

THE PRISONER SHELLGAME

On Friday, I pointed out that Eric Holder and Dennis Blair used language in a letter on Gitmo's detainees that suggests some subset of the detainees at Gitmo is not covered by Obama's Executive Order requiring some resolution to their status.

In recent days, a couple of you have linked to articles about two other shell games the Obama Administration appears to be playing with its detainees. First, it appears that when we cede control over Iraqi prisons to Iraqis later this year, we will retain custody of about 100 detainees from Camp Cropper (where we've kept Iraqi High Value Detainees), purportedly at the request of the Iraqi government.

The U.S. military said it plans a July 15 handover of Camp Cropper, which has held high-level detainees such as Saddam Hussein and members of his regime on the outskirts of Baghdad. The roughly 2,900 detainees in Camp Cropper are currently the only Iraqi detainees in American custody, down from a wartime high of 90,000, the U.S. military said. At the Iraqi government's request, the U.S. will continue to hold about 100 detainees who pose a high security risk, Quantock said, although he was not more specific about who would be kept in custody.

Meanwhile, someone (it's not clear who) is proposing keeping international detainees at Bagram (which would basically mean Bagram would become a colder less accessible Gitmo). (h/t Jim White—and see this excellent Adam Serwer post on the Bagram debate from last November)

That the option of detaining suspects captured outside Afghanistan at Bagram is being contemplated reflects a

recognition by the Obama administration that it has few other places to hold and interrogate foreign prisoners without giving them access to the U.S. court system, the officials said.

Without a location outside the United States for sending prisoners, the administration must resort to turning the suspects over to foreign governments, bringing them to the U.S. or even killing them.

In one case last year, U.S. special operations forces killed an Al Qaeda-linked suspect named Saleh Ali Saleh Nabhan in a helicopter attack in southern Somalia rather than trying to capture him, a U.S. official said. Officials had debated trying to take him alive but decided against doing so in part because of uncertainty over where to hold him, the official added.

U.S. officials find such options unappealing for handling suspects they want to question but lack the evidence to prosecute. For such suspects, a facility such as Bagram, north of Kabul, remains necessary, officials said, even as they acknowledged that having it in Afghanistan could complicate McCrystal's mission.

Mind you, some of these prisoner shell games may be related. While it would seem that the US will have to hold Iraqis within Iraq, if there really are people at Gitmo who don't qualify for the Task Force review, I can imagine that someone would like to keep them away from a prison in Illinois where their presence may become an issue.

But all this illustrates two things. First, there are a number of people against whom we have intelligence that is strong enough to get them imprisoned, but shoddy enough we want to

make sure no independent body ever reviews it. As I noted yesterday, one troubling aspect of the shell game they're playing with the Army Field Manual's Appendix M is that it appears to be applicable to those who we can label an illegal enemy combatants even though they have not engaged in any act of war against us. Which sounds like the kind of people we might want to throw into Gitmo.

And this ongoing shell game with detainees also makes another thing clear: we really need someone (like SCOTUS) to insist that the same access to some review process now available to Gitmo detainees be available to Bagram detainees. Until that happens, our government seems intent on holding people in arbitrary detention.