

BAHITYAR MAHNUT*

CHINESE UYGHUR GUANTÁNAMO REFUGEE IN NEED OF PROTECTION



Bahityar is a Chinese Uyghur, a Muslim minority from East Turkestan, the Uyghur homeland in far western China. Bahityar and other Uyghurs fled for safety from a Uyghur village in Afghanistan after the bombing campaign began, and were turned over to the United States by bounty-hunters. Five among them were classified as non-enemy combatants and, years later, released to Albania; seventeen remain in Guantánamo today.

Summary

Bahityar Mahnut is a Chinese Uyghur, a group subject to severe persecution in China. He has been unlawfully imprisoned at Guantánamo for over six years despite having been long ago cleared for release. Indeed, at his first tribunal – a deeply flawed process initiated two years after his detention began – the tribunal members even recommended him for release. This recommendation was made despite the same tribunal classifying him as an enemy combatant, apparently due to a fear that an alternative classification would precede Bahityar's eventual return to certain Chinese persecution. U.S. officials have acknowledged Bahityar's innocence for years, yet he remains at Guantánamo because of a failure of any country to offer him safe haven.

Personal History

In China, Bahityar suffered from the government's repression of the Uyghur people. Yearning for freedom, Bahityar left China with two others, heading first to Kazakhstan, then to Pakistan, to start a business. In Pakistan, he learned that his life savings of \$700 – an amount that would have been a fortune in China – would not sustain him long. He was told about a Uyghur community in the mountains of Afghanistan, where he would be given food and shelter in exchange for construction work. In the village, he was put to work in construction activities, working on a kitchen and mosque; brick-making; and paving a small road. The Uyghur community was quiet – and separated from the fighting between the Taliban and the Northern Alliance.

However, in late 2001, the village was forced to flee U.S. aerial bombardment of the surrounding area. Bahityar fled with seventeen other Uyghurs. They camped out for several days in the mountains of Afghanistan because they could not find a road in the rugged terrain. They eventually were able to make their way to Pakistan, thinking they would be safer there with their village insecure. However, after crossing into Pakistan, Bahityar and the other Uyghurs were offered a meal, and then sold for bounty – turned over to U.S. forces for a sizable sum. Thirteen of that group remain in Guantánamo today, Bahityar among them.

Allegations

Bahityar underwent a Combatant Status Review Tribunal in 2004, two years after he was initially detained. This flawed process relied largely on secret evidence not available to the detainee himself; allows the use of evidence obtained under torture; denies detainees access to counsel; and lacks a neutral and independent decisionmaker. As troubling to Bahityar was the fact that a finding that he was innocent provided no relief.

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In an exchange with the Tribunal President during his Combatant Status Review Tribunal, the President asked, “*If you were to be set free, you would go back to your homeland, which is China, unless you were to get asylum somewhere?*” Bahityar, aware that return to China would mean certain persecution, responded: “*I was going to ask that. My Personal Representative told me that if I am innocent I’ll go back to my home country. If I’m guilty and come back an enemy, I will stay. I was going to ask you about this. If I go back to China they will kill me, but if I wanted to stay here do I have to make myself guilty?*” The President offered no reassurance that a finding that he was not an enemy combatant could protect him: “*It is my understanding that if we determine you are not properly classified as an enemy combatant, you will be released to your home country.*”

Apparently both Bahityar and the Tribunal understood that this was not a choice at all: he could be found innocent and be sent to China for possible torture and even death, or be classified an enemy combatant, thereby saving his life at the cost of his liberty. In a bizarre twist, the Tribunal chose neither option. Instead, it adjudged Bahityar an enemy combatant, yet simultaneously recommended “favorable consideration for release” and urged that he “not be sent back to China.” Thus, in an apparent attempt to protect him from repatriation, the Tribunal erroneously classified Bahityar an enemy combatant. That misguided decision sealed his fate; as an enemy combatant he would not leave Guantanamo for Albania in 2006 with the five Uyghurs captured with him who had been classified as non-enemy combatants. These men had the same facts, the same circumstances of arrest, and the same allegations against them as the Uyghurs who remained, yet they had the opposite classification and now live as refugees in Albania, the one country which has opened its doors to Guantánamo detainees in need of safe haven.

Fear of Torture or Persecution

As Bahityar acknowledged in his Combatant Status Review Tribunal, his fate as a Uyghur in China would be worse even than his fate in Guantánamo. Uyghurs are a Turkic Muslim minority group that has been, and continues to be, brutally oppressed by the Chinese government. China’s brutal repression of the Uyghurs is well-documented and undisputed. In the Uyghur homeland, there are arbitrary and summary executions, torture, arbitrary detention and unfair political trials. Human rights violations reportedly have intensified in the region in recent years. China has expanded its programs to “re-educate” Uyghur imams, and broaden attacks on Uyghurs. In 2002, China outlawed use of the Uyghur language in all schools and public places.

As recognized repeatedly by the U.S. State Department, China plainly has used the global war on terrorism as a pretext for oppressing Uyghur Muslims with impunity. In particular, China has “opportunistically used the post-September 11 environment to make the outrageous claim that [Uyghur] individuals disseminating peaceful religious and cultural messages in Xingjian are terrorists.”*

The U.S. government has acknowledged that the Uyghurs at Guantánamo cannot and will not be repatriated to China – despite Chinese demands – because they would likely be tortured or killed. However, despite the U.S. government’s acknowledgement of the Chinese government’s repression of the Uyghur minority, the U.S. government allowed a Chinese delegation access to the Uyghurs imprisoned at Guantánamo.

Urgent Need for Humanitarian Protection

While Bahityar plainly deserves release, he must not be sent to China where he would be arrested, tortured and possibly even killed. He needs to find a home where he can—finally—be a free man, reunite with his family and live a normal life.

* [U.S.] Congressional Research Service, *Report for Congress: China’s Relations with Central Asian States and Problems with Terrorism* 3-4, 8 (Dec. 17, 2001).