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What About Bagram?

by William Fisher

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While human rights and legal advocacy groups applauded President Barack Obama's decision to close the military prison at Guantánamo Bay within a year, many immediately raised another thorny question: "What about Bagram?"

The answer came as a shock. In a brief filing in federal court last week, lawyers from Obama's Department of Justice said they would adopt the same position taken by the George W. Bush administration – that detainees held at the Bagram air base in Afghanistan have no right to challenge their detention in U.S. courts.

The U.S. government is holding more than 600 prisoners at Bagram. Some claim they are victims of "extraordinary rendition" by the U.S. Central Intelligence Agency (CIA), while many more say they have been tortured and abused at the facility just outside Kabul.

Marjorie Cohn, president of the National Lawyers Guild, told IPS, "In *Boumediene v. Bush*, the Supreme Court held that Guantánamo detainees have a right to habeas corpus to challenge their detention but it did not limit that right to Guantánamo. Justice Kennedy said the Court would not look kindly on the executive who imprisons people in other countries to avoid the jurisdiction of U.S. courts."

She added, "The Obama administration is reportedly sending detainees to Bagram instead of Guantánamo. It is alarming that hundreds of people in U.S. custody in Iraq and Afghanistan will evidently be denied access to courts to review their 'enemy combatant' designations."

Barbara Olshansky, lead counsel for three Bagram detainees and a visiting professor at Stanford Law School, said she was deeply disappointed that the Obama administration had decided to "adhere to a position that has contributed to making our country a pariah around the world for its flagrant disregard of people's human rights."

She said she hoped that the Obama administration was merely signaling it was still working on its position regarding the detainee issue.

The U.S. District Court held a hearing in early January on separate challenges filed on behalf of four detainees taken to Bagram from outside Afghanistan. At the hearing, Bush administration lawyers argued that Bagram detainees were different from those held at Guantánamo, and could pose a security threat if released.

That policy will now be reviewed in U.S. court, where advocacy groups will argue that Bagram detainees should have the same rights as those in Guantánamo, including the right to a hearing before a neutral judge.

The issue will likely generate even more contention in coming months, as Obama deploys thousands of extra U.S. troops to Afghanistan and a 60-million-dollar expansion doubles the capacity of the Bagram Theater Internment Facility (BTIF).

Some observers are saying they are not surprised by the Obama administration's decision to follow the Bush model, pointing out that this is the second time that's happened during the month since the new president took office.

In a controversial case in San Francisco earlier this month, Obama lawyers declined to change the previous administration's invocation of the "state secrets privilege" to attempt to prevent a federal court from ever hearing a lawsuit brought by an Ethiopian-born British resident who claims he was a victim of "extraordinary rendition."

Binyam Mohamed, who until Monday was a prisoner at Guantánamo Bay, Cuba, is attempting to sue a company known as Jeppesen Dataplan – a subsidiary of the Boeing Corporation – for knowingly providing the CIA with logistical support for the aircraft it used in his "extraordinary rendition."

Mohamed was released from Guantánamo and returned to Britain Monday, with no charges ever filed against him. He had been on a hunger strike at the Caribbean military prison.

A separate lawsuit he filed in Britain has caused a furor there, with officials refusing to make public documents that Mohamed's lawyers say show that their client was kidnapped and tortured in several secret prisons, and that the British authorities were complicit with the CIA in his treatment.

Opposition politicians in Britain claimed the U.S. had threatened to stop sharing intelligence if the documents were made public. The British foreign secretary, David Milliband, denied there was any threat.

A United Nations report last week singled out the Bagram facility for criticism. While the Red Cross was allowed to visit detainees, the report said, the Red Cross findings are kept secret and the U.S. military has denied U.N. requests for similar visits.

"There are reports that some persons have been in detention at Bagram for as long as five years," the report says. "Some ex-detainees allege being subjected to severe torture, even sexual abuse. Ex-detainees also allege that they were held in cages containing between 15 to 20 men and that two detainees died in questionable circumstances while

in custody."

In a briefing paper, Amnesty International urged President Obama and his administration to discontinue what it calls the "unlawful detention policies" of the Bush administration and ensure that detainees held at Bagram have access to U.S. courts so they may challenge their detentions.

The paper, entitled, "Out of sight, out of mind, out of court?", argues for the right of Bagram detainees to judicial review. The organization sent the paper to the new U.S. administration.

"Judicial review is a basic safeguard against executive abuse and a protection against arbitrary and secret detention, torture and other ill-treatment and unlawful transfers from one country or government to another," the briefing paper said.

"In the absence of judicial oversight, detainees in Bagram, as at Guantánamo, have been subjected to just such abuses. Even children have not been spared."

Amnesty said among Bagram's some 600 detainees were Afghan nationals, but also individuals of other nationalities.

"Some have been held for years," it said. "The U.S. authorities must now ensure that all U.S. detentions in Afghanistan comply with international law."

During his first week in office, President Obama ordered the Guantánamo prison camp to be closed within a year and named Attorney General Eric Holder to head a task force to review the case file of each of the 245 detainees to determine what to do with them. About 20 prisoners were scheduled to face trials by military commission but Obama suspended these proceedings while his administration reviews its judicial options.

At Bagram, prisoners' cases are reviewed by the U.S. military every six months.

The next major detention question likely to face the Obama administration is what to do with Ali Saleh Kahlah al-Marri, the last "enemy combatant" imprisoned in the United States. Al-Marri has been held in isolation at a naval brig in South Carolina for more than five years. He has never stood trial or been convicted of any crime.

On Sep. 10, 2001, al-Marri, who is a citizen of Qatar, arrived in the United States with his wife and children. He had a student visa and said he was here to study computer programming at a university in Peoria, Illinois.

That December, he was arrested as a material witness in the 9/11 attacks. In June 2003, al-Marri was supposed to stand trial. But President Bush ordered the military to seize him and hold him indefinitely, thus keeping al-Marri out of court but also putting him into legal limbo.

During the first month of the Obama administration, there has been virtually no mention of the al-Marri case.