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Spurning Demand by the Taliban, Biden Moves to Split \$7 Billion in Frozen Afghan Funds

The president intends to use the Afghan central bank's assets to fund needs in Afghanistan amid a humanitarian disaster, and compensate victims of the Sept. 11, 2001, attacks.

By Charlie Savage

WASHINGTON — President Biden is starting to clear a legal path for relatives of victims of the Sept. 11, 2001, attacks to pursue \$3.5 billion that Afghanistan's central bank had deposited in New York before the Taliban takeover, while also seeking to steer a roughly equal amount toward spending to aid the Afghan people.

Beginning that process, Mr. Biden issued [an executive order](#) Friday morning invoking emergency powers to consolidate and freeze all \$7 billion of the total assets the Afghan central bank kept in New York. The administration [said it would](#) ask a judge for permission to move \$3.5 billion to a trust fund it would set up to support the needs of the Afghan people, like for humanitarian relief.

The highly unusual set of moves, which The New York Times had first reported was expected, is meant to address a tangled knot of legal, political, foreign policy and humanitarian problems stemming from the attacks and the end of the 20-year war in Afghanistan.

When the Afghan government dissolved in August — with top officials, including its president and the acting governor of its central bank, fleeing the country — it left behind slightly more than \$7 billion in central bank assets on deposit at the Federal Reserve Bank in New York. Because it was no longer clear who — if anyone — had legal authority to gain access to that account, the Fed made the funds unavailable for withdrawal.

The Taliban, now in control of Afghanistan, immediately claimed a right to the money. But a group of relatives of victims of the Sept. 11 attacks, one of several sets who had won default judgments against the group in [once seemingly quixotic lawsuits](#) years ago, sought to seize it to pay off that debt.

Meanwhile, the economy in Afghanistan has been collapsing, leading to a [mass starvation](#) that is in turn creating [an enormous and destabilizing new wave of refugees](#) — and raising a clear need for extensive spending on humanitarian relief.

Against that backdrop, the White House's National Security Council led months of deliberations on the central bank funds involving top officials from departments including Justice, State and Treasury, according to people who spoke on the condition of anonymity to discuss a sensitive matter that had not yet been made public.

Much of it came from foreign exchange funds that accumulated over the past 20 years — a time when the United States and other Western countries were donating large sums to Afghanistan, helping generate that activity. Alex Zerden, a former top U.S. Treasury Department official in Afghanistan, characterized the central bank reserves as a kind of rainy day fund for the Afghan people.

In addition, about half a billion dollars of the bank's assets correspond to the reserves of commercial banks in Afghanistan, which by law must keep a certain amount of their deposits — including the savings of ordinary Afghan people — at the central bank. Those assets are owned by Da Afghanistan Bank, but it owes the same amount to the commercial banks.

After the Taliban took over Afghanistan, they appointed their own official to lead the central bank and demanded the immediate release of the money held in New York. But under longstanding counterterrorism sanctions imposed by the United States, it is illegal to engage in financial transactions with them.

Another option has been to let the assets sit untouched, gathering interest for what is likely to be years before the Taliban perhaps again lose power and a more normal government arises.

But in September, a group of about 150 relatives of Sept. 11 victims, who years ago won a default judgment after suing targets like Al Qaeda and the Taliban in a case known as Havlish, persuaded a judge to dispatch a United States Marshal to serve the legal department of the Federal Reserve of New York with a “writ of execution” to seize the money.

After The Times reported on the matter in November, a number of other Sept. 11 groups who filed similar lawsuits after the attacks stepped forward to ask for a share of the Afghan bank assets.

to devote half of the money for the Sept. 11 claims. The Justice Department is instead expected to tell the court later Friday that victims of the attacks should have a full opportunity to have their claims heard, according to people familiar with the matter.

But if the judge agrees to partly lift the writ of execution, Mr. Biden will seek to direct the remainder toward a trust fund to be spent on assistance in Afghanistan — while keeping it out of the hands of the Taliban, according to people briefed on the decision. Setting up that fund and working out the details is expected to take several months, the people said.

It is highly unusual for the United States government to commandeer a foreign country's assets on domestic soil. Officials are said to have discussed a two-part legal process for Mr. Biden to engineer that outcome.

First, in his executive order on Friday morning, he used emergency powers under the International Emergency Economic Powers Act to consolidate all Da Afghanistan Bank assets in the United States in a segregated account at the Federal Reserve Bank of New York. That has blocked them, but the Afghanistan central bank still owns them.

Second, officials have discussed then using a provision of the Federal Reserve Act that permits disposing of property belonging to the central bank of a foreign nation — so long as it has the blessing of someone the secretary of state has recognized as being “the accredited representative” of that foreign country.

But deciding who qualifies as such a person, at a time when Afghanistan’s former government no longer exists, has raised significant complications. It remained unclear what solution Biden administration officials had settled on and whether the name of any person or people they deem as such would be disclosed for security reasons, like possibly endangering family members still in Afghanistan.

But a person familiar with the matter said the Justice Department’s Office of Legal Counsel reviewed the arrangement.

Further complicating matters, the United States does not recognize the Taliban as the legitimate government of Afghanistan, raising the question of whether funds belonging to the Afghan central bank are really the Taliban’s and so can be used to pay off the Taliban’s judgment debts.

But the Biden administration has come under domestic political pressure to tell the court that it thinks the bank’s money is sufficiently linked to the Taliban now that they control that country and its institutions, making the funds seizable.

Lawyers in the Havlish case had earlier proposed a similar arrangement, dividing the assets between humanitarian relief and paying off the Taliban’s judgment debt to their clients. In a statement relayed this week by his legal team, a plaintiff in that case, Ramon Melendez Sr., argued that using the money that way would be just.

“I lost my wife on 9/11 due to the Taliban’s support for terrorism,” Mr. Melendez said. “I became a single parent to two of my four sons and then lost my house. I have never received any money against my judgment. I think some money should go to humanitarian relief for the Afghan people but I also want **my legal judgment to be fully honored.**”

But not all relatives of the Sept. 11 victims agree. This week, Barry Amundson, whose brother Craig was killed in the Pentagon that day, said his group — September 11th Families for Peaceful Tomorrows — thought all of the money should go to benefit Afghans.

“I can’t think of a worse betrayal of the people of Afghanistan than to freeze their assets and give it to 9/11 families,” Mr. Amundson said. “While 9/11 families are seeking justice for their loss through these suits, I fear that the end result of seizing this money will be to cause further harm to innocent Afghans who have already suffered greatly.”

The administration’s move will further cripple Afghanistan’s already paralyzed central bank; draining most of the bank’s capital — it also has about \$2 billion scattered across Germany, Switzerland, the United Arab Emirates and Britain — makes it even less likely that the bank will be able to resume its efforts to stabilize the value of Afghan currency and

prices in that country, including by regularly auctioning millions of U.S. dollars for Afghan cash.

In recent weeks, a longtime member of the bank's board, Dr. Shah Mohammad Mehrabi, had argued that the U.S. government should instead let Da Afghanistan Bank try to restart some of that work and carefully watch to make sure the funds did not reach the Taliban.

In an interview, Dr. Mehrabi — who is also an economics professor at Montgomery College in Maryland — contended that the central bank should be seen as independent of the now Taliban-led Afghan government. He said that many civil servants there knew how to run the bank, and that depriving the bank of the funds it needed to maintain price stability would lead to runs on commercial banks, mass defaulting on loans and ultimately broader disaster.

“You’re talking about moving toward a total collapse of the banking system,” he said. “I think it’s a shortsighted view.”

But an administration official familiar with the government deliberations argued that the “sad reality” was that even if the central bank regained access to the assets in New York and moved them all into Afghanistan for one last injection of capital, it would not solve the deeper structural problems that have sent the country’s economy spiraling into ruin.

For two decades, Afghanistan’s economy was drastically and artificially bolstered by enormous influxes of foreign aid and security assistance from the West, as the United States and its NATO allies pumped money into a nation-building effort.

But that spigot abruptly closed after the Taliban takeover in August, with devastating economic consequences. Among others, hundreds of thousands of Afghans whose salaries were paid by the former government are now unemployed, their incomes vanished.

A shortage of physical currency has led to restrictions on how much the minority of Afghans who have bank accounts may withdraw from their savings. Making more available, specialists say, is likely to accelerate capital flight: As confidence in the country’s future dims, more Afghans are moving their assets abroad.

Some remittances and other international financial transfers have slowed, along with previously planned imports of goods and services, because of fears of violating sanctions on the Taliban.

Against that backdrop, the value of the Afghan currency has plummeted, and with it, the ability of millions of people who were already living on the edge to buy enough food to eat.

As the situation has rapidly grown dire, the **U.S. Treasury Department has moved to make some exemptions to the sanctions**, including telling the money transfer company MoneyGram that it can transmit money to Afghanistan so long as the money will not benefit anyone on [a list of people individually penalized as terrorists](#).

In January, the United States ramped up total American aid to the country by \$308 million, bringing its assistance there to \$516 million since August.