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Bagram: Still a Black Hole for Foreign Prisoners

by Andy Worthington
July 19, 2012

In March 2009, three foreign prisoners seized in other countries and rendered to the main U.S. prison in Afghanistan, at Bagram airbase, where they had been held for up to seven years, [secured a legal victory](#) in the District Court in Washington, D.C., when Judge John D. Bates ruled that they had habeas corpus rights. In other words, they had the right to challenge the basis of their imprisonment under the “Great Writ” that prevents arbitrary detention.

The men — among dozens of foreigners held in Afghanistan — secured their legal victory because Judge Bates recognized that their circumstances were essentially the same as the prisoners at Guantánamo, who had been granted habeas corpus rights by the Supreme Court in June 2008.

Unfortunately, the Obama administration appealed Judge Bates’s careful and logical ruling, and the judges of D.C. Circuit Court agreed, [overturning the ruling](#) in May 2010, and returning the three men to their legal black hole.

In April 2011, the [Associated Press](#) reported that the three men — Redha al-Najar, a Tunisian seized in Karachi, Pakistan, in May 2002; Amin al-Bakri, a Yemeni gemstone dealer seized in Bangkok, Thailand, in late 2002; and Fadi al-Maqaleh, a Yemeni seized in 2004 and sent to Abu Ghraib before Bagram — had all been cleared for release by review boards at Bagram, or, as it is now known, the Parwan Detention Facility.

That same month, Daphne Eviatar of Human Rights First [visited Parwan and discovered](#) that 41 foreign prisoners were still being held, even though “more than a dozen” had been recommended for release. She added that the foreign prisoners were “from Pakistan, Tunisia, Kuwait, Yemen, and even Germany,” but could not find any explanation for why, even when cleared, they were still being held. She noted that “one soldier complained about how frustrating it is to be unable to tell innocent prisoners when they’ll be going home, or what’s causing the holdup,” and that U.S. officials in Afghanistan had been able to state only that the problem was “somewhere in Washington.”

One story told to Eviatar concerned [Hamidullah Khan](#), a Pakistani who was just 16 years old when he was seized in the summer of 2008. When he was allowed to communicate with his family in 2010, he explained that his case had been reviewed, and he had been recommended for release, but he was still being held. Khan was one of seven Pakistanis who, in 2010, began the process of [suing the Pakistani government](#) “either for its alleged role in their capture or for failing to secure their release.” Two others — [Yunus Rahmatullah](#) and [Amanatullah Ali](#) — had been seized in Iraq by British Special Forces in 2004 and subsequently had been handed over to U.S. forces who rendered them to Bagram.

The case of Yunus Rahmatullah — also cleared for release by a review board at Bagram in 2010, but still held — has been used to exert pressure on the United States by lawyers in the UK, who succeeded in [convincing the Court of Appeal](#) to grant him a writ of habeas corpus last December, and to order the British government to take custody of him, even though, in February this year, [the court conceded](#) that it had no power to order his release. As the senior judge, Lord Neuberger, the Master of the Rolls, explained, “When the U.K. defense forces handed over [Rahmatullah] to the U.S. authorities in questionable circumstances in 2004 they most unfortunately appear to have sold the pass with regard to their ability to protect him in the future.”

The case is [now before Britain’s Supreme Court](#), and it undoubtedly continues to send ripples of dissatisfaction across the Atlantic, even though, as with all the prisoners mentioned in this article, there appears to be no particular trigger to force the release of any of them.

As for Redha al-Najar, Amin al-Bakri, and Fadi al-Maqaleh, nothing more was heard about them — or the other foreign prisoners still held at Bagram — until January this year. At that time the [Washington Post](#) noted that, with discussions taking place regarding the transfer of Parwan to Afghan control as part of the planned withdrawal of U.S. forces from Afghanistan, U.S. officials had begun to think about what to do with the foreign prisoners — now numbering “close to 50,” including “up to two dozen Arabs of various nationalities, according to administration and foreign officials.”

U.S. officials told the *Post* that they believed the Afghan authorities would be “unlikely to have any interest in either continuing to hold the foreigners or in putting them on trial.” They [failed to mention](#) that some of them had been cleared for release and that letting them go should not, therefore, pose a problem.

The only mention of any specific obstruction came in an analysis of the particular problems facing Yemeni prisoners and “complicating their possible repatriation.” That “complication” stems from [a moratorium on releasing any Yemenis](#) from U.S. custody, “because of concerns about the security situation in Yemen,” which Barack Obama issued in response to the failed airline bomb plot in December 2009 by Umar Farouk Abdulmutallab, a Nigerian man recruited in Yemen. That moratorium stands to this day.

In March, [a memorandum of understanding](#) between the United States and Afghanistan formally agreed on the transfer of prisoners at Bagram to Afghan control by September, although foreign prisoners were not included.

Four months later, it appears that all of the foreign prisoners at Bagram are still being held. This past Monday lawyers for Redha al-Najar, Amin al-Bakri, and Fadi al-Maqaleh returned to the U.S. courts to try to secure their release, arguing that “they were brought to Bagram for the purpose of keeping them out of the courts,” as Tina Foster, the executive director of the [International Justice Network](#), and one of the lawyers for the men, explained to Aram Roston of [Newsweek](#).

Ramzi Kassem, an associate law professor at City University of New York, who also represents the Bagram prisoners, made a similar claim to the [Miami Herald](#), telling Carol Rosenberg, “Our clients are being kept at Bagram to circumvent [a court’s] jurisdiction.”

In court, the government maintained its position, with Justice Department attorney Jean Lin arguing that, although “the United States does not intend to hold anyone longer than necessary,” the administration also wants to “prevent enemy fighters from returning to the battlefield.” Lin also said that “nothing has changed to alter” the D.C. Circuit Court’s ruling in May 2010.

Judge Bates clearly struggled with this, asking, during the two-hour hearing, “How can I possibly make a decision that goes in a different direction from the D.C. Circuit?” However, as the [Miami Herald](#) noted, he also took on board the defense attorneys’ complaints, suggesting that “there might be evidence that U.S. officials had shipped prisoners to Bagram specifically to avoid judicial oversight,” and he “pressed the Justice Department hard on whether changing circumstances, including a slowdown in fighting and the coming withdrawal of most U.S. forces from Afghanistan, might warrant a second look.”

In seeking further information, Roston spoke by phone to Amin al-Bakri’s brother Khaled, who runs a furniture shop in Medina, Saudi Arabia. “We don’t know why he is being held,” Khaled al-Bakri said, noting that his brother, who has three children, “wasn’t a religious fanatic pursuing jihad but a businessman.” He acknowledged that in the 1980s, his brother had traveled to Afghanistan to fight the Soviet Union, but he also stated that “his Islam is very moderate.” He added, “My brother is multilingual, he’s open-minded to others, and he’s tolerant. We just don’t think he was involved” in any wrongdoing.

That, of course, makes sense, given that al-Bakri has been cleared for release, so the question that remains is whether continuing to hold foreigners in Bagram who have been cleared for release has to do solely with overwrought security concerns, or is a sign of something more

sinister. Lt. Col. Todd Breasseale, a Pentagon spokesman, told Roston that “Bagram happens to be a legitimate and established military detention facility. That’s what works for now.” He added that America’s “short-term goal” was “to maintain custody of third-country nationals,” even while the Afghan government takes over control of the Afghan prisoners.

Responding to a question about what Roston described as “one of the central conundrums of the ongoing fight against Al-Qaeda — where to put potential detainees,” Colonel Breasseale acknowledged that “[sending] a detainee to Guantánamo Bay is not an option” being considered by the Obama administration. The result, as Andrea Prasow of Human Rights Watch explained, is, “As the U.S. prepares to withdraw its troops and wind down the war in Afghanistan, what possible rationale is there for continuing to detain these people there unless its purpose is that it is supposed to be the U.S. global jail?”

That is a very good question, and one that, despite years of bluster in and out of courtrooms, the Obama administration seems unwilling to answer.