Documents/ISN841/SubsequentHearing1/201029_UPR_ISN841_SH1_FINAL_DETERMINATION_PRB.pdf).

159 Al-Darbi's repatriation on 2 May 2019 was part of a plea agreement whereby he pleaded guilty to charges relating to an attack on a French oil tanker in 2002 and would serve out the balance of a 13 year prison sentence in his home country. See 'Detainee Transfer Announced', US Department of Defence press release, 2 May 2018, <https://dod.defense.gov/News/News-Releases/News-Release-View/Article/1510878/detainee-transfer-announced/>.

160 'Review and Disposition of Individuals Detained at the Guantánamo Bay Naval Base and Closure of Detention Facilities' and 'Executive Order 13823 of January 30, 2018, <https://fas.org/irp/offdocs/eo/eo-13492.htm>.

which mandated the continuation of detention operations at Guantanamo.<sup>161</sup> Assuming Biden rescinds this, Congress, as holder of the purse strings, could still impede closing the camp and transferring detainees out. Congress has been, as a group of senior lawyers and anti-torture campaigners recently wrote on the Just Security website, “supremely unhelpful in facilitating closing Guantanamo”:

*Current law—which is likely to remain at least through the end of Fiscal Year 2021—restricts detainee transfers to the United States for any purpose, including for medical treatment or criminal prosecution.... And the Secretary of Defense must certify a set of conditions – some of which have at times proven onerous – prior to other foreign transfers (including congressional notification 30 days in advance).*<sup>162</sup>

Biden does have a Congress with a Democratic majority, albeit the slimmest possible in the Senate. However, the outrage in late January following the Department of Defence’s announcement that the detainees would be vaccinated, and the subsequent announcement that they would not be (seemingly in response to the outrage) was a timely reminder of how politicised any policy around Guantanamo still is, and that Biden may still face battles there.<sup>163</sup>

During Obama’s time in office, the administration chose to send Afghans cleared for transfer to third countries. If this was offered to the two Afghans still in Guantanamo, it would seem a perilous path to take, given what happened to their compatriots in 2016 and 2017 and especially how those sent to the UAE found the promises of resettlement, family reunion and liberty were reneged on. However, given the changes in US policy towards Afghanistan since 2017, the prospect of again *repatriating* Afghans should seem feasible. Harun’s departure to Afghanistan could anyway, always, have been covered by the 2016 Hezb-e Islami agreement made by the Kabul government and strongly endorsed by the US. The case for repatriating both men is now even stronger. After the US signed its 29 February 2020 agreement with the Taleban,<sup>164</sup> it pressured the Afghan government to release 5,000 Taleban prisoners – part of its agreement which the government had no role in. Few details of these prisoners were ever given, in terms of how many were convicted, on trial or in pre-

161 ‘Protecting America Through Lawful Detention of Terrorists, Executive Order (13823)’, 30 January 2018, <https://fas.org/irp/offdocs/eo/eo-13823.pdf>.

162 See Shamsi ‘Toward a New Approach [see FN 2]; the text of the law can be seen at: ‘S.4049 - National Defense Authorization Act for Fiscal Year 2021’, passed by US Congress, 15 December 2020, <https://www.govtrack.us/congress/bills/116/hr6395/text>.

163 Carol Rosenberg ‘Pentagon Halts Plan to Vaccinate the 40 Prisoners at Guantánamo Bay’, *The New York Times*, 30 January 2021, <https://www.nytimes.com/2021/01/30/us/politics/coronavirus-vaccine-guantanamo.html>.

164 For the text of the deal, see ‘Agreement for Bringing Peace to Afghanistan between the Islamic Emirate of Afghanistan which is not recognized by the United States as a state and is known as the Taliban and the United States of America’, 29 February 2020, <https://www.afghanistan-analysts.org/en/resources/peace-process/agreement-for-bringing-peace-to-afghanistan-between-the-islamic-emirate-of-afghanistan-which-is-not-recognized-by-the-united-states-as-a-state-and-is-known-as-the-taliban-and-the-united-states-of-amer/>. For a contemporary analysis, see Thomas Ruttig, ‘From Doha to Peace? Obstacles rising in the way of intra-Afghan talks’, Afghanistan Analysts Network 3 March 2020, <https://www.afghanistan-analysts.org/en/reports/war-and-peace/from-doha-to-peace-obstacles-rising-in-the-way-of-intra-afghan-talks/>.



trial detention etc and for what crimes.<sup>165</sup> The exception was 400 men the government was particularly worried about releasing, whom it said had mostly been convicted of particularly serious crimes, including murder, kidnap and narcotics trafficking.<sup>166</sup> Asserting now that just two men held in Guantanamo, who have never been convicted of a crime and whom the US does not want to put on trial, are too dangerous to release would be outlandish. Moreover, now that Biden has announced US troops are all to withdraw, there is no longer any reason why it should continue to hold Haroon and Rahim.<sup>167</sup>

Yet even though it might be logical to free the two men, there has to be a mechanism for doing so. In the current set-up, Harun looks to have the better prospects, once some sort of new Office of the Special Envoy for Guantanamo Closure is set up and if the Periodic Review Board ceases to insist he expresses remorse – or he chooses to express remorse – for something he says he did not do. That the Afghan government is now publicly supporting his release is significant. Rahim is in a much trickier position, given the claims against him and his categorisation as high value. The Periodic Review Board has performed somersaults before, however, for example, moving from an insistence that Abdul Zahir was a continuing risk to US security to saying he had “probably [been] misidentified” and had had only “a limited role in Taliban structure and activities,”<sup>168</sup> and ruling, after holding Wali Mohammad for 14 years, that his “business connections and associations with al Qaida and the Taliban pre-date 9/11 and appear to have ended.”<sup>169</sup> The board could do so again.

Congressional blocks on transfers could still be a problem, but Biden does have an option to bypass them, as has been proposed by those writing in *Just Security*:

*... the executive branch can expedite transfers by not opposing detainees' habeas cases. There is no requirement in law or in practice that the government contest detainees' habeas petitions. [T]he foreign transfer certification requirements don't apply when a detainee's release or transfer is pursuant to the order of a U.S. court or competent tribunal that has jurisdiction over the case.*<sup>170</sup>

165 Confirmation that no further details about the bulk of the 5,000 prisoners were ever released in email with Shaharзад Akbar, Chair of the Afghanistan Independent Human Rights Commission to author, 17 February 2021.

166 *The New York Times* quoted a government document saying “156 of the 400 prisoners had been sentenced to death, 105 were convicted of homicide, 34 of kidnapping and 51 of narcotics trafficking. A handful were convicted of rape. But it also said that 44 had been ‘blacklisted’ by the Afghan government and its partners. The crimes of four prisoners were listed as ‘unidentifiable.’” See Mujib Mashal and Fatima Faizi, ‘Afghanistan to Release Last Taliban Prisoners, Removing Final Hurdle to Talks’, *The New York Times*, 9 August 2020, <https://www.nytimes.com/2020/08/09/world/asia/afghanistan-taliban-prisoners-peace-talks.html>.

167 Transcript of speech by President Biden released by the White House, ‘Remarks by President Biden on the Way Forward in Afghanistan’, 14 April 2021, <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/04/14/remarks-by-president-biden-on-the-way-forward-in-afghanistan/>.

168 Abdul Sahir [sic] Final Determination, Periodic Review Board, 11 July 2015, [https://www.prs.mil/Portals/60/Documents/ISN753/160711\\_U\\_ISN753\\_FINAL\\_DETERMINATION\\_PUBLIC.pdf](https://www.prs.mil/Portals/60/Documents/ISN753/160711_U_ISN753_FINAL_DETERMINATION_PUBLIC.pdf).

169 Wali Mohammad Final Determination, Periodic Review Board, 26 September 2016, [https://www.prs.mil/Portals/60/Documents/ISN560/160927\\_U\\_FOUO\\_ISN560\\_FINAL%20DETERMINATION\\_PUBLIC\\_v1.pdf](https://www.prs.mil/Portals/60/Documents/ISN560/160927_U_FOUO_ISN560_FINAL%20DETERMINATION_PUBLIC_v1.pdf).

170 Shamsi et al ‘Toward a New Approach’, [See FN 2].



Not opposing habeas writs, however, would mean – if Radiolab’s reporting of the Abdul Latif Nasser case outlined in chapter 3 of this report is correct – the Biden administration accepting that holding detainees outside the law is wrong. Former Special Envoy for Guantanamo Closure Dan Fried has called this the ‘original sin’ of Guantanamo and said it is what has made it so difficult to deal with the detention camp:

*Guantanamo was neither grounded in the laws of war nor in criminal justice. And once you have established a system outside of either international or US law, which this was, then it’s very hard to reintegrate it back into a legal framework.*<sup>171</sup>

Obama’s failure to close Guantanamo was not only due to politics in Congress. The Periodic Review Board system set up by his administration also demonstrated how it still clung to the US state’s right, or need, as it saw it, to continue to deprive individuals of their liberty outside a system of law. Ultimately, Obama managed only to fine-tune

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**In the absence of any proper scrutiny of allegations and evidence, there has been nothing to reduce these imagined monsters down to size or create a space to deal with them rationally.**

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Bush’s system at Guantanamo, not overturn it, to minimise the problem by reducing the number of detainees held there, but not resolve it. If Biden’s “goal and... intention” really is to close Guantanamo, he will have to tackle this ‘original sin’ head on.

For the two last Afghans still in Guantanamo, the obstacles to their getting out have lain not only in the system and the mechanisms which make transfers so difficult. It is also political. Until very recently at least, no one in power, whether Afghan or American, has cared much about the detainees. There has been little or

no capital to be gained by politicians advocating their rights, nor have they mobilised the sort of popular sentiment needed to push policy changes. On the contrary, the men have been of little interest to anyone except their families and a handful of mainly international human rights campaigners and lawyers. That lack of concern extends to the Taleban and until recently, the author would have said it also characterised the Afghan government’s attitude. It had previously barely responded to requests for information from this author and shown no desire to work to secure the freedom of its nationals. It has now supplied an amicus brief in support of Harun’s petition for habeas corpus. Such support by the governments of other nationals held in Guantanamo has helped drive their release and repatriation. If pursued with resolve and determination, Afghan government actions could tip the scales in favour of Harun and Rahim.

A fundamental obstacle for these men is that they have been castigated as the ‘worst of the worst’. The phrase, used by US Secretary of Defence Donald Rumsfeld in early 2002 and repeated endlessly, created monsters in the public imagination of all the detention camp’s

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171 Radiolab, ‘The Other Latif’, [see FN 105].

inmates. When Obama took office, and Guantanamo became a political football, the gap between the actual and the perceived – or portrayed – threat posed by the detainees widened yet further; Republican members of Congress who had been unconcerned about transfers suddenly strived to block them after Obama took office. In the absence of any proper scrutiny of allegations and evidence, there has been nothing to reduce these imagined monsters down to size or create a space to deal with them rationally. After scrutinising the files of all eight Afghans featured in this report in-depth, nothing suggested they were especially dangerous individuals. Yet, this is how the US state has treated each one, by default, and without regard for facts or evidence.

Compare this to the situation in Afghanistan where tens of thousands of people have been captured as alleged insurgents over the years. The majority have been processed as criminal suspects through the judicial system, with courts ruling on whether a person was guilty of a particular crime and then either sentencing or acquitting them.<sup>172</sup> The two Afghans still in Guantanamo – like the two in Oman – are hardly more dangerous. They were just unlucky to have been rendered to Guantanamo.

The record of the most recent Afghans released from Guantanamo is also telling. Individuals were broken by their Kafkaesque experiences – locked up for years far from home, most probably tortured, and denied any meaningful opportunity to defend themselves against bewildering allegations. In Afghanistan, where the insurgency is fully supplied with both young recruits and veteran military commanders, the *actual* risk of repatriating the two Afghan men still in Guantanamo or the two in Oman diminishes to the imperceptible.

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172 Those detained by US forces were taken to Bagram where they were held in detention without charge until March 2013, when the Afghan government re-gained full control of the site and the Afghan detainees. Other Afghan security detainees picked up by either Afghan or other foreign forces were always transferred to NDS and processed as criminals using the normal Afghan judicial system, i.e. charged and tried, or released if there was insufficient evidence. The Afghan state only introduced detention without charge (internment) for a very limited time and under US pressure. Clark 'Thematic Dossier: Detentions' [see FN 31].

## AUTHOR

Kate Clark is co-director and senior analyst at the Afghanistan Analysts Network where she has worked since 2010. She has written extensively on the war, including on civilian casualties, detention and torture and local armed groups, and also on Afghanistan's political economy and natural history. Kate was the BBC Kabul correspondent from 1999, when she was the only western reporter based in the country, to 2002. She has also lived, studied and worked in the Middle East. She has made radio and television documentaries about Pakistan, Iraq and Afghanistan where she covered topics such as the roots of the insurgency, weapons smuggling, the opium industry and corruption. Kate has an MA in Middle Eastern Politics from Exeter University in the UK.

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## COVER PHOTO

US Air Force troops strip-search and secure an Afghan detainee in Mazar-e Sharif for transport to Camp Rhino in Kandahar. Photo: AFP/Cecilio M. Ricardo JR (undated, but received 27 December 2001)

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