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*Washington*

## **Repatriation of Uzbeks From Guantanamo Halted**

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WASHINGTON -- The Bush administration has decided not to send home three Uzbek prisoners deemed eligible for release from the Guantanamo Bay military prison because of the Uzbekistan government's recent deadly crackdown against hundreds of protesters, two senior US officials said yesterday.

"We were looking at the possibility of sending them back, and now, given the current environment, we are not inclined to do that," said one of the officials, who is involved in arranging the transfer and release of detainees from Guantanamo. "Any plan to move them is on hold."

The decision to halt the process of sending the Uzbeks home from Guantanamo underscores the difficulty of repatriating detainees and eventually closing the prison, as urged by former president Jimmy Carter and several members of Congress.

Yesterday, Senator Mel Martinez of Florida became the first Republican to join in the recent chorus questioning whether the cost of Guantanamo outweighs its benefits. Its critics argue that the controversial operation is undermining support for the United States among allies and serving as a recruiting tool for Al Qaeda.

But shutting down the Guantanamo prison may be easier said than done. The Bush administration never articulated a clear endgame for the facility when it decided to bring Afghanistan war prisoners to Cuba 3 1/2 years ago. Now, the United States may be stuck without an easy way out, according to a range of legal and national security analysts.

"They're caught in a web of their own making," said Yale Law School dean Harold Koh, a former Clinton administration official. "All this goes to why you don't make snap judgments like this. Exit strategies are not just about entering wars. They are for setting up apparatuses [so they don't] become liabilities during wars."

Defense Secretary Donald Rumsfeld said this week that keeping the prison open is a necessary part of the US war on terrorism. The White House was less categorical; in a cryptic comment that made global headlines, President Bush told Fox News recently that the United States is "looking at all alternatives" when it comes to dealing with detainees.

The issue revolves around what to do with the roughly 520 prisoners who are still being held without trial at the prison. Some critics have proposed sending most of the detainees back to their home countries, while putting the handful of those deemed most dangerous on trial to legitimize their continued detention elsewhere if the prison closes. But neither task would be simple.

Sending prisoners to their home countries is problematic because some of those countries don't want to take their militant citizens back. Others, like Uzbekistan, have poor human rights records and can't be trusted to treat the prisoners humanely. The Convention Against Torture, which the United States ratified, makes it illegal to transfer prisoners to countries where it is likely they would be mistreated.

Uzbek troops fired on protesters May 13 after militants described by the government as Islamic radicals seized a prison and a government building. Authorities say 173 people died in the unrest;

human rights groups say more than 700 people were killed and that the troops fired on unarmed civilians.

The problem of dealing with countries with bad human rights records has already plagued the administration, which has tried to reduce the Guantanamo prisoner population by sending home those prisoners it deems no longer pose a threat. But first those home governments must satisfy the United States that they will both keep track of their citizens and treat them humanely.

"The problem is that many of these people come from countries with questionable human rights records," said the senior US official, who spoke on condition of anonymity. "We have got a tremendous amount of pressure to release these people and send them home. But you have to balance that with what will happen to them when they go home. It's a strange dilemma that the US finds itself in."

Last summer, the Supreme Court granted Guantanamo detainees access to US courts to challenge the basis of their detention. The military set up several tribunals it hoped would satisfy the court's demand that detainees receive legal safeguards.

The first tribunal determined whether or not detainees were enemy combatants. Thirty-eight detainees who were deemed not to be fighters were ordered freed. Then, a separate parole board-like panel was to review the rest of the cases annually to determine whether detainees should continue to be held.

The second US official said that of the three unidentified Uzbeks who had been declared eligible for release, one was among the 38 deemed not to be enemy combatants and the other two were deemed to be former fighters who no longer posed a threat. All three are in limbo at Guantanamo.

Detainees, who hail from 42 countries, were mostly taken in Afghanistan but some were captured from as far away as Bosnia. The United States has released or transferred 234 prisoners out of Guantanamo. Of the roughly 520 who remain, about 40 have been approved for transfer home.

But the process has ground to a halt for at least 18 of those 40: the three Uzbeks and 15 ethnic Uighurs -- Muslims from China who have been determined to be at risk of torture if they are returned. Diplomatic attempts to get European countries to take the Uighurs have failed. Analysts said other detainees could face the same problem if the United States tries to empty the prison.

In addition, winning a conviction could prove difficult in an American criminal trial or court martial against those the United States deems are so dangerous that it must keep them. The prisoners have been locked up without trial for years, violating normal guarantees of a speedy trial. They have been interrogated under coercive conditions without a lawyer, violating normal criminal case questioning rules.

"We need to consider shutting it down, but it would be a very difficult thing to do," said Mark Jacobson, who helped formulate Guantanamo policy at the Pentagon before leaving in 2003 to complete his doctorate. "I think every defense lawyer would say that 'because you didn't technically stick with the rules for four years, you have to let my client go.' "

Moreover, the evidence against many of them is hazy. Many were captured by the Northern Alliance -- Afghan fighters who helped the United States oust the Taliban regime -- which turned them over with assurances that they did not belong to Al Qaeda. But trials require direct evidence.

If the US government does have stronger evidence against detainees, it may be in the form of secret intelligence that it does not want to reveal in court for fear of compromising a source.

The Bush administration attempted to get around those problems by setting up trials before a military commission that would have allowed hearsay and secret evidence. But a federal judge shut those trials down last fall, ruling them unconstitutional. That case is now on appeal. Only six prisoners were designated as eligible for the trials before they were halted.