

June 2014

TO: Interested Parties
FROM: The National Security Program
RE: Understanding the Bergdahl Prisoner Exchange

Over Memorial Day weekend, President Obama announced that Sgt. Bowe Bergdahl, the longest-held American captive in the Afghanistan conflict, had been released in exchange for five Taliban detainees in Guantanamo Bay.¹ While the initial response to Bergdahl's release was positive, the deal quickly came under fire from the Right, including some who previously had advocated for his release.

As Congress begins its inquiry into the Bergdahl exchange, this memo provides a framework for discussing it and addresses some of the major questions surrounding the exchange.

What to say

- *As a nation, we believe in the principle of leaving no American behind. That applies not just for the best of us but for **all** of us.*
- *Ultimately, Sgt. Bergdahl should answer for his actions in a military court, not the court of public opinion.*
- *As for the five Taliban prisoners that were sent to Qatar, as the President has made clear, if they rejoin the fight against the United States and our allies, we can and will hunt them down.*

Accusation: We don't negotiate with terrorists.

Response: As a nation, we believe in the principle of leaving no American behind, regardless of their particular circumstances. Our senior military leaders have repeatedly reaffirmed this in their statements about the Bergdahl swap.² Retired General Stanley McChrystal, the commander of U.S. forces in Afghanistan in 2009 said, of the Bergdahl exchange, "We don't leave Americans behind. That's unequivocal."³

Prisoner exchanges are a normal part of armed conflict, including exchanges with terrorist combatants. The U.S. has conducted prisoner exchanges in all of its past conflicts, and many of our closest allies, including the Israelis, will negotiate with terrorist groups for the return of their soldiers, dead or alive.⁴

Accusation: The Five Taliban detainees are dangerous and will kill Americans.

Response: The Administration has arranged with the Qatari government to put conditions on the release of the Taliban detainees to ensure they will be monitored and do not leave that country for one year. But, make no mistake, as the President has made clear, if they rejoin the fight against the United States and our allies, we can and will hunt them down.

Accusation: Bowe Bergdahl is a deserter who endangered his colleagues.

Response: The circumstances of Sgt. Bergdahl's disappearance are unclear.

Some in his battalion have come forward to suggest that Sgt. Bergdahl deserted and that several members of the unit were killed searching for him.⁵ It is not clear whether those deaths were directly related to Sgt. Bergdahl's disappearance or rather to the general danger of serving in a war zone that had long been underresourced.⁶

But make no mistake, if the Army concludes that Sgt. Bergdahl did leave voluntarily, he should and will be punished appropriately.

Accusation: President Obama broke the law when he failed to notify Congress.

Response: The Administration honored the substantive provisions of the law by having the Secretary of Defense certify the transfer was in the national security interests of the U.S. and ensure that there were strict conditions for release of the detainees.⁷

Did the White House fail to notify Congress and wait thirty days like the law requires? Yes. But when you have the chance to recover an American soldier, you have to strike while the iron is hot. And, the White House had been talking to Congress about the possibility of this deal for years, so it's a bit disingenuous for some of these Republicans to claim they were surprised.⁸

Accusation: President Obama is politicizing the swap.

Response: Prior to Sgt. Bergdahl's release, recovering him was a bipartisan priority. Then, many Republicans in Congress weighed in strongly in favor of a negotiated release. For example, Rep. Duncan Hunter (R-CA) had written to the Administration at the beginning of the year pressing them to remove bureaucratic impediments to Bergdahl's release, and his staff urged faster action at the end of April.⁹ Now, after the release, Rep. Hunter is accusing Sgt. Bergdahl of "turning his back" on his colleagues.¹⁰

In the first few days after the swap, Republicans and Democrats alike praised Sgt. Bergdahl's release on the airwaves and in social media. But as criticism started to grow, many Republicans began deleting earlier Tweets.¹¹ Clearly, much of the backlash against the Bergdahl swap has now become a partisan political exercise.

Questions for Administration Briefers

- What are the security conditions for the released detainees for the year they are restricted to Qatar? Are there additional conditions that would apply afterward?
- Will the Taliban detainees go through a rehabilitation program in Qatar? How long has the program existed? What is the program's success rate?
- What is the process for determining the circumstances of Sgt. Bergdahl's disappearance?
- What possible penalties does Sgt. Bergdahl face?
- What is the Administration's rationale for not notifying Congress, as required by the NDAA, especially given the efforts the Pentagon took five days before the exchange, to improve the chances of Sgt. Bergdahl's release?
- What is the Administration's plan for the remaining detainees in Guantanamo?

Endnotes

¹ Eric Schmitt and Charlie Savage, "Bowe Bergdahl, American Soldier, Freed By Taliban in Prisoner Trade," *The New York Times*, May 31, 2014. Accessed June 8, 2014. Available at: <http://www.nytimes.com/2014/06/01/us/bowe-bergdahl-american-soldier-is-freed-by-taliban.html>.

² Statement by General Martin E. Dempsey, Facebook, June 3, 2014. Accessed June 8, 2014. Available at: <https://www.facebook.com/GENDempsey/posts/696415437091967>; See also United States, Department of Defense, "Statement by Chief of Staff of the Army General Raymond T. Odierno on Sgt. Bowe Bergdahl," News Release, June 4, 2014. Accessed June 8, 2014. Available at: <http://www.defense.gov/releases/release.aspx?releaseid=16749&source=GovDelivery>.

³ Oliver Knox, "McChrystal on Bergdahl: We don't leave Americans Behind. That's Unequivocal," Yahoo News, June 4, 2014. Accessed June 8, 2014. Available at: <https://news.yahoo.com/mcchrystal-on-bergdahl--we-don-t-leave-americans-behind--that-s-unequivocal-193638795.html>.

⁴ Karl Vick, "Israel Experienced with Prisoner Exchanges and Their Consequences," *TIME*, June 3, 2014. Accessed June 8, 2014. Available at: <http://time.com/2809411/israel-experienced-with-prisoner-exchanges-and-their-consequences/>.

⁵ Jake Tapper, "Fellow soldiers call Bergdahl a deserter, not a hero," CNN, June 4, 2014. Accessed June 8, 2014. Available at: <http://www.cnn.com/2014/06/01/us/bergdahl-deserter-or-hero/>; See also Nathan Bradley Bethea, "We lost Soldiers in the Hunt for Bowe Bergdahl, a Guy Who Walked off in the Dead of Night," *The Daily Beast*, June 2, 2014. Accessed June 8, 2014. Available at: <http://www.thedailybeast.com/articles/2014/06/02/we-lost-soldiers-in-the-hunt-for-bergdahl-a-guy-who-walked-off-in-the-dead-of-night.html>.

⁶ Charlie Savage and Andrew W. Lehren, "Can Bowe Bergdahl be tied to 6 lost lives? The facts are murky," *The New York Times*, June 3, 2014. Accessed June 8, 2014. Available at: <http://www.nytimes.com/2014/06/04/world/middleeast/can-gi-be-tied-to-6-lost-lives-facts-are-murky.html>.

⁷ Adam Goldman and Scott Wilson, "Inside the Obama Administration's debate over freeing Bowe Bergdahl," *The Washington Post*, June 3, 2014. Accessed June 8, 2014. Available at: <http://www.washingtonpost.com/politics/inside-the-obama-administrations-debate-over-freeing-sgt->

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⁸ Josh Rogin, "Exclusive: Taliban Gitmo deal is swap for a Westerner," *Foreign Policy*, Subscription, March 13, 2012. Accessed June 8, 2014. Available at: http://thecable.foreignpolicy.com/posts/2012/03/13/exclusive_taliban_gitmo_deal_is_swap_for_a_western.

⁹ Deb Reichmann, "AP Sources: Work to Free US Soldier Disorganized," The Big Story, Blog, *Associated Press*, April 24, 2014. Accessed June 8, 2014. Available at: <http://bigstory.ap.org/article/taliban-ready-deal-captive-us-soldier>; See also Gordon Lubold with Nathan Soble, "Situation Report: Efforts to Free Bergdahl Disorganized," *Foreign Policy*, Subscription, April 25, 2014. Accessed June 8, 2014. Available at: http://www.foreignpolicy.com/articles/2014/04/25/fps_situation_report_efforts_to_free_bergdahl_disorganized.

¹⁰ Kendall Breitmann, "Duncan Hunter on Bowe Bergdahl: John Kerry 'turned his back,'" *Politico*, June 5, 2014. Accessed June 8, 2014. Available at: <http://www.politico.com/story/2014/06/duncan-hunter-bergdahl-john-kerry-comparison-107467.html>.

¹¹ Brian Ries, "Politicians Scramble to Delete Pro-Bergdahl Tweets as Backlash Grows," Mashable, June 4, 2014. Accessed June 8, 2014. Available at: <http://mashable.com/2014/06/04/politicians-delete-bowe-bergdahl-tweets/>.