

By Andy Worthington

From Truthout.org | Original Article

In all of the mainstream media analysis of WikiLeaks' recent release of Detainee Assessment Briefs (DABs) from [Guantanamo](#) , relating to almost all of the 779 prisoners who have been held at the prison over the last nine years and four months, one group of prisoners has so far been overlooked: the Yemenis.

The most unfortunate group of men in Guantanamo, the Yemenis - 89 in total - make up over half of the 172 prisoners still held. In 2006 and 2007, when the majority of the Saudi prisoners were released, as part of a political settlement between the Bush administration and the Saudi government, which introduced an expensive rehabilitation program to secure the return of its nationals, no such deal took place between the US and President Saleh of Yemen.

Just 23 Yemenis have been released from Guantanamo throughout its history and those who remain have found themselves used as political pawns. When President Obama established the Guantanamo Review Task Force to examine the cases of all the remaining prisoners in 2009, the Task Force - a collection of sober officials and lawyers from various government departments and the intelligence agencies - [recommended](#) that 36 Yemenis should be released immediately and that 30 others should be held in a new category of imprisonment - "conditional detention" - until the security situation in Yemen was assessed to have improved. The Task Force also recommended that five others should be put forward for trial and 26 others held indefinitely without charge or trial.

The designation of this latter group for indefinite detention - as part of a group of 48 prisoners in total - dismayed human rights activists and supporters, in general, of the principle that preventive detention is only authorized if the prisoners in question are enemy prisoners of war, removed from the battlefield until the end of hostilities.

This should not have been a contentious viewpoint, but it was a sign of the paranoia regarding Guantanamo - which was deliberately engendered by the prison's supporters and bought into by Obama administration officials - that few voices of dissent were raised when the president attempted to [justify](#) holding 48 men indefinitely because they were regarded as too dangerous to release, even though there was insufficient evidence to put them on trial.

In the real world, rather than the permanently spooked world of Guantanamo and terrorism, this would mean that there was no evidence and that what the government had instead was multiple levels of hearsay and information extracted through torture. And this, indeed, is what has become apparent in the DABs released by [WikiLeaks](#) , which have demonstrated that much of the government's supposed evidence - against prisoners who, presumably, include some of these 48 men - was either extracted from "high-value detainees" like Abu Zubaydah, who were tortured in secret CIA prisons, or from informants within Guantanamo, who were bribed or coerced to tell lies about their fellow prisoners.

The 28 Yemenis "Approved for Transfer" From Guantanamo and the Poor Reasons for Their Ongoing Detention

Beyond these 48 men, however, and the 26 Yemenis included in the total, the Yemenis cleared for release (or "approved for transfer," in the careful words of the Task Force) have fared no better. Although President Obama released one [Yemeni](#) who had won his [habeas corpus petition](#) in the fall of 2009 and six others the week before

[Christmas](#)

, the capture, on Christmas Day 2009, of a would-be plane bomber, Umar Farouk Abdulmutallab, a Nigerian who had apparently been recruited in Yemen, caused a sudden backlash against releasing any more Yemenis from Guantanamo, which President Obama accepted without criticism, imposing a

[moratorium](#)

on releasing any Yemenis that is still in place 16 months later.

Since January 2010, just one Yemeni has been [freed](#) - a patently innocent man, who also won his [habeas corpus petition](#) - while, in general, a terrible injustice has been allowed to prevail. On the one hand, this involves the US government endorsing guilt by nationality and being content to tar the whole of Yemen as a terrorist nation that cannot be trusted with looking after prisoners released from Guantanamo, and on the other, it involves supporters of Guantanamo telling deliberate lies about the Yemenis, by claiming that released Yemenis have "returned to the battlefield" in significant numbers, when only two examples have been reported - one who was subsequently killed in an [airstrike](#)

, and another who surrendered to the [Yemeni authorities](#).

In fact, the majority of the alleged recidivists in the Gulf - around a dozen ex-prisoners - are Saudis, released by President Bush against the advice of his own intelligence agencies, who identified them as a threat. These men passed through the rehabilitation program, but then some of them crossed the border into Yemen to join al-Qaeda in the Arabian Peninsula, a small terrorist cell inspired by Osama bin Laden's example.

As a result of President Obama's moratorium, the remaining 28 men cleared for immediate release by the Task Force, but still held, have been consigned to a fate that, in effect, is no different from the 48 men held indefinitely without charge or trial. The identities of these men have not been publicly announced and it has not been possible to identify all of them, but 19 cleared Yemenis who are still held are identified in the WikiLeaks documents.

Cleared for Release Since 2004

What is deeply shocking, in reviewing their cases, is the realization that six of them were cleared for release in 2004, three were cleared for release in 2006 and the remaining ten were

cleared for release in 2007. Even these dates may not be completely accurate, as DABs issued in 2008, for example, only refer to transfer decisions made the year before, so some of the men cleared in 2007 may have been cleared even earlier.

These 19 men are not the children or geriatrics exposed in the classified documents released by WikiLeaks, swept up when all screening and safeguards are [discarded](#), as they were in Afghanistan after the US-led invasion in October 2001, Nor are they the farmers and taxi drivers and unwilling Taliban conscripts also identified in the documents (what Maj. Gen. Michael Dunlavey, the commander of Guantanamo in 2002, referred to as "

[Mickey Mouse prisoners](#)

"). However, they are people who, according to the criteria for ongoing detention at Guantanamo - their intelligence value and the risk they pose to the US - should have been released from the prison when they were cleared for release between four and seven years ago.

Most of the 19 were assessed as low-level Taliban foot soldiers, who, in the opinion of the military, do not constitute a serious threat to the US, and some, of course, dispute the allegations against them.

Four of them, it transpires, have had their habeas corpus petitions ruled upon by US judges in the District Court in Washington, DC. In two of these cases (those of [Fahmi al-Assani](#), cleared for release in October 2004 and

[Suleiman al-Nahdi](#)

, cleared for release in August 2007), the prisoners lost their [petitions](#)

and in two others, in which the prisoners won ([Saeed Hatim](#)

, cleared for release in January 2007 and

[Adnan Farhan Abdul Latif](#)

, cleared for release in December 2006), the Obama administration appealed.

The Case of Saeed Hatim and a Notoriously Unreliable Witness

Saeed Hatim, whose habeas corpus petition was granted in [December 2009](#), had his successful petition vacated by the Court of Appeals (the DC Circuit Court) in

[February this year](#)

and Adnan Farhan Abdul Latif, who won his petition

[last July](#)

, is currently preparing to challenge the government's appeal.

In both cases, however, it is deeply distressing that the administration chose to appeal the successful habeas petitions of men whose release from Guantanamo was first approved under the Bush administration and was then approved by US judges, especially as further information emerged in court which undermined the government's supposed evidence and added mitigating factors that were not available from an analysis of the documents released by WikiLeaks.

In Saeed Hatim's case, for example, Judge Ricardo Urbina ruled out self-incriminating statements made by Hatim himself, accepting that he made them while being mistreated and threatened with torture in Kandahar after his capture and also that he repeated them at

Guantanamo "because he feared that he would be punished if he changed his story."

Judge Urbina also ruled out the government's major claim against Hatim - that he had taken part in a showdown between al-Qaeda and US forces in Afghanistan's Tora Bora mountains in December 2001 - because the only source for that claim was one of the notoriously unreliable witnesses identified in the WikiLeaks documents, who, in Judge Urbina's words, "has exhibited an ongoing pattern of severe psychological problems while detained at GTMO."

As I explained in an article [last year](#) :

The judge cited an interrogator, who, in May 2002, stated, "I do not recommend [redacted] for further exploitation due in part to mental and emotional problems [and] limited knowledgeability," and also noted that he had attempted to hang himself in his cell in February 2003 and had again tried to commit suicide in March 2003, "saying that he had received 'command hallucinations' to do so."

He also noted that the Guantanamo hospital record stated that the witness "had 'vague auditory hallucinations' and that his symptoms were consistent with a 'depressive disorder, psychosis, post traumatic stress and a severe personality disorder,'" and concluded by "refus[ing] to credit what is arguably the government's most serious allegation in this case based solely on one statement, made years after the events in question, by an individual whose grasp on reality appears to have been tenuous at best."

I also explained that this particular witness was noteworthy because, in June 2007, the Office of Administrative Review of the Detention of Enemy Combatants (OARDEC), which compiled the evidence against the prisoners for their tribunals and review boards, "warned that because [his] first-hand knowledge had come into serious question since 2005, all information provided by [him] should be adequately verified through independent sources." In Hatim's case, his statement was made in 2006 and, as Judge Urbina also explained, "the personal representative of another GTMO detainee determined that none of the detainees that [the witness] had identified as having trained at al-Farouq were even in Afghanistan during the time that [he] said they attended the camp."

This was a reference to a military official assigned to represent a Syrian prisoner, Mohammed al-Tumani, at his Combatant Status Review Tribunal in 2004. In a story by [Corine Hegland](#) that was published in the National Journal in 2006, the personal representative was so taken aback by the vigor with which al-Tumani refuted a claim that he had attended at the al-Farouq military training camp in Afghanistan that he "pulled the classified file of the accuser, saw that he had accused 60 men and, suddenly skeptical, pulled the files of every detainee the accuser had placed at the one training camp. None of the men had been in Afghanistan at the time the accuser said he saw them at the camp."

Saeed Hatim's DAB, released by WikiLeaks, reveals that his accuser was Yasin Basardah, whose unreliability was first discussed publicly in a [Washington Post](#) article in February 2009. His testimony has been excluded by judges in other habeas corpus petitions (see, for example, the case of [Mohammed](#)

[El-Gharani](#)),

and he has been singled out in the most recent media reports based on the WikiLeaks documents as a particularly unreliable witness, who, as

[The Guardian UK](#)

explained, was "freed after implicating 123 prisoners," and was "rewarded despite unsupported claims and interrogators' doubts about [the] sheer number of names he gave up."

The Case of Adnan Farhan Abdul Latif: Cleared for Release and Mentally Ill

If anything, the case of Adnan Farhan Abdul Latif is even more depressing. Although the US authorities persistently tried to portray him as a member of al-Qaeda, both Latif and his lawyers maintained that he had traveled to Afghanistan to receive cheap medical treatment for a head wound received in a car crash in Yemen. When his petition was granted last July, by Judge Henry H. Kennedy Jr., who ruled that the government had failed to prove "by a preponderance of the evidence that Latif was in Afghanistan to train and fight with the Taliban," one of his lawyers, David Remes, triumphantly stated, "This is a mentally disturbed man who has said from the beginning that he went to Afghanistan seeking medical care because he was too poor to pay for it. Finally, a court has recognized that he's been telling the truth and ordered his release."

There were many reasons for presuming that Latif had told the truth. In my book "[The Guantanamo Files](#)

," for example, I described what had happened at his Combatant Status Review Tribunal at Guantanamo in 2004:

Latif appeared bewildered, refuting what he believed was an allegation that he came from a place called al-Qaeda by saying, "I am from Orday City in Yemen, not a city in al-Qaeda. My city is very far away from the city of al-Qaeda," which perhaps reinforces his claim that he had traveled to Afghanistan to receive treatment for a fractured skull.

Moreover, in the years following the tribunal, it also became apparent that the US government knew that Latif had severe mental health problems. When another of his lawyers, Marc Falkoff, tried to secure his medical records in 2008, he wrote that the government had "been aware for years that Mr. Latif suffers from serious psychological problems, apparently including schizophrenia."

Nevertheless, as I explained in an article [last year](#) , after he won his habeas corpus petition: Even so, the authorities were reluctant to abandon their portrayal of Latif as a conscious troublemaker, as is demonstrated by the following notes in the summary of [evidence](#) for his military review board in March 2005: "Detainee's overall behavior has been non-compliant and aggressive. Detainee does not comply with guards instruction. Detainee continues to talk between the blocks. Detainee also has multiple occurrences of causing damage in his cell. Detainee has shown by his actions that he has little regard for the rules of the cellblock and does not respect his fellow man."

In fact, far from demonstrating deliberate noncompliance, Latif was in such a precarious mental state that he attempted to commit suicide on a number of occasions. In an appeal issued in [May 2009](#)

, Amnesty International noted that he had "attempted suicide several times since September 2008," and that he "told his lawyer that on one occasion in November 2008, he tried to hang himself twice in one day." The Amnesty report added, "At least one of these attempts was confirmed to his lawyer by an official at Guantanamo."

Last May, Amnesty International issued another [appeal](#) and noted little improvement in the intervening 12 months, stating that Latif was "held in isolation," and that in March he told his lawyer that he "continues to be subjected to ill-treatment and indicated that he feels suicidal." When it comes to President Obama's management of Guantanamo, the continued detention of Adnan Farhan Abdul Latif and the decision to appeal his successful habeas corpus petition is a

particularly low point, as Latif is patently unwell. The judge in his habeas petition took his responsibilities seriously when ordering his release and his transfer from Guantanamo was first approved over four years ago, in December 2006.

The Arbitrary Detention of the Yemenis

Even so, it should also be apparent that, when it comes to the other Yemenis whose transfer from Guantanamo was approved by the president's Guantanamo Review Task Force and, in many cases, in decisions made under President Bush dating back to 2004, the continued detention of any of these men undermines any claims that the arbitrary detention that typified the Bush years has come to an end. When judges order the release of prisoners, based on a detailed analysis of their habeas corpus petitions and are ignored, and when decisions taken by the Task Force are discarded because of political convenience, it is clear that the Yemenis are still held as much "outside the law" as they were under George W. Bush.

If President Obama wants to make up for failing to fulfill his promise to close Guantanamo within a year, which he made on his second day in office, he should immediately release Adnan Farhan Abdul Latif, Saeed Hatim and the other 26 men, cleared for release up to seven years ago by the Bush administration and cleared for release again on his own watch. Otherwise, everyone might as well stop pretending that Guantanamo is anything other than what it was when it was first established: a place to hold men forever, without any legal interference, even though the rationale for that disturbing behavior - establishing an illegal offshore interrogation center, where the prisoners could be interrogated using whatever means the commander in chief saw fit to authorize - evaporated years ago.

It is time for Guantanamo to close and to achieve that, everyone except those put forward for trials should be released - starting with these 28 Yemenis.

Note: The 19 Yemenis recommended for transfer (and the date those recommendations were made)

ISN 026 [Fahed Ghazi](#) (recommended for transfer July 2006)

ISN 034 [Abdullah al-Yafi](#) (recommended for transfer April 2007)

ISN 115 [Abdul Rahman Naser](#) (recommended for transfer January 2007)

ISN 152 [Asim al-Khalaqi](#) (recommended for transfer January 2007)

ISN 156 [Adnan Farhan Abdul Latif](#) (recommended for transfer December 2006)

ISN 163 [Khalid al-Qadasi](#) (recommended for transfer January 2007)
ISN 165 [Adil Said al-Busayss](#) (recommended for transfer September 2004)
ISN 167 [Ali Yahya al-Raimi](#) (recommended for transfer October 2004)
ISN 224 [Abdul Rahman Muhammad](#) (recommended for transfer January 2007)
ISN 249 [Muhammad al-Hamiri](#) (recommended for transfer April 2007)
ISN 251 [Muhammad bin Salem](#) (recommended for transfer April 2004)
ISN 255 [Saeed Hatim](#) (recommended for transfer January 2007)
ISN 259 [Fadil Hintif](#) (recommended for transfer January 2007)
ISN 440 [Muhammad Bwazir](#) (recommended for transfer May 2007)
ISN 461 [Abdul Rahman al-Qyati](#) (recommended for transfer September 2004)
ISN 506 [Khalid al-Dhuby](#) (recommended for transfer December 2006)
ISN 511 [Suleiman al-Nahdi](#) (recommended for transfer August 2007)
ISN 554 [Fahmi al-Assani](#) (recommended for transfer October 2004)
ISN 572 [Salah al-Dhabi](#) (recommended for transfer September 2004)