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Disposable Pawns in a Game of Diplomatic Chess

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In a federal court of appeals in Washington, DC today, a case has been filed that casts troubling light on the apparent willingness of the United States government to detain innocent men as "enemy combatants" in order to secure international support for its 2003 invasion of Iraq.

Here, in brief, are the facts described in the filing.

In 1949, Maoist China seized a new far western province known to many of its inhabitants as East Turkistan. Calling the new province "Xingjian," the Chinese ruthlessly suppressed political and religious diversity. Thousands of ethnic Uighers, who are Muslim by affiliation, fled the province.

Among those who sought new lives free of Communist oppression were twenty-three Uighers, who ended up in northern Afghanistan--long an entrepot for Afghans, Turkic, and Chinese peoples. They lived in a village near the eastern town of Jalalabad, doing odd construction and manual labor. They never fought with either al Qaeda or the Taliban. After their village was bombed in the American invasion of October 2001, they fled to Pakistan.

In December 2001, the Uighers were seized by Pakistani forces and handed over to America for \$5000 ransoms. It is a matter of public record that the Pentagon, on the advice of Justice Department lawyers, did not screen its detainees to determine if it was properly holding them: It simply assumed everyone seized was a terrorist.

Grabbed by bounty hunters hungry for money, far from any battlefield, the Uighers were nevertheless taken to Guantánamo. They were labeled the worst of the worst and confined in cages. In a foreign land, they were stranded, cut off from their culture, their homes, their friends, their families.

After three years' detention without any process whatsoever, the Uighers were given the first chance to present their case to a "Combatant Status Review Tribunal," or CSRT. The military explicitly told detainees that the CSRTs were not "habeas review"--that is, the traditional judicial text for unlawful detentions. It is telling that CSRTs were conducted at a rate of 50 per week. The Uighers had no lawyer. They had no way of getting evidence. They were not permitted to see the evidence against them.

A CSRT, indeed, is a simple affair. The officer says, "You're in al Qaeda." The detainee says, "No, I'm not, and if you allow me to present evidence, I can prove it." The officer refuses, stamps the file "enemy combatant"--and we're done for the day.

Much of this is known. What was not known until now is why this decision was made. In August 2002, as Iraq war drums were neared their zenith, Deputy Secretary of State Richard Armitage traveled to China to talk about the war that the United States had already decided to launch in Iraq.

But, for the Chinese, the Uighers were an issue. They demanded that the United States recognize the Uighers as terrorists, and designate Uigher political dissidents as members of a terrorist group. Armitage complied.

It appears that the August 2002 agreement reached with China was even more detailed. In September 2002, mere weeks after the Armitage visit, the filing explains, Chinese interrogators visited Guantánamo to question the Uighers--and used with American authorization coercive techniques such as environmental manipulation, stress positions, and stress deprivations.

Let me reiterate what the Uighers' filing credibly asserts: At a U.S. military facility, the United States permitted Chinese intelligence agents to torture detainees as quid pro quo for Chinese support for the Iraq War.

Of course, by time the war began, Chinese support within the U.N. was, shall we say, less than imperative. In April 2003, the Uighers were told, in the words of one interrogator "You are innocent. I am closing the file on you." The United States began looking for a country that would take the Uighers (who would be tortured if sent to China). Three years later, several are still there.

The question today is whether the United States will continue to keep innocent men in cages for years on end. It is a question of whether to treat human beings as disposable pawns in a grand game of diplomatic chess. A question of whether our principled belief in human dignity must yield before the expediencies of illegal and unwise warmongering.

Last week, the Justice Department issued an apology to Brandon Mayfield, an Oregon lawyer who had been wrongly detained as a "material witness" and criminal suspects in the March 2004 Madrid bombing. Mayfield, another innocent swept up in reckless and feckless counter-terrorism operations, could have sued--and would doubtless have secured a considerable (and embarrassing) judgment.

The Uighers, however, cannot invoke the shadow of money damages: Recent legislation cuts off all money damages claims based on abuse and mistreatment in global money damages claims. Unlike Mayfield, they must ask the United States to do the right thing for its own sake.

Apparently, that's not enough for this Administration.

Indeed, the Uighers must cling to sanity and life against dire odds. Their presence in U.S. hands is a continuing shame. A persistent scar on America's reputation for honesty and decency.

In September, Congress passed the Military Commission Act, which purports to limit the ability of federal courts to scrutinize the facts surrounding certain detention decisions. The case of the Uighers shows why the government wants to limit scrutiny.

When the Democrats took control of the House and Senate, they promised accountability. For many Americans and for many citizens of other nations, it is too late. But for some of the victims of collateral damage from the Iraq war, the clock has not struck twelve. We still can do some modicum of justice, save some cinder of face.

We should do so without delay.

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