

THE Nation.

After Gitmo

by **AZIZ HUQ**

May 13, 2008

The US Supreme Court has yet to rule on the constitutional challenges filed by Guantánamo detainees to their six-year-plus imprisonments. It may not do so until June. Yet politicians already are lining up to ensure that, however the Court rules, a full remedy for the Bush Administration's errors proves impossible.

Last month, Republican senator Sam Brownback of Kansas made a **pre-emptive strike** against any plan to move detainees to the United States. Responding to vague plans to transfer detainees to military facilities in Fort Leavenworth, in his home state, Brownback argued that logistical and technical barriers would make such detentions unfeasible.

Brownback's localism obscures more than it reveals. He assumes that the central problem of unwinding Guantánamo will be how to "store" the remaining detainees, whom he presumes to be too dangerous to be released. He is wrong. The most pressing problem, one that will persist whatever the Supreme Court does, is the fate of detainees who have been seized in error--innocent men who now cannot be returned to their home countries due to the risk of torture.

Brownback has things precisely backward. Rather than worry about the hypothetically guilty at Guantánamo (for in fact no one there has been fairly convicted of any crime), the priority should be how to deal fairly with the innocent.

The most fair and plausible solution for these detainees is resettlement within the United States, a solution only a handful of courageous Guantánamo lawyers have sought to date. Yet the American public has yet to recognize this.

A recent report by the New York-based **Center for Constitutional Rights** documents the cases of at least fifty Guantánamo detainees who are at high risk of torture if they are returned to their home countries. However exposed such detainees were before, being repeatedly branded as dangerous terrorists by the Bush Administration has entrenched their at-risk status beyond repair. Recent repatriations from Guantánamo to **Tunisia** and **Russia** have moved detainees to prisons with even worse conditions--and with less access to legal or humanitarian assistance--than they had at the Cuban base.

Indeed, the implausibility of safe repatriation in such circumstances is now so evident that even the conservative US Court of Appeals in Washington has **held** that courts can stay transfers to examine the risk of torture.

To be sure, resettlement within the United States for any of the Guantánamo detainees is a political non-starter. In a global context, moreover, it is but a small fraction of the larger failure of the United States to deal equitably with the human fallout from its national security policies. **US responses** to the Iraqi refugee crisis in Jordan and Syria have been far from adequate. Nor has the United States honored

the loyalty of **Iraqis** who worked with diplomats and the military in the post-invasion period.

Yet as all of the presidential candidates have recognized, Guantánamo imposes tremendous, perhaps unique, reputational drag on the United States's public campaigns against terrorism, and some resolution must be found.

Rather than honestly dealing with the problems thrown up by the Bush Administration's erroneous detention decisions, the Administration and its supporters are now moving to use Guantánamo as an election-year wedge issue by advocating new "solutions" for the detainees. A **preventive detention statute** is high on the agenda.

Such innovations--echoes of past "solutions" for problem populations--would merely momentarily dislodge Guantánamo from the public eye. They would do nothing to solve the pressing concern of innocent detainees whom the United States refuses to release. But it is a measure of the Bush Administration's success in shifting the terms of debate that internment akin to that used against the Japanese-Americans in World War II or against Catholics in 1970s Northern Ireland is now being touted as a compromise solution.

Nor can Guantánamo be resolved by dispersing detainees to incarcerations in new and distant prisons. Since the United States has failed to hold its allies in Pakistan, Egypt and Syria to even minimal standards of decency, despite the influence foreign aid and military cooperation bring, we have forfeited the right to absolve ourselves of responsibility for what those countries do. To claim that detainees can be returned to those countries in good conscience is risible.

In all events, the Administration has forfeited any credibility when it comes to dealing equitably and securely with detainees. Its lead should be ignored. Resolving the farrago of prideful stupidities that lead to Guantánamo means accepting that the United States has imprisoned and abused innocent men for years--and accepting this not just as an intellectual matter but also as a matter of practical morality.

Resettlement within the United States for Guantánamo detainees who were improperly detained, who the military wants to release, and who cannot be sent to their home country due to the risk of torture, should not be an impossible sell. In one case recently argued in Washington, attorneys for Chinese Uigher detainees **pressed** a compelling argument for that remedy. Whether or not they succeed in the courts, the Uighers' case should prevail as a matter of public policy.

For even conservative politicians increasingly understand the need to redeem those society has cast out into jails. **The Second Chance Act**, which strengths post-incarceration rehabilitation programs, has many conservative supporters, including the good Senator from Kansas. But if empathy can extend to those convicted and sentenced, why should be it withheld from those who have never been convicted, except in a court of public opinion jerry-rigged by the prosecutors?

To do otherwise would be somewhat like solving the problem of wrongful convictions by re-sentencing defendants to death.

The election year will bring many proposals to "fix" Guantánamo involving preventive detention or national security courts. None of these ideas addresses the stain the prison has left on America's reputation. None provides any hope to the wrongly imprisoned. None yields a real solution. A meaningful response accepts responsibility for the shattered lives and stolen years of wrongful imprisonment in the hands of the United States, a responsibility that can be plausibly met only by

treating detainees the same way as other refugees who have no safe port of call--by opening prison doors to new lives in America.

About Aziz Huq

Aziz Huq directs the liberty and national security project at New York University's Brennan Center for Justice. He is co-author of *Unchecked and Unbalanced: Presidential Power in a Time of Terror* (New Press, 2007)

He is a 2006 recipient of the Carnegie Scholars Fellowship and has published scholarship in the *Columbia Law Review*, the *Yearbook of Islamic and Middle Eastern Law*, and the New School's *Constellations Journal*. He has also written for *Himal Southasian*, *Legal Times* and the *American Prospect*, and appeared as a commentator on *Democracy Now!* and NPR's *Talk of the Nation*. [more...](#)

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