

# FEINSTEIN CALLS FOR REVIEW OF HER MORATORIUM ON RELEASE OF YEMENI PRISONERS FROM GITMO

Finally sensing that US policy on Yemeni prisoners at Guantanamo is a disaster of epic proportions, and after playing a key role in putting the moratorium on release of Yemeni prisoners into place, Dianne Feinstein on Thursday took the first step toward trying to resolve the crisis before hunger striking prisoners begin to die in large numbers. Feinstein penned a letter to National Security Director Tom Donilon on Thursday, asking for renewed efforts to release those Guantanamo prisoners who have been cleared for release. It is clear that a central step in that process is to review the moratorium on release of cleared Yemeni prisoners.

There is a craven semantics game that is played in the arena of prisoners who have been cleared for release. Government and military officials only ever refer to “detainees” who are cleared for “transfer”, even when those prisoners have been completely cleared of any wrong-doing. Because of that semantics problem, the Guantanamo Review Task Force final report (pdf), issued in January of 2010, provides a muddled description of two groups of Yemeni prisoners who are cleared at various levels for release:

Falling into the category of those who really should be released outright, but classed in the report as “Detainees Approved for Transfer”, we see 29 from Yemen:

29 are from Yemen. In light of the moratorium on transfers of Guantanamo detainees to Yemen announced by the

President on January 5, 2010, these detainees cannot be transferred to Yemen at this time. In the meantime, these detainees are eligible to be transferred to third countries capable of imposing appropriate security measures.

A second category of Yemeni detainees cleared for release are those that the government believes still warrant some sort of detention in Yemen. They appear in the category "Detainees Approved for Conditional Detention":

30 detainees from Yemen were unanimously approved for "conditional" detention based on current security conditions in Yemen.

The status of these prisoners is described further:

After carefully considering the intelligence concerning the security situation in Yemen, and reviewing each detainee on a case-by-case basis, the review participants selected a group of 30 Yemeni detainees who pose a lower threat than the 48 detainees designated for continued detention under the AUMF, but who should not be among the first groups of transfers to Yemen even if the current moratorium on such transfers is lifted.

These 30 detainees were approved for "conditional" detention, meaning that they may be transferred if one of the following conditions is satisfied: (1) the security situation improves in Yemen; (2) an appropriate rehabilitation program becomes available; or (3) an appropriate third-country resettlement option becomes available. Should any of these conditions be satisfied, however, the 29 Yemeni detainees approved for transfer would receive priority for any

transfer options over the 30 Yemeni detainees approved for conditional detention.

About that “moratorium” on release of Yemeni prisoners. The review task force report informs us that of 36 Yemeni detainees initially cleared for full release, one was released by court order in September 2009 and another six were released in December 2009. But then the Undie Bomber episode took place on Christmas Day of 2009, and the release of Yemeni prisoners somehow became politically impossible. From the review report:

The involvement of Al-Qaida in the Arabian Peninsula—the branch of al-Qaida based in Yemen—in the recent attempted bombing of an airplane headed to Detroit underscored the continued need for a deliberate approach toward any further effort to repatriate Yemeni detainees. In the wake of the attempted plot, the President publicly announced a moratorium on the transfer of detainees to Yemen. Accordingly, none of the 29 Yemeni detainees remaining at Guantanamo who are approved for transfer will be repatriated to Yemen until the moratorium is lifted. These detainees may be considered for resettlement in third countries subject to appropriate security measures, if such options become available.

Although she was front and center in enabling and endorsing the moratorium on Yemeni prisoner release, Feinstein now wants a review of that decision. She broadens the appeal, though, to include all 86 of the prisoners cleared for release. On her website, she provides this framing for the letter to Donilon:

Senator Dianne Feinstein (D-Calif.), chairman of the Senate Intelligence Committee, today sent a letter to

National Security Director Tom Donilon urging the Obama Administration to renew its efforts to transfer 86 detainees at the Guantanamo Bay detention facility who have been cleared for release. Citing the stalled prosecution process and the growing number of detainees on a hunger strike, Feinstein wrote:

Feinstein seems upset by what she was told by the ICRC after their visit to Guantanamo:

As you know, despite commendable efforts across the Executive Branch over the past four years to transfer or prosecute most of the remaining 166 detainees, progress has largely stalled on closing the Guantanamo facility. The fact that so many detainees have now been held at Guantanamo for over a decade and their belief that there is still no end in sight for them is a reason there is a growing problem of more and more detainees on a hunger strike. This week, monitors from the International Committee of the Red Cross who travelled to Guantanamo recently told my staff that the level of desperation among the detainees is “unprecedented” in their view.

Later in the letter, Feinstein owns up to her role in the moratorium on release of Yemenis and then proceeds to explain why the decision should be revisited:

I would like to ask that the Administration review the status of the 86 detainees who were cleared for transfer in the past and let me know if there are suitable places to continue to hold or resettle these detainees either in their home countries or third countries.

Part of this review will require

reassessing the security situation on the ground in Yemen because is my understanding that 56 of the 86 detainees cleared for transfer are Yemeni. After the attempted bombing of Northwest Flight 253 on Christmas Day 2009, then Vice Chairman "Kit" Bond and I wrote to the President asking him to halt transfers of Yemeni detainees at Guantanamo "until the situation in Yemen is stabilized." Although AQAP still has a strong presence in Yemen, I believe it would be prudent to re-visit the decision to halt transfers to Yemen and assess whether President Hadi's government, with appropriate assistance, would be able to securely hold detainees in Sana'a. Do you believe that we can work with Yemen develop an appropriate framework for the return of all 56 Yemenis previously recommended for transfer?

If so, I would like to offer my assistance to help the Administration transition each of the 86 "cleared" detainees.

Note that Feinstein does not openly distinguish between the two categories of Yemeni prisoners. It sounds like she believes that they all should be out of US custody as soon as possible, although it is disturbing that she still puts "places to continue to hold" these prisoners ahead of "resettle" for the options. These two modes of transfer undoubtedly refer to the two categories of prisoners cleared for release. For Feinstein to believe that the underlying issue of indefinite detention without trial for these prisoners will go away simply by transferring them to another government for holding shows how divorced from reality she is.

Feinstein does at least close the letter by chastising the Obama administration for transferring the Special Envoy for the Closing of Guantanamo without providing a replacement.

In her article on this development, Carol Rosenberg puts Feinstein's movement on Yemen into context with its new president:

Since the freeze, Yemen has a new post-Arab Spring president and Feinstein said the White House should reassess whether, "with appropriate assistance," Yemen could securely hold detainees in its capital, Sanaa.

If Feinstein is able to convince the Obama administration to really conduct a review on whether conditions in Yemen are appropriate for release of prisoners there, perhaps there is one other bit of Yemen policy that can be addressed. In Tuesday's hearing on drones, there was testimony from Farea al-Muslimi, who managed to undercut one of the underlying tenets of US drone policy in Yemen. Note that one of the reasons provided for drone strikes is that they are aimed at figures who are dangerous to the US but who cannot be arrested or otherwise detained. al-Muslimi destroyed that argument for a recent strike in his village in Yemen:

Al-Muslimi argued that the purported target of the strike, Hamid al-Radmi, who allegedly had ties to AQAP, was a well-known figure who could have easily been apprehended. "The Yemeni government could easily have found and arrested him," al-Muslimi said in his opening remarks. "Even the local government could have captured him if the U.S. had told them to do so."

Rethinking and revising US drone strategy in Yemen could go a long way in making Yemen a more stable region for release of Guantanamo prisoners. Continuing drone strikes without changes and shipping many Yemeni prisoners to another country for warehousing is a recipe for further radicalization of new figures in Yemen along with any Yemeni Guantanamo prisoners actually released. On the other hand, ceasing

the droning of suspects that the locals know to be available for simple arrest, along with providing support in transition back to civilian life for released prisoners could actually start to repair the tarnished US image in Yemen.

I won't hold my breath while expecting a good outcome on this opportunity for progress. At every juncture since he penned his executive order ostensibly calling for the closure of Guantanamo, Obama has been all too eager to join the side of the war mongers who want to continue abusing Guantanamo prisoners in an effort to look tough to the world. What better way to appear tough than not to give in to a hunger strike?