

HOW THE GOVERNMENT HID THEIR PACHA WAZIR MISTAKE BY DENYING HABEAS CORPUS

Scott Horton's revelation that the detainee described as "CAPTUS" in Glenn Carle's book, *The Interrogator*, is an Afghan named Pacha Wazir reveals something else: in spite of the fact that Carle realized the CIA had been mistaken about Wazir's ties to al Qaeda sometime in 2002, Wazir was not released from US custody until February 24, 2010.

We held Wazir for over seven years after the time Carle first figured out the CIA had made a mistake.

Of particular concern, however, are the decisions the government made to prevent Wazir from getting any kind of review of his detention.

Rather than move Wazir from the Salt Pit to Gitmo—where he would have received a Combatant Status Review Tribunal—he was instead moved to Bagram in 2003 or 2004. At Bagram—as John Bates summarized in his opinion regarding habeas petitions for three other Bagram detainees—the review was much less stringent.

The initial "enemy combatant" determination is made "in the field." Tennison Decl. ¶¶ 11-12. For detainees at Bagram, the initial determination is reviewed within 75 days, and then every six months thereafter.¹⁹ Id. ¶ 13. The reviewing body is the Unlawful Enemy Combatant Review Board ("UECRB"), a panel of three commissioned officers. The UECRB reviews "all relevant information reasonably available," and detainees have the opportunity to make a written statement.²⁰ Id. ¶¶ 12-13. The UECRB then makes a recommendation by

majority vote to the Commanding General as to the detainee's status. Id. ¶ 13. There is no recourse to a neutral decision-maker.

Respondents concede, as they must, that the process used for status determinations at Bagram is less comprehensive than the CSRT process used for the Guantanamo detainees. Tr. at 53. Focusing the inquiry on the flaws Boumediene identified in the CSRT process, the UECRB process is plainly less sophisticated and more error-prone. Unlike a CSRT, where a petitioner has access to a "personal representative," Bagram detainees represent themselves. Obvious obstacles, including language and cultural differences, obstruct effective self-representation by petitioners such as these. Detainees cannot even speak for themselves; they are only permitted to submit a written statement. But in submitting that statement, detainees do not know what evidence the United States relies upon to justify an "enemy combatant" designation – so they lack a meaningful opportunity to rebut that evidence. Respondents' far-reaching and everchanging definition of enemy combatant, coupled with the uncertain evidentiary standards, further undercut the reliability of the UECRB review. And, unlike the CSRT process, Bagram detainees receive no review beyond the UECRB itself.

In September 2006, Wazir did file a habeas petition—his suit was ultimately consolidated with the three Bagram detainees whose DC Circuit habeas denial remains the relevant decision denying Bagram detainees habeas. But Wazir's petition was denied in spite of the fact that a former Bagram detainee revealed that Wazir had been told some time in June or July 2008 there

was no evidence against him.

About four months ago, in June or July of this year, one of the investigators in Bagram told Haji Wazir that there was no incriminating evidence against him.

More troubling, Wazir's petition was denied on jurisdictional grounds because he's an Afghan citizen. Yet even before that decision, Afghan prosecutors determined on June 26, 2008 that coalition forces had no evidence of collaboration with al Qaeda, so Wazir should be freed.

In the documents from coalition forces, it has been mentioned that evidence, physical supporting material and pictures do not exist to prove the accusations, he has not been arrested in a face to face battle, has not performed any terrorism related actions, polygraph tests show that there are no evidence of deception.

Based on the requirements of his job and business he has performed currency exchange activities in all parts and corners of the world legally to earn his livelihood.

Therefore, the commission believe that there are no documents in his file that would support the allegations against this person and he has already spent more than five years in prison. Thus, it is considered appropriate if the suspect is released from prison, introduced to National Independent Commission on Peace and Reconciliation and a report be delivered to the President of Islamic Republic of Afghanistan.

Nevertheless, several weeks after the Afghan determination that coalition forces had no evidence against Wazir, a DOD UECRB determined that he was an unlawful enemy combatant.

Petitioner Wazir is a detainee at BTIF. See *id.* ¶ 19. DoD's records reflect that he was captured in Karachi, Pakistan, and was determined to be an unlawful enemy combatant both when he was first brought under DoD custody and in subsequent reviews. See *id.* ¶ 20. The UECRB's most recent reevaluation of his status was on July 17, 2008. *Id.* Following that review, his status as an unlawful enemy combatants was reaffirmed. *Id.*

So ultimately, John Bates denied his petition on jurisdictional grounds to prevent tensions between the US and Afghans. But the US recertified Wazir as an unlawful enemy combatant even after the Afghans had determined there was no evidence to support such a designation.

Now, there's a lot else that's funky about the government's treatment of Wazir. For example, they claimed he had been arrested November 13, 2003 in Karachi, even while it was clear he had been arrested a year earlier in Dubai. Then, the US sent paperwork transferring custody of Wazir to an Afghan prison, but did not transfer Wazir himself (and then went on to to reaffirm his enemy combatant status).

But ultimately, there's also the question of why they left someone of such purported import in Afghanistan, rather than Gitmo. And while the government insists they don't make detention decisions to avoid giving detainees access to habeas, the three other detainees whose habeas petitions were denied recently submitted new evidence, including two WikiLeaks documents disproving a government claim that it had never moved detainees from Gitmo to Bagram. Of particular note is the detainee who—according to an Afghan War Log cable—was transferred from Gitmo to Bagram on January 18, 2009, just two days before Obama would become President.

Of course, even if they had granted jurisdiction for Wazir to file a habeas peittion, two key

pieces of evidence had already been disappeared: the two cables Carle wrote in late 2002 or early 2003 documenting that Wazir was not the al Qaeda banker the CIA had made him out to be.

For much of the time the CIA was fighting with Glenn Carle over how much detail he could write about Wazir, Wazir was stuck in Bagram, having already been cleared for release by the Afghans yet still—in spite of the lack of evidence—claimed to be an enemy combatant by the US.

That's the kind of injustice our refusal to offer habeas corpus to Bagram detainees permits.