

PREDICTION: LATIF WILL BE REPATRIATED

The WaPo reports that the US is finally trying to resolve the cases of 50 non-Afghans we've had stashed at Bagram. It focuses on two Yemenis who may be repatriated.

The government of Yemen has agreed to closely monitor two Yemenis held by the U.S. military in Afghanistan if they are repatriated, and attorneys for the men asked the Pentagon on Monday to authorize the transfer of the two detainees.

Amin al-Bakri, 44, and Fadi al-Maqaleh, 26, have been cleared for release by military detainee review boards on three occasions, beginning in 2010, according to Pentagon records.

Now, these aren't just any prisoners. They're two of the three Bagram prisoners who tried to challenge their detention by filing a habeas corpus petition. And while the DC Circuit overturned their case, it remains alive based on the question of whether the US moved them to Bagram to ensure they'd be on an "active battlefield" where the government could deny habeas review. As Lawfare has suggested, one reason the government might want to transfer al-Bakri and al-Maqaleh is to be able to move to dismiss their case—to be able to prevent any expansion of legal review beyond Gitmo.

Well, if the government is negotiating transfers of Yemeni prisoners they had already cleared for release, what are the chances they're also negotiating transfers of Yemeni prisoners cleared for release who present even bigger legal problems for the government, like Adnan Farhan Abd al-Latif?

Latif's SCOTUS appeal, after all, should be a slam-dunk. If habeas is to be remotely

meaningful, the government can't be permitted to just submit whatever obviously flawed intelligence document it wants, without some corroborating evidence, to justify imprisoning someone. Nevertheless, if Latif wins at SCOTUS, then all the habeas victories the government has won from a DC Circuit that has tried to undermine Boumediene at every turn could be lost.

And it would be just like the Imperial Bush-Obama continuum to resolve an important detention case to avoid SCOTUS review.

So I predict that if SCOTUS grants Latif cert, he, like al-Bakri and al-Maqaleh will be whisked off to Yemen to avoid any return of real review on the President's authority.

Mind you, I wish all these men (who have never been charged) will be released from imprisonment the government says is unnecessary. I just suspect the government will do so in a way that keeps others imprisoned.