

## **UIGHURS IN GUANTANAMO BAY PRISON: INNOCENTS OR TERRORISTS?\***

by

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**[NOTE:** This overview of 22 Uighurs in the U.S. Guantanamo Bay Prison was originally written in January 2010. Shortly after, it was amended when any of the imprisoned Uighurs were released. It's been a long road for these men from 2003 when the U.S. government determined that none of them were affiliated with Al Qaeda or a Taliban leader. The last 3 Uighurs were finally released the end of December 2013. JMN 21.09.2014]

The group of 22 Uighurs imprisoned in the U.S. prison at Guantanamo Bay, Cuba have been in the news during the past several years as first President George W. Bush and now President Barack Obama attempt to avoid repatriating them to the People's Republic of China. Both of these administrations have struggled to find other foreign governments that are willing to let the Uighurs resettle within their borders. It is by examining the background of the Uighurs that one can see how random events put them in the path of the U.S. military forces and led to their detention in the Guantanamo Bay prison for 8 years. Equally important is that their story could be the same for a majority of prisoners held at Guantanamo Bay: innocent men being in the wrong place at the wrong time. Out of the 779 men who have been processed and detained at Guantanamo Bay at some time during the past 8 years,<sup>1</sup> only 26 of them have been charged with any crime by the United States government.<sup>2</sup> As notable is the fact that only 3 men, of the 26 charged with a crime, have been convicted of any charges. Ironically, several of those found guilty of war crimes against the United States have already been released from prison, while other prisoners who have never been charged with a crime such as the Uighurs remain incarcerated.<sup>3</sup> Most prisoners have been cleared of being 'enemy combatants' as defined by the George W. Bush Administration.

This article examines who the Uighurs are, where do they come from, what led to their incarceration in the U.S. prison at Guantanamo Bay, and what, if any, is the threat in resettling them in another country, including the United States.

### Background of the Uighurs

The Uighurs (pronounced, WEE-gurs) are Turkish-speaking Muslims with past ties to Asia. Their traditional homeland lies in the oil-rich Xinjiang Uighur Autonomous Region of China. Xinjiang is a large area of land located in the farthest northwest portion of China and shares borders with eight different countries including Mongolia, India, Afghanistan and Pakistan. It accounts for approximately 1/6<sup>th</sup> of all of China's land.<sup>4</sup> The people living in the Xinjiang territory come from some thirteen different ethnic groups. The Uighurs are the largest ethnic group with approximately 8 million people out of a total of 9 million non-Chinese in Xinjiang. The Uighurs represent about 45% of Xinjiang's population.<sup>5</sup>

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<sup>1</sup>"Guantanamo: The Definitive Prisoner List (Updated for 2010)" by Andy Worthington, 14 January 2010.

<sup>2</sup> "Military Commission Cases" – Updated 7 January 2010, Miami Herald. As of the update date of 7 January 2010 regarding the war crime charges against 26 men at Guantanamo: 3 men were convicted, 5 men had their charges dropped (and 3 of these were released), 13 men are proceeding to trial with the charges against a further 5 men needing to be reviewed.

<sup>3</sup> For example, David Hicks pleaded guilty to certain charges in March 2007. He was transferred to an Australian prison in May 2007 and released on 29 December 2007. On 6 August 2008, Salim Hamdan was found guilty of one of two charges against him and sentenced to 5 ½ years in prison. The U.S. military tribunal noted that Hamdan had already served 5 years in Guantanamo Bay. He was released to the Yemen authorities on 25 November 2008.

<sup>4</sup> "Uighurs and China's Xinjiang Region", 'Introduction' by Preeti Bhattacharji, Council on Foreign Relations, updated 6 July 2009.

<sup>5</sup> "Q&A: China and the Uighurs" by Tania Branigan and Matthew Weaver, Guardian newspaper, 6 July 2009.

Although the region of Xinjiang was initially annexed to the Manchu Qing Empire in 1759, it was not until 1884 that Xinjiang was formally incorporated into the Chinese empire.<sup>6</sup> During the 20<sup>th</sup> Century, Xinjiang has had varying degrees of independence and autonomy. In October 1933, Turkic rebels in Xinjiang declared independence from China, calling themselves, “The Islamic Republic of East Turkestan” (also known as the Republic of Uighuristan or the First East Turkistan Republic). This independence was short-lived, lasting only one year before Xinjiang was reabsorbed by China.<sup>7</sup>

In 1944, a Soviet-backed movement for independence took place in three districts of Xinjiang; Yili, Tacheng and Ashan.<sup>8</sup> This region was renamed “The East Turkestan Republic”. Its existence was short-lived. In 1949 following the end of the Chinese civil war, The East Turkestan Republic was taken over by the Chinese Communist Party for the newly-formed “People’s Republic of China”.<sup>9</sup>

In October 1955 Xinjiang was classified, like Tibet, as an “autonomous region” of the People’s Republic of China.<sup>10</sup> Its full name is the Xinjiang Uighur Autonomous Region (XUAR). China’s own view of Xinjiang is that it has been an inseparable part of the China since the Western Han Dynasty which ruled from 206 BC to 24 AD. While China refers to this region as Xinjiang, the indigenous people including the Uighurs still refer to it as East Turkestan.

### Chinese Discrimination Against the Uighurs and Other Ethnic Groups

According to a recent Human Rights Watch report, Xinjiang is considered by the Chinese government in Beijing to fall into the same broad category of political concerns as Tibet and Taiwan.<sup>11</sup> Calls for independence or self-determination in either Tibet or Xinjiang are extremely threatening to the Chinese government in their attempt to hold the large state of China together.<sup>12</sup> Also, in the last decade or so, China has moved to control and/or own natural resources around the world. The importance of the Xinjiang region is due to large deposits of oil and different minerals. The ethnic unrest and poor relations between the Uighurs and the Han Chinese in Xinjiang are a direct result of two central policies instituted by Beijing: the accelerated migration of the Chinese ethnic Han into the area and the systematic repression of any freedom of religion.

### The Han Chinese

China has invested in and encouraged agricultural growth in Xinjiang over the past several decades. Since the early 1990’s, China has built massive highways and railroad links as far as the western regions of Xinjiang.<sup>13</sup> The result of these infrastructural developments has been to closely bind Xinjiang to the rest of China as well as to encourage and enable the Han

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<sup>6</sup> “Devastating Blows – Religious Repression of Uighurs in Xinjiang”, Human Rights Watch Report, vol. 17, no. 2(c), April 2005.

<sup>7</sup> “Q&A: China and the Uighurs”.

<sup>8</sup> “Devastating Blows”, ‘The political identity of Xinjiang’.

<sup>9</sup> Ibid.

<sup>10</sup> “Uighurs and China’s Xinjiang Region”.

<sup>11</sup> “Devastating Blows”, ‘Summary’.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

Chinese population to migrate into Xinjiang.<sup>14</sup> Immediately following the incorporation of Xinjiang into China in 1949, the Chinese government in Beijing began a large-scale migration plan of the Han into Xinjiang. From being populated by 6% Han in 1949, the new Chinese migration policies increased the presence of Han to 41.5% by 1976. During the 1980's under economic and political reforms put in place by Deng Xiaoping, the percentage of Han in Xinjiang actually decreased to about 37.5% as greater autonomy was allowed in the region. It was at this time that respect for different religious and cultural practices was encouraged.<sup>15</sup> This trend changed in the 1990's when Beijing once again viewed Han migration into Xinjiang as a priority. To accomplish this, the Chinese government has provided economic and landownership incentives to Han Chinese for their migration. The Han population in Xinjiang has again been increasing during the past decade or so and now the Han represent over 40% of the total population.<sup>16</sup>

With the growth of the Han population, many Uighurs see the limited resources of land and water becoming scarce. According to the 2006 Human Rights in China report, population growth in Xinjiang has transformed the local environment, resulting in "reduced human access to clean water and fertile soil for drinking, irrigation and agriculture."<sup>17</sup> There are discriminatory hiring practices against the Uighurs where the Han are given higher salaries and more jobs. In 2006 it was reported that the Xinjiang Production and Construction Corps reserved some 800 out of 840 civil servant job openings for Han Chinese.<sup>18</sup>

Rubiya Kadeer<sup>19</sup> writes that the Uighurs in Xinjiang face severe discrimination in the areas of healthcare and employment, as well as religious repression, forced abortion, and the removal of Uighur as a language in schools at all levels."<sup>20</sup> Further Chinese attempts to change Uighur culture can be seen by the razing of the ancient centre of the Old City of Kahgar in Xinjiang. The Old City which is celebrated for being both "a cradle of Uighur civilisation for centuries and an important stop on the ancient Silk Route", is being reduced to rubble. The some 220,000 Uighurs who live in the Old City are being forcibly moved to cinderblock apartments on the outskirts of the city.<sup>21</sup> As can be seen, there are reasonable grounds for the Uighurs to fear for their cultural survival. These governmental policies have created strong ethnic tensions in the region.

### Religious Discrimination

Xinjiang is the only province or "autonomous" region in China with a Muslim majority.<sup>22</sup> In the past but especially since the 1990s, the Chinese government has denied the Uighurs their religious freedom. Unrest in Xinjiang rose in the 1990s with many groups urging separation from China.

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<sup>14</sup>"Staged Development in Xinjiang" by Nicholas Bequelin (Human Rights Watch), Vol. 178, The China Quarterly (Cambridge University Press) 7 July 2004.

<sup>15</sup>"Devastating Blows", 'The political identity of Xinjiang'.

<sup>16</sup>"Q&A: Uighurs and China's Xinjiang Region", 'Han Migration'.

<sup>17</sup>"Uighurs and China's Xinjiang Region", 'Ethnic Tension'.

<sup>18</sup>U.S. Congressional-Executive Commission on China reporting to U.S. Congress in its 2007 Annual Report.

<sup>19</sup>Ms Kadeer was imprisoned in China from 1999 to 2005, her crime being to send local newspaper reports about Xinjiang's Uighurs to her Uighur husband in the U.S.. She was nominated for the Nobel Peace Prize in 2006. She is the head of the World Uighur Congress and has lived in the U.S. since 2005.

<sup>20</sup>"The Uighurs' Cry has Echoed Round the World", by Rubiya Kadeer, Op-ed page, The Times 9 July 2009.

<sup>21</sup>Ibid.

<sup>22</sup>"Devastating Blows", 'Background'.

Human Rights Watch reports that the Chinese domination of Xinjiang has never been fully accepted.<sup>23</sup> The most well-known of the groups seeking separation is the East Turkestan Islamic Movement (ETIM). Because Beijing does not want Xinjiang to split off from China, it has taken steps to combat separatists and others in Xinjiang by imprisoning, torturing and even executing them.

Following the September 11<sup>th</sup> attacks in the U.S. in 2001, China began to refer to the actions of ETIM and other protestors in Xinjiang as terrorism, linking its fight against these groups with the U.S. ‘war on terror’.<sup>24</sup> By relying on the fear of Islamic teachings and the occurrence of civil unrest, China has succeeded in branding any incident including peaceful demonstrations as terrorist acts. At the current time, both the United Nations and the United States regard the ETIM as being involved in terrorist activities.<sup>25</sup>

The Uighurs actually practice the traditional form of Sunni Islam, a moderate type of Islam, infused with the folklore and traditions of rural people. Sunni Islam is notable for being a tolerant and open version of Muslim faith.<sup>26</sup> Another type of Islamic practice in Xinjiang has been Sufism. This is a deeply mystical tradition revolving around the cult of particular saints.<sup>27</sup> Islamic teachings are an important part of the Uighur identity but the Uighurs aren’t allowed the freedom of their religion since the Chinese government tightly controls and represses most outward expressions of Islam. Human Rights Watch reports that Uighurs are strictly forbidden by the Chinese government from celebrating Muslim religious holidays, studying religious texts or showing their religious identity through their personal appearance at state institutions, including schools.<sup>28</sup> There is always the threat of potential arrest and torture to even the most peaceful Uighur activist if the Chinese government objects to the manner in which he or she practices Islam.<sup>29</sup>

Many experts and organisations including Andrew J. Nathan, a China expert at Columbia University, Dru C. Gladney, president of the Pacific Basin Institute, Amnesty International and Human Rights Watch believe that China’s claims of the extent, the level of dangerousness and numbers of Uighur rebel fighters are exaggerated. Instead, the view held by these experts and human rights organisations is that many of the incidents labelled as ‘terrorism’ and attributed to the Uighur ETIM by Beijing are actually unorganised bouts of civil unrest against the Chinese regime.<sup>30</sup>

### Recent Ethnic Tensions

The most recent large and violent clash between the Uighur community and the Chinese authorities occurred at the beginning of July 2009 in Xinjiang. According to Rubiya

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<sup>23</sup> Ibid. This is particularly true for the Uighurs. With the exception of the Uighurs, the major ethnic groups of Xinjiang such as the Kazakhs, Tajiks, Uzbeks, and Mongols all have independent states outside of China so they aren’t seen to present a secessionist threat.

<sup>24</sup> Ibid.

<sup>25</sup> See the “From Chinese Terrorist to American Terrorist” section below where the timing of the U.S. policy on the ETIM is discussed in the last two paragraphs.

<sup>26</sup> “Devastating Blows”, ‘Uighur Islam’.

<sup>27</sup> Ibid.

<sup>28</sup> “Devastating Blow” especially Part V: ‘Implementation: Restrictions on Freedom of Religion in Practice’.

<sup>29</sup> “Uighurs at Guantanamo” by Joanne Mariner, Human Rights Watch, 30 June 2008, originally published in FINDLAW.

<sup>30</sup> Ibid;

Kadeer,<sup>31</sup> students in the Xinjiang city of Urumqi began a peaceful march on 5 July 2009. This was being held in response to reports of the earlier injury to and murder of Uighur factory workers by a mob of Chinese workers and gang members using their fists and machetes. Witnesses of this earlier attack said on Radio Free Asia that the Uighurs were attacked in response to an unsubstantiated rumour that Uighur workers had sexually assaulted two Chinese workers. The official Chinese report said two Uighurs were killed but those present said the number was higher with about 18 to 30 Uighurs dead and hundreds wounded.<sup>32</sup>

What began on 5 July as a peaceful demonstration by students turned into violent riots that night and the next day when there were clashes between the Uighurs and Han Chinese with the Chinese authorities attempting to disperse and control the crowds. The violent riots led to what one reporter said were deaths and injuries as the “Uighurs hacked to death or set fire to passers-by, shopkeepers and cyclists”.<sup>33</sup> The Chinese state media reported at least 150 dead and around 800 injured.<sup>34</sup> In contrast to these numbers, Ruiya Kadeer said she had received estimates of approximately 400 Uighur demonstrators had been killed in Urumqi.<sup>35</sup> The Times reported that the Chinese government blamed the killings on “exiled Uighurs seeking independence for their homeland, especially Rubiya Kadeer.”<sup>36</sup>

On 19 December 2009, it was reported that a group of some 20 Uighurs was deported by Cambodia to China. These 20 Uighurs fled to Cambodia following the July 2009 riots in Xinjiang. Despite having officially requested asylum at the United Nations refugee office in Phnom Penh and thus coming under certain rules of protection for those seeking asylum, the Uighurs were handed back to the Chinese government. Their deportation was condemned by numerous organisations including the United Nations and the Uighur American Association, the latter stating that the 20 will likely face torture and possible execution in China. The deportation coincided with a visit to Cambodia the following day (20 December 2009) by the Chinese Vice-President Xi Jinping who was expected to sign some 14 pacts with Cambodia relating to infrastructure, construction, grants and loans.<sup>37</sup>

#### From Chinese Terrorist to American Terrorist: arrival at Guantanamo

As discussed above, many Uighurs have fled Xinjiang and even China because of the poverty, the ethnic unrest, and the heavy-handed Chinese persecution in Xinjiang. One recent article reported that some 200,000 Uighurs have left Xinjiang since 2008.<sup>38</sup> With regards to the 22 Uighurs imprisoned by the United States government at Guantanamo Bay, reports indicate that most of this detained group left China and spent part of 2001 in a Uighur camp in Afghanistan. According to a New York Times article these Uighurs fled to the mountain caves near Jalalabad when their camp was bombed by U.S. military forces.<sup>39</sup> Hungry, frightened and reportedly unarmed, they fled to Pakistan where local villagers turned

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<sup>31</sup> See footnote 17 above.

<sup>32</sup> “The Uighurs’ Cry has Echoed Around the World.”

<sup>33</sup> “Leader Abandons Summit to Quell Unrest” by Jane Macartney, The Times 9 July 2009.

<sup>34</sup> “Uighurs and China’s Xinjiang Region”, ‘Ethnic Tension’.

<sup>35</sup> “The Uighurs’ Cry has Echoed Around the World.”

<sup>36</sup> “Leader Abandons Summit to Quell Unrest.”

<sup>37</sup> “Cambodia has Deported Back to China 20 Muslim Uighurs...”, Reuters News Service, 19 December 2009.

<sup>38</sup> “Is the World Ignoring a Massacre of Uighurs in China?” by Andy Worthington, 14 July 2009.

<sup>39</sup> “Out of Guantanamo, Uighurs Bask in Bermuda” by Erik Eckholm, The New York Times, 15 June 2009.

them in to the Pakistani authorities for bounties paid by the Americans.<sup>40</sup> Initially, while under the American control, these 22 Uighurs were held in an Afghan prison and reportedly mistreated. One of the men suffered a serious infection to his shin, resulting in having his left leg amputated when reaching the U.S. prison at Guantanamo Bay.<sup>41</sup> The Bush Administration stated that these men were all “enemy combatants” and as such could be held indefinitely and without any trial.<sup>42</sup>

An American attorney, Jason Pinney related a tale of political betrayal by the Bush Administration when he appeared in front of the House Foreign Affairs Committee’s Subcommittee on International Organizations, Human Rights and Oversight on 16 July 2009. Pinney, from the law firm Bingham McCutchen which has represented some 11 of the 22 Uighurs, told the subcommittee that the Bush Administration agreed to “label the Uighurs as terrorists and house them at Guantanamo in exchange of *quid pro quo* with China.”<sup>43</sup> What China provided in this was its support as a member of the United Nations Security Council to the U.S. government’s plan to invade Iraq. Furthermore, the U.S. officials gave a Chinese delegation in 2002 unique and unprecedented access to interrogate, unsupervised, the Uighur prisoners at Guantanamo Bay. Considering that the International Committee of the Red Cross (ICRC) was initially denied access to the prisoners at Guantanamo and that currently, members of Congress are still denied visitation rights with the Uighurs by the Obama Administration, strongly suggests that the Bush Administration behaved in a highly irregular manner in allowing the Chinese delegation into Guantanamo.<sup>44</sup>

Pinney also pointed out that on 6 December 2001, the U.S. State Department refused to designate the East Turkestan Independence Movement (ETIM) as a terrorist group. But on August 2002 when the “U.S. Deputy Secretary of State Armitage [met] with Chinese officials in Beijing to discuss the U.S. invasion of Iraq [he] immediately announce[d] that [the ETIM would] be placed on the State Department’s list of terrorist organizations.”<sup>45</sup>

### Frozen Time at Guantanamo Bay

As quoted in an article for Human Rights Watch, “the U.S. officials realized pretty quickly that the Uighurs were no threat.”<sup>46</sup> Indeed, by 2004 many of the Uighurs in Guantanamo were officially cleared by the American authorities of being “enemy combatants”. Despite being cleared by the U.S. government of these charges, the Uighurs continued to be held in the small, confining cells of Guantanamo Bay prison. In mid-2005, The Washington Post

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<sup>40</sup> Ibid. American bounty payments for suspected terrorists were generally from \$3,000 to \$5,000 for each individual turned in.

<sup>41</sup> “Legal Duty, No; Moral Duty, Yes” by Christopher Michaelson, Opinion, The Canberra Times, 18 November 2009.

<sup>42</sup> The term “enemy combatant” was used by the Bush Administration to describe terrorist suspects following the attacks on the United States on 11 September 2001. By using this term the Bush Administration argued these detainees were not technically prisoners of war. As such, they were not entitled to any of the prisoner of war protections including those found in the 1949 Third Geneva Convention. On 13 March 2009, the U.S. Justice Department issued a statement that it would no longer use the term ‘enemy combatant’ to describe these suspects. The new U.S. Attorney General, Eric Holder said that it was essential that the U.S. operate in a manner that strengthened its national security, was consistent with its values and governed by law.

<sup>43</sup> “House Threatens Obama Over Chinese Interrogation of Uighurs in Guantanamo” by Andy Worthington, Internet 21 July 2009.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid.

<sup>46</sup> “Uighurs at Guantanamo”.

reported that 15 Uighurs who had been cleared to be released since late 2003 continued to be imprisoned and were sometimes even shackled to the floor.<sup>47</sup>

One Uighur, Huzaifa Parhat recounted to his lawyer his days in captivity at Guantanamo prison:

Wake at 4:30 or 5:00 a.m.. Pray. Go back to sleep. Walk in circles—north, south, east, west around his 6-by-12 foot cell for an hour. Go back to sleep for another two or more hours. Wake and read the Koran or look at a magazine [written in a language he does not understand]. Pray. Walk in circles once more. Eat lunch. Pray. Walk in circles. Pray. Walk in circles or look at a magazine [again, in a foreign language]. Go back to sleep at 10:00 p.m.. The next day is the same except that [I] may leave [] cell for two hours of recreation in a slightly larger pen or for a shower.<sup>48</sup>

In March 2007, it was reported that the 17 Uighurs<sup>49</sup> remaining at Guantanamo Bay were moved to the recent-built Camp 6, a restrictive and isolating environment. In the Spring of 2009 following the change of U.S. presidents, Attorney General Eric Holder reported that the 17 Uighurs were being transferred to Camp Iguana to live.<sup>50</sup> This is by far the least restrictive camp at Guantanamo Bay but, obviously, still a prison camp.

Why do the Uighurs continue to be held at Guantanamo Bay despite not being charged with any war crime and being cleared of “enemy combatant” status by the U.S. government? Their home country of China has always strongly demanded that the U.S. government repatriate the Uighurs to China. This presented a major problem to the Bush Administration which believed there was a strong possibility the Uighurs would be tortured if they were handed to the Chinese. In 2002, U.S. officials allowed a delegation from the Chinese government to meet with and even interrogate the Uighur prisoners at the Guantanamo Bay prison. Apparently, the Chinese officials questioned them for long hours without food and threatening them and their families.<sup>51</sup>

Accepting that the Uighurs could not be returned to China, the Bush Administration made legitimate efforts to approach other governments to ask if they would accept them for settlement. Few countries are willing to resettle the Uighurs in their territory due to threats from China. This represents the other side of the problem. On several occasions, representatives of China have met with other countries advising them not to accept the Uighurs just prior to any visits or contacts by United States’ officials.<sup>52</sup> It is not surprising that when representatives of the U.S. then make subsequent overtures to these countries that their requests are turned down. China has been known to use economic and financial threats and intimidation as well as offering trade and financial enticements to countries who might resettle the Uighurs in their borders.<sup>53</sup>

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<sup>47</sup> “Chinese Detainees are Men Without a Country” by Robin Wright, The Washington Post, 24 August 2005.

<sup>48</sup> As reported in the Human Rights Watch report, “Locked Up Alone, Detention Conditions and Mental Health at Guantanamo Bay”, 10 June 2008.

<sup>49</sup> In 2006, Albania agreed to accept 5 of the 22 Uighurs.

<sup>50</sup> “Stuck at Guantanamo Uighurs Demand Freedom” by Carol Rosenberg McClatchy, The Miami Herald, Nation, 2 June 2009.

<sup>51</sup> “Out of Guantanamo”. See the discussion regarding this issue in the “From Chinese Terrorist to American Terrorist” section above.

<sup>52</sup> “Obama’s Uighur Headache in Guantanamo” by Tina Wang, Forbes.com, 20 February 2009.

<sup>53</sup> See, “Cambodia has Deported Back to China 20 Muslim Uighurs”. Also, “China to Switzerland: Do Not Resettle Guantanamo Uighurs” by Stephanie Ho, Voice of America News on-line, 12 January 2010.

The Bush Administration, mainly for political reasons, also refused to consider allowing the Uighurs to resettle in the United States. The Obama Administration has been forced by a vehement and vocal U.S. Congress not to allow resettlement in the United States of any of the Guantanamo Bay Uighurs on the grounds that they are terrorists.<sup>54</sup>

### Recent U.S. Court Decisions on the Uighurs

On 7 October 2008 in the U.S. District Court of Washington, D.C., Judge Urbina ordered the 17 Uighurs in Guantanamo Bay prison released to live in the United States. His ruling was made on the basis that the Uighurs were not charged with any crime nor had the government presented any “reliable evidence that they would pose a threat to U.S. interests.”

Following Judge Urbina’s decision, the U.S. Justice Department under Bush made an emergency filing to temporarily block the court’s decision, saying that it would set a dangerous precedent if the Uighurs remained in the United States. The Justice Department contended that only the executive branch was entitled to make decisions on aliens. On 8 October, the Federal Court of Appeals for the Washington, D.C. Circuit agreed to temporarily block the Uighurs’ release scheduled for 10 October.

On 24 November 2008, the D.C. Court of Appeals heard oral arguments from each side. The court’s decision was reported on 18 February 2009, disagreeing with Judge Urbina’s earlier decision and overturning it. The judges agreed instead with the U.S. government’s argument, stating that the Uighurs could not be released to live in the United States because only the executive branch of the government, not the judicial, had the right to decide who can enter the United States.

The Uighurs appealed in April 2009 to the U.S. Supreme Court (the highest court in the country) to hear their case. On 20 October 2009, the U.S. Supreme Court agreed to decide exactly the same question, i.e., whether U.S. federal courts have the power to order the release of prisoners held at Guantanamo Bay into the United States.<sup>55</sup> This is a separation of power question regarding the three branches of the U.S. government: the judicial (the courts), the executive (including the president and his/her cabinet) and the legislative (Congress). At the heart of it is what is the role and power of courts against what they see are an injustice done by another branch of government. This new case, *Kiyemba v. Obama*, 08-1234, was expected to be heard the beginning of March 2010.<sup>56</sup>

This hasn’t happened. In late January 2010, Switzerland offered to resettle two Uighur brothers remaining at Guantanamo Bay to the Swiss canton of Jura. While one brother had been invited to resettle in Palau, his older brother suffering from mental illness wasn’t. The younger brother turned down Palau’s offer and, instead, decided to remain incarcerated with his brother in Guantanamo. On 1 March 2010, the U.S. Supreme Court issued a statement on the *Kiyemba v. Obama* case which said the court was vacating the earlier D.C. Appeals Court judgement for this case and remanding the case back to the Appeals Court to “determine what further proceedings in that court or in the District Court are necessary and appropriate for the

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<sup>54</sup> “Guantanamo Detainees Ask Justices to Free Them” by Carol Rosenberg McClatchy, The Sun-Sentinel, 6 June 2009.

<sup>55</sup> “Uighurs: Justices to Decide on U.S. Release of Detainees” by Adam Liptalk, Goatmilk.wordpress.com, 21 October 2009.

<sup>56</sup> Ibid.

full and prompt disposition of the case in light of the new developments.”<sup>57</sup> The Supreme Court said that since the facts of this case had changed with Switzerland’s resettlement offer, it was unable to proceed with the case since it was a court of review not of first view.

As the Supreme Court stated, all of the Uighurs remaining at Guantanamo Bay have now received (as of 1 March 2010) at least one offer to resettle in another country. By vacating (to the effect of nullifying) the earlier Appeals Court decision, the Supreme Court has directed the D.C. Appeals Court to decide if it or the District Court will be rehearing this case with the new facts. The question for one of these courts to consider is “whether a federal court exercising habeas corpus jurisdiction has the power to order the release of prisoners held at Guantanamo Bay where the Executive detention is indefinite and without authorisation in law and release into the continental United States is the only possible effective remedy”.<sup>58</sup>

#### Status of the Resettlement of the 22 Uighurs Originally Held at Guantanamo Bay

In 2006, Albania agreed to accept 5 of the 22 Uighurs being held at Guantanamo Bay. In December 2007, 1 of the 5 men resettled in Albania moved to Sweden to be with his sister and her family. Sweden has now granted him asylum.<sup>59</sup>

Leaving 17 Uighurs.

In May 2009, Germany looked prepared to accept 9 of the remaining 17 Uighurs. Unfortunately, due to the U.S. government stipulating that the Uighurs were barred from travelling to the U.S., the German government backed off from its offer. As a German Interior Ministry said, “If the U.S. says they should come here, but they cannot travel to the U.S., we would have to ask, why not? Does that mean they are dangerous?”<sup>60</sup>

On 11 June 2009, 4 Uighurs were released and transferred for resettlement to Bermuda.<sup>61</sup> The New York Times reported that the men expressed wonder at their good fortune in landing in Bermuda after a captivity that included more than a year in solitary confinement.<sup>62</sup>

Leaving 13 Uighurs.

Of these 13 remaining Uighurs, a further 6 men were released on 31 October 2009 and flown to the Republic of Palau, a small Pacific island with a population of around 20,800.<sup>63</sup> The President of Palau, Johnson Toribiong, said they would be given a temporary home for as long as two years.<sup>64</sup>

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<sup>57</sup> U.S. Supreme Court decision in *Jamal Kiyemba et al. v. Barack H. Obama*, 1 March 2010.

<sup>58</sup> Ibid.

<sup>59</sup> On 18 February 2009, the Swedish Migration Court of Stockholm granted Adel Hakim asylum in Sweden citing that Mr. Hakim did not choose to be resettled in Albania, he had strong family ties in Sweden and after years of abuse suffered at Guantanamo Bay, he was exceptionally deserving of humanitarian protection in Sweden.

<sup>60</sup> “Europe Objects Anew to Detainees” by Craig Whitlock & Karen DeYoung, The Washington Post, 29 May 2009.

<sup>61</sup> Department of Justice notice, 11 June 2009.

<sup>62</sup> “Out of Guantanamo, Uighurs Bask in Bermuda” by Erik Eckholm, The New York Times 15 June 2009.

<sup>63</sup> “Released Guantanamo Uighurs Land in Palau” Associated Press, Guardian.co.uk, 1 November 2009.

<sup>64</sup> “Guantanamo Uighurs Sent to Palau”, BBC News, 31 October 2009.

Leaving 7 Uighurs.

On 23 March 2010, the two brothers, Arkin Mahmud and Bahtiyar Mahmud, were transferred to Switzerland to start a new life after many years in the Guantanamo Bay prison.<sup>65</sup> The offer from the Swiss government came in January and was made for humanitarian reasons.

Leaving 5 Uighurs.

These last 5 Uighurs rejected offers to go to Palau or to the Maldives. At the same time, the government of the Maldives was seeking closer relations with China and recently received financial backing from China.

In 2011, the government of El Salvador began discussing the possibility of taking the 5 remaining Uighurs. When the offer was made, a year later, only 2 of the 5 Uighurs agreed to it. On 19 April 2012, 2 Uighurs were transferred from Guantanamo Bay to El Salvador. The two men were identified as Ahmed Mohamed and Abdul Razak. By 26 September 2013, both men were reported to have left El Salvador. One source reported that they had gone to Turkey. The U.S. government did not comment.

The 3 Uighurs who had rejected El Salvador's offer continued to be imprisoned at Guantanamo Bay.

Leaving 3 Uighurs.

In the Summer of 2013, Costa Rica offered to take the remaining 3 Uighurs. By the Autumn, this deal was ready to go forward. China then pressured Costa Rica and the offer was rescinded. Another offer, this time from Slovakia was made to these men. These last 3 Uighurs (and the U.S. government) accepted the offer to live in Slovakia. The 3 Uighurs were transferred to Slovakia on 31 December 2013. They were identified as Yusef Abbas, Hajiakbar Abdulghupur and Saidullah Khalik.

Cliff Sloan, a new U.S. State Department envoy working to close Guantanamo, said regarding the transfer, "We deeply appreciate Slovakia's humanitarian assistance in accepting these three individuals from Guantanamo. From the beginning, we knew that one test of our determination to close Guantanamo would be measured by what happened to the Uighurs. That the last of the Uighurs has now left Guantanamo is an important milestone. They didn't belong there in the first place."

And then there was none.

THE END

21 September 2014

Recommended Reports, Articles and Books:

"Devastating Blows – Religious Repression of Uighurs in Xinjiang", Human Rights Watch, Vol. 17, No. 2(C), April 2005.

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<sup>65</sup> "US Transfers 2 Uighur Guantanamo Detainees to Switzerland" by Michael Kraemer, The Jurist, 24 March 2010.

“The East Turkestan Islamic Movement (ETIM)” by Holly Fletcher and Jayshree Bajoria, Council on Foreign Relations, updated 31 July 2008.

“Locked up Alone – Detention Conditions and Mental Health at Guantanamo”, Human Rights Watch, 10 June 2009.

“Uighurs and China’s Xinjiang Region” by Preeti Bhattacharji, Council on Foreighn Relations, updated 6 July 2009.

Dislocating China: Muslims, Minorities and Other Subaltern Subjects by Dru Gladney (University of Chicago Press) 2004.