

As early as September 2002, high-level government officials were aware of concerns within military and intelligence circles about whether and how many detainees were actually dangerous Al Qaeda fighters. A senior CIA analyst with extensive Middle East experience assessed detainees at the base in summer 2002 and concluded in a top-secret report that approximately a third of the population—at that time 200 of 600 detainees—had no connection to terrorism.<sup>32</sup> Many had been “caught in the dragnet. They were not fighters, they were not doing jihad. They should not have been there.”<sup>33</sup> Guantánamo’s commander, Major General Dunlavey, agreed with him and later estimated that half the camp population was innocent.<sup>34</sup> An FBI counterterrorism expert went even further and told a committee of the National Security Council there were at most only 50 detainees worth holding at Guantánamo.<sup>35</sup> A few former detainees said their interrogators confessed they did not understand why they were being held. “When I asked my interrogator why I was being held in Guantánamo, he told me that he was surprised as well after looking at my background file,” one respondent said, but he continued to be held.

Nevertheless, the military moved cautiously in releasing detainees, for several reasons. First, in a meeting to discuss the CIA report in early fall 2002, hard-liners in the Administration, primarily David Addington, legal counsel to Vice President Cheney, rejected any proposal to review the detainees’ status. To do so, Addington argued, would be tantamount to second-guessing the President and undercutting executive power. Second, the military was fearful of releasing the wrong men. Finally, top commanders at Guantánamo, including Dunlavey and his replacement, General Miller, felt many detainees did have information they had not disclosed and gave priority to trying new, harsher interrogation tactics to yield desired results.<sup>36</sup>

As a result, in the first years of operation, detainees had virtually no means to convince U.S. authorities they were wrongfully imprisoned and were not among “the worst of the worst.” The International Committee of the Red Cross (ICRC) visited those held in Guantánamo, but they had no power, other than through written and verbal persuasion, to change the way detainees were treated, and no mandate to advocate for their release. Some former detainees said they viewed the ICRC’s “powerlessness” as suspicious and thought they were working in collaboration with interrogators. This suspicion may have been reinforced by the fact that the military often “isolated [detainees] immediately before and after they met with the Red Cross,” according to the OIG/DOJ Report.<sup>37</sup> Others thought the ICRC was simply ineffective; one respondent referred to the organization as nothing more than a “glorified postman.”

Nor could detainees rely on their home governments to help secure their release. Virtually all respondents reported that they met with officials from their native countries while they were in the camp, many within weeks of arrival. Some respondents felt their governments were not interested in their claims of innocence or in exerting pressure to secure their release.

One former detainee described his feelings after meeting an intelligence officer sent by his government:

*He said to me that everything I had told him was a lie, and that I was going to spend the rest of my life in Guantánamo. And this was within 48 hours of my arrival there.... To hear it from American authorities, it's different. You still have some hope. But then to hear it from your own government, knowing that you've done nothing wrong, it was, it was really hard.*

It was not until June 2004, over two years after Camp X-Ray had been opened, that the U.S. Supreme Court ruled in *Rasul v. Bush* that detainees in Guantánamo should have access to U.S. courts to contest the legal basis for their detention. The Center for Constitutional Rights (CCR), which had brought *Rasul*, along with several other lawyers, immediately set to work to locate families of dozens of detainees. In the first week after the decision, CCR rushed to file habeas corpus petitions on behalf of many detainees and organized dozens of law firms and law school clinics, whose members volunteered pro bono assistance.

In response to *Rasul*, rather than conduct habeas hearings in federal courts, the U.S. military established an internal system of military panels called Combatant Status Review Tribunals (CSRTs) to review the evidence on each detainee and assess whether he was an “enemy combatant.”<sup>38</sup> These procedures became the only legal avenue detainees had to contest their classification. By January 2005, the military had reviewed the cases of 558 detainees and found all but 38 subject to continued detention as enemy combatants. Officially, the U.S. military had not determined these 38 men to be “innocent” of wrongdoing but rather designated each of them “No Longer an Enemy Combatant” and thus eligible for release.<sup>39</sup> Military Administrative Review Boards (ARBs) re-examined each detainee’s case yearly to determine whether he should be held because he “represents a continuing threat to the U.S. or its allies” or has “continuing intelligence value.” An ARB may recommend that detention be continued or that the detainee be transferred from U.S. custody.<sup>40</sup>

Many former detainees reported that the U.S. authorities never explained why they were being held in Guantánamo. Nor was it clear to some whether they had ever had a CSRT hearing. Others did not understand the difference between having a “law-

yer” who would represent their interests (which was not allowed) and the “personal representative” that the military provided them for their CSRT. Many respondents spoke of their “lawyer” who, in their recollection, generally asked whether they wanted to address the tribunal or preferred the representative to do so. For many, the status review process was opaque. This common sentiment is illustrated by the remarks of a former detainee who recalled that the first he knew of his CSRT hearing was when guards brought him before the panel. Few former detainees could recall in any detail what the accusations against them were. “There was a piece of paper with all the charges written down... connection with Al Qaeda, connection with Taliban. I kept [the paper] but at one search they took it away, so I don’t remember exactly what else was on that,” recalled one.

One respondent summed up his two review hearings as follows: “On the first occasion they gave me a letter and I was told that I was enemy of Americans and my second court they gave me a paper and I was told that I was free.” Others felt they had no opportunity to plead their case or to defend themselves because the charges were so vague. Many former detainees stated they were never told the evidence against them, despite their request to have it shown to them. One respondent said that he understood there were two types of charges against him, one was an alleged link to the Taliban, the other set of charges “was secret.” He continued, “when I asked them about my secret crime, they didn’t answer me and they usually told me that it was safe and sacred to them. It was a secret.” Echoing the sentiments expressed by other respondents, one former detainee put it this way:

*It was a very simple court and I was told that I’d been a Taliban and a terrorist—but those names had different meanings for me. I told them: “I have been here for more*

*than three years, so what is my [crime]? If I am guilty, just show me the proof and if I am a terrorist, or if I belong to the Taliban insurgency, show me the proof...explain it to me." But they couldn't explain it.*

In June 2008, the Supreme Court decided *Boumediene v. Bush*<sup>41</sup> and found that Guantánamo detainees had a constitutional right to have a federal court adjudicate their petitions for habeas corpus, challenging the legality of their detention. There had been no habeas hearings since *Rasul*, because of subsequent legal challenges. In *Boumediene*, the Court ruled that the Congressionally-created circuit court review of a CSRT decision was flawed and an "inadequate substitute" for habeas corpus proceedings.<sup>42</sup> In particular, the Court pointed to the limits placed on a detainee's ability to call witnesses or present evidence to rebut the government's allegations.<sup>43</sup>

In general, detainees did not believe they had the opportunity to call witnesses at their hearings when they occurred, while others were rebuffed in their attempts to do so. "We weren't allowed to show any witnesses," said one. Another had his request for two witnesses, whom he claimed could confirm he had no links to Al Qaeda or the Taliban, turned down. As a result, he refused to appear in a subsequent hearing. A later ARB board recommended he be released.

When asked what helped them to survive their stay in Guantánamo, many respondents said that because they were innocent they believed that eventually they would be released. This common sentiment was expressed by one former detainee: "I hadn't committed any crime. I knew I was innocent, and I knew that one day I would be free."

## RELEASE

Guantánamo has held over 770 detainees from the war in Afghanistan since January 2002. Of these, over 65 percent have been released. The average length of confinement at the camp of those we interviewed was three years, the longest was six years and the shortest was five months. Approximately 255 detainees remain, some of whom have been held for six years or more.<sup>44</sup>

The vast majority of respondents said they were extremely surprised when they learned of their imminent release from Guantánamo. News of a detainee's release could come from a number of sources, including sympathetic guards, military officers, and interrogators. Yet many doubted the veracity of what they heard. Recalled one respondent: "[I]t was very difficult for me to trust an American. So when they told me, I still did not believe them."

Preparing detainees for release involved a number of procedures. First, they received a full medical exam and a new set of clothes, including a jacket and a pair of Levis jeans. Most respondents remembered feeling elated when they finally realized they would be returning home. But a few felt guilty or sad to be leaving while fellow detainees remained. One former detainee put it this way:

*On the one hand I was very happy I was going home. On the other hand I was very upset for those young prisoners who would remain in Guantánamo.... [S]ome were Arabs who were not linked to any groups, they were just like...Islamic preachers.... And there was a guy who was always saying, "Oh my God, I have my mom, my wife and son, and I was arrested from the street, from the bazaar." I knew another prisoner who was from Jalalabad. He was a butcher buying and selling cows, and he*

*was arrested based on wrong information from the street. ...So I was happy that I got released but also very sad for those people who stayed behind.*

Within a day of their departure, detainees were presented with a letter from the U.S. Department of Defense and told they had to sign it in order to be released (see insert page 60). The letter stated that because “the United States and its coalition partners are engaged in armed conflict with Al Qaeda, an international terrorist organization, and its Taliban supporters; and ... [the individual] was detained as an enemy combatant during such armed conflict,” that the individual agreed to several conditions to his release including that the detainee will not affiliate with Al Qaeda “or its Taliban supporters” or otherwise act against the United States or its citizens or allies. If the released detainee violated any of these conditions he agreed that he “may again be detained.”

Many respondents said they signed the letter because they felt they had no other choice. “I was ready to sign absolutely anything to leave that place,” a former detainee recalled. “They told me you sign this or you don’t go. So, of course, I signed.” Yet others refused to sign, concerned that to do so would constitute an admission of guilt:

*I couldn’t read the letter. So I asked the translator if he would read it. After I heard what was written in the letter, I think it was something like I had links to the Taliban and Al Qaeda and there was mention that I had been a terrorist. And it said if, in the future, I committed such and such a crime, or fault, or sin, they would capture and detain me again. After I heard these words, I refused to sign the letter.... I told them that I hadn’t been involved in any terrorist activity, and I hadn’t helped any terrorist or Al Qaeda member... I didn’t want*

*to sign the letter because after I signed it, then I’d be guilty. They told me if I didn’t sign the letter, they would not send me back to Afghanistan and they would keep me in detention forever.... So, I told them that I would write down that I hadn’t been involved in any terrorist activities and that I hadn’t had any link with Al Qaeda or the Taliban. After that, I signed it, and they agreed to let me go.*

Still others said they flatly refused to sign the letter but were still released.

Most respondents said they left Guantánamo the same way they had arrived—on U.S. military transport planes. Some home governments sent planes to the base to transport detainees home. While some detainees boarded the planes still fettered in shackles and hoods, others had them removed. One respondent described his feelings after U.S. soldiers removed his shackles and he walked toward the plane his government had sent to transport him home:

*I was thinking, “Wait, I haven’t got my shackles on. This is wrong. I have to be shackled.... This is wrong what they are doing to me.” [Then the policeman from my country] said, “Just walk straight, don’t look back.” I wanted to swear, I wanted to do something, stick my fingers up at the Americans. But I just kept walking toward the plane. When I sat down in my seat, they said, “When you want to get up just tell us, and you can get up and walk on this spot.” And I still didn’t understand. I should have shackles on me right? Because it was normal to be shackled, but then off they went, and that was it.*

One former detainee even found a touch of irony in his long-awaited departure:

## RELEASE AGREEMENT

**AGREEMENT**

WHEREAS, as a result of certain terrorist attacks, the United States and its coalition partners are engaged in armed conflict with al Qaida, an international terrorist organization, and its Taliban supporters; and

WHEREAS, \_\_\_\_\_ was detained as an enemy combatant during such armed conflict;

\_\_\_\_\_ undertakes as conditions for no longer being detained the following:

- THAT he will not in any way affiliate himself with al Qaida or its Taliban supporters;
- THAT he will not engage in, assist, or conspire to commit any combatant activities, or act in preparation thereof against the United States or its citizens, or against allies of the United States or citizens of such allies;
- THAT he will not engage in, assist, or conspire to commit any acts of terrorism or knowingly harbor anyone who does;

FURTHERMORE, \_\_\_\_\_ agrees that if he does not fulfill any of the above stated conditions, he may be detained immediately consistent with the law of armed conflict;

IN CONSIDERATION of these conditions, it is agreed that \_\_\_\_\_ will not be further detained by the United States, but should he not fulfill any of these conditions he may again be detained consistent with the law of armed conflict.

The agreement has been read to me and I understand the contents.

Signed this \_\_\_\_ day of \_\_\_\_\_, 200\_\_

|  |  |
|--|--|
| <p>_____<br/>Signature of Detainee to be released</p> <p>_____<br/>Witness</p> | <p>_____<br/>Appropriate U.S. Official</p> <p>_____<br/>ISN# and Printed Detainee Name</p> |
|--|--|

11/20/2003

Release Agreement.doc

*We were all loaded onto these buses that had blacked out windows and taken to the airfield. The coaches had a capacity for about fifty people each and they were full, but not with detainees. There were only four detainees on my bus and I was one of them. Everybody else was a soldier. And again it was overkill: my detention began*

*with overkill, and now my release was ending with overkill.... I was placed again in the so-called "three-piece suit," only this time there was no hood or goggles. There was a padlock, a big thick padlock, on the shackles, too, for good measure, just in case, you know, I tried to escape on the way to freedom.*



## RETURN: THE LEGACY OF GUANTÁNAMO

As of October 2008, the United States had transferred approximately 520 detainees from the detention facility in Guantánamo Bay to the custody of governments in 30 countries.<sup>1</sup> Many respondents in our study said they were elated when they learned about their impending departure from Guantánamo. In their minds, “release” from U.S. custody meant vindication of their claims of innocence and an opportunity to resume their lives. None of these detainees had been charged with a crime by the United States. What few understood at the time was that U.S. policy was not to “release” detainees but rather to “transfer” their custody to another state. In the weeks and months ahead, many former detainees would discover that the “Guantánamo” chapter of their lives was not entirely over: it had simply moved into a “post-Guantánamo phase” in a different land.

Over time, the U.S. government has negotiated the conditions of detainee transfer with foreign governments. Its stated chief consideration in Guantánamo releases is assurance that the detainee will not “increase the risk of further attacks on the United States and its allies.”<sup>2</sup> Determinations that a detainee was “no longer a risk” or was “no longer of intelligence value” were made in some cases through annual status reviews.<sup>3</sup> However, as a U.S. official interviewed for this study explained, the government negotiates detainee transfers regardless of the outcome of the annual status reviews and detainees may be transferred regardless of whether they have been “cleared” for transfer or release by the review procedures.<sup>4</sup>

As part of its negotiations, the U.S. government obtains guarantees that the receiving government will “establish...measures...that will ensure that the detainee will not pose a continuing threat.”<sup>5</sup> Such measures often include subsequent detention or prosecution, although the U.S. never makes these determinations public.<sup>6</sup> Thus, detainees are not aware of their fate as they leave Guantánamo. They can be immediately freed, placed “in confinement or subject to other restrictions,”<sup>7</sup> or prosecuted under the domestic law of their home country. A detainee cleared by the review boards nonetheless may continue to be held if the Department of Defense does not obtain sufficient security guarantees, a U.S. government official also explained. In addition, detainees cleared for release may continue to be held if the U.S. government recognizes they are at risk of being tortured or persecuted in their native country and the U.S. has not been able to reach agreement for resettlement with a third country. As of October 2008, the U.S. was holding more than 60 detainees in Guantánamo who it acknowledged were eligible for transfer or release to their own or a third country.<sup>8</sup>

### DETENTION AND PROSECUTION

Of the more than 500 detainees the United States has transferred from Guantánamo to the custody of other governments, scores have been destined for further “detention, investigation and/or prosecution.”<sup>9</sup> The U.S. states it seeks “diplomatic assurances” from receiving states that all detainees will be treated humanely.<sup>10</sup> While no official, comprehensive data

exists on the circumstances and outcomes of subsequent national proceedings against released Guantánamo detainees, human rights organizations have reported cases of their abuse in detention, arbitrary and prolonged detention without trial, and irregular criminal prosecutions.

Of our sample, ten respondents were arrested upon arrival in their home countries and incarcerated for periods ranging from three months to two years. Some were held in security prisons on domestic anti-terrorism charges and later released. Others were released without trial. One respondent who was detained for a year and a half in his home country after he left Guantánamo explained: "it was like leaving one nightmare to go into another one." Still, he was grateful for the counseling he received while incarcerated by his government, and his confinement gave him a period to adjust. He noted that the prison psychologists in his home country were not like those in Guantánamo. A therapeutic relationship of trust developed, from which he benefited: "I think it's a good thing that I went to jail after I returned because I could not have been just released into the outside world after what I had been through in Guantánamo."

A few of our respondents reported they had been abused in detention at home. One described being beaten by domestic security agents in prison and forced to take drugs that made him hallucinate so badly he saw "snakes coming from beneath the floor." Held without charge, he was accused of being a spy for the Americans. Another respondent was beaten during his initial interrogation while authorities demanded he confess that he was a member of a terrorist organization. He was released eight months later, without trial.

There have been several reports of abuse of former detainees upon their transfer to home countries.<sup>11</sup> Human Rights Watch, for example, has document-

ed the abuse of Russian<sup>12</sup> and Tunisian former detainees by their governments. In the Tunisian case, courts had convicted at least ten Guantánamo detainees in absentia.<sup>13</sup> In June 2007, two of the convicted were transferred from U.S. custody to a Tunisian prison. One was interrogated for two days, during which authorities reportedly slapped him, threatened to rape his wife and daughters, and deprived him of sleep;<sup>14</sup> the other was reportedly threatened with torture during his initial interrogation. According to Human Rights Watch, both men told visitors their conditions at the new facility were so bad they preferred to return to Guantánamo.<sup>15</sup>

In late 2006 and 2007, the U.S. government transferred two detainees to Libyan custody reportedly after receiving assurances of humane treatment. Both men have been in custody for over a year, without known charges or access to lawyers or representatives of human rights groups.<sup>16</sup>

Several respondents interviewed for this study who had been formally charged upon their arrival or had been detained by home governments for several months reported that their governments placed them under surveillance when they were freed. Some had their passports confiscated; others had strict reporting requirements to follow for domestic travel or were required to report regularly to authorities.

## RELEASE UPON ARRIVAL

According to the Department of Defense, most Guantánamo detainees who have been transferred into detention in their home countries were quickly released.<sup>17</sup> This is consistent with our findings. The vast majority of respondents in our study, 45 of 62, were released from the custody of their governments within 72 hours of arriving home. Several were initially arrested under domestic anti-

terrorism laws, for example, but quickly sent home after questioning.

## RESETTLEMENT AND COMMUNITY RECEPTION

With one exception, who was not among our respondents,<sup>18</sup> none of those yet released from Guantánamo has been convicted or punished for a crime by the U.S. government. Nor have they received any official acknowledgement of their innocence. The U.S. government has repeatedly stated that its decision to release detainees is not an admission that they are cleared of wrongdoing or that U.S. forces committed an error in capturing them or later detaining them in Guantánamo. Without a formal exoneration, people in some communities to which former detainees have returned have regarded them as suspect, even a threat to public safety.

Most respondents interviewed for this study said they received a mixed reception in the communities in which they settled. Although their families generally embraced them, some were shunned by some other community members after learning they had been at Guantánamo.

Some respondents who returned to Western European countries reported that they received death threats over the phone, saw signs denouncing them in their neighborhood, and encountered people shouting profanities in their direction on the street. One interviewee remarked that even some of his old friends were now afraid of him, believing that he was an Al Qaeda terrorist. Another reported that non-Muslims were often more understanding than some in the Muslim community. One said that he no longer felt comfortable walking alone in certain neighborhoods. “[It is] just the way that people look at me,” he confessed. “I don’t feel comfortable.”

## THE REINTEGRATION PROGRAM IN SAUDI ARABIA<sup>21</sup>

Saudi Arabia is unique among countries receiving its nationals from Guantánamo. In late 2006 and early 2007, the Saudi government expanded its existing rehabilitation and reintegration program for identified Islamic extremists to include former Guantánamo detainees. As part of an unpublished agreement with the United States, the Saudi government reportedly agreed to enroll returning detainees in the program as a condition of their release from U.S. custody.<sup>22</sup> The Saudi government program is based on the premise that extremists “were tricked” into false beliefs of Islam and could be re-educated and reformed.<sup>23</sup> Former Guantánamo detainees undergo a six-week program taught by clerics.<sup>24</sup> After completing the program, former detainees are moved to a half-way house on the outskirts of Riyadh. At the “Care Rehabilitation Center” compound, former Guantánamo detainees are housed separately from Saudis who have been jailed for their extremist views. Returned detainees, called “beneficiaries,” live for several months in a guarded compound but have substantial privileges. They receive religious and psychological counseling, including art therapy, and can swim, play soccer, and relax with PlayStations.<sup>25</sup> After release, the Saudi government encourages the former detainees to marry and settle into Saudi society and provides them with financial support and jobs.<sup>26</sup> The government claims that of the more than 100 released detainees, none have been rearrested.<sup>27</sup>



221 Afghans detained in Guantánamo (the largest single group), 192 have been returned home.<sup>19</sup> Some returnees to Afghanistan reported being threatened, mostly by old enemies, they said. Others from impoverished backgrounds reported being neglected after their return, just as they had been before their arrest. "There is no change in my relation with other people in my community because I am a poor guy so no one cares about me," remarked one respondent. Two Afghan respondents said that rumors of sexual abuse at Guantánamo had stigmatized them and made it difficult to find a marriage partner. One of these was also accused of being an American spy and as a result was fearful of becoming a Taliban target.

However, several Afghan respondents experienced a remarkably different reception: village-wide celebrations of their return. The neighbors of one family even invited the local police to join the festivities. In these tight-knit communities, respondents explained that their innocence was never in doubt. "My reputation has not been damaged in the community among my people. People still feel that I am not a traitor," one said. Another former detainee, a teacher to over 200 local students before his detention, reported that he was "well respected" before *and after* his arrest. Another released detainee, who was a shepherd, received an outpouring of sympathy from his community. "[W]hen I'm walking on the streets and I meet some people, they usually say to me, 'We're sorry for you...' Everyone [in my tribe knows] that I'm innocent, that I'm not involved in any political activities."

In 2006, eight former detainees who were unable to return to their country of origin because of fears they would be abused were transferred to Albania.<sup>20</sup> These former detainees faced different challenges than those returning home. U.S. authorities, the Albanian government, local UN officials, and some lawyers for respondents told these former

detainees that they would be reunited with their families and provided homes and jobs in Albania but the reality turned out to be quite different. Continued and indefinite familial separation weighed heavily on the refugees. "I will never be able to go back. I cannot bring them here. I cannot see my family for the rest of my life," said one respondent. Most of their families had been visited by officials in their home country who knew that the individual had been in Guantánamo and was now living abroad and several refugees were concerned about the safety of their families. A family member of one had been threatened with termination of the pension which was the sole support for the family.

None of the refugees spoke Albanian, and language instruction was halting, making social integration particularly difficult. The new arrivals struggled to learn the language, but twice the language course offered at the refugee center was discontinued. At the time of the interviews, none of the refugees was employed and their job prospects were bleak, especially since some potential employers did not want to hire anyone who had been held in Guantánamo.

The Guantánamo refugees lived initially in single rooms at a state-run refugee center on the outskirts of the capital, though in early spring 2008, they were relocated into apartments with a promise that the Albanian government would subsidize the rents for two years. Still, without jobs, their ability to sustain themselves remained uncertain. And, as one former detainee noted, the stigma of Guantánamo remained: "It doesn't matter I was found innocent. It doesn't matter that they cleared my name by releasing me. We still have this big hat on our heads that we were terrorists."

## FAMILY

Prior to their detention, over half of the respondents were married with at least one child. Some had kept abreast of family news through correspondence, while others found it difficult to maintain meaningful contact with their families during their detention in Afghanistan and Guantánamo. Some families believed their loved one was dead and learned what had befallen him only at the time of his release.

Reestablishing primary family relationships was difficult for many former Guantánamo detainees and because of deaths, or estrangements, impossible for others. One former detainee likened his experience to that of the lead character in the film *Cast Away*, played by Tom Hanks, who returned home after years of being stranded on an island to find his fiancée married and with a young child. This former detainee returned home to find his wife had divorced him, while another returned home to learn that his father had been murdered and his estranged wife had taken their children to another part of the country. “I was living in hell in Guantánamo. And when I returned home, it was another hell,” he said. Of the Afghan respondents, eight came home to discover that an immediate family member had “developed a mental problem,” which they attributed to the stress caused by their detention. Others attributed the physical ailments of family members to the anxiety caused by their absence.

Several released detainees spoke of the impact of their absence on their children. Several reported their children had dropped out of school for lack of funds or had fallen behind academically because of their time away. One respondent lamented that his sons “quit their education because of me, and now they’re going to be illiterate.” There were other difficulties too. As one former detainee remarked,

it was particularly difficult for his children to explain that their father was in Guantánamo, so they simply said “my Dad’s in jail.” He recalled: “You can’t express to a child that there is something in this world called ‘detention without trial’ where the rule of law doesn’t exist.” He believed that his children only understood that “if you’re in jail you must be bad, because that’s what society does.”

Many of their families made great sacrifices in seeking their release, some former detainees said. Several families undertook extensive efforts to obtain their loved one’s liberty, often with the support of local groups or international organizations like Amnesty International. “I know that my parents’ life stopped when I was away,” explained one respondent. His family did not want to discuss this topic now, he said, because they did not want him to feel badly for the disruption to their lives. Eleven Afghan respondents reported their families were forced to sell property, borrow money, and/or quit jobs in order to finance efforts to secure their freedom. One former detainee said his brothers quit their jobs to devote themselves full-time to lobbying officials in their country and the United States for his return.

Five Afghan respondents complained that their relatives even paid bribes to corrupt officials who promised to help but ultimately did nothing. Government officers approached one of the brothers and promised to secure his release if the brother bought them a vehicle, one respondent said. The brother complied and was told to meet the officials at a hotel in three days to pick up the former detainee. However, when he arrived, he was beaten by “several police” who threatened to arrest him. Subsequently, another group approached the brother, again promising to return the former detainee to his family if he paid them US \$4,000 and accompanied them to another city. The brother sold his car to pay the fee and went to the agreed location

to retrieve his brother. The men then admitted they did not know where the brother was. Now broke, the brother had to borrow cash to get home.

For many other Afghan families, the financial toll of trying to secure the release of a family member was even higher, but with no happier results. Some lost their family's assets. "[My father] sold our land in order to seek my release," one respondent reported. And another said: "[T]hey spent all the money I had at home just looking for me.... And at the moment, there isn't anything I have to survive on or to make a better life." And a third told of a brother who had returned to Afghanistan to care for their ailing mother and undertake a search for him. He said the family spent approximately U.S. \$60,000 trying to secure his release.

## SUPPORT AND LIVELIHOODS

Most respondents said economic hardship was one of the primary aftereffects of Guantánamo incarceration. As one respondent put it: "The greatest need is financial because as a man, a son, and a father, I should support my family." The economic impact of their detention varied among respondents. Most of the former detainees from Europe were young, unmarried men, and they said their absence did not deprive their families of needed income. Several non-European respondents struggled to make ends meet, but were able to rely on their families for support. Virtually all of the released Afghan detainees, however, reported that their family's wealth had been substantially diminished by their incarceration.

A few respondents reported that they had received some assistance from non-state sources such as community groups, religious institutions, or non-governmental organizations such as Amnesty International and the Red Cross. But 45 of our 62 respondents said they received little or no support

from *any* group—government or private—upon their arrival in their country of origin or a third country. One respondent in Europe noted that convicted criminals in his country receive more assistance than he did. In Afghanistan, national security forces quickly processed the respondents who appeared before the Peace and Reconciliation Commission in a public ceremony in Kabul. The ICRC gave the new arrivals a nominal amount of money (reportedly 500 to 2,000 Afghanis, approximately U.S. \$10 to \$40) to travel home from the capital. Two Afghan respondents reported that the government had not provided anything beyond these modest handouts. Others said they received nothing.<sup>28</sup> Many respondents said the government was unresponsive to their efforts to recover their illegally seized property or reclaim lost government jobs. In two cases, former detainees said that corrupt government officials seized their property after they were accused of being members of the Taliban. Both said they had to pay bribes to regain their lands.

Many Afghan former detainees in particular said they were destitute and had little hope of recouping lost capital. They had lost wealth in a variety of ways: their property was destroyed or confiscated during capture or seized in their absence, sold by their families, or expended by family members to pay bribes or search for them. Several also remarked they were struggling to buy medicines prescribed in Guantánamo for their mental health. Recalled one Afghan respondent: "I am now needy and destitute.... I even have to ask people to lend me money to buy medicines." For some, physical impairments compounded difficulties in paying off debt and supporting their families. One former detainee lost not only his business and built up debts to his family while he was in U.S. custody, he also lost the use of his leg from an untreated injury sustained when he was arrested.

Four Afghan respondents said their property was confiscated after their arrests. One said his pharmacy was looted because U.S. and Afghan forces left the doors open “so all of the property, the drugs, and even the notepads from the drugstores had gone missing.” Others said their homes were bombed or destroyed during their arrest. One reported that U.S. and Afghan national security forces “snatched almost everything” during a raid of his house, including some \$45,000 in cash. His brother complained to authorities about the seizure, to no avail: “[N]obody has scratched their heads about it,” he said. A few respondents reported that the arresting authorities—Pakistani, Afghan, or U.S.—confiscated cash, watches, or other personal property from them. Their property typically was not returned: one respondent, however, said that U.S. authorities had returned the watch, flashlight, and U.S. \$20 in cash that had been taken from him at the time of his capture over four years earlier. Several Afghan respondents said their families had to sell assets to survive. “[W]hen I got arrested,” one recalled, “there was no [one] responsible for my children and wives and they had to sell my land and property.” Another former detainee learned that his family sold his agricultural land to pay for needed medical treatment for family members. He cannot afford to buy land now or pay for the prescriptions his mother needs for an emotional condition she developed while he was in U.S. custody.

Many families assumed significant loans. The families of at least thirteen former detainees reportedly borrowed money, debts that participants said they were struggling to pay off. “I owe money,” one said. “They’re coming to our house every day.” Another remarked: “I have a family of five. So it was difficult for my family while I was in Guantánamo. And now there is a loan. They were borrowing to buy food and flour.” Another respondent said: “I don’t have any job. There’s no land now. There’s

no house now. And I’ve got such a big family, and there is no [one] responsible for my family. I don’t know what to do. That’s all.”<sup>29</sup>

## EMPLOYMENT

Thirty-four of our respondents said they were unemployed while only six reported they had permanent employment (the remaining did not specify their employment status). Only one respondent, from Western Europe, expressed optimism about his economic future. Several younger respondents from Western Europe were enrolled in training programs with the hope of obtaining jobs at the conclusion of their courses. Seven former detainees reported they had tried unsuccessfully to find a job. One reported that prospective employers always noticed the three-year gap in his employment history. When he disclosed he had spent time in U.S. custody, he never heard from them again.

The stigma of Guantánamo interfered with the ability of several Afghan former detainees to regain their former positions. Those who were government employees found they could not reclaim their jobs. “The government authorities think we are terrorists,” said one respondent. “I want my job back,” exclaimed another. “I want my rights, like the salaries that I was supposed to receive, and I want [a] promotion.” Another respondent, a highly-educated man, expressed frustration that his time in Guantánamo indelibly marred his reputation and career. He was a practicing physician, who had operated a clinic before his arrest. Now he had to “start again from a drugstore so that people can trust me.”

## PHYSICAL IMPAIRMENT AND TRAUMA

We asked respondents to describe how they felt physically and psychologically since their release from Guantánamo to gauge how their incarceration may have affected them. As noted earlier, re-

searchers did not conduct medical examinations or evaluate the medical records of the former detainees interviewed for this report. Nor did they conduct psychological evaluations of former detainees. Their responses nevertheless indicate a range of difficulties suffered by detainees after their release. According to Harvard psychiatrist Judith Herman, “[c]hronically traumatized” individuals may lose their “baseline state” of physical comfort and complain “not only of insomnia and agitation,” but “numerous types” of physical symptoms, including “tension headaches, gastrointestinal disturbances, and abdominal, back, or pelvic pain.”<sup>30</sup>

Many respondents complained of a range of physical impairments, which they attributed to their incarceration by U.S. forces. The most common ailment was pain in the wrists, knees, back, and ankles as a result of prolonged short shackling, hanging, or stress positions. Another complaint was deteriorating eyesight. Some reported chronic pain, fatigue, or a generalized deterioration that interfered with their ability to perform physical labor for extended periods. One respondent, comparing his current state of health to his condition before Guantánamo, said, “I was a strong man. But at the moment, I am nothing.” Despite their ailments, few former detainees had been treated for their symptoms following their release, which in some cases had been several years prior to their interview.

Almost two-thirds of the respondents reported having emotional difficulties since leaving Guantánamo.<sup>31</sup> Memories of being short-shackled, exposed to extreme temperatures, and exposed to violence by guards remained vivid for many. One former detainee said he had been diagnosed by a psychiatrist with Post-Traumatic Stress Disorder (PTSD).<sup>32</sup> Another explained that he was depressed and became frustrated easily: “I think if I don’t leave the room, that I will die and I will burst... like a bomb.” Images of Guantánamo still haunted

him years later, another man said, and he found he had developed a quick temper. “I realized that I didn’t return to this life as intact as I thought I had.” Many respondents reported suffering memory loss. Others reported disturbing dreams. “I still do get nightmares. I think I’m still back there, with chains and people swearing at me,” said one respondent who had been released several years earlier.

Another respondent explained that he had developed an obsession with cleanliness in Guantánamo. “I used to always clean myself, clean myself, clean myself. ‘Cause I had nothing to do. Just clean.” Throughout the interview, he said, his mind drifted to the bathtub ring that he had not yet had the opportunity to clean and he had to control his impulse to go and clean it. Another released detainee described how his detention experience continued to separate him from those around him. Words like “isolation” and “detention” had acquired whole new meanings for him. He described feeling as though he was “in a world where people just don’t understand.” A few respondents reported an intense need at times to withdraw from their surroundings and be by themselves.

Whether former detainees who reported mental health problems developed or will develop PTSD or other disorders remains an open question.<sup>33</sup>

## CHANGES IN RELIGIOUS BELIEF

No respondent reported becoming less faithful as a result of his detention. One of the doctrines of Islam is *qismah*, which holds that God is omnipotent, that one’s overall fate has been predetermined but the individual has agency to determine appropriate courses of action.<sup>34</sup> Guantánamo, according to one respondent, was a “test of faith.” Twenty-two former detainees reported no change in their religiosity, and 21 reported their faith had strength-



ened as a result of their detention. As one respondent put it: "I'm in the same position and the same condition, and I'm a Muslim, and I will be Muslim forever." A few Afghan detainees reported they had learned to read the Quran while in Guantánamo. Although raised in Muslim families, two European interviewees reported they had not practiced Islam until they were taken into custody. For others, even though their attitude had not changed, their religious practice was a source of strength as they struggled to reestablish their lives.<sup>35</sup> One respondent said: "Right now, actually, the only thing keeping us going is our faith, faith in God because we understand God is the only one who can help us with our current situation."

## BELIEFS ABOUT ACCOUNTABILITY

"Who do you feel is responsible for your detention and treatment at Guantánamo?" we asked, along with "What should happen, if anything, to those responsible?" A few respondents wanted criminal trials for those responsible for their detention. One noted that only a few low-level soldiers had been held accountable for detainee abuses. He traced responsibility for their actions to "the attitude of people like Donald Rumsfeld," and statements by U.S. officials that those held in Guantánamo were "terrorists" and "killers."<sup>36</sup> Some respondents said such labels sent a permissive signal to guards and others to abuse them and that those who had abused them should be punished. None of the respondents was aware that those who had allegedly abused them had been held accountable.

Many Afghan former detainees stressed they wanted the authorities to find and punish the individuals in Afghanistan who had reported them. As one respondent explained:

*I'm introduced to you and you are told that I'm a criminal, so this is your job to*

*find out whether I'm a criminal or not. If you find me guilty, punish me. If you find me innocent, I should be released and then it's your job to target the person who had introduced me to you and it's your right to punish him for mistakenly or wrongly introducing me to you.*

One respondent explicitly called for vengeance. He wanted those responsible for his initial arrest and detention to be put in jail in his home country to "taste the torture and the sufferings." Another wanted those responsible to be put in Guantánamo to "see how it is," but then added that he did not want anyone tortured.

## REPARATIONS AND RESTORATIVE MEASURES

Thirty-eight respondents said they believed they should receive financial compensation for what they saw as wrongful imprisonment, for their losses, and for their treatment in Guantánamo.<sup>37</sup> Three said they did not want compensation. Although most respondents said they deserved compensation, few were actively pursuing it. A few living in Europe were aware of legal actions pending against U.S. officials, although they did not hold out much hope of success. In 2008, a U.S. federal appeals court affirmed the dismissal of a suit former Guantánamo detainees had brought against military officials for torture and abuses suffered during their detention.<sup>38</sup> None of the respondents had received any compensation for their treatment. Several Afghan respondents did not think they could seek compensation or that officials would be responsive. A few asked researchers if they would assist them in their efforts. Two former detainees indicated they had approached Afghan or U.S. officials in Afghanistan to take action to satisfy their demands, but had been rebuffed.

With only a few exceptions, respondents wanted compensation from U.S. authorities rather than their own governments. “[I]f they found me guilty... they should’ve killed me. [I]f they have any proof regarding my case, and even if they find me guilty now, I’m ready to be punished; otherwise, they should compensate me,” said one former detainee.

Several respondents underscored the reasonableness of their request by pointing to their abject conditions. “I have lost everything as a result of being detained in Guantánamo. I’ve lost my property. I’ve lost my job. I’ve lost my will.... There isn’t any work for me in Afghanistan,” said one. He was prescribed medications in Guantánamo but cannot afford them. “So what to do?” he wondered aloud. The family of another destitute and unemployed respondent forced him to leave home, and his wife returned to her family for support. “I have a plastic bag holding my belongings that I carry with me all the time,” he explained. “And I sleep every night in a different mosque. And that is my situation.”

Several respondents said the United States should publicly acknowledge their innocence. “If they came and said: ‘These guys were innocent. It was all our fault,’ I think that would help,” remarked one. Another put it this way:

*The four and a half years of my life that’s wasted, and which nobody can do anything to bring back, what’s done is done, and I can’t bring back my life. But, until this point, the American government has not even recognized that it’s responsible for this, and has not given any kind of apology or care or concern for me.*

Another respondent said, “I just want to prove to the world people that I was innocent, and I want compensation from the Americans.” Many felt the U.S. had admitted they were innocent by releasing them and therefore owed them compensation: “As

they found us innocent, so now it is their liability to compensate, to pay for us.”

Released detainees, in general, wanted compensation sufficient to resume a “normal life.” Most Afghan interviewees wanted compensation for their lost property and economic losses. Others felt the U.S. ought to enable them to have a sustainable future. Many felt compensation was needed so that former detainees could move forward with their lives without rancor toward the United States.

Several respondents, however, felt it was impossible for any authority to compensate them for what they lost. In particular, time was something many felt could not be replaced. As one former detainee expressed it:

*Years of my life were wasted over there. I lost the chance of living as a human being, my family lost the chance of being with their father and husband, I lost the chance of being with my children and my wife, a person’s life passing by, you never can get that back.*

Another respondent said, “I was 19 years old at that time, so... they, they took a part of my life, and one of the most important times of my life, like between 19 and 24. Nobody can give me that back, of course.”

## OPINIONS AND ATTITUDES OF FORMER DETAINEES

Former detainees were asked their opinions on a number of topics, including their views about their own government as well as the United States; what they would like to tell the American public; and what meaning, if any, they derive from the experience of detention, custody, and return. Their responses indicate a range of attitudes and suggest complexity and variation. The range of responses, including de-

clining to provide a response, suggests former detainees were mostly candid in their views.

### Home Government

Respondents expressed a range of opinions toward their governments. Many felt their government at best failed to advocate for them while they were incarcerated at Guantánamo. One respondent said he felt “betrayed” by his government. He expected his government to protect him, but believed they only secured his release because of the public campaign his family conducted with the support of Amnesty International. Another was disappointed that his government had not gathered evidence to help demonstrate his innocence to his American captors: “The Americans didn’t know anything about me, and my government could [have] collected information from people in my community. Why didn’t it try?” At the same time, a few European former detainees were grateful their governments secured their release, even those who were imprisoned upon release. “Well, it may seem strange because I’ve spent [time] in jail here after I returned, but I’m extremely grateful to [my] government,” said one.

Former Afghan detainees had mixed opinions about their government. One remarked that he had supported the transitional government, which he believed should have intervened on his behalf. Others excused the failure of the Afghan government to do more because their leaders were powerless against the United States. “[T]hey didn’t have the power to tell the Americans not to take me to Guantánamo,” said one. Several believed U.S. forces did not know enough about local politics to avoid being manipulated by unscrupulous members of the community who saw an opportunity to settle old scores. On the other hand, some Afghan former detainees expressed general support for their government and felt their country was heading for better times after decades of civil war.

### The United States

Of those who responded to the question, 31 said their opinion of the United States changed from positive to negative as a result of their experiences in U.S. custody. Fifteen respondents reported that their attitude had not changed and remained generally positive. Five of those we interviewed declined to answer the question or stated they had no opinion.

Many respondents expressed feelings of bitterness that, in their view, the United States had disregarded the rule of law and humanitarian principles. “We never imagined Americans, the country that was the defender of democracy, would treat anybody like this,” remarked one. An Afghan respondent noted that the U.S. supported Afghan forces when they were fighting the Russians, but had turned on these same fighters after 9/11. He now was boycotting American products, he said. “It’s very good for humankind and the world to get rid of terrorism and bad people. I think there are many other ways to beat terrorism rather than fighting, battling, destroying the roads, schools, killing our children, killing our families,” he remarked. Others also held strong views, but affirmed their desire to address their concerns peacefully. One respondent said that despite his mistreatment in U.S. custody: “I’m not going to plan an attack.... We know that within the States you also have organizations and courts and you have the legal system that works quite well, and that is how I will try to get my problem solved and try to claim compensation.”

Several respondents wanted to assure Americans that they harbored no ill will toward them. Two in particular said they wanted to thank those U.S. citizens who had protested against U.S. Guantánamo policy. One former detainee, whose attitude toward the U.S. had not changed, recalled candid conversations with Guantánamo guards. He said, “[They] tried to understand why I was

### THE FATE OF REMAINING DETAINEES

What should happen to detainees still held in Guantánamo? Almost half of those who responded to this question (13 of 29) said the remaining detainees should be charged and prosecuted or, if there was no evidence, they should be freed. As one respondent put it: "I feel that the United States should follow its own laws and constitution. If these detainees are guilty, try them, sentence them to many years in jail or life in jail or something. If they are not, if they are innocent, then they should be released." A few respondents said trials for the remaining detainees should be conducted by an international court because they believed U.S. courts lacked credibility.

While a few respondents felt that the detainees who remained in Guantánamo were innocent and should be released, others focused only on nationals of their own country. Explained one respondent: "I know the Afghan prisoners completely because I was a teacher, and they were my students [in Guantánamo]. Most of them have been arrested based on personal feuds." A few respondents said the detainees still held in Guantánamo should be tried by their home governments. "[H]olding [detainees] in Guantánamo is unjust and unfair," one respondent said. "They shouldn't be there in the first place, especially since it's not proven legally that they've committed any crime."

there and what had brought me there. And as they tried to understand me, I also tried to understand them." As a result, he concluded: "I realized that

the situation is extremely complicated, and that responsibilities are shared." Others said they only wanted the American public to recognize that they were innocent. "I just want to tell them that I am not this savage beast, what they were told I am," explained one respondent.

Other respondents offered more muted criticism, believing a misinformed American public was unable to correct the mistaken policies of its government. Several respondents expressed the opinion that Guantánamo damaged America's reputation as a leading democracy. Nine respondents made clear they distinguished between U.S. citizens and their political leaders and reserved their ire for the U.S. authorities. In the words of one: "I would still love to go to America.... I've got nothing against the American public, nothing at all.... [T]he country hasn't done anything to me. Individuals have. So you can't just go and blame the whole country."

The Department of Defense has claimed that as many as 37 former detainees (of more than 500) have returned to "the battlefield," a recidivism rate of approximately 6 percent.<sup>39</sup> This figure has been strongly disputed. The government-released information was not sufficient to enable independent verification of these cases and critics have pointed out that the government list of those who returned to fight against the U.S. included "those who have publicized anti-American opinions," namely the "Tipton 3" (British former detainees whose experiences were depicted in the film *The Road to Guantánamo*), and Uighur refugees who gave interviews to international press and against whom no other evidence has been introduced.<sup>40</sup> While published interviews with a few former detainees have suggested they became radicalized during their time in Guantánamo,<sup>41</sup> none of the respondents in our study expressed such opinions.

## REFLECTION

Recovering from trauma inflicted in captivity typically comes in stages: first comes the establishment of safety, then remembrance and mourning, and finally reconnection with ordinary life, according to Judith Hermann. Progression through these stages is not always linear and is influenced by a number of factors.

A few, mostly younger men, expressed anger or bitterness about their years in U.S. custody. For them, Guantánamo was a dark coming-of-age experience which gave them a sober perspective on the abuse of power. One young respondent said: "I stayed in Guantánamo so I know about...[the] torture done by Americans." He said he wanted to forget the past, but found it hard to do so: "I was detained for only two years. I left Guantánamo at age 23. But it has put me in distress for the rest of my life."

Many former detainees painted if not an angry picture, a bleak one of their time at Guantánamo and how it colored their present. "What happened to me is the worst memory I have ever had," said one respondent. Looking back, another said he lost his capacity to be human at Guantánamo. Others described their time in U.S. custody as a dark dream. "When I remember Guantánamo," said a respondent, "I feel as if I have just woken up from the grave or a tomb."

Some talked about learning the virtue of patience during detention. As one respondent put it: "We learned how to become really patient and that is something that I did not expect." Another remarked: "All those times when we didn't have enough to eat, all those freezing cold temperatures, and months and months without showers. All the things that we have experienced there, when I look back at it now I'm surprised by my patience, actually." Still, another: "Allah, our God, has wished me such a period in my life. I don't condemn anybody at all."

Others spoke about their desire to forget the past and move forward with their lives. As one put it: "Guantánamo was this big nightmare. Now I just want to close that page and open a new page with my family and my children." Another former detainee simply reported that his Guantánamo chapter was not over: "I am still looking for my path in my life."

Hermann notes that at the final stage of recovery a minority of trauma survivors may become engaged in social action as a way to give meaning and worth to their past suffering.<sup>42</sup> Reflecting on their time at Guantánamo, a number of former detainees commented that the experience had given them a new sense of determination and resolve. A few former detainees left Guantánamo determined to speak out against unjust imprisonment and treatment anywhere in the world. Others said they had become more principled because of the hardships they had endured. "I wouldn't be who I am today," one said. "And I wouldn't care about the world.... And in some degree I thank America for that."

The positive sentiments of a few, however, can never mask the feelings of despair and uncertainty shared by most of the former detainees we interviewed. Some arrived home to find that their families had suffered in their absence and without their support. Family assets had diminished or been lost altogether. Years of separation made family reunifications difficult. For many the "stigma of Guantánamo" hindered their ability to find meaningful employment. Some had tried to move on with their lives but were plagued by intrusive memories of the abuses they had suffered in U.S. custody. Common to most—if not all—was the sense that the legacy of Guantánamo remained.





## 6

# CONCLUSIONS AND RECOMMENDATIONS

## CONCLUSIONS

Our research reveals serious flaws in the system created by the Bush Administration for the apprehension, detention, interrogation, and release of suspected members of the Taliban and Al Qaeda taken into U.S. custody since the attacks of September 11, 2001. One of the most egregious aspects of this system was a series of high-level directives issued between September 2001 and April 2003 authorizing the use of “enhanced interrogation techniques.”<sup>1</sup> Many of these interrogation methods—whether used individually or simultaneously over prolonged periods of time—appear to have violated international and domestic prohibitions on torture or other cruel, inhuman, or degrading treatment.

By adopting a “take the gloves off” approach,<sup>2</sup> top U.S. civilian and military leaders established unprecedented parameters for the treatment of detainees at U.S. detention facilities in Afghanistan, Guantánamo Bay, and other locations. This permissive environment allowed—if not encouraged—guards and interrogators to dehumanize and, in some cases, torture detainees in their custody.<sup>3</sup> The totality of this experience deeply affected the lives of former detainees—many of whom government officials believe were imprisoned in error. Stigmatized by their imprisonment, a significant number of these detainees now face difficulties finding employment, and some report lasting emotional and psychological scars.

Our research raises troubling questions about the

process by which the U.S. military apprehended and screened suspected Al Qaeda and Taliban fighters and their ostensible supporters. In particular, the U.S. government’s payment of cash bounties created an indiscriminate and unscrupulous dragnet in Afghanistan and elsewhere that resulted in the detention of thousands of people, many of whom it appears had no connection to Al Qaeda or the Taliban and/or posed no threat to U.S. security. Once in U.S. custody, the screening procedures of detainees often failed to distinguish civilians from combatants. Instead of holding battlefield hearings mandated by the Geneva Conventions to determine the combat status of detainees,<sup>4</sup> President Bush determined unilaterally that all prisoners captured in the “war on terror” were “unlawful enemy combatants” and could be held indefinitely.<sup>5</sup> Yet the Administration failed to employ sufficient procedural safeguards to minimize errors in determining who fell into that category. Ultimately, the incentive to capture suspected members of Al Qaeda and the Taliban became a higher priority than the diligence and investigation necessary to discern accurately whose detention was justified.

As early as September 2002, high-level U.S. officials were aware of concerns within military and intelligence circles about how many of those held at the U.S. naval base in Guantánamo Bay were actually dangerous Al Qaeda or Taliban fighters. A senior Central Intelligence Agency (CIA) analyst with extensive Middle East experience assessed detainees at the base in summer 2002, and concluded in a top-secret report that approximately

a third of the population—at that time 200 of the 600 detainees—had no connection to terrorism.<sup>6</sup> Many, he said, had been “caught in the dragnet. They were not fighters, they were not doing jihad. They should not have been there.”<sup>7</sup> Guantánamo’s commander, Major General Dunlavey, reportedly agreed with him and later estimated that half the camp population was mistakenly detained.<sup>8</sup> A Federal Bureau of Investigation (FBI) counterterrorism expert went even further and told a committee of the National Security Council that there were at most only 50 detainees worth holding at Guantánamo.<sup>9</sup>

The consequences of false identification were dire. Detainees faced years of confinement in Guantánamo without any meaningful opportunity to show they had been wrongly detained. In June 2008, more than six years after the first detainees arrived at Guantánamo, the Supreme Court ruled in *Boumediene v. Bush* that detainees held there had the right to access U.S. courts to review the legal basis of their continued confinement, and to date no full habeas hearing has been held.<sup>10</sup>

As of October 2008, the Department of Defense states that approximately 255 detainees remain at Guantánamo.<sup>11</sup> Meanwhile, over 520 detainees have been released from the camp, while approximately 60 detainees continue to be held even though military status boards have recommended their release.<sup>12</sup> Of the more than 770 individuals known to have been incarcerated for some period at Guantánamo, the U.S. government has charged only 23 with war crimes as of October 2008.<sup>13</sup> These figures argue in favor of a full investigation to determine how and why the U.S. has held so many men for so long without adequate legal safeguards.

Our qualitative data and secondary sources indicate that many detainees held in U.S. custody in

Kandahar and Bagram, Afghanistan repeatedly experienced physical abuse, deprivations, humiliation, and degradation. The conditions in which detainees were held, as well as their treatment at these facilities, contravened international guidelines for the humane treatment of detainees, violated fundamental cultural and religious taboos against public nudity, interfered with religious practice, and created an environment that maximized physical and psychological discomfort and uncertainty. Respondents held at Bagram in particular reported abuses that included beatings, stress positions, prolonged hanging by the arms, sleep deprivation, intimidation, and being terrorized with dogs.

In Guantánamo, military commanders explicitly subordinated camp administration and procedures to the priorities of interrogation and thus created an atmosphere of constant surveillance and intrusion in the cellblocks that dehumanized detainees. The operating assumption was that camp conditions should serve to weaken the defenses of detainees and enable interrogators to break them down psychologically. Indeed, each component of the camp system—from the use of numbers to identify detainees to solitary confinement—was designed to increase the authority and power of camp interrogators while compounding the detainees’ sense of isolation, powerlessness, and uncertainty.

Camp procedures were designed to support the work of interrogators; however, they also fostered hostility and conflict between detainees and camp personnel. With detainees’ autonomy and control greatly reduced, one of the few ways they could protest the conditions under which they were held was through collective resistance. Respondents said they felt particularly humiliated and outraged when guards mishandled, dropped, or threw the Quran to the floor. Such incidents frequently

## CONCLUSIONS AND RECOMMENDATIONS

sparked acts of collective resistance, including hunger strikes. Detainee resistance often exacted retribution by camp personnel, which generated a further response from detainees, fueling a vicious cycle in which the use of physical force by guards and the imposition of solitary confinement became predictable consequences.

Uncertainty over their fate, often encouraged by their interrogators, haunted Guantánamo detainees, who had no effective avenue to challenge the legality of their confinement. From January 2002 until June 2004, Guantánamo detainees had no access to courts or lawyers. This did not change in any meaningful way even after the 2004 Supreme Court ruling in *Rasul v. Bush*, which required that detainees be permitted access to the federal courts for the purpose of challenging the legality of their detention through habeas corpus review.<sup>14</sup> Moreover, procedures established in the wake of the *Rasul* decision to review whether detainees were “enemy combatants” and therefore could be detained indefinitely were ineffective and fundamentally flawed. Many respondents said they did not understand the Combatant Status Review Tribunals and annual Administrative Review Boards. Other respondents understood only too well that these procedures did not provide a meaningful opportunity to prove their claims of innocence. Without access to an attorney, unable to obtain witnesses, and generally denied access to all evidence against them, detainees remained effectively outside of the rule of law.

In interviews former detainees used words like “futile,” “desperate,” “helpless,” and “hopeless” to describe their feelings as they reflected on their incarceration at Guantánamo. As months turned into years, the *cumulative effect* of indefinite detention, environmental stressors, and other forms of abuse began to exact an increasing psychological toll on many detainees. The International Commit-

tee of the Red Cross (ICRC) raised concerns over several years about the deleterious effects of confinement on the psychological health of detainees at Guantánamo.<sup>15</sup> For example, when the ICRC visited Guantánamo in June 2004, it found a high incidence of mental illness produced by stress, much of it triggered by prolonged solitary confinement.<sup>16</sup> Indeed, the number of attempted suicides reported and witnessed by former detainees interviewed for this study was considerable.

Over half of the study respondents (31) of the 55 who discussed their interrogation sessions at Guantánamo characterized them as “abusive,” while the remainder (24) said they did not experience any problems. Abuses reported by these detainees who were ultimately released included being subjected to short-shackling, stress positions, prolonged isolation, and exposure to extreme temperatures for extended periods—often simultaneously. On some occasions, these tactics were used in conjunction with sensory bombardment, including extremely loud rock music and strobe lights.

Camp officials attempted to integrate medical personnel into the process of interrogation at Guantánamo, prompting both the American Medical Association and the American Psychiatric Association to issue statements in 2006 restricting participation of members in interrogations.<sup>17</sup> In September 2008, members of the American Psychological Association voted to prohibit psychologists from consulting or participating in the interrogation of detainees held at Guantánamo or so-called black sites operated by the CIA.<sup>18</sup> Former medical personnel at the base have said that through 2003 (and possibly later) interrogators had access to detainee medical records and used that knowledge to extract information from detainees. Furthermore, since late 2002, military psychologists and psychiatrists serving on Behavioral Science Consultation Teams (BSCTs) have played an active role in devel-

oping and implementing interrogation strategies at Guantánamo.<sup>19</sup>

Interrogation policies and standards at Guantánamo changed over time, but the data demonstrate that some practices remained consistent throughout the period when the study respondents were held there (January 2002 to January 2007). While more needs to be revealed about the specific interrogation techniques used at Guantánamo, it appears that many of the methods which detainees complained about most bitterly—cold rooms and short shackling, in conjunction with prolonged isolation—were permitted under the U.S. military’s interrogation guidelines in force from April 2003 to September 2006.<sup>20</sup> These practices contravene the Geneva Conventions of 1949, which the United States ratified in 1955. However, President Bush sidestepped these prohibitions in January 2002, when he determined that the Third Geneva Convention, also known as the Geneva Convention Relative to the Treatment of Prisoners of War (POWs), did not apply to suspected members of the Taliban and Al Qaeda taken into detention in Afghanistan.<sup>21</sup>

To date, no independent, comprehensive investigation has been conducted to determine the role that camp personnel as well as officials farther up the civilian and military chains of command played in the design and implementation of interrogation techniques at Guantánamo. No broad investigation has yet addressed whether or not these officials should be held accountable for any crimes they or their subordinates may have committed.

After release from Guantánamo, many respondents said they confronted a host of challenges upon arrival in their country of origin or a third country. Only a handful of former detainees said they received any meaningful or effective assistance. Labeled the “worst of the worst,” they left Guantána-

mo shrouded in “guilt by association,” particularly as their innocence or guilt had never been determined by a court of law. Some respondents referred to this state of affairs as their “Guantánamo stigma” and said it contributed to their difficulties finding employment and reintegrating into their communities. Upon arriving home, some detainees found their families had extinguished their assets and assumed significant debt. Some respondents returned home with compromised physical and mental health, and were unable to afford or access rehabilitative care and services. To date, there has been no official acknowledgment of any mistake or wrongdoing by the United States as a result of its detention or treatment of any Guantánamo detainee. No former detainees have been compensated for their losses or harm suffered as a result of their confinement.

## RECOMMENDATIONS

This report provides the first *systematic* glimpse into the world of former detainees once held in U.S. custody in Afghanistan and Guantánamo Bay.<sup>22</sup> But it is only a glimpse, albeit a very troubling one. There is more to be learned, and our hope is that further investigations and studies will follow with the aim of removing the shroud of official secrecy that has hidden what has been taking place at Guantánamo and other detention facilities from full public scrutiny.

As a first step, we recommend the establishment of an independent, non-partisan commission to investigate and publicly report on the detention and treatment of detainees held in U.S. custody in Afghanistan, Iraq, Guantánamo Bay, and other locations since the attacks of September 11, 2001. The mandate of the commission should be sufficiently broad to include a probe of how the policies and practices of these detention facilities have affected



## CONCLUSIONS AND RECOMMENDATIONS

the return and reintegration of former detainees in their countries of origin or third countries.

The commission should be composed of individuals of the highest caliber, known for their integrity, credibility, and independence. Commission members should include former members of the U.S. military and specialists in U.S. constitutional and military law, international humanitarian and human rights law, public health, psychology, and medicine. To leverage the expertise of its members, the commission should be divided into working groups to focus on discrete areas.

The commission should have subpoena power to compel witnesses and gain access to all classified materials concerning apprehension, detention, interrogation, and release of detainees taken into U.S. custody. The commission should be allocated adequate funding and expert staff to fulfill its mandate. Commission members and staff should undergo expedited review to ensure prompt receipt of the necessary security clearances to gain access to all relevant materials. Most important, the commission should have authority to recommend criminal investigations at all levels of the civilian and military command of those allegedly responsible for abuses or having allowed such abuses to take place. The work of this commission must not be undercut by the issuance of pardons, amnesties, or other measures that would protect those culpable from accountability.

The mandate of the commission should include—but not be limited to—the following areas of inquiry:

- **Apprehension and Screening.** What were the procedures used in the screening of suspected “unlawful enemy combatants” and were they lawful, appropriate, and effective? If not, what should be the proper screening procedures for

suspected enemy fighters? Did the U.S. military detain and transfer individuals to Guantánamo who had no connection to Al Qaeda or the Taliban or otherwise posed no threat to U.S. security? Did the use of monetary bounties contribute to the detention and interrogation of individuals who should never have been taken into U.S. custody? How did the decision not to apply the Geneva Conventions affect the apprehension and screening of detainees?

- **Conditions and Treatment of Detention.**

Did the conditions in U.S. detention facilities in Afghanistan and Guantánamo meet humane standards of treatment? Did the decision not to apply the Geneva Conventions affect the conditions and treatment of detainees? How did the U.S. deviate from the “golden rule” standard articulated in the Army Field Manual which states that no interrogator should use a technique that the interrogator would not want used on a U.S. soldier?<sup>23</sup> What role did medical and psychological personnel play in the treatment of detainees? Did they contravene professional codes of conduct or violate any laws?

- **Interrogations.** Did U.S. interrogation practices subject detainees to abusive treatment including torture and cruel, inhuman, or degrading treatment? How did interrogation policies and practices evolve since President Bush’s declaration of a “war on terror” on September 20, 2001? And what was the role of civilian and military officials in designing and implementing these policies?

- **Reintegration and Rehabilitation.** What has been the *cumulative effect* of indefinite detention on those released from Guantánamo? What was the process to determine whether it was safe to transfer a detainee to the custody of a foreign government? What protections were

used, and were they sufficient? Have any former detainees been subjected to cruel and inhuman treatment since their transfer to the custody of other governments? How successful are former detainees in reintegrating and resettling in their countries of origin or third countries? What impediments do they face? If any returnees pose a security threat, what steps and agreements with receiving governments have been taken to minimize such a threat?

If appropriate, the commission should recommend institutional reforms and other measures to (1) improve the apprehension and screening of suspected enemy fighters, (2) prevent abusive detention and interrogation practices, and (3) monitor the treatment of former detainees upon their release from U.S. custody.

If the commission concludes the U.S. government has violated the rights of individuals held in its custody, it should recommend corrective measures, including issuing an apology, providing compensation, and providing a fair means for clearing that person's name. If applicable, the commission should make recommendations for further criminal investigation of those responsible for any crimes at all levels of the chains of command.

With the advent of a new U.S. administration, it is an opportune time to review and correct policies and, if necessary, make institutional reforms to ensure the means used to protect U.S. security are consistent with American values and U.S. obligations under domestic and international law.

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Aug2006/d20060809ARBProceduresMemo.pdf (accessed August 26, 2008).

41 *Boumediene v. Bush*, 553 U.S. \_\_\_, \*58 (2008).

42 *Ibid.*, 41–42.

43 The government was only obligated to bring witnesses to testify who are “reasonably available.” However, the organization that oversaw the review process, the Office for the Administrative Review of the Detention of Enemy Combatants (OARDEC), did not have a budget to bring witnesses to testify at panels, according to former Tribunal Officer Stephen Abraham. And no other government organization was obligated to pay to bring witnesses.

44 U.S. Dept. of Defense, “News Release: Detainee Transfer Announced,” October 8, 2008, available at <http://www.defenselink.mil/releases/release.aspx?releaseid=12275> (accessed October 8, 2008); Human Rights Watch, *Locked Up Alone*, 24–40.

## 5: RETURN: THE LEGACY OF GUANTÁNAMO

1 U.S. Dept. of Defense, “News Release: Detainee Transfer Announced,” October 8, 2008, available at <http://www.defenselink.mil/releases/release.aspx?releaseid=12275> (accessed October 8, 2008).

2 Declaration of Clint Williamson, Ambassador-at-Large for War Crimes Issues, U.S. Department of State, ¶2, *Rimi v. Bush*, No. 1:05-cv-02427-RJL (D.D.C. 2008) Status Report In Response to Court’s July 3, 2008 Order, filed July 14, 2008; Declaration of Sandra L. Hodgkinson, Deputy Assistant Secretary of Defense for Detainee Affairs, U.S. Department of Defense, ¶3, *Rimi et al. v. Bush et al.*, No. 1:05-cv-02427-RJL (D.D.C. 2008), Status Report In Response to Court’s July 3, 2008 Order, filed July 14, 2008.

3 According to data collected by attorneys representing detainees, “a significant number of men have been transferred out of Guantánamo without [ever] having been officially cleared” by an annual review board. For more information on the Annual Review Boards (ARB) at which such determinations were made, see Chapter Four of this report, “Lack of Due Process and Indeterminate Legal Status.”

4 Center for Constitutional Rights, *Background Information: Relevance of the Administrative Determination that a Detainee is “Cleared” for Transfer*, June 2008, 3.

5 Declaration of Sandra Hodgkinson ¶5.

6 Declaration of Clint Williamson ¶9.

7 Declaration of Sandra Hodgkinson ¶5.

8 U.S. Dept. of Defense, “News Release: Detainee Transfer Announced,” October 8, 2008, available at <http://www.defenselink.mil/releases/release.aspx?releaseid=12275> (accessed October 8, 2008).

9 Declaration of Sandra Hodgkinson ¶¶3–5. As of June 2005, the United States had transferred at least 65 detainees to other countries for “further detention, investigation, and prosecution, as appropriate.” Declaration of Matthew C. Waxman, Deputy Assistant Secretary of Defense for Detainee Affairs, U.S. Department of Defense, ¶4, *Zalita v. Bush*, No. 1:05-cv-01220-UNA (D.D.C. 2005), Response to Petitioner’s Motion for Preliminary Injunction Preventing Transfer, filed January 20, 2007. Several transferred detainees have been subsequently tried by their home countries. For example, in 2007, French courts convicted four French detainees and acquitted one on charges of “criminal association with a terrorist enterprise” in Afghanistan. Pierre-Antoine Souchard, “France convicts 5 ex-Guantánamo inmates,” *USA Today*, December 19, 2007. The men had served provisional sentences upon their return to France and were released by the time the trial concluded.

10 Declaration of Clint Williamson ¶6.

11 See, for example, Human Rights Watch, *Ill-fated Homecomings: A Tunisian Case Study for Reparations*, September 2007; “Russia ‘abused returned suspects,’” *BBC News*, March 29, 2007; “Former Detainees Abused Back Home: ‘I’d Rather Return to Guantánamo,’” *Spiegel Online International*, September 6, 2007.

12 Seven Russian detainees were flown home in March 2004, and were immediately jailed on criminal conspiracy charges and subsequently released for lack of evidence. Human Rights Watch, *The “Stamp of Guantánamo”: The Story of Seven Men Betrayed by Russia’s Diplomatic Assurances to the United States*, March 2007, 20. Since then, three have fled the country or remain in hiding. Three others have been rearrested on suspected terrorism charges. A jury unanimously found two of these



men, Ravil Gumarov and Timur Ishmuratov, innocent in September 2005, only to have the verdict annulled by the Supreme Court of Russia. The men were later convicted by a three-judge panel. Ibid., 38. The third, Rasul Kudaev, was detained on charges related to an attack on a government building that killed 150 people. His lawyer reported that he emerged from the detention facility with a broken right leg, a swollen and misshapen head, and his eye full of blood. Ibid., 23. He remains in custody and no charges have been filed. The final former detainee was killed in June 2007 in a police raid. C.J. Chivers, "Russian Freed From Guantánamo Is Killed by Police Near Chechnya," *New York Times*, June 28, 2007.

13 Human Rights Watch, *Ill-fated Homecomings*.

14 Sworn Statement of Samir Ben Amor, Attorney (July 29, 2007), ¶¶18–19.

15 Ibid., 1.

16 Human Rights Watch, *Libya: Rights at Risk*, March 2008, available at [http://hrw.org/english/docs/2008/01/03/libya17674\\_txt.htm](http://hrw.org/english/docs/2008/01/03/libya17674_txt.htm) (accessed August 28, 2008).

17 Declaration of Sandra Hodgkinson ¶5.

18 In April 2007, Australian detainee David Hicks entered into a plea agreement with U.S. military officials; Hicks pleaded guilty to one charge of material support of terrorism in exchange for a nine-month sentence, which he completed in Australia. Scott Horton, "The Plea Bargain of David Hicks," *Harpers Magazine*, April 2007, available at <http://harpers.org/archive/2007/04/horton-plea-bargain-hicks> (accessed August 28, 2008). Hicks was released from Australian prison on December 29, 2007. Attorney General for Australia, "Media Release: David Hicks Is Released from Yatala Labour Prison," available at <http://www.attorneygeneral.gov.au/www/ministers/RobertMc.nsf/Page/RWPFC12EBADA9ACAC55CA2573-C00018B1A3> (accessed August 28, 2008). Salim Hamdan, one of Osama bin Laden's former drivers, was convicted of providing "material support for terrorism" at the conclusion of his military trial in August 2008. He was given a five-and-a-half-year sentence, five years and one month of which had already been served during his time at Guantánamo. Amnesty International, "Hamdan Convicted at Guantánamo," August 6, 2008, available at <http://www.amnesty.org/en/news-and-updates/news/hamdan-convicted-Guantánamo-20080806> (accessed

October 2, 2008); Associated Press, "Hamdan Gets 5 Years on Terror Charge," MSNBC.com, August 7, 2008, available at <http://www.msnbc.msn.com/id/26055301/> (accessed October 2, 2008). Hamdan remains in Guantánamo.

19 U.S. Dept. of Defense, "List of Individuals Detained by the Department of Defense at Guantánamo Bay, Cuba," as updated by the Center for Constitutional Rights.

20 Neil Arun, "Albanian Fix for Guantánamo Dilemma," *BBC News*, January 11, 2007, available at <http://news.bbc.co.uk/2/hi/europe/6189517.stm> (accessed August 28, 2008).

21 Researchers were unable to obtain permission from Saudi authorities to travel to the country and therefore did not interview any former detainees in Saudi Arabia.

22 Josh White and Robin Wright, "After Guantánamo, 'Reintegration' for Saudis," *Washington Post*, December 10, 2007.

23 Christopher Boucek, "Extremist Reeducation and Rehabilitation in Saudi Arabia," *Terrorism Monitor* 16 (2007): 2; Caryle Murphy, "Saudis use cash and counseling to fight terrorism," *The Christian Science Monitor*, August 20, 2008.

24 In the program, they are taught that only the Saudi state can declare a holy war, thereby breaking any allegiance to Al Qaeda or groups who call for jihad. Shiraz Maher, "Perks of Penance for Saudi Jihadis," *BBC News*, July 9, 2008, available at [http://news.bbc.co.uk/1/hi/world/middle\\_east/7496375.stm](http://news.bbc.co.uk/1/hi/world/middle_east/7496375.stm) (accessed August 28, 2008).

25 Shiraz Maher, "A Betty Ford Clinic for Jihadis," *Times Online*, July 6, 2008.

26 Murphy, "Saudis use cash and counseling to fight terrorism."

27 Farah Stockman, "Nationality Plays Role in Detainee Release: More Saudis Are Freed from Guantánamo," *The Boston Globe*, November 22, 2007.

28 In the case of Afghan detainees returned home, recent developments have increased the role that the U.S. government plays in determining their fate. Prior to April 2007, Afghan detainees were released through participation in the Peace and Reconciliation Commission. As part of a U.S.-Afghan agreement reached in 2005, the U.S. financed construction of a special security wing at a Pul-

i-charkhi prison outside Kabul. Finished in April 2007, it was used to house detainees transferred to Afghan custody from U.S. detention at Bagram and Guantánamo for trial under Afghan law. A U.S.-Afghan team makes joint determinations of whether a detainee should be prosecuted or released through the Peace Commission. Human Rights First, *Arbitrary Justice: Trials of Bagram and Guantánamo Detainees in Afghanistan*, April 2008, 3. Since the Pul-i-charki prison wing opened, at least 32 detainees from Guantánamo have been transferred to the facility, in addition to hundreds from Bagram. Tim Golden, "Foiling U.S. Plan, Prison Expands in Afghanistan," *New York Times*, January 7, 2008; Human Rights First, *Arbitrary Justice*, iii. By April 2008, 160 Pul-i-charki prisoners (of over 250 total) had been referred for prosecution; 65 defendants were convicted and 17 were acquitted. *Ibid.*, 7. The others were not charged. *Ibid.*, ii. Human rights groups criticized the proceedings, spotlighting detainees' lack of access to effective counsel and their inability to cross-examine witnesses. *Ibid.*, ii-iii. None of the Afghan respondents interviewed for this study were held at the facility.

29 Western media has reported very little on the lives of detainees after their release, but four articles in the media database reported financial losses and increased debt among former detainees. In the most frequently reported case, a Pakistani detainee and father of nine children who had run a sawmill business prior to his arrest, returned home to find his mill collapsed because his sons had spent all their time looking for him. Kathy Gannon, "Pakistani prisoner freed from Guantánamo threatens to sue U.S. government for compensation," *Associated Press Worldstream*, December 28, 2002.

30 Judith Herman, *Trauma and Recovery: The Aftermath of Violence – from Domestic Abuse to Political Terror* (New York: Basic Books, 1997), 86.

31 The media database contained articles on the cases of ten former detainees that gave second-hand reports of lingering mental anguish and shock. For example, the lawyer of a former detainee from Kuwait said that he was "suffering a nervous breakdown due to his imprisonment. He has been shouting and out of control." Haitham Haddadin, "Five Kuwaitis head home from Guantánamo," *Reuters News*, November 3, 2005.

32 Post-Traumatic Stress Disorder (PTSD) is an anxiety disorder that may develop after experiencing a terrifying event. Symptoms may include reliving the traumatic

experience, emotional numbing and detachment, and hypervigilance and chronic arousal. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4<sup>th</sup> ed., text rev. (Washington, D.C.: American Psychiatric Association, 2000).

33 A recent report documents the effects of torture and ill-treatment on 11 former detainees held in U.S. custody in Guantánamo and Iraq. All but one of these individuals exhibited symptoms of PTSD. Physicians for Human Rights, *Broken Laws, Broken Lives: Medical Evidence of Torture by US Personnel and Its Impact*, June 2008.

34 *The Oxford Dictionary of Islam*, ed. John L. Esposito (USA: Oxford University Press, 2003), s.v. "Qismah;" Reza Aslan, *No God but God: The Origins, Evolution, and Future of Islam* (Random House, 2005), 154–55.

35 Researchers have found that Islamic faith and practice give meaning to the trauma and suffering of Muslims. Marwa Shoeb, Harvey Weinstein, and Jodi Halpern, "Living in Religious Time and Space: Iraqi Refugees in Dearborn, Michigan," *Journal of Refugee Studies* (2007).

36 During a January 27, 2002 visit to Guantánamo, Secretary of Defense Donald Rumsfeld remarked that the facility houses "among the most dangerous, best-trained, vicious killers on the face of the earth." Gerry J. Gilmore, "Rumsfeld Visits, Thanks U.S. Troops at Camp X-Ray in Cuba," *American Forces Press Service*, January 27, 2002.

37 The Military Commissions Act, which Congress passed in October 2006, bars suits by "enemy combatants" against United States officials for mistreating the combatants while in detention. Military Commissions Act of 2006, Pub. L. No. 109-366, 120 Stat. 2600 §7a (2006).

38 *Rasul v. Myers*, 512 F.3d 644 (D.C. Cir. 2008), *petition for cert. filed* (U.S. Aug. 22, 2008) (No. 06-5209). The plaintiffs in *Rasul* are four British former detainees at Guantánamo who allege that they were tortured, abused, and denied their rights to practice their religion while they were incarcerated. The plaintiffs have filed a petition for certiorari seeking review by the U.S. Supreme Court.

39 Joint Intelligence Task Force – Combating Terrorism, *Defense Analysis Report-Terrorism*, December 4, 2007 (unclassified). By comparison, the recidivism rate for violent offenders in the United States is approximately 60%. U.S. Dept. of Justice Bureau of Justice Statistics, *Reentry Trends in the U.S.*, available at <http://www.ojp>.

usdoj.gov/bjs/reentry/recidivism.htm (accessed August 29, 2008) (providing statistics from a recidivism study dated June 2002).

40 See Mark P. Denbeaux et al., *The Meaning of 'Battlefield': An Analysis of the Government's Representations of 'Battlefield Capture' and 'Recidivism' of the Guantánamo Detainees*, Seton Hall Law School, December 10, 2007; Mark P. Denbeaux et al., *Justice Scalia, the Department of Defense, and the Perpetuation of an Urban Legend: The Truth about Recidivism of Released Guantánamo Detainees*, Seton Hall Law School, August 4, 2008.

41 Tom Lasseter, "Militants Found Recruits among Guantánamo's Wrongly Detained," *McClatchy Newspapers*, June 17, 2008.

42 Herman, *Trauma and Recovery*, 207-211.

## 6: CONCLUSIONS AND RECOMMENDATIONS

1 These include (1) a secret directive by President Bush on September 17, 2001, granting the Central Intelligence Agency the authority to employ "an alternative set of interrogation procedures;" (2) a directive by Secretary of Defense Donald Rumsfeld on December 2, 2002, authorizing 24-hour interrogations, isolation for 30 days at a time, and the exploitation of "individual phobias (such as fear of dogs) to induce stress," which was later rescinded on January 15, 2003; and (3) a directive by the Secretary of Defense on April 16, 2003, authorizing the use of 24 interrogation methods, including environmental manipulation, sleep adjustment, and extended solitary confinement. These directives were largely based on legal memoranda prepared by staff at the Department of Justice. See *Memorandum from Deputy Assistant Attorney General John Yoo to General Counsel of Department of Defense*, January 9, 2002, reprinted in Karen J. Greenberg and Joshua L. Dratel, *The Torture Papers: The Road to Abu Ghraib* (Cambridge: Cambridge University Press, 2005), 38-79; *Memorandum from Assistant Attorney General Jay S. Bybee to White House Counsel Alberto Gonzalez*, January 22, 2002, reprinted in Greenberg and Dratel, *The Torture Papers*, 81-117; and *Memorandum from White House Counsel Alberto Gonzalez to President George W. Bush*, January 25, 2002, reprinted in Jameel Jaffer and Amrit Singh, *Administration of Torture: A*

*Documentary Record from Washington to Abu Ghraib and Beyond* (New York: Columbia University Press, 2006), A-1-3; *Memorandum from Assistant Attorney General Jay S. Bybee to White House Counsel Alberto Gonzalez*, August 1, 2002, reprinted in Greenberg and Dratel, *The Torture Papers*, 172; *Memorandum from Deputy Assistant Attorney General John Yoo to White House Counsel Alberto Gonzalez*, August 1, 2002, reprinted in Greenberg and Dratel, *The Torture Papers*, 218.

2 Cofer Black, head of the CIA's counterterrorist center, told a September 16, 2002 Congressional hearing, "After 9/11, the gloves came off." *Joint Investigation Into September 11<sup>th</sup>: Hearing Before the Joint House-Senate Intelligence Committee*, 109<sup>th</sup> Cong. (2002) (statement of Cofer Black, Former Chief of the Counterterrorist Center, Central Intelligence Agency).

3 See the International Covenant on Civil and Political Rights, December 16, 1966, art.7, 999 UNT.S. 171, *entered into force* Mar. 23, 1976, and UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, G.A. Res. 39/46, UN GAOR. 39<sup>th</sup> Sess. Supp. No. 51, *entered into force* June 26, 1987, UN Doc. A/Res/39/46, available at [http://www.unhchr.ch/html/menu3/b/h\\_cat39.htm](http://www.unhchr.ch/html/menu3/b/h_cat39.htm) (accessed September 30, 2008). See also Article 3 of the Geneva Conventions of 1949 [hereinafter Common Article 3], which prohibits "violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture" and "outrages upon personal dignity, in particular humiliating and degrading treatment." See, in particular, Geneva Convention Relative to the Treatment of Prisoners of War, incl. Annexes I-V, art. 3, August 12, 1949, 6 U.S.T. 3316, 75 UNT.S. 135 [hereinafter Geneva Conventions III], available at <http://www.unhchr.ch/html/menu3/b/91.htm> (accessed October 8, 2008).

4 On January 19, 2002, Secretary of Defense Donald Rumsfeld sent an order to the Joint Chiefs of Staff declaring that the military no longer needed to follow the Geneva Conventions in their handling of Al Qaeda and Taliban prisoners. The next day, he rescinded an earlier order by General Tommy Franks, commander of the Coalition Forces in Afghanistan, which had set up Article 5 hearings to screen captives. Now that the United States was no longer following the Geneva Conventions, there would be no need for Article 5 hearings. See Donald Rumsfeld, *Memorandum for Chairman of the Joint Chiefs of Staff*, January 19, 2002, available at <http://>

[www.defenselink.mil/news/Jun2004/d20040622doc1.pdf](http://www.defenselink.mil/news/Jun2004/d20040622doc1.pdf) (accessed September 30, 2008). See Article 5 of Geneva Conventions III, available at <http://www.unhchr.ch/html/menu3/b/91.htm> (accessed September 30, 2008).

5 President George W. Bush, "Military Order of November 13, 2001: Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," available at [http://www.law.uchicago.edu/tribunals/exec\\_order.html](http://www.law.uchicago.edu/tribunals/exec_order.html) (accessed September 30, 2008).

6 Jane Mayer, *The Dark Side: The Inside Story of How the War on Terror Turned into a War on American Ideals* (New York: Doubleday, 2008), 183; see also Tim Golden and Don Van Natta, "The Reach of War: U.S. Said to Overstate Value of Guantánamo Detainees," *New York Times*, June 21, 2004; Christopher Cooper, "Detention Plan: In Guantánamo, Prisoners Languish in Sea of Red Tape," *Wall Street Journal*, Jan. 26, 2005.

7 Mayer, *The Dark Side*, 183.

8 *Ibid.*, 184.

9 *Ibid.*, 187.

10 On October 7, 2008, a judge ordered the government to produce a group of 17 detainees in his courtroom for their release into the United States, but no hearing to adjudicate their claims has been held as of the date of the writing of this report (October 13, 2008). Minute Entry for Proceedings Held Before Judge Ricardo M. Urbina: Motion Hearing held on 10/7/2008, *In re: Guantánamo Bay Detainee Litigation*, No. 1:05-cv-1509 (D.D.C. 2008). See also Del Quentin Wilber, "Judge Orders Release of Chinese Muslims into U.S.," *Washington Post*, October 7, 2008. The detainees were Uighurs, an ethnic minority group in China persecuted by that government. The court ordered their release because the government no longer considered them "enemy combatants." The government immediately appealed the judge's ruling. Wilber, "Judge Orders Release."

11 U.S. Dept. of Defense, *News Release: Detainee Transfer Announced*, October 8, 2008, available at <http://www.defenselink.mil/releases/release.aspx?releaseid=12275> (accessed October 8, 2008).

12 These detainees remain "stuck" either because the U.S. has been unable to negotiate release conditions with home governments or they are at risk of being tortured or persecuted if returned to their country of origin and the U.S. has not been able to reach agreement for reset-

tlement with a third country.

13 A Department of Defense list available online includes information for a total of 759 detainees detained between January 2002 and May 12, 2006. U.S. Dept. of Defense, "List of Individuals Detained by the Department of Defense at Guantánamo Bay, Cuba, from January 2002 through May 12, 2006," available at <http://www.defenselink.mil/pubs/foi/detainees> (accessed October 8, 2008). However, a more recent version of the list, updated by the Center for Constitutional Rights through October 9, 2008, includes information for 778 detainees.

The U.S. government has stated that it will bring war crime charges against 60 or more of the almost 800 detainees who have been held in Guantánamo since January 2002. Associated Press, "Fast pace set for US war-crimes trials," *Military Global Allied Forces*, August 8, 2008, available at <http://www.militaryglobal.com/forum/index.php/topic,5268.0.html> (accessed September 13, 2008). The Department of Defense has prepared or filed charges against 23 detainees. U.S. Dept. of Defense, "Military Commission: Commission Cases," <http://www.defenselink.mil/news/commissionsCo-conspirators.html> (accessed October 12, 2008).

However, on October 21, 2008, the Department of Defense announced it was dropping charges against 5 detainees, but was prepared to re-file charges at a later date. Andrew O. Selsky, "US drops charges against 5 at Guantánamo after prosecutor complains about withheld evidence," Associated Press, October 21, 2008, available at <http://www.newsday.com/news/nationworld/wire/sns-ap-cb-guantanamo-charges-dropped,0,191295.story> (accessed October 21, 2008).

14 The *Rasul* decision prompted the U.S. government to create Combat Status Review Tribunals and Annual Review Boards as a means to determine whether a detainee should continue to be considered an "unlawful enemy combatant." Litigation challenging the status review system and its Congressionally-created review procedure led to the Supreme Court 2008 decision in *Boumediene v. Bush*, 553 U.S. \_\_ (2008).

15 In late 2003, the International Committee of the Red Cross (ICRC) informed the U.S. Administration that the totality of the conditions under which detainees were held at Guantánamo, including their indefinite confinement, had led to a worrying deterioration in the psychological health of many detainees. See Neil A. Lewis, "Red



Cross Finds Detainee Abuse in Guantánamo," *New York Times*, November 30, 2004.

16 Ibid. Several studies report similar mental disturbances among prisoners placed in solitary confinement. See Stuart Grassian, "Psychiatric effects of solitary confinement," *Journal of Law and Policy* 22 (2006): 327-380. Grassian notes that mental disturbances can include "an agitated confusional state, characteristics of a florid delirium, [with] severe paranoid and hallucinatory features and also by intense agitation and random, impulsive, often self-directed violence." Also see Hernán Reyes, "The worst scars are in the mind: psychological torture," *International Review of the Red Cross* 89, no. 867 (September 2007): 606-608. Again, in 2006, the ICRC expressed its concern that "uncertainty about the prisoners' fate has added to the mental and emotional strain experienced by many detainees and their families." ICRC, *Operational Update*, December 31, 2006, quoted in Amnesty International, *United States of America, Cruel and Inhuman: Conditions of Isolation for Detainees at Guantánamo Bay*, April 5, 2007, 19 (AI Index: AMR 51/051/2007).

17 See American Medical Association Council on Ethical and Judicial Affairs, *Statement on Interrogation of Prisoners*, July 7, 2006, available at <http://pn.psychiatryonline.org/cgi/content/full/41/13/4-a> (accessed July 30, 2008). The AMA statement provides: "Physicians must neither conduct nor directly participate in an interrogation, because a role as physician-interrogator undermines the physician's role as healer and thereby erodes trust in both the individual physician-interrogator and in the medical profession. Physicians should not monitor interrogations with the intention of intervening in the process, because this constitutes direct participation in interrogation. Physicians may participate in developing effective interrogation strategies that are not coercive but are humane and respect the rights of individuals." Also see American Psychiatric Association, *Psychiatric Participation in Interrogation of Detainees*, May 21, 2006, available at <http://pn.psychiatryonline.org/cgi/content/full/41/12/1-b> (accessed July 30, 2008). The APA resolution states: "No psychiatrist should participate directly in the interrogation of persons held in custody by military or civilian investigative or law enforcement authorities, whether in the United States or elsewhere. Direct participation includes being present in the interrogation room, asking or suggesting questions, or advising authorities on the use of specific techniques of interrogation with particular detainees. However, psy-

chiatrists may provide training to military or civilian investigative or law enforcement personnel on recognizing and responding to persons with mental illnesses, on the possible medical and psychological effects of particular techniques and conditions of interrogation, and on other areas within their professional expertise."

18 The referendum prohibits psychologists from working in settings where "persons are held outside of, or in violation of, either International Law (e.g., UN Convention Against Torture and the Geneva Conventions) or the U.S. Constitution, where appropriate," unless they represent a detainee or an independent third party. The Association's bylaws require that it institute the policy at the next annual meeting in August 2009. See Benedict Carey, "Psychologists Vote to End Interrogation Consultations," *New York Times*, September 18, 2008.

19 Military psychologists developed interrogation techniques based on the "reverse engineering" of Survival, Evasion, Resistance, and Escape (SERE) tactics. SERE is a program developed to train U.S. military to resist torture and abusive interrogation. See, for example, Physicians for Human Rights, *Break Them Down: Systematic Use of Psychological Torture by U.S. Forces*, 2005; M. Gregg Bloche and Jonathan H. Marks, "Doctors and Interrogators at Guantánamo Bay," *New England Journal of Medicine* 353 (2005): 6-8. Also see Larry C. James (with Gregory A. Freeman), *Fixing Hell: An Army Psychologist Confronts Abu Ghraib* (New York: Grand Central Publishing, 2008).

20 See Army Regulation 15-6: *Final Report, Investigation into FBI Allegations of Detainee Abuse at Guantánamo Bay, Cuba Detention Facility*, April 1, 2005, amended June 9, 2005, 9-10 [hereinafter Schmidt-Furlow Report] (clarifying that environmental manipulation was approved as an interrogation tactic at Guantánamo through a memorandum released by the Secretary of Defense on April 16, 2003); see also U.S. Dept. of Justice, Office of the Inspector General, *A Review of the FBI's Involvement in and Observations of Detainee Interrogations in Guantánamo Bay, Afghanistan, and Iraq* (May 2008), 58-59 (explaining that environmental manipulation was first approved as an interrogation technique by the Secretary of Defense in a memorandum dated April 16, 2008, and that the memorandum remained in effect until September 2006, when the United States Army released a new field manual that delineated the scope of permissible interrogation techniques). See Headquar-



ters, Dept. of the Army, FM 2-22.3 (FM 34-52), Human Intelligence Collector Operations (September 2006).

21 Geneva Conventions III, art. 3. See also *Memorandum from President George W. Bush*, February 7, 2002, reprinted in Jaffer and Singh, *Administration of Torture*, A-6, also available at [http://www.pegc.us/archive/White\\_House/bush\\_memo\\_20020207\\_ed.pdf](http://www.pegc.us/archive/White_House/bush_memo_20020207_ed.pdf) (accessed October 8, 2008) (declaring that Al Qaeda and Taliban detainees do not qualify as prisoners of war for purposes of Geneva Conventions III).

22 McClatchy Newspapers has compiled profiles of 64 former Guantánamo detainees and published several articles on the camp and former detainees based on interviews in 2007 and 2008, available at <http://www.mcclatchydc.com/259/story/40334.html> (accessed September 12, 2006).

23 FM 2-22.3 § 5-76.



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