

By      By Abigail Hauslohner   From [The Washington Post](#) | Original Article

The U.S. government this month cleared for transfer three more detainees held at the military prison at Guantánamo Bay, Cuba, attorneys say, a step toward reducing the prisoner population in advance of any effort to close the facility.

But to be recommended for transfer by a board composed of the top national security agencies doesn't mean that a detainee gets to leave Guantánamo. There are now 13 men who have been designated by the multiagency Periodic Review Board as eligible for transfer in accordance with U.S. national security concerns. Three of them have continued to be held at Guantánamo for more than a decade. One has been waiting for six years, and six other men were cleared for transfer home or to a third country earlier this year.

Attorneys for the detainees, none of whom have ever been charged with a crime, complain that the Biden administration, despite statements that it wants to close Guantánamo, isn't doing enough to make it happen.

"If I had to make a bet on what's happening, this is an example of the Biden administration, distracted by the pandemic and the economy, not paying any attention to actually making transfers happen," said Shane Kadilal, an attorney at the Center for Constitutional Rights, who represents Algerian detainee [Sufyan Barhoumi](#), who was cleared six years ago.

The prison, which has held nearly 800 detainees and now houses 39, became a global symbol of American torture and abuse, following the Sept. 11, 2001, attacks.

President Biden has not appointed a special envoy — as President Barack Obama did — dedicated to negotiating the transfer of detainees, and the administration has said little about its plans for the 13 men cleared to depart by a board made up of all the major national security agencies, including the CIA, the director of national intelligence, the Department of Homeland Security and the Justice Department.

The administration has repatriated just one detainee since Biden took office, and that was a Moroccan whose transfer arrangement was initiated under the Obama administration.

“The resettlement of Guantánamo detainees in appropriate recipient countries is a multistep process,” said a State Department official who, like others, spoke on the condition of anonymity to discuss internal deliberations. Ongoing negotiations “are also addressing a range of related issues, including rehabilitation programs and resource gaps associated with hosting former detainees. Those arrangements may require significant time to negotiate, and we are making progress,” the official said.

The State Department’s acting coordinator for counterterrorism John T. Godfrey has been leading those efforts, officials say.

The three men cleared this month include one of the last two remaining Afghans, Asadullah Haroon Gul, a member of Hezb-i-Islami Gulbuddin, a militant group once allied with al-Qaeda and the Taliban, but which made peace with the Afghan government in 2016; Sanad al-Kazimi, a Yemeni father of four, who was arrested in the United Arab Emirates 18 years ago on suspicion of being an al-Qaeda member and former bodyguard of [Osama bin Laden](#); and a Pakistani, Mohammed Ahmed Rabbani, whose attorneys say was a taxi driver picked up in Karachi and handed to the CIA in a case of mistaken identity.

“Nothing makes sense,” said Barhoumi, whose repatriation to Algeria was first approved under the Obama administration, in a message communicated through his attorney. “You’re dealing with a human being.” He said he aches to see his mother, his brothers, and the nieces and nephews he has never met. “We still live in limbo after 20 years,” he said. “Until when?”

The Trump administration largely froze transfers out of Guantánamo. The Biden administration began a review process earlier this year to examine cases “that were unable to be completed prior to the end of the Obama administration,” said a person with knowledge of the situation.

“It’s only complicated because [the Biden administration is] letting it be complicated,” said George Clarke, who represents the Yemeni national Tawfiq al-Bihani who has been held the longest — nearly 11 years past his approval for transfer. “They don’t want to actually deal with it. It requires real willpower and doing the right thing in the face of political exposure. And nobody has the guts to do that. Which is why it should be up to the courts.”

Last month the U.S. Court of Appeals for the D.C. Circuit reviewed the case of [Abdulsalam al-Hela](#), a Yemeni businessman held at Guantánamo since 2004, who was cleared by the Periodic Review Board in June. Hela has asked the court to rule his detention unlawful. The Justice Department argued that it is not — even after the same department participated in the Periodic Review Board decision that cleared Hela for transfer.

A Board determination about the threat of a detainee “does not address the legality of any individual’s detention,” said Pentagon spokesman Michael L. Howard.

For Rabbani, who was also cleared this month, the acknowledgment is so overdue that it would be comical if not so tragic, one of his lawyers said Friday. Rabbani, picked up in his native Pakistan, was initially accused of being a wanted man named Hassan Ghul, his attorney Clive Stafford Smith said in an interview over the summer. Rabbani denied the assertion, but was sent to a CIA black site, where Smith said he was tortured for a year and a half before being sent to Guantánamo.

As late as 2019, the Periodic Review Board asserted that Rabbani was in fact a longtime al-Qaeda associate, who had worked with alleged 9/11 mastermind Khalid Sheikh Mohammed, and therefore still posed “a significant threat” to the United States. The board, which typically announces its decisions several days or weeks after the fact, has not yet published its new recommendation for Rabbani’s transfer. One of Rabbani’s attorneys said they learned of his clearance Friday.

Eventually, the U.S. captured the real [Hassan Ghul](#) “and took him to the same [expletive] prison,” Stafford Smith said, referring to the black site. And then, it let him go. “Because he was cooperative.”

Bihani, the Yemeni who was cleared almost 11 years ago, “was, at best, a wannabe jihadi 20 years ago” who never actually made it to the battlefield, Clarke said. The government says he was captured in Iran in 2001 or 2002 by Iranian police, turned over to Afghan authorities which turned him over to the Americans.

In 2016 — six years after his clearance — the military told Bihani that he would be transferred

to Saudi Arabia, where he had grown up. Instead, at the last minute and without explanation, Clarke said, the Pentagon canceled the transfer.

“He’s depressed, he’s despondent. He doesn’t understand why this is happening,” Clarke said of Bihani.

Biden’s declared [end of the war](#) in Afghanistan and the withdrawal of American troops has further underscored the arbitrariness of continuing the detentions, attorneys say.

Of the 219 Afghans sent to Guantánamo following the invasion of Afghanistan in 2001, only Gul and one other remain. Early this year, the U.S.-backed Afghan government — before the Taliban’s return to power — filed their support for Gul’s release in court, saying his continued detention was “detrimental” to U.S.-Afghan relations.

“It’s really great in my opinion that [Gul] has been recommended for transfer,” said his attorney Mark Maher, from the nonprofit Reprieve. “But it’s not really clear when, if ever, that he’s going to be released from Guantánamo.”

*Missy Ryan contributed to this report.*