

IF 40 MONTHS OF DRONE STRIKES IN YEMEN HAVEN'T MADE TRANSFERS SAFE ...

When on January 5, 2010 President Obama announced a halt to all transfers of Yemeni Gitmo detainees, he reiterated his intent to close the prison, even noting that AQAP formed, in part, in response to Gitmo (recall that Said al-Shihri, one of AQAP's actual operational leaders, had been a Gitmo detainee).

Finally, some have suggested that the events on Christmas Day should cause us to revisit the decision to close the prison at Guantanamo Bay. So let me be clear. It was always our intent to transfer detainees to other countries only under conditions that provide assurances that our security is being protected.

With respect to Yemen in particular, there's an ongoing security situation which we have been confronting for some time, along with our Yemeni partner. Given the unsettled situation, I've spoken to the Attorney General and we've agreed that we will not be transferring additional detainees back to Yemen at this time.

But make no mistake: We will close Guantanamo prison, which has damaged our national security interests and become a tremendous recruiting tool for al Qaeda. In fact, that was an explicit rationale for the formation of al Qaeda in the Arabian Peninsula.

The announcement came less than a week after John McCain, Lindsey Graham, and Joe Lieberman released a statement (citing Shihri explicitly)

complaining about the imminent release of 6 Yemeni detainees; Dianne Feinstein and Kit Bond issued their own request. Jane Harman and Crazy Pete Hoekstra were also calling for a halt to transfers to Yemen (Hoekstra, of course, was also leaking NSA intercepts to fearmonger against Anwar al-Awlaki). The day after the announcement, DOD sources leaked a report that would later be released in more detail showing 20% of Gitmo detainees released had joined or rejoined al Qaeda. In short, in significant part it came in response to political pressure to halt transfers, something DiFi admits readily.

But the halt in transfers also came among Obama Administration guarantees that their new strategy against Yemen would quickly bring results. Brennan described the new security agreements put into place at the January 2, 2010 David Petraeus-Ali Abudullah Saleh meeting (this is where Brennan estimated the number of AQAP militants to be "several hundred") at which Saleh agreed to let fixed wing planes, including drones, operate in his country.

WALLACE: Let me widen this discussion in that sense. Not only as you point out, obviously, were you in Yemen earlier, but General Petraeus, the head of Central Command, was in Yemen yesterday.

The British overnight have announced that the U.S. and the British are going to be co-funding a new Yemeni anti-terror counter-terror police force.

Is it fair to say that we are opening up a second front in our war on terror outside the Afghanistan-Pakistan theater in Yemen?

BRENNAN: I wouldn't say we're opening up a second front. This is the continuation of an effort that we've had under way since, as I said, the beginning of this administration.

David Petraeus has been out to Yemen several times. I spoke with him

yesterday after he met with President Salih. We're continuing to have a very close and ongoing dialogue with the Yemeni government. The cooperation is on the security, intelligence and military fronts.

We've had close consultations with the British. I spoke with the British last night also about the types of things that we can do together in support of the Yemeni government. So this is a determined and concerted effort.

We're not going to let Al Qaeda continue to sort of make gains in Yemen, because we need to take whatever steps necessary to protect our citizens there as well as abroad.

WALLACE: Could that mean U.S. troops on ground in Yemen?

BRENNAN: We're not talking about that at this point at all. The Yemeni government has demonstrated their willingness to take the fight to Al Qaeda. We – they're willing to accept our support. We're providing them everything that they've asked for.

And they've made some real progress. And over the past month, Al Qaeda has taken a number of hits, and a number of Al Qaeda leaders in Yemen are no longer with us because of this determined and aggressive action.

The day after Obama announced the moratorium on Yemen transfers, Robert Gibbs claimed (perhaps because several Yemenis had been transferred in December) that the moratorium came as a result of a recent decline in security.

MR. GIBBS: I have not seen or heard about the latest report that you refer to and I don't have handy what numbers had been for similar reports in years

past. Yesterday's determination was made and announced very much on what you heard John Brennan say over the weekend. We never had a plan to transfer anybody either to their home country or to a third country that we believe – we have reason to believe will present a security situation for us or for that country. And in relating to Yemen, I think you heard John say nobody was going to be transferred back that we did not believe that the Yemeni government could handle.

The determination was made that given the – as you heard the President say – the swift change in the security environment even over the last few weeks in Yemen caused the President and the Attorney General to agree that pausing any of those transfers was the right policy right now.

[snip]

Q A couple quick ones on Yemen. Is it fair to say that the pause you just referred to is an indefinite pause for a substantial period of time?

MR. GIBBS: Well, I forget the exact phrasing that the President used, but I would say until we believe the time is right.

Q And when the President and you refer to the security situation in Yemen, are you referring to the ongoing conflict both north and south that's been described as a civil war, or are you talking about stepped-up Yemeni government efforts against al Qaeda strongholds? Are they related? Because one has been going on for quite some time, and the al Qaeda efforts have started much more recently. And if that's what you're referring to I'd like to know.

MR. GIBBS: Well, let me try to phrase this – obviously there has been a security situation. This has not been a safe part of the world for quite some time. What I think you heard the President refer to, without getting overly specific, obviously just in the past couple of weeks you have seen and we have seen a far different security situation.

In short, back when the moratorium was announced 40 months ago, the Obama Administration suggested that it was a response to a recent setback in security in Yemen, one which would be fixed by its new counterterrorism efforts in the country.

Midway through the ensuing period, the Obama Administration succeeded in killing Anwar al-Awlaki, whom they would implicate in that Christmas Day attack.

And yet 40 months after the moratorium (and the drone strikes) started and 19 months since Awlaki's death, the Administration still hasn't removed the moratorium.

It may well be that things in Yemen haven't gotten more stable since January 2010 and on that basis the Administration continues the moratorium (though Yemen's treatment of Adnan Latif sure made it sound like the Administration was moving toward some shift). Indeed, Brennan's most recent estimates say the number of AQAP members has grown fivefold through this period of moratorium.

Clearly, the Gitmo policy has to change. But what about the Yemen policy, which over 40 months time hasn't brought the stability Obama's team was promising when the moratorium started?

MOHAMEDOU OULD SLAHI'S GITMO MEMOIR: A SLOW DEATH

Slate has a remarkable three part excerpt from the memoir of Mouhamedou Ould Slahi, a Mauritanian Gitmo detainee subjected to some of the worst torture. The intro, by Larry Siems, is [here](#). (Some posts on his still-ongoing habeas fight are [here](#), [here](#), and [here](#).) The whole thing reflects a remarkable, chilling, understanding of the Americans who kept him captive, even as he succumbs to his torture and starts lying to make the torture stop.

Reading the memoir, even as over a hundred detainees continue their hunger strike, I'm struck by the repeated theme of slow death, both in what Americans say to him, and in how he processes his own torture.

In Slahi's story of Bagram, he tells of a "cowboy," believing he doesn't speak English, wishing he'll die slowly.

Now I am sitting in front of a bunch of dead-regular U.S. citizens; my first impression, when I saw them chewing without a break: "What's wrong with these guys, do they have to eat so much?" Most of the guards are tall, and overweight. Some of them were friendly and some very hostile. Whenever I realized that a guard [was hostile], I pretended that I understood no English. I remember one cowboy coming to me with an ugly frown on his face.

"You speak English?" he asked.

"No English," I replied.

"We don't like you to speak English, we want you to die slowly," he said.

"No English," I kept replying. I didn't want to give him the satisfaction that

his message arrived. People with hatred have always something to get off their chests, but I wasn't ready to be that drain.

Slahi thinks about slow death as he recounts the fake rendition staged with Donald Rumsfeld's authorization, in which a Jordanian and Egyptian took Slahi on a boat trip to make him think he might be rendered to Egypt. After hours a beating, they wrapped him in ice.

The order went as follows: They stuffed the air between my clothes and me with ice cubes from my neck to my ankles, and whenever the ice melted they put in new hard ice cubes. Moreover, every once in a while, one of the guards smashed me, most of the time in the face. The ice served both for pain and for wiping out the bruises I had from that afternoon. Everything seemed to be perfectly prepared. Historically, dictators during medieval and pre-medieval times used this method to let the victim die slowly. The other method of hitting the victim while blindfolded in inconsistent intervals of time was used by Nazis during WWII. There is nothing more terrorizing than making somebody expect a smash every single heartbeat.

"I am from Hasi Matruh, where are you from?" said the Egyptian, addressing his Jordanian colleague. He was speaking as if nothing was happening. You could tell he was used to torturing people.

"I am from the south," answered the Jordanian.

What would it be like if I landed in Egypt after about 25 hours of torture? What would the interrogation look like?

And even after they break Slahi and he begins to invent lies for them, guards kept repeating the

theme of endless death.

"You know who you are?" said [redacted guard name].

"Uh."

"You are a terrorist," he continued.

"Yes, sir!"

"If we kill you once, it wouldn't do. We must kill you 3,000 times. But instead, we feed you!"

"Yes, sir."

Remember, Slahi, because he broke down and made up lies for his captors, is treated better than most other compliant detainees.

Yet it seems, like them, Slahi experiences just slow death.

OBAMA: WE'RE FORCE-FEEDING CLEARED DETAINEES BECAUSE WE COULDN'T TRY THEM IN CIVILIAN COURTS

At a press conference today, Obama had this to say about hunger strikers at Gitmo.

Q: Mr. President, as you're probably aware, there's a growing hunger strike at Guantanamo Bay, among prisoners there. Is it any surprise, really, that they would prefer death rather than have no end in sight to their confinement?

PRESIDENT OBAMA: Well, it is not a surprise to me that we've got problems

in Guantanamo, which is why, when I was campaigning in 2007 and 2008 and when I was elected in 2008, I said we need to close Guantanamo.

I continue to believe that we've got to close Guantanamo. I think – well, you know, I think it is critical for us to understand that Guantanamo is not necessary to keep America safe. It is expensive. It is inefficient. It hurts us in terms of our international standing. It lessens cooperation with our allies on counterterrorism efforts. It is a recruitment tool for extremists. It needs to be closed.

Now Congress determined that they would not let us close it and despite the fact that there are a number of the folks who are currently in Guantanamo who the courts have said could be returned to their country of origin or potentially a third country.

I'm going to go back at this. I've asked my team to review everything that's currently being done in Guantanamo, everything that we can do administratively, and I'm going to re-engage with Congress to try to make the case that this is not something that's in the best interests of the American people.

And it's not sustainable. I mean, the notion that we're going to continue to keep over a hundred individuals in a no man's land in perpetuity, even at a time when we've wound down the war in Iraq, we're winding down the war in Afghanistan, we're having success defeating al-Qaida core, we've kept the pressure up on all these transnational terrorist networks, when we've transferred detention authority in Afghanistan – the idea that we would still maintain forever a group of

individuals who have not been tried – that is contrary to who we are, it is contrary to our interests, and it needs to stop.

Now, it's a hard case to make because, you know, I think for a lot of Americans, the notion is out of sight, out of mind, and it's easy to demagogue the issue. That's what happened the first time this came up. I'm going to go back at it because I think it's important.

Q: (Off mic) – continue to force-feed these folks – (inaudible) –

PRESIDENT OBAMA: Well, I don't – I don't want these individuals to die. Obviously, the Pentagon is trying to manage the situation as best as they can. But I think all of us should reflect on why exactly are we doing this. Why are we doing this?

I mean, we've got a whole bunch of individuals who have been tried who are currently in maximum security prisons around the country. Nothing's happened to them. Justice has been served. It's been done in a way that's consistent with our Constitution, consistent with due process, consistent with rule of law, consistent with our traditions. The – the individual who attempted to bomb Times Square – in prison serving a life sentence. Individual who tried to bomb a plane in Detroit – in prison serving a life sentence. A Somali who was part of al-Shahab (sic) who we captured – in prison.

So we can handle this. And I understand that in the immediate aftermath of 9/11, with the traumas that had taken place, why, for a lot of Americans, the notion was somehow that we had to create a special facility like Guantanamo, and we

couldn't handle this in – in a normal, conventional fashion. I understand that reaction.

But we're not over a decade out. We should be wiser. We should have more experience at – in how we prosecute terrorists. And this is a lingering, you know, problem that is not going to get better. It's going to get worse. It's going to fester.

And so I'm going to – as I've said before, we're – examine every option that we have administratively to try to deal with this issue. But ultimately, we're also going to need some help from Congress. And I'm going to ask some – some folks over there who, you know, care about fighting terrorism but also care about who we are as a people to – to step up and – and help me on it.

To review, he was asked about hunger strikers' desperation. In response, Obama talked about Gitmo in terms of efficacy – citing cost and image, which only indirectly relate to the plight of those who have been cleared. He then blames Congress for not letting him close Gitmo. Then ultimately he admits that Gitmo amounts to keeping "a hundred individuals in a no man's land in perpetuity."

Now, at that point, someone should have asked whether he admits that military commissions aren't working. Because one of the things that is keeping the actual terrorists in no man's land is the failed MC system.

But Obama doesn't answer the question, really, about hunger strikers directly. When the reporter asks again, Obama suggests that the problem – why are we doing this – is that his Administration has not been permitted to try detainees in civilian courts.

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He ends by repeating that he needs Congress' help.

Now, Obama does need Congress' help to close Gitmo. He needs Congress' help (though didn't, when Eric Holder initially decided to try the 9/11 plotters in NY) to try the actual terrorists in civilian courts, to get them in Florence SuperMax in cells down the hall from Faisal Shahzad and Umar Farouk Abdulmutallab, whom he cites.

But most of the detainees at Gitmo won't ever be tried in civilian courts, either because they were tortured so badly they couldn't be tried without also admitting we tortured them (and, presumably, try the torturers), or because we don't have a case against them.

Trying detainees who don't pose a threat in civilian courts won't solve the problem as they're not guilty of any crime.

Moreover, Obama dodges what his Administration has done himself to keep detainees in Gitmo, notably the moratorium on transferring detainees to Yemen and the appeals of Latif and Uthman's habeas cases so as to have the legal right to keep people based solely on associations and obviously faulty intelligence documents.

Obama doesn't mention that part of Gitmo's legacy. Obama says 10 years have elapsed and we should be able to move beyond the fear keeping men at Gitmo.

3 years have elapsed since he issued the moratorium on Yemeni transfers; 19 months have elapsed since he killed Anwar al-Awlaki, purportedly (though not really) the big threat in Yemen. It's time to move on in Yemen, as well as generally.

DZHOKHAR TSARNAEV: THE BIG ISSUE IS NOT MIRANDA, IT'S PRESENTMENT

Particularly given Lindsey Graham's persistent tweeting yesterday that "the last thing we may want to do is read Boston suspect Miranda Rights," there was a lot of discussion in the moments after Boston Marathon bombing suspect Dzhokhar Tsarnaev was captured last night about whether he would be read his rights.

At first, there were reports he would be. But then DOJ announced he would not be read Miranda immediately; they would invoke the public safety exception to question him.

"The suspect is en route to the hospital for immediate treatment," the official tells TPM's Sahil Kapur. "But we plan to invoke the public safety exception to Miranda in order to question the suspect extensively about other potential explosive devices or accomplices and to gain critical intelligence."

As of about 40 minutes ago, he had still not been read his rights.

Now, thus far, I'm actually not that worked up about Miranda rights (though I may get there soon). As Orin Kerr explains, the public safety exception is a legally recognized law, and Miranda itself only limits what can be admitted as testimony against Dzhokhar in his trial (I'm betting he'll plead guilty in any case). The government appears to have so much evidence against him in any case, any confession he makes will likely not be necessary to convict him.

Mind you, as Charlie Savage reported two years ago, the government has been institutionalizing longer delays before they give Miranda warnings, most notably with people they (or foreign proxies) interrogate overseas first, followed by a clean team Mirandized interrogation. And as the reference to “gain[ing] critical intelligence” above suggests, the Obama Administration is stretching the intent of pre-Miranda interrogations to include more substantive interrogation (update: Emily Bazelon also made this point).

But here in the US, the delays on Miranda warnings aren’t that long. The best—quite similar—example is the 2009 UndieBomber, who was interviewed for about 50 minutes under a public safety exception when he was captured. That entire interrogation was deemed admissible and in fact formed a significant part of the opening arguments in his trial (which didn’t get much further than opening arguments before he plead guilty). So the UndieBomber’s case is one reason the Administration is confident they could question Dzhokhar without Mirandizing him at first (though the length of time has gotten far longer than used with the UndieBomber).

There’s a precedent from the UndieBomber I find more troubling though. The judge in that case also allowed the use of UndieBomber’s statements from the hospital after he had been given a fair amount of sedation. While there was a dispute about how much he got and what kind of effect that might have had, conversations he had with a nurse were also used in the opening arguments of the trial. The two issues together – a suspect interviewed without a lawyer after he’s been given serious drugs, both of which will be apply to Dzhokhar, as well – is troubling on legal, humanitarian, and practical grounds. The High-Value Interrogation Group had already been brought in last night, which suggests he may well be asked questions while in precarious medical state.

But the big issue, in my opinion, is

presentment, whether he is brought before a judge within 48 hours. In addition to stretching Miranda, the government has also been holding and interrogating suspects for periods – up to two weeks for American citizens and far longer for non-citizens – before they see a judge. Not only does this postpone the time when they will be given a lawyer whether they ask or not (because judges are going to assign one), but it gives the government an uninterrupted period of time to use soft coercion to get testimony and other kinds of cooperation.

In my opinion, two of the most troubling cases like this, both involving naturalized citizens accused of terrorism, are Faisal Shahzad and Manssor Arbabsiar.

Shahzad, the Times Square bomber, was held and questioned, reportedly with the help of the HIG, for two weeks before he first appeared before a judge. Each day during that period, he signed a waiver of his right to appear before a judge. Ultimately, he plead guilty, so no one every questioned whether his confessions were coerced or not.

But there are two details that I think raise questions about whether he freely waived his rights. First, within a day or so of his arrest, Pakistani authorities had detained a friend of his and his father-in-law in Pakistan. The day after that, authorities put Shahzad's father, and possibly his wife and children, under "protective" house arrest. That is, even before he normally would have been permitted to see a judge, his loved ones – possibly even his kids – were in Pakistani custody. Particularly given the way our government used threats to family members with detainees being tortured, this seems like a potential way to coerce a presentment "waiver."

Then there's the reason the government gave for wanting uninterrupted access to Shahzad:

Federal law enforcement agents are vigorously and expeditiously pursuing

leads relating to this and other information provided by the defendant, a process which has required the participation of hundreds of agents in different cities **working around the clock** since the defendant's arrest. **Uninterrupted access** to the defendant has been, and continues to be, critical to this process, which requires, among other things, **an ability to promptly verify with him** the accuracy of information developed in the investigation. [my emphasis]

The government said it wanted to avoid presentment so it could have uninterrupted, around the clock, access to him to verify information with him. Recall the technique used at Gitmo, "Frequent Flier," where detainees would be wakened and moved, as a way to continue to use sleep deprivation without looking like they were doing so. The language of round-the-clock access seems to permit the same kind of sleep deprivation by default.

Like Shahzad, Manssor Arbabsiar (the Scary Iran Plotter) had a period of delay before seeing a lawyer, 12 days. During that period, he provided a confession that would be the cornerstone of most of the charges against him, and would also be about the only admissible evidence directly implicating the Quds Force in Iran. Without that confession, in other words, the government had almost no case, and certainly not one they could make an international incident over.

In that case, too, the government seemed to implicate his brother (who had transferred money to him) during the initial period, which raises questions about whether that helped to get him to cooperate. The government kept Arbabsiar hidden away at a military base, rather than a jail. The government never told Arbabsiar that charges against him had already been filed, so he never knew what those charges were (or what they didn't include, which was a bunch of stuff he confessed to).

But it's in the way the government got Arbabsiar to sign his first waiver I find most troubling. Arbabsiar was detained in Mexico sometime on September 28, 2011 (the government has never publicly revealed what time). He was held there for some time, then flown to JFK, arriving at 8:40 PM on September 29, where he was arrested. He was questioned for three hours in what sounds like a bogus public safety exception form (there was absolutely no reason to believe there was a public safety risk, not least because Arbabsiar's main co-conspirator was a DEA informant). And only then was he first asked to waive Miranda. But the government's discussion of this timing (which was a response to an almost entirely redacted defense motion to throw out this confession) ties that waiver with Arbabsiar smoking a cigarette. It appears – though the facts on this are almost entirely secret – that the government detained a chain smoker at least three and more likely at least 24 hours (and possibly up to 48 hours, given his detention in Mexico), and then used the offer of a cigarette to get him to waive his most basic rights. There also appears to have been food involved (though Arbabsiar had the opportunity, which he didn't use, to eat on the plane to the US), but the use of a cigarette to get someone to waive Miranda seems especially troubling (I realize rewards like cigarettes are central to non-violent interrogation, but apparently tying to basic rights is far more troubling).

Arbabsiar's lawyer had a slew more complaints about his pre-presentment conditions (some also seem to do with food), but we don't get to see those.

Which is part of the point. What the government did by delaying presentment in these two cases was to afford itself a 2 week period of oversight free interrogation. And there are at least hints – hints that, because both men ultimately plead out, we'll never learn more about – that the interrogations used some of the same techniques we're supposed to have left behind.

In only Arbabsiar's case did the government need the confession elicited using these methods. Like Dzhokhar, Shahzad was caught in the act, with tens or hundreds of witnesses. Nevertheless, the government chose to infringe on the fundamental right to a lawyer, likely guessing it could get the accused to plead guilty and hide all this detail from the public.

Now the government no doubt would claim it needed to do this for intelligence purposes (indeed, the case of the UndieBomber, where they were never able to coerce his cooperation, even though his public defenders appear to have advised him to do so, and therefore had apparently unadmissible evidence against Anwar al-Awlaki may be why they did this), whether that purpose amounted to real intelligence or propaganda they could use internationally. But ultimately, this practice is corroding our legal system (and this approach will surely be adapted for other uses, such as hackers).

There are a lot of reasons why delaying reading Dzhokhar his Miranda rights are wrong, ethically. But I'm not as worried about that as the possibility they'll stash Dzhokhar away for a couple of weeks without a lawyer or any oversight. And in any case, the Administration seems intent on developing both means of curtailing rights.

Update: Josh Gerstein, who was the first to report on the presentment issue with Shahzad, considers that and Miranda and other issues in this worthwhile piece.

AT GITMO, CAPTAIN JOHN MAKES SURE

DETAINEES DON'T GET “AN OVERABUNDANCE OF THINGS”

Carol Rosenberg, Ryan Reilly, and Charlie Savage have all posted their stories on the government's attempt to make the raid on detainees sound better. (Except as noted, the quotes below come from Rosenberg.)

But the accounts only seem to make it worse. Start with the fact that two of the officers interviewed – Captain John and Lieutenant Hermoine (a pseudonym, according to Rosenberg) – refused to give their names to reporters.

Then there's Colonel John Bogdan's claim that, even though he watched the raid via video, no video of the raid exists. (Jim wrote about Bogdan [here](#).)

The chief of the guard force, Army Col. John Bogdan, said he monitored the mission by video screen and radio but told reporters that no taped record existed of the skirmish to independent review what went on Saturday morning.

Given that the most seriously injured of the five detainees and four guards reportedly injured in the raid was a detainee who allegedly banged his own head against his cell, I find the claim of no video especially curious.

There are the discrepancies in Bogdan's story laid out by Rosenberg.

The chief of the guard force, Bogdan, had earlier told reporters that the military had “not at all” lost control of the communal prison.

But once the captives used cereal boxes and other material to cover up 147 of the 160 cameras inside the cellblocks the military had simply “lost the

ability to monitor them 100 percent.”

Bogdan, speaking to reporters for the first time since the prison camps’ hunger strike and non-compliance crisis, offered a confusing explanation of what went on in the raid – but said that some of his troops were armed with shotguns with “less-than-lethal” ammunition, cartridges loaded with rubber pellets as well as single rubber-tip bullets. He could not offer a clear explanation of how many of the “less than 70” captives met U.S. soldiers with weapons as they burst into different recreation yards.

He started off describing the figure as 8 to 12 but then described a series of events that added up to 48, or the majority of communal captives, resisting troops in riot gear pushing their way in with shields.

Of course, if only 12 detainees resisted the guards, it wouldn’t explain why all detainees lost their communal privileges. So I can see why that story might need to include 48 detainees.

There’s the reported claim, from Savage, that the timing of the raid had nothing to do with the Red Cross visit, seemingly belied by the fact that guards were training for this raid during the entire ICRC visit.

It came just after a three-week visit by the International Committee of the Red Cross. Admiral Smith said its departure had nothing to do with the timing, and he said he waited after the detainees began to cover the cameras to give them a chance to again comply with the rules.

Col. John Bogdan, the leader of the guard force, said that guards trained for the raid for three weeks.

There’s the fact that the entire raid

purportedly served to ensure guards would have uninterrupted views on detainees, yet just hours after the raid, a second detainee managed to strangle himself (but did not succeed in killing himself).

In the latest measure of the mounting tensions, the chief medical officer said that two men had attempted to commit suicide by strangulation over the weekend – one Saturday night while under lockdown at the former communal camp hours after the raid.

There's the report that prison staff have "discovered" additional detainees that might be candidates for abusive force feeding, which sure sounds like retaliation.

Prison medical staff said 45 of the 166 captives were considered hunger strikers Tuesday but predicted the figure would rise because Navy medical staff had identified an undisclosed number of additional captives who might be candidates for tube feedings now that the captives were under lockdown.

But ultimately, it's the story of control, which seems to defy earlier claims that the hunger strikes weren't a response to increasingly abusive treatment from guards.

The commander, Capt. John, an Army reservist who refused to provide his last name, said that the once-compliant captives commonly ignored soldiers' orders for months, since before he took charge in January, a situation that left the American captors of the foreign men with "no control over whether their behavior was good or bad."

[snip]

"I've never been in a civilian prison that looked anything like communal

here,” said Capt. John, who said he had worked as a guard in Louisiana lockups that contained both convicts and pretrial detainees prior to his mobilization last year. But Guantanamo’s communal POW-style captives, men captured more than a decade ago and held without charges ever since, have “a lot of ideas here that they deserve an overabundance of things.”

Perhaps the nicest touch comes from Reilly, whose slide show accompanying the article includes an image of the sign outside Camp 6. “Honor Bound to Defend Freedom,” it reads.

I guess, in the name of defending freedom, Captain John believes he must ensure that these POWs, who have been cleared for release, don’t get access to satellite TV to occupy their infinite detention.

IF IT WAS WRONG TO FORCE-FEED TERRI SCHIAVO, WHY IS IT RIGHT TO FORCE-FEED GITMO DETAINEES?

[youtube]a6D32fc2q-0[/youtube]

Back when he was running for President, Barack Obama said his biggest mistake in the Senate was in not voting against the March 2005 unanimous consent motion to intervene in the Terri Schiavo dispute.

And yet the same man is ultimately responsible for the 11 Gitmo detainees who are being forced to prevent them from starving themselves to

death.

To be sure, Obama's regret about not speaking up against Terri Schiavo's force-feeding is not precisely parallel to that of Samir Haji al Hasan Moqbel and others.

Obama described his objection to Congress' intervention in the Schiavo matter in constitutional terms, presumably objecting to the Congressional interjection into a state legal matter. Unlike Congress and Schiavo, as President, Obama has clear responsibility for those at Gitmo.

Moreover, Schiavo was brain dead. Withdrawing her feeding tube amounted to her husband's fully cognizant decision to fulfill her wishes not to be kept alive in a vegetative state. Whereas the Gitmo hunger strikers are (aside from the impact of 11 years of indefinite detention and forced feeding, which is significant) largely physically and mentally healthy. The Gitmo hunger strikers are choosing for themselves to stop taking nourishment – or at least trying to.

There's also this difference: the forced-feeding of Gitmo detainees involves a great deal more physical coercion than the feeding tube Terri Schiavo had.

A team from the E.R.F. (Extreme Reaction Force), a squad of eight military police officers in riot gear, burst in. They tied my hands and feet to the bed. They forcibly inserted an IV into my hand. I spent 26 hours in this state, tied to the bed. During this time I was not permitted to go to the toilet. They inserted a catheter, which was painful, degrading and unnecessary. I was not even permitted to pray.

I will never forget the first time they passed the feeding tube up my nose. I can't describe how painful it is to be force-fed this way. As it was thrust in, it made me feel like throwing up. I wanted to vomit, but I couldn't. There

was agony in my chest, throat and stomach. I had never experienced such pain before. I would not wish this cruel punishment upon anyone.

All those significant differences aside, though, here's a question I kept asking myself, as I thought about this: how are men who've been cleared for release but nevertheless indefinitely detained – so far at least three years beyond the time they were cleared, and for a number of them, far longer – all that different from being in a legal vegetative state (particularly now that the government has put them back in solitary detention)? I know these men, in theory, retain all their human cognitive selves, but we'll only let them use it to occupy an apparently indefinite, unnecessary detention, not to truly live.

We're fine with Terri Schiavo and her husband choosing to end her life because she was, according to her husband's understanding of her beliefs, not fully living in any case. I don't know the answer, honestly, but how is that different than the life of indefinitely detained innocent men? Without some concrete hope they'll be able to resume their lives, and particularly now that they've been deprived of human contact, what has Gitmo made of their fully human lives?

Ultimately, it seems the underlying issue is the same: human dignity. "I've been on a hunger strike since Feb. 10 and have lost well over 30 pounds. I will not eat until they restore my dignity," Samir said.

Why is it Obama saw the legal justice of letting Schiavo die with dignity but he deprives these hunger strikers of their human dignity?

ODDS AND ENDS

First off, let's wish Marcy a big Happy Birthday! The woman is doing nothing but getting younger and smarter. Amazing.

Secondly, my fine Emptywheel friends, I'd like to apologize, I got a little sidetracked today with some work and duties with my daughter, Jenna. And, honestly, far more of my day was spent learning about some of the players and watching the action in Twitter Fight Club. While our own @emptywheel met her unfortunate demise in the second round (without question hampered by her lack of access to internet connection), I was somehow or another asked to judge the Elite Eight, which is taking place today. If you want to weigh in with your votes, all the Twitter Fight Club info is here. These are all excellent people participating in this game, and it is really a lot of fun. I have, just today, been exposed to several people I did not previously regularly track, even though I knew who they were.

The downside is, for all these reasons, plus now that there is once again a three hour difference between me and the east coast, I am hopelessly deep in the day without having written any substantive posts. In light of that, I will post a couple of interesting quick hits for discussion and make this an open thread for those subjects and all other things generally.

First up: A bit of a weird case was announced today in the Eastern District of Virginia (EDVA). An American citizen, Eric Harroun, was arrested for what appears to be pretty much only foreign terroristic acts:

A former Army soldier from Phoenix who joined rebels fighting the Syrian government and boasted to FoxNews.com of his exploits as a Muslim soldier of fortune earlier this month was arrested Wednesday in Virginia and could face life in prison.

Eric Harroun, 30, who left the Army in 2003 on full disability pay after a truck accident, was charged with conspiring to use a rocket-propelled grenade while fighting with the al-Nusrah Front, an organization also known as Al Qaeda in Iraq. Harroun, who was in Syria or Turkey when he spoke to FoxNews.com by Skype, was nabbed shortly after flying in to Dulles International Airport after a voluntary interview with FBI agents, according to a criminal complaint filed Thursday.

There are all kinds of fascinating about this story. For one, Harroun was just featured in a big story in Foreign Policy. The FP story was only dated March 22, so the timing of when they really interacted with Harroun (the earliest date FP noted was March 2nd and the latest March 16th) in relation to the time and circumstances of his arrest are interesting. Here is the critical affidavit filed on him in EDVA so far. And here is a piece by Bobby Chesney at Lawfare on the Harroun announcement, and I completely agree with him about the curious disconnect between the charge maybe called for under 18 USC 2339(D) and the one contained in the one page, fill in the blank complaint that was filed, of 18 USC 2332(a)(b).

Second, the Sweet Sixteen is underway. I have a rooting interest in the Arizona Wildcats, who are playing an evil Bit 10.2 team, Ohio State. Go Cats! also on tap tonight are Marquette/Miami, Syracuse/Indiana and, in a battle of surprise teams, Wichita State/La Salle. These are all fantastic games, but I think the Buckeyes, Marquette and Indiana will likely win out. The one that is a crap shoot and really fascinating is the Wichita State Shockers and the La Salle Explorers. The Shockers have big and tough inside and the Explorers have guards. I always default to killer guard play in the tournament, and I will ride with La Salle.

Okay, what else you got? Whether in the news,

March Madness, or anything else, let fly.

DOES THIS EXPLAIN WHY MINH QUANG PHAM IS LANGUISHING AWAY?

TBIJ has a troubling report (see also this Independent story) on a number of British citizens who have been stripped of their citizenship so they can be targeted by drones or rendered here to the US. I described the fate of one of them – Mahdi Hashi – here. Another was the Russian spy Anna Chapman, though that happened after her arrest here.

I'm particularly interested, however, in this entry in TBIJ's report.

B2

Deprived December 2011. Successfully challenged. Government now appealing.

This is one of three known cases where notice has been served on an individual while they were still in the UK. B2 came to the UK as a child with his refugee Vietnamese parents. He became a UK citizen in 1995, and later converted to Islam. In 2010 he reportedly traveled to Yemen, where MI5 alleges he trained with al Qaeda in the Arabian Peninsula (AQAP). He apparently returned to the UK in July 2011 and the Home Secretary informed him he would lose his British citizenship that December. B2 appealed, saying the decision would make him stateless. The Vietnamese government agreed that he was not its citizen, and the order was overturned. However the Home Office told the Bureau it is

appealing. B2 is thought still to be in the UK.

These details make B2 sound like Minh Quang Pham, whom I wrote about [here](#) and [here](#). Though here's the timeline DOJ offered when they conspicuously announced Pham's arrest last May, with a few additional details from Pham's docket included.

December 2010: Pham travels from the UK to Yemen.

March 2011: Pham's military training in Yemen begins.

March and April 2011: Pham carries a Kalashnikov.

April 2011: Pham works with Samir Khan and meets Anwar al-Awlaki.

July 2011: End date for military training in Yemen.

September 27, 2011: AQAP releases Inspire, Issue 7.

September 30, 2011: Khan and Awlaki killed in drone strike.

December 2011: End date of material support charges.

May 24, 2012: Pham indicted in NY.

June 29, 2012: Pham "arrested," while still being held by British authorities in immigration custody. Indictment publicly released by DOJ.

August 23, 2012: Pham's indictment officially unsealed.

Compare that to these dates regarding the UK's efforts to strip B2's citizenship.

February 9, 1983: B2 born in Vietnam.

August 1989: B2 travels with parents to

UK, where they are granted asylum.

1995: B2 and his family get British citizenship.

December 2010: B2 travels to Yemen.

July 25, 2011: B2 leaves Yemen.

December 20, 2011: British Secretary of State decides to strip B2 of his citizenship.

December 22, 2011: British SoS provides notice and strips B2 of citizenship.

January 13, 2012: B2 appeals decision based on claim he would be stateless if he lost British citizenship.

June 13-14, 2012: B2's citizenship hearing.

June 29, 2012: B2's appeal succeeds.

Much of this lines up perfectly: The December 2010 departure for Yemen, the July 2011 end to military training, and the December 2011 immigration detention.

More important still, note that the British court released its decision about B2 on the same day – June 29, 2012 – that DOJ hastily announced Pham's arrest, though without formally unsealing his indictment (note, DOJ's original press release, though not FBI's version, got disappeared, though can still be accessed via Internet Archive; see also this screen cap showing the press release missing).

The only discrepancy – and it may not be one – is B2's claim he left Yemen on July 25, 2011. While DOJ's military training charges end in July 2011, its material support charges continue until December 2011. Though note this Telegraph article says Pham was arrested when he arrived in Heathrow on July 27, 2011.

In short, unless there are a whole lot more Vietnamese refugees to Britain wandering back

and forth from Yemen on the very same days, B2 is Pham.

Not only that, but it's clear his "arrest" appears to be nothing more than an attempt to establish a fall-back position if and when holding him in immigration detention becomes impossible because he gets his citizenship restored. Barring that, they may well leave Pham in immigration custody in the UK indefinitely.

The most curious aspect of all this, though, is that material support charge that continues while, at least according to the Telegraph, Pham was in custody. Maybe the Telegraph is wrong, but if not, it means – according to the US – Pham continued to materially support AQAP while in British custody.

RATHER THAN CLOSE GITMO, WE'LL JUST INTERCEPT MORE MEDICAL GOODS FOR IRAN

A lot of people are talking about this story, reporting that the Envoy in charge of shutting down Gitmo will be reassigned.

The State Department on Monday reassigned Daniel Fried, the special envoy for closing the prison at Guantánamo Bay, Cuba, and will not replace him, according to an internal personnel announcement. Mr. Fried's office is being closed, and his former responsibilities will be "assumed" by the office of the department's legal adviser, the notice said.

The announcement that no senior official in President Obama's second term will succeed Mr. Fried in working primarily on diplomatic issues aimed at repatriating or resettling detainees appeared to signal that the administration does not currently see the closing of the Guantánamo Bay prison as a realistic priority, despite repeated statements that it still intends to do so.

But few are talking about where Fried is being reassigned: to the sanctions department.

Mr. Fried will become the department's coordinator for sanctions policy and will work on issues including Iran and Syria.

Granted, both trying to persuade third countries to take detainees and convincing countries to join our ever-intensifying sanctions regime against Iran involve the same skill sets.

Still, as the sanctions against Iran cause increasing difficulties for Iran's citizens, I think it worth noting how we've change our human rights priorities.

ANOTHER YEAR, AND ANOTHER DETAINEE KILLED, BUT OBAMA'S INTENT IS STILL FOUND IN BAGRAM

Today marks yet another anniversary for our prison in Gitmo. Over the last year, the most notable change has been that—after Obama's DOJ

succeeded in gutting habeas corpus so they could keep Adnan Latif, against whom they had no credible evidence, detained—Latif died under unexplained circumstances. Laura Poitras has a powerful video documenting Latif’s torment to mark today’s anniversary. Jason Leopold also has a story with new details on Latif’s death.

And while I do think the Administration’s willingness to so twist the law to keep Latif is itself witness to Obama’s real intent on indefinite detention, I still think the argument I made last year—that Bagram is the true exhibit of Obama’s fondness for review-free detention—stands. Here’s last year’s Gitmo post in its entirety, with updates below.

On a near daily basis in the last week or so, Jason Leopold has tweeted some quote from the daily White House press briefing in which a journalist asks Jay Carney a question about detention, to which Carney responds by insisting the Administration still intends to close Gitmo.

Q One other topic. Wednesday is apparently the 10th anniversary of the prison in Guantanamo Bay, and I’m wondering what the White House says now to critics who point to this as a pretty clear broken promise. The President had wanted to close that within a year. That hasn’t happened for a lot of the history that you know of. And now it’s like there’s really no end in sight. How do you respond to the criticism that this is just a big, broken promise?

MR. CARNEY: Well, the commitment that the President has to closing Guantanamo Bay is as firm today as it was during the campaign. We all are aware of the obstacles to getting that done as quickly as the President wanted to get it done, what they were and the fact that they continued to persist. But the President’s commitment hasn’t changed at

all. And it's the right thing to do for our national security interests.

That has been an opinion shared not just by this President or members of this administration, but senior members of the military as well as this President's predecessor and the man he ran against for this office in the general election. So we will continue to abide by that commitment and work towards its fulfillment.

And that response usually succeeds in shutting the journalist up.

No one has, as far as I know, asked the more general question: "does the Administration plan to get out of the due process-free indefinite detention business?" That question would be a lot harder for Carney to answer—though the answer, of course, is "no, the Administration has no intention of stopping the practice of holding significant numbers of detainees without adequate review." Rather than reversing the practice started by the Bush Administration, Obama has continued it, even re-accelerated it, expanding our prison at Bagram several times.

That question seems to be absent from discussions about Gitmo's anniversary, too. Take this debate from the NYT.

Deborah Pearlstein takes solace in her assessment that Gitmo has gotten better over the last decade.

In 2002, detention conditions at the base were often abusive, and for some, torturous. Today, prisoners are generally housed in conditions that meet international standards, and the prison operates under an executive order that appears to have succeeded in prohibiting torture and cruelty. In 2002, the U.S. president asserted exclusive control over the prison, denying the applicability of fundamental laws that

would afford its residents even the most basic humanitarian and procedural protections, and rejecting the notion that the courts had any power to constrain executive discretion. Today, all three branches of government are engaged in applying the laws that recognize legal rights in the detainees. Guantánamo once housed close to 800 prisoners, and most outside observers were barred from the base. Today, it holds 171, and independent lawyers, among others, have met with most detainees many times.

But she doesn't mention that the Administration still operates a prison alleged to be abusive, even torturous, still rejects the notion that courts have any power to constrain executive discretion over that prison. And that prison holds over 3,000 men in it!

Sure, Gitmo has gotten better, but that only serves to distract from the fact that our detention **practices**—except for the notable fact that we claim to have ended the most physical forms of torture—have not.

David Cole scolds those in Congress who “don't seem troubled at all about keeping men locked up who the military has said could be released, or about keeping open an institution that jeopardizes our security,” yet doesn't mention that Bagram does the same. Nor does he note the part of the Administration's NDAA signing statement that suggested Congress' salutary effort to expand detainee review would not necessarily apply to Bagram. How can it all be Congress' fault when Obama isn't fulfilling the letter of the law providing more meaningful review to those we're holding at Bagram?

Even the brilliant Vince Warren focuses on the “legal black hole” that is Gitmo, without mentioning the bigger legal black hole that is Bagram.

Among the four participants in the debate, only Eric Posner even mentions Bagram, suggesting that that's one less optimal alternative to keeping prisoners at Gitmo.

To be sure, there are other options. Detainees could be placed in prison camps on foreign territory controlled by the U.S. military, where they lack access to U.S. courts and security is less certain.

But then Posner misconstrues the issue.

Some critics believe that the whole idea of a war on terror is misconceived, that Congress could not have lawfully declared war on Al Qaeda, and that therefore suspected members of Al Qaeda cannot be detained indefinitely like enemy soldiers but must either be charged in a court or released. This position has been rejected repeatedly by the courts, but even if it were correct, Guantánamo would remain a legitimate place to detain enemy soldiers picked up on "hot" battlefields wherever they may be now or in the future – places like Afghanistan, Iraq, Libya and maybe soon Iran, to name a few.

There's a difference between what is legal under international law developed for very different wars and what is just or what is the best way to conduct that war. And the problem with Gitmo (mitigated somewhat over the decade)—and the problem with Bagram, still—is that we're spending unbelievable amounts of money to detain and abuse people that we haven't even adequately reviewed to make sure we need to detain them. That's not a smart way to conduct a war, particularly not one its backers insist will never end, particularly one that depends on our ability to win support among Afghans and other Muslims.

The only thing that was and is problematic about Gitmo that is not also problematic about Bagram is the publicity surrounding it (presumably, though, just here and in Europe—I imagine Afghans, Pakistanis, and al Qaeda members know as much about Bagram as they do about Gitmo). That is, by treating—and allowing the Administration to treat—Gitmo as the problem, rather than due process-free and possibly abusive indefinite detention generally, we’re all acting as if the problem is that **people know** we’re conducting due process-free indefinite detention, not that we’re doing it at all. We’re letting the Administration off easy with its claims that mean old Congress has prevented it from closing Gitmo, when Bagram offers proof that it wants to do so not for the right reasons—because it is wrong, because it damages our ability to claim to offer something better than corrupt regimes—but because what America has become and intends to stay is embarrassing, politically inconvenient.

I understand that this anniversary will attract general attention to Gitmo. I’m thrilled that, for once, people are listening to the reporters and activists and lawyers and guards and especially the detainees who have fought to close it. But by allowing the myth that Gitmo is the problem to go unchallenged, and not our due process-free indefinite detention generally, we’re simply pretending that unjust and stupid actions that occur outside of the glare of the press don’t matter as much as those that make the news.

The updates to this story are not good. As Jim White has documented, we have slow-walked our obligation to turn over the prison to Afghanistan because they refuse to agree to indefinite trial-free detention. The Administration continues to successfully fight efforts to give the detainees at Bagram habeas review. And Yunus Rahmatullah—who in December 2011 seemingly won a habeas case brought in the

UK—was denied his petition last year when the Brits declared the US simply wouldn't honor its international agreements and release him. And all these actions come while defying Congress' requirement that DOD detainees get some kind of meaningful review.

The Obama Administration is dishonoring agreements with multiple allies and defying Congress to sustain his system of due process free indefinite detention.

You will hear apologists today claim that Obama hasn't closed Gitmo because Congress won't let him. But his actions with Bagram prove his true intent.