

The Saudi Repatriates Report

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EXECUTIVE SUMMARY

The first planeload of detainees arrived in Naval Station in Guantánamo Bay, Cuba (“Guantánamo”) on January 11, 2003. Since then, nearly 800 detainees have passed through the detention facility. As of February 1, 2007, approximately 395 detainees are believed to still remain in Guantánamo; the rest have either been sent home or transferred elsewhere.¹ Since 2003, 53 Saudi Arabian nationals detained in Guantánamo Bay as enemy combatants have been repatriated.² All but the 16 from the most recent cohort (repatriated on December 14, 2006) have been released from the custody of the Saudi government.³ The purpose of this report is to understand why these particular detainees were sent home and in this order.

We were able to obtain data for 24 of these repatriates in the form of Administrative Review Board (“ARB”) proceeding transcripts, Combatant Status Review Tribunal (“CSRT”) proceeding transcripts, and/or factual returns. These 24 detainees

¹ News Release, United States Department of Defense, *Detainee Transfer Announced* (December 17, 2006), <http://www.defenselink.mil/Releases/Release.aspx?ReleaseID=10301>.

² Approximately 78 Saudi nationals remain imprisoned in Guantánamo Bay (figures current as of February 1, 2007).

³ According to confidential sources, a condition of the release of some of these individuals was a travel restriction, prohibiting them from traveling outside of the country for five years. Aside from this, they are all believed to be living at home with their families as free men. The December 14th cohort appears to be undergoing the same screening process as the earlier groups. Typically, they are held in custody for several months while the Saudi government interviews and investigates them. We expect a significant number, if not all, of the December 14th cohort to be released sometime in 2007.

were randomly chosen based upon the availability of information in their cases, and are believed to be representative of the repatriate population as a whole. We based our analysis upon the most comparable information about these detainees—the accusations made by the United States government. Not only does this avoid the injection of subjective elements into our analysis, but it also focuses upon the government’s best arguments for incarcerating these individuals.

Some of our findings are highlighted below:

- 62.5 percent were accused of being associated with either al Qaida or the Taliban.
- 29.2 percent were accused of traveling to Afghanistan because of jihad or a fatwa.
- 37.5 percent were accused of association with charitable organizations believed by the United States to have ties to terrorism.
- 50 percent were accused of being on the front lines.
- 41.7 percent were accused of fighting U.S. or Northern Alliance forces.
- 54.2 percent were accused of receiving military and/or weapons training.
- 29.2 percent were accused of carrying a weapon while in Afghanistan or traveling to Afghanistan.
- 8.3 percent were accused of being listed as high priority targets of the Saudi Arabian government.

A full 50 percent of the repatriates were accused of being captured and turned over by Pakistani forces. In other words, for at least half of the these individuals, the

United States had no first hand knowledge of their activities in the region. Nor were the remaining 50 percent apprehended by U.S. forces; the record is silent on that point.

Some of the accusations hardly seem to constitute grounds for detention in a prison camp, including:

- Traveling with others to and/or in Afghanistan (12.5 percent)
- Traveling through multiple Middle Eastern countries en route to Afghanistan (33.3 percent)

We then analyzed correlations between pairs of accusations. Among our findings were that detainees accused of being captured by Pakistani forces were likely to also be accused of associating with a charity suspected of having terrorist ties, but were more likely not to have been accused of i) traveling to Afghanistan because of a fatwa or jihad, ii) being on the front lines, or iii) associating with al Qaida or the Taliban. In other words, by its own combinations of accusations, the United States government believes that some of the Saudis turned over by Pakistani forces were not jihadists or front-line fighters, but individuals there on an ostensibly humanitarian mission. Although the charitable organization may have been under suspicion, some of the detainees themselves were not thought to be either Taliban or al Qaida.

There are two basic reasons why the U.S. may have repatriated these 53 detainees: for diplomatic reasons or because the U.S. no longer believes that these individuals pose a sufficient threat to warrant continued detention. Diplomatic reasons are unknowable from the data, so we focused on why the government may have determined that these individuals no longer posed a threat.

We found that there are no accusations common to all of the repatriates. Isolating 16 separate accusations among the pool of repatriates, only two were accused of the same seven offenses. There were 5 instances when two detainees had the same six accusations in common, and 8 instances when two detainees had the same five accusations in common; on the other hand, there were 41 instances when a detainee had no accusations in common with one other specific detainee.^{4,5}

When we compared cohorts, we discovered a possible explanation for the cycle of releases. Isolating the three metrics that were facially most indicative of how allegedly “bad” a detainee was (i.e., average number of accusations, association with al Qaida or the Taliban, and fighting U.S. or Northern Alliance forces), we discovered a statistically significant increase in the percentage of repatriates accused of fighting against U.S. or Northern Alliance forces and the average number of accusations per repatriate. Additionally, the percentage of repatriates accused of association with al Qaida or the Taliban grew over time, although the increase was not statistically significant. The average number of accusations per detainee in May 2006 was 4.5; it grew to 5.13 in June 2006, and was up to 6.12 by December 2006. The number of repatriates accused of being associated with al Qaida or the Taliban grew from 4 in the May 2006 cohort to 5 in June

⁴ E.g., ISN #64 did not have a single accusation in common with 10 of the other detainees.

⁵ There is a possibility that what these detainees have in common is an accusation they *don't* have that is present among the remaining population; however, outwardly the accusations confound any explanation as to why these particular detainees were sent home first. As stated earlier, 62.5 percent were accused of being associated with al Qaida or the Taliban; 50 percent were accused of being on the front lines; 41.7 percent were accused of fighting U.S. or Northern Alliance forces; and 54.2 percent were accused of receiving some sort of military or weapons training.

2006 and 6 in December 2006. The number of repatriates accused of fighting against allied forces stayed constant at 2 between May 2006 and June 2006, but then tripled to 6 in December 2006. Combining the May and June cohorts because of their proximity, in comparison to the December cohort, average number of accusations grew from 4.88 to 6.12; percentage accused of association with al Qaida or the Taliban grew from 0.56 to 0.75; and percentage accused of fighting against the U.S. or the Northern Alliance grew from 0.25 to 0.75.

Though the numbers suggest a possible rational decision-making process, the soundness of this process is undercut by the anomalies we discovered in our data. If the accusations are true, how can the following be explained:

- the detainees alleged to be “high priority Saudi targets” who were released shortly after they were repatriated; or
- the 6 repatriates who did not participate in their CSRT or ARB hearings and did not respond to their accusations. In these 6 cases, the U.S. government had determined that these individuals were enemy combatants; had only its accusations against them; and had no rebuttals, witnesses, or arguments to the contrary. Yet each of these individuals was ultimately returned home.

Moreover, the credibility of many of these accusations is highly questionable.

For example, 42 percent of the repatriates were accused of having their name or nickname appear on lists found on confiscated hard drives purportedly affiliated with al Qaida. However, this accusation appears to be based upon little more than similarities in the transliterations of a detainee’s name and a name found on one of the hard drives. In addition, in some cases, a very different transliteration on the hard drive is asserted to be

a detainee's "nickname;" however, no evidence is introduced explaining (i) why the government believes this is the detainee's nickname, and (ii) how the government associates the transliteration of the name on the hard drive with the transliteration of the detainee's nickname.

In fact, 22 percent of the repatriates accused of having their names appear on a hard drive associated with al Qaida were not actually accused of being associated with al Qaida. The only logical explanations (that either the names are too vague to identify or that appearing on the hard drive does not necessarily mean one is a terrorist) cast doubt upon the evidentiary value of any of the names found on the hard drives.

A second example is the 33.3 percent of the repatriated Saudis accused of traveling through multiple countries en route to Afghanistan, an accusation rooted in the suspicion that these individuals were taking so-called al Qaida travel routes. Upon closer examination, however, only two of these individuals were accused of taking the same route through the same countries (Saudi Arabia to Afghanistan via Syria and Iran). The other six so accused employed different routes and a combination of different countries including Kuwait, Pakistan, Jordan, United Arab Emirates, Syria, Iraq, Iran and Bahrain. Part of these so-called "al Qaida travel routes" involve ordinary connecting flights in major international airports. There is no explanation for how such different itineraries through major transit points credibly constitute the same accusation. Moreover, one would think that individuals traveling along suspected al Qaida routes would be the most likely to stay in guesthouses purported to be waystations for terrorists; but there is absolutely no relationship between the two accusations (0.0 correlation).

An even more distressing question raised by our analysis is why it took the United States nearly five years to release some of these individuals. What possible justification was there for detaining Saudis who believed they were working with a humanitarian organization and were never even accused of association with al Qaida or the Taliban in Guantánamo for almost five years?

Part of the problem is undoubtedly the unchecked authority the executive enjoyed in the years following the attacks of September 11th, 2001. Lacking any political pressure to bring charges against the detainees or release them, detainees never even accused of association with al Qaida or the Taliban were left to languish for years. In addition, there are systemic failures in the CSRT process which prevent detainees from being able to adequately challenge the bases for their detention, as well as an absence of rigorous review processes for reevaluating and expurgating discredited allegations from a detainee's file. These factors combine to leave even the so-called "easy" cases, the victims of circumstance swept up after the war in Afghanistan, with no recourse but to remain in prison for several years without ever being charged with a crime.

DATA SET

The data used for this study was obtained from documents made publicly available made by the United States government with respect to certain Saudi Arabian citizens detained at Guantánamo Bay. The data was obtained from factual returns filed in the habeas cases of certain detainees, or culled from documents posted online in response to a Freedom of Information Act ("FOIA") request from the Associated Press ("AP"). As of February 1, 2007, 53 of the 137 Saudi detainees have been repatriated to Saudi Arabia

in six separate cohorts: May 15, 2003 (5), July 20, 2005 (3), May 19, 2006 (15), June 14, 2006 (9), June 24, 2006 (5), and December 14, 2006 (16). (See Appendix A) We were able to obtain the records for 24 of these repatriates. We will refer to this group of 53 repatriated Saudis as the “population” and the group of 24 for which we had data to analyze define our “sample.”

Note that our choice of analyzing the accusations made by the government is in no way a value judgment about the detainees or their claims of innocence. Challenges to the factual bases for the detention of these individuals is a legal matter outside the scope of this analysis. Not a single one of these detainees was released from Guantánamo as a result of a court order; as such, their legal cases have no bearing upon this analysis. Every one of the detainees was ultimately released because of a decision made by the United States government. By exploring the United States’ own rationale for holding them in the first place, we are attempting to discern the United States’ rationale in releasing them.

METHODOLOGY

In preparing this report, we first compiled a list of all detainees who had been repatriated to Saudi Arabia. To do this, we aggregated information from press releases published by the Saudi Arabia Ministry of Interior and articles from the Saudi Arabian newspaper Al-Hayat, then confirmed this list with members of habeas counsel and contacts inside of Saudi Arabia.

By contacting all habeas counsel for Guantánamo detainees, we were able to determine which of the repatriated detainees had been represented by U.S. counsel. We

then asked these attorneys to provide us with all of publicly available information in their possession regarding their clients.

The U.S. government publicly filed factual returns in 6 out of the 24 cases in our sample per a court order. Factual returns are unclassified Department of Defense documents filed in response to an Order to Show Cause that contain the government's justification for the detainee's status as an "enemy combatant." They are the most complete publicly available source of the accusations that serve as justification for declaring a detainee an enemy combatant.

In addition, the Department of Defense has posted online⁶ thousands of pages of documents regarding Guantánamo detainees in response to a FOIA request by the AP. These documents, almost entirely transcripts of ARB or CSRT proceedings, typically identify their subject by ISN number and/or name. We have only included in our data set information from those FOIA documents for which we were able to match the ISN number or positively match the name and confirm that the detainee was of Saudi nationality. In two instances, the name of the detainee in the transcript did not match the name on our list closely enough for us to declare him a match with a sufficient degree of confidence; in those two instances, we elected not to use the FOIA data.

The universe of documents from which we obtained our data was CSRT transcripts, ARB transcripts, and factual returns for 24 of the 53 repatriated detainees. Habeas counsel had previously requested factual returns for all of the detainees currently

⁶ United States Department of Defense, *Combatant Status Review Tribunal (CSRT) and Administrative Review Board (ARB) Documents Released March 3, April 3, and April 19, 2006*, <http://www.dod.mil/pubs/foi/detainees/csrt/index.html>.

or formerly held in Guantánamo Bay, but the Department of Defense has steadfastly refused to release that information voluntarily. Because our sample was a random subset of the population, we are treating our results as representative of the Saudi repatriate population as a whole. More detailed analyses of how representative our findings are of the population as a whole are available in Appendices D and E.

Limited by the pool of available data, we chose to base our analysis upon the most uniform, and consequently, most comparable, set of data we could obtain, which was the accusations made against the detainees. We determined the accusations in two ways, based upon the information available for each detainee. Where we were in possession of the actual factual return, we looked to paragraph 3 of Exhibit R-1, an unclassified memorandum in the factual returns that justifies the detainee's status as an enemy combatant by enumerating the accusations against him without providing any supporting evidence. Where we had only the CSRT or ARB transcripts, we looked to the portion of the transcript (usually at the beginning) where the detainee is asked to respond to the individual accusations against him. We did not include information volunteered by the detainee (even if in relation to one of the categories below) if it was not clearly in response to an accusation used to support his enemy combatant status determination.

For the purposes of our analysis, we did not distinguish the December 14th, 2006 cohort from the repatriates who had been released to their homes. The more critical commonality was that the United States allowed all of them to return to Saudi Arabia. We tabulated and compared all of the accusations, which are as follows:

- Associated with either al Qaida or the Taliban
- Traveled with others en route to and/or in Afghanistan

- Left Saudi Arabia for Afghanistan after September 11, 2001
- Went to Afghanistan to fight because of jihad or a fatwa
- Name or nickname was found on a confiscated hard drive associated with al Qaida
- Stayed at a Taliban or al Qaida guesthouse or safehouse
- Was on the front lines
- Fought against U.S. or Northern Alliance forces
- Received military and/or weapons training
- Carried a weapon while in Afghanistan or traveling to Afghanistan
- Listed as a high priority target of the Saudi Arabian government
- Present at prison near Mazar-e-Sharif during the uprising
- Associated with a charitable organization believed by the United States to have ties to terrorist organizations
- Traveled through multiple countries in the Middle East en route to Afghanistan
- Was captured and turned over by Pakistani authorities
- Managed an al Qaida trust account

Appendix B lists the detainees by ISN number and the accusations against them.

Appendix C lists the correlations between pairs of accusations. An accusation is deemed to “strongly correlate” when the absolute value of the correlation coefficient, the numerical value that represents the strength of the relationship between accusations, is 0.50 or greater. An accusation is deemed to “weakly correlate” when the absolute value

of the coefficient is less than 0.1. This coefficient was calculated for every pair of accusations.

Margin of error

A number of factors have contributed to the margin of error in our sample size. First, due to refusals by the Department of Defense, we only have information for 24 of the 53 Saudi detainees who have been repatriated, or 45 percent of the total population.

Second, that data is not entirely uniform. In several instances, we did not have actual factual returns, and had to determine accusations as they were read out during a CSRT or ARB hearing. We have no way of determining whether every charge was verbalized during these proceedings.

Using the Stata statistical software package, we calculated the standard error and 95 percent confidence intervals for the average number of accusations per repatriate, the percentage of repatriates accused of association with al Qaida or Taliban, and the percentage of repatriates accused of fighting U.S. or Northern Alliance forces (see Appendix E).⁷

Finally, some have suggested that it would be more analytically sound to compare the accusations against the repatriates versus those against the Saudi detainees who

⁷ The Stata command `ci` was used to obtain confidence intervals, and the `poisson`, `tab`, and `test` commands were used to generate the test statistics for equality across release cohorts, as detailed in Appendices D-E. In each case, because there are 53 Saudi repatriates in total, a finite population was used, as described in the article *Finite Population Correction for Binomial Confidence Limits*. Herman Burstein, *Finite Population Correction for Binomial Confidence Limits*, 70 *Journal of the American Statistical Association* 67, 67-69 (1975).

remain in Guantánamo. To the extent that there are entirely separate accusations present in the overwhelming majority of the detainees who remain in Guantánamo, such an analysis would indeed be useful, as it would suggest that it was the *lack of* a certain accusation that made these detainees attractive candidates for repatriation. As stated earlier, we are limited in the data available to us because of a steadfast refusal by the Department of Defense to make public data about detainees not represented by habeas counsel that it has for detainees who are represented by habeas counsel. However, anecdotally, habeas counsel for Saudi detainees have confirmed that a number of Saudi nationals still in Guantánamo have very similar accusations to those who have been released. If this is indicative of the remaining Saudi population as a whole, such an analysis would bolster an argument that there is no logical pattern to who has been released, or that many more of the detainees who are currently in Guantánamo should be released as well.

FINDINGS

Of the Saudi repatriates analyzed, 100 percent were determined to be enemy combatants.

62.5 percent were accused of being associated with either al Qaida or the Taliban.

12.5 percent were accused of traveling with others en route to and/or in Afghanistan.

33.3 percent were accused of leaving for Afghanistan after September 11, 2001.

29.2 percent were accused of traveling to Afghanistan because of a jihad or a fatwa.

41.7 percent were accused of being among the names listed on confiscated hard drives associated with al Qaida.

25 percent were accused of staying at a Taliban or al Qaida safehouse or guesthouse.

50 percent were accused of being on the front lines.

41.7 percent were accused of fighting against U.S. and/or Northern Alliance forces.

54.2 percent were accused of receiving military and/or weapons training.

29.2 percent were accused of carrying a weapon while in Afghanistan or traveling to Afghanistan.

8.3 percent were accused of being listed as Saudi high priority targets.

12.5 percent were accused of being present at the prison near Mazar-e-Sharif during the uprising.

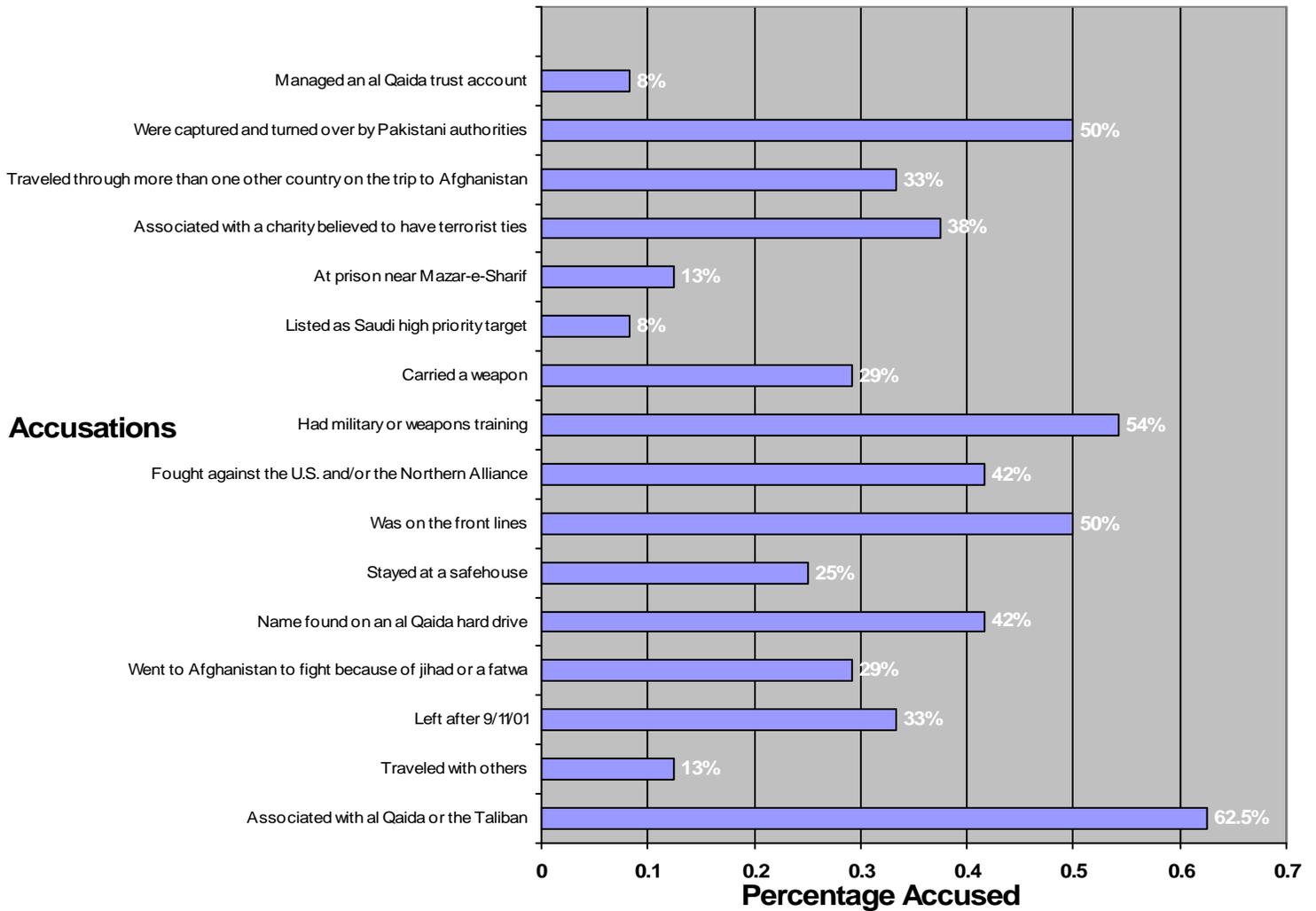
37.5 percent were accused of association with charitable organizations believed by the United States to have ties to terrorism.

33.3 percent were accused of traveling through multiple Middle Eastern countries en route to Afghanistan.

50 percent were accused of being captured and turned over by Pakistani authorities.

8.3 percent were accused of managing al Qaida trust accounts.

Table 1 - Accusations



25 percent chose not to respond to their accusations.

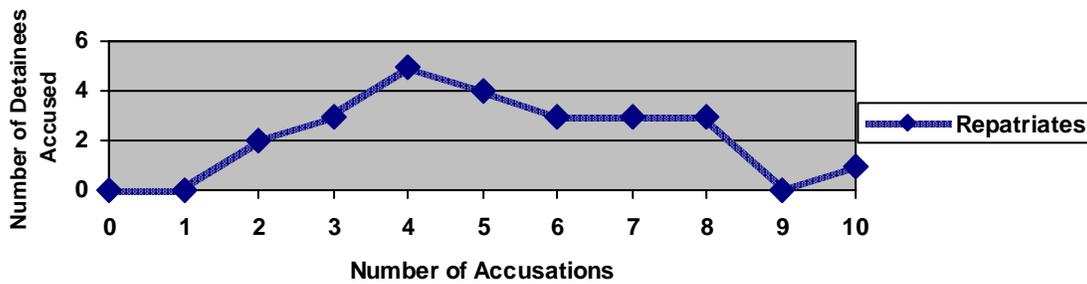
Average number of accusations per repatriate: 5.25

Average number of accusations per repatriate accused of being associated with either al Qaida or the Taliban (total): 6.2

Lowest number of accusations for a repatriate: 2

Highest number of accusations for a repatriate: 10

Table 2- Average Number of Accusations Per Repatriate



There is not one instance of a perfect correlation between two accusations.

There is a positive correlation between the accusations of being associated with al Qaida or the Taliban and being on the front lines (+0.43) and traveling because of a fatwa or jihad (+0.31). There is a negative correlation between accusations of association with al Qaida or the Taliban and association with a charitable organization suspected of having terrorist ties (-0.29).

There is a strong positive correlation between the accusations of traveling with others and traveling after September 11th (+0.53). There is a positive correlation between the accusations of traveling with others and being captured by Pakistani forces (+0.38). There is a negative correlation between accusations of traveling with others and traveling to Afghanistan because of a fatwa or jihad (-0.24), fighting on the front lines (-0.13), receiving weapons training (-0.16), and carrying a weapon (-0.24), and a weak negative correlation with fighting United States or Northern Alliance forces (-0.06).

There is a positive correlation between the accusations of traveling after September 11th and taking a terrorist travel route (+0.44) and association with al Qaida or the Taliban (+0.19). There is a negative correlation between the accusations of traveling after September 11th and receiving weapons training (-0.24), a weak negative

correlation with fighting the U.S. or Northern Alliance forces (-0.06), and a positive correlation with being captured by Pakistani forces (+0.18).

There is a negative correlation between the accusations of traveling to Afghanistan because of a jihad or a fatwa and association with a charitable organization suspected ties to terrorism (-0.50) and being captured by Pakistani forces (-0.46). There is a positive correlation between the accusations of a) traveling to Afghanistan because of a jihad or a fatwa and b.i) being on the front lines (+0.28) and b.ii) carrying a weapon (+0.20), and a weak positive correlation with b.iii) fighting the U.S. or Northern Alliance forces (+0.02) and b.iv) receiving weapons training (+0.04).

There is a strong positive correlation between being accused of being on the front lines and being accused of fighting U.S. or Northern Alliance forces (+0.51). There is a strong negative correlation between accusations of being on the front lines and being captured by Pakistani forces (-0.50).

There is a positive correlation between accusations of fighting U.S. and/or Northern Alliance forces and receiving weapons training (+0.44) and association with al Qaida or the Taliban (+0.31).

There is a positive correlation between accusations of receiving weapons training and carrying a weapon (+0.41) and taking a terrorist travel route (+0.41).

There is a positive correlation between being accused of belonging to an organization with ties to terrorism and being captured by Pakistani forces (+0.43).

There is a positive correlation between accusations of taking a terrorist travel route and managing an al Qaida trust account (+0.43).

There is no relationship (0.0 correlation) between two variables in nine instances. This occurred four times with the accusation of taking terrorist travel routes (bearing no relationship to the accusations of i) being associated with al Qaida or the Taliban, ii) staying at a safehouse, iii) being on the front lines, iv) or present at the prison near Mazar-e-Sharif); three times for the accusation of being on the front lines (bearing no relationship to the accusations of i) being a high priority Saudi, ii) taking a terrorist travel route, and iii) managing an al Qaida trust account); and two times for the accusation of traveling after September 11th (bearing no relationship to the accusations of i) staying at a safehouse or ii) being present at the prison near Mazar-E-Sharif).

Association with al Qaida or the Taliban

62.5 percent of repatriates were accused of being associated with either al Qaida or the Taliban. In other words, for every repatriated Saudi who was not believed to have been associated with either al Qaida or the Taliban, two more were sent home who were so accused.

The accusation does not define “association” with the Taliban or al Qaida. It is conclusory, and “supported” by the strength of the remaining accusations. In the format of the accusations, each factual return contains a summary of evidence divided into numbered paragraphs. The accusation of association with either the Taliban or al Qaida or both is always found in Paragraph 3(a). All evidence leading to that conclusion is listed as sub-bullets, e.g., 3(a)(i), 3(a)(ii), etc. These sub-bullets are generally other accusations. Consequently, the strength of the al Qaida/Taliban association accusation is undermined by weaknesses in any of the remaining accusations. The accusation of being

associated with either al Qaida or the Taliban is a summary point, reflecting the presence of certain other accusations. It does not stand alone.

Association with a charitable organization believed to have terrorist ties

There is a negative correlation (-0.29) between accusations of associating with an organization believed to have terrorist ties and association with al Qaida or the Taliban. This supports the argument made by several detainees during their hearings that it is possible, through a good faith mistake, to be affiliated with an organization alleged to have terrorist ties without being a terrorist oneself.

From the CSRT and ARB transcripts, 44 percent of the detainees accused of association with a terrorist organization admitted to belonging to the organization and expressed surprise that the organization was accused of having terrorist ties. Several cited the fact that the organization was an official charitable organization operated under the auspices of the Saudi Arabian government.⁸

The shock expressed by the detainees is consistent with the low correlation (+0.18) between accusations of association with an organization with terrorist ties and traveling to Afghanistan after September 11th. Apparently, many of these individuals were already in the region when the attacks began. 66 percent of these individuals (or 86 percent excluding the two who did not participate) stated that they were there on a charitable mission with what they believed was a humanitarian organization. There is a strong negative correlation (-0.50) between accusations of associating with an

⁸ 33 percent denied actually being associated with the organizations in question, and 23 percent refused to participate.

organization with terrorist ties and traveling to Afghanistan for jihad or a fatwa. In other words, the U.S. government itself believes that many of these repatriates did not travel to the region in response to a jihad or a fatwa – they were there already with an organization ostensibly providing humanitarian relief.

In fact, the U.S. government has backtracked on some of its claims of terrorist links. Appended to the factual returns of one of the detainees as supporting evidence is the September 2001 Executive Order listing 27 organizations suspected of having ties to terrorist organizations. A second detainee's factual returns contain the September 2001 Executive Order as well as a December 2001 Terrorist Exclusion List designated by the Secretary of State under Section 411 of the USA Patriot Act (8 U.S.C. § 1182)⁹ that lists 39 organizations, only 8 of which are included on the September 2001 list. The most recent document (appended to the factual return of a third repatriate) is the January 2004 Terrorist Organization Reference Guide prepared three years later, identifying 74 organizations suspected of having terrorist ties. It contains only 23 of the 39 of these organizations listed on the December 2001 Terrorist Exclusion List and only 4 of the 27 organizations from the September 2001 Executive Order. Three organizations cited in this accusation against three detainees, al Haramain, the al Birr Foundation and al Ighatha al-Khairia, were not on any of the lists. Factual returns were not available for two of these individuals, suggesting that there are, at a minimum, four separate, non-overlapping

⁹ Exec. Order No. 13,224, 66 Fed. Reg. 49,079 (September 25, 2001); Press Statement, United States Department of State, *Statement of 39 Organizations on the USA Patriot Act's Terrorist Exclusion List* (December 6, 2001).

lists of organizations with terrorist ties that are being used against the detainees in Guantánamo Bay.

It is unclear how the government determines which list to use with particular detainees. It is also unclear what happens to the individuals accused of belonging to a certain organization if it is stricken from one of the later lists; is their status as an enemy combatant upheld?

Captured by Pakistani authorities

50 percent of the detainees in our data set were accused of being captured by Pakistani authorities and handed over to U.S. forces.¹⁰ Of this group, 75 percent stated that the Pakistanis had turned them over to the U.S. for reasons unknown to them; the remaining 25 percent elected not to participate. A few individuals stated that they had sought the help of Pakistani police in reaching the Saudi Arabian embassy in Pakistan, while others stated that the Pakistani authorities had explicitly told them that they were worth a considerable amount of money from the U.S.

From the CSRT transcript of ISN #340:

Q: What reason did [the Pakistanis] give you for arresting you?

A: . . . [H]e said there is nothing against us, but he asked for five thousand dollars. He said that the United States will buy you for ten thousand dollars, five thousand dollars per person.

¹⁰ Nor were the remaining 50 percent necessarily captured by the U.S. forces; instead, the record is pointedly silent.

From the CSRT transcript of ISN #64:

A: Pakistan is the reason I am here. Pakistan was greedy and wanted money, so they sold me.

From the CSRT transcript of ISN #157:

Q: The Detainee went to the Pakistani police and when he got there, they cuffed and arrested him. The Detainee also stated that a member of the Pakistani police placed his hand on the detainee's shoulder and said that he would bring in a good price.

From the CSRT transcript of ISN #344:

A: [The Pakistanis] said they would give us a ride to the embassy of Saudi Arabia. We were very happy. . . .Handing us to the Americans was not because of a charge to be criminals or terrorists but the reason behind is the money paid for every single head handed to the American intelligence.

It is widely known that shortly after the United States invaded Afghanistan in the fall of 2001, it dropped flyers into the Pakistan/Afghanistan border region, offering large rewards for the capture of "terrorists," a sample of which is provided below. Many detainees have argued that this created an incentive for locals to seize random Arabs traveling through the region and present them as a terrorist for rewards of \$5000 (U.S.) or more. Pakistani President Pervez Musharraf, in his autobiography, refers to the

“millions” his country made from turning men believed to be terrorists over to the U.S.¹¹
From a review of multiple CSRT and ARB transcripts, it appears that no proof beyond oral assurances was ever required.

Figure 1 - Flyer Distributed by U.S. Forces in Afghanistan and Pakistan After September 11, 2001¹²



Translation:

Front: “Get wealth and power beyond your wildest dreams. Help the Anti-Taliban forces rid Afghanistan of murderers and terrorists.”

Back: “You can receive millions of dollars for helping the Anti-Taliban Force catch Al-Qaida and Taliban murderers. This is enough money to take care of your family, your village, your tribe for the rest of your life. Pay for livestock and doctors and school books and housing for all your people.”

Additionally, the United States failed to follow Army Regulation 190-8 to conduct battlefield screenings of the supposed terrorists handed over to them by the Pakistanis, the Northern Alliance, and tribal warlords, among others. Army Reg. 190-8, instituted after the Vietnam War, the first war in which the United States encountered

¹¹ “We captured 689 and handed over 369 to the United States. We have earned bounties totaling millions of dollars. Those who habitually accuse us of ‘not doing enough’ in the war on terror should simply ask the CIA how much prize money it has paid the government of Pakistan.” Pervez Musharraf, *In the Line of Fire: A Memoir* 237 (2006).

¹² Afghanistan leaflets, <http://www.psywarrior.com/afghanleaf40.html>.

opposing fighters dressed as civilians, is designed to allow U.S. troops to quickly sort true enemy fighters from innocent civilians caught by mistake. Because the site of capture often contains the best evidence to make such a determination, Army Reg. 190-8 has been part of the Army field manual and a required procedure for every conflict since Vietnam. However, it was expressly not followed in the Afghan conflict because of direct orders from the Department of Defense. Therefore, detainees who were turned over by Pakistani authorities as “enemy fighters” had no opportunity at the time to contest their designation or refute the assertions of their captors.¹³

So, who were the Pakistani authorities picking up? There is a negative correlation between the accusation of being captured by Pakistani authorities and of traveling to Afghanistan to fight because of jihad or a fatwa (-0.46), being on the front lines (-0.50), and association with al Qaida or the Taliban (-0.09); however, there is a positive correlation (+0.43) between accusations of being captured by Pakistani authorities and belonging to an organization with terrorist ties. Thus, based upon its own combinations of accusations against these individuals, the U.S. government believes that the Pakistanis were not picking up front-line jihadists, but Saudis who were there with organizations they believed to have humanitarian purposes.

¹³ Joseph Margulies, *Guantánamo and the Abuse of Presidential Power* 78-84 (2006).

On front lines/Fought against U.S. or Northern Alliance/Received military training/Carried a weapon

There are positive correlations between accusations of association with al Qaida or the Taliban and being on the front lines (+0.43); of being on the front lines and fighting U.S. or Northern Alliance forces (+0.51); of fighting U.S. or Northern Alliance forces and receiving weapons training (+0.44); and of receiving weapons training and carrying a weapon (+0.41).

Two detainees were accused of all four (being on the front lines, fighting against the U.S. or Northern Alliance, receiving military training, and carrying a weapon). Nine were accused of at least three. Only four were accused of just one of these four allegations, of which three were accused of receiving training at the al Farouq camp.

Logically, the four accusations are facets of the same basic allegations, that these individuals were trained fighters captured in combat against the U.S. and allied forces. The accusation of fighting against U.S. and Northern Alliance forces is always accompanied either by an allegation of being on the front lines, receiving military training, or both. Similarly, carrying a weapon is never listed as an isolated accusation, but always with some combination of the other three. “Possession of a weapon” seems to be less of a standalone accusation than evidence supporting one of the other three allegations. Thus, breaking these out into separate accusations artificially inflates the number of accusations against a detainee.

Traveling through multiple Middle Eastern countries en route to Afghanistan/Safehouses

This first accusation is rooted in the suspicion that the routes taken by certain detainees through multiple Middle Eastern countries are known terrorist travel routes. The accusation of traveling through multiple Middle Eastern countries en route to Afghanistan correlates positively with the accusations of traveling after September 11th (+0.44) and managing an al Qaida trust account (+0.43), and it correlates negatively with the accusation of receiving weapons training (-0.41).

Only two of the eight detainees accused of traveling through multiple Middle Eastern countries appear to have taken the same route. The other six who were accused of traveling through multiple countries used different routes and traveled through a combination of different countries including Kuwait, Pakistan, Jordan, United Arab Emirates, Syria, Iraq, Iran and Bahrain. (See Appendix F) One detainee explained that it was much cheaper to fly from Bahrain than through Saudi Arabia.¹⁴ A second questioned how these routes could be considered “indirect” if they went through major international airports.¹⁵ He further stated, “As far as I know, to my knowledge, there is no way to get

¹⁴ From the ARB transcript of ISN #507:

Designated Military Officer: Did you have to go to Bahrain and UAE to get to Pakistan, was there no direct route from Saudi Arabia to Pakistan?

Detainee: The way of traveling was from Bahrain because the ticket is cheaper from Saudi Arabia. So when I purchased my ticket from Bahrain to Abu Dhabi to Karachi it was cheaper that way.

¹⁵ “As far as I know, to my knowledge, there is no way to get from Saudi Arabia to Afghanistan by plane. . . I left from an international airport and I also went to Iran and to Syria as far as I know they are also known airports or international airports, so where is the indirect route? I traveled from Saudi Arabia to Syria, Syria to Iran and as far as I know the airports were all international airports.” From the ARB transcript of ISN #273.

from Saudi Arabia to Afghanistan by plane.” The itineraries that fall under the sweeping purview of this single accusation are remarkably dissimilar, and are just as consistent with traveling through very public locations en route to Afghanistan for aboveboard reasons. And this lack of evidence is borne out in the government’s own combination of accusations: there is absolutely no relationship between this accusation and being associated with al Qaida or the Taliban (0.0 correlation).

Additionally, if these repatriates were truly following preset al Qaida travel routes, one might logically expect them to stay at guesthouses suspected of harboring al Qaida or Taliban fighters. Here again there is absolutely no relationship between the two accusations (0.0 correlation). Furthermore, one might expect persons traveling known terrorist routes to at some receive weapons training; however, these individuals are more than likely *not* to have been accused of receiving weapons training (-0.41).

Listed as high priority targets of the Saudi Arabian government

Two of the detainees were accused of being high priority Saudi targets. What constitutes a “high priority target” is never defined. However, these were not necessarily front-line fighters: there is absolutely no relationship between being accused of being a high priority Saudi target and being accused of being on the front lines (0.0 correlation).

Moreover, these two repatriates were released from the custody of the Saudi government within six months. It is unclear why individuals who were purportedly high priority targets for the Saudi government would have been released so quickly, but logically, one might interpret this to mean either that this accusation is not as severe as it sounds, or that these individuals were wrongly accused.

Left for Afghanistan after September 11, 2001

33.3 percent of the repatriates were accused of leaving Saudi Arabia after September 11, 2001. In and of itself, this is certainly not a crime; it must be useful solely to the extent that it can support another accusation. In *Hamdan v. Rumsfeld*, the Supreme Court held that only offenses performed after September 11th could form the jurisdictional basis for trying a detainee in a military commission.¹⁶ Events that occurred prior to September 11th cannot form the basis of a triable offense. In theory, then, anything that correlates loosely with travel after September 11th is weak justification for detaining prisoners; conversely, anything with a strong correlation is a strong justification.

The data shows no relationship between traveling after September 11th and being accused of staying at a safehouse (0.0) or being present during the uprising at Mazar-e-Sharif (0.0). There is a strong correlation between traveling after September 11th and traveling with others (+0.54) and a positive correlation with belonging to an organization believed to have terrorist ties (+0.18). However, there is a slightly negative correlation between traveling after September 11th and traveling to Afghanistan because of jihad or a

¹⁶ The *Hamdan* Court held that any chargeable offense committed by a detainee must have been “committed both in a theater of war and *during*, not before, the relevant, conflict.” at 2779. The Court deems the attacks of September 11, 2001, as the “relevant ‘act[s] of war’” (n. 31) triggering the Authorization of Use of Military Force that gave the President the power to detain enemy combatants. The *Hamdan* court expressly disregarded any claims regarding acts prior to September 11, 2001. *Hamdan v. Rumsfeld*, 126 S. Ct. 2749, 2778-2779 (2006).

fatwa (-0.07) and only a slight correlation with being accused of being associated with al Qaida or the Taliban (+0.18).

In other words, this accusation is consistent with a fact pattern of charity workers traveling to the region to distribute aid, but not that of hardcore jihadists traveling to the region to fight. Indeed, given the fact that a detainee was three times more likely to have left Saudi Arabia after September 11th for a reason *other than* jihad or a fatwa¹⁷, then, as a standalone accusation, leaving after September 11th should have little bearing on whether a detainee was properly designated an enemy combatant.

Name on al Qaida hard drive

As gleaned from the record, the United States, in a series of raids of purported al Qaida strongholds, confiscated a number of computer hard drives containing, inter alia, lists of Arabic names. One of the accusations against 41.7 percent of the repatriates was that their name or nickname matched a name found on the hard drive known to be that of an al Qaida operative.

A number of detainees, during their ARB and CSRT proceedings, denied this accusation and questioned how the U.S. government could be certain that a generic Arabic name found on a hard drive was definitively their name, e.g., “Abu Ibrahim.”¹⁸

¹⁷ See Appendix B. Only two of eight repatriates accused of leaving Saudi Arabia after September 11th were accused of traveling to Afghanistan because of jihad or fatwa.

¹⁸ “As for the aliases, there is more than one person with the same name. My nickname is Abu Grafar or Abu Ibrahim. How would they prove that this Abu Grafar or Abu Ibrahim is me? For example, David is so common a name among interrogators. It will be true only if there is a picture with the name.” From the CSRT transcript of ISN #188.

Moreover, it is not entirely clear how the government has determined that a detainee's purported "nickname" conclusively identifies him as one of the individuals listed on the hard drive. We also believe that the government is comparing English transliterations of both the names on the hard drives and the names given by the detainees. Discrepancies between translators could result in false positives.

This accusation does not correlate strongly with any of the other accusations. It has a low correlation with the accusation of being associated with al Qaida or the Taliban (+0.13), nothing close to 100 percent. In other words, it is entirely possible to have one's name appear on al Qaida hard drives without actually being a member of al Qaida. This accusation correlates most strongly is with the accusation of operating an al Qaida trust account (+0.36). But in all likelihood, this probably has less to do with the presence of evidence supporting this conclusion than the fact that the same hard drives were the sources of these two accusations. That, combined with the fact that this accusation doesn't correlate with anything, not even association with al Qaida or the Taliban, suggests that the U.S. government itself is hard pressed to decide how reliable the source information actually is.

Managed an al Qaida trust account

This allegation appears only twice in our data set, and refers to alleged bank accounts held by al Qaida mujaheddin for the purposes of financing al Qaida's terrorist activities. Both of these individuals were accused of being associated with al Qaida or the Taliban, having their name appear on an al Qaida hard drive, and traveling through multiple countries on their way to Afghanistan.

From the description, these individuals appear to have names matching those associated with trust accounts found on confiscated hard drives. In the previous section regarding al Qaida hard drives, we enumerated the various problems intrinsic to matching one Arabic name with another, particularly where the names are incomplete, devoid of additional personal data, and are English transliterations. Those same uncertainties apply here, casting doubt as to the verity of the identifications.

Mazar-e-Sharif

This accusation refers to a prisoner uprising that took place in the Qala-e-Jhangi fort near the Afghan city of Mazar-e-Sharif on November 24, 2001. Several hundred prisoners of the Northern Alliance revolted against their Northern Alliance and American guards. A pitched three-day battle ensued, resulting in the deaths of dozens of coalition forces and approximately 400 prisoners.¹⁹

It is not entirely clear from the accusations who, in fact, these prisoners were. All three of the individuals accused of being present at Mazar-e-Sharif during the uprising are also accused of being on the front lines and carrying a weapon. (Indeed, they appear to have been captured together, as their ISNs are in numerical sequence.²⁰) But there is no relationship between this accusation and being accused of traveling after September 11th (0.0 correlation) or traveling through multiple countries on their way to Afghanistan

¹⁹ BBC News, *Fort revolt: What really happened?*, (December 1, 2001), http://news.bbc.co.uk/1/hi/world/south_asia/1681513.stm.

²⁰ ISN numbers are typically assigned in sequence as prisoners are processed by U.S. forces.

(0.0 correlation). Only two of them are accused of being associated with al Qaida or the Taliban; the third is not, suggesting that the United States believed that at least one detainee was on the front lines with a weapon and later transported to Mazar-e-Sharif but not in any way associated with the Taliban or al Qaida. At the very least, this indicates that persons other than Taliban or al Qaida ended up in Mazar-e-Sharif en route to Guantánamo.

ANALYSIS

The purpose of this report is to determine why these particular detainees were sent home and in this order. There are two basic reasons the United States would repatriate detainees: for diplomatic reasons, or because it no longer considered these detainees to be a threat.

The first explanation is unknowable from the publicly available data. No amount of additional data or comparison to the profiles of detainees who remain will point to behind-the-scenes diplomacy sans a conclusive determination that the accusations were true *and* the detainees still posed a threat. However, it should be noted that the United States has consistently argued that it has the authority to hold prisoners in Guantánamo Bay for the ‘duration of hostilities,’ an open-ended limit that the government readily concedes could last multiple generations, effectively resulting in a life sentence for the detainees.²¹ Therefore, in the absence of any legal or legislative definition of the ‘end of

²¹ “At a minimum, the government has conceded that the war [on terrorism] could last several generations, thereby making it possible, if not likely, that ‘enemy combatants’ will be subject to. . .life imprisonment at Guantánamo Bay.” *In re Guantanamo Detainee Cases*, 355 F. Supp. 2d 443, 465 (D.D.C., 2005).

hostilities,' it is implausible that the United States would have agreed to relinquish control over detainees it regarded as serious threats.

So let us turn to our other explanation, that the United States repatriated these detainees because it no longer believes them to be a threat. This conclusion is drawn in part from the ARB guidelines.²² In determining whether to recommend the continued detention of a detainee, Enclosure 3, Sec. 3(f)(1) of the guidelines requires the Board to evaluate whether “an enemy combatant continues to pose a threat to the United States or its allies” as well as other factors including “the likelihood that the enemy combatant may be subject to trial by military commission, and whether the enemy combatant is of continuing intelligence value.” But by far the “threat determination. . .is the most critical element in the review process.”²³

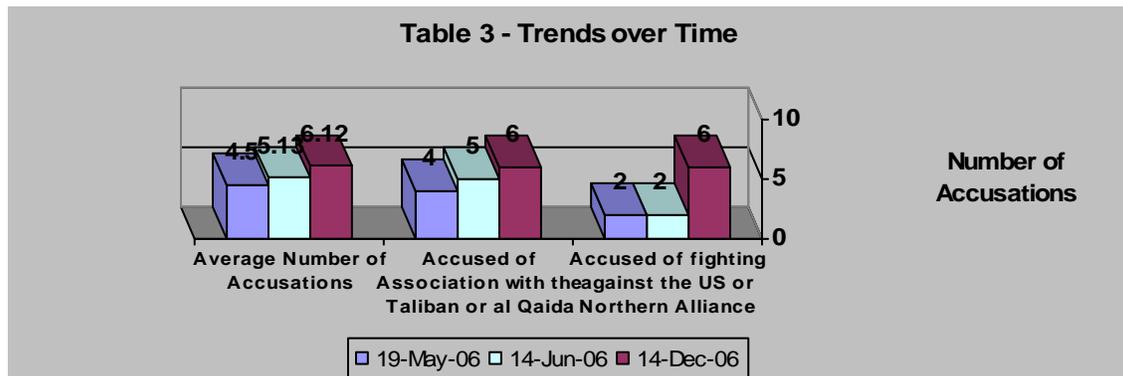
So why were these particular detainees deemed to be no longer a threat? We can say with near certainty that these detainees were not repatriated because of anything they had in common. The repatriates had no single accusations or combinations of accusations in common. Of the 16 separate accusations, only two repatriates were accused of the same seven offenses. There were 5 instances when two detainees had the same six accusations in common, and 8 instances where two repatriates had the same five

²² Memorandum from the United State Department of Defense, *Implementation of Administrative Review Procedures for Enemy Combatants Detained at U.S. Naval Base Guantánamo Bay, Cuba* (“ARB guidelines”) (September 14, 2004), <http://www.defenselink.mil/news/Sep2004/d20040914adminreview.pdf>.

²³ *Id.*, at Enclosure 3, Sec. 3(f)(1)(c).

accusations in common. On the other hand, there were 41 instances when a repatriate had no accusations in common with one other repatriate.²⁴

We then analyzed the order of release, and discovered a trend over time. We looked at the three largest cohorts (May 19, 2006, June 14, 2006, and December 14, 2006), because they were of comparable sizes and possessed enough data points to yield statistically significant data. We compared the three metrics that, taken as true, are superficially indicative of allegedly “bad” detainees: average number of accusations, association with al Qaida or the Taliban, and fighting U.S. or Northern Alliance forces. Here’s how they compared against one another:

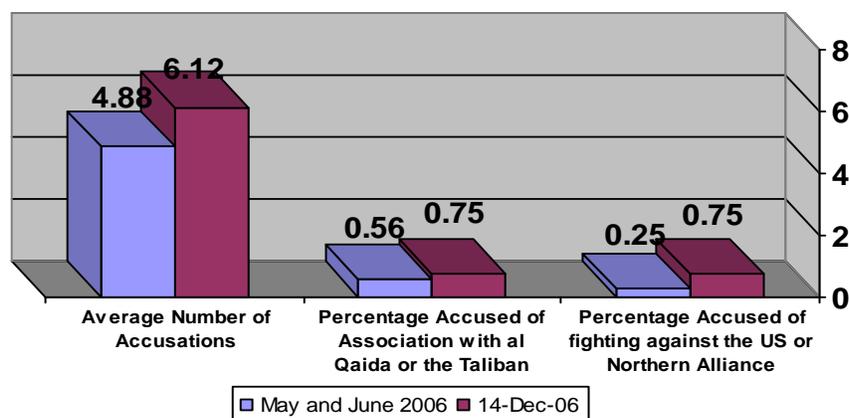


²⁴ There is a remote possibility that what all of these detainees have in common is an accusation or set of accusations that they *do not* have that the remaining detainees do have. Anecdotally, we don’t believe this to be the case. In aggregate, the United States has repatriated detainees accused of a range of offenses, from the fairly serious (ISN #188, accused of being on the front lines, carrying a weapon, fighting U.S. and/or Northern Alliance forces, and associated with al Qaida or the Taliban) to the relatively benign (ISN #343, whose greatest alleged offense appears to have been traveling with people who were associated with organizations with terrorist ties). However, without a more rigorous analysis of the remaining detainee population, we can’t eliminate that possibility.

From this graph, it appears that over time, the U.S. has repatriated Saudi detainees with an increasing average number of accusations. The number of repatriates accused of being associated with al Qaida or the Taliban increases with each cohort, and the number of repatriates accused of fighting against U.S. or Northern Alliance forces stays the same or increases. The seemingly less “involved” detainees (according to the United States’ allegations) were sent home first and those accused of more grievous offenses were sent home later, possibly after there had been additional time to evaluate their threat levels and intelligence value.

However, because of the small sample size, the means and proportions were not estimated precisely, and we questioned whether the trends we had seen were statistically significant. Therefore, we utilized Wald and Pearson chi-squared tests to determine whether the trends we observed were statistically significant. We grouped the May and June prisoners into a single cohort and compared their characteristics with December's cohort. Given the unequal number of detainees in the two cohorts, we measured the second two metrics as percentages. Our results are summarized in the following table:

Table 4 - Trends Over Time Between May/June and December Cohorts



Similar to our earlier findings, there appear to be increases in the average number of accusations per detainee, percentage of detainees accused of association with al Qaida or the Taliban, and percentage of detainees accused of fighting U.S. or Northern Alliance forces. The increase in the average number of accusations is statistically significant at the 90 percent level (p value is 0.06); the increase in association with al Qaida or the Taliban is not statistically significant (p value is 0.25); but the increase in the percentage of detainees accused of fighting the United States or Northern Alliance forces is significant at the 99 percent level (p value is 0.01).

From these results, the U.S. government appears to be employing a cycle of releases whereby the “easy” cases are repatriated first. This cycle of releases accounts for the repatriation of some of our population. As demonstrated by the correlations in the Findings section, a number of repatriates were in the Afghanistan region before September 11th with what they believed was a humanitarian organization. They claimed not to have had a hidden, terrorist agenda, and the United States agreed, never accusing them of association with al Qaida or the Taliban. There were also the following cases:

- The detainee who was imprisoned near Mazar-e-Sharif but never accused of being associated with al Qaida or the Taliban
- The detainee whose name was similar to a name found on an al Qaida hard drive, but was never accused of being associated with al Qaida or the Taliban

These individuals seem to have been victims of circumstance who posed little or no threat to the United States or its allies; their release is understandable.

However, the rationality of this cyclical release system is only as sound as the underlying accusations. If the accusations are untrue, then the government's method for determining who goes home first is flawed, and is likely resulting in a much more random population being repatriated and a random population being detained.

We know that many of the accusations are not credible, and that many of the correlations are not coherent. The credibility of the accusations against the detainees is undermined when one of the accusations is the "terrorist travel routes" that are indistinguishable from normal, aboveboard travel throughout the Middle East, and bore no relationship to accusations of association with al Qaida or the Taliban or staying at al Qaida or Taliban safehouses.

Nor can all of the accusations being true account for the following repatriations:

- The detainees alleged to be "high priority targets of the Saudi Arabian government" who were released shortly after they were repatriated.
- The six repatriates who did not participate in their CSRT or ARB hearings and did not respond to their accusations. In these 6 cases, the U.S. government had determined that these individuals were enemy combatants; had only its

accusations against them; and had no rebuttals, witnesses, or arguments to the contrary. Yet each of these individuals was ultimately returned home.

Whether the U.S. government believes all of the accusations against these detainees is ultimately a matter of speculation. The more distressing question raised by the data is: why did it take five years for some of these individuals to be repatriated? For the detainees traveling with humanitarian organizations, there appears to be little or no justification; the roster of organizations believed to have ties to terrorism has changed repeatedly over time. As to the others, if their name appeared on a hard drive but they weren't believed to be associated with al Qaida or the Taliban; if they were picked up by Pakistani forces but not believed to be al Qaida or Taliban; or if they were handed over by the Northern Alliance at Mazar-e-Sharif but not believed to be al Qaida or Taliban, then why were they not released years earlier?

The record is silent as to this question. Part of the answer lies in the fact that, given that the executive detention of these individuals has occurred without meaningful checks or balances, there has never been pressure to release even the “easy” cases in a timely fashion.

Part of the problem too, we suspect, is that allegations, once made, no matter how spurious or lacking in evidence, are never removed from detainees' files, and are considered by review boards with no additional information about their credibility. This is but a symptom of the larger problem, the lack of due process afforded the detainees in the CSRTs and ARBs. The inequities have been exhaustively detailed elsewhere, but some of the glaring omissions are that detainees i) are not provided with sufficient detail to challenge much of the ‘evidence’ behind some of the accusations, ii) are rarely

provided with the witnesses from the outside world whom they request²⁵, iii) are not provided with independent counsel, and iv) are presumed guilty.

If the accusations are flawed, then no cycle of releases based upon the accusations is rational, because the average number of accusations against the later releases, if inaccurate, in no way indicates whether they are “worse” than the earlier repatriations. Which leads to a disturbing conclusion—not only would there be no rational distinction between who was released first and who was released later, but there are very likely detainees still in Guantánamo with fact patterns that mirror those of the repatriates. In fact, the U.S. government has *admitted* this last point, notifying habeas counsel in late 2006 that approximately 85 detainees had been cleared for release, but, inexplicably remained in Guantánamo, subject to the same conditions and restrictions as the other detainees.²⁶

²⁵ “The US government routinely failed to give detainees at Guantánamo Bay access to witnesses who might have helped them prove their assertions of innocence, saying it could not locate the vast majority of the witnesses the terror suspect requested as special military hearings. But within a three-day span, a Globe reporter was able to locate three of those witnesses. . . .two of them in Afghanistan, and. . .a third in Washington, D.C., where he is teaching at the National Defense University.” Faraf Stockman & Declan Walsh, *Detainees Not Given Access to Witnesses*, The Boston Globe (June 18, 2006), http://www.boston.com/news/world/articles/2006/06/18/detainees_not_given_access_to_witnesses/.

²⁶ “Approximately 85 detainees remain at Guantánamo who the U.S. Government has determined eligible for transfer or release through a comprehensive series of review processes. Departure of these remaining detainees approved for transfer or release is subject to ongoing discussion between the United States and other nations.” See News Release, United States Department of Defense, *supra* note 1.

CONCLUSION

The purpose of this report was to determine why the first 53 Saudi detainees had been repatriated, and why they were repatriated in this order. As to why they were repatriated, we formulated two explanations. The first, diplomatic reasons, is unknowable from the data. But if the government released these detainees for non-diplomatic reasons, then it must have found them to no longer be a threat, either believing that all of their accusations were true and releasing them anyway because they were relatively harmless, or believing they were not a threat to the United States because many of the accusations were deemed not to be credible.

Again, it's impossible to say with certainty which is the case merely by observing from the outside. The answer may be a combination of both. Though we discovered what appears to be a pattern within the cycle of releases, its reliance upon the accusations against the detainees undermines its usefulness. We discovered that many of the accusations simply are not credible bases for determining enemy combatant status, nor are the combinations of accusations against many of the repatriates coherent.

The root of the problem seems to be that accusations, once made, tend to stick in a detainee's file, even if they are not supported, or even at odds with, other information in the detainee's file. By number and gravity, these accusations may be making the remaining detainee population appear far worse than it actually is. Thus, although there appears to be a trend over time in the type of detainee who is being released, it does not result in progressively "worse" people being released. Indeed, the rationale for releases appears to be much more random while the net effect is more uniformly benign.

A December 15, 2006 Associated Press article published a composite profile of some 245 detainees who had been repatriated.²⁷ 205 were freed without being charged with a crime or cleared of charges related to their detention at Guantánamo.²⁸ Only 14 were put on trial, of whom 8 were acquitted and 6 were awaiting verdicts at the time of publication.²⁹ A senior official in the Pakistani Ministry of the Interior has stated, in reference to the release of 67 of 70 Pakistani repatriates, that investigators determined that most of the Pakistani repatriates had been “‘sold’ for bounties to U.S. forces by Afghan warlords who invented links between the men and al-Qaida.”³⁰ All 83 Afghan repatriates were released; Sibghatullah Mujaddedi, head of Afghanistan’s reconciliation commission, stated that many wound up in Guantánamo because of tribal or personal rivalries.³¹ In perspective, the release of the majority of Saudi repatriates from the custody of their government without charges is symptomatic of a worldwide trend among repatriated detainees.

Regardless of why the United States government determined that these individuals did not present a threat sufficient to continue detaining them, neither possibility adequately explains why it took the U.S. government so long to repatriate

²⁷ Andrew O. Selsky, ‘Vicious Killers’ From Guantánamo Bay Routinely Freed by Other Countries, The Associated Press (December 15, 2006), http://www.usatoday.com/news/world/2006-12-15-gitmo-freed_x.htm.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

them. There is nothing to suggest that evidence recently uncovered spurred the releases. On the contrary, a systematic refusal to adopt any meaningful due process into the review procedure, the failure to expurgate implausible or inconsistent accusations unsupported by evidence from the detainee's file, and the lack of political and judicial pressure to expedite the disposition of these detainees made it possible for them to remain in Guantánamo for approximately five years without ever being charged with a crime.

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Since 2005, Weil, Gotshal & Manges LLP has represented five Saudi Arabian citizens detained in Guantánamo Bay on a pro bono basis.

DISCLAIMER: This report is not intended to provide legal advice. It represents the individual opinions of the authors, and is not intended to reflect the opinions of Weil, Gotshal & Manges LLP.

APPENDIX A
Saudi Detainees Repatriated From Guantánamo Bay *

Name	ISN #	Date Returned to KSA
Mishal Al-Shadokhi	71	5/15/2003
Fawaz Al-Zahrani	125	5/15/2003
Fahad Al-Shabanat		5/15/2003
Ibrahim Al-Omar		5/15/2003
Unknown Juvenile		5/15/2003
Saleh Al-Oshan	248	7/20/2005
Khalid Al-Jahni		7/20/2005
Mishal Al-Harbi		7/20/2005
Abdulahdi Muhammad Badan Al-Subai'i	64	5/19/2006
Abdullah Hamid Muhammad Al-Qahtani	652	5/19/2006
Abdullah Ibrahim Abdullah Al-Rushaidan	343	5/19/2006
Abdulrahman Uthman Ahmad Al-Ghamdi	95	5/19/2006
Adel Al-Nusairi Al-Ruwaili	308	5/19/2006
Adnan Muhammad Ali Al-Sayegh	105	5/19/2006
Fahd Saleh Sulaiman Al-Jutaili	177	5/19/2006
Ibrahim Dhaifallah Nu'aiman Al-Sahli	94	5/19/2006
Khalid Abdullah Abdulrahman Al-Moorifi		5/19/2006
Khalid Rashid Ali Al-Murri	505	5/19/2006
Muhammad Jayid Hadi Al-Subai'i	319	5/19/2006
Nawwaf Fahd Humood Al-Otaibi	501	5/19/2006
Rashid Awwad Rashid Al-Uwaidha	664	5/19/2006
Sa'd Farhan Khatam Al-Maliki	157	5/19/2006
Su'ud Bazghan Ishq Al-Shaibani Al-Otaibi		5/19/2006
Muhammad Surooroo Dakheelallah Al-Otaibi	96	6/14/2006
Musa Abdulwahhab Abdulqadir Al-Hoosawi	58	6/14/2006
Rashid Abdulmuslih Qayed Al-Qayed	344	6/14/2006
Sa'd Ibrahim Sa'd Al-Badna		6/14/2006
Siddeeq Ahmad Siddeeq Noor Turkistani	491	6/14/2006
Tariq Shallah Hasan Al-Harbi	265	6/14/2006
Uthman Ahmad Uthman Al-Ghamdi		6/14/2006
Wasm Awwad Umar Al-Wasm		6/14/2006
Yousef Khamees Abdullah Al-Sulaimani		6/14/2006
Abdulaziz Abdulrahman Abdulaziz Al-Badah	264	6/24/2006
Abdullah Muhammad Saleh Al-Ghanmi	266	6/24/2006
Abdussalam Gaithan Mureef Al-Shihri	132	6/24/2006
Ibrahim Muhammad Ibrahim Al-Nasir	271	6/24/2006
Saleh Ali Zaheed (or Zuhaid) Al-Khath'ami	191	6/24/2006
Abdulaziz Muhammad Ibrahim Al-Nasir	273	12/14/2006
Abdullah Muhammad Al-Yamani		12/14/2006
Abdulrahman Muhammad Husain Khawran	513	12/14/2006
Anwar Hamdan Muhammed Al-Noor	226	12/14/2006
Bassam Muhammad Saleh Al-Dubaikhi	340	12/14/2006
Hajji Hajjaj Awadh Al-Sulami	245	12/14/2006
Ibrahim Sulaiman Muhammad Al Rubaish	192	12/14/2006
Jabir Jubran Ali Al-Fifi	188	12/14/2006
Majid Hamad Abdulrahman Al-Fareij	336	12/14/2006
Muhammad Yahya Muhsin Al-Zayla'l	55	12/14/2006
Saeed Ali Al-Farha Al-Ghamdi	341	12/14/2006
Saleem Salman Awadhallah Al-Harbi	57	12/14/2006
Sulaiman Sa'd Muhammad Al-Oshan	121	12/14/2006
Sultan Sari Sayil Al-Anazi	507	12/14/2006
Yousef Abdullah Saleh Al-Rubaish	109	12/14/2006
Ziyad Saeed Faraj Al-Jahdali	286	12/14/2006

* As of February 1, 2007

APPENDIX B Table of Accusations Against Repatriated Saudis

ISN	Associated with al Qaida or the Taliban	Traveled with others	Left post 9/11	Went to Afghanistan to fight because of a Jihad or Fatwa	Name on an Al Qaida hard drive	Stayed at a safe-house	Was on the front lines	Fought against the U.S. or Northern Alliance	Had military and/or weapons training	Carried a weapon	Listed as a high priority target of the Saudi Arabian Government	Present at prison near Mazar-e Sharif	Associated with an organization believed to have terrorist ties	Traveled through more than one other country on the trip to Afghanistan	Captured by Pakistani authorities	Managed an Al Qaida trust account
ISN 55								x	x	x				x	x	
ISN 58	x						x		x		x				x	
ISN 64													x		x	
ISN 94	x		x	x		x	x			x		x				
ISN 95	x			x	x	x	x		x	x		x				
ISN 96							x	x	x	x		x				
ISN 105	x			x			x	x								
ISN 132	x		x		x		x	x	x	x					x	
ISN 157									x				x		x	
ISN 177	x			x	x		x	x	x							
ISN 188	x		x	x	x		x	x	x	x						
ISN 191					x	x			x							
ISN 192	x						x	x	x							
ISN 226	x		x		x								x	x	x	x
ISN 245	x							x	x	x						
ISN 264					x								x	x	x	
ISN 265	x			x					x						x	
ISN 266	x				x	x							x	x	x	
ISN 273			x		x		x						x			
ISN 308				x		x										
ISN 340	x	x	x			x	x	x	x				x	x	x	
ISN 343		x	x												x	
ISN 344	x	x	x								x		x	x	x	
ISN 507	x				x		x	x						x		x

*ISN 64 – Accused of being a mujaheddin in Bosnia in 1996, but never accused of being a member of al Qaida of the Taliban

APPENDIX C

Correlations Between Pairs of Accusations

	Associated with al Qaida or the Taliban	Traveled with others	Left post 9/11	Went to Afghanistan to fight because of a Jihad or Fatwa	Name on an Al Qaida hard drive	Stayed at a safe-house	Was on the front lines	Fought against the U.S. or Northern Alliance	Had military and/or weapons training	Carried a weapon	Listed as a high priority target of the Saudi Arabian Government	Present at prison near Mazar-e Sharif	Associated with an organization believed to have terrorist ties	Traveled through more than one other country on the trip to Afghanistan	Captured by Pakistani authorities	Managed an Al Qaida trust account
Associated with al Qaida or the Taliban	1.0000															
Traveled with others	0.0325	1.0000														
Left post 9/11	0.1826	0.5345	1.0000													
Went to Afghanistan to fight because of a Jihad or Fatwa	0.3077	-0.2425	-0.0648	1.0000												
Name on an Al Qaida hard drive	0.1309	-0.3194	0.1195	0.0155	1.0000											
Stayed at a safe-house	0.0497	0.0727	-0.0000	0.2646	0.0976	1.0000										
Was on the front lines	0.4303	-0.1260	0.1768	0.2750	0.1690	0.0000	1.0000									
Fought against the U.S. or Northern Alliance	0.3055	-0.0639	-0.0598	0.0155	-0.0286	-0.2928	0.5071	1.0000								
Had military and/or weapons training	0.1511	-0.1580	-0.2365	0.0383	-0.0707	-0.0483	0.2509	0.4382	1.0000							
Carried a weapon	0.1183	-0.2425	0.1296	0.1933	0.0155	0.0529	0.2750	0.3874	0.4063	1.0000						

	Associated with al Qaida or the Taliban	Traveled with others	Left post 9/11	Went to Afghanistan to fight because of a Jihad or Fatwa	Name on an Al Qaida hard drive	Stayed at a safe-house	Was on the front lines	Fought against the U.S. or Northern Alliance	Had military and/or weapons training	Carried a weapon	Listed as a high priority target of the Saudi Arabian Government	Present at prison near Mazar-e-Sharif	Associated with an organization believed to have terrorist ties	Traveled through more than one other country on the trip to Afghanistan	Captured by Pakistani authorities	Managed an Al Qaida trust account
Listed as a high priority target of the Saudi Arabian Government	0.2335	0.3419	0.1066	-0.1935	-0.2548	-0.1741	-0.0000	-0.2548	-0.0252	-0.1935	1.0000					
Present at prison near Mazar-e-Sharif	0.0325	-0.1429	0.0000	0.3118	-0.0639	0.3637	0.3780	-0.0639	0.0948	0.5890	-0.1140	1.0000				
Associated with an organization believed to have terrorist ties	-0.2889	0.2277	0.1826	-0.4971	0.0436	-0.0497	-0.2582	-0.3055	-0.3239	-0.3077	0.0778	-0.0325	1.0000			
Traveled through more than one other country on the trip to Afghanistan	-0.0000	0.2673	0.4375	-0.2593	0.1195	-0.0000	0.0000	-0.0598	-0.4139	-0.0648	0.1066	0.0000	0.3651	1.0000		
Captured by Pakistani authorities	-0.0861	0.3780	0.1768	-0.4583	-0.1690	-0.1925	-0.5000	-0.3381	-0.0836	-0.2750	0.3015	-0.3780	0.4303	0.1768	1.0000	
Managed an Al Qaida trust account	0.2335	-0.1140	0.1066	-0.1935	0.3568	-0.1741	-0.0000	0.0510	-0.3278	-0.1935	-0.0909	-0.1140	0.0778	0.4264	0.0000	1.0000

APPENDIX D

Prevalence of Accusations

Variable	Observations	Mean	Standard Error	Binomial Exact [95% Confidence Interval]	
				Low	High
Associated with al Qaida or the Taliban	24	0.6250	0.0738	0.4561	0.7712
Traveled with others	24	0.1250	0.0504	0.0462	0.2746
Left post 9/11	24	0.3333	0.0719	0.1959	0.5011
Went to Afghanistan to fight because of a Jihad or Fatwa	24	0.2917	0.0693	0.1628	0.4585
Name on an Al Qaida hard drive	24	0.4167	0.0752	0.2653	0.5830
Stayed at a safe-house	24	0.2500	0.0660	0.1310	0.4148
Was on the front lines	24	0.5000	0.0762	0.3388	0.6612
Fought against the U.S. or Northern Alliance	24	0.4167	0.0752	0.2653	0.5830
Had military and/or weapons training	24	0.5417	0.0760	0.3770	0.6988
Carried a weapon	24	0.2917	0.0693	0.1628	0.4585
Listed as a high priority target of the Saudi Arabian Government	24	0.0833	0.0421	0.0235	0.2236
Present at prison near Mazar-e-Sharif	24	0.1250	0.0504	0.0462	0.2746
Associated with an organization believed to have terrorist ties	24	0.3750	0.0738	0.2301	0.5426
Traveled through more than one other country on the trip to Afghanistan	24	0.3333	0.0719	0.1959	0.5011
Captured by Pakistani authorities	24	0.5000	0.0762	0.3388	0.6612
Managed an Al Qaida trust account	24	0.8333	0.0421	0.0235	0.2236

APPENDIX E
Statistical Significance Of Trends Over Time

Average Number of Accusations

Cohort	Exposure	Mean	Standard Error	Binomial Exact [95% Confidence Interval]	
				Low	High
May/June 2006	16	4.8750	0.4142	4.1085	5.7824
December 2006	8	6.1250	0.6664	4.9113	7.6273

Wald Test of Equality Across Cohorts

P value = 0.0618

Confidence level = $1.00 - 0.0618 = .9382 = 93.82\%$

Percentage Accused of Association with al Qaida or the Taliban

Cohort	Exposure	Mean	Standard Error	Binomial Exact [95% Confidence Interval]	
				Low	High
May/June 2006	16	0.5625	0.0931	0.3568	0.7513
December 2006	8	0.7500	0.1166	0.4298	0.9385

Pearson Chi-Squared Test of Equality Across Cohorts

P value = 0.2486

Confidence level = $1.00 - 0.2486 = .7514 = 75.14\%$

Percentage Accused of Fighting the U.S. or Northern Alliance

Cohort	Exposure	Mean	Standard Error	Binomial Exact [95% Confidence Interval]	
				Low	High
May/June 2006	16	0.2500	0.0812	0.1091	0.9385
December 2006	8	0.7500	0.1166	0.4298	0.9385

Pearson Chi-Squared Test of Equality Across Cohorts

P value = 0.0051

Confidence level = $1.00 - 0.0051 = .9949 = 99.49\%$

APPENDIX F
Travel Routes Taken By Saudi Repatriates To Afghanistan

