

# The End of Guantánamo

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Global Research, November 27, 2008

27 November 2008

Theme: [Crimes against Humanity](#)

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The repatriation from Guantánamo of Salim Hamdan, a former driver for Osama bin Laden, to serve out the last month of his sentence for providing material support for terrorism in Yemen, will surely hasten the demise of the prison, as [promised](#) by President-Elect Barack Obama, even though the circumstances of Hamdan's departure were as furtive and secretive as the long years of his detention. Speaking to the [Los Angeles Times](#), his military defense attorney, Navy Lt. Cmdr. Brian Mizer, explained, "Attorneys should have many rights under this system, and so should an accused. But those just don't happen at Guantánamo. The way things happen in Guantánamo is that your client is whisked away in the middle of the night and you find out about it in the newspapers."

In August, Hamdan became the first prisoner of the United States to face a [war crimes trial](#) since the Second World War, and although opponents of the system of trials by Military Commission (dreamt up by Vice President [Dick Cheney](#) and his close advisers in November 2001) maintained their disdain for the entire system, pointing out that, amongst other defects, it allowed the judge to withhold all mention of evidence obtained through coercion, the verdict in the trial was a bitter blow for the government.

Prosecutors had hoped to secure a 30-year sentence for Hamdan, who was accused of conspiracy and providing material support for terrorism, but the military jury dismissed the conspiracy charge, accepting Hamdan's claim that he was merely a \$200-a-month employee, with no inside knowledge of the workings of al-Qaeda, and [sentenced](#) him to serve just five and a half years for providing material support for terrorism. When the judge, Navy Capt. Keith Allred, allowed for time served since Hamdan was first charged, it meant that he would be free by the end of the year.

The sentence infuriated the Pentagon, which refused to rule out the possibility that it would continue to hold Hamdan as an "enemy combatant" after his sentence was served, even though this was a concept that most dictatorships would blanch at pursuing. Unwilling to acknowledge that tampering with the results of a military system of its own devising would resemble the tantrum of a small child, the Pentagon then [attempted](#) to put pressure on Capt. Allred to reconvene the jury for a new sentence, arguing that he had no right to reduce Hamdan's sentence for time served, but on October 30, in a terse response, Allred refused to be swayed, and declared, "The prosecution motion to reconsider, reassemble, reinstruct and re-announce a sentence is denied."

Beyond demonstrating, however belatedly, that the Bush administration is actually capable of playing by its own rules, Hamdan's release is also enormously significant for around half

the remaining prisoners at Guantánamo. Regarded, as [CBS News](#) explained on November 14, as “too dangerous to release but not guilty enough to prosecute,” these prisoners — approximately 125 in total — are [caught between](#) the 50 or so prisoners who have been cleared for release but cannot be freed because of international treaties preventing the return of foreign nationals to countries where they face the risk of torture, and the 80 or so regarded as significant enough to face a trial by Military Commission.

However, although CBS News alleged that they could not be put forward for prosecution “because the evidence against them can not be used in court,” the reality is that these are prisoners against whom suspicions of militant activity or of sympathy for militant activity are largely unjustifiable because they are derived from the torture, coercion or bribery of other prisoners, or from the torture and coercion of the prisoners themselves.

The history of Guantánamo is permeated with dubious information, masquerading as evidence, which has been used by the administration to justify holding these men, but as is evident from the verifiable stories of numerous released prisoners, from investigations by their lawyers, from [explosive statements](#) made by military officers who worked on the tribunals at Guantánamo that were responsible for presenting the information that was used as evidence, from a study of Pentagon documents by the Seton Law School ([PDF](#)), and in my own research for my book [The Guantánamo Files](#), the reason that much of this information is inadmissible is not just because of the manner in which it was gathered, but also because so much of it would not stand up to independent scrutiny, as has been demonstrated in the only two cases that have been reviewed by a US court: those of [Huzaifa Parhat](#), cleared of being an “enemy combatant” in June, and five [Bosnian Algerians](#), cleared of the charges against them in a District Court last week.

The conclusion is stark, but as true as it has ever been: hearsay evidence — whether obtained through kindness (better living conditions) or cruelty (the use of “enhanced interrogation techniques”) — is fundamentally unreliable, and at Guantánamo the liberal, even credulous acceptance of hearsay evidence has produced a catalog of farcical allegations that are simply untrue.

What this means, when the window dressing is removed, is that these 125 prisoners are regarded as less significant than Salim Hamdan, who was specifically chosen for a flagship trial because of his known proximity to Osama bin Laden. As a result, when Hamdan’s sentence comes to an end, one month from now, and he is a free man once more, reunited with his wife and children, it will, I believe, be impossible for the administration to justify holding these men any longer, and Barack Obama will, if he wishes, be able to highlight the absurdity of this situation to justify a speedy review leading to their release.

Significantly, over half of these prisoners are also from Yemen. A mixture of innocent men, seized and sold for bounty payments, and lowly foot soldiers for the Taliban, who were recruited to fight an inter-Muslim civil war that began long before the 9/11 attacks, they are among the 100 or so Yemenis at Guantánamo who have watched, over the years, as hundreds of prisoners from other nations were released, and the majority of the 130 Saudis were also repatriated, to be put through a bold rehabilitation program, involving religious reprogramming and psychological and financial support, that met with the approval of the US authorities. With the government of Yemen — a poorer and more fractured country than Saudi Arabia — unable to guarantee that returned prisoners would be put through a similar program, the Yemenis have languished at Guantánamo, despite the similarities, for the most part, between their stories and those of the Saudis.

Hamdan's release indicates that negotiations between the Yemeni and US governments are now proceeding more fruitfully than before, and suggests that their repatriation — until now a major stumbling block to the closure of Guantánamo — may be only a matter of time.

*Andy Worthington is the author of [The Guantánamo Files: The Stories of the 774 Detainees in America's Illegal Prison](#) (published by Pluto Press/the University of Michigan Press, and available from Amazon — click on the following for the [US](#) and the [UK](#)).*

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