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CLOSE GUANTÁNAMO, FREE THE AFGHANS

by Andy Worthington

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In the coverage of the ongoing, prisonwide hunger strike at Guantánamo, which is now in its fourth month, there has been widespread recognition that it is unacceptable to indefinitely detain the 86 prisoners (out of 166 in total) who were cleared for release more than three years ago by the president's own interagency task force. These men are still held because of presidential inertia, congressional obstruction, and the failures of some branches of the U.S. judiciary to uphold justice.

Fifty-six of the 86 men are Yemenis, and, in some quarters, it has also been accepted that the ban Barack Obama imposed on releasing cleared Yemenis from Guantánamo, following a failed airline bomb plot on Christmas Day 2009 that was hatched in Yemen, constitutes collective punishment. It is also fundamentally unacceptable because it means that prisoners whose release was recommended by the president's own task force continue to be detained not because of what they have done, but because of what they might do in future.

Of the 30 others, however, there has been little or no discussion beyond a recognition that one of them, Shaker Aamer, a British resident with a British wife and four British children, could and should be released immediately.

Around a dozen of these 30 men cannot be repatriated, as they are from countries to which it is not safe to return — China, for example, in the case of the three remaining Uighur prisoners (Muslims from Xinjiang province who face government persecution), and war-torn Syria, which has four cleared prisoners.

Others, however, should also be released as soon as possible, given that all that prevents their release is politically motivated obstruction. Congress imposed restrictions in the National Defense Authorization Acts of 2012 and 2013, preventing the release of prisoners to countries where even a single released prisoner is alleged to have “returned to the battlefield.” It also insisted that, in other cases, the secretary of Defense would have to certify that any prisoner the government intended to release would not be able to engage in anti-American activities — a requirement that appears to be impossible to fulfill.

To overcome those obstacles, however, a waiver was included in the legislation, which allows the president and the secretary of Defense to bypass Congress if they regard it as being “in the national security interests of the United States.”

One group of prisoners who might benefit from the waiver are the remaining Afghan prisoners, whose cases I wrote about last year — here and here — when discussions were taking place regarding the possible release of 5 of the remaining 17 prisoners as part of tentative negotiations between the United States and the Taliban.

Those negotiations fell through, but last month David Ignatius revisited the story for an insightful article in the Washington Post entitled, “Keeping Taliban fighters in Guantánamo hurts U.S. interests,” in which he tackled some of the key problems with the “war on terror” that led to the mess at Guantánamo that Obama has, to date, failed to resolve.

Ignatius began boldly, proclaiming that the “failed effort” to release Afghan prisoners from Guantánamo was an example of how the U.S. government “can work at cross-purposes in dealing with terrorism.” He added, “It shows how an incorrect analysis — that the Taliban and al-Qaeda pose the same threat — can lead to a cascade of bad policy that has undermined U.S. interests.”

The refusal to distinguish between the terrorists of al-Qaeda and the government of Afghanistan at the time of the U.S.-led invasion in October 2001 was a disaster from the start, leading to George W. Bush’s chronically unwise decision to label all the men as “enemy combatants,” and to refuse to grant them any rights at all, either as prisoners or as human beings. More recently, as Ignatius noted, it “complicated the release of five Taliban prisoners from Gitmo during reconciliation talks in 2011; it confounded the Afghan government’s efforts to seek release of eight other Afghans; and it helped fuel a hunger strike described by one prisoner in a recent *New York Times* op-ed headlined ‘Gitmo Is Killing Me.’”

Ignatius proceeded to explain that the decision by some supporters of Guantánamo to continue to regard all the prisoners at Guantánamo as terrorists who should be detained indefinitely is not only wrong, but, in the case of the Afghans, has given the Taliban “a propaganda advantage,” despite CIA assessments that the release of the Afghan prisoners “wouldn’t pose a high security risk.”

Ignatius traces the confusion back to the earliest days of the “war on terror,” through the words of George Tenet, the director of the CIA at the time of the Afghan invasion. He quotes Bob

Woodward in his book *Bush at War*: “We have to deny al-Qaeda sanctuary, Tenet said. Tell the Taliban we’re finished with them. The Taliban and al-Qaeda were really the same.”

Ignatius continues by explaining that Tenet said he “didn’t view the two as ‘equivalent’ threats,” but adds, “that logic has prevailed ever since, despite skepticism from some CIA analysts as they examined the individual cases.”

As the United States began looking at the possibility of releasing Taliban prisoners, after Obama took office in 2009, his special representative for Afghanistan, Richard Holbrooke, began looking for openings for a political settlement, aware that the Pentagon, backed by Republicans, “opposed any prisoner release that would put Taliban fighters back on the battlefield.”

In April 2009, as Ignatius put it, “Barnett Rubin, an Afghan expert at New York University who would soon join Holbrooke’s team, met with Abdul Salam Zaeef in Kabul.” Zaeef, the Taliban’s former ambassador to Pakistan, had been held in Guantánamo for three years, and he came up with six names. There was, Ignatius noted, support from Afghanistan’s former president Burhanuddin Rabbani, who was in charge of reconciliation efforts for President Hamid Karzai.

In early 2011, Rabbani wrote to the U.S. government asking for the release of one of the six, Khairullah Khairkhwa, the former governor of Herat. That request was followed up when Holbrooke’s successor, Marc Grossman, had a secret meeting with a Taliban representative, Mohammed Tayeb al-Agha, which led to a deal involving the proposed release of five Taliban prisoners to Qatar. In return, as Ignatius explained, the Taliban “would condemn international terrorism and release U.S. Army Sgt. Bowe Bergdahl,” a Taliban prisoner since 2009.

Unfortunately, the deal fell through. Karzai complained that he hadn’t been involved, and when he finally came on board the Taliban had gone off the idea, suspending talks in March last year.

As Ignatius explains, “What made this exercise so frustrating was that the CIA had studied the five Taliban detainees who were slated for release and concluded that this would have no net effect on the military situation, even if they broke their pledges and left Qatar.” Far from being involved with terrorism, the evidence suggested that, although they “had fought with the Taliban, they had no role in supporting al-Qaeda’s plots and had quickly surrendered after the U.S. offensive started.”

After the Taliban withdrew from the talks, Karzai nevertheless attempted to engage Obama in further discussions. At the NATO summit in Chicago last May, he asked for the release of eight other Afghans. Their files had also been examined by the CIA, who found that four of them were considered a “low risk” and four were a “medium risk.” As Ignatius puts it, however, because of the congressional requirements covering planned releases from Guantánamo, the Obama administration “made elaborate demands for how the Afghans would be monitored back home,” and Karzai’s government “never bothered to answer.”

Ignatius concluded by noting that the Obama administration “still says it wants a political settlement in Afghanistan, but progress has stalled.” One way to revive it would be for the Afghan prisoners to be released, especially as the Afghan prisoners in Afghanistan — held in the

Parwan Detention Facility, formerly known as Bagram — were handed over to Afghan custody in March.