

By Andy Worthington

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On Friday, the ACLU secured a significant victory in its campaign to secure information about the prisoners held in the US prison at Bagram airbase, Afghanistan (known as the Bagram Theater Internment Facility), when the Pentagon released a list of the names of the 645 prisoners who were held on September 22, 2009 ([PDF](#)).

Even so, at first glance the document appears to be of little use. Names — spooling out like some randomly generated version of an Afghan census — are all that this heavily redacted list provides. When the FOIA request was [first filed in April 2009](#) , the ACLU asked the Obama administration “to make public records pertaining to the number of people currently detained at Bagram, their names, citizenship, place of capture and length of detention, as well as records pertaining to the process afforded those prisoners to challenge their detention and designation as ‘enemy combatants.’” However, as Melissa Goodman, a staff attorney at the ACLU, explained in [a statement](#) accompanying the release of the list on Friday:

Releasing the names of those held at Bagram is an important step toward transparency and accountability at the secretive Bagram prison, but it is just a first step ... Full transparency and accountability about Bagram requires disclosing how long these people have been imprisoned, where they are from and whether they were captured far from any battlefield or in other countries far from Afghanistan.

Nevertheless, on close inspection, this apparently bland and uninformative list is rather useful. Although no dates or places of capture are provided, the list is clearly chronological, with the prisoners’ numbers (beginning at 1201) following on from the numbers used for [the last of the regular prisoners](#) transferred to Guantánamo from Bagram in October 2003 ([Mohammed Mussa](#)).

, prisoner 1165). The first three names, it should be noted, refer to prisoners released from Guantánamo, who were subsequently recaptured, but in at least one of these cases — that of [Hafizullah Shabaz Khie](#)l) — there are [serious concerns](#) that the US authorities have seized an innocent man for a second time.

This correspondence between the prisoners' numbers reinforces the comparison between the two prisons, but emphasizes the gulf that actually exists between Guantánamo, where the prisoners have had access to attorneys since 2004, and have secured court victories ordering their release in [32 out of 41 habeas corpus petitions](#) in the last 16 months, and Bagram, where no civilian lawyer has set foot, and the reach of the courts has not yet been established, and is fiercely disputed.

In March 2009, after pioneering work by lawyers at the [International Justice Network](#), at the [City University of New York](#), and at Yale Law School, Judge John D. Bates — a George W. Bush appointee — ruled on a habeas corpus petition submitted on behalf of four prisoners held at Bagram for between five and seven years: Redha al-Najar, a Tunisian seized in Karachi, Pakistan, in May 2002, Amin al-Bakri, a Yemeni gemstone dealer seized in Bangkok, Thailand, in December 2002, Fadi al-Maqaleh, a Yemeni seized in 2004, and Haji Wazir, an Afghan businessman seized in the United Arab Emirates in 2002.

In his ruling last March, Judge Bates concluded that the writ of habeas corpus, granted to the prisoners at Guantánamo by the Supreme Court in June 2008 (in [Boumediene v. Bush](#)), extended to foreign prisoners seized in other countries and rendered to Bagram, because “the detainees themselves as well as the rationale for detention are essentially the same.”

As [I explained at the time](#), Judge Bates was clearly correct, because “only an administrative accident — or some as yet unknown decision that involved keeping a handful of foreign prisoners in Bagram, instead of sending them all to Guantánamo — prevented them from joining the 779 men in the offshore prison in Cuba.”

Judge Bates' ruling affected only the foreign prisoners rendered to Bagram. After deferring judgment in the case of Haji Wazir, he [ruled in July](#) that *Boumediene* did not extend to any Afghan in Bagram (even those, like Haji Wazir, who were rendered from other countries).

Reprising doubts he had expressed in March, he essentially agreed with the government's claim that to do so would cause "friction" with the Afghan government, because of ongoing negotiations regarding the transfer of Afghan prisoners to the custody of their own government.

Despite the logic and clarity of Judge Bates' ruling about the rights of foreign prisoners rendered to Bagram, the government appealed, and two weeks ago the Court of Appeals convened to hear oral arguments for and against the ruling. As the [Washington Post](#) described it, the Justice Department argued that Bates' ruling was "flawed," because Bagram is in "a highly active war zone," and "dealing with federal court proceedings would hamper the war effort and complicate diplomatic relations with the Afghan government," but two of the judges were clearly interested in working out if Judge Bates' ruling could be applied within narrow parameters. As the [Post](#) explained, Judges David S. Tatel and Harry T. Edwards pushed Tina Foster, one of the men's lawyers, to "craft an argument that would limit the reach of habeas corpus to just her clients at Bagram," because of their concern that "granting such rights to the Bagram prisoners would extend habeas corpus to military bases across the globe."

The Court of Appeals' ruling is not expected for several months, but in the meantime the newly released prisoner list provides the first opportunity to try and work out the identities of the other foreign prisoners — 36 in total, as of March 10, 2009, according to a declaration filed by the government — who have also been held at Bagram for many years. What makes this all the more pressing is the strong suspicion that a number of the foreign prisoners, including the three men mentioned above, were part of the CIA's "black sites" program, and were held in various secret prisons in Afghanistan — or elsewhere — before their eventual transfer to Bagram.

According to Abu Yahya al-Libi, an al-Qaeda member who escaped from Bagram in July 2005, two of the men were tortured in a number of secret prisons in Afghanistan, run by the CIA, before they were moved to Bagram, and the third was rendered to Iraq. In a report that is no longer available online, but which I discussed in my book [The Guantánamo Files](#), al-Libi wrote that al-Bakri was held in the notorious "

[Dark Prison](#)

" near Kabul, another prison in the Panjshir valley, and another prison identified as "Rissat," before being moved to Bagram, that al-Najar was also held in the "Dark Prison," the Panjshir prison, "Rissat," and another prison identified as "Rissat 2," and that al-Maqaleh was sent to Abu Ghraib before Bagram.

Al-Libi identified 12 prisoners in total — all of whom, according to his account, passed through the secret prison network — and although four of these men ended up in Guantánamo, the

whereabouts of the other five are unknown, and only two can be tentatively identified from the prisoner list:

Lutfi al-Arabi al-Gharisi may be Abou Hudeifa, a Tunisian identified as a “ghost prisoner” in “Off the Record” ([PDF](#)), a report by various human rights groups that was published in June 2007. Al-Libi identified him as Abou Houdayfa, but noted that his real name was Lotfi. Captured in Peshawar, Pakistan, at the end of 2002, he was reportedly held in several CIA prisons in Afghanistan, including the Dark Prison, before being moved to Bagram.

Salah Mohammad Ali may be Salah Din al-Bakistani (the Pakistani), who, according to al-Libi, lived in Doha, Qatar, was captured in Baghdad in 2004, and was held in Abu Ghraib and an unidentified “torture prison” before his transfer to Bagram.

Of the other three men mentioned by al-Libi, two — Issa (a Tunisian) and Abu Naseem (a Libyan) — were also mentioned in “Off the Record,” while the third, Abdelhaq al-Jazairi, an Algerian picked up in Georgia, has not been mentioned outside of *The Guantánamo Files*. Al-Libi wrote that he feared al-Jazairi had been sent to Algeria — and it may well be that he and dozens of other prisoners held by the CIA, whose current whereabouts are unknown, were sent back to their home countries.

These men were among the 94 prisoners mentioned by Assistant Attorney General Stephen Bradbury in one of the Office of Legal Counsel’s notorious “ [torture memos](#) ,” written in May 2005 and released by the Obama administration last April, and there are suspicions that a number of “ghost prisoners” were sent back to their home countries in 2006. A significant example of this process is Ibn al-Shaykh al-Libi, the CIA’s most notorious “ghost prisoner.” Rendered to Egypt in 2002, al-Libi

[falsely confessed](#)

under torture that there were connections between al-Qaeda and Saddam Hussein, which were subsequently used to justify the invasion of Iraq. After

[several further renditions](#)

, to “proxy” prisons and others run by the CIA, he was returned to Libya, where he died,

[allegedly by committing suicide](#)

, in May last year.

However, although it is probable that a number of former “ghost prisoners” have been

repatriated to face death or further detention, it is not inconceivable that some prisoners were not included in the list because they are being held elsewhere — perhaps in a corner of Bagram to which the list does not extend.

One indication that this is so is the apparent omission from the list of Amanatullah Ali, a Pakistani who was seized by British forces in Iraq in 2004 and rendered to Bagram. His detention in Bagram has been confirmed through letters to his family, and his story, which was told by David Rose in Britain's [Mail on Sunday](#) on December 9, is significant not only because it sheds light on the British government's complicity in the Bagram rendition program, but also because it reveals the extent to which depriving the prisoners of the right to challenge the basis of their detention perpetuates the same mistakes that were made at Guantánamo.

A rice merchant who had been on a business trip to Iran, Amanatullah Ali was seized in Baghdad after deciding to visit some holy sites in Iraq. According to the British defense secretary John Hutton, who conceded in February 2009 that Ali and another Pakistani — Salahuddin, who is probably Salah Din, mentioned above — had been transferred to US custody in Bagram, both men were regarded as members of the Pakistani terrorist group Lashkar-e-Tayyiba (LeT). In Ali's case, however, this is impossible, because he is a Shia Muslim, and, as his [lawyers at Reprive have explained](#), LeT is "a Sunni extremist group that views all Shia as heretics, and is currently conducting a violent campaign in Punjab to dispossess Shia Landlord lords such as Mr. Amanatullah."

This analysis of the prisoner list only begins to scratch the surface of Bagram's dark secrets, but I hope that it provides a useful starting point for further questions about the whereabouts of the 36 foreign prisoners mentioned in March 2009, and others held in the CIA's network of secret prisons, and that the case of Amanatullah Ali demonstrates why it is irresponsible to allow the Bush administration's detention policies to go unchallenged.

In a second article to follow, I'll look at what the list reveals about how prisoners at Bagram are still not held according to the Geneva Conventions, and what it doesn't reveal about other prisoners transferred from Bagram to Afghan custody, or to a US-refurbished block in Kabul's main prison, Pol-i-Charki. I'll also examine claims that the Obama administration has not fully abandoned the "rendition" program, and may be trying to avoid further litigation by handing Bagram over to the Afghan government.