



Written by [Joe Wolverton, II, J.D.](#) on October 30, 2022

Guantanamo Bay Detainee Released After 18 Years Without Charges

A 75-year-old Pakistani man has been released from Guantanamo Bay military prison after being held there for 18 years without being charged with a crime.

According to a story first published in the [Daily Mail](#), Saifullah Paracha “was first captured in Thailand in July 2003 and taken to the US military base at Bagram, Afghanistan, before being transferred in 2004 to the camp in the US naval station in Guantanamo Bay, Cuba.”

Paracha was not charged with a crime and was not accused of facilitating the attacks of September 11, 2001. Rather, he was believed to have assisted two of the alleged 9/11 conspirators in carrying out a financial transaction after the attacks. The *Daily Mail* identifies those alleged conspirators as Khalid Shaikh Mohammed and Ammar al-Baluchi, Mohammed’s nephew.

Mohammed and al-Baluchi are both still detained at Guantanamo Bay. As for Mohammed, his trial was delayed by protocols instituted by the federal government in response to Covid-19 and no makeup date has been announced.

The *Daily Mail* report cites unnamed U.S. Department of Defense sources who said that Paracha was able to be released because he no longer posed a “significant threat” to the United States.

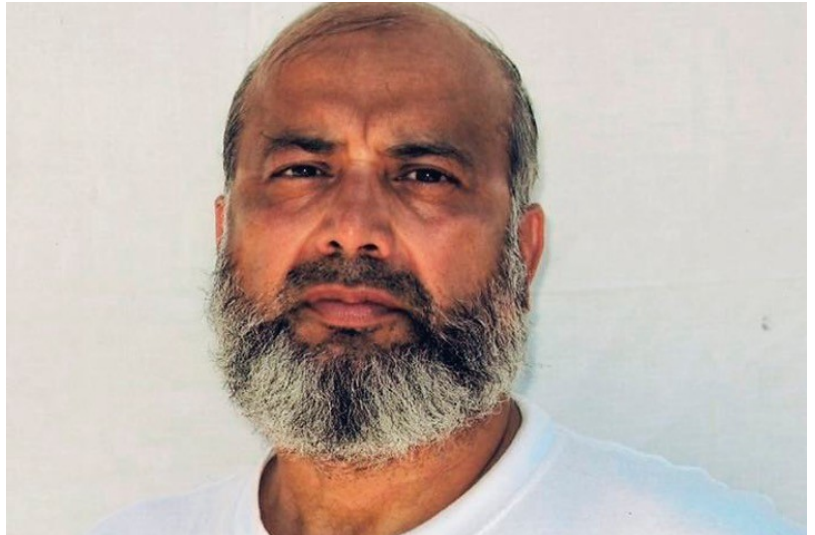
In a statement released to the press, the Pakistani foreign ministry said: “We are glad that a Pakistani citizen detained abroad is finally reunited with his family.”

As for the accusations made against him of aiding al-Qaeda in financial schemes, Paracha admits that he guarded \$500,000, but that he was unaware of any connection between the alleged conspirators and al-Qaeda. Furthermore, he denies any ties to terrorism.

The *Daily Mail* printed the following account of his capture and subsequent imprisonment in Guantanamo Bay:

Paracha was captured in Thailand in 2003 during an FBI sting. Paracha believed he was going to discuss a merchandising deal with Kmart, only to be seized by intelligence agents and flown to Afghanistan.

The US has held him at Guantanamo since September 2004....



AP Images
Saifullah Paracha



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The *Daily Mail* article repeats the now two-decades old assertion by the Pentagon that “it can hold detainees indefinitely without charge under the international laws of war.”

That assertion is not constitutionally sound.

First, a brief history lesson.

On January 11, 2002, the first 20 prisoners arrived at the U.S. naval base in Cuba, detained as suspected “enemy combatants” in the global War on Terror that was initiated by Congress and the president (without, it must be remembered, a declaration of war as mandated by the Constitution) in the wake of the terrorist attacks of September 11, 2001.

Despite the rhetoric and the reactionary resort to unconstitutional and often unconscionable acts by the United States government, many Americans regardless of party affiliation see the continuing operation of the facility as anathema to the principles of liberty and due process of law upon which our Republic was founded.

Beyond the allegations made by many Guantanamo Bay prisoners of human rights violations — including torture and deprivation — many if not most of them are being denied some of the most basic of due-process rights guaranteed by our Constitution, including one of the oldest — the right of habeas corpus.

Habeas corpus is Latin for “you may have the body.” It typically takes the form of a writ or order through which a prisoner is released from unlawful detention. Habeas corpus has formed a fundamental part of Anglo-American jurisprudence since the early 14th century (some argue that the foundations of the writ are found in the Magna Carta, written in 1215).

Alexander Hamilton, writing as “Publius” in *The Federalist*, No. 84, declares that the “establishment of the writ of habeas corpus” is one of the “greater securities to liberty and republicanism” found in our Constitution, and that the “practice of arbitrary imprisonments [has] been the favorite and formidable instruments of tyranny.”

With regard to the men being detained at the Guantanamo Bay Naval Facility in Cuba, provisions of the Military Commissions Act of 2006 mandated that prisoners at the facility were no longer entitled to have the merits of their cases heard by judges or juries in the American civil law system, and thus all outstanding habeas corpus petitions were stayed.

On June 12, 2008, however, in the case of *Boumediene v. George W. Bush*, the Supreme Court of the United States held that the suspension of habeas corpus contained in the Military Commissions Act was unlawful and that all habeas corpus petitions stayed by that law were eligible to be reconsidered and reinstated.

While there was a brief uptick in the number of detainees whose cases were heard and decided in favor of the detainees after the *Boumediene* opinion was handed down, a report published by the Center for Policy and Research at Seton Hall University School of Law revealed that since July 2010, federal judges have only held in favor of the detainees’ habeas corpus complaints 1 out of 12 times.

While the adherence to constitutional principles of due process and habeas corpus is most assuredly to be celebrated — specifically, the repatriation of Saifullah Paracha to his homeland and his family — 37 people remain imprisoned at the Guantanamo Bay detention facility, not one of whom has ever been charged with a crime.

I’ll leave the last word to a forgotten Founding Father and hero of Yorktown, St. George Tucker:



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In the United States, [habeas corpus] can be suspended, only, by the authority of congress; but not whenever congress may think proper; for it cannot be suspended, unless in cases of actual rebellion, or invasion. A suspension under any other circumstances, whatever might be the pretext, would be unconstitutional, and consequently must be disregarded by those whose duty it is to grant the writ.



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