



The School for Ethics and Global Leadership

Guantánamo Bay: Recommendations for U.S. Policy

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Introduction

This document, written in the Spring of 2012, is the work of 20 high school students who attend The School for Ethics and Global Leadership (SEGL). SEGL is a semester-long residential program that provides intellectually motivated juniors, who reflect the diversity of the United States, with the best opportunity to shape themselves into ethical thinkers and leaders who will create positive change in our world. Each semester's class researches a current international challenge and prepares a policy document that provides practical solutions. This document was written entirely by the students and the opinions shared do not necessarily reflect those of SEGL or its faculty. We hope that this document sheds light on the current status of the Guantánamo Bay detention facility and provides direction for the future.

Please direct any responses to guantanamo.bay@schoolforethics.org. Thank you.

Executive Summary

The fear instilled in every American on September 11, 2001 radically changed the national psyche. A cry for greater national security led to the creation of a series of detention facilities around the world. Perhaps the most well known of these is the detention center at Guantánamo Bay, Cuba, (GTMO). The international outcry expressed immediately after GTMO opened scarred the reputation of the United States (U.S.). The controversy over GTMO stems from inhumane treatment conducted there during the earliest years of its existence. Cuba served as an ideal location for the detention facility in order to restrict detainees' access to U.S. federal courts and to limit their proximity to U.S. citizens. Many countries have condemned the United States for knowingly evading the law.

One week after the September 11th attacks, Congress passed the Authorization for Use of Military Force Act and on October 7, 2001, the U.S. declared war on Afghanistan. This was the beginning of the War on Terror. Hundreds of suspected terrorists, then called enemy combatants, were taken into U.S. custody to be questioned. In early 2002, these men were sent to a detainment facility at the U.S. Naval Base in Guantánamo Bay, Cuba. In 2002, Bush's Assistant Attorney General reported a new interpretation of the U.S. definition of torture, which allowed for enhanced interrogation techniques. Shortly afterwards, there were many reforms used to improve the humanitarian aspect of procedures at GTMO; however, international disdain still mars the image of the U.S.

Currently, those detainees at GTMO who charges can be brought against are tried in military commissions. There are 36 detainees remaining at GTMO who charges can be brought against. We recommend that those 36 detainees be tried in the Military Commission system that is in place, though reform to the system is necessary. Guidelines for the system are outlined in the *2010 Manual for Military Commissions*. Though years of reform have improved the legal system at GTMO, the commissions are still not widely accepted as an appropriate method for trial. The major concern of international organizations is that the commissions are unregulated because they operate outside the U.S. federal court system. As a result, we recommend continued use of the *Manual for Military Commissions* with the stipulation that it is updated annually to ensure that practices are lawful and just. As part of the updated manual, we advise that subsection "b" of the hearsay rules be removed. These recommendations will serve to improve the public perception on the military commissions in use at GTMO, while also creating a legal system that is more in line with practices used in U.S. courts in preparation for an ultimate phase out.

As an advocate for humanitarian issues across the globe, the U.S. should continue to improve human rights' standards at GTMO. The classification of Guantanamo detainees as

unprivileged enemy belligerents places them outside of the jurisdiction of Article 3 of the Geneva Conventions, an international standard of torture set in 1949 protecting the rights of prisoners of war (POWs). However, because the detainees at GTMO are not categorized as POWs, the unprivileged enemy belligerents are only protected from the use of torture through U.S. guidelines. Though the government discloses information about certain camps at GTMO, not all of the camps have the same level of transparency. To address this problem the Joint Task Force-GTMO (JTF-GTMO) should disclose to the public the existence of all camps at GTMO and the status of each facility. To increase transparency at GTMO, the U.S. should also endorse unplanned visits from a third party. In addition, to ensure that no torture is used in the future the U.S. government should utilize the United Nations to monitor GTMO and maintain that both international and U.S. law are upheld.

Executive Order 13492, issued in 2009, ordered the closure of GTMO, but it is yet to be fulfilled due to differences of opinion between Congress and President Barack Obama. Domestically, American citizens prefer that GTMO remain open because there is currently no definite relocation site for the detainees. With a reformed military commission system, all “non-high-value” detainees could be tried, many of whom are held unjustifiably. The status of all detainees at GTMO needs to be evaluated through the triennial Periodic Reviews as established by the Executive Order 13567 and information on these findings should be released to the general public. In order to appeal to the concerns of all parties, a bipartisan committee in Congress should be created to insure that the military tribunal court follows the best practice standards. While GTMO remains open, the facility should abide in accordance with practices recommended by the UN Commission on Human Rights. The United Nations should hold the U.S. accountable for more humane practices through a series of quarterly check ups at random at the naval base by members of the UN Human Rights council.

The inefficient process for determining national security threats means there are detainees in GTMO who do not pose a threat to the U.S. nor do they have useful intelligence and therefore could be serving their sentences elsewhere. All detainees who can be tried should go through the military commissions system as refined each year. The transfer of all remaining detainees should be determined at a global summit of 26 critical countries with detainees including allies such as the UAE, Canada, and Saudi Arabia. The goals of this summit are as follows: determine where the prisoners go, evaluate current security risks in the countries and the US, and lastly develop guidelines for future relations. These recommendations are a vital part to the process of closing GTMO and therefore need to be taken into consideration immediately.

Ten years after its opening, GTMO is still associated with torture and perceived negatively both domestically and internationally, though more so the latter. Reform can combat this negative sentiment and develop an improved international image of the U.S. These recommendations serve to form GTMO into a facility that is as humane and efficient as possible, for the remainder of the time the facility is open. We have acknowledged that the War on Terror, as defined by Bush and Obama may be indefinite which creates a very ambiguous timeline for the confinement of detainees at GTMO. For that reason we are committed to shutting GTMO down and outlining a phase-out even as War on Terror continues. It is in the best legal, humanitarian, and political interest of the United States to follow through with the closing of GTMO; however, the following document addresses solutions to the immediate issues facing the detention center.

History

Guantánamo Bay, located in southeast Cuba, houses a 45 square mile U.S. naval base. Within the base is the Guantánamo Bay detention camp (GTMO), used for holding unprivileged enemy belligerents against the U.S.¹ The U.S. acquired this territory in 1903 through the Platt Amendment; however, the detainment camp was not in operation until 2002, when the first prisoners arrived.²

Following the September 11, 2001 terrorist attacks on the World Trade Center and the Pentagon, Congress passed the “Authorization for Use of Military Force Against Terrorists”, which allowed the U.S. to use military force against nations, organizations, or individuals accountable for the attacks.³ This was the beginning of the War on Terror, a fight to eradicate terrorism both nationally and globally. On October 7, 2001, the U.S. launched the war in Afghanistan, resulting in the capture of hundreds of unprivileged enemy belligerents.⁴ A month later, President Bush gave a military order declaring that these unprivileged enemy belligerents would be tried outside of U.S. military or civilian courts, in separate military commissions. In addition, detainees were to be held outside of the country.⁵ Donald Rumsfeld, then Secretary of Defense, announced in late 2001 that Guantánamo Bay would be used as a detainment facility for captured Taliban and Al-Qaida fighters, describing it as the “least worst place” the government could have selected for the detainment of these individuals.⁶ The administration cited Guantánamo as a desirable detainment location as it provided a secure facility that was located far away from areas of conflict.⁷ The Bush administration drew criticism on this decision on the grounds that detainees would have limited access to federal courts to challenge their detention through applying for a writ of habeas corpus.

¹U.S. Congressional Research Service, *Guantanamo Bay Naval Base, Cuba: Background and Current Issues, 1994* (Washington, DC)

²U.S. Congress, *Platt Amendment* (Washington, DC), 1903.;

³Matthew Ivey, “A Framework for Closing Guantanamo Bay,” *Boston College International & Comparative Law Review* 32, no 2 (2009): 356-376 ; “Habeas Corpus,” *International Law Update* 14, 2008: 98-101

⁴ Kenneth Jost, “Closing Guantanamo,” *CQ Researcher Volume 19*, No. 8 Pages 177-200; Yin Tung, “Anything But Bush?,” *Harvard Journal of Law & Public Policy* 34, no 2 (2011); 453-492

⁵ Peter Katel and Kenneth Jost, “Treatment of Detainees”, *CQ Researcher*, Volume 16, No. 29 (2006): 673-696;

⁶ U.S. Department of Defense, *DoD News Briefing-Secretary Rumsfeld and Gen. Meyers*, 2001.

⁷ Jost, pg 185

Description of Guantanamo Bay Detention Center

Detainees

The detainees at GTMO include alleged terrorist trainers, terrorist financiers, bomb makers, Usama bin Laden's bodyguards, and recruiters and facilitators.⁸ In January 2002, the first detainees arrived, and by the end of the year, the camp held 625 prisoners.⁹ Of the 779 people who have been held in the camp, 602 have been transferred, 8 have died, and 169 detainees remain there today. GTMO has held citizens of forty-eight different countries. Afghanistan and Saudi Arabia are the most common places of citizenship among the detainees held there, with 220 and 134 inmates, respectively. The countries that the detainees have been transferred to include Afghanistan, Saudi Arabia, Britain, and Pakistan.¹⁰

Camps

The Joint Task Force - Guantánamo (JTF-GTMO) operates GTMO. A joint task force is a combination of several military services used for a special operation. JTF-GTMO, under the command of the U.S. Southern Command, is a combination of personnel in the Navy, National Guard, Coast Guard, and Marine Corps.

Camp X-Ray, the first camp, operated for only 4 months in 2002. The detention facility's main camp, Camp Delta, is comprised of eight camps: Camp Iguana, Camp 1, Camp 2, Camp 3, Camp 4, Camp 5, Camp 6, and Camp 7 (also called Camp Platinum).

The U.S. detained the first 110 prisoners in Camp X-Ray on January 11, 2002.¹¹ Outcry about inhumane conditions at Camp X-Ray, such as the use of goggles, earmuffs, and facemasks as restraints as well as the confinement of detainees in wire cells, put GTMO into the international spotlight.¹² In order to expand the camp to hold more detainees and also to alleviate the conditions of the camp that the international community condemned, Camp X-Ray was closed and Camp Delta opened on April 29, 2002.¹³

Camp Iguana used to house detainees who were still minors. Now, it holds the detainees who are waiting to be transferred back to their nation of origin.¹⁴ Camps 1, 2, and 3 can house up to 716 detainees in solitary confinement. There are currently no detainees held in

⁸ Joint Task Force - Guantanamo, pg. 2.

⁹ "The Guantanamo Docket: A History of the Detainee Population." *The New York Times*. April 19 2012, accessed April 22, 2012. <http://projects.nytimes.com/guantanamo/>

¹⁰ Ibid.

¹¹ *The 9/11 Encyclopedia*, s.v. "Guantánamo Bay Detainment Camp," accessed April 25, 2012, http://dmzadserver.cushing.org/login?url=http://www.credoreference.com.dnzadserver.cushing.org/entry/abcne/guant%C3%A1namo_bay_detainment_camp

¹² "Inside Camp X-Ray," *BBC News*, 2002, http://news.bbc.co.uk/1/hi/english/static/in_depth/americas/2002/inside_camp_xray/routine.stm.

¹³ Guantanamo Bay - Camp X-Ray, Global Security, http://www.globalsecurity.org/military/facility/guantanamo-bay_x-ray.htm.

¹⁴ Ivey, pg. 357.

these camps, but the three are still available for use, if necessary.¹⁵ In Camp 4, up to 175 detainees are kept in 10-cot bunkhouses, rather than in solitary confinement, like the rest of the camps.¹⁶ Camp 4, which usually houses the most compliant detainees, is currently vacant due to maintenance.^{17 18} Camp 5 is a \$16 million, maximum-security facility that can hold approximately 100 individuals. Camp 5 also contains a section called Camp Echo.¹⁹ Camp 6 contains a medical clinic and can hold 175 detainees. It was intended to be a medium-security facility; however, after an uprising from the detainees in Camp 4 and three suicides in Camp 1 during 2006, Camp 6 was created as a maximum-security penitentiary. Its degree of security can be adjusted and it is now used as a minimum-security facility.²⁰ Top-secret Camp 7 holds the most dangerous detainees.²¹ The high-value detainees are transferred there from the custody of the Central Intelligence Agency.²² All events that occur at Camp 7 are classified. Currently, 169 unprivileged enemy belligerents are held in Camps 5, 6, 7, and Iguana.²³

Torture

When the Bush administration opened GTMO, Bush established interrogation methods using the U.S. definition of torture as a guideline. The U.S. defined torture as:

An act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control.²⁴

Although the definition did not change, in 2002, President Bush's Assistant Attorney General, Jay S. Bybee, sent Alberto R. Gonzales of the Counsel to the President a memorandum, detailing their new interpretation of torture.²⁵ This new interpretation allowed for ten interrogation techniques that involved facial slaps, cramped confinement, and waterboarding.²⁶

¹⁵ Joint Task Force - Guantánamo, *Joint Task Force Guantanamo: Overview*, 2012, 3.

¹⁶ Human Rights Watch, *Locked Up Alone : Detention Conditions and Mental Health at Guantanamo*, 2008, 7.

¹⁷ Joint Task Force - Guantánamo pg. 3.

¹⁸ Matthew Ivey, "A Framework for Closing Guantánamo Bay," *Boston College International & Comparative Law Review* 32, no 2 (2009), 357.

¹⁹ Review of Department Compliance with President's Executive Order on Detainee Conditions of Confinement, page 11

²⁰ Ibid, 3.

²¹ Ivey, pg. 357.

²² Human Rights Watch, pg. 13.

²³ "The Guantanamo Docket: A History of the Detainee Population." *The New York Times*. April 19 2012, accessed April 22, 2012. <http://projects.nytimes.com/guantanamo/>

²⁴ U.S. Department of Justice, *Memorandum for Alberto R. Gonzales Counsel to President*, 2002

²⁵ "Redefining Torture?" Frontline, PBS, October 18, 2005, <http://www.pbs.org/wgbh/pages/frontline/torture/themes/redefining.html>.

²⁶ U.S. Department of Justice, *Memorandum for John Rizzo Acting General Counsel of the Central Intelligence Agency*, 2002.; U.S. Department of Justice, *Memorandum for Alberto R. Gonzales Counsel to President*, 2002

In an interview with BBC News, three released detainees (famously known as “The Tipton Three”) confirmed that the guards abused them, especially during interrogation sessions.²⁷ In 2006, in response to growing speculation surrounding interrogation techniques, Congress passed the Detainee Treatment Act, which regulates the living conditions of detainees and reforms the interrogation tactics used on them.²⁸ However, in 2007, the International Committee of the Red Cross sent the CIA a letter describing their visit to GTMO and their findings.²⁹ The letter exposed methods of treatment that were previously declared illegal by the Detainee Treatment Act.³⁰

Upon taking office in 2009, President Obama issued Executive Order 13491 to repudiate the torture techniques used by the Bush Administration.³¹ He declared that GTMO would abide by those interrogation techniques listed in the Army Field Manual.³²

Legal History

Congress’s “Authorization for the Use of Military Force” passed in 2001 following the September 11th attacks enabled the president to take all necessary action against those who were responsible for the attacks.³³ Following this act of Congress, the President launched the war in Afghanistan in October and captured thousands of fighters.³⁴ In November, Bush issued a military order authorizing the detainment of non-citizens including members of Al-Qaida and the Taliban who were captured in the war in Afghanistan. Under the order, these individuals were to be tried by military commissions outside of the United States court system.³⁵ In 2002, the Department of Justice announced that Guantánamo Bay Naval Base was being prepared for the long term detention of individuals captured in the war in Afghanistan that were subject to Bush’s military order.³⁶

The legal rights of detainees at Guantánamo were unclear. The Department of Defense deemed that Guantánamo detainees were not held as prisoners of war, but rather as “unlawful enemy combatants” that, as members of the Taliban and Al-Qaida, did not meet

²⁷ “Tipton Three Complain of Beatings,” *BBC News*, March 14, 2004, http://news.bbc.co.uk/2/hi/uk_news/3509750.stm.

²⁸ U.S. House of Representatives, *Detainee Treatment Act, 2005*, (Washington, DC).

²⁹ “ICRC Report on the Treatment of Fourteen ‘High Value Detainees’ in CIA Custody,” *International Committee of the Red Cross*, February 14, 2007, <http://assets.nybooks.com/media/doc/2010/04/22/icrc-report.pdf>

³⁰ Ibid.

³¹ Obama, Barack, *Executive Order 13491, 2002*, (Washington, DC).

³² Ibid.

³³ Jenifer K. Elsea and Michael John Garcia, “Enemy Combatant Detainees: Habeas Corpus Challenges in Federal Court”, *Congressional Research Service*, February 2, 2010

³⁴ Tung, 460

³⁵ U.S. Executive Branch, *Military Order-Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism*, 2001.

³⁶ U.S. Department of Justice, *Memorandum for Albert R. Gonzales Counsel to President*, 2002, pg 2.

the Geneva Convention's POW criteria.³⁷ As "unlawful enemy combatants", the U.S. claimed to have the right to detain them without trial.³⁸

Legal rights of detainees were complicated by Guantánamo's international location. Among these issues was whether or not U.S. federal courts had jurisdiction over hearing writ of habeas corpus appeals of Guantánamo detainees. In 2002, multiple detainees at the Guantánamo Bay detention facility sought writs of habeas corpus in federal district courts in the United States. The district court and subsequently the U.S. Court of Appeals for the District of Columbia dismissed the petitioners on the grounds that the Guantánamo Bay detention center was outside of the court's jurisdiction.³⁹ However, the 2004 Supreme Court case *Rasul v. Bush* determined that U.S. district courts have jurisdiction over hearing the writ of habeas corpus appeals of Guantánamo detainees.⁴⁰ Additionally, the rights of U.S. citizens held in Guantánamo Bay were unclear until the 2004 Supreme Court case *Hamdi v. Rumsfeld*. In this case, the Supreme Court ruled that detainees with U.S. citizenship were guaranteed the right to contest their detainment in court.⁴¹ Following *Hamdi* and *Rasul*, the Bush administration established Combatant Status Review Tribunals (CSRTs) as a way to address the Supreme Court's ruling. CSRTs gave detainees an opportunity for to challenge their combatant status and detention.⁴² Detainees not deemed to be enemy combatants would be eligible to be returned to their country of origin.⁴³ By 2005, 23 detainees were returned to their nation of origin via this process.⁴⁴

During that same year, pictures of the mistreatment of prisoners held in the Abu Ghraib prison in Iraq put the issue of detainee treatment in Guantánamo Bay on the national consciousness.⁴⁵ To address this, Congress passed the "Detainee Treatment Act" (DTA) of 2005, which prohibited the inhumane treatment of prisoners.⁴⁶ However, the DTA also limited federal courts from hearing writ of habeas corpus cases filed by detainees, giving the U.S. Court of Appeals of the District of Columbia exclusion jurisdiction over reviewing CSRT decisions.⁴⁷

In 2006, the military commissions in which Guantánamo Bay detainees were being tried came under scrutiny with the case *Hamdan v. Rumsfeld*. Hamdan, a Yemeni man who allegedly served as the bodyguard and driver for Osama bin Laden and had been detained in Guantánamo Bay since 2002, challenged the military commissions process in which he was

³⁷ U.S. Department of Defense, *Combatant Status Review Tribunals*, 2006; Elsea and Garcia, page 4

³⁸ Ibid.

³⁹ "Habeas Corpus," *International Law Update*, June 14, 2008: 98-101.

⁴⁰ Ibid.

⁴¹ Supreme Court of the United States, *Yaser Esam Hamdi and Esam Fouad Hamdi, as Next Friends of Yaser Esam Hamdi, Petitioners vs. Donald H. Rumsfeld, Secretary of Defense, et al.*, 2004.

⁴² *Combatant Status Review Tribunals*, page 1

⁴³ Elsea and Garcia, page 7

⁴⁴ *Combatant Status Review Tribunals*, page 1

⁴⁵ Jost, pg 186

⁴⁶ Katel and Jost, pg 686

⁴⁷ U.S. House of Representatives, *Detainee Treatment Act of 2005*, Section 1005

tried.⁴⁸ Hamdan specifically protested the military commissions procedures which could exclude a detainee and his counsel from knowing the evidence used against him, even if the evidence used was obtained through hearsay or coercion.⁴⁹ The Supreme Court ruled that these commissions breached various parts of U.S. and international law.⁵⁰ The laws breached, according to the Supreme Court, include Article 3 of the Geneva Conventions, which prohibits sentencing without the judgment of a “regularly constituted court.”⁵¹ In addition, the court found the commission procedures inconsistent with Article 36 of Uniform Code of Military Justice, which requires that military commissions must follow rules of evidence procedures commonly practiced by U.S. district courts.⁵² As a result of the *Hamdan v. Rumsfeld* ruling, Congress passed the 2006 Military Commissions Act (MCA). This act permitted the continuation of military commissions to try “unlawful enemy combatants” for violations in the law of war.⁵³ The MCA provided a definition for unlawful enemy combatants as those who are part of the Taliban or al Qaeda or those who had been determined to be an unlawful enemy combatant before the enactment of the MCA.⁵⁴ Lastly, the MCA prohibited all pending and future writ of habeas corpus attempts by Guantánamo detainees.⁵⁵

The MCA statute banning detainee habeas corpus petitions was struck down in 2008 by the Supreme Court case *Boumediene v. Bush*. In this case, the court decided that all Guantánamo detainees have the right to a writ habeas corpus because of the U.S.’s “de facto sovereignty” over the detainment camp.⁵⁶ A detainee’s right to a writ of habeas corpus is still applied to this day.

In 2009, the Obama administration halted military commissions proceedings to review the procedures being used, though it considered restarting the military commissions process in May of the same year. After this review was completed, Congress passed the Military Commissions Act of 2009, which amended the 2006 Military Commissions Act. The 2009 act classified individuals being tried in military commissions as “unprivileged enemy belligerents” instead of as “unlawful enemy combatants.”⁵⁷

⁴⁸ U.S. Supreme Court, *Hamdan vs. Rumsfeld, Secretary of Defense*, 2006, No. 05-184

⁴⁹ Ibid.

⁵⁰ Ivey, pg 363; Arsalan M. Suleman, “Military Commissions Act of 2006”, *Harvard Human Rights Journal* 20, 2007, 325-337.

⁵¹ The Geneva Convention Relative to the Treatment of Prisoners of War, August 12, 1949, art. 3 § 1(d)

⁵² Elsea and Garcia, page 11; Uniform Code of Military Justice, Article 36; U.S. Supreme Court, *Hamdan vs. Rumsfeld, Secretary of Defense*, 2006, No. 05-184

⁵³ Ivey, pg 363; Suleman, pg 325

⁵⁴ Suleman, pg 326-327

⁵⁵ Jost, pg 187

⁵⁶ Katel and Jost, pg 186-188

⁵⁷ U.S. Congress, *Military Commissions Act of 2009*, 2009. H.R. 2647-385

The Obama Administration and Current Status

In 2009, Obama rebranded the War on Terror as an Overseas Contingency Operation (OCO).⁵⁸ However, the new name did not provide a definite end for when the U.S. would stop combating terrorism.

On President Obama's second full day in office, January 22, 2009, he issued Executive Order 13492. This order called for a review of all GTMO case files and the closure of the camp within one year's time. To close the facility, the detainees would be returned to their home countries, transferred to a third country, or moved to another detention facility located in the U.S.⁵⁹ Obama recommended that the U.S. government immediately review the legality and factual basis for each inmate's detainment and decide how they should be prosecuted. The Attorney General, the Secretary of Defense, the Secretary of State, the Secretary of Homeland Security, the Director of National Intelligence, the Chairman of the Joint Chiefs of Staff, and other officers as determined by the Attorney General were to conduct these reviews.⁶⁰

Congress disagreed with Obama's enforcement of expensive transfers. In objection, Congress issued the Supplemental Appropriations Act of 2009, which banned the use of funds appropriated to release any detainees onto American soil.⁶¹ Facing the Congress' dissent, Obama passed Executive Order 13567. In Executive Order 13567, Obama described a new review process for GTMO detainees, called the Periodic Review. Every detainee must have an Initial Review hearing before the Periodic Review Board (PRB). Following the Initial Review is the Subsequent Full Review in which each detainee's case "shall be subject to subsequent full reviews and hearings by the PRB on a triennial basis."⁶² Each detainee's file will undergo inspection each month between full reviews. If a detainee is found not guilty, then the Secretary of State and Defense will be responsible for returning him, in an appropriate and humane manner, to a location outside of the United States.⁶³

In the hopes of shutting down Guantanamo and relocating the detainees, President Obama planned to move detainees to a vacant, state-owned prison in Thomson, Illinois (pop. 500). While the Obama administration sees this prison as an opportunity for jobs, Illinois Congressman, Mark Kirk, sees the prison as a threat to America's national security.⁶⁴

⁵⁸ White House, Overseas Contingency Operation, 2009 (Washington, DC).;

Scott Wilson & Al Kamen, "'Global War on Terror' Is Given New Name," Washington Post, March 25, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/24/AR2009032402818.html>

⁵⁹ U.S. Executive Branch, *Executive Order 13492*, 2009 (Washington, DC)

⁶⁰ Ibid.

⁶¹ U.S. Congress, *Supplemental Appropriations Act*, 2009 (Washington, DC: H.R. 2346 (111th))

⁶² U.S. Executive Branch, *Executive Order 13567-Periodic Review of Individuals Detained at Guantánamo Bay Naval Station Pursuant to the Authorization for Use of Military Force*, 2011 (Washington, DC)

⁶³ Ibid.

⁶⁴ Ed Tibbets, "Thomson Sees Economic Boon in Prison Deal" *American Planning Association News Brief*

Responding to their constituents' fear of threats to national security, Congress passed two acts in 2011, further hindering the government's ability to transport detainees. The first act, the National Defense Authorization Act of 2011, barred appropriations authorized for assisting the transportation of detainees into the United States on basis of trial.⁶⁵ The second act was the Ike Skelton National Defense Authorization Act for Fiscal Year of 2011, which guaranteed no federal funding to move detainees to the United States for trial or detention.⁶⁶

Meanwhile, The New York Times acquired hundreds of classified documents via WikiLeaks, detailing the detainees at GTMO, and how the United States detained and held men without trial. The New York Times published these files on April 25, 2011.⁶⁷

⁶⁵ U.S. Congress, *National Defense Authorization Act for Fiscal Year 2011*, 2011 (Washington, DC)

⁶⁶ U.S. Congress, *Ike Skelton National Defense Authorization Act for Fiscal Year 2011*, 2011 (Washington, DC)

⁶⁷ Scott Shane and Benjamin Weiser, "Judging Detainees' Risk, Often With Flawed Evidence" *New York Times*, April 24, 2011, http://www.nytimes.com/2011/04/25/world/guantanamo-files-flawed-evidence-for-assessing-risk.html?_r=1.

Legal

The construction of an offshore detention center on the United States Naval Base at GTMO created a legal grey area. As a result, policies and procedures pertaining to detainees of this facility have undergone extensive reform as new information has been released. The following outlines the current legal status of GTMO and seeks to identify areas for immediate reform in preparation for an ultimate phase out plan.

Legality of Torture

In a 2002 government memo, the Office of Legal Council (OLC) gave John Rizzo, Acting General Counsel of the Central Intelligence Agency and President Bush, the right to interpret U.S. code. It states, “torture” to mean an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain.⁶⁸ In the memo the OLC granted permission for the use of enhanced interrogation techniques, such as waterboarding, to be used if the interrogators did not intend to cause harm. This assertion was based on past results; in which waterboarding was used in navy training and trainees did not experience physical or mental pain.⁶⁹ To prevent torture from occurring in the future, Obama signed Executive Order 13491 on January 22, 2009. This revoked Executive Order 13440 and all regulations or executive directions regarding the interrogation of detainees that were inconsistent with his executive order.⁷⁰ The executive order stated that the new rules for the interrogators were to be based on the “Army Field Manual”.⁷¹ In the past the United Nations (U.N.) has recommended that the U.S. should close GTMO because human rights violations in terms of international laws. The Obama administration made the decision to use Army Field Manual’s interrogation procedures, as it clearly outlines the legality of interrogation techniques and ensures that methods comply with national and international standards.

Current Status of Military Commissions

The United States exercises complete jurisdiction over GTMO as determined in the landmark Supreme Court case *Rasul v. Bush*.⁷² As a result, the actions of these commissions are currently monitored in order to determine that fair trials are being conducted. This oversight is found in the form of the Secretary of Defense, who submits an annual report

⁶⁸ Cornell University Law School. "18 USC § 2340 - Definitions | LII / Legal Information Institute." LII | LII / Legal Information Institute. <http://www.law.cornell.edu/uscode/text/18/2340> (accessed April 25, 2012).

⁶⁹ Jay Bybee to John Rizzo, *Memorandum for John Rizzo: Acting General Counsel of the Central Intelligence Agency* (Washington, DC: August 1, 2002), 8.

⁷⁰ The President, Presidential Documents: *Executive Order 13491 of January 22, 2009, Ensuring Lawful Interrogations* (Washington, DC: GPO 2009), 4893.

⁷¹ Ibid. 4894.

⁷² Cornell University Law School, *Rasul v. Bush*, accessed May 3, 2012, <http://www.law.cornell.edu/supct/html/03-334.ZS.html>.

concerning the trials by military commission to the Committees on Armed Services of the Senate and the House of Representatives.⁷³

Despite the many reforms implemented since the creation of the tribunals, groups such as Human Rights Watch and Amnesty International have raised concerns about the fairness of the trials.⁷⁴ Human Rights Watch went so far as to say that the history of controversy threatens the legitimacy of future rulings.⁷⁵

Outline of Basic Detainee Legal Rights

Based on the 2008 Supreme Court ruling in *Boumediene v. Bush*, detainees have the right to a writ of habeas corpus despite their classification as unprivileged enemy belligerents. Under the 2009 Military Commissions Act (MCA), an unprivileged enemy belligerent is defined as

- “...an individual (other than a privileged belligerent) who –
- (A) has engaged in hostilities against the United States or its coalition partners;
 - (B) has purposefully and materially supported hostilities against the United States or its coalition partners;
 - (C) was a part of al Qaeda at the time of the alleged offense under this chapter”.⁷⁶

The 2009 MCA also states that the status of the detainees is to continue to be reviewed by periodic review boards or by military commission.⁷⁷ Currently, according to the Department of Justice, “any detainee who is determined not to be an enemy combatant will be transferred to their country of citizenship or other disposition consistent with domestic and international obligations and U.S. foreign policy.”⁷⁸ This procedure still applies to the detainees classified as unprivileged enemy belligerents who are currently being held. Complications have arisen from attempts to return enemy belligerents to their home countries.

On March 7, 2011, President Barack Obama issued Executive Order 13567. It states that the right to a writ is to be upheld through the federal court system in the U.S.⁷⁹

⁷³ Congressional Report, *Sec. 1806. Annual Reports to Congress on Trials by Military Commission* (Washington DC).

⁷⁴ Amnesty International USA, last modified 2012. <http://www.amnestyusa.org/ourwork/issues/security-and-human-rights/guantanamo>.

⁷⁵ Human Rights Watch, “The Guantanamo Trials,” last modified 2012. <http://www.hrw.org/features/guantanamo>.

⁷⁶ United States Government, *Title XVIII – Military Commissions* (Washington D.C.: 2009), H.R. 2647-386.

⁷⁷ Robert Povtak, Thomas Luckini, Isaac Gorodetski, “U.S. Law,” *Detained by U.S.*, May 2, 2012, <http://www.detainedbyus.org/legal-resources/u-s-law/>.

⁷⁸ U.S. Department of Defense, Combatant Status Review Tribunal Order Issued, accessed May 2, 2012, <http://www.defense.gov/releases/release.aspx?releaseid=7530>.

⁷⁹ The White House, *Periodic Review of Individuals Detained at Guantanamo Bay Naval Station Pursuant to the Authorization for Use of Military Force* (Washington DC: GPO, 2011).

Jurisdiction of Military Commissions

According to chapter 47A of Title 10, United States Code, any detainee at GTMO who is being charged with a terrorism crime falls under the jurisdiction of the military commissions. Currently there are 36 detainees who have been recommended to have trials.⁸⁰

Composition of Military Commissions

According to the *2010 Manual for Military Commissions*, a non-capital military commission is made up of one military judge and a minimum of five members. A capital military commission consists of one military judge and a minimum of twelve members. These members may consist of any commissioned officer of the armed forces.⁸¹ These members may not consist of an accuser, witness, or person who has acted as an investigator or counsel in the case.⁸²

Right of the Accused to Counsel

The accused has the right to be represented by military counsel or by civilian counsel so long as it is at no expense to the Government.⁸³ According to the *2010 Manual for Military Commissions*, said counsel must, “guard the interests of the accused zealously within the bounds of the law without regard to personal opinion as to the guilt of the accused.”⁸⁴ Attorney-client privilege is protected with the exception of communication that clearly communicates contemplation of committing a crime.⁸⁵

Hearsay

Hearsay is defined as, “a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.”⁸⁶ Hearsay evidence may be admitted in trials if it would be admitted under the Federal Rules of Evidence that apply to general courts-martial that are outlined in the *2010 Manual for Military Commissions*.⁸⁷ Furthermore, hearsay evidence that would not otherwise be admitted under those rules of evidence may be admitted in a trial by military commission if the proponent of the evidence provides the opposing counsel with, “the proponent’s intention to offer the evidence, and the particulars of the evidence (including information on the circumstances under which the evidence was obtained).”⁸⁸ The military judge must

⁸⁰ Guantanamo Review Task Force, *Final Report, 2010* (Washington DC: GPO, 2010) ii.

⁸¹ United States Military, *Manual For Military Commissions*, 2010. United States. (Washington, DC: GPO), II-22.

⁸² Ibid., II-3.

⁸³ Ibid., II-32.

⁸⁴ Ibid., II-27.

⁸⁵ Ibid., III-21.

⁸⁶ Ibid., III-53.

⁸⁷ Ibid., III-53.

⁸⁸ Ibid., III-54.

determine that the hearsay statement is probative as evidence of a material fact, direct testimony of the witness is not available for reasons of practicality or security, and the admission best serves the interests of justice.⁸⁹

The reason for a formal system of testimony is to ensure trustworthiness of evidence. Rule 807 states that when a hearsay statement is admitted into evidence, the credibility of the declarant may be attacked.⁹⁰ Subsection “b” of Rule 803, admissibility of hearsay, provides an exception in which the declarant cannot be cross-examined. In the 2008 Supreme Court case, *Parbat v. Gates*, the Court determined that hearsay evidence “must be presented in a form, or with sufficient additional information, that permits the Tribunal and court to assess its reliability.”⁹¹ According to Lieutenant Colonel Jon Jackson, the reliability cannot be accessed without being able to cross-examine the declarant; therefore striking out subsection “b” would better both the transparency and legitimacy of trials.⁹² If a detainee suspected of terrorist activities were tried in a military commission and the evidence against said detainee was based on hearsay, the admission of that hearsay without proper weight of credibility and validity could compromise the justice of the trial.

Conclusion

The legal process at GTMO is fundamentally flawed. The following recommendations serve to improve the current system while GTMO remains open. However, it is our finding that phasing out the system entirely and ultimately trying any new cases in U.S. federal courts would be best.

Recommendations

- Continued use of the Army Field Manual to regulate interrogation techniques.
- Continued adherence to the *Manual of Military Commissions* on the condition that it is updated annually.
- Strike out subsection “b” of the current hearsay rules. Adhere to subsection “a” solely, which complies with both United States Federal Rules of Evidence as well as Military Court Martial practices.
- Try the 36 detainees remaining at GTMO who charges can be brought against in the military commissions. Try any new cases in U.S. federal courts.

⁸⁹ Ibid., III-54.

⁹⁰ Ibid., III-54.

⁹¹ United States Court of Appeals, *Parbat v Gates*: 2008. (Washington, DC)

⁹² Lieutenant Colonel Jon Jackson, personal communication, May 4, 2012.

Humanitarian

At the heart of the GTMO conflict is a controversy over human rights violations. In 2002, the United Nations, Amnesty International, Center for Constitutional Rights and American Civil Liberties Union (ACLU) adamantly disagreed with the U.S. decision to open a detainment camp.⁹³ The original conditions of Camp X-Ray, the first facility for detainees at GTMO, received international criticism, which discredited the U.S. efforts to uphold human rights across the world. In 2009, the Obama administration was committed to closing the camp down. Drastic improvements to interrogation tactics, camp conditions, and detainee's experiences have been a driving force to keeping GTMO open.

One reason the tactics at the base are under scrutiny is because there are currently eighty-nine detainees who have been cleared for release and are still held at GTMO.⁹⁴ In order to uphold high human's rights standards the U.S. needs to continue to focus increasing standards of human rights at the camps. This can only happen when U.S. standards are equal to international standards, meaning full disclosure of interrogation tactics and the disclosure of enemy combatants.

Torture and Law

Though President Obama issued an executive order, GTMO is still open today. Whether or not GTMO should remain open is not the focus of the humanitarian debate. Rather humanitarian concerns lie in the treatment and conditions of detainees.

The President and the Department of State have both made it clear that human rights are an American priority.⁹⁵ President Obama has argued that humanitarian concerns are in the underpinnings of the constitution, and the ideals of liberty and basic human rights are a fundamental part of American ideals, and subsequently, American security.⁹⁶ The U.S. was a lead drafter of the International Declaration of human rights and a key player in the development of the United Nations and international law in general. As long as GTMO remains open, the U.S. must uphold standards of human rights on par with or surpassing international standards.

⁹³ Amnesty International USA. *Guantanamo, Bagram and Illegal U.S. Detentions*.

<http://www.amnestyusa.org/our-work/issues/security-and-human-rights/guantanamo> (accessed 5 2, 2012).

⁹⁴ Human Rights Watch. *Letter to Secretary of Defense Leon Panetta: Repatriate or Resettle Detainees Cleared for Transfer and Implement PRBs*. April 9, 2012. <http://www.hrw.org/news/2012/04/09/letter-secretary-defense-leon-panetta-repatriate-or-resettle-detainees-cleared-trans> (accessed May 3, 2012)

⁹⁵ Kate Pickert, "The Army Field Manual," *Time Magazine*, accessed April

25, 2012, last modified January 26, 2009, <http://www.time.com/time/nation/article/0,8599,1873897,00.html>.

⁹⁶ *Ibid.*(5)

American Law and Controversy

The United States definition of torture,⁹⁷ is as follows:

(1) "torture" means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;

The statute gives a more detailed outline defining the illegitimate causes of "severe mental pain or suffering" including prolonged intentional infliction of pain or suffering, the use of mind altering substances, or the threat of imminent death.

This definition alone protects the rights of detainees against torture. During the early years of Guantanamo's existence, the original statute on torture was re-interpreted, changing the way the U.S. categorized interrogation and torture. Because the interpretation was changed, some information extracting tactics previously deemed inhumane practices of torture became legal by the approval of the Office of the Legal Counsel. However, once the public was aware of what practices the CIA was using on GTMO detainees, GTMO became infamous for its uses of extreme forms of torture.

This process of reinterpretation is best illustrated by the "Torture Memos." The U.S. definition of torture has been the same since GTMO was opened in 2002, but these laws were heavily reinterpreted to accommodate "enhanced interrogation." A specific part of these memos, a memorandum entitled to John Rizzo, is a controversial piece of evidence illustrating this practice⁹⁸ Rizzo, the Acting General Counsel for the CIA, had sent the Office of the Legal Counsel a list of proposed interrogation techniques to be administered at GTMO. The CIA took steps to ensure there was no legal ambiguity regarding these methods. They sent the list of methods to the Office of the Legal Counsel for official verification, to ensure that these practices would not be considered torture. The techniques included insult slapping, cramped confinement, sleep deprivation, insects placed in a confinement box, and waterboarding.⁹⁹

Attorney General Jay Bybee, signed the memos between John Rizzo and the Office of Legal Counsel allowing for the use of these ten techniques. Rizzo also looked to the Legal Counsel to judge his interpretation of the definition of torture.

President Obama's executive order 13491, executed on the 22nd of January, 2009, repudiated the guidelines given by the Office of Legal Counsel to John Rizzo and Bush's administration. Obama had acknowledged the legality of the Bush administration's practices of torture, but condemned these practices as inhumane.

⁹⁷ U.S. Congress, House, U.S. Code, Title 18: Crimes and Criminal Procedures, Part I: Crimes, Chapter 113C: Torture.

⁹⁸ Jay S. Bybee to John Rizzo, August 1, 2002, in Memorandum for John Rizzo Acting General Counsel of the Central Intelligence Agency (Washington,DC)

⁹⁹ Ibid.(8)

After Obama's statement on the "Torture Memos"¹⁰⁰, he expressed that all torture techniques in GTMO should abide by the allowances and restrictions in the Army Field Manual, the guide used by the U.S. Army delineating effective interrogation techniques and the rules of lawful interrogation.

International Standards

The American definition of torture¹⁰¹ parallels that of the United Nations:

For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.¹⁰²

Both parties agree torture is a conscious action in which "severe pain or suffering... is intentionally inflicted on a person".¹⁰³ Both definitions, however, include a loophole; torture that does not include "pain or suffering arising only from, inherent in or incidental to lawful sanctions"¹⁰⁴ is legal. This allows the U.S. to use torture judiciously. If laws or acts are passed that validate the use of torture techniques, whether humane or not, they can override the definition of torture we have today. This could potentially lead to the government using methods that may not necessarily be characterized as "torture", if a new act or law states otherwise.

The United Nations as an international third party has sent investigators to GTMO before, and should continue to assess whether the detainees at GTMO are protected against unlawful acts of torture. The loophole is the reason the U.S. needs GTMO to be monitored; it is imperative the integrity of U.S. law is maintained. They have observed inhumane acts of torture in the past, and have called for the closure of GTMO, but their scrutiny of GTMO were never considered and the situation was never re-assessed. The investigations and findings of the United Nations should be held with higher authority. Previously, U.S. security concerns overshadowed the integrity of the law. The U.S. should use the UN as a watchdog, and use UN recommendations to keep GTMO on par with international standards. The U.S. Government should utilize the United Nations to monitor GTMO and ensure that International and American law is being upheld.

¹⁰⁰ Ibid.(8)

¹⁰¹ United Nations, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1985 (United Nations Headquarters, New York).

¹⁰² Ibid.(11)

¹⁰³ Ibid.(11)

¹⁰⁴ Ibid.(11)

Camp 7

Overtime the camps at GTMO have evolved from sparse chain link cells to expensive facilities much nicer than many detention camps across the globe. The JTF GTMO lays out in a detailed report each facility. Camps 1, 2, and 3 are for the low to medium value detainees. Camp 4 is equipped with recreation space for minimum value detainees. Camp 5 is for the highest threat detainees. And the last camp chronicled by the JTF is Camp 6; which holds minimum, medium, or maximum threat detainees.¹⁰⁵ An additional Camp that the Obama administration does not admit to existing is known as Camp 7. A recent visit in 2010 from the Washington Independent reporters confirmed existence of the camp from a lieutenant general.¹⁰⁶ “We do acknowledge there’s a Camp 7,” said Lt. Col. Andrew McManus, the deputy commander of the Joint Detention Group, which oversees detention operations. “That’s all we say about it.”¹⁰⁷

In addition, on February 24th, 2012 military lawyers representing 6 high value detainees published a five-page letter addressed to William K. Lietzau, the top detainee policy official in the Pentagon.¹⁰⁸ The letter admitted and complained about conditions in Camp 7. The lawyers accused the U.S. of denying detainees halal food and solitary confinement.

Any possible remaining torture at GTMO lies largely in Camp 7. No visitors have ever been allowed to tour this camp and according to the JTF it does not exist. The five prisoners including Khalid Sheikh Mohammed allege that the Camp does not follow international laws such as the Geneva Conventions. A camp that is acknowledged by the public, but not by the government is a dangerous facility that needs to be shut down.

Full Disclosure

Currently in GTMO the Red Cross has 6 check ups a year to make sure the camp is maintaining humanitarian standards.¹⁰⁹ Frequent visits to the naval base are a vital part to preserving the integrity of JTF GTMO. A media policy released by the Defense Department in 2010 states “in an effort to encourage open reporting and promote transparency...and the need to protect operational and national security, and comply with the international treaty obligations.”¹¹⁰ The document release confirms the demand for third party evaluations of

¹⁰⁵ Joint Task Force Mission Guantanamo. (n.d.). *Joint Task Force Guantanamo*. Retrieved 2012 йил 24-April from <http://www.jtfgtmo.southcom.mil/xWEBSITE/index.html>

¹⁰⁶ Spencer Ackerman, post to Washington Independent newsgroup, April 27, 2010, <http://washingtonindependent.com/83290/a-photographic-tour-of-guantanamo-bay> (accessed May 2, 2012).

¹⁰⁷ Ibid. (2)

¹⁰⁸ Savage, C. (2012 йил 24-February). Guantanamo Conditions Slip, Military Lawyers Say. *The New York Times*.

¹⁰⁹ Joint Task Force Mission Guantanamo. (n.d.). *Joint Task Force Guantanamo*. Retrieved 2012 йил 24-April from <http://www.jtfgtmo.southcom.mil/xWEBSITE/index.html>

¹¹⁰ Department Of Defense, "Media Ground Rules for Guantanamo Bay, Cuba (GTMO)," Department of Defense, accessed May 3, 2012, last modified September 10, 2010, <http://www.defense.gov/news/d20100910groundrules.pdf>.

the detention camps conditions. In an effort to increase transparency of GTMO the U.S. should endorse unplanned visits from a third party.

Recommendations

- JTF-GTMO should disclose to the public all camps at GTMO and the status of each facility
- In an effort to increase transparency of GTMO the U.S. should endorse unplanned visits from a third party
- The U.S. Government should utilize the United Nations to monitor GTMO and ensure that international and American law is being upheld.

Political Relations

Since the opening of the detainment center, opinions on keeping GTMO open have been divided. Despite President Obama's Executive Order 13492, ordering the closing of GTMO, differing interests between Congress and the Executive Branch have led to a deadlock. Currently, citizens in the U.S. do not wish to see GTMO detainees moved onto American soil due to national security concerns and would like the base remain open.¹¹¹ Responding to these fears, Congress has made shutting down GTMO a difficult task. President Obama however, is pressured internationally to close the camp due to humanitarian concerns, yet his efforts to minimize prisoners has led many of those released to participate in reengagement acts of terrorism. In addition, there are economic opportunities to decrease spending at the base. In the future by addressing humanitarian concerns and ensuring transparency in GTMO practices, the base can remain open until the eventual phase out of the camp, pleasing both the internal and international communities.

Domestic Public Opinion

Internal American opinion opposes the idea of shutting down GTMO. Following President Obama's Executive Order 13492 in 2009, a Gallup public opinion poll states that 65% of United States citizens believe that GTMO should remain open, whereas only 32% want it to close.¹¹² 54% of Americans who want to keep GTMO open, according to Gallup, would be "upset" if the prison were closed.¹¹³

Although more commonly associated with the Republican Party, another Gallup poll reveals that the desire to keep GTMO open cuts across party lines. As of November 22, 2009, only 50% of Democrats thought that GTMO should be closed down.¹¹⁴ According to the same poll, this issue is not clearly defined by geographic areas. The East, Midwest, South, and West regions of the United States all believe (each over 60%) that GTMO should remain open, with results differing by just a few percentage points.¹¹⁵ The fact that GTMO is not a regional issue reinforces the wide spread controversy associated with the detainment center.

There are several reasons why Americans support keeping the facility open— the largest of which is national security. 74% of Americans oppose relocating detainees to a prison in their own state.¹¹⁶ Such public sentiments have been displayed with prior attempts to transfer high-value GTMO detainees, such as Khalid Sheikh Mohammed and four other 9/11

¹¹¹ Jeffrey M. Jones, "Americans Oppose Closing Gitmo and Moving Prisoners to U.S.," Gallup Poll, last modified June 3, 2009,

<http://www.gallup.com/poll/124727/Americans-Oppose-Closing-Gitmo-Moving-Prisoners.aspx>.

¹¹²Ibid.

¹¹³ Ibid.

¹¹⁴ Frank Newport, "Americans Oppose Closing Gitmo, Moving Prisoners to U.S.," Gallup Poll, last modified December 9, 2009, <http://www.gallup.com/poll/124727/Americans-Oppose-Closing-Gitmo-Moving-Prisoners.aspx>.

¹¹⁵ Ibid.

¹¹⁶ Jones, "Americans Oppose Closing Gitmo and Moving Prisoners to U.S.,"

conspirators, to New York.¹¹⁷

In addition, the public's disapproval of the Obama Administration's policy to move detainees to a federal prison on U.S. soil exemplifies these American fears. Although the administration argued that creating a high security federal prison in Thomson, Illinois would generate at least 1,100 new jobs as well as inject \$100 billion into the economy, many Americans opposed the idea.¹¹⁸ A poll from December 2009 by Rasmussen Reports reveals that 51% of Illinois voters opposed the move while 39% supported it.¹¹⁹ Thus responding to its constituents, Congress passed legislation restricting government funding for the implementation of this plan. Therefore, it is exceedingly difficult for prisoners to be transferred to American soil.

In the future, all detainees at GTMO in which there is enough evidence to prosecute, must be tried using the military tribunal system according to the 2009 Military Commissions Act. However before proceeding, it is recommended that Congress form a bipartisan committee to review this system, ensuring that the courts follow the best practice standards created by the Secretary of Defense as published in the annual *Manual of Military Commissions*. In addition, information should be shared with the public on the statuses of all detainees as determined by the Periodic Review Board, every three years, set up by the Obama administration. Determining the risks of detainees at GTMO and releasing this information to the public will appease the fear of American citizens by making sure they know exactly who is being held and for what reasons.

Congressional Opinion

As part of a democracy, Congress has the responsibility to respond to Americans desire to keep GTMO open. In 2009 President Obama also looked to Congress to implement his new policy of shutting down GTMO in Executive Order 13492. Yet he President found little support from Congressmen. According to Gallup polls taken in 2009, there is general agreement between Democrats and Republicans in the Senate with regard to closing GTMO.¹²⁰ 54% of Democrats in the Senate say that they would not support closing Guantánamo, and 91% of Republicans would also go against shutting down the detention facility.¹²¹

¹¹⁷ "No way out: America marks the tenth anniversary of the prison camp," *The Economist*, January 14, 2012.

¹¹⁸ Richard Durbin, "Durbin, Kirk ask (sic) Attorney General to clearly state that no Prisoners from Guantánamo Bay will be Transferred to Thomson," United States Senate, last modified March 11, 2011, <http://durbin.senate.gov/public/index.cfm/pressreleases?ID=280b6b9c-a1d8-4e50-8c0f-93be386efb6c>.

¹¹⁹ "51% in Illinois Oppose Prison for Guantánamo Terrorists In Their State," Rasmussen Reports, last modified December 12, 2009, http://www.rasmussenreports.com/public_content/politics/general_state_surveys/illinois/51_in_illinois_oppose_prison_for_Guantánamo_terrorists_in_their_state.

¹²⁰ Jones, "Americans Oppose Closing Gitmo and Moving Prisoners to U.S."

¹²¹ Ibid.

The House has expressed similar interests to resist the closing of GTMO through the creation of new legislation. This legislation restricts the Obama Administration from following through with Executive Order 13492, which intended to close GTMO within a year. The Ike Skelton National Defense Authorization Act of 2011 passed through the House with a majority in favor of cutting funds used for transporting detainees to the United States for trial. 79% of the House supported the financial cuts, and of this 79%, both Democrats and Republicans had equal representation.¹²² Recently, with the Ike Skelton National Defense Authorization Act in place, the Obama Administration has struggled to find ways to shut down GTMO due to insufficient funds for transferring detainees.

Republicans on the House Armed Service Committee (HASC) have questioned the Obama Administration and their executive orders intended to close GTMO. Republicans on the HASC are critical about the number of prisoners being released by the Obama Administration, because they believe these prisoners are reengaging in terrorist activities. The HASC report says the Obama Administration has let “domestic political pressures” and a “desire to earn good will abroad” impact their decision-making too much.¹²³

If the executive and legislative branches are going to come to an agreement, Congress must review the current tribunal court system being used to try detainees at GTMO. The tribunals need to be more effective and efficient and the threat of detainees needs to be made clearer. If the statuses of detainees are clear, Congress can please the public by providing a higher sense of nation security. Also, if Congress passes legislation to reform GTMO operations, this will help the Executive Branch’s efforts to modify GTMO practices as well as lead to the eventual closing of the camp.

International Opinion

Though Congress and its constituents would like to keep GTMO open, President Obama feels pressure to uphold international standards and maintain a good image abroad, which can only be achieved through humanitarian reforms and the eventual closing of GTMO. A recent survey held by the United Nations indicates that 63% of its members believe the U.S. should change its practicing policies at GTMO. If the base were to remain open, they would like to see the U.S. use practices recommended by the UN Commission on Human Rights.¹²⁴ In addition, the United Nations should hold the U.S. accountable for more humane practices at the naval base by unannounced quarterly check ups performed by members of the UN Human Rights Council. 71% of American citizens would like to see the international community hold the U.S. accountable for more humane practices at GTMO, as defined by

¹²² "H.R. 6523 (111th): Ike Skelton National Defense ... (On Motion to Suspend the Rules and Pass, as Amended)." *GovTrack.us*. <<http://www.govtrack.us/congress/votes/111-2010/h650>>.

¹²³ "Republican Report Criticizes Transfers From Guantánamo." *New York Times*. Last Modified, 2/9/12. <<http://www.nytimes.com/2012/02/09/us/gop-report-criticizes-transfers-from-Guantánamo.html>>.

¹²⁴ “Americans Say US Should Comply with UN Judgment and Change Treatment of Guantánamo Detainees,” World Public Opinion.org, last modified, May 11 2006, http://www.worldpublicopinion.org/pipa/articles/home_page/194.php?nid=&id=&pnt=194.

the UN Commission on Human Rights.¹²⁵ Thus, Congress should pass legislation for humanitarian reform to please the international community, with the expectation that they will then aid in the phase out of the camp.

The Obama Administration also faces pressure surrounding the transfer of prisoners. Some countries have accepted individuals or small groups of detainees. However, after multiple transfers, the “Summary of the Reengagement of Detainees Formerly Held at Guantanamo Bay, Cuba,” reports that as of 2010, 13.5 % of detainees released have acted in confirmed terrorist activities. In addition, another 11.5 % are suspected but not confirmed to have done the same.¹²⁶ The reengagement rate of detainees upon their release does not support closing GTMO. Such a high number threatens the security of the U.S. as well as other countries abroad. Despite this, many of the detainees’ home countries have expressed their desire to have their nationals back. To aid in the gradual closing of the base, in compliance with Executive Order 13567, detainees no longer deemed a threat to the United States as determined by the Periodic Review Board must be released, thus pleasing internal and international opinions. In addition, while GTMO remains open, if the US fails to reform humanitarian policies, support for the relocation of prisoners to third party countries or their home nations will become more limited. If humanitarian reforms are not made, nations will be less likely to assist in future joint detention and national security situations.¹²⁷

Economics

The excess spending at GTMO further emphasizes the need for reform at the base. Currently, the federal government has restricted the appropriation of funds towards the transportation and detention of GTMO detainees onto American soil. The Supplemental Act of 2009, the National Defense Authorization Act of both 2010 and 2011, and the Ike Skelton National Defense Authorization Act of 2011 have eliminated federal funding directed towards GTMO convictions.¹²⁸ In December of 2009, Attorney General Eric Holder issued a memorandum on behalf of the President insisting that the Departments of Justice and Defense begin the federal ownership of the Thomson Correctional Center, a prison located in Carroll County, Illinois constructed in 2001.¹²⁹ This prison facility was suggested because it was used sparingly—the only part of the 15-building complex in use

¹²⁵ “Americans Say US Should Comply with UN Judgment and Change Treatment of Guantánamo Detainees,” World Public Opinion.org, last modified, May 11 2006, http://www.worldpublicopinion.org/pipa/articles/home_page/194.php?nid=&id=&pnt=194.

¹²⁶ Director of National Intelligence, *Summary of the Reengagement of Detainees Formerly Held at Guantanamo Bay, Cuba*, (Washington D.C.: DNI, 2012).

¹²⁷ Chaffee Devon, “The Cost of Indefinitely Kicking the Can: Why Continued “Prolonged” Detention is No Solution to Guantánamo,” *Case Western Reserve Journal of International Law*, no. 42 (2010): 187-196, <http://proxygw.wrlc.org/login?url=http://search.ebscohost.com/login.aspx?direct=true&db=a9h&AN=49091140&site=ehost-live>.

¹²⁸ Carey Gillam, “Illinois Prison Eyed to House Guantánamo Detainees,” *Reuters* (2009), accessed April 24, 2012, <http://www.reuters.com/article/2009/11/15/Guantánamo-idUSN1546843320091115>.

¹²⁹ Attorney General Eric Holder, *Presidential Memorandum—Closure of Detention Facilities at the Guantánamo Bay Naval Base*, (Washington, DC: GPO, 2009).

was the minimum-security section, which houses up to 200 prisoners.¹³⁰ By moving GTMO detainees to Thomson, Illinois, President Obama could successfully shut down GTMO, as was proposed by Executive Order 13492, and effectively eradicate negative international opinions.

Democrat Senator, Richard Durbin, supported this initiative believing it would stimulate the economy and provide thousands of jobs.¹³¹ His Republican counterpart, Mark Kirk, holding views similar to Republicans on the House Armed Service Committee, objected to this initiative deeming the move “outrageous.”¹³² Adamant on his position, Senator Mark Kirk later stated to the Illinois Administration: “Our economy is hurting everywhere... but the idea of moving a detention facility, where 200 of the worst known criminals on earth live, to our state under the guise of economic stimulus is outrageous.”¹³³ Theoretical economic uncertainties were not enough to convince Mark Kirk. Further economic restrictions and Congressional discontent resulted in the collapse of this plan.

GTMO costs the United States \$150 million a year in operational costs. The U.S. Government has spent at least \$500 million on renovating the detention center.¹³⁴ The facility costs, on average, two times that of the collective federal prison system.¹³⁵ It is not cost effective for the United States to keep the detention center open as evident by these expenses. However, with proper trial insured by a congressional committee and or status reviews preformed by the Period Review Board, the number of detainees could be decreased, lowering the annual operational cost. It costs \$800,000 a year per detainee compared to \$25,000 for those in federal prisons.¹³⁶ Given this current situation, decreasing prisoners will both please American taxpayers and allow for fund to be reallocated in the federal budget.

¹³⁰“Thomson Correctional Center,” Illinois Department of Corrections: Illinois Auditor General, last modified August 6, 2009, <http://www.auditor.illinois.gov/audit-reports/compliance-agency-list/corrections/thomson-cc/fy08-thomson-cc-comp-digest.htm>.

¹³¹ Durbin, “Durbin, Kirk ask (sic) Attorney General to clearly state that no Prisoners from Guantánamo Bay will be Transferred to Thomson.”

¹³²Amanda Paulson, “Illinois divided over news of incoming Guantánamo detainees,” *The Christian Science Monitor* (2009), accessed April 18, 2012, <http://www.csmonitor.com/USA/Justice/2009/1215/Illinois-divided-over-news-of-incoming-Guantánamo-detainees>.

¹³³Ibid.

¹³⁴Paula Escobar, “What does Guantánamo Cost Us?,” *Amnesty International* (2010), accessed April 18, 2012, <http://blog.amnestyusa.org/waronterror/what-does-Guantánamo-cost-us/>.

¹³⁵Scott Shane, “Beyond Guantánamo, a Web of Prisons for Terrorism Inmates,” *New York Times*, December 10, 2011, <http://www.nytimes.com/2011/12/11/us/beyond-Guantánamo-bay-a-web-of-federal-prisons.html?pagewanted=all>.

¹³⁶Scott Shane, “Beyond Guantánamo, a Web of Prisons for Terrorism Inmates,”

Recommendations

- The status of all detainees at GTMO needs to continued to be evaluated through the triennial Periodic Reviews as established by the Executive Order 13567 and information on these finding should be released to the general public.
- A bipartisan committee in Congress should be created to insure that the military tribunal court follows the best practice standards created by the Secretary of Defense published annually in the *Manual of Military Commissions*.
- While GTMO remains open, the facility should abide in accordance with practices recommended by the UN Commission on Human Rights.
- The United Nations should hold the U.S. accountable for more humane practices through a series of quarterly check ups at random at the naval base by members of the UN Human Rights council.

Detainees

Current Situation

As of 2012, there are 169 detainees held in GTMO.¹³⁷ In this section of the document, we are going to profile three detainees: Khalid Sheikh Mohammed, Abd al Rahbi, Omar Khadr, three detainees we feel are archetypes of detainees who are currently held at GTMO. With their profiles, we will recommend what we believe should be done with not only these specific detainees, but also future detainees that fit these profiles.

A typical detainee at GTMO is male and, presumably, since each detainee is given a Koran upon entry, that they are practicing Muslims. Most detainees in GTMO come from Afghanistan, followed by Saudi Arabia, Pakistan, Yemen, and Algeria.¹³⁸ The U.S. is currently detaining anyone is believed to pose a threat to national security and has an affiliation with the Taliban or al-Qaida.¹³⁹ Detainees in GTMO are legally defined as unprivileged enemy belligerents.

The Department of Defense (DOD) has put detainees into three categories. They are classified as high, medium or low risk from a national security standpoint, high, medium or low threat based on detention and high, medium or low level based on a detainee's intelligence value. We recommend that these categories be eliminated and detainees be evaluated on a different basis. Under our recommendations, only detainees who have participated in terrorist activities will be classified as a threat. Everyone else will be dealt with according to the recommendations we have outlined below.

Khalid Sheikh Mohammed

"The 9/11 assaults were designed to cause as many deaths as possible and havoc and to be a big slap for America on American soil." – Khalid Sheikh Mohammed, June 2002¹⁴⁰

Khalid Sheikh Mohammed is a Pakistani unprivileged enemy belligerent currently held at Camp 7 in GTMO.¹⁴¹ In April 2003, he was captured by Pakistani intelligence and immediately given to the U.S., and was held at various secret CIA "black sites", where it was confirmed that he was waterboarded 183 times.¹⁴² It was through these tactics that

¹³⁷ "The Guantánamo Docket," last modified April 19, 2012
<http://projects.nytimes.com/guantanamo>.

¹³⁸ Ibid.

¹³⁹ Jennifer K. Elsea and Michael John Garcia, "Detainee Provisions in the National Defense Authorization Bills," *Congressional Research Service*, December 8, 2011
<http://www.fas.org/sgp/crs/natsec/R41920.pdf>.

¹⁴⁰ Terry McDermott, "Khalid Sheikh Mohammed, the mastermind of 9/11." *New Yorker*. September 13, 2010.
http://www.newyorker.com/reporting/2010/09/13/100913fa_fact_mcdermott?currentPage=all

¹⁴¹ Richard Minter, *Mastermind: The Many Faces of 9/11 Architect, Khalid Shaikh Mohammed* (New York: Penguin, 2011), 187-188.

¹⁴² Scott Shane, "Waterboarding Used 266 Times On 2 Suspects". *The New York Times*. April 20, 2009. .

Mohammed revealed crucial information about the organization of the 9/11 attacks.¹⁴³ Mohammed served as a head of the al-Qaida military committee and was Usama bin Laden's principal operative on the 9/11 attacks.¹⁴⁴ In September 2006, Mohammed was transferred to GTMO and in March 2007, Mohammed testified before a closed-door hearing that he was "...responsible for the 9/11 operation, from A to Z."¹⁴⁵ He appeared to be the mastermind behind the 9/11 attacks, and confessed to organizing the 1993 World Trade Center bombing, the Bali nightclub bombings, journalist Daniel Pearl's murder in 2002, and planning several assassination attempts.¹⁴⁶ The CIA official who interrogated Mohammed cautioned that most of what Mohammed had revealed upon being waterboarded was unusable, "designed to send the U.S. on the wrong path," and misled the U.S. into believing that Mohammed had more information on certain events than he actually had.¹⁴⁷

The military trials in 2008 resulted in him pleading guilty to charges of conspiracy, murder in violation of the law of war, attacking civilian objects, intentionally causing serious bodily injury, destruction of property in violation of the law of war, terrorism, and providing material support for terrorism.¹⁴⁸ Subsequently, Mohammed authored the "9/11 Shura Council" which justified his involvement in terrorism with his "inherent right" to protect his religious beliefs.¹⁴⁹ The military trials were ultimately abandoned, as was his trial in New York, New York.¹⁵⁰ Legal problems include finding a jury that is impartial and determining if Mohammed's right to a speedy trial was violated. It remains unclear if the evidence used against him is admissible.

Therefore, we recommend that Khalid Sheikh Mohammed be given a military trial in GTMO. The evidence used against him must have been procured legally and he should be awarded the right of a defense attorney. Mohammed's former deputy, Majid Khan, should be allowed to testify against Mohammed, and if found guilty of all charges, he should face the death penalty.

We recommend that detainees, who occupy high positions in terrorist organizations and have orchestrated significant assaults on the U.S., should not be tortured in ways that would jeopardize the efficiency of a military trial. Under no circumstance should detainees like

¹⁴³ "Key 9/11 suspect confesses guilt". *BBC News* (BBC). Accessed April 20, 2011.

<http://news.bbc.co.uk/2/hi/americas/6452573.stm>

¹⁴⁴ "JTF-GTMO Detainee Assessment: ISNUS9KU-010024DP." Accessed April 20, 2011.

<http://wikileaks.org/gitmo/prisoner/10024.html#>

¹⁴⁵ Ibid

¹⁴⁶ "Khalid Sheikh Mohammed's '31 plots'." Last updated March 15, 2007

<http://news.bbc.co.uk/2/hi/americas/6452789.stm>

¹⁴⁷ "JTF-GTMO Detainee Assessment: ISNUS9KU-010024DP." Accessed April 20, 2011.

<http://wikileaks.org/gitmo/prisoner/10024.html#>

¹⁴⁸ William Glaberson, "5 Charged in 9/11 Attacks Seek to Plead Guilty." *The New York Times*. December 8, 2008.

¹⁴⁹ Khalid Sheikh Mohammed et al, "The Islamic Response to the Government's Nine Accusations." (document written in response to the United States government during arraignment)

¹⁵⁰ "JTF-GTMO Detainee Assessment: ISNUS9KU-010024DP." Accessed April 20, 2011.

<http://wikileaks.org/gitmo/prisoner/10024.html#>

Khalid Sheikh Mohammed be released. However, detainees like Mohammed should have the option of facing the death penalty on a case-by-case basis if decided by a unanimous jury.

Abd al Rahbi

Abd al Rahbi is a prototype of a detainee who has not engaged in terrorist activities but has received military training and may have information on al-Qaida. He grew up in Yemen working a variety of jobs such as selling vegetables and after graduating high school he studied Islamic theology at the Furqan Institute.¹⁵¹ His transformation from ordinary citizen to suspected terrorist began with a lecture he heard from a sheikh who convinced him to take his pregnant wife with him to Afghanistan and teach the Koran.¹⁵² He was captured by Pakistani forces on Dec 15, 2001 while crossing the border between Afghanistan and Pakistan and then transferred to GTMO in January 2002.¹⁵³ He was suspected to have recruited terrorists and funded the Taliban. Al Rahbi received military training and served as a bodyguard for Usama bin Laden.¹⁵⁴ He was captured in an active zone of combat and the U.S. was primarily invested in gathering information about the fighting going on.¹⁵⁵ Therefore, evidence was not gathered with intent to prosecute Abd al Rahbi. Although the intelligence obtained may be true, some of it cannot be used in court because it was not gathered through legal procedures and the rest may not be enough to convict the detainee of a crime. There is no evidence stating al Rahbi has been involved in specific terrorist activities. While, al Rahbi has attended a training camp, currently, he cannot be prosecuted for a criminal offense. The GTMO task force categorizes him as a high risk to national security, high threat to the prison, and high intelligence value.¹⁵⁶

We recommend that because al Rahbi has not been involved in any terrorist activities, such as fighting on the front lines or setting off explosives, he should not be classified as a high threat to the U.S. Al Rahbi should be sent to a military commission in GTMO. If proven guilty of funding the Taliban he will be sent to another country to serve his sentence, but, if proven not guilty, he will be released.

If al Rahbi is to be released from GTMO, there remain some complications with determining his final destination. He cannot be sent back to his home country, Yemen, because there is a strong al-Qaida presence and not enough security to insure he does not re-engage with terrorism.¹⁵⁷ Ideally, al Rahbi would be sent to Afghanistan, a country that has

¹⁵¹ "JTF-GTMO Detainee Assessment: ISN US9YM-000037DP," last modified April 28, 2008, <http://wikileaks.org/gitmo/pdf/ym/us9ym-000037dp.pdf>

¹⁵² Ibid., 2

¹⁵³ Ibid., 3

¹⁵⁴ Ibid., 2

¹⁵⁵ "Final Report: Guantanamo Review Task Force," last modified January 22, 2012, http://media.washingtonpost.com/wp-srv/nation/pdf/GTMOtaskforcereport_052810.pdf

¹⁵⁶ "JTF-GTMO Detainee Assessment: ISN US9YM-000037DP."

¹⁵⁷ "Final Report: Guantanamo Review Task Force."

engaged in peace talk initiatives with the U.S. and has appropriate security measures.¹⁵⁸ Once sent to Afghanistan, al Rahbi will serve his sentence in a prison there. But if proven not guilty, he will be released from detainment because he was not convicted of a crime and can return to a country as determined by the summit, which would be outlined below.

For the future, we recommend that other suspected terrorists who have not engaged directly in terrorist activities, should be given similar treatment - a trial in a military commission, and sent to an appropriate country that assures the continued security of the U.S. or to continue imprisonment if convicted. The only exception is that under our recommendations, detainees will be captured with the intent to prosecute them. This means that the capture team should insure that information necessary to give detainees a fair trial is gathered simultaneously with intelligence data. However, current detainees that do not have enough information to try them, then their relocation will be determined during the summit that will be outline below.

Omar Ahmed Khadr

Omar Khadr is an example of a detainee that has low involvement in terrorist activities and has limited intelligence. Khadr is a Canadian citizen who was charged in 2002, at the age of 15 for: murder, attempted murder, conspiracy to terrorism, and killing Christopher Speer, an army sergeant.¹⁵⁹ Khadr was born and raised in Canada until 2006, when he moved to the Afghanistan-Pakistan region.¹⁶⁰ His involvement in terrorism began with encouragement from his father. He was trained to be a soldier and after killing Speer in a raid, he was sent to GTMO in October 2007. Khadr is being held to find out more information on his father's involvement with terrorism and other al-Qaida missions.¹⁶¹

The problem with Khadr's detainment is that he was captured as a minor. The U.S. military defines a juvenile as anyone under the age of 16.¹⁶² There have been 8 juveniles held at GTMO and all with the exception of Khadr were given mental and physical treatment, education, and were kept in a camp separate from adults.¹⁶³ Khadr was deprived of these rights and our recommendations will ensure that this will not happen in the future. Khadr

¹⁵⁸ Missy Ryan, "Afghan officials visit Guantanamo in peace bid," Reuters, March 10, 2012, accessed May 2, 2012,

<http://www.reuters.com/article/2012/03/10/us-usa-afghanistan-guantanamo-idUSBRE82901O20120310>

¹⁵⁹ "DOD Announces Sentence for Detainee Omar Khadr," U.S. Department of Defense, last modified October 31, 2010,

<http://www.defense.gov/releases/release.aspx?releaseid=14023>

¹⁶⁰ "JTF-GTMO Detainee Assessment: ISN US9CA-000766DP," last modified January 24, 2004,

<http://wikileaks.ch/gitmo/pdf/ca/us9ca-000766dp.pdf>

¹⁶¹ Ibid., 1

¹⁶² "Detention of Juvenile Enemy Combatants at Guantanamo Bay: The Special Concerns of the Children," Melissa A. Jamison, accessed May 3, 2012,

http://jjlp.law.ucdavis.edu/archives/vol-9-no-1/03_Jamison.pdf

¹⁶³ Ibid., 137

was given a trial in 2010 and accepted a plea deal in which he was sentenced to eight years. He was promised a transferral to Canada after a year to complete his sentence.¹⁶⁴

We recommend that the juvenile age be increased to anyone under the age of 18 consistent with the Protocols to the Convention on the Rights of the Child.¹⁶⁵ If the detainee is captured as a minor he should be treated as an adult if he is 18 at his arrival at GTMO. Future juveniles should still be kept in a separate camp and be ensured more humane treatment, such as medical care and education, as outlined by the Protocol. We recommend that all juveniles should be given a fair trial in the commission system and if they are convicted of a crime they will be detained in GTMO and if not guilty released back to their home country.

International Summit for Relocation

In the past, the U.S. has engaged in diplomatic negotiations with individual countries over the resettlement of GTMO detainees. However, most of these specific negotiations have been unsuccessful. Though there has been international interest in resolving this issue, there have not been large multilateral discussions about the resettlement of detainees. Meanwhile, many countries want their respective nationals to return home.¹⁶⁶ The U.S. stance on closing GTMO and individual country meetings have not been enough to create solutions regarding the re-location of detainees and to date there have not been any large collaborative multilateral discussions on the issue. We recommend that the U.S. should hold a summit that will allow the U.S. to refocus these interests internationally.

We recommend that there should be a summit held with the 26 countries that currently have citizens held in GTMO. These countries include: Afghanistan, Saudi Arabia, Pakistan, Yemen, Somalia, Palestine, Mauritania, Libya, Kuwait, Syria, Algeria, Tajikistan, Sudan, Iraq, Russia, Uzbekistan, United Arab Emirates, China, Morocco, Tunisia, Kenya, Indonesia, Malaysia, Bosnia, Egypt, and Canada.¹⁶⁷ We have chosen these countries because our goal is to give detainees the best chance of returning home. We would invite individuals from the previously listed countries who are cordial with the U.S. and who hold high positions in their respective governments to deal directly with their nationals in GTMO.

¹⁶⁴ "DOD Announces Sentence for Detainee Omar Khadr"

¹⁶⁵ "Optional Protocols to the Convention on the Rights of the Child," accessed May 3, 2012, <http://www2.ohchr.org/english/law/crc-conflict.htm>

¹⁶⁶ USA Today, "Taliban prisoners at Guantanamo accept transfer to Qatar," Associated Press. 2012.

¹⁶⁷ "WikiLeaks Reveals Secret Files on All Guantanamo Prisoners." Last modified April 25, 2011, <http://wikileaks.org/index.html>

The main objective of the summit is to determine how to deal with the detainees in GTMO that do not have sufficient information to be tried. The summit should accomplish the following goals:

- (1) determine where the prisoners are sent
- (2) evaluate the current security risks in the following countries
- (3) develop guidelines for future relations with the summit countries

With renewed common interests and the pressure of the international spotlight, a summit evaluating the relocation of detainees will create momentum in the international community, resulting in a push for a strategic and international solution to the resettlement issue of detainees. The summit would also involve discussions and lead to solutions for the problems associated with relocating detainees to countries like China and Yemen.

Obama's push has not been enough to persuade congress to fund relocation but Obama's push along with international pressure will force Congress to re-evaluate the issue. This is an unprecedented amount of international and executive pressure on GTMO. Even if Congress does not implement all of the solutions from the summit, the momentum created through discussions will force this issue into international spotlight and subsequently, will allow the issue to be debated and resolved in Congress.

Recommendations

- Only those proven to have participated in terrorist activities can be considered a threat. If these individuals have high levels of participation they cannot be released because they pose a threat to U.S. national security.
- Those who hold high positions in terrorist organizations or have high involvement should be: given military commissions at GTMO and if proven guilty they may face the death penalty, if decided by a unanimous jury, or continue to be detained. Evidence used against them must be derived from non-torture tactics.
- If detainees have not engaged directly in terrorist activities they should be: given a military commission, if proven guilty be sent to a prison in an approved country, and must be captured with the intent to prosecute.
- The age of juvenile detainees should be raised to anyone under 18 years old. Juveniles should be kept in separate camps and be ensured more humane treatment, and access to education.
- Those detainees that cannot be tried will be relocated according to the results of the summit that will be held.

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