

## Close Guantánamo with Justice Now

At the start of his administration, President Obama signed an executive order mandating the closure of the detention camp at Guantánamo Bay, Cuba within a year. Yet the prison remains open, and on January 11, 2011 it enters its tenth year of operation. Failing to fulfill the executive order, the Obama administration has also extended some of the worst aspects of the Guantánamo system by continuing indefinite detentions without charge or trial, employing illegitimate military commissions to try some suspects, and blocking accountability for torture both by refusing to conduct independent and thorough investigations and by attempting to prevent the courts from reviewing lawsuits brought by formerly detained men.

As human rights organizations and people of conscience, we are calling for the closure of Guantánamo and both transparency at all U.S.-run detention sites and accountability for the abuses that happen within them. We oppose secret detention sites, including so-called “filtration” or “screening” sites like the covert “black prison” at Bagram, where even the International Committee of the Red Cross has been denied access and where abusive interrogations are allegedly taking place. We also express our opposition to excessively punitive conditions of confinement in prisons and detention centers inside the United States, and note that prolonged solitary confinement is a form of torture prohibited under international standards for human rights. We reject the continuation of illegal and abusive Bush-era detention and interrogation policies by the Obama administration.

The story of Guantánamo remains the shameful case of the U.S. government rounding up nearly 800 men and boys, indiscriminately labeling them “the worst of the worst,” and throwing them into an island prison designed to exist beyond the reaches of the law, where they would have no right to challenge their detention or abuse. The vast majority of the prisoners at Guantánamo should never have been detained in the first place. Many were simply in the wrong place at the wrong time and were fleeing the chaos of war when U.S. forces entered Afghanistan. Only one in twenty was captured by the U.S. military. Most were captured by local civilians and authorities in Afghanistan and Pakistan and sold to the United States in exchange for substantial bounty. According to Colonel Lawrence Wilkerson, a senior State Department official who served in the Bush administration between 2002-2005, the Bush administration knew early on that the majority of the men at Guantánamo were innocent but did not release them due to political concerns that doing so could harm support for the government’s push for war in Iraq and the broader “Global War on Terror.”

It is now clear that the Obama administration has no plans to close Guantánamo anytime soon, while opposition from Congress makes that goal even more remote. The prison at Guantánamo continues to exist in violation of both ethical and legal standards, and at risk to our collective safety. President Obama must act decisively or risk making Guantánamo and the Bush detention regime permanent features of the U.S. landscape. We call on President Obama and relevant departments within his administration to:

- **Recommit to rapidly closing Guantánamo, and make clear that many of the men there were detained in error.** It is by now well established, including by former administration officials, that the majority of the prisoners at Guantánamo should never have been detained. If President Obama were to exercise leadership and acknowledge this, it would help create the political atmosphere necessary to close the prison.

- **Charge or release the men detained at Guantánamo.** In 2004 and 2008, the U.S. Supreme Court ruled that the prisoners at Guantánamo may challenge their detention in U.S. federal court by means of *habeas* petitions. Since then, federal judges have ruled in the great majority of cases that the government lacked evidence sufficient to justify the continued detention of the petitioners. Other men at Guantánamo have been cleared for release by the U.S. government's own Guantánamo Review Task Force, which consists of representatives from every government agency with a stake in the matter, including the Department of Justice, the Department of Defense, and the CIA. All men ultimately cleared for release by the courts or the government should be immediately repatriated or resettled, and all others should be formally charged and tried in a fair and open proceeding.
- **Abandon any plan for indefinite detention.** The Obama administration has declared it will hold approximately 50 of the men at Guantánamo indefinitely without charge or trial, and plans to formalize indefinite detention through an executive order. The official justification is that these men are “too dangerous” to release but “not feasible” to prosecute, purportedly because there is not sufficient evidence against them that meets the minimum standards of any court; because their trials could compromise intelligence-gathering; or because detainees could challenge evidence obtained through coercion. But federal courts are fully capable of dealing with sensitive evidence, and if the government only has tainted evidence against a detainee, then the only evidence it has is both illegal and unreliable, and does not justify continued detention. The administration's plan for indefinite detention constitutes a system of pre-emptive incarceration based on the alleged probability of future crime, and not on verifiable past conduct. This plan is flatly inconsistent with the rule of law and should be rejected.
- **Lift the blanket ban on all repatriations to Yemen.** The Obama administration must end its indefinite suspension of all repatriations of Yemeni men at Guantánamo and allow those who have won their habeas cases or been cleared for release by the U.S. government's own extensive Guantánamo Review Task Force to go home. The Yemeni men, like all detainees, must be individually evaluated on the basis of what they have done, not punished based on their nationality or the alleged actions of others.
- **Cease forcible repatriations of men whose safety is threatened by transfer.** There are men at Guantánamo who have expressed a strong fear of returning to their countries of origin and who should not be repatriated where there is reason to believe they may be at risk on their return. No detainee should be transferred to a state where credible risks exist to his safety.
- **Lift the ban on resettling men into the United States.** More than 15 countries, including France, Spain, Portugal, Ireland, Hungary, Belgium, Switzerland, Albania, Latvia and Palau, have accepted detainees for resettlement without incident. The U.S. government should also offer a home to men who have won their habeas cases or been cleared for transfer and have no other safe country to go to. (A federal judge did order the release of clearly innocent Uighur Muslim detainees into the United States, but both the Bush and Obama administrations appealed the case and then Congress acted to bar any resettlement of wrongly detained men to the United States.) Offering to resettle such men would also encourage other countries to make similar offers and help shut Guantánamo
- **Fully investigate the deaths of men who died in detention, including the three who died in 2006.** Three detained men who were never charged with any crime died at Guantánamo in June 2006. Initially reported as

suicides, new evidence from four soldiers stationed at the base has raised serious questions about the circumstances surrounding their deaths. Until now, the Obama administration has not only failed to conduct an independent and thorough investigation of the deaths but has opposed inquiry and review by the courts.

- **Ensure accountability for crimes.** Despite its promise of a new era of accountability and respect for the rule of law, the Obama administration has repeatedly acted to ensure impunity for those under the Bush administration who planned, authorized, and committed torture. The Obama administration must honor its promise by conducting a comprehensive inquiry into well-documented and grave human rights abuses at Guantánamo and elsewhere, including torture. Specifically, the Attorney General should appoint an independent prosecutor with a full mandate to investigate and prosecute those responsible for torture and other war crimes, as far up the chain of command as the facts may lead. Moreover, President Obama should condemn newly revealed pressure by his own administration to secretly obstruct efforts within the Spanish judiciary to investigate egregious violations of international law, including the torture of former Guantánamo detainees and other individuals who have been subjected to the U.S. torture program, and fully cooperate with the proceedings in Spain.

- **Take responsibility for the wellbeing of the men after they are released.** The U.S. government must not hold men without charge in inhumane conditions for years, subject them to abuse including torture, and then repatriate and resettle them in far corners of the world, leaving their rehabilitation and reintegration to other governments, organizations, and individuals. The government has a responsibility to ensure that the men have adequate support and resources after release.

We also urge the international community to offer safety to men at Guantanamo who cannot leave until third countries come forward to offer them resettlement, and to ensure their rights and wellbeing once resettled. Many of the men resettled have not been granted permission to work, to travel, or to reunite with their families after years of separation and anguish, and the legal status of many remains in limbo.

We invite people of conscience all over the world to work with us to make sure Guantánamo is closed with justice, and recommit to advocating towards this end.

**The Center for Constitutional Rights  
Amnesty International U.S.A.**