



# GUANTÁNAMO'S REFUGEES: TRAPPED BY INACTION

The Need for Safe Haven  
for Guantánamo's Refugees

2d edition



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## EXECUTIVE SUMMARY

There are approximately 50 detainees at Guantánamo from “high-risk” countries where there is a potential danger of persecution or torture should they be forcibly returned, or who are unable to return because they are stateless. At least 30 of these men have been “cleared for release” by the U.S. government – for some, years ago – yet they remain in Guantánamo. These men need to be offered safe haven in the United States and third countries. However, until now, Albania has been the only country that has been willing to accept a small number of Guantánamo’s refugees. Indeed, the United States has already transferred detainees from Guantánamo to high-risk countries despite credible individualized fears of persecution or torture upon their repatriation.

The refugee crisis that exists in Guantánamo should be approached like any other – with the United Nations High Commissioner for Refugees (UNHCR), the United States, and other countries creating and implementing a plan of action to end the indefinite detention of refugees in an extrajudicial prison. With changes in U.S. law ending any meaningful judicial review of the government’s treatment of detainees, the crisis grows even more urgent as the courts have refused to intervene to prevent the *refoulement* of detainees to countries where they are at great risk of persecution.

**Cover Photo:** The mother and daughter of Abdul Ra’ouf Al Qassim await news of Abdul Ra’ouf’s status. The U.S. government has repeatedly expressed its intent to send Abdul Ra’ouf to Libya despite a credible – and undisputed – fear that he would be tortured if returned, and even though Libya is a country which he fled years before he was transferred to Guantánamo.

**RECOMMENDATIONS TO CLOSE GUANTÁNAMO AND END THE INDEFINITE DETENTION  
WITHOUT CHARGE OF THE REFUGEES DETAINED THERE**

The **United States** should:

- ❖ Independently, or in concert with UNHCR, conduct individualized refugee status determinations of the men detained at Guantánamo to determine which detainees have a well-founded fear of return and ensure that no more detainees are forcibly repatriated despite substantial risks of torture or persecution upon their return;
- ❖ Accept into the United States men detained at Guantánamo who are unable to return to their home countries for fear of torture or persecution; and
- ❖ Cooperate with other nations to end the use of Guantánamo as an arbitrary detention site by:
  - where evidence exists, prosecuting individuals by fair trials that satisfy domestic and international obligations;
  - releasing detainees to the United States or third countries if they cannot be safely repatriated; and
  - safely releasing the remainder to their home countries.

The **United Nations High Commissioner for Refugees** should:

- ❖ Urge the United States to conduct individualized refugee status determinations or aid in the implementation of such reviews; and
- ❖ Urge the United States and third countries to help to close Guantánamo and end the arbitrary detention of individuals detained there – including refugees – through safely repatriating those who should not be prosecuted and facilitating humanitarian protection and safe haven for those who cannot be safely repatriated.

The **international community** should:

- ❖ Assist in the closure of Guantánamo by offering humanitarian protection and safe haven to some of the men detained at Guantánamo unable to safely return to their home countries because of fears of persecution or torture, or because they are stateless.



## INTRODUCTION

*“A substantial number of the detainees appear to be . . . simply innocents in the wrong place at the wrong time.”*

- Tim Golden and Don Van Natta, Jr., *U.S. Said to Overstate Value of Guantánamo Detainees*, N.Y. TIMES, Jun. 21, 2004, *citing a confidential CIA report on Guantánamo, 2002*

In the aftermath of the U.S. bombing campaign in Afghanistan in 2001, the U.S. military detained countless men fleeing the violence. Some were involved in the war, but most were not. According to the U.S. military's own documents, in the chaos of wartime, most captured in Afghanistan and Pakistan were sold to the U.S. military for money or as part of tribal or local grievances; others were picked up far from any battlefield.<sup>1</sup> With no process to sort through the men detained, many were shuffled through military facilities in Afghanistan before being transported to the now-infamous U.S. military base in Guantánamo Bay, Cuba. Now in their sixth year of detention, by the U.S. government's own assertions, at least 80 of these men have been cleared for release.<sup>2</sup> But many continue to languish in Guantánamo simply because they have nowhere to go – their home countries would persecute them if they were forcibly returned, and the United States and its allies have refused to intervene to provide them safe haven. These men are literally trapped by inaction.

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<sup>1</sup> According to a 2002 CIA report, “a substantial number of the detainees appear to be either low-level militants . . . or simply innocents in the wrong place at the wrong time.” The CIA report also reported that “[o]fficials of the Department of Defense acknowledge that the military's initial screening of the prisoners for possible shipment to Guantánamo was flawed.” Tim Golden and Don Van Natta, Jr., *U.S. Said to Overstate Value of Guantánamo Detainees*, N.Y. TIMES, Jun. 21, 2004. Jay Hood, Commanding General of the Joint Task Force, acknowledged, “sometimes, we just didn't get the right folks.” Jay Hood, Commanding General, Joint Task Force, *in* Christopher Cooper, *Detention Plan: In Guantánamo, Prisoners Languish in Sea of Red Tape*, WALL STREET JOURNAL, Jan. 26, 2005. A study relying exclusively on the records from the U.S. government's own flawed Combatant Status Review Tribunals found that – *even if all of the Tribunal records were accepted as true* – a majority of the detainees have been determined to have not committed hostile acts against the United States or its coalition allies; and only eight percent of the detainees have been characterized as Al Qaeda fighters. Indeed, eighty-six percent of the detainees were arrested by either Pakistan or the Northern Alliance and turned over to U.S. forces – most at a time when the United States was offering sizable bounties for the handover of “suspects.” Mark Denbeaux, *Report on Guantánamo Detainees: A Profile of 517 Detainees through Analysis of Department of Defense Data*, Seton Hall University School of Law (Feb. 2006). U.S. military personnel recognized early that the U.S. leadership was overstating the threat posed, and the intelligence value presented by, the men detained at Guantánamo. In 2004, Brigadier General Martin Lucenti said, “Of the 550 [detainees] that we have, I would say most of them, the majority of them, will either be released or transferred to their own countries.” *In* Mark Huband, *US Officer Predicts Guantánamo Releases*, FINANCIAL TIMES (LONDON), Oct. 4, 2004. Lieutenant Colonel Anthony Christino similarly said that the intelligence value of Guantánamo detainees was already severely limited four years ago: “There is a continuing intelligence value . . . for [s]omewhere a[round] a few dozen, a few score at the most” of the Guantánamo detainees. *In* Peter Jennings *Reporting: Guantánamo*, ABC NEWS, June, 26, 2004.

<sup>2</sup> See Craig Whitlock, *82 Inmates Cleared but Still Held at Guantánamo: U.S. Cites Difficulty Deporting Detainees*, WASHINGTON POST, Apr. 29, 2007, p. A01.

Despite the strong statements made by myriad countries for the closure of Guantánamo,<sup>3</sup> only two countries have thus far agreed to accept Guantánamo's refugees – non-citizens in need of safe haven because they would face torture or persecution if repatriated to their home countries.<sup>4</sup> The need for countries to intervene to provide protection for Guantánamo's refugees is critical. The possibility that men will be sent by the U.S. government to their home countries despite their legitimate fear of persecution or torture is not an abstract concern. The U.S. government has forcibly returned Guantánamo detainees to countries that are recognized to have committed egregious human rights abuses – including extrajudicial killings, torture and disappearances – despite pleas not to be sent there. Further, the U.S. government has vehemently resisted any attempt by detainees and their attorneys to halt transfers, even where very specific, verifiable and objective fear of persecution and torture exists.<sup>5</sup> With the passage of the Military Commissions Act, a 2006 law limiting judicial review for the men imprisoned at Guantánamo, detainees are now prohibited from legally challenging transfers to countries where they will likely be tortured or subjected to persecution.

This report highlights just a few examples of detainees whose cases present clear evidence of a severe risk of torture or persecution in their home countries, or who cannot return home because they are effectively stateless. Without intervention from the United States or safe third countries, each of these men faces an impossible choice: repatriation to torture or persecution, or continued indefinite detention in Guantánamo.

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<sup>3</sup> See, e.g., *Merkel Calls for Closure of Guantánamo*, DER SPIEGEL, Jan. 7, 2006 (“An institution like Guantanamo can and should not exist in the longer term.”); Associated Press, *Dutch Defense Minister Urges U.S. to Close Guantánamo Prison*, Jan. 12, 2006; U.S.: *U.K. Official's Call to Close Guantanamo Rejected*, RADIO FREE EUROPE, May 11, 2006 (citing call by Lord Peter Goldsmith, Attorney General of the United Kingdom, to shut down Guantánamo, calling it “unacceptable”: “It is time, in my view, that it should close”); *EU Renews Calls to Close Guantánamo After Deaths*, THE TIMES (LONDON), June 12, 2006; *EU Parliament Calls for Action to Close Guantanamo*, AGENCE FRANCE PRESSE, June 13, 2006; Statement of Austrian Foreign Minister Ursula Plassnik, June 12, 2006 (“The government of the United States should take measures to close Guantanamo as quickly as possible.”); *Criticism of Guantánamo Rises; Pentagon IDs 3 Who Killed Selves*, THE GUARDIAN, June 12, 2006 (citing leaders of Germany, Sweden and Britain calling for the closure of the detention center at Guantánamo).

<sup>4</sup> Albania accepted eight refugees from Guantánamo in 2006, from Algeria, China, Egypt and Uzbekistan. Matt Schofield, *Bush's Visit to Albania Will Thank a Country That's Supported His Policies*, MCCLATCHY NEWSPAPERS, June 7, 2007. In August 2007, Britain called for five British residents to be released to the United Kingdom. These men were residents in the United Kingdom prior to their transfer to Guantánamo, but they are citizens of Algeria, Ethiopia, Jordan, Libya and Saudi Arabia. *UK Seeks Guantánamo Men Release*, BBC NEWS, Aug. 7, 2007. Three of the five had been transferred to the United Kingdom by January 2008.

<sup>5</sup> *Zalita v. Bush*, 550 U.S. \_\_\_ (S.Ct. May 1, 2007); Reply Brief for Appellants and Brief for Cross-Appellees, *Kiyemba v. Bush*, No. 05-5487 (D.C. Cir. filed Aug. 2, 2006).

## PROHIBITIONS AGAINST TORTURE AND TRANSFERS TO TORTURE

*“No State shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture . . .”*

- *United Nations Convention Against Torture*

The international ban on torture is unequivocal. Under international law, under no circumstances can torture be justified.<sup>6</sup> These principles are recognized by international human rights and humanitarian law, as well as domestic law in all countries party to the Convention Against Torture.<sup>7</sup>

The prohibition against torture does not only prohibit the direct torture of individuals; in the strongest of terms, it also prohibits the transfer of individuals to countries in which they would be tortured or persecuted.<sup>8</sup> In addition to being a non-derogable human rights and humanitarian obligation, this *non-refoulement* principle is the bedrock of refugee law and applies to any form of forcible transfer, including deportation, extradition or informal transfer.<sup>9</sup> The 1951 Refugee Convention prohibits the transfer of a refugee to where his/her “life or freedom would be threatened on account of” certain enumerated factors.<sup>10</sup> The Convention Against Torture prohibits a state party from expelling, returning or extraditing an individual to a country in which there are

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<sup>6</sup> United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, Annex, 39 U.N. GAOR Supp. No. 51, U.N. Doc. A/39/51 (1984) (*hereinafter* CAT), Art. 2(2).

<sup>7</sup> *Id.* Over 140 states, including the United States, are party to the Convention Against Torture which defines and prohibits torture.

<sup>8</sup> CAT, Art. 1 (definition of torture), Art. 3 (“No State shall expel, return (‘refouler’) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture . . .”); International Covenant on Civil and Political Rights, Art. 7 (“no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”); 1951 Convention Relating to the Status of Refugees, Art. 33 (no state “shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”). Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), U.S. Criminal Code § 2340A (prohibiting the U.S. from expelling, extraditing or otherwise effecting the involuntary removal of any person to a country where there are substantial grounds for believing that s/he would be in danger of being subjected to torture).

<sup>9</sup> United Nations High Commissioner for Refugees (UNHCR), Advisory Opinion on the Extraterritorial Application of *Non-Refoulement* Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (Jan. 26, 2007), 3 [*hereinafter* UNHCR Advisory Opinion]. *See also* Cartagena Declaration on Refugees, 22 November 1984, Annual Report of the Inter-American Commission on Human Rights, OAS Doc. OEA/Ser.L/V/II.66/doc.10, rev. 1, at 190-93 (1984-85) [*hereinafter* Cartagena Declaration] (“To reiterate the importance and meaning of the principle of *non-refoulement* . . . as a cornerstone of the international protection of refugees”).

<sup>10</sup> Convention relating to the Status of Refugees, opened for signature July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150, entered into force Apr. 22, 1954 Art. 33(1) [*hereinafter* 1951 Refugee Convention].

substantial grounds for believing the individual would be subjected to torture.<sup>11</sup> This is a mandatory obligation of State Parties to these two treaties.

The *non-refoulement* obligation requires an individualized determination. A refugee is entitled to protection from *refoulement* not because of any prior finding of official refugee status, but rather because of the fact that s/he meets the criteria of a person whose life or freedom would be threatened or who would be subject to torture.<sup>12</sup>

The *non-refoulement* obligation does not end at the border of a country, but extends to wherever a state exercises jurisdiction, including where that is in the territory of another State.<sup>13</sup> UNHCR has interpreted the *non-refoulement* obligation to apply to any acts or omissions, no matter where they are taken, by a state party which “have the effect of returning a refugee to territories where he or she is likely to face persecution or danger to life or freedom.”<sup>14</sup>

#### **GUANTÁNAMO’S BLACK HOLE: TRANSFER-TO-TORTURE WITH NO JUDICIAL OVERSIGHT**

Some Guantánamo detainees are at unique and heightened risk of being subjected to torture or ill-treatment upon their forcible transfer to human rights abusing regimes, in part, because of their status and individualized experiences; and, in part, because the U.S. government relies on woefully inadequate preventive mechanisms such as “diplomatic assurances” from human rights abusing countries.<sup>15</sup> Furthermore, the United States consistently has asserted that the courts have no power to review the treatment of detainees at Guantánamo. Thus far, the government’s arguments have

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<sup>11</sup> CAT, Art. 3.

<sup>12</sup> UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, 1979, Reedited 1992, para. 28. There are exceptions where an individual poses a danger to the country of refuge, or a danger to the country from which s/he fled, as evidenced by a conviction by a “final judgment of a particularly serious crime.” 1951 Refugee Convention, Art. 33(2).

<sup>13</sup> See UNHCR Advisory Opinion, 12.

<sup>14</sup> UNHCR Advisory Opinion, 14 (citing Mr. Henkin, the United States representative, during negotiations preceding the adoption of the 1951 Refugee Convention, arguing that “[w]hether it was a question of closing the frontier to a refugee who asked admittance, or of turning him back after he had crossed the frontier, or even expelling him after he had been admitted to residence in the territory, the problem was more or less the same. Whatever the case might be, whether or not the refugee was in a regular position, he must not be turned back to a country where his life or freedom could be threatened”).

<sup>15</sup> See, e.g., Human Rights Watch, *Empty Promises: Diplomatic Assurances No Safeguard Against Torture* (Apr. 2004); Human Rights Watch, *Still at Risk: Diplomatic Assurances No Safeguard Against Torture* (Apr. 2005).



been successful—the current state of U.S. law and policy provides no meaningful or effective avenues of relief for individuals at risk and fearing repatriation.<sup>16</sup>

Because of their status, some Guantánamo detainees from human rights abusing countries are at heightened risk of torture and persecution if forcibly repatriated. Some fled their countries of origin before being detained and transferred to Guantánamo. They may have asserted refugee claims in the countries to which they originally fled such that their dissent is a matter of public record. Receiving states with records of torture and ill-treatment can be expected to retaliate against such individuals. Other human rights abusing regimes have been given access to detainees while in Guantánamo – and have threatened their nationals with torture and ill-treatment upon their return. For instance, it is reputed that intelligence officers from Jordan, Libya and Uzbekistan threatened their natives held at Guantánamo. Still other Guantánamo detainees did not face persecution before their Guantánamo detention, but are now likely to face torture or ill-treatment from receiving states that believe these individuals are a security threat, either based on information passed on by the U.S. government, not reviewable or subject to challenge by the individual, or simply because of the stigma associated with their incarceration in Guantánamo.

Moreover, many Guantánamo detainees are transferred to human rights abusing states with known records of torture of detainees and where the United States relies on mechanisms that have patently failed to prevent torture and persecution in the past. Post-return monitoring is impossible or ineffective to protect detainees against the risk of torture and ill-treatment in these states. Where the day-to-day custodians of detainees regularly perpetrate torture with impunity, only the most independent and intrusive of outside monitoring would be effective. Such monitoring has not been permitted by receiving states and likely will not be permitted in the future. Further, the United States has consistently disclaimed any responsibility for monitoring the treatment of detainees once they have been turned over to other nations.<sup>17</sup>

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<sup>16</sup> *Zalita v. Bush*, 550 U.S. \_\_\_ (S.Ct. May 1, 2007); Reply Brief for Appellants and Brief for Cross-Appellees, *Kiyemba v. Bush*, No. 05-5487 (D.C. Cir. filed Aug. 2, 2006); *Belbacha v. Bush*, No. 07A98 (S. Ct. Aug. 10, 2007) (denying application for injunction to prevent a transfer to Algeria).

<sup>17</sup> *See, e.g.*, Respondents' Memorandum in Opposition to Petitioners' Motions for Temporary Restraining Orders and Preliminary Injunctions, *Almurbati v. Bush*, No. 04-cv-1227, Dkt. 134 (D.D.C. 2005) ("When the [DoD] transfers detainees to the control of other governments, the detainees are no longer subject to the control of the United States.").

The United States instead relies on “diplomatic assurances” to proclaim that it is not acting in violation of domestic and international law in the transfer of at-risk individuals from Guantánamo to rights-abusing regimes such as Libya, Russia, Tunisia and Uzbekistan. In the case of transfers where there is a risk of persecution and torture, diplomatic assurances are unenforceable commitments from one government to another not to subject the individual transferred to torture or abuse.<sup>18</sup> The U.S. government states that whenever it transfers detainees from Guantánamo to the custody of another state, it seeks assurances “of humane treatment,” and where “circumstances warrant,” the United States seeks “more specific assurances.”<sup>19</sup> These assurances are highly problematic as they rely on the dangerously unlimited discretion of government officials. Neither the decision-making process nor the assurances themselves are transparent in any respect. Since human rights abusing regimes routinely deny torture allegations and refuse to investigate them, assurances that Guantánamo detainees will be treated humanely are hollow promises.<sup>20</sup>

A limited and decreasing number of the men detained at Guantánamo who fear that they would be returned to a country in which they risk torture or persecution have access to only the most basic relief: a brief notice period in which to attempt to challenge a transfer to torture.<sup>21</sup> However, because of recent legislative and judicial developments in the United States, even these most basic means to prevent a transfer to torture are increasingly non-existent. Relying on the Military Commissions Act, a new law that strips the district courts of jurisdiction over the cases of many non-citizens held in U.S. custody, the U.S. Court of Appeals for the District of Columbia held that it did not have jurisdiction to hear a challenge to the legality of detention of individuals detained at Guantánamo.<sup>22</sup> The United States Supreme Court heard the appeal of this case in December 2007.<sup>23</sup>

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<sup>18</sup> See, e.g., Human Rights Watch, *Still at Risk: Diplomatic Assurances No Safeguard Against Torture* (Apr. 2005).

<sup>19</sup> *Abdah v. Bush*, 2005 U.S. Dist. LEXIS 4942 (D.C. Cir. 2005), Declaration of Pierre-Richard Prosper, para. 6.

<sup>20</sup> The United States has consistently challenged judicial review of these assurances, asserting that such review would “encumber and add delays to what is already a lengthy process.” *Abdah v. Bush*, 2005 U.S. Dist. LEXIS 4942 (D.C. Cir. 2005), Declaration of Pierre-Richard Prosper, para. 12.

<sup>21</sup> The U.S. government has been required to provide thirty days notice to the detainee’s attorney before initiating the transfer in a limited number of cases. However, the attorney has no legal recourse to halt a transfer since no judicial process was available. The attorney also is prohibited from publicly discussing the transfer of his client, even if s/he does receive advance notice of the transfer.

<sup>22</sup> *Boumediene v. Bush*, 476 F.3d 981 (2007).

<sup>23</sup> *Boumediene v. Bush*, cert. denied, 127 S. Ct. 1478 (Apr. 2, 2007); rehearing granted (June 29, 2007).

As a consequence of the new law and the court's interpretation of it as constitutional and an effective removal of the right of Guantánamo detainees to challenge their detention, the judicial options to contest any aspect of an individual's detention at, or transfer from, Guantánamo are virtually non-existent. This was evidenced by the Supreme Court's refusal to consider a case brought by a Libyan detainee seeking to prevent his imminent transfer to the Qadhafi regime for further detention and interrogation, despite known and severe risks of persecution, and an expressed fear by the detainee that he would face torture if repatriated, none of which the United States disputed.<sup>24</sup> In April 2007, the Supreme Court refused to consider the case and thus essentially left the Libyan's life entirely subject to executive discretion.<sup>25</sup> More recently, in June 2007, the U.S. Court of Appeals for the District of Columbia refused to grant an injunction against the transfer of another Libyan who faces probable torture if forcibly returned and the Supreme Court in August 2007 denied the emergency appeal of an Algerian at risk of torture if transferred to Algeria.<sup>26</sup>

Given the current state of U.S. law, as well as the reliance of the United States on unenforceable diplomatic assurances from notorious rights-abusing regimes, an urgent need exists for UNHCR and countries – including the United States – to intervene to ensure that Guantánamo's refugees are protected from torture and other forms of persecution, as well as from continued indefinite detention without charge. Until UNHCR and the international community become involved and agree to offer humanitarian protection to these men, they will remain in Guantánamo indefinitely or face persecution and torture from their home countries.

## **REFUGEES FROM HUMAN RIGHTS ABUSING REGIMES**

The refugees at Guantánamo in need of humanitarian protection are from diverse countries with recognized records of abuse of minorities, political prisoners, accused (rightly or wrongly) security detainees and other “undesirables.” Many countries – including the United States – regularly welcome refugees from these countries because of their poor human rights records.<sup>27</sup> All the

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<sup>24</sup> *Zalita v. Bush*, 550 U.S. \_\_\_ (S.Ct. May 1, 2007).

<sup>25</sup> *Id.*

<sup>26</sup> *Khalifh v. Gates*, No. 07-1215 (D.C. Cir. June 22, 2007) (order denying emergency motion to prevent transfer to Libya on the grounds that the court lacked jurisdiction to grant the requested relief); *Belbacha v. Bush*, No. 07A98 (S. Ct. Aug. 10, 2007) (denying application for injunction to prevent a transfer to Algeria).

<sup>27</sup> In 2005, countries absorbed large numbers of refugees fleeing persecution in these countries. Germany, the United Kingdom, France, Canada, and Spain absorbed approximately 10,165 Algerian refugees. The United States, Canada,

individuals at risk if forcibly returned have been detained for years without charge or trial and, absent the intervention of international actors, face an even bleaker future.

Detainees who fear return include some detainees from Algeria, China, Jordan, Libya, the Palestinian Occupied Territories, Russia, Somalia, Sudan, Syria, Tajikistan, Tunisia and Uzbekistan. In some countries (i.e., Algeria, Russia), the dangers of repatriation are individualized such that some nationals can safely return while others cannot. In other countries (i.e., China for Uighur minorities, Uzbekistan), all Guantánamo detainees would be at great risk if returned. Some of the countries to which individuals either have been returned or could be returned are described below.

**Algeria** still suffers from the aftereffects of a long-running civil war. Human rights groups continue to report killings, torture and “disappearances” committed by security forces, state-armed militias and armed groups.<sup>28</sup> Individuals suspected of membership in terrorist organizations are singled out for prolonged and isolated pre-trial detention and state-sanctioned torture, including severe beatings and electric shock.<sup>29</sup> Recently, two security detainees living in the United Kingdom were forcibly returned to Algeria and are reported to have been arrested, imprisoned and charged with terrorist activities.<sup>30</sup> *There are 24 Algerians currently detained in Guantánamo—at least 10 have been “cleared for release.” The U.S. has transferred one Algerian refugee to Albania, but none have been transferred to Algeria. Some Algerians can safely return while others cannot. The United States has refused to prevent the repatriation of at least one Algerian who would face substantial risk if returned.*<sup>31</sup>

**China** is one of the world’s most notorious human rights abusing regimes. China’s brutal repression of the Uighurs, a Turkic Muslim minority from the far western Xinjiang Autonomous Region, is well-documented and undisputed.<sup>32</sup> China plainly has used the global war on terrorism as

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Germany and the Netherlands absorbed approximately 42,121 Chinese refugees. Similarly, Germany, the United States, Canada, Sweden and Australia absorbed 166 Jordanian refugees. Additionally, Switzerland, Germany, Canada, the United Kingdom and Sweden absorbed 1,196 Libyan refugees. For a more comprehensive breakdown of refugees and asylum applicants as well as the main countries of asylum, see *UNHCR Statistical Yearbook 2005: Trends in Displacement, Protection and Solutions* (May 2007), available at <http://www.unhcr.org/statistics/STATISTICS/464478a72.html>.

<sup>28</sup> Amnesty International, *Amnesty International Report 2007: Algeria*.

<sup>29</sup> *Id.*

<sup>30</sup> *Algeria to Try Deported Terror Suspects*, THE GUARDIAN, Feb. 26, 2007.

<sup>31</sup> *Belbacha v. Bush*, No. 07A98 (S. Ct. Aug. 10, 2007) (denying application for injunction to prevent a transfer to Algeria).

<sup>32</sup> See, e.g., U.S. Dept. of State, *Country Reports on Human Rights Practices – 2004* (China Report) § 1(c) (2005) (“Former detainees reported credibly that officials used electric shocks, prolonged periods of solitary confinement, incommunicado detention, beatings, shackles, and other forms of abuse . . . [S]tate-run media reported that 460 people were killed by law enforcement officials and over 100 seriously injured through abuse or dereliction of duty in 2003.”).

a pretext for oppressing Uighur Muslims with impunity.<sup>33</sup> In particular, China has “opportunistically used the post-September 11 environment to make the outrageous claim that [Uighur] individuals disseminating peaceful religious and cultural messages in Xinjiang are terrorists.”<sup>34</sup> *There are 17 Uighurs currently detained in Guantánamo; it appears that all were cleared for release as long ago as 2003. None can be returned to China; these innocent men will remain imprisoned until a country accepts them as refugees.*<sup>35</sup>

**Libya** is a modern-day authoritarian regime governed by the fierce and unchallenged authority of its head of state, Colonel Muammar Qadhafi. Since assuming control in a 1969 military coup, the Qadhafi dictatorship has maintained power through severe repression of any political dissent, using methods that include routine torture, arbitrary arrest and detention, and excessive use of force.<sup>36</sup> Independent human rights monitoring entities are flatly prohibited by the government and the government maintains a “multilayered, pervasive surveillance system.”<sup>37</sup> Political prisoners are particularly vulnerable to torture and abuse during their imprisonment. According to a 2006 U.S. State Department report, “security personnel routinely tortured prisoners during interrogation or as punishment,” including through “chaining prisoners to a wall for hours, clubbing, applying electric shock, applying corkscrews to the back, pouring lemon juice in open wounds, breaking fingers and allowing the joints to heal without medical care, suffocating with plastic bags, prolonged deprivation of sleep, food and water, hanging by the wrists, suspension from a pole inserted between the knees and elbows, cigarette burns, threats of dog attacks, and beatings on the soles of the feet.”<sup>38</sup> *Seven Libyans remain in Guantánamo, and at least one has been cleared for release. One Libyan was repatriated to Libya in December 2006, despite that he was reportedly threatened by Libyan officials while he was detained in*

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<sup>33</sup> See, e.g., U.S. Dep’t of State, Fact Sheet: China and Human Rights (2006) (“[W]ith regard to the Uighur Muslims, [China] has sometimes used the global war on terror as a pretext for restrictions and repressions.”); U.S. Dep’t of State, International Religious Freedom Report 2006, China (2006) (“Xinjiang authorities continued to use counter terrorism as a pretext for religious repression of Uighur Muslims . . . regularly fail[ing] to distinguish carefully among those involved in peaceful activities in support of independence, “illegal” religious activities, and violent terrorism.”).

<sup>34</sup> Human Rights Watch, *Devastating Blows: Religious Repression of Uighurs in Xinjiang* 8 (Apr. 2005).

<sup>35</sup> The United States has acknowledged that the small group of Uighur detainees at Guantánamo cannot and will not be repatriated to China – despite Chinese demands – because they would likely be tortured or killed based on their cultural and ethnic identity. See, e.g., *Powell Says Detained Uighurs Will Not Be Returned to China*, AGENCE FRANCE PRESSE, Aug. 13, 2004.

<sup>36</sup> U.S. Department of State, *Country Reports on Human Rights Practices: Libya – 2006* (2007); Amnesty International, *Amnesty International Report 2007: Libya* (2007).

<sup>37</sup> U.S. Department of State, *Country Reports on Human Rights Practices: Libya – 2006* (2007).

<sup>38</sup> *Id.*

*Guantánamo.*<sup>39</sup> Another was repatriated in September 2007. Both have reportedly been detained without trial since their repatriation. Several Libyans reported being threatened by Libyan security officials while in detention at Guantánamo.

**Russia** has a criminal justice system notorious for lacking due process and fairness. Security forces in Russia have been involved in extrajudicial killings; torture, violence and other brutal treatment; and arbitrary arrest and detention.<sup>40</sup> The United Nations body responsible for monitoring state compliance with the Convention Against Torture has acknowledged “numerous and consistent allegations of widespread torture and other cruel, inhuman or degrading treatment or punishment of detainees . . . , commonly with a view to obtaining confessions.”<sup>41</sup> Muslim “security” detainees are particularly at-risk of abusive treatment in Russian detention facilities.<sup>42</sup> Some of the men repatriated to Russia from Guantánamo reported to human rights investigators that U.S. interrogators threatened them with repatriation and coercive interrogations in Russian prisons.<sup>43</sup> *One Russian detainee, Ravil Mingazov, remains in detention in Guantánamo. Seven detainees were returned to Russian authorities in 2004. All were kept in detention in Russia and suffered torture and abuse at the hands of Russian authorities despite the country’s assurances of humane treatment.*<sup>44</sup>

**Somalia** remains a state in deep disarray. In 2006, significant sections of the country were alternately controlled by a warlord coalition reportedly supported by the U.S. government; the Islamic Courts; and the Transitional Federal Government (TFG), a group of clan-based factions supported by Ethiopia. In addition to the generalized violence and insecurity in Somalia, there have been unfair political trials and reports of torture.<sup>45</sup> Furthermore, Somalia is a site in the current

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<sup>39</sup> See U.S. Department of Defense, *Detainee Transfer Announced*, Dec. 17, 2006 (announcing the transfer of one detainee to Libya); Andy Worthington, *Return to Torture: Cleared Guantánamo Detainee Abdul Rauf al Qassim Fears Return to Libya*, June 16, 2007.

<sup>40</sup> U.S. Department of State, *Country Reports on Human Rights Practices: Russia – 2006* (2007).

<sup>41</sup> United Nations Committee Against Torture, Report to the Russian Government on the Visit to the Russian Federation Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf (2003), 30, June 30, 2003.

<sup>42</sup> Memorial, *Concocting Criminal Proceedings for ‘Islamic Extremism*, Feb. 2006.

<sup>43</sup> Human Rights Watch, *The “Stamp of Guantánamo”: The Story of Seven Men Betrayed by Russia’s Diplomatic Assurances to the United States* (Mar. 2007), 16-17 (quoting one detainee recalling that his interrogators at Guantánamo warned him: “We’ll send you to Russia . . . They’ll string you up there’ and that kind of thing”; and another detainee recalling his interrogators stating: “If you don’t tell us the truth, we’ll send you to Afghanistan, and if after Afghanistan anything is left of you, you will be sent to Russia where you will be tortured, you will have no fingers left.”).

<sup>44</sup> *Id.*

<sup>45</sup> Amnesty International, *Amnesty International Report 2007: Somalia*.

offensive against suspected terrorists in the Horn of Africa. Individuals fleeing conflict in Somalia have been caught in a network of secret detention and transfer between Somalia, Kenya and Ethiopia. Some have reported torture.<sup>46</sup> Former Guantánamo detainees returned to Somalia would remain at risk of being alleged to be terror suspects and detained, tortured or disappeared. *Two Somalis remain in Guantánamo—both have previously been recognized by UNHCR as mandate refugees after fleeing that country; at least one has been cleared for release.*

**Syria** has a record of state-sanctioned torture, unfair trials and prolonged arbitrary and incommunicado detention of detainees, including thousands of political prisoners. Prisoners have died in Syrian custody due to the torture and ill-treatment they suffered. Torture and abusive treatment by security forces occurs with impunity; instances of abuses in custody are not investigated where they occur.<sup>47</sup> The U.S. Department of State reports that forms of torture in Syria include “electrical shocks; pulling out fingernails; burning genitalia; forcing objects into the rectum; beating, sometimes while the victim was suspended from the ceiling; alternately dousing victims with freezing water and beating them in extremely cold rooms; hyperextending the spine; bending the detainees into the frame of a wheel and whipping exposed body parts; and using a backward-bending chair to asphyxiate the victim or fracture the victim's spine.”<sup>48</sup> More than 17,000 Islamists “disappeared” in the 1970s and 1980s remain unaccounted for. A state of emergency has remained in force in Syria for the past 45 years.<sup>49</sup> Individuals are still arbitrarily arrested and detained for extended periods without trial and those considered to be affiliated with Islamist groups are still singled out.<sup>50</sup> *The U.S. government may have transferred one Syrian to Syria; nine remain in Guantánamo.*

**Tunisia** has an abominable human rights record. Torture and physical abuse by the security forces is endemic.<sup>51</sup> According to the U.S. Department of State, security forces subject detainees to various forms of torture and abuse, including “sleep deprivation; electric shock; submersion of the head in water; beatings with hands, sticks, and police batons; suspension, sometimes manacled, from cell

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<sup>46</sup> Amnesty International, *Horn of Africa: Unlawful Transfers in the 'War on Terror'*, June 2007; Human Rights Watch, *People Fleeing Somalia War Secretly Detained; Kenya, US and Ethiopia Cooperate in Secret Detentions and Renditions*, Mar. 30, 2007.

<sup>47</sup> Amnesty International, *Amnesty International Report 2007: Syria*; U.S. Department of State, *Country Reports on Human Rights Practices: Syria – 2006* (2007).

<sup>48</sup> U.S. Department of State, *Country Reports on Human Rights Practices: Syria – 2006* (2007).

<sup>49</sup> Amnesty International, *Amnesty International Report 2007: Syria*.

<sup>50</sup> U.S. Department of State, *Country Reports on Human Rights Practices: Syria – 2006* (2007).

<sup>51</sup> U.S. Department of State, *Country Reports on Human Rights Practices: Tunisia – 2006* (2007).

doors and rods resulting in loss of consciousness; and cigarette burns.” Islamist detainees have been threatened with the sexual assault of their wives, or have had their wives sexually assaulted, during their detention to secure information or for punishment. Security forces subject individuals to arbitrary arrest and detention; and abuses by the security forces are committed with impunity.<sup>52</sup> Many are detained for extended periods without trial.<sup>53</sup> *Ten Tunisian detainees remain in Guantánamo; at least eight have been convicted in absentia. Most have been threatened while in Guantánamo and have in absentia sentences of between 10 and 40 years imprisonment. They likely face continued detention, torture and abuse if repatriated to Tunisia. Two Tunisian detainees were repatriated in June 2007. At least one had been convicted in absentia. Upon their return, they were held in solitary confinement for weeks, abused and threatened. They continue to suffer in Tunisian custody. One was sentenced to three years in prison after being convicted of associating with an unnamed criminal group.*<sup>54</sup>

**Uzbekistan** has a notorious rights-abusing record and has engaged in a relentless campaign to target, isolate or expel defenders of human rights. The government has threatened, imprisoned and tortured many activists and independent journalists. The UNHCR was expelled from Uzbekistan in April 2006. Individuals who are alleged to be members of prohibited Islamic groups and who have been forcibly returned to Uzbekistan from other countries, have faced incommunicado detention. In November 2006, the U.S. State Department listed Uzbekistan as one of the “countries of particular concern” for violating religious freedom. The UN Special Rapporteur has reported systematic torture and the denial of prison access to the International Committee of the Red Cross (ICRC).<sup>55</sup> *The U.S. government has transferred one Uzbeki to Uzbekistan and one to Albania; five remain in Guantánamo, at least three of whom have been cleared for release.*

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<sup>52</sup> In 2006, no Tunisian police or security official was charged with abuse despite widespread allegations of abuse and substantial documentary evidence. *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> Bouazza Ben Bouazza, ASSOCIATED PRESS, *Ex-Gitmo Detainee Convicted in Tunisia*, Oct. 24, 2007.

<sup>55</sup> Report of the UN Special Rapporteur on Torture, Mission to Uzbekistan, E/CN.4/2003/68/Add.2 (2003).



## **THE REFUGEES: SENTENCED TO PERSECUTION AT HOME OR INDEFINITE DETENTION IN GUANTÁNAMO**

### **Adel Noori, Chinese Uighur refugee<sup>56</sup>**

Adel Noori is an ethnic Uighur who has been cleared for release from Guantánamo. He is approximately thirty-five to forty years old, and has a wife and young daughter currently living in western China. Adel is a college graduate, and before his imprisonment in Guantánamo, he was well-connected to the literary and progressive political movements in East Turkestan, the Uighur homeland located in far western China. Adel is a close friend of Husein Celil, the Canadian citizen wrongfully imprisoned in China last year, and Abdrahim Otkur, the famous Uighur author who was arrested and imprisoned by the Chinese government during the Cultural Revolution. Adel is presently wanted by the Chinese for “political crimes” based on his participation in a political demonstration in the 1990s.

In 2001, Adel was living with a group of fellow Uighurs in Afghanistan after having escaped religious and political persecution by the Chinese government. However, after the U.S. invasion of Afghanistan, Adel and the other Uighurs were forced to flee Afghanistan for their own protection. After crossing the border into Pakistan, Adel was sold by Pakistani bounty-hunters to the United States.

Like all of the Uighurs held at Guantánamo, Adel would be imprisoned, tortured, and potentially executed if returned to China, or to a country subject to Chinese control or influence. Chinese persecution of the Uighurs is well-documented, and the Chinese have made it clear, through the interrogation of the Uighur prisoners in Guantánamo and the pressure they have brought to bear on governments contemplating asylum for the Uighurs, that they will mistreat the Uighurs should they be released to Chinese custody.

In Guantánamo, Adel's efforts to prevent his fellow prisoners from sinking into despair have earned him the nickname “Hope.” Yet, after more than six years of indefinite imprisonment, the many broken promises of freedom that he has received from personnel at Guantánamo, and daily humiliation and abuse, Adel is starting to believe that he will never be released.

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<sup>56</sup> Adel Noori is represented by Michael Sternhell and Seema Saifee of Kramer Levin LLP.

### **Abdul Ra'ouf Al Qassim, Libyan refugee<sup>57</sup>**

Abdul Ra'ouf Al Qassim deserted the Libyan Army when he was young and fled Libya for fear of religious persecution. During the next ten years, Abdul Ra'ouf lived abroad as a refugee to avoid



being returned to Libya. In 2000, he married an Afghan woman and settled in the Afghan capital of Kabul before the U.S. bombardment began in October 2001. Abdul Ra'ouf fled with his pregnant wife to seek refuge in Pakistan. They now have a daughter who is also an Afghan citizen.

Soon after the family arrived in Pakistan, however, Abdul Ra'ouf fell victim to the chaos of the war in

Afghanistan. At the time, the U.S. military offered large sums of money – \$5,000 or more – to anyone who handed over alleged “terrorists.” The United States blanketed Afghanistan and Pakistan with leaflets promising “wealth and power beyond your dreams.” Abdul Ra'ouf was living with his wife and young daughter in Pakistan when Pakistani police turned him over to military authorities, likely for a sizable bounty. He was later brought to Guantánamo, where he has been detained for more than five years without charge or trial.

Abdul Ra'ouf has been cleared for release and the United States has attempted to transfer Abdul Ra'ouf to Libya, and challenged efforts to prevent his transfer.<sup>58</sup> Because of Abdul Ra'ouf's status as a former Guantánamo detainee – and the U.S. government's false and unsubstantiated allegations that he was associated with a group hostile to Libya's dictatorial leader – he is at grave risk of indefinite detention, torture and death if forcibly returned.

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<sup>57</sup> Abdul Ra'ouf Al Qassim is represented by Gitanjali Gutierrez of the Center for Constitutional Rights, and by George Daly and Jeffrey Davis.

<sup>58</sup> In December 2006, and again in February 2007, the U.S. government publicly declared its intention to transfer Abdul Ra'ouf to Libya, notwithstanding his fears of severe persecution if he were forcibly returned. Legal action by his lawyers at the Center for Constitutional Rights delayed his transfer initially. However, in May 2007 the U.S. Supreme Court refused to intervene in Abdul Ra'ouf's case and prevent the U.S. government from transferring him from Guantánamo to Libya – regardless of the indisputable risk of persecution he would face in his home country. By refusing to intervene in his case, the courts have effectively left Abdul Ra'ouf's life and safety entirely in the hands of President Bush.

**Ali (Anwar Hassan), Chinese Uighur refugee<sup>59</sup>**

Ali is an ethnic Uighur from the Xinjiang Autonomous Region of western China. He has been cleared for release from Guantánamo. Indeed, an initial Combatant Status Review Tribunal (CSRT) determined that Ali was *not* properly classified as an enemy combatant before he was ordered to undergo a second CSRT. In ordering a second CSRT, the Assistant Secretary of Defense for Detainee Affairs expressed concerns about the appearance of inconsistency in the finding that Ali was not an enemy combatant when “16 other Uighurs with identical circumstances were determined to be enemy combatants.” Earlier communication to the Chair of a CSRT panel noted that “inconsistencies will not cast a favorable light on the CSRT process or the work done by [Office for the Administrative Review of the Detention of Enemy Combatants].”<sup>60</sup> Inconsistencies abound, however: five other Uighurs with virtually identical factual circumstances were classified as non-enemy combatants and released to Albania as refugees in 2006.<sup>61</sup> Nevertheless, a second CSRT was convened and found Ali to be an enemy combatant.<sup>62</sup> He remains in Guantánamo today, cleared for release but lacking a safe country willing to offer him humanitarian protection.

As with the other Uighur detainees, Ali fled religious and ethnic persecution as a minority in China. If returned to China, Ali would indisputably face torture or summary execution.<sup>63</sup> Ali left China and traveled to Afghanistan through Pakistan in the hopes of seeking asylum. Ali stayed in a Uighur village near Jalalabad until the U.S. bombing campaign began in October 2001, forcing their evacuation to a safer location. After the start of the bombing campaign, he fled with 17 other Uighurs to the mountains and survived during the bombing in caves. Ali and some other Uighurs

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<sup>59</sup> Ali (Anwar Hassan) is represented by George Clarke of Baker & McKenzie LLP.

<sup>60</sup> See *In re Petitioner Ali*, Petition for Original Writ of Habeas Corpus, Dkt. No. 06-1194 (Feb. 12, 2007).

<sup>61</sup> According to CSRT records, the factual circumstances concerning the capture and detention of the Uighurs still detained are virtually indistinguishable from the circumstances of the Uighurs who were released. *China's Gitmo Refugees*, Wall Street Journal, Apr. 24, 2006.

<sup>62</sup> See *In re Petitioner Ali*, Petition for Original Writ of Habeas Corpus, Dkt. No. 06-1194, 6 (Feb. 12, 2007) (noting that Uighur Petitioner Ali was found to *not* be properly classified as an enemy combatant before a second Combatant Status Review Tribunal was ordered to convene, and classified him as an “enemy combatant”); William Glaberson, *Guantánamo Detainees' Suit Challenges Fairness of Military Repeat Hearings*, N.Y. TIMES, May 15, 2007. In the case of another Uighur at Guantánamo, Bahityar Mahnut, the Assistant Legal Advisor who reviewed his CSRT records noted that the Tribunal urged “favorable consideration for release of the Detainee” and “that he not be forcibly returned to the People's Republic of China.”

<sup>63</sup> See U.S. Dep't of State, Country Reports on Human Rights Practices - 2004 (Feb. 28, 2005), at <http://www.state.gov/g/drl/rls/hrrpt/0%2004/41640.htm>.

fled to Pakistan, but were handed over to an Afghan warlord who reportedly received a bounty from the U.S. in exchange for handing them over to the U.S. military.

Ali has been cleared for release; indeed, he had been classified as a non-enemy combatant before being forced to undergo a second review. Yet he remains in Guantánamo six years after his transfer, and he will continue to be indefinitely detained until a country offers him a safe refuge from persecution. Ali cannot return to China without a serious risk of persecution and torture, if not execution.<sup>64</sup>

### **Oybek Jamoldinivich Jabbarov, Uzbek refugee<sup>65</sup>**

Oybek Jamoldinivich Jabbarov's 6-year long imprisonment at the hands of the U.S. government is a tragic case of being in the wrong place at the wrong time. Now 30 years old, Oybek and his pregnant wife, infant son, and elderly mother were living with other Uzbek refugees in northern Afghanistan in 2001 when fighting broke out between the Taliban and the Northern Alliance. Oybek was not captured on the battlefield, nor was he armed. Instead, he accepted a ride from a group of Northern Alliance soldiers he met at a roadside teahouse who said they would take him to Mazar-e-Sharif. Instead, the Northern Alliance soldiers drove him to Bagram Air Base and transferred him to U.S. forces, likely for a sizable bounty.

After Bagram, Oybek was taken to a prison in Kandahar, Afghanistan, and then transferred to Guantánamo Bay in June 2002. During his first few months at Guantánamo, an FBI agent told Oybek, "you're a free man, you're not a problem," and advised him to be patient while diplomatic arrangements were made for his release. But months turned into years and still nothing happened. Finally, in February 2007, Oybek received approval from the U.S. government to leave Guantánamo. This news brought little comfort, however, because Oybek fears for his life if he is returned to his native Uzbekistan, a county with a long and well-documented history of human rights abuses, including the widespread use of torture. Indeed, Oybek had a chilling encounter with Uzbek officials who came to Guantánamo in September 2002 to interrogate him. The Uzbek

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<sup>64</sup> In September 2002, the U.S. government allowed Chinese officials to interrogate the Uighur detainees at Guantánamo. The Chinese threatened Ali during these interrogations.

<sup>65</sup> Oybek Jamoldinivich Jabbarov is represented by Michael Mone, Jr.

interrogators told Oybek he would be sent to prison upon his return to Uzbekistan and implied he might face torture to force him to confess to things he did not know.

Unfortunately, Oybek fits the very profile of someone who will face persecution, arrest, imprisonment and torture at the hands of Uzbek authorities. While Oybek would like to practice Islam freely, even the most basic acts of wearing a prayer cap, keeping a beard and going to mosque are viewed with grave suspicion by the Uzbek security services. Further, the stigma attached to his prolonged detention in Guantánamo means that Oybek could expect to face the harshest legal or extra-judicial treatment if returned to his country. Yet, despite the grave and obvious danger facing him, the U.S. government refuses to rule out repatriating Oybek to his native Uzbekistan. Oybek yearns to be reunited with his family – to finally meet his youngest son who was born just after his arrest in November 2001, but he is afraid he will never see his family again if he is returned to Uzbekistan.

#### **Maher El-Falesteny, Palestinian refugee<sup>66</sup>**

Maher El Falesteny is a stateless Palestinian who has been held at Guantánamo Bay for nearly six years. He has been cleared to leave Guantánamo for at least one year. Yet, because of Maher's status as a stateless person with no papers for residency in any country, Maher is stranded at Guantánamo. Indeed, during his imprisonment in Guantánamo, the United States government has allowed Jordanian officials and possibly Israeli officials access to him; they have threatened him with torture if he is sent to either Israel or Jordan.

Maher was born in Gaza in 1965. In his late adolescent years, he moved with his parents from Gaza to southern Lebanon. He later moved to Jordan where he worked as a cashier in a supermarket, and married. The entire time he was in Lebanon and Jordan, Maher was without identification papers or official status; he never was granted a passport, or any form of travel document or other form of national identification.

In the summer of 2001, Maher traveled to Afghanistan to seek refugee papers that would allow him to emigrate with his family. He stayed briefly in Jalalabad where he worked as a sheep trader.

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<sup>66</sup> Maher El-Falesteny (Maher Refaat Al-Khawary) is represented by Christopher Huber of Pepper Hamilton LLP.

Maher never fought in Afghanistan or had weapons there; none of the information provided to date by the United States government suggests otherwise.

Once the United States attacked Afghanistan, Maher fled for his safety, and was captured by villagers and sold to the Northern Alliance for a bounty. The Northern Alliance beat Maher brutally, and forced him to sign a document in Farsi, a language he does not understand. They eventually turned him over to U.S. troops, who transferred him to Guantánamo.

### **Muhammed Hussein Abdallah, Somali refugee<sup>67</sup>**

Muhammad Hussein Abdallah is a teacher, an elderly father of eleven, and a Somali refugee. He led his family out of Somalia years ago to protect them from escalating clan-based violence – the first murmurs of a conflict that plagues Somalia to this day. The family settled in Pakistan in the early nineties; UNHCR granted them protected refugee status in 1993. For the next several years, the Abdallahs lived in relative quiet. Abdallah was his family's protector and main provider; the family lived on his meager teacher's income and on remittances from married daughters in Canada and Saudi Arabia. When Abdallah was abducted and taken to Guantánamo, he was teaching orphans at a Red Crescent school in Jalozai, a refugee camp outside Peshawar that housed thousands of displaced Afghans. Pakistani soldiers staged a nighttime raid on his home, tore him away from his family, and sold him to American soldiers. He has been in military custody ever since. He described the shock of his capture at his Combatant Status Review Tribunal in 2004: *"I am just a teacher. I teach orphans, seven or eight year old orphans. They came and picked me up at 2 am from my house. I have no relations or no connections with anybody . . . . So if teaching orphan children who lost their father how to write is a terrorist act, [then] I am a terrorist."*

Family reports indicate that, just three months after Abdallah's abduction, his house was raided again by both the Pakistani and U.S. forces. During that raid, a U.S. soldier reportedly stormed into the room where Abdallah's son-in-law was sleeping, unarmed. Startled, the son-in-law apparently reached for his glasses to see what was happening—and the U.S. soldier shot him. He was killed.

Other witnesses—including exonerated ex-Guantánamo prisoner Abu Muhammad<sup>68</sup>—have

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<sup>67</sup> Muhammed Hussein Abdallah is represented by Cori Crider, Reprieve.

<sup>68</sup> Abu Muhammad is a pseudonym to protect Mr. Muhammad's privacy and family.

corroborated Abdallah's story. Muhammad, also a schoolteacher, traveled to work with Abdallah on the same Red Crescent bus. In Abdallah's CSRT, Muhammad remembered his former colleague as "basically a family man": someone with few outside contacts who preferred to spend his free time at home with his wife and eleven children. Now, Abdallah has been cleared for release from Guantánamo yet remains there because his country is war-torn and he has nowhere else to go.

**Abdul Aziz Naji, Algerian refugee<sup>69</sup>**

Abdul Aziz Naji is an Algerian refugee who left his homeland to become a humanitarian aid worker in Pakistan. He walks with the aid of a prosthetic leg due to an injury he suffered when he stepped on an unexploded landmine<sup>70</sup> while he and other social service workers were providing food supplies to villages in the mountains. Prior to leaving Algeria, Abdul served in the Algerian army in the mid-1990s, fighting fundamentalist terrorists opposed to the Algerian government.

Abdul would face multiple threats if he were returned to Algeria. Because of his role in the Algerian army, the newly-resurgent Algerian terrorists would consider him a target. Abdul's neighborhood was posted with fliers—presumably distributed by insurgent terrorists—warning people not to join the military, and he knew of many instances in which insurgent terrorists specifically targeted Algerian men who had served in the army, and these men were captured and slaughtered. For example, Abdul described incidents that occurred near his family's home, where terrorists posing as military police would set up roadblocks, stop buses and demand that the passengers who worked for the armed forces exit the bus, check everyone's papers<sup>71</sup>, and then kill those passengers who were or had been in the military.

In addition to how he would be perceived by the newly-resurgent Algerian terrorists, Abdul is further tainted by his detention in Guantánamo, as the Algerian government would also consider him a threat and potentially would subject him to coercive interrogation or torture, indefinite extrajudicial detention and regular harassment. Indeed, Algerian government officials met with Abdul in Guantánamo and asked him if he was a member of a militant Islamic organization in Algeria – the *Groupes Islamiques Armés (GIA)* – though he had no prior connection with the

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<sup>69</sup> Abdul Aziz Naji is represented by Doris Tennant and Ellen Lubell of Tennant & Lubell.

<sup>70</sup> Pakistan is laced with unexploded ordnance left over from the many conflicts pre-dating the 2001 war.

<sup>71</sup> Abdul explained that Algerians are required to carry their identification and military services papers with them at all times.

organization, and there was no reason to suspect any affiliation aside from his detention in Guantánamo. This line of questioning greatly increased Abdul's fear of return. Further, Abdul expressed fear that terrorists in Algeria could become aware that he had been in Guantánamo and would threaten him if he did not join them.

### **Ravil Mingazov, Russian refugee**<sup>72</sup>

Ravil Mingazov, a ballet dancer, performed with various dance troupes in Russia, before serving in the Soviet army prior to the dissolution of the Soviet Union. While Ravil's family was not religiously observant, Ravil became more interested in Islam in the mid-1990s. Ravil has vigorously disavowed radical Islam and is committed exclusively to the peaceful practice of his faith. His renewed faith led him to pray regularly, restrict his diet and dress more conservatively. Russian society is not tolerant of religious minorities, and Ravil's Muslim faith



aroused considerable hostility and persecution. He was followed by Russian intelligence services; his house was ransacked and searched by security forces. Both he and his wife were denied passports, and they were forbidden from naming their son Yusef, a traditional Muslim name.

Ravil fled Russia to try to find a better home for his family. He was in a refugee camp in Afghanistan at the time of the U.S. invasion. He fled the violence of the war; seeking refuge, he made his way to Pakistan. Soon after he arrived in Pakistan, however, he was taken to a prison by Pakistani police and eventually to a U.S. military base in Afghanistan and then to Guantánamo.

Ravil is the only remaining Russian in Guantánamo. Relying on diplomatic assurances, the U.S. government repatriated seven Russians in 2004 despite documented U.S. Department of State reports of severe religious persecution against Muslims in Russia.<sup>73</sup> Each returned detainee was charged with criminal conduct and committed temporarily to prison. Upon their release from prison, they were further harassed, abused and persecuted by Russian authorities.<sup>74</sup>

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<sup>72</sup> Ravil Mingazov is represented by Doug Spaulding and Allison Lefrak at Reed Smith LLP.

<sup>73</sup> See, e.g., United States Department of State, *International Religious Freedom Report* (2006).

<sup>74</sup> See, e.g., Human Rights Watch, *The Stamp of Guantánamo: The Story of Seven Men Betrayed by Russia's Diplomatic Assurances to the United States*, Mar. 2007.



## **OBLIGATIONS OF THE UNHCR AND THE INTERNATIONAL COMMUNITY**

International refugee problems generally need international responses, including the cooperation of multiple states with the capacity to safely protect refugees unable to return to their home countries for fear of torture or persecution. Humanitarian protection is an important tool to share the burden and responsibility of refugees.

Despite voicing strong statements in opposition to the continued use of Guantánamo for extra-legal detentions,<sup>75</sup> only two countries have thus far agreed to accept Guantánamo's refugees unable to return to their home countries for fear of torture or persecution. Though not a traditional receiving country of refugees, Albania agreed to grant refugee protection to eight men – five Chinese Uighurs, an Uzbek, an Algerian and an Egyptian. Later, in August 2007, the British government requested that the United States release five men – all British residents, but none British citizens – and transfer them to the United Kingdom. In a letter from the British Foreign & Commonwealth Office to the attorneys for these men, a representative of the British government emphasized that this was a humanitarian gesture born from the need for the international community to share responsibility for the closure of Guantánamo:

The US Government has recently taken steps to reduce the numbers of those detained at Guantanamo Bay and to move towards the closure of the detention facility. These steps include an increasing emphasis on engagement with third countries over the transfer and resettlement of those detained. . . . While the Government does not normally make representatives of this kind [urging the release of non-citizens in custody], the decision to do so in this case arises out of the exceptional nature of the Guantanamo Bay detention facility and the [British] Government's desire to take action to help bring about its closure and to reduce the number of those detained there.<sup>76</sup>

As with any other humanitarian disaster, Guantánamo's man-made refugee crisis requires the diligent and collaborative efforts of UNHCR and the international community, particularly the United States and European countries.

Albanian Prime Minister Sali Berisha commented in June 2006 that he was surprised that the United States and several European countries that call for the closure of Guantánamo had refused to offer

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<sup>75</sup> See fn. 3, *supra*.

<sup>76</sup> Letter from Paul Welsh, US Section, North America Team, United Kingdom Foreign & Commonwealth Office, to Clive Stafford Smith, Legal Director, Reprieve, of 8/7/07, at 2.

humanitarian protection to some of the small number of Guantánamo detainees who are refugees. “Big countries don’t like to deal with small problems,” he said. This may explain why dozens of other innocent men continue to be detained in Guantánamo despite their exoneration, but it is a woefully inadequate response from the international community which must act to offer humanitarian protection to these men rather than allowing them to continue their unlawful and indefinite incarceration in Guantánamo or perhaps face persecution if repatriated to their home countries for lack of any alternative.

## **CONCLUSIONS**

Guantánamo’s refugees are an international problem requiring an international solution that incorporates the expertise and resources of UNHCR and the international community, including the United States and many European countries. As evidenced by the U.S. government’s own records, most of these men were wrongly detained and present no threat to the United States or any other country. The international community must accept responsibility to find them refuge. They must not face the impossible choice of continued indefinite detention or forcible repatriation to torture or other persecution.