# USA

# BROKEN PROMISES

## FAILURE TO CLOSE GUANTÁNAMO IS PART OF A DEEPER HUMAN RIGHTS DEFICIT

AMNESTY INTERNATIONAL

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# Contents

# AND NOW AT THE 11TH HOUR…

*Some individuals currently detained at Guantánamo have been there for more than 6 years, and most have been detained for at least 4 years…[P]rompt and appropriate disposition of the individuals currently detained at Guantánamo and closure of the facilities in which they are detained would further the national security and foreign policy interests of the United States*
President Barack Obama, 22 January 2009

*It is past time to shut down the detention facility at Guantánamo*
President Barack Obama, 6 December 2016

The 15th anniversary of the first detainees arriving at the US naval base in Guantánamo Bay, Cuba falls on 11 January 2017. Eleven days later, it will be eight years since President Obama signed an executive order committing his administration to ending the detentions by 22 January 2010 at the latest.

On 10 January 2017, there were 55 people still held at the base, 45 of them without charge, the remainder facing, or already having faced, military commission proceedings incompatible with international fair trial standards. Meanwhile, the perpetrators of crimes under international law committed against these defendants and other detainees continue to enjoy impunity.

On 1 January 2017, for the third time during the Obama presidency, the USA assumed a three-year seat on the UN Human Rights Council, having been voted there by the UN General Assembly in October 2016. As previously, in its pre-election 'manifesto' the USA promised to be a human rights champion and to abide by its human rights treaty obligations.

For eight years, the Obama administration has failed to address the detentions as a human rights issue. Instead it has applied a distinct "law of war" framework and allowed domestic politics to override international human rights norms. This is consistent with a long held reluctance of the USA to apply the same international standards to its own conduct that it frequently says it expects of others.

President Obama is about to transfer command of Guantánamo to his successor, Donald Trump. It is not too late for this handover on 20 January 2017 to occur without any detainees in the base. Even at this 11th hour, there is time for resolution of the detentions in compliance with the USA's human rights obligations. All branches of government should support such a resolution, as they are required under international law to do.

# PROMISES MADE

*The deep commitment of the United States to championing the human rights enshrined in the Universal Declaration of Human Rights is driven by the founding values of our nation and the conviction that international peace, security, and prosperity are strengthened when human rights and fundamental freedoms are respected and protected. As the United States seeks to advance human rights and fundamental freedoms around the world, we do so cognizant of our own commitment to address challenges and to live up to our ideals at home and to meet our international human rights obligations*

United States of America, UN Human Rights Council Candidate 2017-2019[1]

On 28 October 2016, the United Nations (UN) General Assembly elected 14 member states to serve on the UN Human Rights Council from 2017 to the end of 2019. One of them was the United States of America (USA). The USA took its seat on the Human Rights Council on 1 January 2017.

In its 'manifesto' published in February 2016 in support of its candidacy, the USA set out a range of human rights pledges and commitments, and declared its "deep commitment" to "championing the human rights enshrined in the Universal Declaration of Human Rights" (UDHR).

On 11 January 2017, it will be 15 years since the USA began a detention regime entirely antithetical to UDHR principles. The US naval base at Guantánamo Bay, Cuba was chosen as the location for detentions in order to deny legal protections to those held there.

On 10 January 2017, there were still 55 detainees at Guantánamo. Two had been held there since 11 January 2002, more than half of them were taken there in the first year of detention operations, and 51 had been held at the base for over a decade. At least 26 were held in secret US custody – some for years – prior to being transferred to the naval base. Forty-five of the 55 are detained without charge or trial. The other 10 have either faced or are facing unfair trial proceedings by military commission.

On 6 December 2016, President Obama said, "it is past time to shut down the detention facility at Guantánamo", but a day earlier he had handed his successor a legal and policy framework for indefinite detention.[2] President Obama now has little time left to make good his promise to end the Guantánamo detentions, albeit seven years past his deadline of 22 January 2010. Amnesty International is urging him to fulfil this commitment, and to do so in line with the USA's international human rights obligations.

And now the USA has assumed its seat on the UN's principal human rights body. Among the UN Human Rights Council's responsibilities, set by the General Assembly, is to "promote the full implementation of human rights obligations undertaken by States".[3] In its pre-election materials, the USA asserted its commitment "to meeting its UN treaty obligations and participating in a meaningful dialogue with treaty bodies."

Among the many outstanding calls to the USA from UN treaty monitoring bodies is precisely this – to end the Guantánamo detentions in a manner compliant with US treaty obligations. Any detainee the USA intends to prosecute should be immediately charged with recognizable criminal offences and brought to trial in ordinary civilian court. Military commissions should be abandoned. Anyone whom the US government does not intend to bring to fair trial should be immediately released. If it will take time to find a suitable country to receive any released detainee, he should be released into the USA. Meanwhile the necessary steps to ensure full accountability and remedy in relation to the human rights violations committed against detainees held at Guantánamo and elsewhere must finally be taken.

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[1] Available at http://www.state.gov/p/io/humanrights/index.htm

[2] Remarks by the President on the administration's approach to counterterrorism, MacDill Air Force Base, Tampa, Florida, https://www.whitehouse.gov/the-press-office/2016/12/06/remarks-president-administrations-approach-counterterrorism

[3] UN Doc: A/RES/60/251, Resolution adopted by the General Assembly on 15 March 2006.

# CONDITIONALITY BREEDS CONTEMPT

*The United States issued reservations, understandings, and declarations upon its ratification of the ICCPR. The United States' long-held position is that the ICCPR applies only to individuals who are both within the territory of a state and within that State Party's jurisdiction… The United States issued reservations, understandings, and declarations upon its ratification of the UNCAT…*

White House, national security legal and policy framework, December 2016[4]

On 6 December 2016, President Obama gave a speech at MacDill Air Force Base in Tampa, Florida on his "approach to counterterrorism over the last eight years", implicitly encouraging his successor to follow such an approach. He restated his opposition to the detentions at Guantánamo and that he would do all he could "to remove this blot on our national honour".[5] Yet, 24 hours earlier the White House had published a guidebook for, among other things, indefinite detentions in the counterterrorism context, including at Guantánamo.

The White House Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations reiterated the US position that, underpinning the detentions at Guantánamo and elsewhere outside the USA is the broadly worded Authorization for Use of Military Force (AUMF), passed by Congress with little genuine debate on 14 September 2001. This is accepted by all branches of the US government, as the report also restates. The USA is playing by its own rules at Guantánamo, and has been from the outset.[6]

The White House report reiterates that "The United States bases its authority to detain these individuals on the 2001 AUMF as informed by the law of armed conflict", and such "detention is generally authorized until the end of hostilities". It does not put any timeline on when this "end" can be expected – and, as three federal judges pointed out in October 2016, the administration has been seeking to backdate this "war" to as early as 1992 (see below). The White House report merely reiterates President Obama's now three-and-a-half-year-old assertion that "this war, like all wars, must end." It adds: "Unfortunately, that day has not yet come", because "terrorist groups like al-Qa'ida… still pose a real and profound threat to US national security". As a result, "the United States remains in a state of armed conflict against these groups", and "the 2001 AUMF continues to provide the President with domestic legal authority to defend against these ongoing threats."

In relation to detentions, geographic scope under the AUMF is unbounded too, and according to the Obama administration, "imposing such a geographic limit on the authority conferred by the 2001 AUMF would "unduly hinder both the President's ability to protect our country from future acts of terrorism and his ability to gather vital intelligence".[7] The 55 people still in Guantánamo on 10 January 2017 had originally been taken into custody at airports, houses, and other locations in Afghanistan, Azerbaijan, Djibouti, Egypt, Georgia, Iran, Pakistan, Thailand, Turkey, and United Arab Emirates. Those already transferred out of Guantánamo had been detained across an even wider range of countries.

At a time of presidential transition, the question arises as to what the USA's future direction on human rights will be, including in relation to those held at Guantánamo. There is reason for heightened concern given some of the rhetoric heard during the presidential campaign. On 23 February 2016, for example, candidate Trump said: "This morning, I watched President Obama talking about Gitmo, right, Guantánamo Bay, which, by the way, which, by

[4] Report on the legal and policy frameworks guiding the United States' use of military force and related national security operations, White House, December 2016, n. 191 and 192
https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/Legal_Policy_Report.pdf

[5] Remarks by the President on the administration's approach to counterterrorism, *op. cit.*

[6] This current report does not address the question of the USA's use of force in the counter-terrorism context, which also raises serious issues, see for example USA: 'Targeted killing' policies violate the right to life, June 2012, https://www.amnesty.org/en/documents/amr51/047/2012/en/

[7] Report on the legal and policy frameworks, *op. cit.*, see n. 13.

the way, we are keeping open, which we are keeping open. And we're going to load it up with some bad dudes, believe me. We're going to load it up."[8]

While it remains to be seen what a Trump administration's approach to detentions and interpretations of executive power will be, it is important to realize that respect for human rights is not a given in the USA, and never has been. This is a country that has long voiced support for human rights – and has been an important force in the development of international human rights instruments – but has for just as long shown a marked reluctance to apply those same standards to its own conduct.

Take the USA's response to the attacks of 11 September 2001. The treatment of those it took into custody around the world clearly ignored US human rights obligations. US personnel resorted to abduction, enforced disappearance, torture, arbitrary and indefinite detention, discrimination, and unfair trials by military commission.

Some might say the worst of this has long since been over, and that this episode was the response of a unique administration to a unique event (although the sort of campaign rhetoric noted above stirs fears of recurrence). Certainly one searches in vain for any apologies in the memoirs of the former President, Vice President or other officials from that administration. But if this was a one-off state of affairs, how is it that a number of policies incompatible with international human rights law have continued through eight years of another administration or that the crimes under international law committed during the previous years have never been properly investigated, let alone punished, or the truth about them fully revealed?

To the UN and the watching public, the Bush administration described the International Covenant on Civil and Political Rights (ICCPR) as "the most important human rights instrument adopted since the UN Charter and the Universal Declaration of Human Rights, as it sets forth a comprehensive body of human rights protections."[9] In contrast, when setting up the Guantánamo detention camp, the ICCPR was a set of principles to be avoided. The Department of Justice advised the Pentagon in December 2001 that the choice of Guantánamo as a location to hold detainees should preclude US federal courts from considering habeas corpus petitions, including challenges brought on behalf of any detainee to the "legality of his status and treatment under international treaties, such as the Geneva Conventions and the International Covenant on Civil and Political Rights".[10]

In 2006, the US Supreme Court found that Article 3 common to the Geneva Conventions applied to the detentions, puncturing the Bush decision in early 2002 to the contrary, but at the same time giving it confidence to continue framing its post 9/11 response as a "war", governed by its own interpretation of the "law of war" coupled with a selective or downright rejectionist approach to human rights law. To this day, the USA has continued to reject the position of the UN Human Rights Committee, the expert body established by the ICCPR to monitor its implementation, that the ICCPR applies to individuals held at Guantánamo.

The Obama administration reiterated to the Committee in October 2015 that the ICCPR is not applicable to the detentions, rather "the United States continues to have legal authority under the law of war to detain Guantánamo detainees until the end of hostilities", and "all current military commission proceedings" comply with the Geneva Conventions.[11] In its December 2016 national security legal and policy report, the White House reiterated its view that the ICCPR does not apply to individuals who are not "both" within US territory "and" its

[8] Inside Obama's plan to close the Guantánamo Bay detention center, PBS News Hour, http://www.pbs.org/newshour/bb/inside-obamas-plan-to-close-the-guantanamo-bay-detention-center/

[9] Opening statement to the UN Human Rights Committee, Matthew Waxman, Head of US Delegation and Principal Deputy Director of Policy Planning, US Department of State, 17 July 2006, Geneva, Switzerland, http://2001-2009.state.gov/g/drl/rls/70392.htm

[10] Memorandum for William J. Haynes, II, General Counsel, Department of Defense, Re: Possible habeas jurisdiction over aliens held in Guantanamo Bay, Cuba. From Patrick F. Philbin, Deputy Assistant Attorney General, John C. Yoo, Deputy Assistant Attorney General, Office of Legal Counsel, US Department of Defense, 28 December 2001.

[11] Reply of the United States of America to the Special Rapporteur for Follow-up on concluding observations of the Human Rights Committee on its Fourth Periodic Report on implementation of the International Covenant on Civil and Political Rights, 9 October 2015.

jurisdiction. The USA takes the view that the Guantánamo detainees are on territory that is ultimately Cuban - the reason the Bush administration chose Guantánamo for the detention facility in the first place.

The fact is that the USA's response to 9/11 did not come from nowhere, but was built among other things on the USA's aversion to international standards, including the conditionality that it has routinely lodged with its ratification of human rights treaties. Little has changed in this regard, despite repeated calls for such change from treaty monitoring bodies. This is an aspect of US exceptionalism that infects the USA's approach to human rights. So when in 2014 President Obama responded to a Senate committee's findings on a now terminated secret detention programme with the assertion that "one of the strengths that makes America exceptional is our willingness to openly confront our past, face our imperfections", he did not mean that the full committee report would promptly be declassified – despite the fact that it contained details of how each detainee was treated in CIA custody, in other words information about crimes under international law – or that the impunity associated with the programme would be ended, as the USA's international legal obligations required. Issuing the summary was deemed enough. The summary did not, for example, summarize Volume III of the full report, that is, it did not offer any form of synopsis of each detainee's treatment.

In its December 2016 report on national security policy and legal frameworks, the White House noted that the ICCPR and the UN Convention Against Torture (UNCAT) prohibit torture and other cruel, inhuman or degrading treatment. It added in a footnote that the USA had "issued "reservations, understandings, and declarations" (RUDs) when it ratified these treaties in 1992 and 1994 respectively. It made no reference, however, to the fact that it is now more than two decades since the UN Human Rights Committee expressed its regret about the extent of the USA's RUDs filed with its ratification of the ICCPR, which the Committee believed were "intended to ensure" that the USA had accepted only what was "already the law of the United States". The Committee was particularly concerned by the reservation lodged with the article 7 prohibition of torture and other cruel, inhuman or degrading treatment or punishment which it considered "incompatible with the object and purpose of the Covenant" (and hence in violation of the law of treaties).[12] The USA lodged an identical reservation to article 16 of UNCAT, which concerns the prohibition of cruel, inhuman or degrading treatment or punishment, and the UN Committee Against Torture has expressed the same concern as its counterpart under the ICCPR.

When Bush administration lawyers gave policy makers the green light for torture and other cruel, inhuman or degrading treatment in the post-9/11 context, references to these reservations riddled their arguments, as the UN Committee Against Torture noted to the Obama administration in 2014. In October 2015, and again in August 2016, the UN Human Rights Committee wrote to the administration to ask what measures had been taken "to establish responsibility for those who provided legal pretexts for manifestly illegal behaviour". None has been taken.

A decade earlier, the UN Committee Against Torture had expressed regret at the USA's stated view that enforced disappearance "do not constitute a form of torture" and called on the administration to "prosecute and punish perpetrators, as this practice constitutes, per se, a violation of the Convention." Also in 2006, the UN Human Rights Committee had called on the US authorities to investigate all allegations of torture and other ill-treatment in the counter-terrorism context, including in secret detention facilities, and to ensure that "those responsible are prosecuted and punished in accordance with the gravity of the crime." The USA utterly failed to comply. In August 2016, the Committee wrote to the Obama administration and expressed regret that it had received no further information on "investigations, prosecutions or convictions of US government personnel in positions of command for crimes committed during international operations or as part of the US detention and interrogation programmes".

The USA has failed to provide the Committee with the information it seeks, because it has not taken the necessary action against impunity. And consider what the Obama

[12] UN Doc.: CCPR/C/79/Add.50, para 14, 7 April 1995.

administration argued in federal court in 2010. Successfully seeking to keep from public disclosure information about the experiences of detainees previously subjected to enforced disappearance and torture or other cruel, inhuman or degrading treatment, the Department of Justice wrote: "The present prohibition against using these interrogation methods does not render their past use illegal."[13]

Repeated calls from these treaty monitoring bodies for the USA to withdraw its RUDs have gone unheeded. At the same time, the USA has proclaimed itself a human rights champion, promised to be a promoter and protector of human rights, and criticized other governments for human rights violations. In the pledges and commitments it made in early 2016 to bolster its candidacy for a seat on the UN Human Rights Council, the USA promised to "continue to support the work of the human rights treaty bodies".

This is the third time during the Obama administration that the USA has been elected to the Human Rights Council (which replaced the Human Rights Commission in 2006). Prior to each of these votes, the USA made the same promise: "The United States is committed to meeting its UN treaty obligations and participating in a meaningful dialogue with treaty body members" (2009); and "The United States is committed to meeting its UN treaty obligations and participating in a meaningful dialogue with treaty bodies" (2012).

The December 2016 White House report on legal and policy frameworks for national security operations states the USA's recently adopted position that its obligations under UNCAT "extend to certain places beyond the sovereign territory of the State Party", and that in the USA's case this includes the naval base at Guantánamo Bay in Cuba and "all proceedings conducted there", it makes no reference to the fact that it is now more than a decade since the UN Committee Against Torture told the USA that holding people indefinitely without charge was *per se* a violation of the UN Convention Against Torture. Today there are still 55 men held at Guantánamo, 45 of them without charge or trial. On 29 August 2016, the Committee again wrote to the US government to reiterate that this matter had still not been rectified.

Two and a half years ago, the UN Human Rights Committee reiterated the call on the USA to ensure that any prosecutions of Guantánamo detainees were "dealt with through the criminal justice system", not military commissions. The Committee has repeated this call in 2015 and 2016, but has been ignored. Seven detainees are currently facing unfair trial by military commission, with the prosecution pursuing the death penalty against six of them. These six were all previously held in the CIA's secret detention programme, with those who perpetrated crimes under international law against them continuing to enjoy impunity. Two other detainees are awaiting sentencing after pleading guilty under pre-trial agreements, and one other is serving a life sentence.

Amnesty International is continuing to call on President Obama in his final days in office to resolve the Guantánamo detentions in line with the USA's international human rights obligations. The USA appears to have no intention of bringing to trial most of those still held at the base. Those it does not intend to charge with recognizable criminal offences and bring to fair trial in ordinary civilian courts should be promptly released, into the USA if no other option which would comply with their human rights obligations is immediately available. It should abandon this military commission system and bring any prosecutions in the ordinary civilian courts. It should drop its pursuit of the death penalty against anyone.

As the outgoing administration hands over the USA's membership to the UN Human Rights Council to the new administration, the USA must live by the promises it made when promoting its candidacy for that seat. It asserted a commitment to work with the US Senate on ratification of a number of treaties, but it should now list among these the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention Against Torture. It should add to this a commitment to withdraw all limiting reservations, understandings and declarations it filed with existing ratifications.

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[13] *ALCU v. Department of Defense, Central Intelligence Agency.* Brief for appellees, US Court of Appeals for DC Circuit, March 2010.

# UNDERMINING BASIC PRINCIPLES

*The challenges of the war on terror do not necessitate truncating the judicial power to make room for a new constitutional order*
*Al Bahlul v. USA,* DC Circuit Court of Appeals, 20 October 2016, three-judge dissent

"Our success in dealing with terrorists through our justice system", President Obama told a military audience on 6 December 2016, "reinforces why it is past time to shut down the detention facility at Guantanamo." The Guantánamo detentions are incompatible with the USA's international human rights obligations, as is the military commission system, and as is the USA's failure to ensure full truth, remedy and accountability in relation to human rights violations that have occurred against detainees. And to use the words from the recent three-judge dissent cited above, part of the damage done by the USA's law of war framework has been the truncation of judicial power.

There exists a risk that marginal improvements to a prolonged unlawful situation may be accepted as adequate because they are better than nothing. The military commissions, for example, have been "improved" since their first incarnation under a military order signed by President George W. Bush on 13 November 2001. But no amount of improvement can rid them of their fundamental flaw – that they are not independent courts, but exceptional tribunals the creation of which was entirely unnecessary given the existence of fully functioning court system resourced and available to deal with the same prosecutions.

The UN Human Rights Committee has stated in its authoritative General Comment interpreting the right to a fair trial under the ICCPR that the trial of civilians by special or military courts must be strictly limited to exceptional and temporary cases where the government can show that resorting to such trials is "necessary and justified by objective and serious reasons", and where "with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials". Clearly that is not the case here.

The December 2016 White House report on the legal and policy frameworks for national security operations reiterates that "the Article III court system in the USA is a well-established forum for trying terrorism suspects". The USA has itself admitted that the federal courts (the courts established under Article III of the US Constitution) would be an entirely legal, appropriate and available forum in which to conduct the trials of Guantánamo detainees. Indeed, in 2009, the Department of Justice announced that five men accused of leading involvement in the 9/11 attacks would be brought to trial in ordinary civilian federal court in New York. The promise was short-lived, however, falling victim to domestic politics. In 2011, citing congressional blocking, the Attorney General announced a U-turn. The five would instead face trial by military commission. This outcome is clearly contrary to the UN Basic Principles on the Independence of the Judiciary which state:

> "everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals".

The three dissenting judges quoted above noted that in the case before them, that of Ali Hamza al Bahlul, who has been at Guantánamo since the first day of its detention operations and is the only person there serving a sentence imposed by a military commission, the government could have prosecuted him in the ordinary federal courts. They also expressed concern about what the Obama administration had argued to the court of appeals:

> "Against the backdrop of the war on terror, in which many of the traditional constraints on the use of law-of-war military commissions are disappearing, the government articulates a breathtakingly expansive view of the political branches' authority to subject non-service members to military trial and punishment. Indeed, it admits only two constitutional constraints on its power to try individuals in law-of-war military commissions: the charges must allege (1) that the individuals are 'enemy belligerents' who (2) engaged in proscribed conduct 'in the context of and associated with

> hostilities.'... What does it mean, for instance, for an individual to have committed an offense in the context of hostilities? The answer is uncertain, both as a temporal and geographic matter. We would be willing to wager that if you asked Americans when the United States' 'war' with al Qaeda began, most would say September 11, 2001. Even executive branch officials often cite that date as the beginning of hostilities against al Qaeda and its affiliates. But in a pending military-commission case, the government seeks to hold an alleged member of al Qaeda responsible for a failed attack on a US vessel that occurred in January 2000. It takes the position in that case that the United States' war with al Qaeda goes back 'to at least 1998,' and it appears to believe that the conflict may date as far back as 1992."[14]

This pending case is that of 'Abd Al-Rahim al-Nashiri, more information on whom is given below. In any event, Amnesty International categorically rejects the trial of civilians by military courts, including civilians who are alleged to have engaged in the kind of conduct at issue in the US cases. Even applying the criteria set out by the UN Human Rights Committee, however, the military commissions are not by any measure tribunals of demonstrably legitimate necessity, but creations of political choice. By their very nature, their application in cases such as these violates the right to fair trial. Moreover, the fact that this violation of fair trial rights is being reserved for foreign nationals renders the system discriminatory, again in violation of international law. In addition, the USA considers that the detainees acquitted at military commission trial can be returned to indefinite detention under the 'law of war'.

Over a decade ago, on 6 July 2004, President Bush ordered that Guantánamo detainee Abdul Sahir be made subject to his November 2001 Military Order, and in 2006, this Afghan national was charged for trial by military commission. Proceedings against him barely progressed, however, and the charges were later dismissed. The Obama administration's Guantánamo Review Task Force in its 2010 "final report" slated Abdul Sahir to be "referred for prosecution", but he remained in detention without charge. Then on 11 July 2016 – exactly 14 years after he was taken into custody by US military forces at his home in Afghanistan – the Periodic Review Board (PRB) decided that "continued law of war detention of the detainee is no longer necessary". It noted his "limited role in Taliban structure and activities, and the assessment that the detainee was probably misidentified as the individual who had ties to al-Qaeda weapons facilitation." It recommended his transfer out of the base. In early January 2017, he was still at Guantánamo.

Such decisions by the PRB, a "discretionary, administrative interagency process to review whether continued detention of particular individuals held at Guantánamo remains necessary to protect against a continuing significant threat to the security of the United States", might encourage the notion that the detentions have been rendered acceptable or even lawful.[15] But while the PRB, set up under a 2011 executive order, may be an improvement on the Combatant Status Review Tribunal and Administrative Review Board established under the Bush administration as part of its attempts to keep the courts away from the detentions, the PRB is entirely a construct of the USA's "law of war" framework.

Twenty-four detainees have been transferred out of Guantánamo after the PRB decided that their continued "law of war" detention was no longer "necessary". These outcomes cannot disguise the fact that the PRB can only have a further corrosive effect on the protections provided under the ordinary criminal justice system, in which detainees have the right not to be held indefinitely without charge or fair trial.

As the PRB order noted, "detainees have the constitutional privilege of the writ of habeas corpus to challenge the legality of their detention", or at least they are deemed to have had this "privilege" since June 2008, under the US Supreme Court's *Boumediene v. Bush* ruling.

The essence of habeas corpus proceedings has for centuries been that authorities must bring an individual physically before the court and demonstrate that a clear legal basis exists for

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[14] *Al Bahlul v. USA*, US Court of Appeals for the DC Circuit, 20 October 2016, Judges Rodgers, Tatel and Pillard dissenting.

[15] Periodic Review Secretariat, About the PRB, http://www.prs.mil/About-the-PRB/

their detention. Normally, if the government is unable to do so promptly, meaning within days, the court is to order the individual released. A court's power to obtain the immediate release of an unlawfully held individual must be real and effective and not merely formal, advisory, or declaratory. This is the bedrock guarantee against arbitrary detention (reflected in article 9(4) of the ICCPR, for example). If it is not fully respected by the government and courts in every case, the right to liberty and the rule of law are more generally undermined.

This is not what you get if you are a detainee at Guantánamo. Habeas proceedings take years. The detainee's physical presence before the court is denied. And a judge's ruling that the detention is unlawful – even if the executive accepts that ruling rather than appeals it – is effectively advisory, with release still not immediate but subject to diplomatic negotiations that can take many weeks or months. This is because the outcome that would make immediate release possible – transfer to and release in the USA – has been absolutely opposed by US authorities even as they pressure other countries to accept released detainees.

On 9 April 2010, a US federal judge ordered the release of Mohamedou Ould Slahi, a Mauritanian national who by then had been held at Guantánamo without charge or trial for eight years, after being rendered from Mauritania to Jordan, and then Afghanistan and Guantánamo. Slahi's detention was unlawful, the judge concluded, adding that "a habeas court may not permit a man to be held indefinitely upon suspicion, or because of the government's prediction that he may do unlawful acts in the future…" The Obama administration appealed. There was no requirement under the AUMF, the administration argued, that Slahi had to have "personally engaged in combat" and it was also of "no moment" that he was transferred to US custody "in a location other than Afghanistan". The President's detention authority under the AUMF, it continued, "is not limited to persons captured on a 'battlefield' in Afghanistan" and to argue otherwise would "cripple the President's capability to effectively combat al-Qa'ida". In November 2010, the Court of Appeals vacated the District Court ruling and sent the case back for further proceedings on the question of whether Mohamedou Slahi was "a part of" *al-Qa'ida* at the time he was taken into custody despite his claim to have by then severed all ties to the group. Mohamedou Ould Slahi had been held for another five and a half years when the PRB decided that his "law of war detention" was no longer "necessary". The District Court was informed of the decision, and the habeas corpus proceedings were stayed. On 17 October 2016, Slahi was transferred to Mauritania, nearly 15 years after he was taken from there.

Eleven years passed between a habeas corpus petition being filed for Haji Wali Muhammed on 7 June 2005 (three years after he arrived at Guantánamo), and a decision on that petition. On 8 June 2016, the District Court found that his detention was lawful under the AUMF. Three months later, after the administration had opposed his release for 14 years, the PRB decided that "law of war" detention was not necessary, and recommended his transfer. He remains in detention at Guantánamo, 14 and a half years after he arrived there.

A decision by the PRB that "law of war detention" is no longer "necessary" does not mean immediate release. Ghaleb Nasser Bihani received such a decision on 28 May 2014. Two and a half years later, he remains at Guantánamo, more than 15 years after he was first taken into custody in Afghanistan in November 2001.

In Shawqi Awad Balzuhair's case, about six months passed between his PRB decision and his transfer out of the base. This relatively short period in Guantánamo terms should not obscure what went before. A habeas corpus petition was filed in US District Court for on his behalf in July 2008, about three weeks after the Supreme Court ruled that the Guantánamo detainees had the "constitutional privilege" to habeas corpus and were entitled to a "prompt" hearing to determine the lawfulness of their detention. He had by then already been in Guantánamo for five and a half years, and before that had been held in the CIA's secret detention programme for a month.

On 11 July 2016, nearly 14 years after he was taken into custody in Pakistan, the PRB decided that Shawqui Awad Balzuhair's "degree of involvement and significance in extremist activities has been reassessed to be that of a low-level fighter. The Board also noted the detainee's lack of expression of support for extremist ideologies, the detainee's compliance record at Guantánamo, and the detainee's lack of ongoing extremist ties". It decided that his

"law of war" detention was no longer "necessary" and recommended that he be transferred. Four months after that, in November 2016, his habeas lawyers informed the District Court that "Mr Balzuhair remains in detention at Guantánamo Bay. It is unknown when he will be transferred." A month later, on 4 December 2016, the Department of Defense announced that the Yemeni detainee had been transferred to the Government of Cabo Verde.

In *Boumediene*, the Supreme Court said that "the costs of delay can no longer be borne by those who are held in custody." That the detainees have always born the costs of delays, as the executive retains control over their fate, was shown with the Guantánamo Review Task Force, set up under President Obama's January 2009 executive order to close the detention facility. Ridah Bin Saleh al Yazidi's "final disposition" from the Task Force in January 2010 was "transfer to a country outside the United States". He had also been slated for transfer under the Bush administration. In any event, in early January 2017, 15 years after being taken into custody in Pakistan in December 2001, he was still at Guantánamo.

Russian national Ravil Mingazov was taken into custody in Faisalabad, Pakistan on 28 March 2002. After some weeks in Pakistani prisons, he was transferred – without any judicial oversight – to US military custody in Bagram airbase in Afghanistan where he was held for several months. He was transported to Guantánamo in October 2002.

A petition for habeas corpus was filed on Ravil Mingazov's behalf in US District Court in late December 2005. There it metaphorically gathered dust until two and a half years later when the US Supreme Court ruled that the Guantánamo detainees "are entitled to a prompt habeas corpus hearing". Again, for the meaning of "prompt", dictionary definitions are redundant. Another two years passed before the District Court heard his habeas corpus claim.

After a four-day hearing in April 2010 in court in Washington, DC (without the detainee physically present), the judge ruled on 13 May 2010 that, even under its broadly interpreted AUMF powers, the detention was unlawful. He ruled that the Obama administration had "not demonstrated that Mingazov was 'part of' the command structure of any terrorist organization", and ordered it to "take all necessary and appropriate diplomatic steps to facilitate Mingazov's release forthwith". The administration appealed and sought a stay of this order. Ravil Mingazov's lawyers asserted in response:

> "The government had its opportunity to demonstrate that Mr Mingazov was a part of al-Qaida, Taliban, or associated forces. The government failed. Historically, that was the end of the story. If the Great Writ of Habeas Corpus was granted, the government had to release the petitioner on the courthouse steps… Instead, Mr Mingazov continues to remain locked up unlawfully at Guantánamo, while the government even delays taking the diplomatic steps necessary to effect his release. The public interest in the rule of law and basic human rights should not allow such injustice to continue".

However, the judge stayed his order on 4 August 2010, while acknowledging that this would "cause injury to Mingazov, who has already been held in custody at Guantánamo Bay for eight years and who will, as a result of this stay, remain there for at least as long as appellate litigation continues". A few months later, before oral argument in the Court of Appeals, the Obama administration filed a motion asserting that it wanted to run the habeas corpus hearing again, on the grounds that it had found some information that had not been considered in the 2010 hearing. Litigation on this development continued, and the years passed. On 12 July 2016, Ravil Mingazov filed a response to the government motion:

> "An honest harmonization of the government's position is this: when it comes to GTMO, the government always wins; and even when it loses, it can pull out 'new evidence' that it had in its possession for years and receive a do-over trial with that evidence added to the record, and so on, until it prevails… There are many aspects of GTMO that challenge whether our Nation is committed to the rule of law, and this motion is no exception… [Ravil Mingazov] survived the government's arrows and proved that his detention is unfounded – it cannot be that the government simply can reach back into its quiver, claim it found a new arrow, and re-fire… Mr Mingazov has missed the entirety of his son growing up… It has been six years since the government filed its appeal… Time is punishment for Ravil Mingazov, and he now enters his 15th year of confinement without charges".

Nine days later, the Periodic Review Board announced that it was recommending that Ravil Mingazov be released from Guantánamo. This executive review body noted his "record of compliance" at Guantánamo, his "history of positive engagements with the guard force", and the fact that he had not "espoused any anti-US sentiment that would indicate he view the US as his enemy". In contrast to its years of litigation in federal court after the District Court judge had found the detention unlawful because the Obama administration had "not demonstrated that Mingazov was 'part of' the command structure of any terrorist organization", the executive body "noted the detainee's degree of involvement and significance in extremist activities appears to be that of a low-level fighter". The PRB decided that "continued law of war detention of the detainee is no longer necessary".

On 26 July 2016, the Obama administration notified the District Court of the PRB's recommendation and that "the United States is considering transfer options". The judge agreed to postpone the 4 August 2016 hearing on the government's motion for relief from the court's 13 May 2010 order for the detainee's release. As of December 2016, Ravil Mingazov remained in Guantánamo. He fears human rights violations if returned to Russia. In September 2015, a family reunification petition was filed in the United Kingdom, where members of his family, including his now 17-year-old son live.

While Ravil Mingazov can now have hope that his detention at Guantánamo may be coming to an end, and the administration should act promptly on this, the PRB decision in his case does not inject one iota of lawfulness into his detention. His case illustrates how basic principles of ordinary criminal justice and protections against arbitrary detention have been and continue to be undermined.

## 'ABD AL-RAHIM AL-NASHIRI

> *[I]t is my conclusion that Mr Al-Nashiri suffers from complex posttraumatic stress disorder as a result of extreme physical, psychological, and sexual torture inflicted upon him by the United States. Indeed, in my many years of experience treating torture victims from around the world, Mr Al-Nashiri presents as one of the most severely traumatized individuals I have ever seen*
>
> Dr Sondra S. Crosby, October 2015

'Abd Al-Rahim Hussein Muhammed al-Nashiri recently began his 15th year in US custody. He was transferred to military detention at Guantánamo on or around 4 September 2006, after nearly four years in secret detention at various CIA "black sites", including at Guantánamo when the agency operated a secret facility in 2003 and 2004. For those four years, subjected to enforced disappearance, he had no access to any courts or any legal counsel whatsoever. He was also subjected to torture and other cruel, inhuman or degrading treatment, including by interrupted drowning ("waterboarding"), forced nudity, mock execution, sleep deprivation, threats and other interrogation methods and conditions of detention. No one has been brought to justice for what happened to him. Today, the USA is pursuing 'Abd al-Nashiri's execution.

In June 2008, two weeks after the Supreme Court's *Boumediene* decision, a habeas corpus petition was filed in US District Court on Abd al-Nashiri's behalf. Three years later, with that petition still pending, he was arraigned for capital trial by military commission on charges relating to the attempted bombing of the USS The Sullivans in 2000, and the bombings of the USS Cole in 2000 and of the French supertanker the Limburg in 2002, all in Yemen.

In an amended habeas corpus petition filed in 2012, lawyers for 'Abd al-Nashiri argued that the offences with which he had been charged were not triable by military commission because they were not committed in the context of and associated with hostilities. The Obama administration argued that ruling on the habeas corpus petition would unduly interfere with the military commission proceedings and such review should be held in abeyance pending resolution of the trial and any subsequent appeals. The District Court agreed, and in August 2016, so did the DC Circuit Court of Appeals. The latter ruled that 'Abd al-Nashiri – a man who had been subjected to enforced disappearance for nearly four years, who had survived torture authorized at the highest levels of government, who had been held for years before being charged, and whose health and well-being were cause for serious

concern – would have to wait. Although stating that "we are troubled by the estimate of Al-Nashiri's counsel that appellate review in this court might not occur until 2024", the Court of Appeals abstained from considering the issue until after the military commission trial.

One of the three judges dissented. Judge David Tatel argued for prompt consideration of 'Abd al-Nashiri's claim, given the "extraordinary" circumstances of the case, including allegations of "years of brutal detention and interrogation tactics that left him in a compromised physical and psychological state and that the harms he has already suffered will be exacerbated – perhaps permanently – by the government's prosecution of him in a military commission."

Judge Tatel pointed to the opinion of a doctor appointed by the Department of Defense to assess 'Abd al-Nashiri's physical and psychological condition. The judge quoted some extracts from this expert assessment, which was filed in the Court of Appeals in December 2015. This assessment bears repeating in fuller detail, given its clear description of the nexus between past violations and the current situation faced by such detainee/defendants:

> "[I]t is my conclusion that Mr Al-Nashiri suffers from complex posttraumatic stress disorder as a result of extreme physical, psychological, and sexual torture inflicted upon him by the United States. In my opinion, the CIA also succeeded in inducing 'learned helplessness' in Mr Al-Nashiri. The result is that Mr Al-Nashiri is most likely irreversibly damaged by torture that was unusually cruel and designed to break him. Indeed, in my many years of experience treating torture victims from around the world, Mr Al-Nashiri presents as one of the most severely traumatized individuals I have ever seen. Making matters worse, there is no present effort to treat the damage, and there appear to be efforts to block others from giving him appropriate clinical care.
>
> The physical and psychological diagnoses of Mr Al-Nashiri are compelling. One suffering from complex PTSD would be expected to be hypervigilant, suffer from intrusive recollections and flashbacks, sleep disorders, nightmares and other recognized sequalae of torture. Mr Al-Nashiri displays every symptom of complex PTSD. He suffers chronic nightmares, the content of which, while classified, in my opinion directly relate to the specific physical, emotional and sexual torture inflicted upon Mr Al-Nashiri while in US custody. He experiences flashbacks, which are triggered frequently by reminders of torture.
>
> The torture experienced by Mr Al- Nashiri has fractured his trust in humanity, which has damaged his ability to interact with all humans, including counsel, doctors, other detainees, and even family. While much of Mr Al-Nashiri's treatment remains classified, there is no question that Mr Al-Nashiri was tortured at the hands of the CIA and that his current symptoms and poor health directly relate to that torture.
>
> My physical examination of Mr Al-Nashiri strongly supported his account of torture. This examination included a detailed history of historical and current physical symptoms, in addition to examination findings, including scars. Many of his physical ailments, notably chronic pain, can be linked to torture techniques utilized during his detention.
>
> Despite the passage of time between Mr Al-Nashiri's direct torture in CIA custody and the present, he shows little sustained improvement. Although, even in the best of circumstances, the horrific and calculated nature of his torture would be expected to have long lasting effects, there are multiple factors that are unique to Guantánamo and the military proceedings against him that are further exacerbating his symptoms and suffering.
>
> A principal factor in Mr Al-Nashiri's current condition is that Guantánamo itself was one of the 'black sites' in which Mr Al-Nashiri was held, during his period of secret detention in the RDI [rendition, detention, interrogation] program. It is difficult to overstate the

pervasive consequences of this. On a periodic basis Mr Al-Nashiri is confronted with reminders (visual, audible) of his time in CIA custody. Seeing these reminders particularly when shackled as he often is while moved to and from meetings with counsel and to court, triggers traumatic stress and causes him intense anxiety, dissociation, and painful flashbacks to his experience of torture.

His deterioration is exacerbated by the lack of appropriate mental health treatment at Guantánamo. Based on my assessment and vast experience caring for survivors of torture, the physical and mental health care afforded to him is woefully inadequate to his medical needs. A significant factor in my opinion is that medical professionals, including mental health care providers, have apparently been directly or indirectly instructed not to inquire into the causes of Mr Al-Nashiri's mental distress, and as a consequence, he remains misdiagnosed and untreated.

Any discussion of his experience of torture, which is the primary cause of his most chronic physical and mental ailments, appears to be off limits. I base this opinion on my review of medical records and the public testimony of 'Dr 97', who was Mr Al-Nashiri's attending medical healthcare provider until recently. Dr 97 changed his diagnosis of Mr Al-Nashiri from PTSD to Narcissistic Personality Disorder shortly in advance of a hearing that involved the adequacy of Mr Al-Nashiri's medical care. This is professionally irresponsible and is representative of the quality of mental health care that Mr Al-Nashiri receives.

Lack of adequate mental health treatment is exacerbating Mr Al-Nashiri's suffering and instability, and he continues to suffer from ongoing PTSD symptoms including somatic complaints, nightmares, hypervigilance, flashbacks, numbing, and a host of other symptoms.

The procedures and circumstances of Mr Al-Nashiri's conditions of confinement and military trial process are sources of triggering events. The lack of treatment has left Mr Al-Nashiri without the tools necessary to self-regulate his emotional responses to triggering events that others may not perceive. Without realizing it, guards, military trial personnel and even Mr Al-Nashiri's defense team do or say things that seem benign, or at least manageable in terms of their emotional valence, but which are profoundly and disproportionately upsetting to Mr Al-Nashiri. The absence of an adequate mental health support system in Guantánamo causes each of these episodes to exacerbate Mr Al-Nashiri's complex PTSD.

The environment in Guantánamo lacks stability or any sense of relative safety. This lack of stability profoundly exacerbates Mr Al-Nashiri's complex PTSD. I understand from public court filings that the policies and procedures within the detention facilities are highly variable and unpredictable. This appears to be at least partially the result of an unstable command environment. Most of the detention personnel are stationed in Guantánamo for only 6 to 18 months. In addition, multiple chains of command are responsible for various aspects of his detention, the military trial process, and his health care. A key strategy of the CIA's RDI program was to keep the detention facility's policies and procedures unpredictable in order to induce helplessness. Whether deliberate or not in Guantánamo, the effect on Mr Al-Nashiri is the same.

This chronic uncertainty conspires to present him with ever-changing rules and procedures, whose rationales are obscure to the point of arbitrary. While healthy adults might be able to accept that this atmosphere of uncertainty is now only incidental and a

consequence of bureaucratic mismanagement, Mr Al-Nashiri has no way of differentiating this from the government's prior deliberate efforts to destabilize his personality. Whatever the genesis of the chronic uncertainty, the effect is the same. There is an almost daily retraumatization of Mr Al- Nashiri and no adequate mental health care to provide him the tools to deal with that.

At present, the military trial process is a principal driver of this instability. Rules governing hearings and how the issues will be dealt with are highly fluid and unpredictable.

Moreover, the military judges have responded to defense requests pertaining to Mr Al-Nashiri's conditions of confinement by stating that they have no power to control the various agencies that impact Mr Al-Nashiri's well-being, such as the command that is responsible for control over the facility where Mr Al-Nashiri is housed or the medical staff at Guantánamo. To be clear, I have no insight into the merits on any issue other than issues pertaining to Mr Al-Nashiri's health care. However, in my opinion, the inability or unwillingness of the presiding judge to act on the merits of issues directly impacting Mr Al-Nashiri's conditions of confinement and consequently his mental health contributes to a general atmosphere of arbitrariness that, given the stakes involved, exacerbates his trauma.

Given that the military trial is seeking to impose the death penalty against him, the ad hoc character of the proceedings causes Mr Al-Nashiri profound anxiety. This anxiety is exacerbated by the fact that often his own defense counsel are typically unable explain or predict the course of the proceedings to him, to articulate applicable rules and standards, or set reasonable expectations for what will transpire. Indeed, given the ad hoc nature of the proceedings, it is unclear if or when a trial will occur.

One of the most destabilizing aspects of the military trial process is the lack of continuity of Mr Al-Nashiri's defense team. Only one of his lawyers who were present at the beginning of the proceedings in 2011 remains. I understand that this is a consequence of military personnel rules. But Mr Al-Nashiri is ill equipped to understand, let alone cope with, the loss of lawyers with whom he has developed relationships of varying degrees of trust…

Another aspect of the military trial process that causes a great deal of anxiety and traumatization is his periodic exclusion from the proceedings. When the military commission goes into 'closed session', not only is Mr Al-Nashiri excluded from the courtroom, but his attorneys are prevented from explaining to him what transpires or providing specifics as to why the session was closed in the first place. This in my opinion seriously interferes with his ability to trust his attorneys. What is more, he is generally aware that sessions are closed when issues relating to his torture are being discussed. This causes him acute distress associated with his exclusion from a discussion of his own experiences.

In my opinion, a capital trial of Mr Al-Nashiri in the current Military Commission regime will have a profoundly harmful and possibly long lasting effect upon him, in addition to the permanent harm already inflicted. While I would expect a capital trial in any court to be stressful, my knowledge of the more predictable procedures of federal confinement and trials causes me to believe that the contemplated military trial is stressful on a different order of magnitude and, given Mr Al-Nashiri's situation and fragile psychological state induced by torture, exponentially more harmful.

Indeed, I have serious doubts about Mr Al-Nashiri's ability to remain physically or mentally

> capable of handling the physical and emotional stress of the military trial process. As things stand, hearings in Guantánamo have lasted no more than a few days a week, perhaps one week per month. When a trial, expected to last several months, begins and trial proceedings are held daily and particularly when issues surrounding his torture are litigated in an adversarial setting, I fear that Mr Al-Nashiri will eventually decompensate. Without adequate mental health support and in light of the unusual and unpredictable character of the proceedings, there is a strong likelihood that this decompensation will have a permanently disabling effect on his personality and his capacity to cooperate meaningfully with his attorneys."

In his dissent, Judge Tatel argued that the Court of Appeals should not wait until after the military commission trial to rule on the claims raised in Al-Nashiri's habeas corpus petition:

> "we are faced with the federal executive branch's assertion that it should get the first crack at deciding Al-Nashiri's substantial constitutional and statutory challenges to a military commission's authority to try him even though Al-Nashiri may, because of the executive branch's past actions, suffer severe and permanent injuries from the exercise of its jurisdiction. Further, the military commission has concluded that it will not fully determine its own jurisdiction, in the first instance, until trial. By the time Al-Nashiri has an opportunity for meaningful judicial review, the extraordinary injuries may well have occurred."

The Obama administration has continued to pursue the "first crack" cited by Judge Tatel, including 'Abd al-Nashiri's execution if it obtains his conviction and death sentence. Meanwhile, in its December 2016 Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations, the White House pointed out that the UNCAT "creates a variety of legal obligations" that are "binding on the United States", including that it "promptly and impartially investigate credible allegations of torture under its jurisdiction". It has utterly failed in its obligation to conduct adequate investigations into and ensure accountability for the crimes under international law committed against 'Abd al-Nashiri and others by US personnel. Article 14 of UNCAT also requires that victims of torture are able to obtain redress and have "an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible."

## AMMAR AL BALUCHI

> *The result of over classification is that my memories are classified, my thoughts are classified, my pain and suffering is classified, my post torture (post trauma) symptoms are classified*
>
> Ammar al Baluchi, December 2015

Another of the six men currently facing capital charges at Guantánamo is Ammar al Baluchi. He and his four co-defendants were first charged in 2008 under the MCA of 2006 for trial by military commission. These charges of involvement in the 9/11 attacks were dismissed after the Obama administration announced in 2009 that it would transfer the men to the US mainland to bring them to trial in civilian federal court. However, in 2011 the Attorney General announced a U-turn. Ammar al Baluchi and the four other men were charged with crimes under the MCA of 2009, including conspiracy, attacking civilians, murder in violation of the law of war, and terrorism and would be tried by military commission. The trial has yet to begin, and pre-trial litigation continues.

Taken into custody in Pakistan in April 2003, Ammar al Baluchi was subjected to enforced disappearance in secret CIA custody until he was transferred to Guantánamo in early September 2006. During his three and a half years in CIA custody he was held in a number of locations, the identity of which remain classified Top Secret. The countries in which "black sites" operated by the CIA were located during the time that Ammar al Baluchi was in CIA custody are believed to have included Afghanistan, Poland, Romania, Cuba (Guantánamo), Morocco, and Lithuania.

In its review of the USA in November 2014, the UN Committee Against Torture said that it

was "particularly disturbed" by the USA's "draconian system of secrecy surrounding high-value detainees that keeps their torture claims out of the public domain", a regime which "prevents access to effective remedies and reparations and hinders investigations into human rights violations by other States". The Committee called for "the declassification of torture evidence, in particular accounts of torture by Guantánamo Bay detainees."

Like others, Ammar al Baluchi's experiences in the CIA secret detention programme are classified Top Secret, and his descriptions and recollections of those three and a half years cannot officially be made public until they are declassified. He has himself written of the effect of this classification. In December 2015, he said:

> "The US Gov went to employ extreme measures to overclassify everything they did with regard to torture which ironically proved in bold that the Torture Program was state sponsored up to President and Vice President, executive branch and other branches of US Gov which also proves it was systematic not random. So there goes the accountability, it should start from the top not the other way.
>
> The result of over classification is that my memories are classified, my thoughts are classified, my pain and suffering is classified, my post torture (post trauma) symptoms are classified. Therefore there was no chance for me to obtain effective treatment and there was no chance whatsoever to get rehabilitation even after over 12 years of the initial trauma (torture) but instead I was and still am subjected to retraumatization on daily bases every day for more than 4,500 days in row, every day I am subjected to multiple aspects of my torture, every day I am exposed to multiple reminders of my torture, and this is not happening randomly but systematically."

Among the issues that have been the subject of pre-trial litigation concerns the defence team's efforts to obtain information about his treatment during his time in CIA custody. For example, since 2014 Ammar al-Baluchi's lawyers have been asking the military commission judge to order the government to provide the defence with the full report of the Senate Select Committee on Intelligence of its review into the CIA secret detention programme. Clearly this is of relevance to the defence team, given that their client was held in this programme for more than three years, and given that the SSCI report contains details of his treatment during that time (as it does of all those held in the CIA programme). The military judge has yet to rule on this matter, and the litigation continues.

In April 2015, the military judge overseeing 'Abd al-Nashiri's military commission pre-trial proceedings, denied a defence motion to compel production of the SSCI report, and instead directed the government to tell him of "all newly located and discoverable material" provided to the defence as a result of the government's review of the SSCI report. Then, on 28 December 2016, in 'Abd al-Nashiri's habeas corpus case in District Court in Washington DC, Judge Royce Lamberth issued a preservation order in relation to the SSCI report. Judge Lamberth ordered the administration to "preserve and maintain all evidence, documents and information, without limitation, now or ever in [the administration's] possession, custody or control, relating to the torture, mistreatment, and/or abuse of detainees held in the custody of the Executive Branch since September 11, 2001". He explicitly noted that this included the full SSCI report and all the documents relied upon in producing that report. He further ordered that "an electronic or paper copy" of the report be deposited with the Court Security Officer for secure storage.[16] The Obama administration had opposed this outcome, including on the grounds that 'Abd al-Nashiri had sought and been denied "nearly identical relief from the military commission".[17] In early January 2017, it was not known if the Department of Justice would appeal Judge Lamberth's order.

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[16] *Al-Nashiri v. Obama*, Order. In the US District Court for the District of Columbia, 28 December 2016.

[17] *Al-Nashiri v. Obama*. Respondents' interim response to petitioner's motion for a preservation order. US District Court for DC, 5 December 2016.

In March 2014, the UN Human Rights Committee called upon the USA to declassify and make public the report of the SSCI study. In November 2014, the UN Committee against Torture also called for the "declassification and prompt public release of the Senate Select Committee on Intelligence report on the CIA secret detention and interrogation programme, with minimal redaction."

In December 2014, the SSCI released a declassified 500-page summary of the 6,500-page report. The full report remains classified Top Secret. In October 2015, the UN Human Rights Committee again wrote to the US government to express concern that the report remained classified, and that the Department of Justice apparently was not planning to reopen investigations into the CIA programme despite have access to the full report. In August 2016, the UN Committee against Torture wrote to the USA to express concern that the USA had still not conducted the necessary investigations into torture, particularly in the CIA programme, and it added that this was "particularly regrettable" given the publication of the SSCI summary. The UN Human Rights Committee then wrote again in August 2016 to express concern that it had received no further information from the authorities, and again in December 2016.

As noted above, the USA has repeatedly promised to engage in "meaningful dialogue" with treaty monitoring bodies.

In January 2015, the defence lawyers filed an emergency motion to have the full report at least provided to and kept by the military commission judge, in order to preserve it pending further proceedings. This motion was filed after the leadership of the SSCI changed and its new chairman, who had been critical of the study, requested the executive branch to return the copies of full report to the Committee. Then on 7 December 2016, in a pre-trial session before the military judge, the lead lawyer for Ammar al Baluchi argued that the situation had once again changed and there were a number of reasons why the judge should at the very least order that the Department of Defense's copy of the full SSCI report be provided to him and placed in his custody. He explained that what had made the request all the more urgent was the revelation that one of the eight copies of the report in the possession of the executive branch (specifically the one in the possession of the CIA Inspector General) had been "inadvertently" destroyed. Secondly, the lawyer pointed to information that "the United States Government, through what it describes as a mistake, has decommissioned or destroyed a black site without notice to the defence". And thirdly, he argued that a new administration was soon to take office under a President who during the election campaign had indicated support for the torture method known as "waterboarding" (interrupted drowning), "or worse", and that there were reasons to believe that the incoming administration would be "hostile to preservation of the report". Since "both the legislature and the executive will be under control of persons who have expressed their displeasure with the report", he continued, there was a genuine reason to fear that the report "could be destroyed either inadvertently, as the CIA Inspector General has claimed, or as part of a political strategy".

On 9 December 2016, the Counsel to President Obama wrote to Senator Dianne Feinstein, the Vice-Chair of the SSCI (and Chair at the time of the study) to tell her that the full report would be preserved under the Presidential Records Act. The letter concluded that "at this time, we are not pursuing declassification of the full Study". Amnesty International will continue to seek declassification and release of the study, not least Volume III which contains details of the treatment in CIA custody of all those individuals whom the SSCI found had been subjected to the programme.

Another issue being litigated is whether the CIA provided the makers of the 2012 Hollywood film, Zero Dark Thirty, with classified information not provided to Ammar al Baluchi's lawyers about his treatment in CIA custody. A draft CIA document released under Freedom of Information Act notes that the film "includes several interrogation scenes the first of which is an interrogation of a character who is modelled after Ammar al-Baluchi". As an article in Time Magazine put it in 2013, "the first 25 or so minutes of the film are largely taken up with torture: Ammar is strung up, beaten, waterboarded and kept awake for 96 hours straight". According to the scriptwriter's initial email contact with the CIA's Office of Public Affairs, "we intend to make accuracy and authenticity hallmarks of the production, for we

believe that this is one of those rare instances where truth really is more interesting than fiction". The litigation on what information the CIA went on to provide the filmmakers is continuing. Meanwhile, the USA is still failing to meet its obligation to reveal the full truth about the human rights violations that occurred.

Some of Ammar al Baluchi's allegations have been declassified, and include the following:

> "The [redacted] held me first in [redacted], where they used their fists and cricket bats to force me to talk. After days of standing blindfolded they moved me to another location to be interrogated from well before the sun came up to well after it went down. I felt as if someone outside was manipulating the interrogators. The [redacted] took me to [redacted], where I spent one day before I was taken to [redacted]. This is when I knew others had been manipulating the [redacted] interrogators. [Redacted] was another place of complete darkness, where I was naked, thirsty, starving, and shackled while suspended from the ceiling and waiting for them to come for me with more questions. When they did come, I was taken to a room so bright it hurt to open my eyes. The difference here between the complete darkness of my cell and the harsh, extreme light of the interrogation room have caused me to feel pain to this day when I am exposed to the brightness of sunlight or other bright lights.
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> After the place of darkness was the place of sterile, white light, [redacted]. Here they blazed light that was bright and intense because of the sterile white of the walls, floors and ceilings. Here it felt as if I was 'living in a nightmare'. Here I finally had clothes, short pants and a blanket, which was not enough to ward off the cold of this place.
>
> Next was [redacted], a place where they used drugs to make me hallucinate and music to disorientate me. The music made the effects of the drugs more intense. There were constant threats that I would be returned to [redacted] and to the sterile white rooms. Here in [redacted], the interrogators played a game of good cop, bad cop. I spent my days and nights listening to the sounds of others being tortured with the lights always on, not bright, not dim, just on.
>
> Next was [redacted], another place of constant light, light that I was told was to provide me with Vitamin D because I had not seen the sun for a very long time. It was here that I saw every day the hooks on the floor and the ceiling to remind me of the places before where I was chained to the floor or suspended from the ceiling. It was here that manipulation of time was used to ensure that I never knew when to pray, whether it was day or night or even what day it was on the calendar.
>
> In many of the places that I was held I saw the same people, who interrogated me, and in other places new interrogators were present, but there were ones who always seemed to reappear at some point. In some places I could communicate with the others held, while in others harsh punishments were dealt to anyone caught talking or communicating with anyone else being held. Sometimes I saw or heard the same people being held with me that I had known from the other places I was held. At other times I would not see or hear another person that I had been held with previously for weeks or months at a time.
>
> In [redacted], two other brothers who had been held incommunicado for the previous year had been caught communicating. One brother was sent to another continent to be held alone and unable to have any human contact for months, while the other remained in [redacted].
>
> Years later I still have trigger responses to sounds and scents among other things. The

> intense feelings of the torture flood in and are often unexpected when they come. The threats and the fear continue to plague me daily making it difficult to not remember the torture that I still endure."

According to his lawyers, Ammar al Baluchi displays symptoms of post-traumatic stress disorder and traumatic brain injury as a result of the torture and other ill-treatment to which he has been subjected in CIA custody. He has described the technique of "walling", authorized at the highest levels of the US government. Describing what he says happened to him in late May and early June 2003, Ammar al Baluchi wrote in December 2015:

> "At the CIA black site, in the very first days. After US Gov Agents shaved my head, then they smashed my head against the wall repeatedly. It continued until I lost count at each session. As my head was being hit each time, I would see sparks of lights in my eyes. As the intensity of these sparks were increasing as a result of repeated hitting then all of sudden I felt a strong jolt of electricity in my head. Then I couldn't see anything, everything went dark and I passed out.
>
> Next thing I found myself in a different place suspended to the ceiling in a dark cold cell. I don't know for how many hours I was unconscious. Naked while my legs were swollen as a result of extended standing. My legs couldn't support my body. The handcuffs were cutting my wrists which were pulled over above my head. A very sharp throbbing pain in my head. There was an extremely loud and disturbing music with a mixture of grating screeching shrill sounds cutting into my ears, pounding my mind. As every now and then an agent would come and hit the steel door with a metal bar in his/her hands making verbal threats pointing to the metal bar in addition to flashing a sharp light into my face. And when I indicate that I need water to drink, someone would come and stand at the doorstep holding a cup/container of water, showing it to me. Then he or she would spill it on the floor and leave.
>
> After this particular head injury incident I lost my ability to sleep ever since. I was not able to have a normal or deep sleep. I am still reliving the nightmares of this incident every night every time I try to close my eyes it just pops up and this was just one among many incidents."

Among other symptoms, Ammar al Baluchi's lawyers say that he is unable to concentrate for prolonged periods of time, or to read without losing concentration, and suffers dizziness and impaired executive functioning. Multiple formal requests for a full medical assessment and treatment of Ammar al Baluchi have been denied.

# REMEDY DENIED, AGAIN AND AGAIN

*The State party should ensure that all victims of torture are able to access a remedy and obtain redress, wherever acts of torture have occurred, and regardless of the nationality of the perpetrator or the victim*

UN Committee Against Torture, conclusions on USA, November 2014

In its August 2016 communication to the Obama administration, the UN Human Rights Committee also pointed to reports that "current and former Guantánamo detainees have been deprived of the ability to seek judicial remedy for torture and other human rights violations incurred while in US custody", and rued the lack of information provided by the USA in this regard. Again, there was nothing much the Obama administration could say. Indeed, it had just recently been arguing in federal court to have the lawsuit of former Guantánamo detainee Mohammed Jawad dismissed.

Mohamed Jawad was under 18 years old at the time he was taken into US custody in Afghanistan in 2002. He was held for years without trial, before being charged in late 2007

for trial by military commission. Proceedings against him began, but then the military prosecutor resigned citing "ethical qualms", and the military judge ruled that the teenager had been subjected to "abusive conduct and cruel and inhuman treatment" in Guantánamo. The military judge granted the defence motion to suppress statements made by Jawad in custody. The Obama administration dismissed charges, but kept him in detention, carrying on the Bush administration's opposition to Jawad's habeas corpus petition.[18]

On 16 July 2009, setting 5 August as the date for Mohammed Jawad's habeas corpus hearing (more than a year after the US Supreme Court had ruled that the Guantánamo detainees were entitled to a "prompt" hearing to challenge their detention), a US District Court Judge referred to the administration's case against Mohammed Jawad as "riddled with holes", "in shambles", and "absolutely shocking". She also ruled to suppress "as a product of torture" every statement made by Mohammed Jawad since his arrest in Kabul in December 2002. Without the statements, she said, the government's case was "gutted" and the "US Government knows it is lousy".

Despite a federal judge and a military judge having pointed to torture and other ill-treatment having been used against Mohamed Jawad in US military custody, when it came to remedy the Obama administration took precisely the same line as the Bush administration before it – block it. The Obama administration successfully invoked Section 7(a) of the Military Commissions Act, signed into law by President George W. Bush in October 2006:

> "[N]o court, justice, or judge shall have jurisdiction to hear or consider any [non-habeas] action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination."

Six days after the UN Human Rights Committee wrote to the Obama administration about the blocking of judicial remedy for former and current Guantánamo detainees, the US Court of Appeals dismissed the Jawad lawsuit on the grounds that "the federal courts lack jurisdiction to hear his claims".[19]

This is just the latest in what is now a long line of such denials. It is systematic.

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[18] USA: From ill-treatment to unfair trial. The case of Mohammed Jawad, child 'enemy combatant', 13 August 2008, http://www.amnesty.org/en/library/info/AMR51/091/2008/en. USA: Military judge hears allegations of ill-treatment of teenager at Bagram and Guantánamo, 15 August 2008, http://www.amnesty.org/en/library/info/AMR51/094/2008/en. USA: Military prosecutor in child 'enemy combatant' case resigns, citing 'ethical qualms', 26 September 2008, http://www.amnesty.org/en/library/info/AMR51/107/2008/en. USA: Remedy and accountability still absent: Mohammed Jawad subjected to cruel and inhuman treatment in Guantánamo, military judge finds, 1 October 2008, http://www.amnesty.org/en/library/info/AMR51/109/2008/en; USA: Sounding a note of urgency: Judge loses patience over Guantánamo case; detention and interrogation policy Task Forces delay reports, 21 July 2009, http://www.amnesty.org/en/library/info/AMR51/084/2009/en; USA: Moving the goalposts, prolonging the detention: Mohammed Jawad no longer detained under AUMF, but still held, 27 July 2009, http://www.amnesty.org/en/library/info/AMR51/087/2009/en

[19] *Jawad v. Gates*, US Court of Appeals for the DC Circuit, 12 August 2016. A petition to the US Supreme Court to review the decision was filed in November 2016, and was pending before the Court in early January 2017.

# AN OPEN LETTER TO US AMBASSADORS

Dear Ambassador

Nearly eight years ago, Amnesty International sent President Barack Obama and members of his administration our response to the executive orders on counter-terrorism detention policy signed by the President on 22 January 2009. Our report was entitled "The promise of real change", and in it we expressed our hope that genuine human rights change was on the way and our intent to do what we could to encourage such a shift.

We welcomed the clear indication from President Obama's first hours in office that he had prioritized resolution of the Guantánamo detentions. Although we voiced our concern that closure of the detention facility was being framed in terms of furthering "the national security and foreign policy interests of the United States", rather than expressly as a matter of the USA's international human right obligations, we assumed the new administration's serious intent to close a prison camp that had been created under its predecessor. We welcomed the President's elaboration that the Guantánamo detentions had been a "misguided experiment" based on the "misplaced notion" that detainees could be held "beyond the law".

Nevertheless we remained concerned that the President's executive order on Guantánamo itself left open the possibility of detainees being held without charge there for up to another year, which we pointed out would be an unacceptable outcome. We urged that the reference to "as soon as practicable" be interpreted and applied with all due urgency, because fair trial or release of the approximately 240 detainees then held at Guantánamo was already years overdue.

We regret, then, that history will record that the Guantánamo detentions did not come to a swift end under this administration but instead operated longer than they had under the administration that began them. Today there are 55 detainees still held at Guantánamo. Forty-five of them are held without charge or trial. The remaining 10 have been or are set to be prosecuted before a military commission system that is incompatible with the USA's fair trial obligations, including given the availability and competence of existing civilian courts. Meanwhile, US perpetrators of crimes under international law of torture and enforced disappearance committed against these and other detainees – at Guantánamo and beyond – continue to enjoy impunity.

President Obama suggested in his 6 December 2016 speech at MacDill Air Force Base that Congress "will be judged harshly by history" for blocking closure of the detention facility, and for our part we condemn this blocking and other congressional human rights failures over the past decade, including its passage of the Military Commissions Act in 2006. But as we pointed out in January 2009, under international law, a government cannot legitimately point to internal law or politics as justification for failure to meet the country's treaty obligations. All three branches must work – whether in collaboration or when independently checking each other's actions – to ensure the USA's full respect for international law at all times. We do not believe that the USA would accept inter-branch disagreements within governments of other countries as excuses for human rights violations.

Whether or not the Obama administration's failure to act in a prompt and decisive manner allowed the issue to become mired in a domestic political impasse, we would suggest that the roots of the problem lie further back, including in the long-standing reluctance of the USA to apply international human rights law to many aspects of its own conduct. The USA's continuing application of its flawed "law of war" framework for these detentions under the AUMF, as reiterated in the Report on the Legal and Policy Frameworks Guiding the United States' Use of Military Force and Related National Security Operations, issued by the White House on 5 December 2016, has been one symptom of this. This framework for detentions continues to undermine respect for human rights and principles of ordinary criminal justice.

On 1 January 2017, the USA assumed its seat on the UN Human Rights Council. This is the third time during the Obama administration that the USA has been elected to the Council. Prior to each vote, the USA made many human rights pledges and commitments, including the promise that that it would meet its treaty obligations and participate in meaningful dialogue with the UN treaty bodies. Yet many such UN treaty body recommendations to the USA have remained outstanding for years, not least in the area of counter-terrorism detentions.

More than a decade ago, the UN Committee Against Torture told the USA that holding people indefinitely without charge was per se a violation of the UN Convention Against Torture. On 29 August 2016, the Committee again wrote to the USA to express concern that this matter had still not been rectified. Two and a half years ago, the UN Human Rights Committee, scrutinizing the USA's compliance with its obligations under the International Covenant on Civil and Political Rights, again called for any prosecutions of Guantánamo detainees to be "dealt with through the criminal justice system", not military commissions. The Committee has repeated this call in 2015 and 2016.

Each of these UN independent expert bodies, constituted under the respective human rights treaties ratified by the USA and specifically mandated to monitor their compliance, has repeatedly called on the USA to conduct thorough investigations into the human rights violations that have occurred against detainees in the counter-terrorism context, including the crimes under international law of torture and enforced disappearance. More than a decade ago, in 2006, the UN Human Rights Committee called on the USA to investigate all allegations of torture and other cruel, inhuman or degrading treatment in the counter-terrorism context, including in secret detention facilities, and to ensure that "those responsible are prosecuted and punished in accordance with the gravity of the crime." The USA has utterly failed to comply. In August 2016, this Committee wrote to the USA and expressed regret that it had received no further information on "investigations, prosecutions or convictions of US government personnel in positions of command for crimes committed during international operations or as part of the US detention and interrogation programmes". In October 2015, and again in August 2016, it wrote to the USA to ask what measures had been taken "to establish responsibility for those who provided legal pretexts for manifestly illegal behaviour".

Amnesty International urges the administration to do all it can to resolve the Guantánamo detentions in line with the USA's international human rights obligations before President Obama leaves office. It appears that there is no intention of bringing to trial most of those still held at the base. Those against whom there is no intention to bring recognizable criminal charges and bring to fair trial should be promptly released, into the USA if no other option compliant with the USA's international human rights obligations is immediately available. The competent authorities should abandon the military commission system and bring any prosecutions in the ordinary civilian courts. They should drop their pursuit of the death penalty against anyone.

The damage done to the rule of law and basic principles of human rights and criminal justice, we would suggest, is immense. We urge the USA to conduct a fresh examination of its relationship to its international human rights obligations, which must lead to a long overdue improvement of its human rights record, and, as part of this 'reset', to meeting the wide range of outstanding UN treaty body recommendations, including an end to the conditionality attached to US ratification of international human rights treaties. As the current administration hands over its seat on the UN Human Rights Council to the new administration, the USA must finally live by the human rights promises and commitments it has repeatedly made.

Yours sincerely

Amnesty International

# THE DETAINEES

- There are 55 persons in detention at Guantánamo today.
- 2 have been there since day one of detention operations (11 January 2002); 28 have been there since year one; 51 have been held there for more than 10 years; all 55 have been in US custody for longer than they have been held in Guantánamo; some have already been held for over 15 years
- 45 of the 55 are held in indefinite detention without charge
- 26 of these 45 are deemed to be in "continued law of war detention" under the Authorization for Use of Force (AUMF) a broadly-worded resolution passed by Congress on 14 September 2001 without reference to detention
- 3 of the 45 are Yemeni nationals who have for seven years or more been deemed to be in "conditional detention" under the AUMF, "given the current security situation in Yemen"
- 2 of the 45 have been approved for transfer since at least January 2010, under the findings of the executive Guantánamo Review Task Force (GRTF)
- 14 of the 45 were previously in GRTF-determined "law of war detention" but have since been recommended for transfer by Periodic Review Board (PRB)
- 1 is serving a life sentence imposed by military commission
- 2 are awaiting sentencing after pleading guilty before military commissions in 2012 and 2014 pursuant to pre-trial agreements under which sentencing was deferred for several years
- 7 of the 55 detainees have been charged and are facing unfair trial by military commission; 6 of them face the death penalty if convicted. The USA considers that it can return them to "law of war" detention if acquitted
- 0 have been prosecuted the crimes under international law of torture or enforced disappearance committed against these detainees
- At least 26 of the 55 were in secret CIA custody prior to transfer to Guantánamo
- CASE EXAMPLE. Abu Zubaydah has been in US custody for nearly 15 years. He was subjected to enforced disappearance for the first four and half of those years. He was subjected to other forms of torture and other cruel, inhuman and degrading treatment during this time. No one has been brought to justice for the crimes committed against him. He has been in Guantánamo continuously since September 2006. He had been there before. Part of his earlier secret detention had been at the base when the CIA operated a "black site" there. A habeas corpus petition was filed on his behalf in August 2008 less than a month after the US Supreme Court ruled that the Guantánamo detainees had the right to a "prompt" hearing into the lawfulness of their detention. There is yet to be a decision on his petition more than eight years later. In January 2010, the Obama administration labelled him as "referred for prosecution". He has never been charged. He is in "continued law of war" detention, reaffirmed by the PRB in September 2016. His conditions of detention at Guantánamo are classified.

**KEY**

**PRB/D = Periodic Review Board/Detention**
**PRB/T = Periodic Review Board/Transfer**
**GRTF/CD = Guantanamo Review Task Force/Conditional Detention**
**GRTF/T = Guantanamo Review Task Force/Transfer**
**MC/CTP = Military Commission/Capital Trial Pending**
**MC/TP = Military Commission/Trial Pending**
**MC/SD = Military Commission/Sentencing Deferred**
**MC/LI = Military Commission/Life Imprisonment**
**SSCI = Senate Select Committee on Intelligence**

1. **PRB/T. Ghaleb Nasser Bihani**. Yemeni. Detained in Afghanistan in November 2001, and taken to a prison near Sheberghan before being handed over to US forces near Kandahar on 30 December 2001. Transferred to Guantánamo on 20 June 2002. 2010 GRTF Final: Continued detention under the AUMF. PRB in May 2014 decided that "continued law of war detention of the detainee is no longer necessary" and recommended "resettlement in a third country with appropriate support, including adequate medical care".

2. **PRB/D. Uthman Abdul Rahim Mohammed Uthman**. Yemeni. Taken into custody by Pakistani forces in mid-December 2001; transferred to US military custody at Kandahar in Afghanistan on 26/27 December 2001. Transferred to Guantánamo on 16 January 2002. In 2010, a federal judge ruled that his detention was unlawful and ordered his release. The Obama administration appealed and in 2011 the US Court of Appeals reversed the order. 2010 GRTF Final: Continued detention under the AUMF. PRB upheld this status in May 2016.

3. **PRB/D. Moath al Alwi**. Yemeni. Taken into custody by Pakistani forces in mid-December 2001. Transferred to US military custody at Kandahar in Afghanistan on 26/27 December 2001. Transferred to Guantánamo on 16 January 2002. 2010 GRTF Final: continued detention under the AUMF. PRB upheld this status in October 2015.

4. **PRB/T. Mohammed al Ansi**. Yemeni. Taken into custody by Pakistani forces in mid-December 2001. Transferred to US military custody at Kandahar in Afghanistan on 26/27 December 2001. Transferred to Guantánamo on 16 January 2002. 2010 GRTF Final: Continued detention under the AUMF. PRB upheld this status in March 2016. On 9 December 2016, the PRB decided that "continued law of war detention is no longer necessary" and recommended "resettlement to a GCC [Gulf Cooperation Council] country with a strong rehabilitation and reintegration program and access to familial support".

5. **GRTF/T. Ridah Bin Saleh al Yazidi**. Tunisian. Taken into custody by Pakistani forces in mid-December 2001. Transferred to US forces on 26/27 December 2001. Transferred to Guantánamo on 11 January 2002. 2010 GRTF Final: Approved for transfer.

6. **MC/LI. Ali Hamza al-Bahlul.** Yemeni. Taken into custody by Pakistani forces in mid-December 2001, handed to US forces at Kandahar, Afghanistan on 26/27 December 2001. Transferred to Guantánamo on 11 January 2002. Charged for trial by military commission. Sought to boycott his 2008 trial and did not present a defence. Convicted of conspiracy to commit war crimes, solicitation of others to commit war crimes, and providing material support for terrorism. The DC Circuit Court of Appeals vacated his convictions for material support and solicitation, but has allowed his conspiracy conviction to stand. Serving a life sentence.

7. **PRB/D. Mohammed al Qahtani**. Saudi Arabian. Taken into custody by Pakistani forces in mid-December 2001. Transferred to US custody at Kandahar in Afghanistan on 26/27 December 2001. Transferred to Guantánamo on 13 February 2002. On 13 May 2008, the Department of Defense announced that capital charges sworn against Mohamed al-Qahtani in February 2008 had been dismissed. In January 2009, the Convening Authority for the military commissions revealed that she had dismissed the charges because of the torture to which Mohammed al Qahtani had been subjected in Guantánamo in late 2002 and early 2003. 2010 GRTF Final: Referred for prosecution, but he has been held without charge ever since. In July 2016, the PRB "determined that continued law of war detention of the detainee remains necessary".

8. **GRTF/CD. Tawfiq Nasir Awad al-Bihani**. Yemeni. Arrested in late 2001 or early 2002 by Iranian police and held in Iranian custody until mid-March 2002, when he was transferred to Afghan custody. He apparently remained in Afghan custody until he was transferred to US

custody at Bagram airbase around mid-December 2002. According to the SSCI summary, he was in secret CIA custody for 50-59 days. Subjected to 72 hours of sleep deprivation between his arrival at Detention Site Cobalt (Afghanistan) and his interrogation in October 2002.[20] Guantánamo transfer, 6 February 2003. His "final disposition" as of 22 January 2010 was "at this time, given the current security situation in Yemen conditional detention pursuant to the Authorization for Use of Military Force, as informed by the laws of war. Before the closure of Guantanamo, the detainee may be transferred if the security situation in Yemen improves, an appropriate rehabilitation program or third-country resettlement option becomes available, or Yemen has demonstrated its ability to [redacted] or mitigate any threat they pose. At the time of the closure of Guantanamo, the detainee will be reconsidered for transfer to Yemen, a third country, or a detention facility in the United States".

9. **PRB/T. Khalid Ahmad Qasim**. Yemeni. Taken into custody by Afghan forces on or around 18 December 2001, transferred to US custody at Kandahar on 31 December, and to Guantánamo on 1 May 2002. GRTF 2010 Final, continued detention under AUMF. PRB March 2015, "continued law of war detention remains necessary". On 8 December 2016, the PRB decided "law of war detention" no longer deemed necessary, and recommended "resettlement to a GCC country with a strong rehabilitation and reintegration program and mental health access".

10. **PRB/T. Abdul Latif Nasir**. Moroccan. Taken into custody by Northern Alliance forces on or about 15 December 2001 and taken to Kabul Prison, transferred to US custody in Kandahar on 21 January 2002. Transferred to Guantánamo on 3 May 2002. 2010 GRTF Final: Continued detention under AUMF. PRB July 2016, "continued law of war detention is no longer necessary", recommeded transfer "only to Morocco".

11. **GRTF/T. Muieen Adeen al Sattar**. According to the Guantánamo authorities, he is "an ethnic Rohingya Burmese who claims Pakistani citizenship" and who was born in United Arab Emirates. Taken into custody by Pakistani forces in mid-December 2001, transferred to US custody on 5 January 2002, and transported to Guantánamo on 9 February 2002. 2010 GRTF Final recommendation was "transfer to a country outside the United States that will implement appropriate security measures".

12. **PRB/T. Mustafa al Shamiri**. Yemeni. Taken into custody by Northern Alliance forces on or around 24 November 2001, transferred to US custody on 15 January 2002, and transferred to Guantánamo on 12 June 2002. 2010 GRTF Final: continued detention under AUMF. PRB January 2016, "continued law of war detention does not remain necessary", recommends transfer "preferably to an Arabic-speaking country that will enrol detainee in an integration program to assist his transition to life outside Guantanamo".

13. **GRTF/CD. Muhammed Ahmad Said Haydar.** Yemeni. Taken into custody in Tora Bora approximately 15 December 2001, and transferred to US custody in Bagram. Transferred to Guantánamo on 3 May 2002. His "final disposition" as of 22 January 2010 was "at this time, given the current security situation in Yemen conditional detention pursuant to the Authorization for Use of Military Force, as informed by the laws of war. Before the closure of Guantanamo, the detainee may be transferred if the security situation in Yemen improves, an appropriate rehabilitation program or third-country resettlement option becomes available, or Yemen has demonstrated its ability to [redacted] or mitigate any threat they pose. At the time of the closure of Guantanamo, the detainee will be reconsidered for transfer to Yemen, a third country, or a detention facility in the United States".

14. **PRB/T. Salman Yahya Hassan Muhammad Rabeii.** Yemeni. Taken into custody at Tora Bora approximately 15 December 2001 and transferred to a Northern Alliance prison in Kabul and then to US custody at Kandahar Detention Facility on 28 January 2002.Transferred to Guantánamo on 1 May 2002. 2010 GRTF Final: Continued detention under AUMF. PRB May 2016, decided that "continued law of war detention of the detainee remains necessary". Seven months later, on 1 December 2016, the PRB decided that "law of war detention is no longer necessary" and recommended "resettlement, preferably to a GCC country with a strong rehabilitation and reintegration program".

15. **PRB/D. Yassin Qasim Muhammad Ismail Qasim.** Yemeni. Taken into custody by Afghan forces in December 2001. Transferred to US custody in Kandahar. Transferred to Guantánamo on 1 May 2002. 2010 GRTF Final: Continued detention under AUMF. PRB March 2016: "Continued law of war detention of the detainee remains necessary".

[20] For further information on colour-coded detention sites, as contained in SSCI summary, see USA: Crimes and Impunity, at https://www.amnesty.org/en/documents/amr51/1432/2015/en/

16. **GRTF/CD. Walid Said bin Said Zaid.** Yemeni. Taken into custody in hospital in Jalalabad on or around 31 December 2001. Transferred to US custody on 7 February 2002. Transferred to Guantánamo on 3 May 2002. His "final disposition" as of 22 January 2010 was "at this time, given the current security situation in Yemen conditional detention pursuant to the Authorization for Use of Military Force, as informed by the laws of war. Before the closure of Guantanamo, the detainee may be transferred if the security situation in Yemen improves, an appropriate rehabilitation program or third-country resettlement option becomes available, or Yemen has demonstrated its ability to [redacted] or mitigate any threat they pose. At the time of the closure of Guantanamo, the detainee will be reconsidered for transfer to Yemen, a third country, or a detention facility in the United States".

17. **PRB/T. Haji Wali Muhammed.** Afghan. Pakistani intelligence officers took him into custody at his home in Peshawar on 26 January 2002, and he was transferred to US custody in February 2002. Transferred to Guantánamo on 30 April or 1 May 2002. GRTF final 2010, continued detention under the AUMF. PRB in September 2016 decided that "continued law of war detention of the detainee is no longer necessary", and recommended his transfer "preferably to a country with reintegration support and the capacity to implement robust security measures, including monitoring and travel restrictions".

18. **PRB/D. Suhayl al Sharabi.** Yemeni. Taken into custody on 7 February 2002 by Pakistani Inter-Services Intelligence Directorate (ISID) officials during a raid on a house in Karachi. He was turned over to US forces on 27 February 2002. Transferred to Guantánamo on 5 May 2002. GRTF final disposition in January 2010 was "referred for prosecution". In March 2016, the PRB decided that "continued law of war detention of the detainee remains necessary".

19. **PRB/D. Sharqawi Ali Abdu al-Hajj**. Yemeni. Taken into custody on 7 February 2002, and transferred to custody of "a foreign government" (believed to be Jordan) later that month. Nearly two years later, in January 2004, he was "rendered into the CIA's Detention and Interrogation Program". He was in CIA custody for between 120 and 129 days before being transferred to US military custody in May 2004. On 19 September 2004, he was transferred from US military custody in Afghanistan to Guantánamo. His "final disposition" as of 22 January 2010, was "referred for prosecution". In April 2016, the PRB decided that "continued law of war detention of detainee remains necessary". Still held without charge.

20. **PRB/D. Ghassan al Sharbi.** Saudi Arabian. Taken into custody by Pakistani forces in a raid on a guesthouse in Faisalabad on 28 March 2002. He was then detained in Lahore for two days and then in Islamabad for two months. From Islamabad, he was handed over to US forces and taken to Bagram Airbase for 18 days, and then to Kandahar for 10 days. Transferred to Guantanamo on 19 June 2002. He was charged for trial by military commission in 2005, but the charges were dismissed in 2008. He was again charged for trial by military commission in 2009, but again the charges were dismissed in 2013. GRTF final determination in January 2010 was "referred for prosecution". In July 2016, PRB decided that "continued law of war detention of detainee is necessary".

21. **PRB/D. Said bin Brahim bin Umran Bakush also known as Abdul Razak Ali.** Algerian. Taken into custody by Pakistani authorities in Faisalabad on 28 March 2002. Held by Pakistani authorities first in a prison in Lahore, and then at a prison in Islamabad. Transferred to US custody sometime in May 2002. Transferred to Guantánamo on 19 June 2002. GRTF final disposition in January 2010 was "referred for prosecution". In July 2016, the PRB decided that the "continued law of war detention of the detainee remains necessary".

22. **PRB/T. Sufiyan Barhoumi.** Algerian. Taken into custody by Pakistani forces in Faisalabad on 28 March 2002. Transferred to Guantánamo on 18 June 2002. He was charged for trial by military commission in 2005, but the charges were dismissed in 2008. GRTF final disposition was "referred for prosecution". In August 2016, the PRB decided that "continued law of war detention of the detainee is no longer necessary" and recommended "repatriation to Algeria".

23. **PRB/T. Jabran Qahtani.** Saudi Arabian. Taken into custody by Pakistani forces in Faisalabad on 28 March 2002. Held in Islamabad before later being transferred to US custody at Bagram Air Base. Transferred to Guantánamo on 5 August 2002. Charged for trial by military commission in 2005, but the charges were dismissed in 2008. He was again charged for trial by military commission in 2009, and again these charges were dismissed in 2013. GRTF final disposition was "referred for prosecution". In November 2016, the PRB decided that "continued law of war detention of detainee is no longer necessary" and recommended his transfer "only to Saudi Arabia for potential prosecution – consistent with the laws of Saudi Arabia" and participation in rehabilitation programme, and "with appropriate security and humane treatment assurances".

24. **PRB/T. Ravil Mingazov.** Russian. Taken into custody by Pakistani authorities in Faisalabad on

the night of 28 March 2002. Held first in a prison in Lahore, and then at a prison in Islamabad. He was transferred to US custody in Bagram in May 2002. Transferred to Guantánamo on 18 October 2002. In 2010 a federal judge found his detention unlawful, but the Obama administration appealed. GRTF final disposition in January 2010 was "referred for prosecution". In July 2016, the PRB decided that "continued law of war detention of detainee is no longer necessary" and recommended his transfer.

25. **PRB/D. Zayn al Abidin Muhammad Husayn, also known as Abu Zubaydah** – Palestinian. Arrested, 28 March 2002, Pakistan. In CIA custody for 1,610-1619 days. Placed in isolation for 47 days from 18 June 2002 to 4 August 2002, at which point "CIA interrogators re-established contact with Abu Zubaydah and immediately began to subject Abu Zubaydah to the non-stop use of the CIA's enhanced interrogation techniques for 17 days, which included at least 83 applications of the waterboard interrogation technique". This was in Detention Site Green (Thailand). Then held in Detention Site Blue (Poland). Nudity, cramped confinement, walling, sleep deprivation, prolonged isolation, prioritization of interrogation over medical care, subjected to "rectal fluid resuscitation" for "partially refusing liquids". Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. His "final disposition" as of 22 January 2010, was "referred for prosecution". In September 2016, PRB decided that "continued law of war detention of the detainee remains necessary".

26. **PRB/D. Omar Mohammed Ali al-Rammah (Zakaria)**. Yemeni. Detained in Georgia, April 2002. Initially held in a warehouse, later taken to an airport and put on a plane. When detainee landed, an "American interrogator" told him he was in Afghanistan. Held in the Afghan National Directorate of Security Prison; transferred to US custody at Bagram on 9 April 2003. According to SSCI summary, was in CIA custody for 370-379 days. Guantánamo transfer, 9 May 2003. His "final disposition" as of 22 January 2010 was "continued detention pursuant to the Authorization for Use of Military Force (2001), as informed by principles of the laws of war, subject to further review by the Principals prior to the detainee's transfer to a detention facility in the United States". In August 2016, the PRB decided that "continued law of war detention of detainee remains necessary".

27. **PRB/D. Ismael Ali Faraj al Bakush**. Libyan. Was taken into custody in May 2002 in Lahore by Pakistani authorities. Transferred to Guantánamo on 5 August 2002. GRTF final disposition as of January 2010 was continued detention under the AUMF. In August 2016, the PRB decided that "continued law of war detention of detainee remains necessary".

28. **MC/SD. Ahmed Muhammed Haza al Darbi**. Saudi Arabian. Ahmed al Darbi was arrested by civilian authorities at the airport in Baku, Azerbaijan, on 4 June 2002, and held in Azerbaijani custody for about two months. In August 2002, he was handed over to US agents. In a declaration signed in 2009, Ahmed al Darbi recalls how these agents, "blindfolded me, wrapped their arms around my neck in a way that strangled me, and cursed at me. [Redacted], and somebody else kept saying 'fuck you' in my ear. I was terrified and feared for my life, because I did not know who had seized me, which government's custody I was in, or where they were taking me. They did not tell me where we were going. I was eventually taken to a place that I now know was Bagram Air Force Base in Afghanistan. I was imprisoned at Bagram for about eight months… In late March 2003, I was transferred to Guantánamo." Charged for trial by military commission in 2007, but charges were dismissed in 2009. A 2009 brief filed in habeas corpus case in federal court alleged "Mr Al Darbi has been beaten, suspended by his arms and placed in other excruciating positions for extended periods of time, sexually assaulted, threatened with further sexual assault and rape, sexually humiliated, forced to perform hard labor, exposed to loud music and bright lights, kept in isolation for extended periods of time, and deprived of sleep for extended periods of time. To this day, Mr Al Darbi continues to suffer mental and physical harm as a result of his torture, reporting headaches, mood swings, recurring nightmares involving his interrogators, night terrors, incontinence and, until recently, back pain." Charged for trial by military commission. Pleaded guilty in 2014 to conspiracy, attacking civilian objects, hazarding a vessel, terrorism. Sentencing delayed for three years and six months.

29. **PRB/T. Abdul Sahir**. Afghan. Taken into custody by US military forces on 11 July 2002 at his home in Hesarak, Afghanistan. Transferred to Guantánamo on 27 October 2002. Charges under the MCA were referred against him in 2006, but subsequently dismissed. GRTF final disposition as of January 2010 was "referred for prosecution". In July 2016, the PRB decided that "continued law of war detention of detainee is no longer necessary" and recommended his transfer. It noted the "assessment that the detainee was probably misidentified as the individual who had ties to al-Qaeda weapons facilitation".

30. **PRB/T. Karim Bostam**. Afghan. Taken into custody by Pakistani military at a checkpoint near Bannu, Pakistan, on 13 August 2002. He was held in prison in Islamabad for about six

months before being turned over to US forces in February 2003. Transferred to Guantánamo on 6 March 2003. GRTF final disposition as of January 2010 was continued detention under AUMF. In June 2016, the PRB decided that his "law of war detention" was no longer "necessary" and recommended his transfer "preferably to a country with reintegration support".

31. **PRB/D. Mohammed Ahmad Ghulam Rabbani also known as Abu Badr**. Pakistani (born Saudi Arabia). Arrested in Karachi, Pakistan on 10 September 2002. In secret CIA custody for 550-559 days. Forced standing, attention grasps, and cold temperatures without blankets in November 2002. Subjected to EITs without CIA HQ approval. Guantánamo transfer, 19 September 2004. His "final disposition" as of 22 January 2010, was "referred for prosecution". In October 2016, the PRB decided that "continued law of war detention of the detainee remains necessary."

32. **MC/CTP. Ramzi bin al Shibh**. Yemeni. Arrested in Karachi, Pakistan, on 11 September 2002. Was rendered to the custody of a "foreign government" for five months. Was rendered to Detention Site Blue (Poland) in February 2003. Held in CIA secret detention in Guantánamo in 2003 and 2004. In CIA custody for 1,300-1,309 days. Subjected to "multiple" use of facial hold, rectal feeding and threats of rectal hydration. Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. Facing death penalty trial by military commission.

33. **PRB/D. Hassan Bin Attash**. Yemeni. Arrested 11 September 2002, Karachi, Pakistan. Was in CIA custody for 120-129 days. Believes he was held in Jordan between September 2002 and January 2004 and has claimed that he was tortured there. Guantánamo transfer, 19 September 2004. His "final disposition" as of 22 January 2010, was "referred for prosecution". In October 2016, the PRB decided that "continued law of war detention of the detainee remains necessary".

34. **PRB/D. Abdul Rahim Ghulam Rabbani**. Pakistani (born in Saudi Arabia). Arrested in Karachi, Pakistan on 11 September 2002. In CIA custody for 550-559 days. Guantánamo transfer, 19 September 2004. His "final disposition" as of 22 January 2010, according to the Guantánamo Review Task Force, was "referred for prosecution". In August 2016, the PRB decided that "continued law of war detention of the detainee remains necessary".

35. **PRB/D. Sa'id Salih Sa'id Nashir**. Yemeni. Arrested in Karachi, Pakistan, 11 September 2002. In CIA custody for 30-39 days. Allegedly "mistreated and beaten by Americans while blindfolded and stripped down to his underwear in [redacted]". Guantánamo transfer, 28 October 2002. His "final disposition" as of 22 January 2010, was "continued detention pursuant to the Authorization for Use of Military Force, as informed by principles of the laws of war". In November 2016, the PRB decided that "continued law of war detention of the detainee remains necessary".

36. **PRB/T. Ha'il Aziz Ahmad al-Mithali**. Yemeni. Arrested, Karachi, 11 September 2002. In CIA custody for 30-39 days. Sleep deprivation indicated. Guantánamo transfer, 28 October 2002. "Final disposition", 22 January 2010, "continued detention pursuant to the Authorization for Use of Military Force, as informed by principles of the laws of war". In August 2016, the PRB decided that his "law of war detention" was no longer "necessary" and recommended his transfer, "only to an Arabic-speaking country, preferably a GCC country".

37. **PRB/T. Musab Umar Ali al-Madhwani**. Yemeni. Arrested in Karachi, Pakistan on 11 September 2002. He has alleged that he was whipped, beaten and threatened in Pakistani custody and his allegations indicate that US personnel were aware of this at the time. After five days in Pakistani custody he was handed over to US custody and flown to Afghanistan. He says he was taken to the "Dark Prison", a secret CIA-operated facility in or near Kabul, where he was held for about a month. There "he suffered the worst period of torture and interrogation, treatment so terrible that it made him miss his time with the Pakistani forces". He was allegedly held for 30-40 days "in darkness so complete that he could not see his hand in front of his face"; "not allowed to sleep for more than a few minutes at a time"; "was fed only about every 2½ days, in very small portions"; and "twenty-four hours a day, obnoxious music blared at a deafening volume". For most of his detention at the Dark Prison, he was allegedly "suspended from a wall by one hand, feet shackled, in a stress position that allowed him neither to sit nor stand fully. Al-Madhwani was shackled in this way night and day, without relief except during interrogation sessions. During these sessions, Al-Madhwani's hands were shackled to the floor… On one occasion, two men took Al-Madhwani, hooded and shackled, stripped him naked, and attached electrical wires to his genitals. As the men discussed whether to turn on the electricity, Al-Madhwani began screaming with fear. The men laughed and then repeatedly drenched Al-Madhwani in water so cold that Al-Madhwani could not move his fingers or his mouth… Day after day, Al-Madhwani hung from the wall by his hand, in complete and total darkness, loud music blaring. Disoriented, he heard noises of mice and doors and thought they

were ghosts. Thinking that he must be hallucinating, Al-Madhwani tried to calm himself by imagining mountains. Then he would hear a small noise, and as he turned toward it, five or more men would jump on him, remove his chains from the wall, and beat, kick, and throw him to the ground. Pointing a gun to Al-Madhwani's head, guards threatened him with the worst acts, including electrocution. For Al-Madhwani, these surprise attacks were the worst part of the Dark Prison, making him feel like his heart was tearing apart or his heart and brain were being extracted from his body." Musa'ab al Madhwani was then transferred to the US air base at Bagram where he was held for another five days. There he has alleged that: "I was forced to stand the entire time until my feet swelled and I was exhausted. I was dragged by the neck to interrogation, where dogs would bark in my face." He was transferred to Guantánamo on 28 October 2002. His GRTF "final disposition" as of 22 January 2010, was "continued detention pursuant to the Authorization for Use of Military Force, as informed by principles of the laws of war". In July 2016, the PRB decided that his "law of war detention" was no longer "necessary", and recommended his "resettlement with reintegration support".

38. **PRB/D. Abd al Salam al Hela**. Yemeni. Seized in or rendered from Egypt in September 2002. In CIA custody for 590-599 days. Has alleged torture or other ill-treatment. Guantánamo transfer, 19 September 2004. His "final disposition" as of 22 January 2010, was "continued detention pursuant to the Authorization for Use of Military Force (2001), as informed by principles of the laws of war, subject to further review by the Principals prior to the detainee's transfer to a detention facility in the United States". In June 2016, the PRB decided that "continued law of war detention of the detainee remains necessary".

39. **MC/CTP. 'Abd al Rahim al-Nashiri**. Saudi Arabian. Arrested United Arab Emirates, October 2002. In CIA custody for 1,390–1,399 days. Taken to Detention Site Cobalt (Afghanistan) in November 2002 and later that month to Detention Site Green (Thailand) and subjected among other things to waterboarding. Taken to Detention Site Blue (Poland), and subjected to "Unapproved nudity and approximately two-and-a-half days of sleep deprivation in December 2002, with his arms shackled over his head for as long as 16 hours". A January 2003 cable refers to him being held "in the standing position, with hands tied overhead, overnight". In Detention Site Blue, he was also subjected to mock execution and various other "unauthorized" techniques. From 2003 was held in a "temporary patch" detention arrangement (thought to be in Morocco), and from there taken to secret custody at Guantánamo, in 2004 back to Morocco, and subsequently to Detention Site Black (Romania). In May 2004, while on a hunger-strike, he was subjected to rectal force feeding. Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. Facing death penalty trial by military commission.

40. **PRB/D. Sanad 'Ali Yislam al-Kazimi**. Yemeni. Arrested in Dubai in January 2003. In CIA custody for 270-279 days. He has alleged torture in UAE and CIA custody. Guantánamo transfer, 19 September 2004. His "final disposition" as of 22 January 2010 was "referred for prosecution". In June 2016, the PRB decided that "continued law of war detention of the detainee remains necessary".

41. **MC/CTP. Khalid Sheikh Mohammed**. Pakistani. Arrested in Pakistan, 1 March 2003. In CIA custody for 1,280-1,289 days. Subjected to water-boarding, nudity, standing sleep deprivation, attention grab and insult slap, facial grab, abdominal slap, kneeling stress position, walling, rectal hydration, threats to his children, water dousing. Was in Detention Site Cobalt (Afghanistan) in March 2003 from where he was taken to Detention Site Blue (Poland). He was in Detention Site Black (Romania) in November 2003. Transferred to Detention Site [redacted] in 2005 and to Detention Site Brown (Afghanistan) in March 2006. Guantánamo transfer, presumably from Detention Site Brown, 4 September 2006. Facing death penalty trial by military commission.

42. **MC/CTP. Mustafa Ahmad al-Hawsawi**. Saudi Arabian. Arrested in Pakistan, 1 March 2003. In CIA custody for 1,280-1,289 days. Was subjected to water-dousing in Detention Site Cobalt (Afghanistan). Excessive force in rectal examination. Had serious medical problems while held in Detention Site Violet (Lithuania). Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. Facing death penalty trial by military commission.

43. **MC/SD. Majid Khan**. Pakistani. Arrested on 5 March 2003 in Pakistan and taken into Pakistani custody. In CIA custody for between 1,200 and 1,209 days. For a period in 2003 appears to have been in a CIA "safehouse" in Afghanistan. He was subjected to "enhanced" interrogation immediately upon being taken into CIA custody. The cable referred to is dated 24 May 2003. Subjected to sleep deprivation, nudity, dietary manipulation, immersion in bath ice water bath, rectal feeding. Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. Pled guilty in 2012. In 2016 he withdrew his guilty plea to one of the offences. Sentencing is deferred currently until February 2019.

44. **MC/CTP. Ammar al-Baluchi**. Pakistani. Arrested in Pakistan, 29 April 2003 in a "unilateral operation by Pakistani authorities resulting from criminal leads". Rendered into CIA custody the following month, around 15 May. In CIA custody for 1,200-1209 days. Was subjected to EITs immediately upon being rendered into CIA custody in May 2003, including sessions from 17 May to 20 May 2003. Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. Facing death penalty trial by military commission.

45. **MC/CTP. Khallad (Walid) Bin Attash**. Yemeni. Arrested in Pakistan, 29 April 2003 in a "unilateral operation by Pakistani authorities resulting from criminal leads". Rendered into CIA custody the following month, around 15 May. In CIA custody for 1,200 to 1,209 days. Was subjected to EITs immediately upon being rendered into CIA custody, including from 16 May to 18 May 2003 and then again 18 July to 29 July 2003. Sleep deprivation, facial grabs, facial insult slaps, abdominal slaps, walling, water dousing, threats of rectal hydration. Was held in Detention Site Blue (Poland). Guantánamo transfer, presumably from Detention Site Brown (Afghanistan) 4 September 2006. Facing death penalty trial by military commission.

46. **PRB/D. Zubair, also known as Mohammed Farik Bin Amin**. Malaysian. He was taken into custody by the authorities in Thailand on 8 June 2003 and held in Thai custody. He was rendered to CIA custody around 20 June 2003. Upon arrival at Detention Site Cobalt he was immediately subjected to EITs. CIA chief of interrogations "placed a broomstick behind the knees of Zubair when Zubair was in a stress position on his knees on the floor". He was questioned about a particular topic on 25 June 2003, "days" after his transfer from Thailand to Detention Site Cobalt (Afghanistan). Yet, in the list of detainees, it states that he was in CIA custody for 1,170 days – 1,179 days. He was taken to Guantánamo on 4 September 2006 and transferred to military custody. In which case, this would put his rendition to CIA custody as having occurred sometime between 4 and 13 July 2003. Guantánamo transfer, presumably from Detention Site Brown, 4 September 2006. His "final disposition" as of 22 January 2010 was "referred for prosecution". In September 2016, the PRB decided that "continued law of war detention of the detainee remains necessary".

47. **PRB/D. Saifullah Paracha**. Pakistani. Seized in Bangkok, Thailand, in July 2003 by US agents, hooded, handcuffed, and thrown into the back of a vehicle. He was held for over a year in Bagram before being transferred to Guantánamo on 19 September 2004. GRTF final disposition as of January 2010 was "referred for prosecution". In April 2016, the PRB decided that "continued law of war detention of the detainee remains necessary".

48. **PRB/D. Lillie, also known as Bashir bin Lap**. Malaysian. Arrested in Thailand, 11 August 2003. "Enhanced" interrogation "almost immediately" upon his arrival at Detention Site Cobalt (Afghanistan) in August 2003. He was "stripped of his clothing", and "placed in a cell in the standing sleep deprivation position in darkness". He has said that following three to four days held naked in Thailand, he was held for nine days naked and seven days in the prolonged stress standing position in the secret Afghanistan facility, during which time he was forced to defecate and urinate on himself. In CIA custody for 1,110-1,119 days. Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. "Final disposition" as of 22 January 2010 was "referred for prosecution". In September 2016, the PRB decided that "continued law of war detention remains necessary".

49. **PRB/D. Hambali, also known as Riduan bin Isomuddin**. Indonesian. Arrested in Thailand by the Special Branch of the Thai police on 11 August 2003. He has said he was in Thailand, in US custody, for four to five days, before being taken to secret CIA detention in Afghanistan for two months, where he was held naked for most of the time. Rendered to CIA custody in August 2003. He was "almost immediately subjected to the CIA's enhanced interrogation techniques. In CIA custody for 1,110–1,119 days. Transfer to Guantánamo, presumably from Detention Site Brown (Afghanistan), on 4 September 2006. His "final disposition" as of 22 January 2010 was "referred for prosecution". In September 2016, the PRB decided that "continued law of war detention of the detainee remains necessary".

50. **PRB/D. Hassan Guleed**. Somalian. Taken into custody in Djibouti on 4 March 2004 "based on information from a foreign government and a CIA source". He was in CIA custody for 900-909 days. Transferred to Guantánamo on 4 September 2006, this would mean that he was transferred to CIA custody between 9 and 18 March 2004. Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. His "final disposition" as of 22 January 2010 was "continued detention pursuant to the Authorization for Use of Military Force, as informed by principles of the laws of war, subject to further review by the Principals prior to the detainee's transfer to a detention facility in the United States". In September 2016, the PRB decided that "continued law of war detention remains necessary".

51. **PRB/D. Mustafa Faraj Muhammad Mas'ud al-Jadid al-Uzaybi, also known as Abu Faraj al-Libi**. Libyan. Taken into custody in Pakistan on 2 May 2005. Was rendered to CIA custody in

Detention Site Orange (Afghanistan) later that month, possibly around 23 May, followed by transfer to Detention Site Black (Romania) within days of that, still in May 2005. Subjected to EITs from 28 May to 2 June 2005 and from 17 June to 28 June 2005. In CIA custody for 460-469 days. Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. His "final disposition" as of 22 January 2010 was "referred for prosecution". In September 2016, the PRB decided that "the continued law of war detention of the detainee remains necessary".

52. **MC/TP. Abd al-Hadi al-Iraqi**. Iraqi. Rendered to CIA detention in early November 2006, after being taken into custody in Turkey. In CIA custody for 170-179 days. Subjected to interrogations in incommunicado detention in November and December 2006 and January 2007. He may have been protected from subjection to "enhanced" techniques because President Bush had not yet signed the post-*Hamdan v. Rumsfeld* executive order that he would eventually sign in July 2007. The use of EITs against him was discussed at CIA Headquarters from February 2007. Guantánamo transfer, 27 April 2007. Facing trial by military commission.

53. **PRB/D. Haroon al Afghani**. Afghanistan. Taken into custody by Afghan National Directorate of Security on 4 February 2007. Transferred to Guantánamo on 22 June 2007. The GRTF final determination in 2010 was "referred for prosecution". In July 2016, the PRB decided that "continued law of war detention of the detainee remains necessary".

54. **PRB/D. Mohammed Abdul Malik Bajabu**. Kenyan. He was arrested in February 2007 by police in Kenya before being handed over "to the Americans, who took me to Djibouti, Bagram, Kabul and Guantánamo Bay". He remains in Guantánamo, without charge or trial, nearly 10 years after he was taken there on 23 March 2007. The GRTF 2010 determination was detention under the AUMF. In June 2016, the PRB decided that "continued law of war detention of the detainee remains necessary".

55. **PRB/D. Muhammad Rahim al-Afghani**. Afghan. Arrested on 25 June 2007 in Pakistan. Rendered to Detention Site Brown (Afghanistan) and held in CIA custody for 240-249 days. Subjected to attention grasp, facial hold, abdominal slaps, facial slaps, shackling in standing position for sleep deprivation, use of diapers, liquid diet. Guantánamo transfer, 14 March 2008. "Final disposition" as of 22 January 2010 was continued detention under the AUMF. In September 2016, the PRB decided that "continued law of war detention of the detainee remains necessary".

# MILITARY COMMISSION CONVICTIONS SINCE 2002

**Convicted and sentenced by military commission**

1. **David Hicks**, Australian. Convicted in 2007 after pleading guilty to material support for terrorism. Transferred to Australia to serve nine months of seven year sentence. In 2015, the Court of Military Commission Review overturned his conviction based on the 2014 Court of Appeals ruling in the al Bahlul case below.

2. **Salim Ahmed Hamdan,** Yemeni. Taken into custody in 2001 and transferred to Guantánamo in 2002. Convicted in a 2008 trial of material support for terrorism, but acquitted of conspiracy to commit war crimes. Sentenced to 66 months' imprisonment with credit for some of the time he had been in detention, and transferred to Yemen in November 2008. His conviction was overturned in 2012 by US Court of Appeals for the DC Circuit. Noting that the relevant conduct of which he was accused took place between 1996 and 2001 and with the Court of Appeals "read[ing] the Military Commissions Act not to retroactively punish new crimes, then "because material support for terrorism was not a pre-existing war crime under [US law], Hamdan's conviction for material support for terrorism cannot stand."

3. **Ali Hamza Ahmad Suliman Al Bahlul**, Yemeni. Sought to boycott his 2008 trial and did not present a defence. He was convicted of conspiracy to commit war crimes, solicitation of others to commit war crimes, and providing material support for terrorism. Sentenced to life imprisonment. The DC Circuit Court of Appeals vacated his convictions for material support and solicitation, in light of the Hamdan decision above, but has allowed his conspiracy conviction to stand.

4. **Ibrahim Al Qosi**, Sudanese. Convicted in 2010 under a plea of guilty to conspiracy and providing material support for terrorism. Transferred to Sudan after serving two year sentence.

5. **Omar Ahmed Khadr**, Canadian. Taken into US custody in 2002 at the age of 15. Pleaded guilty in 2010 to murder and attempted murder in violation of the law of war, providing material support for terrorism, conspiracy, and spying. Transferred to Canada to serve remainder of eight-year sentence.
6. **Noor Uthman Mohammed**, Sudanese. Pleaded guilty to providing material support for terrorism and conspiracy to provide such support. Was sentenced to 34 months' imprisonment under a plea agreement and transferred to Sudan in 2013. In January 2015, the Convening Authority for military commissions "set aside" the findings of guilty and "the sentence is disapproved", in light of the Court of Appeals rulings in the Hamdan and al Bahlul cases, "it appears that it was legal error" to try these offences before a military commission, he wrote.

**Convicted, awaiting sentencing**

1. **Majid Khan**, Pakistani. Pleaded guilty in 2012 to murder and attempted murder in violation of the law of war, providing material support for terrorism, spying, and conspiracy. Has withdrawn his guilty plea to providing material support, in light of the al-Bahlul decision above. Sentencing deferred, currently until February 2019
2. **Ahmed al Darbi**, Saudi Arabian. Pleaded guilty in 2014 to conspiracy, attacking civilian objects, hazarding a vessel, terrorism. Sentencing delayed for three years and six months.