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Rulings of Improper Detentions as the Bush Era Closes

By [WILLIAM GLABERSON](#)

For nearly six years, Haji Bismullah, an Afghan detainee at [Guantánamo Bay](#), has insisted that he was no terrorist, but had actually fought the [Taliban](#) and had later been part of the pro-American Afghan government.

Over the weekend, the Bush administration flew him home after a military panel concluded that he “should no longer be deemed an enemy combatant.”

Asked about the panel’s decision, which was not publicly announced and seemed to acknowledge a mistake of grand proportions, a Pentagon spokeswoman said, “Mr. Bismullah was lawfully detained as an enemy combatant based on the information that was available at the time.”

The decision was part of a pattern that has emerged in the closing chapter of the administration. In the last three months, at least 24 detainees have been declared improperly held by courts or a tribunal — or nearly 10 percent of the population at the detention camp in Guantánamo Bay, Cuba, where about 245 men remain.

The Bush administration has maintained that the detention camp holds “the worst of the worst.” In a radio interview Tuesday, Vice President [Dick Cheney](#) said that “now what’s left, that is the hardcore.”

But for Guantánamo’s critics, the timing of the decisions on the two dozen detainees adds new urgency to a review of all Guantánamo cases, which the incoming Obama administration is expected to announce as soon as Wednesday. “The house of cards is finally falling down,” said Vincent Warren, the executive director of the Center for Constitutional Rights, which has coordinated detainees’ lawyers.

Lawyers for Mr. Bismullah, 29, presented sworn statements from officials of the American-supported Afghanistan government of [Hamid Karzai](#) that indicated Mr. Bismullah had been named as a terrorist by collaborators of the Taliban who wanted to take over his position as a provincial official. In fact, after Mr. Bismullah was shipped to Guantánamo, a local official said in a sworn statement, one of his accusers stole his car and drove it for two years.

President-elect [Barack Obama](#), who plans to close Guantánamo, has said that some of the detainees are too dangerous to release. Mr. Obama’s administration is expected to begin an effort to sort these detainees from those who pose less of a threat or are being held on weak evidence.

While hundreds of suspects have been released from the detention camp in the seven years it has been operating, the recent decisions came after the Bush administration said it had reduced the population to the

most dangerous terrorists.

While Mr. Bismullah's case was decided by a military panel, the rulings for the other 23 detainees occurred in [habeas corpus](#) hearings in federal court. Since a [Supreme Court](#) decision in June gave detainees the right to have their detentions reviewed by federal judges in habeas cases, the government has won only three of them. The government is appealing some of the rulings it lost.

The cases provide a snapshot of the intelligence collected by the government on the suspects and suggest that there was little credible evidence behind the decision to declare some of the men enemy combatants and to hold them indefinitely.

In a decision on Wednesday ordering the release of a prisoner who had been a Saudi resident, Judge Richard J. Leon of Federal District Court said the government's case was largely based on inconsistent accusations from two other Guantánamo detainees whose credibility the government itself had questioned.

That case involved Mohammed el Gharani, who was detained when he was 14. One of the government's claims was that Mr. Gharani had been a member of a Qaeda cell in London. His lawyers at the British legal group Reprieve argued that the government's assertions would have meant that he was a member of the cell at age 11.

"Putting aside the obvious unanswered questions as to how a Saudi minor from a very poor family could have even become a member of a London-based cell," Judge Leon said, "the government simply advances no corroborating evidence for these statements."

In a separate case involving five Algerian detainees, Judge Leon, an appointee of President Bush, ruled last fall that he was not persuaded by the government's claim that the men had planned to go to Afghanistan to fight Americans. The claim, he ruled, turned out to have been based on an assertion from a single unnamed person in a classified government document.

"The government's failure in case after case after case to be able to prove its case calls into question everybody who is there," said Susan Baker Manning, a lawyer for 17 Uighur detainees from western China who were ordered released by a federal judge in October. The Justice Department has appealed that order from a federal district judge, Ricardo M. Urbina, and the men are still at Guantánamo.

A Justice Department official who discussed the pattern of rulings only if not identified said the department had long argued that legal proceedings were not well suited to review classified evidence gathered during wartime. The defeats, the official said, were a "consequence of the fact that neither the Supreme Court nor Congress has provided rules on how these habeas corpus cases should proceed in this unprecedented context."

In Mr. Bismullah's case, a military tribunal considered new evidence. His lawyers had fought his case up to the federal appeals court in Washington, which issued a ruling in 2007 that would have required the government to turn over all the information it had gathered on all detainees.

The Bush administration, in fighting that decision, told the court that it would hold a new military hearing at Guantánamo to review Mr. Bismullah's claims of innocence. That new hearing, people knowledgeable

about the case said, led to his release over the weekend, along with five other detainees.

The tale Mr. Bismullah's lawyers assembled was one of complex tribal loyalties and evident confusion by his American captors. Sher Mohammed Akhundzada, a Karzai ally and member of the Afghan Senate, described in a sworn statement that he had known Mr. Bismullah and his family for years. When they fought the Taliban, he said, "Haji Bismullah was with us."

After the fall of the Taliban, Mr. Bismullah became an official of the pro-American regional government in Helmand Province, where tribal loyalties had brought assassinations and other brutal infighting, according to sworn statements. His job as chief of transportation was coveted by a rival clan, whose members had held the position under the Taliban. Mr. Akhundzada said the rival clan members had demanded the job, and when they did not get it, they told American forces that Mr. Bismullah was in league with the Taliban.

Though the accusation worked, the rival clan's candidate was not appointed transportation chief. It was then that Mr. Bismullah's car was seen being driven by one of his accusers, who, according to Karzai officials, were themselves tied to the Taliban.

At Guantánamo, Mr. Bismullah insisted he was innocent. He told military officials to contact his brother to vouch for him. The officials concluded that the brother was "not reasonably available" as a witness. At the time the brother, Haji Mohammad Wali, was the chief spokesman for a pro-American provisional governor who regularly gave news conferences, legal filings say.

In 2006, the brother filed a sworn statement with Guantánamo officials. Mr. Bismullah and his whole family, he wrote, "fought to drive the Taliban out of Afghanistan."

Mr. Bismullah, he added, had a wife and three children, including a son born while he was in Guantánamo. "The boy," he wrote, "has never seen his father."

Margot Williams contributed reporting.

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