



**Resettlement of Guantanamo Bay Detainees:
Questions and Answers
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The Issue

On his second day in office, US President Barack Obama signed an executive order committing to close the US military detention facility at Guantanamo Bay by January 2010 and authorizing a review by the attorney general of each detainee's status.

Approximately 244 detainees remain in Guantanamo. An unknown number will ultimately be slated for prosecution, and others cleared for release or transfer. But approximately 60 detainees—from countries such as Algeria, China, Egypt, Libya, and Uzbekistan—reportedly face a credible fear of torture or persecution and cannot be returned home, even if cleared to leave Guantanamo. In addition, at least one detainee is stateless, and has no place to return to.

What can European and other countries such as Canada do for Guantanamo detainees who cannot be returned to their home countries?

Although the US government has primary responsibility for the detainees released from Guantanamo, it will need the help of other governments, as a practical matter, to close the facility. In recent months, several European countries have recognized that the Obama administration needs their help, and have expressed a willingness to resettle detainees cleared for transfer or release.

Ideally, the United States would resettle all of the detainees who have been cleared for transfer or release from Guantanamo but cannot be returned home due to fears of torture or persecution. Release into the United States, however, is not a practical solution for all of the detainees who cannot be returned home. Because of the strong political opposition to resettling even a small fraction of the detainees in the United States, any effort to resettle all of them there would likely mean years of legal and political wrangling. Some of the detainees, moreover, would be extremely reluctant to try to make a new life in the United States, given their mistreatment in US custody, and the possibility that detainees released into the United States might be subjected to official or unofficial harassment or abuse.

European governments and Canada can help to close Guantanamo by offering these men safe haven in their countries. The long history of action by these countries on behalf of human rights and for the protection of vulnerable persons makes them ideally situated to provide a refuge for the Guantanamo detainees who might not have other options. Many European countries have well-developed infrastructures to assess the individuals' needs

and provide support, integration, and rehabilitation services to former detainees. They also have excellent networks of migrants' rights, human rights, and other civil society organizations to assist with integration and rehabilitation. Moreover, some of the men already have family ties in Europe or Canada, promises of support from local communities, and relevant language skills that will greatly facilitate their reintegration.

Which detainees are in need of resettlement?

The approximately 60 Guantanamo detainees who have expressed fears of torture or persecution if returned home are from Algeria, Azerbaijan, China, Egypt, Libya, the Occupied Palestinian Territories, Russia, Syria, Tajikistan, Tunisia, and Uzbekistan.

None of them face criminal charges. Many have been cleared to leave Guantanamo for years, and would have been released long ago, but for the fact that they cannot be returned to their home countries. Many were reportedly handed over to US forces by bounty hunters in Pakistan and Afghanistan, after the US distributed flyers in these countries offering substantial monetary awards for turning in "suspicious" people. Others were linked to relatives or acquaintances suspected of criminal activity and were therefore considered "guilty" by association.

Among those in need of resettlement are a group of 17 Chinese Uighurs, most of whom were turned over from Pakistan to the United States for bounties in late 2001. The US government cleared most of the original group of 22 Uighurs for release by 2004, but they were not returned to China due to credible fears that they would be tortured upon return. For several years, the US government has tried to convince other countries to resettle the Uighurs. In 2006, Albania agreed to take in five of them, but no other country has yet been willing to accept the remaining 17.

There is general agreement as to the circumstances of the arrest of most of the Guantanamo Uighurs. They were living together in a Uighur village in Afghanistan and when the US-led coalition bombing campaign began in October 2001, a group of them fled into the mountains. Arab travelers promised to take them to a safe house in Pakistan, but instead turned them over to Pakistani authorities who, in turn, handed them over to the United States, reportedly for large bounties. They have been in US custody ever since.

In October 2008, a US federal court ordered the Uighurs released into the United States, but the Bush administration appealed and the ruling was reversed in February 2009. The

appellate court concluded that only the executive branch—and not the courts—has the authority to admit the Uighurs into the United States. Human Rights Watch and many others have urged the Obama administration to do so.

Have European countries accepted former Guantanamo Bay detainees in the past? If so, what is the current situation of these former detainees?

European states have accepted a number of former Guantanamo Bay detainees. Some 27 former detainees have been returned to European Union (EU) member states, including Belgium, Denmark, France, Germany, Spain, Sweden, and the United Kingdom. The men are citizens or former residents of the countries to which they were returned.

Two other former detainees also currently reside in EU member states: Shamil Khazhiev was transferred to Russia from Guantanamo Bay in 2004 but sought refuge in the Netherlands in 2007. The Dutch authorities subsequently granted Khazhiev political asylum based on the harassment and abuse he suffered at the hands of the Russian intelligence services upon his return to Russia from Guantanamo. Adel Abdul Hakim, a Uighur detainee transferred from Guantanamo Bay to Albania in 2006, currently resides in Sweden with his sister and her family and was granted political asylum there in February 2009.

In addition, 13 former detainees—all citizens or former residents—were repatriated to other European countries, including three men to Bosnia in December 2008; seven to Russia in 2004; and four to Turkey between 2003 and 2005. Albania is the only European country to have offered asylum to detainees while they were still in prison at Guantanamo. In 2006, five Uighurs, an Egyptian, an Algerian, and an Uzbek were resettled in Albania.

To our knowledge, all of the former Guantanamo detainees in Europe are living peaceful lives, without engaging in militant or other violent activity.

How many former Guantanamo Bay detainees have engaged in terrorist activities or other criminal acts after release?

Over 500 men have been released from Guantanamo Bay since 2002. The vast majority of these men appear to have reintegrated into their societies successfully. A small minority of former detainees, however, are alleged to have joined terrorist organizations or committed

serious crimes after their release. Due to the lack of detail and precision in such allegations, the actual number of former detainees who have engaged in such acts is unknown.

In 2009, in the last days of the Bush administration, the US Department of Defense alleged that approximately 60 former detainees have “returned to the fight” since their release. However, the Defense Department has failed to provide identifying information or other information to support its claim, despite promising to do so. Moreover, the Defense Department’s number apparently includes former detainees who have engaged in “propaganda warfare” by speaking out publicly about the abuses they suffered while imprisoned at Guantanamo. Labeling such former detainees as having joined the fight against the United States following release vastly inflates the number of men who may have gone on to engage in terrorist activities after release.

Two former detainees have been reported to have joined al-Qaeda in Yemen and Saudi Arabia.

Moreover, the vast majority of former detainees currently residing in Europe have successfully reintegrated. While some have been prosecuted for criminal activity, in every case but one, they were tried for acts that occurred prior to their detention at Guantanamo. Although five former detainees were convicted of criminal association in France—receiving sentences of time served—those convictions were overturned on appeal. A 2005 conviction of a Spanish former detainee on terrorism charges was similarly overturned on appeal, and the detainee was released in 2006. A Moroccan who was transferred from Guantanamo Bay to Spain in 2005 was tried on charges of association with a terrorist organization but was acquitted in 2006. He is currently seeking asylum in Spain. In fact, the only known criminal conviction that still stands is that against a former detainee who returned to Denmark in 2004 and was convicted of theft in 2007.

What legal status should current detainees be given if resettled in Europe?

The former detainees should be granted a legal status that provides them with physical security, including protection against being transferred in the future to a country where they would be at risk of torture or persecution (known as *refoulement*). Host states should also take steps to protect the men from foreign security agents from their home countries. The men should also be ensured the right to work, the opportunity for family reunion, and the

right to access other public services, including housing, medical care, and integration programs.

Ideally, detainees would be granted the most protective status, that of legal resident. Legal residents enjoy most of the rights and privileges of citizens, including the rights to work, healthcare, education, housing, and other public services, with a few exceptions (e.g., voting rights).

Some European countries may be able to grant detainees permanent residence permits, while others require that a residence permit be renewed periodically. In some cases, the grant of residency could be based on family ties to a host country. For example, a small number of detainees have siblings or other family members who currently reside in European countries.

Some of the former detainees may also meet the definition of a refugee, and should be able to apply for political asylum under a country's refugee and asylum laws. Refugee status confers a number of benefits on a person and his or her family, including protection against *refoulement*, the right to family reunion, freedom of movement within the country, travel documents, access to employment, education, healthcare, housing, and other forms of social assistance, including rehabilitation services and integration programs.

The men should not be disadvantaged in the asylum process by their unlawful detention at Guantanamo Bay. Information used to determine whether they meet the definition of a refugee must be reliable (e.g., not extracted under coercive interrogation methods) and credible.

Will the former detainees' families be able to join them?

Former detainees will find it difficult to rebuild their lives without the support of their families. A small number of Guantanamo detainees eligible for resettlement in Europe have family members—spouses and children—that they will want to join them. After years of separation, these families should be reunited.

The right to family unity is a central tenet of European human rights law. Under EU law, foreigners lawfully residing in EU member states have a right to family reunification, and virtually every European country recognizes the right to family reunion in its domestic laws.

Governments should confer the same legal status on all reunited family members.

Family reunion and the continuing support of the family unit are widely recognized—including by the United Nations High Commissioner for Refugees (UNHCR) and other experts, such as the European Council for Refugees and Exiles (ECRE)—as a key condition for successful integration into a host society. A former detainee's prospects for rehabilitation and meaningful integration will be greatly enhanced by reunion and the continuing support of his family.

What types of security controls can be placed on a former detainee in the resettlement country?

The goals of resettlement in Europe are to protect former detainees from further abuse and to ensure that they successfully integrate into their host country's society. Unnecessary restrictions on their movement and association could reinforce the stigma that already attaches to imprisonment at Guantanamo Bay and have an adverse impact on the men's ability to integrate.

Restrictions on detainees' movement and associations cannot be justified solely on the grounds that an individual was formerly detained at Guantanamo Bay. Rather, any restrictions or conditions on former detainees' freedom of movement and association—including reporting requirements—should be based on reliable and specific evidence that the individual poses a threat, narrowly tailored to address that threat, and subjected to the following judicial safeguards:

- Restrictions should be ordered by a court (not by the executive branch), following a process in which reliable and specific evidence of their necessity and proportionality is presented to the court, the affected individual, and his lawyer.
- The affected individual should be provided an effective opportunity to challenge the evidence, as well as the opportunity to bring a meaningful appeal.
- Restrictions should be time-limited and open to rescission or amendment on the presentation of new evidence.

Any necessary restrictions should be imposed in a manner that allows the affected individual to continue to work or engage in educational or vocational training, to practice his religion, to access health and rehabilitation services and integration programs, and to maintain family unity.

What kinds of psychological support might the former detainees need?

Some of the detainees will require psychological counseling for post-traumatic stress disorder and other psychological harm they may have suffered as a result of the abuses they endured prior to and during their detention at Guantanamo Bay. The infrastructure for this type of sustained and expert support exists in many European countries. In addition to government-funded support services, expert rehabilitation centers for trauma and torture survivors are located in Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, the Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland, and the United Kingdom.

Many of these centers are associated with the International Rehabilitation Council for Torture Victims (IRCT) based in Copenhagen, which has repeatedly called on the US government to close the detention facility at Guantanamo Bay. European governments would benefit from the advice and resources of organizations like the IRCT and its affiliated centers to ensure that former Guantanamo Bay detainees receive the needed psychological support to assist them with successful integration into the society and culture of their host state.

How will the former detainees integrate into European society after so many years of abuse, isolation, and uncertainty?

Most European countries have well-developed government-supported service networks for lawfully residing foreigners, and diverse and active migrant communities that provide a range of formal and informal services for their members, including language training, advice and support to obtain adequate housing, employment counseling and vocational training, and opportunities for socializing and cultural exchange.

The United Nations High Commissioner for Refugees, long a partner with the EU and other European countries in the effort to provide safe haven to persons who fear persecution, could also provide valuable advice and expertise on the integration and rehabilitation of the former detainees.

Human rights, migrant, and other civil society organizations are already working together in a number of European countries to explore the full range of government-funded and private medical and psychological services, vocational and employment training, and housing and

educational opportunities available to former detainees and how to coordinate those services in the most cost-effective manner.

In Canada, several church and community groups have joined forces to agree to sponsor the resettlement of particular detainees, and have committed to providing housing, language and job training, and other services to the detainees once released.