

UNITED STATES OF AMERICA  v.  Mohammed Jawad	<b>Revised Defense Application for Mental          Examination pursuant to RMC 706</b>  May 28, 2008
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**1. Timeliness:** This motion is filed within the timeframe established by the Military Commissions Trial Judiciary Rules of Court and this Court's orders dated 20 December 2007 and 15 February 2008 and within the specific deadline established for law motions by COL Brownback on 7 May 2008. The motion is filed pursuant to R.M.C. 706 and 909. This revised motion is intended to replace the motion filed 23 May 2008.

**2. Relief Sought:** Defendant seeks a mental health examination from a neutral, Pashto speaking, civilian psychologist.

**3. Overview:** The defense believes that Mr. Jawad is not able to cooperate intelligently in the defense of his case because he is presently suffering from one or more mental health diseases or defects, as a result of the extended and severe conditions of detention to which he has been subjected. Pursuant to R.C.M. 909, no person may be brought to trial by military commission if that person is suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature of the proceedings against him or to conduct or cooperate intelligently in the defense of the case.

**4. Burden and Standard of Proof:** Pursuant to R.M.C. 706(a) "If it appears to . . . defense counsel. . . that there is reason to believe that . . . the accused lacks capacity to stand trial, that fact and the basis of the belief or observation shall be transmitted to the authority authorized to order an inquiry into the mental condition of the accused. The

submission may be accompanied by an application for a mental examination under this rule.” “After referral of charges, an inquiry into the mental capacity or mental responsibility of the accused may be ordered by the military judge.” R.M.C. 706(b)(2). Under R.M.C. 909 the standard of proof is preponderance of the evidence. “Trial may proceed unless it is established by a preponderance of the evidence that the accused is presently suffering from a mental disease or defect rendering him or her mentally incompetent to the extent that he is unable to understand the nature of the proceedings or to conduct or to cooperate intelligently in the defense of the case.”

## **5. Facts:**

i. Mohammad Jawad was arrested by Afghan police on December 17, 2002. At the time of his arrest Mr. Jawad was either 16 or 17 years of age.<sup>1</sup> After over seven hours of interrogation by various Afghan authorities, Mr. Jawad was turned over to American authorities on the following morning. On or about 3 February 2003, Mr. Jawad was shipped to Guantanamo Bay, Cuba, where he has been held since. He is currently in Camp VI.

ii. The conditions of confinement to which Mr. Jawad has been subjected for the last five and a half years are very severe, “more isolating than many death rows and prisons” according to one expert on American prison conditions.<sup>2</sup> He has been in solitary confinement (what the government euphemistically refers to as “single-occupancy”) in a small cell with virtually no amenities for 22 to 23 hours a day. He is allowed out of his cell only to shower, or to be placed in an enclosed, covered exercise area, or for occasional medical or dental appointments. He has not seen the sun or sky more than once since February 2003. During his entire captivity, bright overhead fluorescent lights

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<sup>1</sup> The U.S. has acknowledged to the UN Committee on the Rights of Children that Mr. Jawad was under 18 at the time he was captured. Mr. Jawad was subjected by detention authorities to a bone density scan, without his informed consent, for the purpose of determining his age. It is not clear why this test was performed, given the government’s apparent position that Mr. Jawad’s age is legally irrelevant.

<sup>2</sup> William Glaberson, Detainees Mental Health is Latest Battle, NYTimes, April 26, 2008, citing Professor Jules Lobel. (Attachment 3). See generally, CCR Point Paper on Solitary Confinement at Guantanamo Bay (Attachment 4); Cruel and inhuman: Conditions of isolation for detainees at Guantánamo Bay, AMNESTY INT’L 4, April 5, 2007. (Attachment 5)

have been on in his cell 24 hours a day, 365 days a year. The extreme conditions led Mr. Jawad to attempt to commit suicide on 25 Dec 2003. After his suicide attempt, he was provided medical care and spent five days in a medical facility. In May 2004, Mr. Jawad was subjected to a 14 day program of intentional sleep deprivation and disorientation. This program is colloquially known among the prison guards as the “frequent flier program.” The official name of the program is believed to be classified.<sup>3</sup> Under this program, Mr. Jawad was moved from cell to cell 112 times over a two-week period, an average of every two hours and fifty minutes. This torture program caused intense mental suffering and profoundly disrupted the senses and personality of Mr. Jawad. The defense believes this program is what Mr. Jawad was referring to in his statement at the 7 May 2008 hearing where he referred to being repeatedly awakened and moved from cell to cell. Sometime in the past year, Mr. Jawad was issued a sleep mask. Prior to that point, he had no relief from the glaring light. Mr. Jawad has complained of the difficulty in sleeping in his cell and of extreme fatigue.

iii. Mr. Jawad has had very few opportunities to converse with anyone in his native language of Pashto, other than U.S. Government interrogators, for the last five and a half years. Mr. Jawad does not speak any other language. He has not spoken to any member of his family or anyone he knew prior to confinement since his capture, although he is believed to have received half a dozen Red Cross messages from a family member. There are no phone calls, radios, televisions, computers, games or movies in the detention facilities.

iv. Mr. Jawad had a difficult childhood. His father died when he was very young in the Afghan civil war after the Soviet occupation and his family was forced to flee to a refugee camp in Pakistan. Mr. Jawad was kicked out of his home by his step-father when he was approximately 13. The government asserts that Mr. Jawad has a seventh or eighth grade education. The defense believes this education was received at a religious madrassa at a refugee camp in Amir Shah, Pakistan, where the curriculum largely consisted of oral recitation of the Koran. At the time he was captured, Mr. Jawad was

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<sup>3</sup> To the civilized world, the program would be referred to as torture.

functionally illiterate. During his captivity, Mr. Jawad has developed some limited ability to read and write basic Pashto, but not to the point where he can read age-appropriate books which may be available from the prison library. In his cell, Mr. Jawad has no recreation or diversion other than attempting to read the Koran, attempting to communicate with other nearby prisoners through the walls, and praying five times a day.

v. Charges against Mr. Jawad were sworn on 9 October 2007. Mr. Jawad was detained for more than four and a half years before he was charged. He was never provided counsel or allowed to see an attorney until October 2007. Mr. Jawad faces life imprisonment, if convicted of one or more of the three attempted murder specifications.

vi. Mr. Jawad has exhibited signs of physical ailments, mental illness and instability in interviews with his detailed defense counsel. (Attachments 1- 2) Mr. Jawad has complained of severe headaches and fatigue, both in private and publicly at his arraignment, where he took off his headphones and placed his head on the table.

vii. Mr. Jawad has difficulty in fully comprehend the nature of the proceedings against him and has been unable to cooperate intelligently in his defense to date. (Attachments 1-2)

viii. Conditions at Guantanamo are so bad that they have driven many detainees to extreme measures. Prior to June 11, 2006, Guantanamo officials acknowledged that there had been 41 suicide attempts by 25 detainees. Mr. Jawad was one of these detainees. On June 11, 2006, three detainees committed suicide. (Attachment 6) Another detainee committed suicide on 30 May 2007. (Attachment 7) Suicide attempts continue. Mohammed al Qahtani attempted suicide in early April 2008.<sup>4</sup> In the summer of 2005 at least 128 detainees participated in a hunger strike to protest conditions at Guantanamo. (Attachment 10) In early 2006, prison authorities broke the hunger strike by establishing a new policy of strapping prisoners into restraint chairs while they are fed by plastic tubes

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<sup>4</sup> See, CCR Press Release (Attachment 8). Charges were recently dismissed against Mr. al Qahtani, the alleged "20<sup>th</sup> hijacker" amid allegations of severe mental illness brought on by torture by US authorities. William Glaberson, Case Against 9/11 Detainee is Dismissed, NY Times, May 14, 2008. (Attachment 9)

inserted through their nostrils. Despite the new force-feeding policy, more than thirteen detainees launched a new hunger strike in 2007. (Attachment 11)

## **6. Law and Argument:**

Any person snatched from his home country, transported halfway around the world to a maximum security prison on an isolated tropical island, and placed virtually incommunicado in solitary confinement under extremely austere conditions for five and a half years would suffer adverse mental health effects, and Mr. Jawad is no exception. The debilitating effects on the mental health prisoners due to long-term confinement and isolation is well-documented and not reasonably subject to dispute.<sup>5</sup> Although not all detainees suffer identical effects and the severity of mental health problems may vary based on individual factors, Mr. Jawad's background, youth and lack of education make him particularly ill-equipped to handle the extreme conditions of his confinement and particularly vulnerable to mental deterioration, as evidenced by his suicide attempt.

While at a basic level, Mr. Jawad understands that he is being accused of throwing a hand grenade, even in his moments of relative clarity and lucidity the legal issues of his case and the complex legal procedures of the military commission are utterly foreign and completely bewildering to him. With his troubled, fragile, and rapidly deteriorating mental state, he is simply unable to fully understand the nature of the proceedings against him or to meaningfully assist in the preparation of a defense. The defense believes an unbiased mental health examination will confirm this. The defense requests that the military judge order that the board include a neutral, civilian psychologist, completely unassociated with JTF-GTMO. The defense believes it would be impossible for a non-Pashto speaker to professionally and adequately evaluate Mr. Jawad. A proper psychological evaluation requires the psychologist to understand the nuances of language and body language. Only a person fluent in the language and familiar with the culture

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<sup>5</sup> See, Stuart Grassian, "Psychological Effects of Solitary Confinement", *American Journal of Psychiatry*, 140:1450-1454, 1983; Terry A. Kupers, "The SHU Syndrome and Community Mental Health", *Community Psychiatrist*, summer 1998, Craig Haney, "Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement", *Crime and Delinquency*, vol.49, no.1 (January 2003).

can perform a complete and reliable examination. The use of an interpreter in psychological evaluations invades the doctor-patient relationship and violates patient confidentiality. The defense has identified a highly qualified psychologist and specifically requests that he be appointed to the board to perform the evaluation. The defense requests the appointment of [REDACTED] is a licensed clinical psychologist, adjunct professor and co-founder of the [REDACTED]

[REDACTED] serves the mental health needs of the Afghani community of Northern California and is the founding president of the [REDACTED] a non-profit organization focusing on healing psychological trauma in [REDACTED]. [REDACTED] received his M.A. in organizational consultation [REDACTED] 1989 and his [REDACTED] [REDACTED] in 1993. Presently, [REDACTED] is serving as a senior clinical supervisor at the [REDACTED] has also served as an Adjunct Professor at [REDACTED] from 1993-96 and has taught at the [REDACTED] and has been teaching at [REDACTED] for the past 13 years. [REDACTED] has been a community Radio Psychologist for the past seven years, serving primarily the [REDACTED] Community. He has spoken and written extensively on multicultural issues, relevant to the field of clinical Psychology. [REDACTED] believes he is the only Pashto speaking licensed psychologist in the entire United States. Dr.

[REDACTED] CV is Attachment 12.

Even if the commission ultimately rules that Mr. Jawad is mentally competent to stand trial, the defense believes a complete mental health evaluation will provide important mitigation and extenuation concerning the accused's mental state which would not otherwise be available.

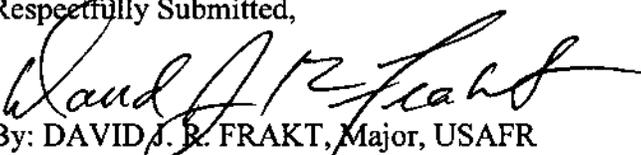
**7. Request for Oral Argument:** If the court is prepared to grant the request based on the written submissions, then the defense does not request oral argument. If the court is undecided based on the written submissions, the defense requests an evidentiary hearing and oral argument at the next scheduled motion hearing.

**8. Request for Witnesses:** The defense requests the government's or the commission's assistance in obtaining a responsible official from JTF-GTMO as a witness to describe the conditions in detention generally and specific aspects of Mr. Jawad's detention history. Depending on the government's reply to this motion, the defense may also request an expert witness on the mental health effects of long-term confinement.

**9. Conference with Opposing Counsel:** The Defense has conferred with the Prosecution. Trial Counsel has indicated that the government does not oppose the court ordering a mental health examination, but does oppose any access to a detainee by a civilian mental health professional that lacks a security clearance. It is anticipated that the government will propose that any board be comprised of DoD personnel.

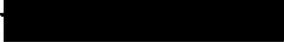
**10. Request for public release:** The defense requests permission to publicly release the government response to this pleading and the court's ruling as soon as possible.

Respectfully Submitted,

  
By: DAVID J. B. FRAKT, Major, USAFR  
Office of the Chief Defense Counsel  
Office of Military Commissions



**11. Attachments:**

1. Affidavit of COL J. Michael Sawyers
2. Affidavit of  (signed copy and more legible unsigned copy)
3. News Article: William Glaberson, *Detainees Mental Health is Latest Battle*, NY Times, April 26, 2008.
4. Center for Constitutional Rights Point Paper on Solitary Confinement at Guantanamo Bay

5. Amnesty International Report: *Cruel and inhuman: Conditions of isolation for detainees at Guantánamo Bay*
6. News Article: *3 Prisoners Die in Suicide Pact at Guantanamo*, NY Times June 10, 2006
7. News Article: Josh White, *Death of Detainee is Apparent Suicide*, Washington Post, May 31, 2007.
8. CCR Press Release: *Newly Declassified Notes Reveal Guantanamo Detainee Mohammed al Qahtani Suicidal After Military Commission Capital Charges*, May 20, 2008.
9. News Article: William Glaberson, *Case Against 9/11 Detainee is Dismissed*, NY Times, May 4, 2008.
10. News Article: Carol D. Leonnig, *More Join Guantanamo Hunger Strike: Detainees Demand Hearings Allege Beatings by Guards*, Washington Post, September 13, 2005.
11. News Article: Tim Golden, *Guantanamo Detainees Stage Hunger Strike*, NY Times, April 9, 2007.
12. Curriculum vitae of [REDACTED]

# Attachment 1

AFFIDAVIT  
OF  
J. MICHAEL SAWYERS, COL, USAR

I am a United States Army Reserve Colonel in the Judge Advocate General's Corps. I have been a licensed attorney since 1988. I have participated in over 100 courts-martial as both a prosecutor (four years) and a defense counsel while serving on active duty from 1988 until 1997. Specifically, I served as the Senior Defense Counsel for the 3d Infantry Division from 1993 until 1995 and for the National Capital Region from 1996 until 1997. I was a Regional Defense Counsel and Deputy Commander of the 154<sup>th</sup> Legal Support Organization, the reserve Trial Defense organization, from February 2004 until March 2007. I served on active duty at the Office of the Chief Defense Counsel, Office of Military Commissions from 20 March 2007 to 4 April 2008.

During the course my work as a defense counsel, I worked on dozens of cases involving the mental capacity of an accused to assist in their defense. I have had the opportunity to work with several mental health organizations over the years. This included work with the United States Army Forensic Psychiatric Fellowship at Walter Reed Army Medical Center on two separate occasions on behalf of two separate clients.

The type of potential mental defects with which I am familiar include organic brain damage, post traumatic stress disorder, bi-polar disorder, depression, narcissism, and schizophrenia.

I was detailed defense counsel for Mohammad Jawad from 10 Oct 2007 to 4 April 2008. Each time I traveled to Cuba to meet with Mr. Jawad I would schedule a morning and afternoon meeting with him, each meeting to last for four hours. As will be discussed below, I was never able to meet with him in the afternoon. During these meetings I was accompanied by an interpreter, but was otherwise alone in an interview room with Mr. Jawad. I also represented Mr. Jawad during his arraignment. I meet with Mr. Jawad approximately nine times for a total of approximately 25 hours.

From the first meeting with Mr. Jawad until the arraignment, my experiences with him were the same. First, the meetings began only in the mornings, starting anywhere between 9:00 A.M. and 10:00 A.M. Mr. Jawad demeanor began as pleasant. He would smile and greet us with appropriate words and actions. He stated that he was very glad to see us and would thank us for our assistance. However, this demeanor was short lived.

Mr. Jawad could only maintain concentration on what we were discussing for about 30 minutes, sometimes slightly longer. After that, his concentration would start to wane. Mr. Jawad would become disoriented, he would stop answering questions. Regardless of what I asked, he would start to hold his head and complain of headaches and torture. (The interpreter would routinely say that he is not listening and is not responding) Soon thereafter Mr. Jawad's mood would be extremely erratic. He would start ranting about several things, to include his treatment and his innocence. Mr. Jawad would also become paranoid, believing me or the interpreter to be a government interrogator, that our

conversations were being recorded, or that we were being watched. Then, suddenly he would become calm. Sometimes the anger would return. However, regardless of being angry or calm, he became non-responsive to questions. He could not seem to understand or discuss the simplest of concepts and provided no input into any of the issues we needed to discuss. I would attempt everything I knew to do to have him refocus. However, I was never successful after about 60 minutes of meeting with Mr. Jawad. My tactic was always to let him say what he wanted for sometime, hoping he could refocus. However, he was never able to regain his ability to communicate. After two hours, we would become extremely fatigued and simply would stop talking. When this occurred, I would end the meeting. Mr. Jawad would then say he was too fatigued to meet me in the afternoon and would cancel that meeting.

Finally, what I found the strangest of Mr. Jawad's behavior was the repetitiveness of what he would say. His "rants" would always be the same, his complaints always the same, and his sudden fatigue always the same.

I have no idea what is wrong with Mr. Jawad, but I believe he is in need of a mental health evaluation. I can say with some certainty that his lack of concentration, his conduct, and the constant fatigue made it almost impossible to prepare a defense on his behalf. This is best illustrated at his first arraignment. The arraignment was scheduled for 1300 hours. I had never seen Mr. Jawad in the afternoon because he would not meet with me. I was told that when the guards came for him to take him to the arraignment he was sleeping. Mr. Jawad did not want to awake and was resistant to coming to the arraignment. As the world observed, he gave a long, ranting speech during the arraignment and thereafter removed his headset and put his head on the table. What the world observed at arraignment is what I have observed and heard Mr. Jawad say since October 2007.

In Mr. Jawad's current mental condition, I do not believe he is capable of following the proceedings, let alone provide meaningful input to his attorney, during a full day of court proceedings, and certainly not during a multi-day trial. I believe he may be mentally incompetent to stand trial because he is unlikely in his current state to be able to cooperate intelligently in the defense of his case.

Under penalty of perjury, I swear the foregoing to be true and correct to the best of my knowledge.



J. MICHAEL SAWYERS,  
COL, JA  
USAR

Date: 20 May 2008

## Attachment 2

AFFIDAVIT OF



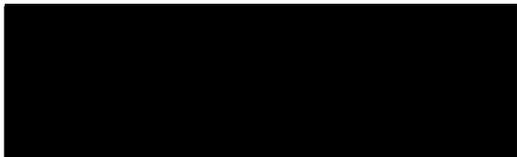
I am a court interpreter with fifteen (15) years of experience in providing translation services in legal matters, including for the Department of Homeland Security, Immigration and Naturalization Service, and state and federal courts in New York, etc. I have been employed by the Office of Military Commissions, Defense, to serve as Pashto interpreter in the Mohammed Jawad case from October 2007 to the present. In that capacity, I have made three trips to Guantanamo, accompanying Colonel J. Michael Sawyers twice and Major David Frakt once. I have visited Mr. Jawad on approximately ten different occasions at the detention camps in Guantanamo and attended his arraignment in March 2008 and the second court session on May 7, 2008. I spoke with Mr. Jawad both before and after both court sessions.

I strongly believe that Mr. Jawad is in need of mental health evaluation and treatment. I believe I have had ample opportunity to observe Mr. Jawad's mental state. My observations are that he has a great deal of difficulty in concentrating and staying focused for more than thirty or forty minutes at a time. His attention span is so short and energy level so low that we have had to cut several meetings short, and cancel our planned afternoon interviews. After an hour or two, he usually begins to complain of headaches, and begins to rub his head or bury his head in his hands. He has difficulty understanding simple concepts and I frequently have to repeat things several times to try to get him to understand. He has a series of complaints that he tends to repeat over and over. When asked questions, he often responds with irrelevant answers. He has exhibited paranoia. He is suspicious of everyone and everything. I have also observed frequent mood swings. He can be very polite and gentle, but suddenly becomes very agitated and angry. He has told me repeatedly that he is going crazy. Although he has moments of hopefulness, he is generally despairing and hopeless about his situation. He is losing track of time and has difficulty in remembering things. He becomes very fatigued and listless when he tries to concentrate for extended periods.

In my opinion, Mr. Jawad is not able to be helpful to his attorneys in preparing a defense for him. I do not believe that he would be able to pay attention in court for more than an hour or two.

Under penalty of perjury, I swear the foregoing to be true and correct to the best of my knowledge.

5/19/08  
Date \_\_\_\_\_



AFFIDAVIT OF



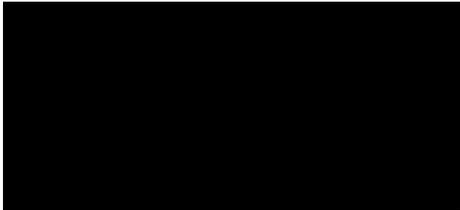
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Under penalty of perjury, I swear the foregoing to be true and correct to the best of my knowledge.

\_\_\_\_\_  
Date



## Attachment 3

April 26, 2008

## Detainees' Mental Health Is Latest Legal Battle

By WILLIAM GLABERSON

Next month, Salim Ahmed Hamdan, a Yemeni who was once a driver for Osama bin Laden, could become the first detainee to be tried for war crimes in Guantánamo Bay, Cuba. By now, he should be busily working on his defense.

But his lawyers say he cannot. They say Mr. Hamdan has essentially been driven crazy by solitary confinement in an 8-foot-by-12-foot cell where he spends at least 22 hours a day, goes to the bathroom and eats all his meals. His defense team says he is suicidal, hears voices, has flashbacks, talks to himself and says the restrictions of Guantánamo “boil his mind.”

“He will shout at us,” said his military defense lawyer, Lt. Cmdr. Brian L. Mizer. “He will bang his fists on the table.”

His lawyers have asked a military judge to stop his case until Mr. Hamdan is placed in less restrictive conditions at Guantánamo, saying he cannot get a fair trial if he cannot focus on defending himself. The judge is to hear arguments as soon as Monday on whether he has the power to consider the claim.

Critics have long asserted that Guantánamo's climate-controlled isolation is a breeding ground for madness. But turning that into a legal claim marks a new stage for the military commissions at Guantánamo. As military prosecutors push to get trials under way, they are being met with challenges not just to the charges, but to Guantánamo itself.

Pentagon officials say that Guantánamo holds dangerous men humanely and that there is no unusual quantity of mental illness there. Guantánamo, a military spokeswoman said, does not have solitary confinement, only “single-occupancy cells.”

In response to questions, Cmdr. Pauline A. Storum, the spokeswoman for Guantánamo, asserted that detainees were much healthier psychologically than the population in American prisons. Commander Storum said about 10 percent could be found mentally ill, compared, she said with data showing that more than half of inmates in American correctional institutions had mental health problems.

With their filings, Mr. Hamdan's lawyers are setting the stage for similar challenges to the procedures of Guantánamo in some 80 expected war crimes cases, lawyers for other detainees say. "The issue of mistreatment of prisoners, the miserable lives they live in these cells, will come up in every case," said Clive Stafford Smith, a lawyer for 35 detainees.

The case of Salim Hamdan is already a landmark because the Supreme Court used an earlier case against him to strike down the Bush administration's first military commission system in 2006. But that case, like most of the legal battles over Guantánamo, did not affect conditions there.

Detainees lawyers argue that the effects of intense isolation have gradually turned the prison camp into something of a highly fortified mental ward. Mr. Hamdan's lawyers say his place as one of the best-known detainees has not spared him.

In more than six years of detention, Mr. Hamdan has had two phone calls to his family and no visits. He has been disciplined, legal filings say, for having a Snickers bar that was given to him by his lawyers and for possessing too many socks.

"Conditions are asphalt, excrement and worse," he wrote his lawyers in February. "Why, why, why?"

At Guantánamo, there are no family visits, no televisions and no radios. A new policy will for the first time permit one telephone call a year.

In the cells where Mr. Hamdan and more than 200 of Guantánamo's 280 detainees are held, communication with other detainees is generally by shouting through the slit in the door used for the delivery of meals. Mail is late and often censored, lawyers say.

Conditions are more isolating than many death rows and maximum-security prisons in the United States, said Jules Lobel, a law professor at the University of Pittsburgh who is an expert on American prison conditions.

The military prosecutors declined to comment on the claims about Mr. Hamdan's condition. As is common at Guantánamo, their legal filings were not made public before the scheduled court date. But defense filings released by Mr. Hamdan's lawyers recited some prosecution arguments.

The prosecutors argued that the way that Mr. Hamdan was being held did not constitute solitary confinement in part because "detainees can communicate through the walls." They said

that Mr. Hamdan had denied having mental problems and that he was no model detainee, spitting at guards, threatening assault and throwing urine.

Speaking generally, Commander Storum said, detainees are enemy combatants held safely. "We are holding the right people," she added, "in the right place, for the right reasons, and doing it the right way."

Prosecutors have said Mr. Hamdan, now about 39, helped Mr. bin Laden elude capture after the 2001 terror attacks. He is charged with transporting weapons for Al Qaeda and being a bin Laden bodyguard and driver.

In recent weeks, his case has drawn wide notice because the defense asserted that senior Pentagon officials exerted improper influence over military prosecutors and pressed cases for political reasons. Hearings on that issue, also scheduled for next week, may expose the internal workings of the military commissions. The former chief Guantánamo prosecutor, Col. Morris D. Davis, who has become a critic of the way the war crimes system is run, is slated to testify for Mr. Hamdan.

But the claim about Mr. Hamdan's mental health could expose the workings of Guantánamo. According to military statistics, three-quarters of the detainees have been held recently in two "camps" that look much like American prisons. Camp 5 and Camp 6, heavily guarded concrete buildings, hold men who have yet to face trial. Behind a heavy door, each cell has a handful of sanctioned items including a cup and a Koran.

Officials concede that the daily two hours of recreation in a chain-link pen is sometimes offered in the dark. From inside their cells, detainees cannot see the outdoors. From the exercise pens they sometimes can see only a sliver of sky.

Michael E. Mone Jr., a Boston lawyer, visited a client last month in Camp 5, where Mr. Hamdan is held. Mr. Mone said his client, an Uzbek detainee, asked why he could not be held in a place where he could see the sun.

This winter, lawyers for Abdulghappar Turkistani, a detainee in Camp 6, received a letter describing life there. "Losing any contact with anyone," he wrote, "also being forbidden from the natural sunlight, natural air, being surrounded with a metal box all around is not suitable for a human being."

Reporters are not permitted to interview detainees, and some international groups, like Amnesty International, have been denied access to detainees.

In leaked reports in 2004 investigators for the International Committee of the Red Cross, who do see detainees, said their treatment, including solitary confinement, amounted to torture. But the Red Cross usually keeps its conclusions private.

As a result, much of what is known about current conditions at Guantánamo comes from lawyers, who visit regularly under tight restrictions. Many describe the men as depressed or delusional. Some, they say, show obvious signs of what some of them call Guantánamo psychosis.

Four detainees are believed to have committed suicide in 2006 and 2007, but the military has never released the official details.

Some of the men are increasingly paranoid and some are losing touch with reality, said Rebecca P. Dick, a Washington lawyer who visited two Afghan detainees in March. "One client said, 'I'm talking to the ceiling now,'" Ms. Dick recalled.

Six detainees, according to military officials, are now on hunger strikes. They are fed liquid nutrition through tubes inserted in their nostrils daily.

Mr. Stafford Smith said one of his clients, a hunger striker, was fixated on a mathematical formula that he believed proves that he will be the next to die.

Another detainee, Mr. Stafford Smith said, has smeared feces on his cell walls. "When I asked him why he was doing it, he told me he had no idea," Mr. Stafford Smith said.

Last month a lawyer for nine detainees who are members of China's Uighur ethnic minority told a Congressional committee that one of them, Huzaiifa Parhat, said that life at Guantánamo was like having already died. The lawyer, P. Sabin Willett, said Mr. Parhat asked the lawyers to pass on a message. He told them to tell his wife to remarry.

Military officials often dismiss such descriptions as accounts by gullible lawyers manipulated by terrorists trained to make false claims of mistreatment.

Detainees' lawyers say the military methodically understates the mental illness at Guantánamo for public relations reasons.

In military commission proceedings in recent weeks, there have been hints that some of the men facing charges may be deteriorating psychologically.

A military lawyer for a Sudanese detainee said her client appeared frantic and asked that he be

evaluated.

When a judge asked a Saudi detainee the name of a lawyer, the detainee's answer was: "I have been here for six years. Thank God I can even still remember the names of my own family."

But Mr. Hamdan's case is the first in the current system to try to air fully the claim that Guantánamo is warping the minds of the men held there.

Commander Mizer said Mr. Hamdan talked unendingly about his desire to moved to Camp 4, the only place at Guantánamo where detainees are permitted to live communally. Camp 4 is believed to house 50 or fewer detainees who officials classify as highly compliant. Mr. Hamdan blames his lawyers for failing to get him out of Camp 5, Commander Mizer said, and will talk only about that. "He refuses to talk about his case," he said.

The trial is now set to begin on May 28. But twice in recent months, Commander Mizer said, Mr. Hamdan has said he was dismissing Commander Mizer from the case. "He said, 'I don't ever want to see you again,'" Commander Mizer said.

There is only one subject, he said, that Mr. Hamdan discusses: Getting out of his cell in Camp 5 at Guantánamo Bay.

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## Attachment 4

## Solitary Confinement at Guantánamo Bay

*"It's kind of like having their own apartment."*

Camp 6 Guard, Guantánamo Bay Naval Station<sup>1</sup>

*"I am in my tomb."*

Abdelli Feghoul, Camp 6 prisoner, cleared for release since at least 2006

**Approximately 70% of the men imprisoned in Guantánamo are in solitary confinement or isolation.**<sup>2</sup> Virtually none have ever been charged, and most will never be charged or tried. Yet, they remain in "super-maximum security confinement" conditions – held by a federal judge to "press the outer bounds of what most humans can psychologically tolerate."<sup>3</sup>

There are three camps at Guantánamo where conditions qualify as solitary confinement or isolation: Camps 5, 6 and Echo. The military maintains that Camps 5 and 6 are intended for "non-compliant" prisoners, but the facts prove otherwise. Indeed, a number of men slated for release are held in these conditions, including some who languish because they are unable to be safely transferred.

**The military refuses to acknowledge that there is solitary confinement in Guantánamo at all. Instead, they speak in euphemisms of greater "privacy"<sup>4</sup> and "single-occupancy cells."<sup>5</sup> The conditions, however, speak for themselves:**

- In Camp 6, each detainee is confined to a small, windowless steel cell with no access to natural light or air. In Camp 5, a frosted window provides minimal access to natural light, but no view outside. Florescent lights are on 24 hours a day, limiting sleep.

*"Bisher al-Rawi is, slowly but surely, slipping into madness. . . . Bisher is allowed no contact with fellow prisoners. Bright lights are kept on 24 hours a day. Bisher is given 15 sheets of toilet paper per day, but because he used his sheets to cover his eyes to help him to sleep, his toilet paper - considered another comfort item... - has been removed for 'misuse.'"*

- Attorney Brent Mickum on Bisher al-Rawi's confinement in Camp 5.<sup>6</sup>

- Detainees are allowed no more than two hours of "recreation" a day. In Camp 6, recreation takes place alone in a pen surrounded by high concrete walls with a mesh covering blocking out most sun. The only equipment is an occasional ball. Sometimes detainees are only allowed recreation at night, preventing them from seeing any sun for days. Alone in their pen, all physical contact with others is forbidden.

*Saber Lahmar, a detainee who had been held in solitary confinement in Camp Echo, was only allowed to exercise approximately every 10 days, despite severe leg pain and a camp doctor's admission that he needed exercise for nerve and muscle damage in his legs.<sup>7</sup>*

- Detainees have virtually no human contact. Food is delivered through a slot in the door. Detainees may try to shout to one another through the slot with great difficulty, and at risk of disciplinary sanction.<sup>8</sup> They are almost entirely cut off from the outside world and their families. There are no activities or stimulation, save one book a week from a poorly stocked library cart, and a Koran.

<sup>1</sup> William Glaberson, *Detainees' Mental Health is Latest Legal Battle*, NEW YORK TIMES, April 26, 2008.

<sup>2</sup> *Id.* Camp 6 was recently constructed with minimal allowance for human contact; 165 men were transferred there shortly after its completion in December 2006.

<sup>3</sup> *Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995).

<sup>4</sup> Ben Fox, *GTMO's Camp 6: extra privacy or harsh isolation?*, ASSOCIATED PRESS, February 4, 2007.

<sup>5</sup> NEW YORK TIMES, *supra* note 1.

<sup>6</sup> Brent Mickum, *Guantánamo's Lost Souls*, THE GUARDIAN, Jan. 8, 2007. Mr. al-Rawi was released on March 31, 2007, after 4 years in prison.

<sup>7</sup> *Id.* at 21. Mr. Lahmar lived in Camp Echo for over a year. He is currently in isolation in Camp 3, but is allowed more recreation time.

<sup>8</sup> *Cruel and inhuman: Conditions of isolation for detainees at Guantánamo Bay*, AMNESTY INT'L 4, April 5, 2007.

## Psychological and Physical Effects

Solitary confinement, especially in combination with severely restricted stimuli and activity, is known to cause psychological and physical damage.<sup>9</sup>

*"[My client] smeared feces on his cell walls. When I asked him why . . . , he told me he had no idea."*

- Attorney Clive Stafford Smith<sup>10</sup>

*"[Y]ou try talking to a man who only wants to see the sun. You will never forget the experience. . . . In [his] cell, [Huzaiifa Parhat] can crouch at the door, and yell through the crack at the bottom. The fellow in the next cell may respond, or he might be curled in the fetal position, staring at the wall. Another Uighur told us of the voices in his head. The voices were getting the better of him. His foot was tapping on the floor. I don't know what's happened to him: he doesn't come out of the cell to see us anymore."*

- Attorney Sabin Willett, describing the condition of the Uighur detainees in Camp 6.<sup>11</sup>

*"Tell [my wife] to remarry. She should consider me dead."*

- Chinese Uighur imprisoned at Guantánamo, soon after being transferred into Camp 6.<sup>12</sup>

*"I've started talking to the ceiling. I know it's crazy, but I can't stand it otherwise."*

- Camp 6 prisoner<sup>13</sup>

*"I'm fighting for my sanity."*

The same man, a year later: *"The walls are really beginning to close in on me now."*

- Camp 5 prisoner<sup>14</sup>

## Conditions at Guantánamo Violate United States Obligations under Law

The conditions in Camps 5, 6 and Echo constitute cruel, inhuman or degrading treatment that violates internationally accepted standards of humane treatment, as well as U.S. law.

- Such treatment is prohibited under the Detainee Treatment Act of 2005, and under the U.S. Supreme Court ruling in *Hamdan v. Rumsfeld*, which held that Common Article 3 of the Geneva Conventions applies to Guantánamo detainees.
- The International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT) prohibit torture and other ill-treatment.<sup>15</sup> The ICCPR monitoring body has stated that "prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7."
- Depriving detainees of fresh air and natural light violates both the UN Standard Minimum Rules for the Treatment of Prisoners and American Correctional Association standards.<sup>16</sup> Denial of social interaction, recreation and family visits is inconsistent with UN standards and U.S. federal rules.<sup>17</sup>

*I look alive, but actually I'm dead.*

- Camp 6 prisoner<sup>18</sup>

<sup>9</sup> Psychological damage includes hallucinations, extreme anxiety, hostility, confusion and concentration problems. Physical symptoms of solitary confinement can include impaired eyesight, weight loss, and muscular atrophy. Stuart Grassian, *Psychological Effects of Solitary Confinement*, AMERICAN J. OF PSYCHIATRY, 140:1450-1454, 1984; Terry A. Kupers, *The SHU Syndrome and Community Mental Health*, COMMUNITY PSYCHIATRIST, Summer 1998; Craig Haney, *Mental Health Issues in Long-Term Solitary and 'Supermax' Confinement*, CRIME AND DELINQUENCY, vol. 49, no. 1, January 2003; Amnesty Int'l, *UK Special Security Units - Cruel, Inhuman and Degrading Treatment*, 1997 (AI Index: EUR 45/06/97), cited in AMNESTY INT'L, *supra* note 8 at 18.

<sup>10</sup> Cited in NEW YORK TIMES, *supra* note 1.

<sup>11</sup> Sabin Willett, Testimony to the House Committee on Foreign Affairs' Subcommittee on International Organizations, Human Rights and Oversight, May 20, 2008. The Uighurs are Chinese Muslims who have been cleared for release for years, but have no country to which they can return safely.

<sup>12</sup> *Parhat v. Gates*, No. 06-1397 (D.C. Cir. Jan. 20, 2007) (Decl. of Sabin Willett at ¶ 33).

<sup>13</sup> Rebecca Dick, attorney notes.

<sup>14</sup> *Id.*

<sup>15</sup> The United States is a party to both treaties.

<sup>16</sup> Standards for Adult Correctional Institutions, 4<sup>th</sup> Ed., 4-4147-4-4148.

<sup>17</sup> UN Standard Minimum Rules for the Treatment of Prisoners, Art. 37; 28 CFR 540.30-34 and 544.80-83, cited in AMNESTY INT'L, *supra* note 8 at 16. U.S. federal rules stress the importance of programs that provide for social interaction, recreation and education.

<sup>18</sup> *Supra*, note 13.

## Attachment 5

Public

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**amnesty international**

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**UNITED STATES OF  
AMERICA**

**Cruel and inhuman:  
Conditions of isolation for  
detainees at Guantánamo Bay**



**5 April 2007  
AI Index: AMR 51/051/2007**

**INTERNATIONAL SECRETARIAT, 1 EASTON STREET, LONDON WC1X 0DW, UNITED KINGDOM**

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# **amnesty international**

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## **UNITED STATES OF AMERICA**

### **Cruel and Inhuman: conditions of isolation for detainees at Guantánamo Bay**

**April 2007**

**Summary**

**AI Index: AMR 51/051/2007**

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This report describes Amnesty International's concerns about the current conditions of detention in the US military base at Guantánamo Bay, Cuba. As of 1 April 2007, approximately 385 men of around 30 nationalities remained detained as "unlawful enemy combatants", many have been held for more than five years without charge or trial or knowing if or when they will be released.

Despite being provided with what the US government has called "high quality" medical care, adequate food, sanitation and access to religious items, most detainees have languished in harsh conditions throughout their detention, confined to mesh cages or in held in isolation in maximum security cells. Moreover, a new facility which opened in December 2006, known as Camp 6, has created even harsher and apparently more permanent conditions of extreme isolation and sensory deprivation.

Detainees are confined for 22 hours a day to individual, enclosed, steel cells where they are almost completely cut off from human contact. The cells have no windows to the outside or access to natural light or fresh air. No activities are provided, and detainees are subjected to 24 hour lighting and constant observation by guards through the narrow windows in the cell doors. They exercise alone in a high-walled yard where little sunlight filters through; detainees are often only offered exercise at night and may not see daylight for days at a time.

The US authorities have described Camp 6 as a "state of the art modern facility" which is safer for guards and "more comfortable" for the detainees. However, Amnesty International believes that the conditions, as shown in photographs and described by detainees and their attorneys, contravene international standards for humane treatment. In some respects, they appear more severe than the most restrictive levels of "super-maximum" custody on the US mainland, which have been criticized by international bodies as incompatible with human rights treaties and standards.

It appears that around 80 per cent of those currently held at Guantánamo are in isolation – a reversal of earlier moves to ease conditions and allow more socialising among detainees. According to the Pentagon, 165 detainees had been transferred to Camp 6 from other facilities on the base by mid-January 2007. A further 100 detainees are held in solitary confinement in Camp 5, another maximum security facility.

As many as 20 detainees are also believed to be held in solitary confinement in Camp Echo, a facility set apart from others on the base, where conditions have been described by the International Committee of the Red Cross (ICRC) as "extremely harsh".

They include Shaker Aamer, a UK resident and former camp negotiator, who has been held in total isolation in Camp Echo since September 2005. Saber Lahmer, an Algerian seized in Bosnia, has also spent the last 10 months in Camp Echo. Both men are reportedly confined to small, windowless cells with little exercise and no possessions apart from a copy of the Qu'ran. Saber Lahmer reportedly refused to leave his cell for a pre-arranged visit with his attorneys in March, causing grave concern for his mental health. The military authorities denied requests by his lawyers to visit him in his cell.

Security at the camp is reported to have significantly tightened following a protracted hunger strike and the deaths of three detainees from apparent suicide in June 2006. Many of those transferred to Camp 6 were previously held in Camp 4 where they lived communally in barracks and had access to a range of recreational activities. Camp 4 is now reported to house only around 35 detainees, down from 180 in May 2006.

A significant number of the more than 80 detainees slated for release or transfer by the Pentagon following review board hearings are believed to be held in isolation in Camps 5 or 6. They include all or some of the 14 Uighars still detained: Chinese Muslims cleared for release but who cannot be returned to China because of the risk of persecution.

Amnesty International is concerned that, as well as being inhumane, the conditions could have a serious adverse effect on the psychological and physical health of many of the detainees, exacerbating the stress inherent in their indefinite detention without trial or access to their families. Lawyers who have recently visited detainees in Camp 6 have expressed concern about the impact of the conditions on the mental state of a number of their clients.

Amnesty International is calling for Guantánamo to be closed and for detainees to be charged and tried under international fair trial norms or else released (see appendix). In the meantime, the organization is urging the US government to take immediate steps to alleviate conditions in the camp to ensure that all detainees are treated humanely in accordance with international law and standards. Such steps include ensuring that no detainee is subjected to prolonged solitary confinement in conditions of reduced sensory stimulation, and allowing detainees more association and activities as well as regular contact with their families with opportunities for phone calls and visits.

Amnesty International is also calling on the government to allow independent health care professionals into Guantánamo to examine detainees in private and to allow visits by independent human right organizations and the UN special procedures. Such visits should include access to all parts of the facility and the ability of delegates to speak privately to detainees.

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# UNITED STATES OF AMERICA

## Cruel and Inhuman: Conditions of isolation for detainees at Guantánamo Bay

### Introduction

*Without question, the isolation of a prisoner from the general population for an indefinite period of time raises Eighth Amendment issues, and due process concerns.*

US federal judge, 27 August 2004<sup>1</sup>

As of 1 April 2007, approximately 385 men of around 30 nationalities were detained without trial in the US military base at Guantánamo Bay, Cuba. Designated by the US authorities as “unlawful enemy combatants”, many have been held for more than five years without knowing if or when they will be released or brought to any form of judicial process. None of those currently held has had the lawfulness of his detention reviewed by a court. A few face the prospect of trials by military commission under procedures that violate international fair trial standards.<sup>2</sup>

Amnesty International has raised concerns about the treatment of the detainees ever since the first of them were transferred by plane from Afghanistan to Guantánamo – hooded, shackled and tied down – in January 2002.<sup>3</sup> From the outset, the US authorities have asserted that all the detainees in its custody are treated “humanely”. That such assertions should be treated with extreme caution has become clear over the years. Even when official investigations have revealed interrogation techniques and detention conditions that clearly violate the international prohibition on torture or other cruel, inhuman or degrading treatment, US investigators and officials have concluded that no law was breached.<sup>4</sup>

Despite being provided with what the US government has called “high quality” medical care, adequate food, sanitation and access to religious items, most detainees have languished in harsh conditions throughout their detention, confined to mesh cages or enclosed maximum security cells. Moreover, in December 2006, a new facility opened on the base. This facility, known as Camp 6, has created even harsher and apparently more permanent

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<sup>1</sup> *Hamdi v. Rumsfeld*, In the US District Court for the Eastern District of Virginia. The Eighth Amendment of the US Constitution prohibits, among other things, “cruel and unusual punishments”.

<sup>2</sup> *USA: Justice delayed and justice denied? Trials under the Military Commissions Act*, AI Index: AMR 51/044/2007, March 2007, <http://web.amnesty.org/library/Index/ENGAMR510442007>.

<sup>3</sup> See, for example, *Afghanistan/USA: Prisoners must be treated humanely*, AI Index: AMR 51/004/2002, 10 January 2002, <http://web.amnesty.org/library/Index/ENGAMR510042002>; *USA: AI calls on the USA to end legal limbo of Guantánamo prisoners*, AI Index: AMR 51/009/2002, 15 January 2002, <http://web.amnesty.org/library/index/engamr510092002>.

<sup>4</sup> For example, see *USA: Rendition – torture – trial? The case of Guantánamo detainee Mohamedou Ould Slahi*, AI Index: AMR 51/149/2006, September 2006, <http://web.amnesty.org/library/Index/ENGAMR511492006>.

conditions of extreme isolation and sensory deprivation in which detainees are confined to almost completely sealed, individual cells, with minimal contact with any other human being.

The US authorities have described Camp 6 as a “state of the art modern facility” which is safer for guards and “more comfortable” for the detainees. However, Amnesty International believes that conditions in Camp 6, as shown in photographs or described by detainees and their attorneys, contravene international standards for humane treatment. In certain respects, they appear more severe than the most restrictive levels of “super-maximum” custody on the US mainland, where conditions in some units have been criticized by international bodies and US courts as incompatible with human rights and US correctional standards.

The organization is concerned that, as well as being inhumane, conditions in Camp 6 could have a serious adverse effect on the psychological and physical health of many of the detainees held there, exacerbating the stress inherent in their indefinite detention without trial or access to their families. Lawyers who have recently visited Camp 6 have expressed concern about the impact of the conditions on the mental state of a number of detainees.

Isolation has been an aspect of the treatment of detainees in Guantánamo that has caused serious concern over the years, including its use as an interrogation technique or as punishment.<sup>6</sup> Released detainees have recalled that the use of isolation became more pronounced from late 2002.<sup>7</sup> In a meeting with the Guantánamo authorities in October 2003,

*“Reports indicate that the treatment of detainees since their arrests, and the conditions of their confinement, have had profound effects on the mental health of many of them. The treatment and conditions include the capture and transfer of detainees to an undisclosed overseas location, sensory deprivation and other abusive treatment during transfer; detention in cages without proper sanitation and exposure to extreme temperatures; minimal exercise and hygiene; systematic use of coercive interrogation techniques; long periods of solitary confinement; cultural and religious harassment; denial of or severely delayed communication with family; and the uncertainty generated by the indeterminate nature of confinement and denial of access to independent tribunals. These conditions have led in some instances to serious mental illness, over 350 acts of self-harm in 2003 alone, individual and mass suicide attempts and widespread, prolonged hunger strikes. The severe mental health consequences are likely to be long term in many cases, creating health burdens on detainees and their families for years to come.”*

Report of five United Nations experts on situation of detainees at Guantánamo Bay, 2006<sup>5</sup>

<sup>5</sup> UN Doc: E/CN.4/2006/120. *Situation of detainees at Guantánamo Bay*. Report of the Chairperson-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 27 February 2006.

<sup>6</sup> See, for example, Section 4.2 of *USA: Human dignity denied – Torture and accountability in the ‘war on terror’*, AI Index: AMR 51/145/2004, <http://web.amnesty.org/library/index/engamr511452004>.

the International Committee of the Red Cross (ICRC) raised its concern about the “excessive isolation of detainees”, and noted that there had been “no improvement” on this issue, according to a leaked Pentagon document.<sup>8</sup> Three and a half years later, in addition to Camp 6, Amnesty International remains concerned about other isolation facilities on the Guantánamo base, including Camp 5, built as a long-term detention and interrogation centre where detainees classed as “non-compliant” are also held in solitary confinement.

At the time of writing, about 300 of the Guantánamo detainees – nearly 80 per cent of the current detainee population – were believed to be held in isolation in Camps 5, 6 or Camp Echo. According to the Pentagon, 165 detainees had been transferred to Camp 6 from other facilities on the base by mid-January 2007. Around 100 detainees are held in Camp 5, and some 20 more are believed to be held in isolation in Camp Echo, a facility set apart from others on the base, which was originally used to hold detainees selected for trial by military commissions. Fourteen “high value” detainees transferred from years of secret detention to Guantánamo Bay in September 2006 are also held in isolation on the base, although their exact location is unknown. It was also not known at the time of writing in which part of the base Abdul Malik, a detainee transferred from Kenya to Guantánamo over the weekend of 24/25 March 2007, was being held.

The information in this report is based on various sources including lawyers who have visited detainees in Guantánamo;<sup>9</sup> photographs and articles appearing in the press by journalists given controlled tours of the base (none of whom were allowed to speak to detainees); and public statements and photographs issued by the Department of Defense. Amnesty International has made several requests to visit Guantánamo and speak to detainees since the detention facility opened in January 2002 but these requests have been turned down.

### **Conditions in Camp 6**

Built to accommodate around 178 detainees, the compound known as Camp 6 is surrounded by high concrete walls with no windows visible on the façade. Inside, detainees are confined for a minimum of 22 hours a day in individual steel cells with no windows to the outside. The only view from each cell is through strips of glass only a few inches wide in and adjacent to the cell door which looks onto an interior corridor patrolled by military police. There are no

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<sup>7</sup> For example, “[A] point came at which you could notice things changing. That appeared to be after General Miller around the end of 2002... Before when people were put into isolation they would seem to stay for not more than a month. After he came, people would be kept there for months and months and months.” Detention in Afghanistan and Guantanamo Bay. Statement of Shafiq Rasul, Asif Iqbal and Ruhel Ahmed. July 2004. Available at: <http://www.ccr-nv.org/v2/reports/docs/Gitmo-compositestatementFINAL.23july04.pdf>

<sup>8</sup> Memorandum for Record. Subject: ICRC Meeting with MG Miller on 09 Oct 03. Department of Defense, Joint Task Force 170, Guantanamo Bay, Cuba.

<sup>9</sup> Including detailed discussions at Reprieve, a London-based human rights charity which currently provides legal representation for 37 detainees in Guantánamo Bay (see [www.reprieve.co.uk](http://www.reprieve.co.uk)). Lawyers have not been allowed into the housing areas of Camps 5 or 6 but only the attorney visitation rooms.

opening windows and detainees are completely cut-off from human contact while inside their cells.

The housing cells are arranged around a central area on the ground floor which has fixed metal tables and chairs, originally designed so that detainees could have communal dining. However, this area was closed off to detainees before the facility opened, following a tightening of security and a change in the prison's mission to one that amounts to an administrative segregation facility. Detainees now eat all meals inside their cells.

The only way in which detainees can communicate with other inmates is by shouting through a narrow gap at the bottom of the cell door. Reportedly detainees have been punished for shouting to other inmates. One detainee told his lawyer that after several weeks in the facility, he still had no idea of who was in the facility apart from the five other inmates in his immediate "pod".

Contrary to international standards, the cells have no access to natural light or air, and are lit by fluorescent lighting which is on 24 hours a day and controlled by guards. The lighting is reportedly dimmed at night, although it is unclear by how much. The only source of air in the cells is from air-conditioning controlled by guards. Lawyers who visited detainees in January 2007 reported that they consistently complained of being too cold in the steel cells, with the air-conditioning turned up too high.<sup>10</sup> One lawyer has described how in the visiting room her client was huddled on the floor, trying to warm himself with his arms and was too cold to sit on the chair. Reportedly, detainees in Camp 6 have now been given thermal shirts to wear under their jumpsuits, but these may be taken away as punishment through "loss of privileges": one detainee reportedly had his shirt taken away when he was found with a small item in his pocket when he went to shower.

The cells are sparsely furnished with a built-in bunk, and a combined metal toilet and sink unit; some if not all cells also have a small table fixed to the wall near the door with a shelf for the Qu'ran.<sup>11</sup> Detainees reportedly have no possessions in their cells apart from a copy of the Qu'ran, and (if "compliant") a prayer rug and beads and one book a week from a library cart. The library is reportedly poorly stocked, and there are few books in the Sunni tradition, despite most of the detainees being Sunni; there are a lot of children's books, and some which are reportedly culturally insensitive. A clock is reportedly positioned in the corridor outside the cells so that detainees can see the time for prayer.

As well as having few materials or possessions in their cells, detainees are cut off from the outside world by not being allowed newspapers, radio or TV. Once a week the guards will reportedly put up articles printed from the internet in the recreation area. Amnesty International has been told that these are nearly all in English, which the large majority of detainees cannot read. Furthermore, the articles do not constitute any meaningful synopsis of the "news" and have sometimes included crude propaganda: a photograph of Saddam Hussain

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<sup>10</sup> The manipulation of temperature via air conditioning has been authorized and used in Guantánamo as an interrogation technique known as "environmental manipulation".

<sup>11</sup> The table was reportedly in a cell viewed by journalists. It is not shown in photographs although it may have been obscured by the door.

was reportedly pinned up at the time of his execution with a caption by the US military stating that he “was executed because he did not co-operate with the Americans”. On another occasion, captions had reportedly been added to pictures of children along the lines of “Daddy, I don’t remember what you look like. Please cooperate with the Americans so you can come home”.

Detainees are allowed two hours of exercise a day. This is taken in a yard which was originally intended to be a communal sports and recreation area but has now been divided into individual areas by chain-link fences. During exercise, detainees are reportedly able to have some minimal communication with inmates in adjacent areas, although touching, such as hand-shaking, is forbidden. There appears to be no equipment of any kind in the yard for exercise or other activities, apart from a ball in some pens.

The exercise yard is surrounded by high concrete walls, with mesh fencing covering the top, so that while technically it is an outside area there is no view to the outside. Detainees have told their lawyers that, although they can see the sky from the yard during the day, the height of the walls and the mesh fencing means the sun filters through only for a short period of the day, and only in patches so that they have little, if any, exposure to the sun. Furthermore, detainees have reported that they are often offered exercise late at night, in which case they may not see daylight for days at a time. Guards also reportedly encourage detainees to refuse yard time at night and take a shower only, to which they usually agree.

The lack of human contact in Camp 6 appears to be reinforced by other operating procedures. The cell doors are operated by remote control, and guards escorting the detainees to and from the exercise yard wear thick gloves. There is an opening in the door through which food is slotted so that detainees rarely come into direct contact with another human being. Guards are reportedly silent during most of their contact with detainees. Detainees are also escorted in shackles whenever they leave their cells. Visits with attorneys take place in a small, windowless room, and detainees are reportedly shackled to the floor during visits.

One common complaint by detainees in Camp 6 is their constant exposure to guards. Several detainees have described their distress at being observed by guards while using the in-cell toilets. Reportedly, detainees in Camp 6 have not been allowed to cover themselves while using the toilet and they may be observed by female staff. It is further alleged that, contrary to former operating rules, female guards now observe detainees while they are taking showers. The towels provided are alleged to be too small to provide adequate covering. Amnesty International considers that allowing female guards to watch male detainees in the circumstances described can amount to a form of sexual abuse in violation of international standards prohibiting cruel, inhuman or degrading treatment; the constant observation may also violate the right to privacy and respect for human dignity, both of which are enshrined in the International Covenant on Civil and Political Rights.

Another complaint relates to constant noise deriving from the way Camp 6 is constructed. The cell areas consist of prefabricated units arranged on two storeys. Cell walls,

doors, ceilings, and even the floors on the second storey<sup>12</sup>, are made of steel, as are the walkways which are patrolled by military police every two or three minutes. Amnesty International was told that every movement causes the steel to reverberate and echo, so that there is constant amplified noise. This reportedly goes on throughout the night, with guard patrols and people taken for exercise at virtually all hours, so that there is no respite. This causes sleep disturbance and considerable stress to detainees: as one lawyer put it, time spent in Camp 6 is “a combination of no peace and nothing to do”.

### **General restrictions on communication with relatives and lawyers**

Detainees in Guantánamo are denied family visits and mail from relatives is often delayed and heavily censored. The father of Guantánamo detainee David Hicks recently said that even words of affection were blacked out and removed in letters to and from his son.<sup>13</sup> Detainees are generally not allowed any phone calls. In March 2007, Omar Khadr, aged only 16 when first brought to Guantánamo after his capture in Afghanistan in July 2002, was allowed to speak to his mother on the telephone for the first time in more than five years.

Amnesty International has been told that detainees are usually not allowed to keep paper and pens in their cells and are provided with these items for only half an hour a week; if they are unable to complete a letter to their family or lawyer within this period, they have no extra time to do so. This can make it difficult for detainees to communicate with their families or lawyers adequately or assist in preparing a legal case, contrary to international standards.<sup>14</sup> Furthermore, there is no time for detainees to assist those who are illiterate, in areas where communication between detainees is possible.

### **Move to permanent lockdown for most detainees: conditions worse than before**

As noted above, 165 prisoners – more than a third of the total Guantánamo detainee population – had been moved to Camp 6 from other facilities in the base by January 2007. Around 100 other detainees are held in Camp 5, an isolation and interrogation facility for “non-compliant” detainees that opened in October 2004. Amnesty International has previously expressed concern about conditions in Camp 5, where detainees (including at least two who were juveniles when taken into custody) have been confined for up to 24 hours a day in small, enclosed cells. Camp 5 cells appear similar to those in Camp 6 and have solid metal doors with a small window looking onto an interior corridor; however, they also have a

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<sup>12</sup> The only area which is not made of steel is the concrete floor on the ground floor cells.

<sup>13</sup> Australian national David Hicks is the only detainee known to have had access to family members.

<sup>14</sup> AI was told that detainees may be allowed a pen and paper the day before an annual review board hearing (an administrative hearing at which the detainee is not represented by a lawyer). International standards state that prisoners shall be allowed to communicate with family and friends through correspondence and visits (see section on standards). Principle 8 of the UN Basic Principles on the Role of Lawyers states that “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality”.

narrow frosted window on the outside wall which provides some access to natural light, if no view to the outside. Amnesty International has been told that the exercise yard in Camp 5 is surrounded by fencing so appears less enclosed than in Camp 6. While conditions in both camps are extremely harsh, according to a contact who has viewed cells in each facility, the difference in Camp 6 is that detainees have no way of knowing whether it is day or night from the physical environment in the cells. One detainee has described Camp 6 as being a “dungeon above the ground”.<sup>15</sup>

The Pentagon claims that conditions in Camp 6 are superior to those in older housing areas such as Camp 1 as detainees now have more “privacy” and larger cells as well as a standardized two hours of daily exercise. Detainees in Camp 1 are confined to small cages in cell blocks, with little opportunity for exercise. Harsh as these conditions are, however, the meshed walls allow communication between detainees as well as access to some natural light and fresh air (many of the cells appear to have windows). Lawyers have reported that detainees formerly in Camp 1, or in Camps 2 and 3 which are similar, find conditions in Camp 6 much more oppressive, particularly in terms of the isolation and lack of natural light.

Disturbingly, dozens of detainees transferred to Camp 6 used to be held in Camp 4, a medium security facility where they lived communally in barracks, ate at picnic tables, prayed together and had all-day access to an outside recreation area with sports equipment. They include some or all of the 14 Uighurs who have been cleared by review boards as eligible for release but who cannot be returned to China because of the risk of persecution.<sup>16</sup> Most of the Uighurs had been transferred from Camp 4 to Camps 1-3 prior to their transfer to Camp 6; however they had never before been held in conditions of such blanket isolation. They are now reportedly dispersed among separate pods and are even more isolated as they don't speak Arabic. According to the Department of Defense, as of early March 2007, more than 80 of the approximately 385 detainees currently held at Guantánamo were designated for release or transfer, following review board decisions.<sup>17</sup> A significant number of these may now be held

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<sup>15</sup> Declaration of Sabin Willett, January 20, 2007 in case of *Huzaiifa Parhat et al v Robert M Gates*, before United States Court of Appeals, District of Columbia Circuit, Case No. 06-1397

<sup>16</sup> According to their lawyers, Combatant Status Review Tribunal (CSRT) records show that their case histories are similar to those of five ethnic Uighurs (Chinese Muslims) released from Guantánamo to Albania in 2006, long after they were determined to be no longer a threat to the USA. The CSRTs are administrative review bodies set up in July 2004, more than two years after detentions began, to review the “enemy combatant” status of detainees. The CSRT determination is a one-off procedure, followed up by an annual Administrative Review Board (ARB). Both the CSRT and ARB procedures are wholly inadequate replacements for full judicial review of detentions. Both tribunals can rely on coerced or secret evidence against a detainee denied legal representation and presumed to be an “enemy combatant” unless he can prove otherwise. See *USA: Guantánamo and beyond: The continuing pursuit of unchecked executive power*, AI Index: AMR 51/063/2005, May 2005, <http://web.amnesty.org/library/index/engamr510632005>.

<sup>17</sup> News Transcripts from the Department of Defense, 6 March 2007: *Annual Administrative Review Boards for Enemy Combatants Held at Guantánamo attributable to senior Defense officials*. <http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=3902>.

in Camps 5 or 6.<sup>18</sup> It appears that many detainees may have been transferred there because there was room in the facility, not because of their individual behaviour.

Some of the harshest conditions anywhere at Guantánamo appear to be in Camp Echo. In its meeting with the Guantánamo authorities on 9 October 2003, the ICRC had expressed shock to discover that “Camp Echo had expanded”, and described conditions in the facility as “extremely harsh”.<sup>19</sup> Camp Echo, which is still operational three and a half years later, is a collection of windowless shacks situated in a separate part of the base. One half of each shack is divided into two small individual cells: a sleeping area and a shower area which the detainee is reportedly allowed to use for 10 minutes a day. The other half is a room with a table and chairs, which is used for attorney visits and reportedly sometimes for interrogations. Detainees can only access this room by passing through the shower area. Detainees spend 23 or 24 hours a day confined to the individual cells at the back of each hut. The huts have no natural light and fluorescent lighting is on 24 hours a day. Some detainees in Camp Echo have reportedly been denied outdoor exercise for weeks at a time; others have been allowed exercise only a few times a week.

Detainees first named to appear before military commissions were at one time held in Camp Echo but are now in Camp 6. For example, after being named as eligible for trial by military commission in 2003, Yemeni national Salim Ahmed Hamdan was transferred to Camp Echo. The military claimed that “detainees at Camp Echo are not in solitary confinement”.<sup>20</sup> However, Salim Ahmed Hamdan was held for almost a year in solitary confinement in Camp Echo:

*“The ICRC focussed on the effects that the interrogations were having on the mental health of the detainees. The ICRC feels that interrogators have too much control over the basic needs of detainees. That the interrogators attempt to control the detainees through the use of isolation. [The ICRC] stated that the interrogators have total control of the level of isolation in which the detainees were kept; the level of comfort items detainees can receive; and also the access of basic needs to the detainees. According to [the ICRC], detainees are kept in uncertainty as to their future and are often given contradictory information about their repatriation.”*

Leaked Department of Defense memorandum of a meeting between ICRC and Guantánamo authorities, October 2003.

*“Since December 2003 Mr Hamdan has been confined alone in a cell, in a house that is guarded by a single non-Arabic-speaking guard. A translator is rarely available. He receives 60 minutes of exercise outdoors three times a week, only at night... Mr Hamdan has described his moods during his period of solitary confinement as deteriorating, and as encompassing frustration, rage (although he has not been*

<sup>18</sup> One lawyer AI spoke to in March 2007 has six clients slated for release: five are in Camp 6 and one in Camp 5.

<sup>19</sup> Memorandum for Record. Subject: ICRC Meeting with MG Miller on 09 Oct 03. Department of Defense, Joint Task Force 170, Guantanamo Bay, Cuba.

<sup>20</sup> Fact sheet: Camp Echo and Camp Five. Updated: June 2004. JTF Public Affairs.

*violent), loneliness, despair, depression, anxiety, and emotional outbursts. He asserted that he has considered confessing falsely to ameliorate his situation.*<sup>21</sup>

Several detainees who acted as leaders during a brief period of negotiation with the authorities in 2005 were sent to Camp Echo after negotiations broke down. At least one former negotiator, Shaker Aamer, a UK resident, has been held in Camp Echo continuously since September 2005 and, at the time of a visit with his attorney in August 2006, had not been outside for 64 consecutive days. He has reportedly suffered beatings and harassment by guards and has had his clothes and mattress removed.<sup>22</sup> Saber Lahmer, another former camp negotiator, was returned to Camp Echo in June 2006 where he remained as of late March 2007 without any explanation being given to his attorneys. Both men are reportedly totally isolated and denied personal possessions and basic materials, such as pen and paper. Saber Lahmer was apparently too depressed to see his lawyer during his last visit to the base (see cases, below). Amnesty International has been told that as many as 20 detainees may currently be held in Camp Echo, although exact numbers are hard to come by given the facility's isolated location.

The transfer of most detainees to lockdown conditions marks a shift in policy, reversing moves over the past two years to apply less restrictive conditions for detainees. Following the Abu Ghraib torture revelations and other allegations of detainee abuse, commanders in Guantánamo reportedly began easing conditions for detainees after 2004, with Camp 4 seen as a model and incentive for non-disruptive detainees. The Army reported in 2005 that part of the rationale behind the living arrangements in Camp 4 was to rebuild detainees' social skills "which may have been lost over time": to this end detainees were provided with social activities and were responsible for maintaining their own living quarters.<sup>23</sup> Camp 6 was also reportedly designed to be a medium security facility allowing socializing among inmates, increased access to exercise areas and activities, mail and foreign-language materials.<sup>24</sup> The former warden of Guantánamo also started a direct dialogue over detainee complaints, meeting several times in 2005 with a council of detainee leaders.

However, a series of events precipitated a clamp-down by the authorities. These included the resumption in August 2005 of a hunger strike by detainees in protest at their indefinite detention and conditions, which continued into January 2006 amid reports of ill-treatment of detainees during force-feeding through nasal tubes. Other incidents were a disturbance in Camp 4 in May 2006;<sup>25</sup> and the deaths of three prisoners in Camp 1 in June

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<sup>21</sup> *Swift v. Rumsfeld*, Declaration of Daryl Matthews, M.D., Ph.D., US District Court, Western District of Washington, 31 March 2004.

<sup>22</sup> Declaration of Zachary Philip Katznelson (attorney), 19 December 2006. The declaration suggests that Shaker Aamer has been treated particularly poorly because he speaks fluent English, is outspoken, and has therefore been an interlocutor between the US military and the detainees.

<sup>23</sup> Article by Kathleen T. Rhem, American Forces Press Service, 16 February 2005

<sup>24</sup> See for example, *New Guantánamo Camp to Pave Way for Future Detention Ops*, by Donna Miles, American Forces Press Service, June 28, 2005.

<sup>25</sup> There are conflicting accounts of what transpired during what the US military calls a "riot" in Camp 4 on 18 May, but it appears to have started when a tactical squad entered the camp after two detainees

2006, allegedly from suicide. It was after the deaths that security at Guantánamo appears to have been dramatically tightened, with the opening of Camp 6 delayed while it was retrofitted as a high maximum security facility. This involved the communal areas in Camp 6 being closed off, the landings fenced in and the exercise yard divided into individual pens.

Statements by the military indicate that Camps 5 and 6 are intended to be permanent facilities for the long-term confinement of detainees, with the large majority of detainees housed there in the future. According to a military spokesperson, Camp 4 is unlikely to house many more than the 35 detainees currently held there, down from 180 in May 2006.

The US authorities have justified the restrictive regime in Camp 6 by emphasising that “the most dangerous” detainees, including those still “intent on killing Americans”, are held there. Such statements are consistent with a pattern by the administration of presuming the guilt of detainees who have not been charged or convicted. The authorities maintain that the prison combines humane treatment with security needs, citing incidents such as assaults by detainees on guards with bodily fluids in more open facilities. However, Amnesty International considers that conditions in Camp 6 and other isolation facilities are unacceptably harsh and breach international standards for the treatment of persons deprived of their liberty.

Amnesty International is disturbed that in applying such punitive conditions, the government has disregarded the severe psychological impact on detainees of indefinite confinement, a concern first raised by the ICRC more than four years ago.<sup>26</sup> Such disregard was shown in the authorities’ description of the apparent suicides in June as “a good PR move” and an example of “asymmetrical warfare”. A similar attitude was displayed when officials referred to the hunger strikes as “voluntary fasting”.<sup>27</sup> Amnesty International believes that the

*“He told me that even when a detainee is being good they will take their personal items away. He said they do this to anger the detainees so that they can punish them when they object or complain. I asked Steven why he treats the detainees this way. He said it is because he hates the detainees and that they are bad people... Steven also added that his ‘only job was to keep the detainees alive’.”*

Affidavit of Sergeant Heather N. Cerveny, US Marine Corps, 4 October 2006, relating a discussion she says she had with a Guantánamo military guard, Steven, who had worked in Camp 5 and was moving to Camp 6.

in another part of the base were found to have taken an overdose from hoarded drugs; later on the same day a detainee in Camp 4 is alleged to have been suspected by guards of preparing to hang himself with a sheet, although this is disputed by detainees. The situation reportedly escalated when some older detainees refused to allow their Qu’rans to be searched. Soldiers reportedly used large quantities of pepper spray and other non-lethal weapons against detainees.

<sup>26</sup> See page 20 of *USA: The threat of a bad example: Undermining international standards as ‘war on terror’ detentions continue*, AI Index: AMR 51/114/2003, August 2003, [http://web.amnesty.org/library/pdf/AMR511142003ENGLISH1/\\$File/AMR5111403.pdf](http://web.amnesty.org/library/pdf/AMR511142003ENGLISH1/$File/AMR5111403.pdf).

<sup>27</sup> *Guantanamo Tube Feedings Humane, Within Medical Care Standards*. American Forces Press Service, 1 December 2005, <http://www.defenselink.mil/news/newsarticle.aspx?id=18672>.

only way forward is for the US government to restore the rule of law and ensure fair procedures and humane treatment for all detainees, in accordance with its obligations under international law.

In raising these concerns, Amnesty International also notes that despite the disturbances cited above, there are reportedly far fewer violent incidents and assaults on staff than in the average maximum security prison in the USA. Guantánamo is staffed by military police most of whom have little or no experience in working in prisons or detention facilities; better training and the application of humane standards of treatment would benefit guards as well as detainees.

The United Nations (UN) Committee against Torture has called for the closure of Guantánamo, concluding that indefinite detention without charge is itself a violation of the Convention against Torture.<sup>28</sup> Amnesty International is also calling for Guantánamo to be closed and for the detainees to be charged and tried under international fair trial norms or else released (see appendix). In the meantime, those still detained should be confined in the least restrictive and most humane conditions possible.

As of March 2007, dozens of detainees are reported to have continued or resumed a hunger strike in protest at their conditions as well as indefinite detention. They include detainees in Camp Echo and Camps 5 and 6. A number of them were being force-fed through nasal tubes, some while strapped into restraint chairs. In recently declassified accounts, detainees have described being subjected to considerable pain as the tubes are inserted into their nostrils. One detainee reported how, three times, the tube had been inserted the wrong way so that it went into his lungs; he said he frequently vomited after being force-fed and was not given clean clothes. Guards have allegedly subjected hunger-striking detainees in one block to further punitive treatment, such as pepper spraying them or turning the air-conditioning up high. Amnesty International was seeking further information from the authorities about these allegations at the time of writing.

### Standards for humane treatment

*“Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation”.*  
Article 57 of the United Nations (UN) Standard Minimum Rules for the treatment of Prisoners.

*“Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out under the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic and Social Rights, and the International Covenant on Civil and Political Rights ... as well as such other rights as are set out in other United Nations covenants.”* Basic

<sup>28</sup> Conclusions and recommendations of the Committee against Torture on the USA, 25 July 2006:  
<http://daccessdds.un.org/doc/UNDOC/GEN/G06/432/25/PDF/G0643225.pdf>.

Principles for the Treatment of Prisoners, adopted by the UN General Assembly (1990).

The US government is obliged under international law to treat all those in its custody humanely, regardless of their status or location. Since the US Supreme Court ruling in *Hamdan v. Rumsfeld* in June 2006, the US government claims that its treatment of the Guantánamo detainees complies with Article 3 common to the four Geneva Conventions of 1949 which prohibits, *inter alia*, torture, cruel treatment and “outrages upon personal dignity, in particular humiliating or degrading treatment”.<sup>29</sup> The Detainee Treatment Act of 30 December 2005 also prohibits the cruel, inhuman or degrading treatment or punishment, as defined under US law, of persons of any nationality under the custody or control of the US government anywhere in the world.

The US government has declared the Guantánamo detainees to be “unlawful enemy combatants”, a status unrecognized in international law. Under its global “war on terror” paradigm it maintains that its detention activities outside the USA are exclusively regulated by the law of war, as it defines it, and that human rights law is inapplicable in this global armed conflict. However, contrary to this assertion, it is widely agreed by international experts that the two bodies of law, far from being mutually exclusive, are complementary.<sup>30</sup> As the International Criminal Tribunal for the former Yugoslavia has emphasized,

*“The essence of the whole corpus of international humanitarian law as well as human rights law lies in the protection of the human dignity of every person... The general principle of respect for human dignity is... the very raison d'être of international humanitarian law and human rights law; indeed in modern times it has become of such paramount importance as to permeate the whole body of international law. This principle is intended to shield human beings from outrages upon their personal dignity, whether such outrages are carried out by unlawfully attacking the body or by humiliating and debasing the honour, the self-respect or the mental well being of a person.”*<sup>31</sup>

The International Court of Justice (ICJ) has stated that “the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation...”<sup>32</sup> The USA has made no such derogation.

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<sup>29</sup> Common Article 3 reflects customary international law applicable to international and non-international armed conflicts (but does not apply where there is no such conflict).

<sup>30</sup> For further information and discussion, see Section 2 of *USA: Justice delayed and justice denied? Trials under the Military Commissions Act*, AI Index: AMR 51/044/2007, March 2007, <http://web.amnesty.org/library/Index/ENGAMR510442007>.

<sup>31</sup> *Prosecutor v. Furundzija*, No. IT-95-17/1-T, Judgment of 10 December 1998, para. 183.

<sup>32</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, para. 106. <http://www.icj-cij.org/ijwww/idoCKET/imwp/inwpframe.htm>.

Amnesty International considers that the conditions under which detainees are held in Guantánamo contravene universally applicable standards, including international human rights treaties, and a range of standards and guidelines applying to the treatment of persons in custody.

The USA has ratified the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), both of which prohibit torture and other ill-treatment. Article 10 (1) of the ICCPR requires that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”<sup>33</sup>.

The Human Rights Committee, the ICCPR monitoring body, has emphasized that the prohibition on torture and other cruel, inhuman or degrading treatment or punishment is a peremptory norm of international law, non-derogable and binding on all states.<sup>34</sup> According to the Committee, this absolute prohibition under Article 7 of the ICCPR “relates not only to acts that cause physical pain but also to acts that cause mental suffering ....” and that “prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7”<sup>35</sup>.

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles),<sup>36</sup> states under Principle 6 that:

“the term ‘cruel, inhuman or degrading treatment or punishment’ should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or his awareness of place of the passing of time”.

Amnesty International believes that the conditions described in Camps 5 and 6 and Camp Echo, particularly when applied long-term or indefinitely, constitute cruel, inhuman or degrading treatment in violation of the above standards. This conclusion is based on the isolation and prolonged cellular confinement; the conditions inside the cells including the

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<sup>33</sup> In May 2006, the UN Committee Against Torture urged the USA to: “recognize and ensure that the Convention [against Torture] applies at all times, whether in peace, war or armed conflict, in any territory under its jurisdiction”. In July 2006, the UN Human Rights Committee called upon the USA to “acknowledge the applicability of the [International] Covenant [on Civil and Political Rights] in respect of individuals under its jurisdiction and outside its territory, as well as in times of war”

<sup>34</sup> Human Rights Committee, General Comment 29 (States of Emergency, Article 4), UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001.

<sup>35</sup> Human Rights Committee General Comment 20, on Article 7. See also the Basic Principles for the Treatment of Prisoners, Article 7, G. A. res. 45/111 (1990), stating that “Efforts addressed to the abolition of solitary confinement as punishment, or to the restriction of its use, should be undertaken and encouraged”.

<sup>36</sup> While not a treaty, the Principles apply to all countries and represent an authoritative set of internationally recognized standards, drafted over a number of years and adopted by consensus by the UN General Assembly in 1988.

enclosed environment and lack of any view to the outside; the lack of access to natural light and fresh air, particularly in Camp 6; the constant and allegedly intrusive observation; the paucity of possessions or equipment available to detainees; and the absence of social or external stimuli or almost any form of activity, together with minimal contact with the outside world.

#### *Conditions inside the cells*

The lack of natural light and fresh air in the Camp 6 cells is in clear contravention of the UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), which state that

“In all places where prisoners are required to live or work, (a) windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation.” (Article 11).

While the Standard Minimum Rules do not have the binding force of a treaty they are minimum standards considered acceptable for the living conditions and treatment of prisoners worldwide. The rules set out standards for convicted and untried prisoners, and prisoners held without trial, with Article 11 among the rules for general application. Fresh air and natural light are fundamental elements of the quality of life to which all human beings are entitled.

Standards for adult correctional facilities set out by the American Correctional Association also require that “all inmate rooms/cells provide access to natural light” and an opening window in the case of general population prisoners confined to cells more than 10 hours a day.<sup>37</sup> The ACA standards appear to allow for a natural light source within 20 feet of a cell rather than directly into the cell itself. This may be acceptable in old-style facilities where cells have bars through which light can enter from a central skylight. However, it appears that no meaningful level of natural light can filter into the enclosed cells in Camp 6 from the central area. While the facility was originally designed so that detainees could spend more time out of their cells, the present lockdown conditions mean that the facility is not meeting ACA standards on natural light.

The US military authorities reportedly take the ACA standards into account in the operation of the facility. Although the standards are not mandatory, Amnesty International is disturbed that the authorities should disregard the standard on access to natural light. It considers this would be unacceptable in any detention facility, and certainly does not conform to what would be required in a facility described as “state of the art”.

The cell conditions in Camp Echo, including the lack of window and natural light also fall short of ACA and international standards. While the size of the cells in Camps 5 and 6 reportedly meet ACA minimum standards, the cells in Camp Echo and Camps 1-3 measure a maximum of six by eight feet. This is considerably less than the minimum 80 square feet of

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<sup>37</sup> 4-4147- 4-4148, Standards for Adult Correctional Institutions, 4<sup>th</sup> Edition. The rules also state under 4-4140 that “segregation housing units provide living conditions that approximate those of the general population”.

total floor space per occupant recommended by the ACA when inmates spend more than 10 hours a day in their cells.<sup>38</sup> The standards also require 35 square feet per prisoner of unencumbered space, yet the Camp Echo cells reportedly provide only around a third of this after the bed, toilet and sink are taken into account. Such a shortfall from minimum standards is particularly disturbing given the extremely long periods detainees in Guantánamo spend in such cells.

The apparent lack of furniture other than a bed, toilet and sink in isolation cells in Guantánamo, possibly including Camp 6 cells, may also fall short of ACA correctional standards.<sup>39</sup>

Amnesty International is also concerned at the possible health risk in requiring detainees to eat all meals in their cells, given the enclosed environment and close proximity to the toilet and sink unit. The lack of any chair with a back support may also cause discomfort and physical problems when prisoners are confined to cells for such prolonged periods.

The denial of regular outdoor exercise in the case of detainees in Camp Echo and possibly elsewhere is in breach of the Standard Minimum Rules which state that all prisoners shall have at least one hour of exercise in the open air daily if the weather permits (Rule 21.1).

#### **General concerns**

All relevant international standards provide that, except for limitations demonstrably necessitated by the fact of incarceration, prisoners have the same human rights and fundamental freedoms set out under the Universal Declaration of Human Rights and other treaties. The UN Human Rights Committee reasserts this principle in its General Comment on Article 10 of the ICCPR that persons deprived of their liberty may not be

“... subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in an enclosed environment”, and that:

“Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule ... This rule must be applied without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.<sup>40</sup>

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<sup>38</sup> ACA Standard 4-4131 (Standards for Adult Correctional Institutions, 4<sup>th</sup> Edition). Camp 5 and Camp 6 cells reportedly measure 9x12 and 6x12 feet in totality.

<sup>39</sup> ACA Standard 4-4134 provides that each inmate confined to a cell/room for ten or more hours daily should be provided with bedding, a writing surface and proximate area to sit; storage for personal items; and adequate storage space for clothes and personal belongings. Amnesty International has been told that there is a small storage space built into Camp 6 cells but detainees are not allowed to keep anything there for security reasons, not even a copy of the Qu’ran.

<sup>40</sup> Human Rights Committee General Comment 21.

While Camp 4 allows detainees to engage in some form of social activity within the confines of Guantánamo, the absence in Camps 5 and 6 of any social interaction or activities which are a basic part of human life is contrary to the above principle. This is even more disturbing as all detainees in Guantánamo already suffer through the absence of family visits or regular contact with the outside world - itself a violation of international standards.

The Body of Principles and the Standard Minimum Rules provide that prisoners should be able to communicate at regular intervals with family and friends both by correspondence and by receiving visits.<sup>41</sup> Cutting a prisoner off from his or her family is also a violation of the right to protection of family life contained under the Universal Declaration of Human Rights and article 23 of the ICCPR. The Body of Principles further state that a detained or imprisoned person "shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations" (Principle 19), and the Standard Minimum Rules provide that prisoners should be kept informed regularly of what is going on in the outside world, by the reading of newspapers, periodicals or other means (Rule 39).

In keeping with the general principle that persons deprived of liberty retain the same basic human rights as non-imprisoned persons, international standards emphasize the importance of prisoners and detainees engaging in recreational, social, cultural, educational and religious activities for their mental and physical wellbeing, recognizing that such measures are also necessary to prepare individuals for their eventual return to society.<sup>42</sup> US federal rules also emphasize the importance of social, recreational and educational programs for all inmates in the federal system.<sup>43</sup>

### **Super-maximum security prisons in the USA**

Camps 5 and 6 provide a regime similar to those in so-called super-maximum security facilities on the US mainland.<sup>44</sup> These are prisons, or units within prisons, designed for the extended segregation for administrative or disciplinary purposes of prisoners considered too violent or too disruptive to be held in the general prison population. Indeed, the conditions in Camps 5 and 6 appear as restrictive as some of the highest security levels in super-maximum units, some of which have been criticized by US courts. A US federal judge found, for example, that conditions in Pelican Bay prison in California, where prisoners are confined for

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<sup>41</sup> Principle 19 of the Body of Principles and article 37 of the Standard Minimum Rules.

<sup>42</sup> For example, Principle 28 of the Body of Principles states that a detained or imprisoned person shall have the right to obtain "reasonable quantities of educational, cultural and informational material"; article 40 of the Standard Minimum Rules states that every institution shall have a library for the use of all categories of prisoners "adequately stocked with both educational and instructional books"; elsewhere the rules stress the importance of providing prisoners with educational, recreational, religious and vocational programs, with Article 95 stating that all measures applying to convicted prisoners should apply to persons detained without charge "when conducive to the benefit of this special group of persons in custody".

<sup>43</sup> 28 CFR 540.30-34 and 544.80-83.

<sup>44</sup> Some 25,000 prisoners in more than 40 US states are reported to be currently held in such facilities.

22-23 hours a day to sealed, windowless cells, “may press the outer bounds of what most humans can psychologically tolerate”.<sup>45</sup>

International human rights bodies have also criticized conditions in US super-maximum prisons. In his 1999 annual survey of country practices, the UN Special Rapporteur on Torture, for example, raised concern about conditions in two facilities in Indiana, noting that inmates were held in solitary confinement for 22 and a half hours a day in cells with little natural light and fresh air, with most human contact reduced to the minimum. He referred to evidence of the damaging psychological effects of such confinement.<sup>46</sup> In its May 2000 report on the USA’s obligations under the Convention against Torture, the Committee against Torture expressed concern about the “excessively harsh” conditions in US supermaximum prisons and in its report in May 2006 called on the USA to “review the regime imposed” in such facilities.<sup>47</sup> In its July 2006 report on US obligations under the ICCPR, the Human Rights Committee reiterated its concern that conditions in some super-maximum security prisons in the USA were incompatible with Article 10 (1) of the ICCPR.<sup>48</sup>

Inmates assigned to US mainland super-max facilities are usually convicted offenders who have committed further serious offences or rule violations in prison. While conditions remain extremely harsh in most super-max facilities, conditions for Guantánamo detainees in Camps 5 and 6 are in some respects even more severe. The detainees are more isolated than mainland prisoners, for example, in not being allowed even limited visits with family members or telephone calls.<sup>49</sup> Segregated prisoners in the USA must have their status periodically reviewed, and some super-max facilities provide a level system where prisoners can move from the most restrictive custody units to less severe conditions. Some systems provide in-cell activities or programs at even the strictest custody levels. In ADX Florence, the only federal super-max (level 6) prison in the USA, prisoners in the “general population” have some group recreation at each of the three security stages; prisoners housed in solitary cells in the Security Housing Unit (SHU) at ADX-Florence are allowed TV, radio and craft materials in their cells, unless these are removed for disciplinary purposes.<sup>50</sup> Detainees in Camps 5 and 6 reportedly have no access to such items. The segregated cells in ADX Florence have windows giving a view of outside exercise yards.

Crucially, inmates of US prisons may seek to have their treatment or conditions reviewed by the courts or other oversight bodies. Although results have been limited,

<sup>45</sup> *Madrid v Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995).

<sup>46</sup> E/CN.4/1999/61 Report of the Special Rapporteur on Torture, 12.01.99.

<sup>47</sup> Conclusions and Recommendations of the Committee against Torture: United States of America. CAT/C/USA/CO/2, 18 May 2006,

<http://www.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.USA.CO.2.pdf>

<sup>48</sup> Human Rights Committee, Concluding Observations: United States of America, 28 July 2006,

<http://www.ohchr.org/english/bodies/hrc/docs/AdvanceDoes/CCPR.C.USA.CO.pdf>

<sup>49</sup> As noted above, Omar Khadr, who was a juvenile when first detained in Guantánamo, received his first phone call from his family in five years in March 2007. To AI’s knowledge, the vast majority of detainees have never received a phone call from their families.

<sup>50</sup> Information from an Amnesty International visit to ADX in July 2001.

litigation has led to the amelioration of conditions in several US super-max facilities.<sup>51</sup> In addition, the US Supreme Court has ruled that prisoners are entitled to procedural safeguards when assigned to super-max facilities which impose “atypical and significant hardship”; such safeguards include notice of the factual basis for such an assignment and an opportunity to rebut the decision at a hearing.<sup>52</sup>

The Guantánamo detainees, on the other hand, have no access to the courts or statutory oversight bodies and their treatment is entirely at the discretion of the US government. The Military Commissions Act, signed into law by President Bush on 17 October 2006, stripped US courts of the jurisdiction to consider *habeas corpus* appeals challenging the lawfulness or conditions of detention of any non-US citizen held as an “enemy combatant” in US custody. Although a number of *habeas corpus* applications have been filed on behalf of Guantánamo detainees, and challenges to the new law are pending, none of those currently detained has had his case reviewed by a court. Even before the MCA was passed, government opposition to briefs filed previously have delayed proceedings over the years. Judicial review is a vital safeguard against cruel conditions of detention and other ill-treatment as well as arbitrary detention.

### **Mental health problems and other health concerns**

There is a significant body of evidence in the USA and elsewhere that prolonged isolation can cause serious psychological and physical harm, particularly if accompanied by other deprivations such as conditions of reduced sensory stimulation, enforced idleness and confinement to an enclosed space. Sometimes referred to as the “SHU syndrome”, mental health experts who have examined prisoners in isolation, including US super-max facilities, have described symptoms that include perceptual distortions and hallucinations, extreme anxiety, hostility, confusion, difficulty with concentration, hyper-sensitivity to external stimuli and sleep disturbance as well as physical symptoms.<sup>53</sup> A study by health experts on prisoners held in isolation units in the UK found inmates suffered from physical disorders resulting from their highly restricted surroundings which included impaired eyesight, weight loss, muscle wastage and memory loss and that some inmates had developed “mental illnesses which go beyond the ordinary and expected anticipatory anxiety”.<sup>54</sup>

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<sup>51</sup> Litigation in Wisconsin led to improvements which included removal of the mentally ill from the state’s supermax, and substantially reduced the level of lighting in cells at night (*Jones’El v Berge*, 164 F. Supp.2d 1096 (W.D.Wisc 2001); a judicial order in Indiana covered medical and mental health issues plus access to radios, TVs, additional reading and personal property, increased educational opportunities and reduced night lighting in cells (*Taifa v Bayh*, 946 F. Supp 723 (N.D. Ind 1994).

<sup>52</sup> *Wilkinson v Austin*, No 04-495, Supreme Court ruling 13 June 2005.

<sup>53</sup> Findings of studies have been described in a number of articles, including Stuart Grassian, “Psychological Effects of Solitary Confinement”, *American Journal of Psychiatry*, 140:1450-1454, 1983; Terry A. Kupers, “The SHU Syndrome and Community Mental Health”, *Community Psychiatrist*, summer 1998, Craig Haney, “Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement”, *Crime and Delinquency*, vol.49, no.1 (January 2003) and in court rulings and testimony.

<sup>54</sup> January 1997 report by three independent psychiatrists who examined prisoners in UK Special Security Units (SSUs). An official inquiry by the UK Prison Service recommended in an unpublished

Several US courts have ruled that the isolating conditions in super-max facilities can lead to serious mental injury in some cases, and have ordered the removal of prisoners with pre-existing mental illness, or who risk developing psychosis, from such units. A judge in Wisconsin ruled that confinement under conditions prevailing in the state's super-max facility "is known to cause severe psychiatric morbidity, disability, suffering and mortality", even in individuals with no history of mental breakdown, noting that: "Many prisoners are not capable of maintaining their sanity in such an extreme and stressful environment: a high number attempt suicide".<sup>55</sup>

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the expert body which is part of the Council of Europe, has stated, "It is generally acknowledged that all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long-term, to have damaging effects resulting in deterioration of mental faculties and other social abilities".<sup>56</sup> The CPT has recommended that all forms of solitary confinement should last for as short a time as possible, with compensatory measures for those held in high security units, such as enhanced exercise facilities, choice of activities and opportunities to meet fellow inmates within the units.

In Guantánamo, detainees generally have not had access to independent, outside mental health experts.<sup>57</sup> However, the ICRC noted in 2003 that the totality of the conditions under which they were held, including their indefinite confinement, had led to a worrying deterioration in the psychological health of many detainees. The ICRC continues to express its concern that "uncertainty about the prisoners' fate has added to the mental and emotional strain experienced by many detainees and their families".<sup>58</sup> Lawyers have also reported on health problems suffered by detainees, particularly individuals held for prolonged periods in solitary confinement, some of whom had been allegedly subjected to torture or other ill-treatment during interrogation. Complaints about the mental state of detainees appear to have increased since the opening of Camp 6. Lawyers who have visited clients in Camp 6 have consistently reported a marked decline in the mental and physical health of detainees since their transfer to Camp 6.

- A document describing the impact on five Uighurs of their transfer to Camp 6 states how they all expressed feelings of "despair, crushing loneliness, and abandonment by

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report in 1996 that prisoners in SSUs should be held there for as short a period as possible and more provision should be made for mental stimulation and physical exercise and that prisoners should have access to open visits with members of their immediate family. The study's findings are described in an Amnesty International report, *UK Special Security Units – Cruel, Inhuman and Degrading Treatment*, 1997 (AI Index: EUR 45/06/97).

<sup>55</sup> Jones' El, 164 F. Supp. 2d at 1101, 1102.

<sup>56</sup> CPT Report to the Finnish Government on the Visit to Finland, conducted between 10 and 20 May 1992, Strasbourg, France, 1 April 1993, CPT/Inf (93) 8.

<sup>57</sup> David Hicks, an Australian national, had a visit from an Australian psychiatrist in February 2005. Requests for a follow-up visit were reportedly refused by the US authorities.

<sup>58</sup> ICRC, Operational update, 31 December 2006, <http://www.icrc.org/web/eng/siteeng0.nsf/html/usa-detention-update-121205?opendocument>.

the world”, during visits with their lawyers in January 2007. None had been subjected to such strict conditions of isolation before. One detainee who during previous visits “had appeared gentle and pleasant, quick to laugh and smile” now “appeared to be in despair” and said he was “beginning to hear voices”. Another described how his cell neighbour was “constantly hearing noises, shouting out, and being punished”.<sup>59</sup>

- David Hicks, an Australian national detained for more than five years in Guantánamo, was reported to have deteriorated physically and mentally after being held in virtual total solitary confinement in Camps 5 and 6 from March 2006. He was transferred to Camp 6 in December 2006. Lawyers who visited him in January 2007 described how they were shocked by how much he had changed. Chained to the floor in the Camp 6 visitation room, Hicks reportedly looked far older than his 31 years, was hollow-eyed, unkempt and dishevelled and extremely despondent, and had difficulty in communicating for the first part of the interview. His lawyers said he was suffering the effects of prolonged isolation and a lack of privacy, being forced to use the toilet in his cell in full view of the guards. His hairbrush and comb had also been confiscated in Camp 6. There were complaints that, in Camp 5, his cell had often been kept very cold and he had not been given sufficient clothing. Hicks’ family had expressed concern about his condition in July 2006, when Hicks had been incoherent during a telephone call. In December, the US authorities reportedly denied a request for a follow-up visit from an independent psychiatrist who had visited Hicks in February 2005.

On 26 March 2007, David Hicks pleaded guilty at a military commission hearing in Guantánamo to a single count of “providing material support for terrorism”. On 30 March, as part of a pre-trial agreement, he was sentenced to seven years all but nine months of which were suspended and was due to be returned to Australia within 60 days.<sup>60</sup>

- In January 2007 the lawyer for Bisher al-Rawi, an Iraqi-born UK resident detained in Guantánamo for more than four years, described how his “once healthy and extremely articulate” client was “slowly but surely slipping into madness” after nine months of solitary confinement in Camp 5 with no end in sight. Bisher al-Rawi’s cell was reported often to be “unbearably cold” with the air-conditioning turned up to the maximum. Sometimes guards removed his orange jump suit and sheet, leaving him only in his shorts. When he tried to warm himself by covering himself with his prayer rug, one of the few “comfort items” permitted to him, guards removed it for “misuse”. His toilet paper was also reportedly removed because he was using it to shield his eyes from constant light in his cell. He was reportedly being punished with isolation

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<sup>59</sup> *Huzaiifa Parhat et al v. Robert M. Gates et al*, Petitioners’ Emergency Motion For Leave to Supplement The Record on Pending Motions with January 20,2007 declaration of Sabin Willett.

<sup>60</sup> See USA: David Hicks pleads guilty on one count. *AI observer attends arraignment at Guantánamo*, AI Index: AMR 51/052/2007, 27 March 2007, <http://web.amnesty.org/library/Index/ENGAMR510522007>.

when he refused to undergo any further interrogations.<sup>61</sup> In late March 2007 Bisher al-Rawi was transferred to the UK where he was subsequently released.

- A lawyer for three other Guantánamo detainees reported that they had been “remarkably psychologically strong” and hopeful during a visit in October but two had later been transferred to Camp 6 and one to Camp 5. During a visit to Camp 6 in January 2007 one of the men who had been vulnerable but bearing up well before, was now “visibly shaken and in great despair”; he had reportedly not seen daylight in 15 days.
- Saber Lahmer, an Algerian transferred to Guantánamo after being seized in Bosnia, has been held in solitary confinement in Camp Echo since late June 2006. A camp doctor had reportedly admitted to him that he needed exercise for serious nerve damage and muscle atrophy in both his legs. However, at Camp Echo he was allowed exercise only every 10 days or so, in a very limited space. When his lawyers visited him in November 2006, he appeared both psychologically and physically debilitated, appearing “extremely depressed”, with severe leg pains.<sup>62</sup> He was completely isolated from anyone but guards as there were no detainees in any adjacent cells; he was not allowed to send or receive mail from his family on a regular basis or to keep mail from his lawyers in his cell and was often refused a pen and paper. He was denied all reading material except for the Qu’ran.

When his lawyers returned to Guantánamo in March 2007 for a pre-arranged legal visit with Saber Lahmer guards told them that he did not want to be moved from his cell to go to an interview. Deeply disturbed that this was a sign of his further mental decline, his lawyers sought permission to visit him in his Camp Echo cell or at least the visitation room adjoining the cell. This request was also refused. On 22 March, just before they left the base, his lawyers made a formal written request to the Camp Command to move Saber Lahmer from his isolation in Camp Echo to a more social environment. They had not received a response at the time of writing.

As noted above, indefinite detention can itself cause severe psychological trauma and the ICRC has reported at various times on what they have observed to be a deterioration in the mental health of a large number of the Guantánamo detainees since January 2002. Twelve independent mental health experts who examined the impact of indefinite detention on eight detainees in the UK found this had led to clinical depression in all eight cases as well as signs of depression in three spouses interviewed.<sup>63</sup> The severe psychological impact of years of

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<sup>61</sup> Article by al-Rawi’s attorney G. Brent Mickum, in *The Guardian*, January 9, 2007.

<sup>62</sup> His lawyers had administered a proxy examination of him in 2005, which was prepared and then evaluated by forensic psychologist Dr Daryl Matthews of the University of Hawaii who said that at that time he met the criteria for a Major Depressive Episode and Post Traumatic Stress Disorder.

<sup>63</sup> *The psychiatric problems of detainees under the 2001 Anti-Terrorism Crime and Security Act*, Robbins, I., Mackeith, J., Kopelman, M., et al. (2004), *Psychiatric Bulletin* (2005) 29:407-409, the Royal College of Psychiatrists. <http://pb.rcpsych.org/cgi/content/full/29/11/407>. Each of the detainees was seen by more than one clinician on more than one occasion and there was a high degree of consensus amongst the expert opinion on the detainees.

indefinite confinement and lack of contact with the outside world is likely to be exacerbated by the conditions of isolation and other deprivations described above. On the US mainland, there is evidence that inmates held in isolation cells, with few amenities or privileges, are at a greater risk of suicide than other prisoners, especially if they already suffer from depression or other mental health problems.

There had been more than 40 attempted suicides by detainees at Guantánamo before the three deaths by apparent suicide in June 2006. The men who died were held in maximum security custody in Camp 1. While the physical conditions in Camp 1 meant they were not so isolated as detainees in Camps 5 or 6, they were nevertheless confined to small cells with little exercise or amenities, conditions likely to be extremely stressful over time. One of the three, Yasser al-Zahrani from Saudi Arabia, was only 17 when he was first incarcerated at Guantánamo; he died aged 21. He is among a number of detainees who were under 18 when first held in the base, some of whom had reportedly spent time in isolation or prolonged cellular confinement.<sup>64</sup> International standards prohibit punishing children with solitary or cellular confinement.<sup>65</sup>

In recognition of the health implications of solitary or isolated confinement, the UN Standard Minimum Rules states that

“Punishment by close confinement ... shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it” (Rule 32 (1)) and that

“The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health” (Rule 32 (3)).

ACA standards for correctional facilities also state that inmates in segregation should receive at least daily visits from a qualified health care official.<sup>66</sup>

However, Amnesty International is concerned that the mental or physical health of Guantánamo detainees in isolation may not be adequately monitored or treated. One detainee sent to Camp 6 reported that he had not been seen by a doctor or mental health professional more than two months after being transferred there, despite repeated requests. A detainee in Camp Echo had reportedly not been permitted to see a doctor during two months of solitary confinement, despite having health problems (see Saber Lahmar case, below). Amnesty International has been told that in general it can be difficult to see a doctor, rather than a lower level health technician.

Relevant professional and ethical standards require that health professionals in prisons or places of detention should raise any concerns about conditions and their effects on

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<sup>64</sup> Research undertaken by the UK group Reprieve in 2006 suggests that there may have been at least 17 detainees who were taken to Guantánamo when they were under 18 years old; most international legal standards recognize children as being under 18.

<sup>65</sup> *UN Rules for the Protection of Juveniles Deprived of their Liberty*, rule 67.

<sup>66</sup> Standard 4-4258, *Adult Correctional Institutions*, Fourth Edition

prisoners with the authorities. Amnesty International is unaware of whether such action has been taken in regard to conditions of isolation, but notes that mental health and other health professionals at the base are not independent as they are employed by the military. The organization is concerned, for example, by reports that military psychiatrists at one time downplayed some of the suicide attempts at Guantánamo, reclassifying them as “manipulative self-injurious behaviour”, resulting in a decrease in the number of such attempts officially reported.<sup>67</sup>

While detainees in isolation in Guantánamo receive visits by health care technicians, and occasionally by doctors and psychiatrists, they are reportedly assessed only cursorily and some detainees have stated that they are afraid to complain. Amnesty International has been told that problems with the delivery of mental health care are compounded by detainees’ mistrust of health professionals at Guantánamo because of a history of mental health care personnel at the base having worked with interrogators.<sup>68</sup> Army medical personnel are alleged to have assisted in using detainees’ medical records to design individual prisoner interrogation plans that included sleep deprivation, prolonged isolation and exposure to temperature extremes, and to have coached interrogators on questioning techniques. Such practices are a gross violation of international standards which state that it is a breach of medical ethics for health personnel to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical or mental health.<sup>69</sup>

There are also concerns about the delivery of other medical care. Amnesty International is aware of several cases where doctors reportedly advised that detainees needed more exercise for medical conditions, but the advice was ignored. One case concerned a heart patient held in restraints in the medical facility and another a detainee transferred to isolation (see Saber Lahmer case, above). Such reports are extremely disturbing and inconsistent with the US authorities’ claims to provide excellent medical care at Guantánamo. Amnesty International is also disturbed at reports that prisoners in the medical facility are routinely held in four-point restraint, sometimes for prolonged periods without exercise. Holding someone immobile in restraints for a prolonged period can lead to serious and potentially fatal health conditions, including blood clots. The practice is contrary to both international and US health professional standards on use of restraints.<sup>70</sup>

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<sup>67</sup> David Rose, *Vanity Fair*, January 2004.

<sup>68</sup> This is based on a number of sources, including a leaked copy of a Department of Defense memorandum relating to an October 2003 meeting between Guantánamo authorities and members of the ICRC. Memorandum for Record. Subject: ICRC Meeting with MG Miller on 09 Oct 03. Department of Defense, Joint Task Force 170, Guantanamo Bay, Cuba.

<sup>69</sup> UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by General Assembly resolution 37/194 of 18 December 1982).

<sup>70</sup> For example, in its *Standards for Health Services in Correctional Institutions*, the American Public Health Association (APHA) states that restraints should be used only when inmates pose a great risk of serious injury to themselves or others and only on the order of a physician; that restraints must be

- Jumah al Dossari, a Bahraini national who has reportedly attempted suicide at least 12 times during his detention, has been held in the mental health unit at Guantánamo for over a year in a windowless cell. He has told his lawyer that the lights are always off outside his cell and the air-conditioning turned up high so it is always very cold and dark. His communication with other detainees is reportedly limited because of the severe psychological problems suffered by many others in the mental health unit, some of whom he has seen crying. After the June 2006 deaths, he was permitted to have only a blanket, mattress and Qu'ran in his cell, with his possessions increased some months later to allow a toothbrush, toothpaste and soap.

Although he is visited daily by a psychiatric technician and weekly by two psychiatrists, they reportedly spend only a few minutes with him, asking the same questions: whether he is eating and sleeping well, and whether he thinks about harming himself or others. He alleges that all detainees have learned to report that they are well because otherwise they are held under even stricter conditions.

- Saifullah Paracha was moved to the Guantánamo hospital in November 2006 after suffering serious chest pains and was diagnosed as needing cardiac catheterization. During the week he spent in hospital he was reportedly held in four-point restraint with both his hands and both feet chained to the bed at all times (except for one hand at meal times). A consulting cardiologist reportedly recommended that Saifullah Paracha walk around the hospital four times a day for 20 minutes at a time, but security personnel refused the request. Saifullah Paracha refused to undergo medical treatment at Guantánamo as he was not confident that his medical needs would be adequately met or that after the operation he would receive appropriate monitoring. No longer able to tolerate being in restraints, he asked to be returned to his cell in Camp 5 and the doctor agreed.<sup>71</sup>

### Recommendations

Amnesty International is calling on the US government to close Guantánamo and to charge detainees with recognized crimes and bring them to trial under fair trial procedures or else release them with full protections against further abuses (see appendix). In the meantime the US government should ensure that all detainees are treated in accordance with international law and standards, including the International Covenant on Civil and Political Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

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applied as humanely as possible and the level of restraint reduced as quickly as possible to the least restriction necessary; and should be automatically terminated after four hours, renewable for a maximum of four more hours. The UN Standard Minimum Rules state that restraints should be used only when other measures are ineffective and only for so long as is "strictly necessary" (Rules 33 and 34).

<sup>71</sup> Declaration of Zachary Philip Katznelson, representing petitioner in *Paracha v Bush*, Case No. 04-CV-2022. His lawyers applied to the US courts for him to be transferred to the USA for treatment but this was denied.

and other international instruments relevant to the treatment of persons deprived of liberty. In particular, the US government should take immediate steps to:

- ensure that no detainee is subjected to cruel, inhuman or degrading treatment or punishment, including prolonged solitary or cellular confinement in conditions of reduced sensory stimulation. No detainee should be held for a prolonged period in a cell with no window to the outside or without access to natural light or fresh air;
- improve the living conditions for detainees to allow them more association, meaningful activities and recreation; the communal areas in Camp 6 should be fully utilized. More equipment should be provided in the exercise yards. The library should be better stocked and detainees should have access to recreational and educational programs, including through TV and video where feasible, and should be kept informed regularly of the more important items of news. All detainees should have regular, daily exercise in the fresh air, during daylight hours;
- ensure that all detainees are treated with respect for their human dignity; steps should be taken to prohibit intrusive, culturally or sexually humiliating observation of detainees, such as allowing female guards to observe detainees while showering;
- Detainees should be treated with respect for their religious beliefs and practices, including with regard to handling of the Qu'ran;
- allow independent health care professionals into Guantánamo to examine detainees in private;
- allow visits by independent human rights organizations and the UN special procedures. Such visits should include access to all parts of the facility and the ability of delegates to speak privately with detainees;
- allow contact with detainees' families through regular, and where possible uncensored, mail, with opportunities for phone calls and visits.

## Appendix: Fair trials and an end to unlawful detentions

### General<sup>72</sup>

1. Any detention facility which is used to hold persons beyond the protection of international human rights and humanitarian law should be closed. This applies to the detention facility at Guantánamo Bay, where, in more than five years of detention operations, the US administration has failed to establish procedures which comply with international law and standards. The USA's secret detention program should be immediately and permanently ended and any secret detention facilities, wherever in the world they may be situated, closed down.
2. Closing Guantánamo or other facilities must not result in the transfer of the human rights violations elsewhere. All detainees in US custody must be treated in accordance with international human rights law and standards, and, where relevant, international humanitarian law. All US detention facilities must be open to appropriate external scrutiny, including that of the International Committee of the Red Cross (ICRC).
3. The responsibility for finding a solution for the detainees held in Guantánamo and elsewhere rests first and foremost with the USA. The US government has created a system of detention in which detainees have been held without charge or trial, outside the framework of international law and without the possibility of full recourse to US courts. It must redress this situation in full compliance with international law and standards.
4. All US officials should desist from further undermining the presumption of innocence in relation to the Guantánamo detainees. The continued public commentary on their presumed guilt puts them at risk in at least two ways – it is dangerous to the prospect for a fair trial and dangerous to the safety of any detainee who is released. It may also put them at further risk of ill-treatment in detention.
5. All detainees must be able to challenge the lawfulness of their detention in an independent and impartial court, so that that court may order the release of anyone whose detention is not lawful. The Military Commissions Act should be repealed or substantially amended to bring it into conformity with international law, including by fully ensuring the right to *habeas corpus*.
6. President George W. Bush should fully rescind his 13 November 2001 Military Order authorizing detention without charge or trial, as well as his executive order of 14 February 2007 establishing military commissions under the Military Commissions Act.
7. Those currently held in Guantánamo should be released unless they are to be charged and tried in accordance with international standards of fair trial.

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<sup>72</sup> This framework, with additional notation, appears in *USA: Justice delayed and justice denied? Trials under the Military Commissions Act*, AI Index: AMR 51/044/2007, March 2007, <http://web.amnesty.org/library/Index/ENGAMR510442007>.

## Attachment 6

June 10, 2006

## 3 Prisoners Die in Suicide Pact at Guantánamo

By THE ASSOCIATED PRESS

SAN JUAN, Puerto Rico (AP) -- Three Guantánamo Bay detainees hanged themselves with nooses made of sheets and clothes, the commander of the detention center said Saturday. They were the first reported deaths among the hundreds of men held at the base for years without charge.

The suicides, which military officials said were coordinated, triggered further condemnation of the isolated detention center, which holds some 460 men on suspicion of links to al-Qaida and the Taliban. There has been growing international pressure on the U.S. to close the prison.

Two men from Saudi Arabia and one from Yemen were found dead shortly after midnight Saturday in separate cells, said the Miami-based U.S. Southern Command, which has jurisdiction over the prison. Attempts were made to revive them, but they failed.

"They hung themselves with fabricated nooses made out of clothes and bed sheets," Navy Rear Adm. Harry Harris told reporters in a conference call from the U.S. base in southeastern Cuba.

Gen. John Craddock, commander of the U.S. Southern Command, said in the conference call that the three had left suicide notes, but refused to disclose the contents.

One of the detainees was a mid- or high-level al-Qaida operative, Harris said, while another had been captured in Afghanistan and participated in a riot at a prison there. The third belonged to a splinter group. Their names were not released.

He said all three had engaged in a hunger strike to protest their indefinite incarceration and had been force-fed before quitting the protest action. Military commanders said two were participating in the hunger strike as recently as last month, and described one of them as a long-term hunger striker who had begun the protest late last year and ended it in May.

Bush, who was spending the weekend at Camp David, expressed "serious concern" about the incident, White House press secretary Tony Snow said.

His immediate concerns were making sure that an investigation was being conducted and that the bodies were "treated humanely and with cultural sensitivity," Snow said.

Meanwhile, the State Department was consulting with the governments of the home countries of the three prisoners.

Amnesty International said the apparent suicides "are the tragic results of years of arbitrary and indefinite detention" and said the prison was a blight on the Bush administration.

"Today's reported suicides of detainees in Guantanamo should serve as a wake up call to President Bush and his administration that Guantanamo is not just a public relations problem, but instead an indictment on its deteriorating human rights record."

Barbara Olshansky of the Center for Constitutional Rights said in a telephone interview from New York that those held at Guantanamo "have this incredible level of despair that they will never get justice. And now they're gone. And they died without ever having seen a court."

Olshansky's group represents about 300 Guantanamo detainees. She appealed to the Bush administration "for immediate action to do the right thing. They should be taken to court or released. I don't think this country wants the stain of injustice on it for many years to come."

Pentagon officials said the three men were in Camp 1, the highest maximum security prison at Guantanamo, and that none of them had tried to commit suicide before.

That camp was also the location where two detainees tried to commit suicide in mid-May, when a riot broke out at the facility. The two men, who took overdoses of an anti-anxiety medication they hoarded, were found and received medical treatment and were recovering.

The military said in a statement that "all lifesaving measures had been exhausted" in the attempt to revive the detainees. The remains were being treated "with the utmost respect," an issue important to Muslims. A cultural adviser was assisting the military.

The statement defended the prison, saying detainees pose a danger to the United States and its allies.

"They have expressed a commitment to kill Americans and our friends if released," it said. "These are not common criminals. They are enemy combatants being detained because they have waged war against our nation and they continue to pose a threat."

Though the military termed the deaths suicides, the Naval Criminal Investigative Service was

investigating to establish the official cause of death.

Guantanamo Bay has become a sore subject between Bush and U.S. allies who otherwise are staunch supporters of his policies.

A U.N. panel said May 19 that holding detainees indefinitely at Guantanamo violated the world's ban on torture and the United States should close the detention center.

German Chancellor Angela Merkel, Danish Prime Minister Anders Fogh Rasmussen and British Prime Minister Tony Blair are among those who also recently have urged the United States to close the prison.

On Friday, after the prison came up during a meeting with Fogh Rasmussen at Camp David, Bush said his goal is to do just that.

"We would like to end the Guantanamo -- we'd like it to be empty," Bush said. But he added: "There are some that, if put out on the streets, would create grave harm to American citizens and other citizens of the world. And, therefore, I believe they ought to be tried in courts here in the United States."

Bush said his administration was waiting for the Supreme Court to rule on whether he overstepped his authority in ordering the detainees to be tried by U.S. military tribunals.

In a sign of the administration's concern over the diplomatic fallout from the suicides, there was an extraordinary round of global outreach by officials from the White House National Security Council, the State Department and Bush's congressional liaisons.

Among those contacted within hours by the Bush administration were the United Nations, the European Union, most European nations individually, the embassies of Mideast and near-Mideast countries, the International Committee of the Red Cross, Snow said.

Josh Colangelo-Bryan of the Center for Constitutional Rights discovered one of his clients attempting to hang himself last year when he visited Guantanamo, and said he feared there would be more suicides.

Colangelo-Bryan said one detainee recently told him: "I would simply rather die than live here forever without rights."

Moazzam Begg, 37, a British Muslim who spent three years in U.S. detention, including two years at Guantanamo before being released in 2005, told The Associated Press: "We all

expected something like this but were not prepared. It's just awful. I hope the Bush administration will finally see this is wrong."

A total of 759 detainees have been held in Guantanamo, with about 300 released or transferred.

There have been increasing displays of defiance from the prisoners, with many claiming their innocence.

Until now, Guantanamo officials have said there have been 41 suicide attempts by 25 detainees and no deaths since the U.S. began taking prisoners to the base in January 2002. Defense lawyers contend the number of suicide attempts is higher.

On May 18, in one of the prison's most violent incidents, a detainee staged a suicide attempt to lure guards into a cellblock where they were attacked by prisoners armed with makeshift weapons, the military said. Earlier that day, two detainees overdosed on antidepressants they collected from other detainees and hoarded in their cells. The men have since recovered.

There also has been a hunger strike among detainees since August. The number of inmates refusing food dropped to 18 by last weekend from a high of 131. The military has at times used aggressive force-feeding methods, including a restraint chair.

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Associated Press reporters Paisley Dodds in Lon

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## Attachment 7

washingtonpost.com

## Death of Guantanamo Detainee Is Apparent Suicide, Military Says

By Josh White  
Washington Post Staff Writer  
Thursday, May 31, 2007; A08

A Saudi detainee at the U.S. military detention facility at Guantanamo Bay, Cuba, was found dead in his cell from an apparent suicide yesterday afternoon, military officials said. He would be the fourth detainee to take his own life at the facility in the past year.

Military officials at U.S. Southern Command did not release details about the death or identify the detainee, who was among about 80 Saudi Arabians in custody. Attorneys with the Center for Constitutional Rights, a New York-based law group that represents many Guantanamo detainees, said they had learned no details as of last night and did not have independent confirmation that the death was a suicide.

"The detainee was found unresponsive and not breathing in his cell by guards," military officials said in a news release on Southcom's Web site. "The detainee was pronounced dead by a physician after all lifesaving measures had been exhausted."

The Naval Criminal Investigative Service has started an investigation, and a cultural adviser is assisting officials at the base to ensure that the detainee's body is handled in a "culturally sensitive and religiously appropriate manner," according to the release.

Three detainees committed suicide in their cells simultaneously on June 10, 2006, using clothes and sheets to fashion makeshift nooses. U.S. officials called the incident an act of "asymmetric warfare" and a way to garner negative publicity for the detention facility on the U.S. base. Those detainees, according to the military, allegedly conspired with others to carry out a suicide pact and passed notes among themselves about how to do it.

The three suicides in June were the first detainee deaths reported at Guantanamo since it opened in January 2002. As of last year, there had been more than 40 suicide attempts by about 25 detainees, including some who had tried to overdose on hoarded drugs and one who repeatedly tried to die by hanging and slashing himself.

Such cases are illustrative of the negative image that Guantanamo has internationally; even Defense Secretary Robert M. Gates has expressed a desire to close the facility because of the taint it carries. Attorneys for detainees have talked emotionally about the desperation their clients feel and have railed against what they consider worsening conditions at the facility's newest camp, which is modeled after U.S. prisons.

There are about 380 detainees at Guantanamo, fewer than half of the 775 detainees who have been there since it was opened to house those captured in the war in Afghanistan and in the larger Bush administration effort against terrorism. Three detainees have been charged with crimes under the Military Commissions Act of 2006.

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Military spokesmen at the Pentagon and at Guantanamo referred all inquiries to Southcom. A Southcom spokesman said last night that he could not elaborate on details of yesterday's death.

Wells Dixon, an attorney at CCR, said last night that he has asked the Justice Department for information about the detainee, and that his organization is already calling for an independent investigation into his death. Dixon, who visited Saudi detainees at Guantanamo earlier this month, said they "were suffering terribly."

"The fact that four detainees have now died while in military custody should not surprise anyone," Dixon said. "These results are predictable, given the fact that these men have been confined for so long without charge or trial under such difficult circumstances."

*Staff researcher Julie Tate contributed to this report.*

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## Attachment 8



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## Newly Declassified Notes Reveal Guantanamo Detainee Mohammed al Qahtani Suicidal After Military Commission Capital Charges

**CCR Attorneys Say Client Unprosecutable, Cannot Participate in Own Defense Because of Torture, and Should Be Transferred to Saudi Arabia**

Contact: [press@ccrjustice.org](mailto:press@ccrjustice.org)

May 20, 2008, New York – Newly declassified notes from Center for Constitutional Rights (CCR) attorney Gitanjali Gutierrez' meetings with her client, Mohammed al Qahtani, earlier this month reveal that he attempted suicide in early April after he learned death penalty charges were referred against him by the government to the Military Commissions at Guantanamo. Mr. al Qahtani cut himself a series of times with escalating severity. His third cut resulted in a deep wound, profuse bleeding and hospitalization.

Mr. al Qahtani told his attorney, "I cannot accept this injustice. If I have to stay in this jail I want to put an end to this suffering."

Neither his lawyers nor his family were notified of his attempted suicide or his hospitalization following the attempt at taking his life.

When Ms. Gutierrez met with her client the week of April 28, 2008, she noticed the scars immediately: "I was shocked because except for a period during his torture in 2002, Mohammed has not been suicidal or self-injurious at Guantanamo."

Ms. Gutierrez continued, "He felt the Saudi government has thoroughly abandoned him and as if he is surrounded by people – the U.S. military – who want to kill him. He has lost all hope. Although the charges have been dismissed for now, I'm not sure how he will survive having the threat of new charges hanging over his head."

In fact, Mr. al Qahtani told her, "I am feeling great frustration and hopelessness. If this situation continues, I will find a way to take care of myself and end this suffering."

Military Commission charges against Mr. al Qahtani were dismissed earlier this month. He was initially named as one of six defendants in a proposed 9/11 conspiracy charge for which the government was seeking the death penalty. After dismissing Mohammed from the final charges sent to the military tribunal, the government announced that it reserved the right to charge him again. Ms. Gutierrez will travel to Guantanamo to meet with her client this week to discuss his current legal situation.

Mr. al Qahtani, who has been at Guantánamo for almost six years, was subject to the 'First Special Interrogation Plan,' which

consisted of a regime of 'aggressive interrogation methods' that constitute torture personally approved by former Secretary of Defense Donald Rumsfeld. These techniques were revealed in a leaked government interrogation log.

CCR attorneys maintain the Mr. al Qahtani is incapable of engaging in his own defense as a result of what was done to him.

Shayana Kadidal, Managing Attorney of CCR's Guantanamo project said, "Although the U.S. continues to threaten to bring charges against our client before these sham Commissions, their evidence and every statement he has ever made was extracted through torture or threat of torture. Because he is basically unprosecutable and incapable of participating in his own defense, he's at serious risk of indefinite detention without end and has made clear that that is not a situation he can survive."

Mr. al Qahtani's attorneys contend that he should be returned to the custody of the Saudi government, where there is a system in place to maintain custody of former Guantanamo detainees who present a danger, as well as a strong rehabilitation program supervising those that are released.

Ms. Gutierrez spoke with her client's family as soon as her classified notes were cleared and reports that it was devastating for them to hear that though the charges have been dismissed, it may only be temporary and that the U.S. is still threatening to re-charge him. They were shocked to learn that he is suicidal.

#### NEW OIG REPORT RELEASED TODAY

The Justice Department's Inspector General interviewed Mohammed al Qahtani at Guantanamo in February 2007 with his attorney, Gitanjali Gutierrez present. A significant number of the FBI agents' allegations of detainee abuse investigated in the report released today revolved around Mr. al Qahtani's interrogations.

Said Ms. Gutierrez, "His may be the most heavily documented abuse and torture at Guantanamo. The OIG's report confirms, yet again, that multiple agencies were aware of Mr. al Qahtani's unlawful interrogations. It is deeply disappointing that the FBI was aware of and investigating detainee abuse that occurred in the past at the exact same time new FBI "clean team" interrogation units were complicit in the military's effort to cover up these violations by re-interviewing detainees abused in prior interrogations. The hypocrisy is flagrant."

The torture techniques approved by Donald Rumsfeld for use on Mr. al Qahtani include:

- Beatings
- Severe sleep deprivation combined with 20-hour interrogations for months at a time
- Threats of rendition to other countries that torture
- Explicit threats made against his family, including female members of his family
- Strip searches, body searches and forced nudity, at times in the presence of female personnel
- Sexual humiliation
- Humiliation by forcing him to bark like a dog, dance with a mask on his face, and pick up piles of trash with his hands cuffed while he was called "a pig"
- Denial of the right to practice his religion, including prohibiting him from praying for prolonged times and during Ramadan
- Threats to desecrate the Koran in front of him
- Attacks by dogs
- Forcible administration of frequent IVs by medical personnel during interrogation
- Being placed in acute stress positions for hours at a time
- Being placed in tight restraints repeatedly for many months or days and nights
- Exposure to low temperatures for extended periods of time
- Exposure to loud music for prolonged times

- At least 160 days of severe isolation

CCR has been representing Mohammed al Qahtani since 2005 and has led the legal battle over Guantanamo for the last six years – sending the first ever habeas attorney to the base and sending the first attorney to meet with a former CIA “ghost detainee.” CCR has been responsible for organizing and coordinating more than 500 pro bono lawyers across the country in order to represent the men at Guantanamo, ensuring that nearly all have the option of legal representation. CCR represented the detainees with co-counsel in the most recent argument before the Supreme Court on December 5, 2007.

For more information and documents in Mohammed al Qahtani’s case, click [here](#).

*The Center for Constitutional Rights is dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change.*

## Attachment 9

May 14, 2008

## Case Against 9/11 Detainee Is Dismissed

By **WILLIAM GLABERSON**

The Pentagon official in charge of war crimes cases declined to permit a case to proceed against one of six detainees charged in the Sept. 11, 2001, attacks, dismissing charges against a Saudi who had been subjected to aggressive interrogation at the United States detention camp at Guantánamo Bay, Cuba.

The decision by the official, Susan J. Crawford, whose title is Convening Authority, came with no explanation.

She approved the death penalty charges submitted by military commission prosecutors in February against five detainees in the 2001 attacks, while declining to approve charges against the sixth detainee, Mohammed al-Qahtani. Mr. Qahtani was subjected to interrogations that Pentagon officials have found were “degrading and abusive,” including being forced to wear a bra, being led around on a leash and required to perform dog tricks.

Ms. Crawford’s decision said the charges against Mr. Qahtani were being dismissed “without prejudice.” On Tuesday, Capt. André Kok of the Air Force, a spokesman for her and for military prosecutors, said the government could “reinitiate charges against him at any time.”

The chief prosecutor at Guantánamo, Col. Lawrence J. Morris of the Army, said, through Captain Kok, that prosecutors were “evaluating the case in light of the decision to sever.”

In legal parlance, severance of a case can mean that it could proceed separately.

Mr. Qahtani has sometimes been referred to as the 20th hijacker because of evidence that he tried to enter the United States a few days before Sept. 11, 2001, and that he was in touch with the men who became the hijackers.

Mr. Qahtani’s military lawyer, Lt. Col. Bryan Broyles of the Army, said he believed that Ms. Crawford’s decision meant that efforts to try Mr. Qahtani were over. “It is unlikely that they are ever going to try him,” Colonel Broyles said.

He said he believed Ms. Crawford might have concluded that evidence against Mr. Qahtani was "derived by torture," which could undermine the prosecution's case.

The decision permitted the prosecutors to proceed with the case against Khalid Shaikh Mohammed, the self-professed planner of the attacks, and four other men held at Guantánamo whom officials describe as "high-value detainees." The five were held in secret C.I.A. prisons until they were transferred to Guantánamo in 2006.

Mr. Mohammed's lawyer, Capt. Prescott L. Prince of the Navy, said the effort to press ahead with the charges against those detainees was political. He said prosecutors were trying to rely on evidence obtained through coercion or torture that would not be admissible in civilian or regular military courts.

Mr. Mohammed is one of three former C.I.A. prisoners government officials have said were questioned using the simulated drowning technique known as waterboarding.

Military lawyers for several of the five detainees said they expected to begin extensive legal challenges to the military commission system. "Given the political nature of the entire process," Captain Prince said, "I just don't see how my client can get a fair trial before military commissions."

Lawyers said it was difficult to analyze the significance of Ms. Crawford's decision, particularly since the charges were originally announced in February in a news conference by her legal adviser, Brig. Gen. Thomas W. Hartmann.

Questioned about the decision, the spokesman, Captain Kok, said commission rules "do not require the Convening Authority to explain her decisions."

Ms. Crawford is a quasi-judicial official with broad powers, including the power to reduce or reject charges brought by prosecutors.

But lawyers involved with the defense said they had seen a memorandum to Ms. Crawford from General Hartmann that could help explain the decision. They said General Hartmann had concluded that seeking the death penalty was appropriate for Mr. Mohammed and the other four detainees, who have been described as high-level planners and facilitators.

But the lawyers said General Hartmann concluded that prosecutors should not seek the death penalty for Mr. Qahtani. One lawyer who saw the memorandum said it did not include a reason why.

But other lawyers noted that Mr. Qahtani might have been only a low-level plotter, and an unsuccessful one at that.

Other lawyers said a factor might have been the long record of Mr. Qahtani's treatment at Guantánamo. Gitanjali Gutierrez, a lawyer with the Center for Constitutional Rights who is representing Mr. Qahtani, said it appeared that officials were pressing for quick trials and that the issues of Mr. Qahtani's treatment might have been an obstacle. "There's no question about what happened to him," she said.

The timing of the announcement was unexpected, coming days after a military judge in another case disqualified General Hartmann from participating in that case, saying the general was so closely aligned with the prosecution that it was not clear he could carry out his role with the required neutrality. That case is against a detainee who was a driver for Osama bin Laden.

On Tuesday, several of the military defense lawyers said they would seek dismissal of the charges against the five detainees in the Sept. 11 case because of General Hartmann's involvement. Several lawyers said they were perplexed about why Ms. Crawford would proceed when it was clear that General Hartmann's participation would bring new legal challenges.

Pentagon spokesmen declined to comment.

But Maj. Jon S. Jackson, the defense lawyer for one of the men charged, Mustafa Ahmad al-Hawsawi, said the decision to proceed despite the general's involvement was "illegal because he has acted outside his role as a neutral and detached legal adviser."

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# Attachment 10

[washingtonpost.com](http://www.washingtonpost.com)

## More Join Guantanamo Hunger Strike

Detainees Demand Hearings, Allege Beatings by Guards

By Carol D. Leonnig  
Washington Post Staff Writer  
Tuesday, September 13, 2005; A03

A month-old hunger strike at the U.S. military prison at Guantanamo Bay, Cuba, has grown to include at least 128 detainees, 18 of whom are forcibly receiving intravenous fluids or nutrition in the prison hospital, military officials and detainee lawyers said yesterday.

The captives are protesting their indefinite imprisonment and what they describe as beatings administered by the prison's Immediate Response Force (IRF)— squads of military personnel who are dispatched to put down disturbances in detainees' cells. Some have said they will refuse to eat until the military gives them a fair hearing or they die, according to their attorneys.

Military officials first acknowledged the hunger strike, the second of the summer, on Aug. 25. Since then, the number of people hospitalized and in serious physical danger has grown to 18, according to Maj. Jeffrey J. Weir, a Guantanamo Bay spokesman. He said that step was taken to prevent any of the approximately 520 prisoners at the U.S. Navy base prison from engaging in a "form of suicide."

The hunger strike began in the first week of August, and, according to newly declassified accounts of detainees provided by their lawyers, has gradually spread across several camps at the prison. Detainees allege they have been severely beaten and are deeply frustrated at their indefinite detentions. Some have been held for 3 1/2 years without facing charges.

Lawyers for the prisoners assert that more than 200 detainees are refusing food. An earlier hunger strike in June and July ended after military authorities met with a small group of detainees and promised improvements in their living conditions.

"They truly feel they have nothing left," said attorney David Remes, who represents several Yemeni detainees. "I'm not sure what the end point will be. But I do predict there will be death."

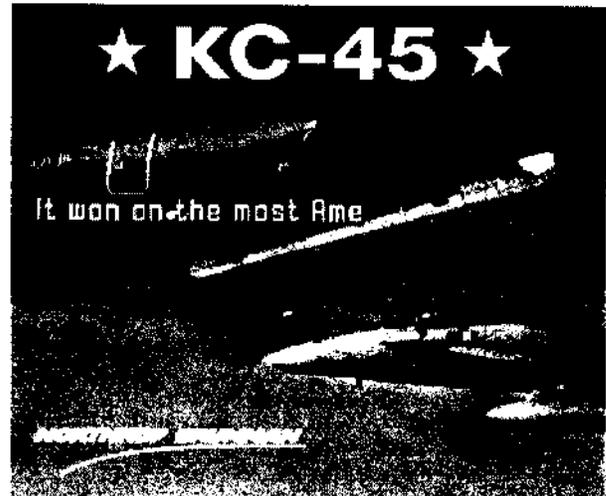
Binyam Mohammed, formerly of London, whose account was the first declassified, told his attorney on Aug. 11 of the new hunger strike. "I do not plan to stop until I die or we are respected," he said. "People will definitely die."

Another detainee, Libyan-born Omar Deghayes, told his lawyer he had not eaten in five weeks. "Many more people have fallen unconscious. . . . More are taken to hospital," he said.

Military officials have characterized the protest as a "fast" of prisoners aimed at grabbing attention, and say it involves 128 prisoners. They say its significance is exaggerated by their lawyers.

Weir said no detainees are in danger of dying and that the military's treatment is preventing them from losing critical nutrition. Of the 18 people hospitalized, 13 are being force-fed through nasal tubes and

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five are being given intravenous hydration.

On Aug. 25, the military said that 89 detainees were fasting and seven were hospitalized and receiving forced fluids or nutrition.

Weir said yesterday that the military does not allow beatings of detainees, and he believes the refusal to eat is part of a campaign to press for their transfer or release.

"My understanding is that it's just because of their continued detention," Weir said. "They're trying to call attention to that."

The majority of detainees at Guantanamo Bay have long insisted that they were captured by mistake by U.S. forces in Afghanistan in the fall of 2001. In some prisoners' cases, records show, the military has little but circumstantial evidence that the men engaged in or supported terrorist acts. The military's review of 558 cases resulted in 38 detainees being declared non-enemy combatants.

The appellate court for the District of Columbia heard arguments last week on the legality of the military holding the detainees indefinitely without giving them the chance to challenge their detentions in a U.S. court -- a follow-up to a U.S. Supreme Court ruling in 2004. But that dispute is expected to drag on until next year, and is likely to be appealed to the Supreme Court again.

Hunger strikes are not new to the prison. Detainees launched one in 2002 after allegations that guards and interrogators mistreated copies of the Koran. Military officials then issued new guidelines for proper treatment of the Islamic holy book, and the strike ended.

Detainees began a new strike in late June to protest their treatment and the quality of their food and water. They complained about solitary confinement, alleged beatings by IRF teams, and the use of uniform colors to signify how detainees should be treated. Detainees given white uniforms are considered cooperative while those assigned orange uniforms are considered uncooperative and treated more harshly, detainees said.

The prisoners halted the previous strike in the first days of August after military camp leaders met with a small "council" of detainees and promised improvements in their living conditions. But the strike resumed a few days later, some detainees told their lawyers, when news spread through the camp of a Tunisian detainee beaten by an interrogator and IRF teams hitting two others, according to detainees' reports to their lawyers.

Weir declined to discuss individual detainees' cases or allegations.

An Algerian detainee told his lawyer in a newly declassified report provided by his attorney that a new interrogator beat the Tunisian with an empty beverage cooler and a metal chair after the detainee refused to talk to him. The Algerian said he saw the Tunisian's bloodied, swollen eye after the session.

Weir declined to comment on those details. Other detainees' accounts of the strike have not yet been declassified by the military, their lawyers said.

*Researcher Julie Tate contributed to this report.*

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# Attachment 11

April 9, 2007

## Guantánamo Detainees Stage Hunger Strike

By **TIM GOLDEN**

A long-term hunger strike has broken out at the American detention center at Guantánamo Bay, Cuba, with more than a dozen prisoners subjecting themselves to daily force-feeding to protest their treatment, military officials and lawyers for the detainees say.

Lawyers for several hunger strikers said their clients' actions were driven by harsh conditions in a new maximum security complex. About 160 of the roughly 385 Guantánamo detainees have been moved to the complex since December.

Thirteen detainees are now on hunger strikes, the largest number to endure the force-feeding regimen on an extended basis since early 2006, when the military broke a long-running strike with a new policy of strapping prisoners into restraint chairs while they are fed by plastic tubes inserted through their nostrils.

The hunger strikers are now monitored so closely that they have virtually no chance to starve themselves. Yet their persistence underscores how the struggle between detainees and guards at Guantánamo has continued even as the military has tightened its control in the past year.

"We don't have any rights here, even after your Supreme Court said we had rights," one hunger striker, Majid al-Joudi, told a military doctor, according to medical records released recently under a federal court order. "If the policy does not change, you will see a big increase in fasting."

A military spokesman at Guantánamo, Cmdr. Robert Durand of the Navy, played down the significance of the current strike, calling the prisoners' complaints "propaganda."

But the protests come as criticism of Guantánamo continues to rise in the United States and abroad. Last week, after the Supreme Court denied a new appeal on behalf of the detainees, the head of the International Committee of the Red Cross delivered a rare public reprimand to the Bush administration, saying the prisoners' ability to contest their detention was inadequate.

Newly released Pentagon documents show that during earlier hunger strikes, before the use of

the restraint chairs, some detainees lost more than 30 pounds in a matter of weeks. By comparison, the current hunger strike — in which 12 of the 13 detainees were being force-fed as of Friday — seems almost symbolic.

For instance, the medical records for Mr. Joudi, a 36-year-old Saudi, showed that when he was hospitalized on Feb. 10, he had been fasting for 31 days and had lost more than 15 percent of his body weight.

By the time he was transferred a few days later to a “feeding block” where more serious hunger strikers are segregated from other prisoners, his condition had stabilized and his weight was nearly back to an ideal level for a man his size. (His exact weight gain was not recorded.) Mr. Joudi was subsequently flown home and turned over to the Saudi authorities, his lawyer said.

Lawyers for several detainees held in the new maximum security complex, known as Camp 6, compared it to “supermax” prisons in the United States. The major differences, they said, are that the detainees have limited reading material and no television, and only 10 of the Guantánamo prisoners have been charged.

The Camp 6 inmates are generally locked in their 8-foot-by-10-foot cells for at least 22 hours a day, emerging only to exercise in small wire cages and to shower. Besides those times, they can talk with other prisoners only by shouting through food slots in the steel doors of their cells.

“My wish is to die,” one reported hunger striker in the camp, Adnan Farhan Abdullatif, a 27-year old Yemeni, told his lawyer on Feb. 27, according to recently declassified notes of the meeting. “We are living in a dying situation.”

Commander Durand, the Guantánamo spokesman, dismissed such accounts as part of an effort by the prisoners and their lawyers to discredit the detention mission. He described the new unit as much more comfortable than the detainees’ previous quarters, and denied that they suffered any greater sense of isolation in the new cell blocks.

“This was designed to improve living conditions,” Commander Durand said, “and we think it has.”

Camp 6 was originally designed as a modern, medium-security prison complex for up to 200 inmates, with common areas where they could gather for meals and a large fenced athletic field where they could jog or play soccer outside the high concrete walls.

But after a riot last May and the suicides of three prisoners in June, the unit was retrofitted

before opening to limit the detainees' freedom and reduce the risk that they might hurt themselves or attack guards, military officials said.

As Camp 6 was opening, senior officials expressed concern about how prisoners would react to its greater isolation. Most had been held in makeshift blocks of wire-mesh cells that — while often hot, noisy and lacking privacy — allowed them to communicate easily, pray together and even pass written messages.

Guantánamo's other maximum-security unit, Camp 5, has cells that face each other across a short hallway, allowing the roughly 100 detainees there to converse fairly easily. In Camp 6, the prisoners can see one another from their cells only when one of them is being moved. At other times, they look out on the stainless-steel picnic tables in the common areas they are not allowed to use.

Lawyers for several Camp 6 detainees said their clients were despondent about the move even though, as military officials note, the new cells are 27 square feet larger than the old ones and have air-conditioning, nicer toilets and sinks, and a small desk anchored to the wall.

"They're just sitting on a powder keg down there," said one lawyer, Sabin Willett, who, like others, described growing desperation among the prisoners. "You're going to have an insane asylum."

Lawyers who visited Guantánamo recently said the detainees reported a higher number of hunger strikers than had the military — perhaps 40 or more. Military officials said there were sometimes "stealth hunger strikers," who pretend to eat or surreptitiously vomit after eating, but they dismissed the detainees' estimates as exaggerations.

Because reporters are prevented from speaking with detainees or visiting most of their cell blocks, it is difficult to verify the conflicting accounts.

Hunger strikes have been part of life at Guantánamo almost since the detention center opened in January 2002.

They reached a peak in September 2005, when more than 130 detainees were classified as hunger strikers, having refused at least nine consecutive meals, military records show. As the strikes went on, some detainees being force-fed continued to lose weight by vomiting or siphoning their stomachs with the feeding tubes. But by early February 2006, shortly after the military began using restraint chairs during the forced feedings, the number of hunger strikers plunged to three.

The number rose again sharply but briefly last May, reaching 86 after three detainees attempted suicide and a riot broke out as the guards searched for contraband. Yet even then, no more than seven strikers were forced into the restraint chair regimen.

Three detainees who had been hunger strikers hung themselves on June 10. After July, no more than three detainees subjected themselves to extended forced feeding.

That number began to grow again as detainees were moved into Camp 6 in December. By mid-March, the number of hunger strikers reached 17. For the first time, as many as 15 detainees continued with the strikes despite being force-fed in the restraint chairs.

Military officials have described the restraint chair regimen as unpleasant but necessary. They originally said prisoners needed to be restrained while digesting, so they could not purge what they were fed.

Now, the rationale has changed. The restraints are generally applied “for safety of the detainee and medical staff,” records show, and they are kept on for as little as 15 minutes at a time, rather than the two hours commonly used before. Afterward, the prisoners are moved to a “dry cell” and monitored to make sure they do not vomit.

Even so, some detainees describe the experience as painful, even gruesome.

One Sudanese detainee, Sami al-Hajj, a 38-year-old former cameraman for Al Jazeera, described feeling at one point that he could not bear the tube for another instant. “I said I would begin to scream unless they took it out,” he wrote in a recent diary entry given to his lawyer. “They finally did.”

Stephen H. Oleskey, who represents Saber Lahmar, an Algerian religious scholar whom military officials accused of propagating a religious legal ruling that was linked to the suicides, said of his client: “The man has been in segregation — virtual isolation — for over nine months. Physically and emotionally, he’s collapsing. We think this punishment does exceed what the law allows, and that he won’t survive.”

Military officials said Mr. Lahmar and other detainees had received adequate medical attention.

*Margot Williams and William Glaberson contributed reporting.*

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## Attachment 12

UNITED STATES OF AMERICA  v.  Mohammed Jawad	<b>Government's Response to the Revised Defense Application for Mental Examination pursuant to RMC 706</b>  3 June 2008
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**1. Timeliness:** This response is filed within the timeframe established by the Military Commissions Trial Judiciary Rules of Court and this Court's orders dated 20 December 2007 and 15 February 2008 and within the specific deadline established for law motions by the military judge on 28 May 2008.

**2. Relief Sought:** The Government has no objection to the Commission's granting of the defense's request in part. The request itself is acceptable, so long as the board ordered by the Commission consists only of mental health professionals possessing the proper security clearances, both to allow the board access to the JTF – GTMO facilities and to prevent the unauthorized disclosure of classified information.

**3. Overview:** In light of the defense request for a mental health evaluation under RMC 706, the Government does not object to the evaluation so long as it complies with RMC 706, the protective orders currently in effect in this case, and does not result in classified material being released to uncleared personnel.

**4. Burden and Standard of Proof:** RMC 706 states, "[i]f it appears to any convening authority who considers the disposition of charges, or to any trial counsel, defense counsel, military judge, or member that there is reason to believe...the accused lacks capacity to stand trial, that fact and the basis of the belief or observation shall be transmitted to the authority authorized to order an inquiry into the mental condition of the

accused.” After referral of charges, an application for a mental health evaluation under RMC 706 may be ordered by the military judge. R.M.C. 706(b)(2).

**5. Facts:** The defense contends that the accused has exhibited or has made known facts suggesting that the accused lacks mental responsibility or mental capacity. The prosecution has not made any such observations, but concedes the defense’s good faith basis for the instant request.

**6. Law and Argument:**

The prosecution has no objection to arranging for an RMC 706 evaluation to be conducted for the accused, so long as the evaluation is conducted by a board whose member or members possess the requisite security clearance, thus fulfilling the prosecution’s affirmative obligation to safeguard classified information. Accordingly, the prosecution requests that the Commission order the board conducting the RMC 706 evaluation consist of individuals – civilian or military – who have security clearances commensurate with the classification of the information to which they may be exposed.

RMC 706 requires that when a mental health examination is ordered, the evaluation will be referred to a board consisting of at least one person and that each member of the board will be either a physician or clinical psychologist. Under normal circumstances, at least one member of the board will be either a psychiatrist or a clinical psychologist. Nothing in the rule dictates that a member of the board will be a civilian or that they will speak the native language of the accused. The board – as it is comprised of medical professionals – is unbiased and therefore neutral. Their sole responsibility is to “report as to the mental capacity or mental responsibility or both of the accused” and provide that report exclusively to defense counsel. Only a limited report is provided to the prosecution. RMC 706. These procedures ensure the neutrality of the board and preserve the privileges of the accused. In fact, the board is strictly prohibited from disclosing to the prosecution any statement made by the accused during the evaluation or any statement derived from a statement made during the evaluation. RMC 706(c)(4).

The accused's mental health and other medical records may be classified. Access to speak with and interview the accused – obvious requirements for the board – is classified. Even entry into Camp Delta – where the evaluation will take place – requires a vetted, active security clearance. In order for the board to conduct the evaluation, the medical professionals who comprise the board will necessarily be exposed to myriad classified information, as well as having contact with a detained alien unlawful enemy combatant who has been charged with war crimes under the Military Commissions Act of 2006, 10 U.S.C. §948a, et seq. As such, the individuals sitting on the board will require security clearances at the level of the information that they will review. In this case, that level is Secret. The requirement that the medical personnel on the board have the appropriate clearances is also consistent with the protective orders issued by the court in this case.

In addition, for the sake of logistical and cost-effective considerations, the Government requests that the board be made up of personnel employed by the Department of Defense. If the members of the board are employees of the U.S. government then the Prosecution can convene a board immediately following the military judge's order to do so. It is in the best interest of every party involved to determine the mental health of the accused as quickly as possible. Expediting the results of the RMC 706 board is in the interest of justice and a board comprised of DoD personnel can be formed quicker and more easily than an alternative. The board will be neutral to the interests of the parties. Lastly, the request by Defense counsel that a member of the board speak the native language of the accused is neither required nor contemplated by RMC 706. The ability of the board to communicate with the accused will be facilitated by an interpreter.

In the final analysis, the Defense has requested a Pashto speaking psychologist who is, presumably, without a security clearance. The former requirement is unnecessary and the latter one is indispensable to a psychologist's ability to conduct the evaluation. The Department of Defense has qualified psychiatrists and psychologists who have conducted this type of evaluation numerous times and who all have current, appropriate clearances. In addition, please note that the Office of Prosecution will arrange for the administrative requirements of the board – to include travel orders and coordination with JTF-GTMO.

**7. Request for Oral Argument:** If the court is prepared to grant the Government's request based on the written submissions, then the Government does not request oral argument. However, if the court is undecided based on the written submissions, the Government requests oral argument at the next scheduled motion hearing.

**8. Request for Witnesses:** The Government does not request any witnesses.

**9. Conference with Opposing Counsel:** The prosecution and defense have conferred, and the prosecution not oppose the court ordering a mental health examination, but we do oppose any access to a detainee and his classified medical data by anyone, even a mental health professional, lacking the requisite security clearance.

**10. Request for public release:** The prosecution opposes, and will continue to oppose, any departure from the relevant regulations and established practice of these Commissions regarding the release of pleadings, motions, and so on, to the public, in the absence of compelling, extraordinary circumstances, none of which the defense has articulated here.

Respectfully Submitted,



Darrel Vandeveld  
Lieutenant Colonel, U.S. Army  
Prosecutor

UNITED STATES OF AMERICA  v.  Mohammed Jawad	<b>Defense Reply to Government's Response to D-005 Revised Defense Application for Mental Examination pursuant to RMC 706</b>  <b>June 10, 2008</b>
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1. The Government has conceded that a mental health examination should be conducted. The sole remaining issue for the commission to determine is the makeup of the Board. The defense has requested a Pashto-speaking psychologist and has identified a qualified expert, [REDACTED] who is available and willing to do the job.

2. The government argues that any member of the board must have a security clearance and must be a DoD employee to prevent the unauthorized disclosure of classified information. This position is completely without merit. Mr. Jawad does not possess any classified information, unless it is the government's position that the way that Mr. Jawad has been treated is classified. It would be a cruel irony indeed if Mr. Jawad, a non U.S. citizen, could be prevented from discussing with a psychologist the treatment inflicted upon him by the U.S. government, by virtue of the U.S. classifying the details of his detention. The suggestion that he may possess classified information that would need to be safeguarded is ludicrous. Mr. Jawad has been in U.S. custody since December 2002. He knows nothing of what is going on in the outside world. He has no contact with anyone other than a rare postcard from home, which is vetted by detention personnel before being given to him. Over forty interrogations have proven that he has no useful information of any kind. He was not a member of al Qaida or the Taliban. He is not charged with conspiracy or providing material support to terrorism. He was, at best, a foot soldier, who engaged in an isolated act of violence against lawful combatants over five and a half years ago, when he was 16 or 17 years old. The focus of the examination will be on the accused's mental health, and would be unlikely to stray into potentially sensitive areas of inquiry in any event. Furthermore, psychologists are bound by strict ethical rules of confidentiality which will prevent any unauthorized disclosure.

3. As another basis for trying to force a board composed of DoD personnel on the accused, the government claims that the mental health evaluation will take place at Camp Delta, where a security clearance is allegedly required to enter. The government should not be able to dictate the site of the mental health evaluation in order to create a security clearance requirement.

4. While it is true that there is nothing in the rules that state the board must speak the language of the accused, the unique circumstances of this case make such a qualification essential. Mr. Jawad comes from a distinct tribal culture in Afghanistan. An American mental health professional will not necessarily be able to accurately interpret the unique body language and verbal and non-verbal cues of the region. The examination of Mr. Jawad poses unique challenges. Mr. Jawad is functionally illiterate so written tests will be of no use. The diagnosis will rely solely on the evaluation of Mr. Jawad's verbal and body language, which an interpreter can't possibly replicate. Translations tend to be crude approximations of the words actually spoken and even the best interpreters cannot convey the tone and demeanor of the speaker. Adding to the difficulty, Mr. Jawad does not trust Americans. He particularly distrusts military and DoD personnel, and with good reason. The mistreatment of Mr. Jawad has been enabled by DoD medical and mental health professionals, such as those serving as part of Behavioral Science Consultation Teams (BSCT). Although the defense has yet to receive the requested discovery which might establish the origins of the Frequent Flyer program to which he was subjected, this program was almost certainly designed in consultation with military medical personnel.<sup>1</sup> Some degree of open discussion is essential to a complete and accurate diagnosis. Mr. Jawad is very unlikely to open up to a non-Pashto speaker.

5. Although a security clearance appears to the defense to be completely unnecessary, if the commission requires the board members to have one, Dr. Rahmany certainly can get one. I note that numerous civilian lawyers with no DoD affiliation have received security

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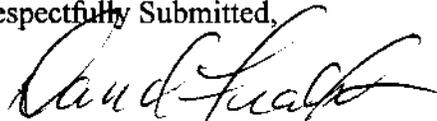
<sup>1</sup> The complicity of military mental health professionals in the psychological abuse of detainees is well-documented. See, M. Gregg Bloche and Jonathan H. Marks, Doctors and Interrogators at Guantanamo Bay, *New England Journal of Medicine* 353;1, July 7, 2005 (Attachment 1); Stephen H. Miles, M.D., *Oath Betrayed: Torture, Medical Complicity and the War on Terror* (Random House 2006) (Book Review from Washington Post is Attachment 2)

clearances to assist detainees. Such clearances can be obtained rapidly if needed. Given that Dr. Rahmany has been subjected to an extensive background investigation as part of his medical licensing, he will certainly sail through any security investigation with ease.

6. The government claims that “the DoD has qualified psychiatrists and psychologists who have conducted this type of evaluation numerous times.” Only one mental health evaluation has ever been conducted under R.M.C. 706.<sup>2</sup> Although DoD mental health professionals have undoubtedly conducted mental health examinations of many English-speaking patients or of patients who speak another language in which they are fluent, it is far less likely that they have experience conducting mental health examinations through an interpreter of hostile, paranoid and functionally illiterate persons from completely alien cultures. This mental health examination is *sui generis* and requires the right person for the job. That person is Dr. Rahmany.

**7. Request for public release:** The defense renews its request that the commission publicly release all court filings as soon as possible.

Respectfully Submitted,



By: DAVID J. R. FRAKT, Major, USAFR  
Detailed Defense Counsel  
Office of the Chief Defense Counsel  
Office of Military Commissions



**11. Attachments:**

1. New England Journal of Medicine: Doctors and Interrogators at Guantanamo Bay
2. Book Review: Oath Betrayed: Torture, Medical Complicity and the War on Terror

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<sup>2</sup> An R.M.C. 706 examination has been ordered in the commission case *U.S. v. Hamdan* with the board report due 13 June.

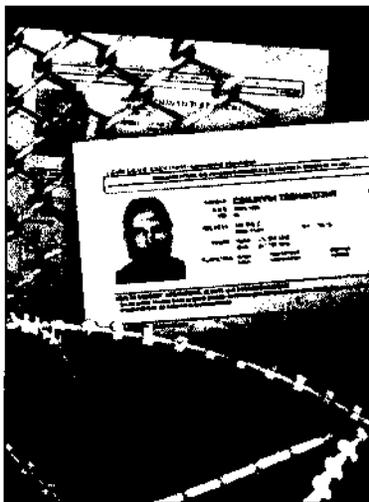
## Doctors and Interrogators at Guantanamo Bay

M. Gregg Bloche, M.D., J.D., and Jonathan H. Marks, M.A., B.C.L.

Mounting evidence from many sources, including Pentagon documents, indicates that military interrogators at Guantanamo Bay have used aggressive counter-resistance measures in systematic fashion to pressure detainees to cooperate. These measures have reportedly included sleep deprivation, prolonged isolation, painful body positions, feigned suffocation, and beatings. Other stress-inducing tactics have allegedly included sexual provocation and displays of contempt for Islamic symbols.<sup>1</sup> The International Committee of the Red Cross (ICRC) and others charge that such tactics constitute cruel and inhuman treatment, even torture.

To what extent did interrogators draw on detainees' health information in designing and pursuing such approaches? The Pentagon has persistently denied this practice. After the ICRC charged last year that interrogators tapped clinical data to craft interrogation strategies, Defense Department officials issued a statement denying "the allegation that detainee medical files were used to harm detainees."<sup>2</sup> This spring, an inquiry led by Vice Admiral Albert T. Church, the inspector general of the U.S. Navy, concluded: "While access to medical information was carefully controlled at GTMO [Guantanamo Bay], we found in Afghanistan and Iraq that interrogators sometimes had easy access to such information."<sup>3</sup> The implication is that interrogators had no such access at Guantanamo and that medical confidentiality was shielded, albeit with

exceptions. Other Pentagon officials have reinforced this message. In a memo made public last month, announcing "Principles . . . for the Protection and Treatment of Detainees," William Winkewer, the Assistant Secretary of Defense for Health Affairs, said that limits on detainees' medical privacy are "analogous to legal standards applicable to U.S. citizens."



But this claim, our inquiry has determined, is sharply at odds with orders given to military medical personnel — and with actual practice at Guantanamo. Health information has been routinely available to behavioral science consultants and others who are responsible for crafting and carrying out interrogation strategies. Through early 2003 (and possibly later), interrogators themselves had access to medical records. And since late 2002, psychiatrists and psychologists have been part of a strategy that employs extreme stress, combined with behavior-shaping rewards, to ex-

tract actionable intelligence from resistant captives.

A previously unreported U.S. Southern Command (SouthCom) policy statement, in effect since August 6, 2002, instructs health care providers that communications from "enemy persons under U.S. control" at Guantanamo "are not confidential and are not subject to the assertion of privileges" by detainees. The statement, from SouthCom's chief of staff, also instructs medical personnel to "convey any information concerning . . . the accomplishment of a military or national security mission . . . obtained from detainees in the course of treatment to non-medical military or other United States personnel who have an apparent need to know the information. Such information," it adds, "shall be communicated to other United States personnel with an apparent need to know, whether the exchange of information with the non-medical person is initiated by the provider or by the non-medical person." The only limit this policy imposes on caregivers' role in intelligence gathering is that they cannot act as interrogators.

The statement, embedded — along with policies on parking and alcohol — in the personnel section of the SouthCom Web site,<sup>4</sup> not only requires caregivers to provide clinical information to military and Central Intelligence Agency interrogation teams on request; it calls on them to volunteer information that they believe might be of value. It thereby makes them part of Guantanamo's surveil-

lance network, dissolving the Pentagon's purported separation between intelligence gathering and patient care.

Rather than being consistent with the presumption of confidentiality that applies to Americans even in prisons, the Guantanamo policy rejects this presumption. Within military prisons, personal health information cannot be given to correctional or law-enforcement officials unless they deem it necessary for health, safety, or security reasons. Confidentiality is also the starting point in federal and state prisons for civilians, albeit with similar exceptions for health, safety, and security. (Federal law permits disclosure of inmates' health information "to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities.") There is debate over the scope of these exceptions, but there is consensus about the basic presumption of medical privacy.

Wholesale rejection of clinical confidentiality at Guantanamo also runs contrary to settled ethical precepts. Medical privacy is not an ethical absolute — caregivers in civilian and military settings have an obligation to report information to third parties when doing so can avert threats to the health or safety of identifiable persons — but confidentiality is the starting premise.

The laws of war defer to medical ethics. Additional Protocol I to the Geneva Conventions provides that medical personnel "shall not be compelled to perform acts or to carry out work contrary to the rules of medical ethics." Although the protocol has not been ratified by

the United States, this principle has attained the status of customary international law. International human rights law (most important, the 1966 International Covenant on Civil and Political Rights) provides additional protection for privacy in general — in wartime and peacetime. Although this protection isn't absolute, exceptions must be justified by pressing public need, and they must represent the least restrictive way to meet this need. Wholesale abandonment of medical confidentiality hardly qualifies, especially when the "need" invoked is the crafting of counter-resistance measures that are prohibited by international law.

In what ways did military intelligence personnel draw on medical information for interrogation and counter-resistance purposes? Instructions to Guantanamo veterans not to discuss their service publicly have been an obstacle to answering this question. But available documents, an account of a fall 2004 briefing by the camp's commander (Brigadier General Jay Hood), and interviews with behavioral science professionals enable us to assemble parts of this picture.

During the camp's early months, interrogators could gain access to personal health information (and did so to set limits on practices that might put detainees' health at risk) but did not use psychological assessments of individual subjects. Conventional army intelligence doctrine has been unsympathetic to such input: it has relied instead on a mix of standard interrogation methods meant to appeal variously to subjects' insecurities, pride, and fears, within constraints set by the laws of war.<sup>5</sup> But by

late 2002, growing frustration with the slow pace of intelligence production at Guantanamo led to calls from commanders for innovative tactics. Major General Geoffrey Miller, who took command of Guantanamo in late 2002, approved the creation of a "Behavioral Science Consultation Team" (BSCT, pronounced "Biscuit") in order to develop new strategies and assess intelligence production. A principal BSCT function was to engineer the camp experiences of "priority" detainees to make interrogation more productive.

A psychiatrist and a psychologist staffed the Guantanamo BSCT. Those initially assigned to this team both came from health care backgrounds; neither had much training in behavioral analysis of the sort that civilian psychologists perform for law-enforcement agencies. According to Hood's briefing, BSCT consultants prepared psychological profiles for use by interrogators; they also sat in on some interrogations, observed others from behind one-way mirrors, and offered feedback to interrogators. The first BSCT psychologist, Major John Leso, a specialist in assessing aviators' fitness to fly, attended part of the interrogation of Mohammed al-Qahtani, thought by many to be the "20th hijacker." (An extract from a log of this interrogation published in *Time* magazine last month refers to Leso as "Maj. L.")

There are strong indications that the Guantanamo BSCT has had access to personal health information. An internal, May 24, 2005, memo from the Army Medical Command, offering guidance to caregivers responsible for detainees, refers to the "interpretation of relevant excerpts from

medical records" for the purpose of "assistance with the interrogation process." The memo, provided to us by a military source, acknowledges this nontherapeutic role, urging health professionals who serve in this capacity to avoid involvement in detainee care, absent an emergency. This acknowledgment is consistent with other accounts of information flow from caregivers to behavioral science consultants to interrogators.

Competing behavioral science models have influenced the advice given to interrogators by BSCT members. One approach emphasizes fear and anxiety as counter-resistance tools; another favors rapport with detainees. The former approach, supported by some associated with the John F. Kennedy Special Warfare Center who have helped to formulate BSCT doctrine, builds on the premise that acute, uncontrollable stress erodes established behavior (e.g., resistance to questioning), creating opportunities to reshape behavior. Complex reward systems (e.g., the creation of multiple camp "levels" with different privileges) promote cooperation. Stressors tailored to the psychological and cultural vulnerabilities of individual detainees (e.g., phobias, personality features, and religious beliefs) are key to this approach and can be devised on the basis of detainee profiles.

Proponents of rapport-based interrogation counter that answers given under high stress are unreliable. Not only are people in acute distress inclined to say whatever they think might bring relief; the psychiatric se-

quelae of extreme stress — anxiety, depressed mood, and disordered thinking — impair the understanding of questions and produce incoherent answers. Rapport building, tailored to people's cognitive styles and cultural beliefs, takes time but yields better information, its defenders contend.

There is no scientific answer to the question of which interrogation strategy is more effective. For obvious ethical and legal reasons, there is unlikely to be one. At Guantanamo, the fear-and-anxiety approach was often favored. The cruel and degrading measures taken by some, in violation of international human rights law and the laws of war, have become a matter of national shame.

Clinical expertise has a limited place in the planning and oversight of lawful interrogation. Psychologists play such a role in criminal investigations, and medical monitoring of detainees is called for by international legal instruments. But proximity of health professionals to interrogation settings, even when they act as caregivers, carries risk. It may invite interrogators to be more aggressive, because they imagine that these professionals will set needed limits. The logic of caregiver involvement as a safeguard also risks pulling health professionals in ever more deeply. Once caregivers share information with interrogators, why should they refrain from giving advice about how to best use the data? Won't such advice better protect detainees, while furthering the intelligence-gathering mission? And

if so, why not oversee isolation and sleep deprivation or monitor beatings to make sure nothing terrible happens?

Wholesale disregard for clinical confidentiality is a large leap across the threshold, since it makes every caregiver into an accessory to intelligence gathering. Not only does this undermine patient trust; it puts prisoners at greater risk for serious abuse. The global political fallout from such abuse may pose more of a threat to U.S. security than any secrets still closely held by shackled internees at Guantanamo Bay.

Dr. Bloche is professor of law at Georgetown University and a visiting fellow at the Brookings Institution, both in Washington, D.C., and adjunct professor at Bloomberg School of Public Health, Johns Hopkins University, Baltimore. Mr. Marks is a barrister at Matrix Chambers, London, and Greenwall Fellow in Bioethics at Georgetown University Law Center and the Bloomberg School of Public Health.

An interview with Mr. Marks can be heard at [www.nejm.org](http://www.nejm.org)

1. Break them down: systematic use of psychological torture by U.S. forces. Cambridge, Mass.: Physicians for Human Rights, 2005.
2. Lewis NA. Red Cross finds detainees abuse at Guantanamo. *New York Times*. November 30, 2004:A1.
3. Church report: unclassified executive summary. (Accessed June 16, 2005, at <http://www.defenselink.mil/news/Mar2005/d20050310exe.pdf>.)
4. Huck RA. U.S. Southern Command confidentiality policy for interactions between health care providers and enemy persons under U.S. control, detained in conjunction with Operation Enduring Freedom. August 6, 2002 (memorandum). (Accessed June 16, 2005, at [http://www.southcom.mil/restrict/j1/new%20web%20page/New%20Web%20Pages/AG/Policy/Current%20SC%20Policies/SC%20Current\\_pols.htm](http://www.southcom.mil/restrict/j1/new%20web%20page/New%20Web%20Pages/AG/Policy/Current%20SC%20Policies/SC%20Current_pols.htm).)
5. Department of the Army. Field manual 34-52: intelligence interrogation. 1992. (Accessed June 21, 2005, at [https://atiam.train.army.mil/soldierPortal/atia/adisc/view/public/6999-1/FM/34-52/FM34\\_52.PDF](https://atiam.train.army.mil/soldierPortal/atia/adisc/view/public/6999-1/FM/34-52/FM34_52.PDF).)

## Book Review: *Oath Betrayed: Torture, Medical Complicity, and the War on Terror* by Steven Miles

"If law be the bedrock of civil society, it can no more undergird torture than it could support slavery or genocide." *from the Introduction*

The graphic photographs of U.S. military personnel grinning over abused Arab and Muslim prisoners shocked the world community. That the United States was systematically torturing inmates at prisons run by its military and civilian leaders divided the nation and brought deep shame to many. When Steven H. Miles, an expert in medical ethics and an advocate for human rights, learned of the neglect, mistreatment, and torture of prisoners at Abu Ghraib, Guantanamo Bay, and elsewhere, one of his first thoughts was: Where were the prison doctors while the abuses were taking place?

In *Oath Betrayed*, Miles explains the answer to this question. Not only were doctors, nurses, and medics silent while prisoners were abused; physicians and psychologists provided information that helped determine how much and what kind of mistreatment could be delivered to detainees during interrogation. Additionally, these harsh examinations were monitored by health professionals operating under the purview of the U.S. military.

Miles has based this book on meticulous research and a wealth of resources, including unprecedented eyewitness accounts from actual victims of prison abuse, and more than thirty-five thousand pages of documentation acquired through provisions of the Freedom of Information Act: army criminal investigations, FBI notes on debriefings of prisoners, autopsy reports, and prisoners' medical records. These documents tell a story markedly different from the official version of the truth, revealing involvement at every level of government, from Secretary of Defense Donald Rumsfeld to the Pentagon's senior health officials to prison health-care personnel.

*Oath Betrayed* is not a denunciation of American military policy or of war in general, but of a profound betrayal of traditions that have shaped the medical corps of the United States armed forces and of America's abdication of its leadership role in international human rights. This book is a vital document that will both open minds and reinvigorate Americans' understanding of why human rights matter, so that we can reaffirm and fortify the rules for international civil society. By Michael Hirsh *Washington Post Book World* (Copyright 2006 Washington Post Book World Service/Washington Post Writers Group)

UNITED STATES  
v.  
MOHAMMED JAWAD

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ORDER

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1. The Defense has requested, the government does not oppose, and the Military Judge orders, that an inquiry into the mental capacity of the accused be conducted in accordance with Rules for Military Commission 706 and 909.

2. The Board shall consist of two or more persons who are physicians or clinical psychologists. At least one member of the Board shall be either a psychiatrist or a clinical psychologist. If a Pashto speaking physician or clinical psychologist is reasonably available so that the schedule set forth in paragraph 5 below may be met, he or she will be appointed to the board. Unless a Pashto speaking physician or clinical psychologist is appointed, a Pashto speaking interpreter will be designated by the government to assist the board in its inquiry. Unless ordered by this Commission, this interpreter may not disclose anything learned during the inquiry, except to defense counsel. The defense may choose to have its assigned interpreter present when the accused is examined.

3. The Board in its evaluation shall make separate and distinct findings as to each of the following questions:

(A) Is the accused presently suffering from a mental disease or defect? If so, what is the clinical psychiatric diagnosis?

(B) Does the accused have sufficient present ability to consult with his lawyers with a reasonable degree of rational understanding and does he have a rational as well as a factual understanding of the proceedings against him. If so, does the accused have sufficient mental capacity to understand the nature of the proceedings against him (trial by commission) and to conduct or cooperate intelligently in the defense?

(C) If the answer to 3(A) is yes and 3(B) is no, what, if any, changes to the conditions of the accused's detention does the board recommend in order to improve his condition such that the answer to 3(B) would be yes.

(D) Does the accused require immediate psychological or medical treatment?

4. The basis for ordering this inquiry is as indicated in the attached defense request, and other allied documents as may be provided by trial and defense counsel. Examinations and tests may be conducted, if appropriate, to answer the questions set forth in paragraph 3 above.

5. Compliance with this order shall be as expeditiously as possible consistent with a medically competent and thorough examination to answer the specified questions.

a. Not later than 1 August 2008, the Board shall prepare a summarized report consisting of only the Board's ultimate conclusions as to all questions specified in paragraph 3. This report will be prepared in two copies. The trial counsel and the defense counsel will be telephonically notified when this report is ready for pick-up. At the option of the officer responsible for the summarized report, it may be faxed or e-mailed to the trial counsel and the defense counsel.

b. Not later than 8 August 2008, the Board shall prepare its full report. This report shall be placed into a sealed envelope and provided to MAJ David Frakt, Office of Chief Defense Counsel, Office of Military Commissions, [REDACTED]. The full report will NOT be faxed or e-mailed unless specifically requested by MAJ Frakt.

6. Under no circumstances will the full report, matters considered by the Board during it's inquiry, or any statements made by the accused to the board (or evidence derived there from) be disclosed to anyone other than MAJ Frakt, without express, written authorization from the military judge or the defense counsel.

7. Telephone numbers: [REDACTED]

Ordered this 20<sup>th</sup> day of June 2008:

  
STEPHEN R. HENLEY  
Colonel, U.S. Army  
Military Judge

Encls:

1. Charge Sheet
2. Revised Defense Application for Mental Examination, with attachments, dtd 28 May 2008
3. Government Response, dtd 3 June 2008