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## Closing the Doors on GITMO

**A combination of diplomacy, transfers and prosecutions can help end this debacle.**

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President Bush said last year that "it should be a goal of the nation to shut down Guantánamo," the offshore prison for foreigners accused of terrorism. But now it seems this goal will remain unfulfilled when the president leaves office.

Bush's recent decision to keep Guantánamo Bay open is regrettable. It represents a victory for Vice President Cheney, who, according to reports, believes it will "validate" Bush's detention policies if the prison is still open under a new administration.

But there is no redeeming the detention and prosecution system at Guantánamo - a system that has produced only two convictions in seven years, has been rebuked by the Supreme Court three times, and has caused four military prosecutors to step down in disgust. Former Secretary of State Colin L. Powell has properly urged that this symbol of injustice be shut down "this afternoon."

The next president will need new strategies for dealing with the three categories of detainees at Guantánamo:

Where sufficient evidence exists that a detainee has committed a war crime, court-martial proceedings should begin immediately. Those charged under this system and ultimately convicted can be detained in military jails inside the United States.

The military-commission system has failed miserably and should be scrapped. The well-regarded military-justice system, on the other hand, will gain us greater international respect, reduce delays and eliminate the possibility of convictions being overturned because of constitutional defects.

A second group consists of detainees who, according to our military, present no danger but have not been released because we cannot find a country that will take them. The new president will have to expend some diplomatic capital on persuading allies to share the burden of closing Guantánamo by taking custody of these individuals.

For this mission to succeed, however, we will need to avoid a recurrence of what happened earlier this month, when a State Department effort to place 17 detainees - members of an ethnic minority in was undercut by Justice Department statements calling them extremely dangerous.

The most difficult challenge is the group of detainees the government deems dangerous but cannot prosecute because it lacks admissible evidence. The Supreme Court has held that we may detain unlawful enemy combatants captured in battlefield circumstances until hostilities have ended. The court's most recent ruling, however, gives detainees the right to challenge their status as unlawful combatants in federal court.

The best way to get out of this legal hole is to transfer these detainees to their home countries, provided we are assured they will be kept in custody and treated humanely. Recent negotiations to transfer a large number of detainees to Yemen, for example, need to be brought to a speedy conclusion.

The remainder of the detainees should be transferred to high-security military facilities inside the United States. The government has resisted taking this step because bringing the detainees here may give them additional rights when challenging their detentions in court. It also would increase the possibility that a judge could order detainees released inside the United States, as one recently did in the case of the Uighurs. (That ruling is being appealed.)

These are low-level risks worth enduring for the sake of closing Guantánamo. The likelihood that detainees would be let go in the United States is minimal.

Even if a court rules that continued military detention is unlawful, the detainees have no right to be in the United States. They could be placed in custody as illegal immigrants until we find a country to accept them. Congress has robust authority over immigration matters, and it would no doubt intervene if the courts tried to release detainees into our civilian population.

Some members of Congress have presented another obstacle by saying they would oppose placing dangerous terrorists in prisons in their districts. This kind of demagoguery simply will have to be ignored. Our prisons hold mass murderers and serial rapists; surely they can prevent the escape of the Guantánamo detainees as well.

This combination of prosecutions, diplomacy and transfers will not resolve all our legal difficulties. But at least it would bring the Guantánamo debacle to an end.