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Men Without a Country

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LAST MONDAY THE PROSPECTS FOR two men detained at Guantanamo Bay grew somewhat brighter. In a Washington, D.C., courtroom, a lawyer for Abu Bakker Qassim and A'del Abdu Al-Hakim made a persuasive case that the government no longer has legal justification to detain the men because they had been declared "non-enemy combatants" by Defense Department tribunals. A Justice Department lawyer acknowledged that the only thing standing between the two men and freedom was finding a "suitable country" to take them in.

The problem is that Qassim and Al-Hakim cannot go home. They are Uighurs, a persecuted Turkic Muslim minority concentrated in China's far northwest province of Xinjiang, or, as the Uighurs call it, East Turkestan. Their cases illustrate both the flaws of U.S. detention policy in the war on terrorism and the efforts of the administration finally to sort out those who need to be detained from those unfairly caught up in the post-9/11 dragnet.

The Uighurs live in an area that Beijing considers strategically important, bordering on Central Asia, Afghanistan, and Kashmir. Beijing has devoted considerable resources to settling Xinjiang with ethnic Han Chinese and developing it economically, including infrastructure projects designed to extend settlement deep into the Uighur heartland in the south. Religious persecution, already serious before 9/11, has intensified, as China has used the war on terror to justify an even harsher crackdown on Islamic practice and Uighur culture and education.

Under these circumstances, and to its credit, the Bush administration refuses to return the Uighurs. Their mere association, however mistaken, with Guantanamo--and their statements about China while in custody--would put them in grave jeopardy. At the same time, it appears that the government has known for quite some time that many if not all of the approximately two dozen Uighurs at Guantanamo constitute no threat to the United States and its allies in the war on terrorism. At a March briefing marking the completion of tribunals for all of Guantanamo's detainees, Navy Secretary Gordon England said, "We have Uighurs from China that we have not returned to China, even though, you know, some of those have been deemed, even before these hearings, to be non-enemy combatants."

According to their lawyer, Qassim and Al-Hakim, men in their thirties, married and with children, traveled to Iran from Kyrgyzstan, trying to obtain visas to Turkey, which has a substantial Uighur community where they might find work. Al-Hakim told the lawyer that they were seized in Pakistan in late 2001 or early 2002 by Pakistani security forces who had been paid a bounty by Americans.

Their lawyer's statement filed with the court is the only information publicly available about them. The Defense Department instituted Combat Status Review Tribunals last summer, but transcripts of the tribunal proceedings are classified and have not been provided to attorneys for detainees. Some undated, redacted transcripts of unidentified detainees have been declassified, however, through a Freedom of Information Act request by the Associated Press. Among these are several that, owing to the references they make to the Chinese government, are clearly from cases of Uighur detainees like Qassim and Al-Hakim.

The tribunal officials were concerned with determining whether the detainees were members of a militant Islamic group and whether they had received weapons training, which some of the Uighurs did. However, a number of Uighurs adamantly reject the notion that they are hostile to

the United States or its coalition allies. One transcript relates a story similar to what Qassim and Al-Hakim told their lawyer:

[M]y goal was to go to Turkey but unfortunately I couldn't get a visa and ended up in Afghanistan. I had no intention to attack or do anything against the United States. I never had those kinds of intentions and I never will. I want you to know that I am a normal businessman. . . . Speaking for myself, if I get out of here, I will say good things about America because they have treated us in here really good.

In another transcript, a different, unidentified detainee insists that Uighurs are not a threat to the United States:

America never hurt me; why would I join against them? If I wanted military training it would have been to fight the Chinese government. There have never been problems between the Americans and the Uighurs; we support America.

According to the New York Times, there are 22 Uighurs at Guantanamo, and as of last November at least half were eligible for release. Washington wants to release the Uighur detainees to countries that will respect their human rights but also make the men available for further questioning if necessary. Norway has declined, and a number of other European countries, including Switzerland and Finland, have also said no, according to press accounts.

There is one obvious, suitable country to take Qassim and Al-Hakim--the United States. Of course, there are two problems to contend with: China would react furiously, and the administration's critics would have a field day.

Beijing would be outraged by a decision that undermines its justification for persecuting the Uighurs. But Washington has for the most part rejected Beijing's use of the war on terror as a pretext for cracking down on Uighurs engaging in peaceful political and unsanctioned religious activities. Nor should the administration fear that releasing Qassim and Al-Hakim on U.S. soil would prompt Beijing to withhold anti-terrorism cooperation. There simply hasn't been enough cooperation to worry about losing it.

Domestic political obstacles to settling Guantanamo detainees in this country are much greater. Considering the administration's claim that Guantanamo houses "the worst of the worst" and its staunch opposition to proposals by Republican senators McCain, Graham, and Warner to raising standards for the detention, trial, and treatment of detainees, settling even a handful of Guantanamo inmates here would be seen by at least some within the administration and among its critics as a devastating concession.

To the contrary, it would reflect credit on the United States for providing due process and haven to two men who were mistakenly taken into U.S. custody and held for more than three years. Some members of the small Uighur community in the United States, which now includes Rebiya Kadeer, an internationally lauded Uighur political prisoner released from Chinese prison in March thanks to the Bush administration's efforts, have expressed willingness to help the men settle and embark on productive lives here.

Justice Department lawyer Terry Henry argued last week that the Bush administration is trying to find countries to take Qassim and Al-Hakim "soon." Questioned by Judge James Robertson, Henry said he meant soon "in the hopeful sense of the word."

Hope is not what is required. The administration should not expect other countries to do something it is not willing to do itself--especially in light of the responsibility it has to these men. Settling Qassim and Al-Hakim, and other noncombatant Uighurs, will take political courage, as well as assurances from the president to the American people that they are welcome arrivals who pose no threat. It's hard to see any better outcome for men now undeservedly behind bars.

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