

# GUANTÁNAMO BAY

## FIVE YEARS LATER



*Prepared by the*

 centerforconstitutionalrights

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## SUMMARY

Four months after 9/11, on **January 11, 2002**, the U.S. military flew 20 prisoners from Afghanistan to the U.S. Naval Base at Guantánamo Bay, Cuba. More would soon follow, as would allegations of torture and abuse, public outcry both at home and abroad over the mistreatment of detainees, and repeated calls for the closure of Guantánamo.

The five years since then have seen the total number of detainees rise to more than 750—some as young as ten years old, and others as old as eighty—and Guantánamo become a Kafkaesque symbol of the U.S. government's deeply flawed "war on terror," a place where the rule of law does not apply.

The U.S. government has twice attempted to strip detainees, many of whom are guilty only of being in the wrong place at the wrong time, of their legal right to contest their detention. Over and over again, we have seen the U.S. government reject the claim that detainees have the right to habeas corpus, fair trials, and due process of law.

### **Prisoners being interrogated at Guantánamo have been:**

- Held in solitary confinement for periods exceeding a year;
- Deprived of sleep for days and weeks and, in at least one case, months;
- Exposed to prolonged temperature extremes;
- Beaten;
- Threatened with transfer to a foreign country for torture;
- Tortured in foreign countries or at U.S. military bases abroad before transfer to Guantánamo;
- Sexually abused and humiliated or threatened with rape;
- Deprived of medical treatment for serious conditions, or allowed treatment only on the condition that they "cooperate" with interrogators;
- Routinely "short-shackled" (wrists and ankles bound together and to the floor) for hours and even days during interrogation.

*From the Center for Constitutional Rights' "Report on Torture and Cruel, Inhuman, and Degrading Treatment of Prisoners at Guantánamo Bay, Cuba"*

In fact, only 10 detainees have ever been charged with offenses, and none have been tried or found guilty. Military officials have admitted that innocent civilians have been detained at Guantánamo and that most held at the prison have little, if any, intelligence to offer. The vast majority, according to the Pentagon's own documents, have no direct ties to al Qaeda or the Taliban.

While hundreds of detainees have been released, hundreds continue to be held, most with no charges against them and no trials in their future. Flimsy evidence, if any at all, is used to justify their

continued detention. As confirmed by evidence from the detainees, military personnel, and even the F.B.I., many of the detainees have been tortured, abused, and humiliated at the hands of the U.S. government.

The International Committee of the Red Cross, the United Nations, Amnesty International, European officials like British Prime Minister Tony Blair and German Chancellor Angela Merkel, and other human rights groups have called for Guantánamo to be closed. The U.S. government, meanwhile, has employed every possible tactic to evade judicial review of its detention and interrogation practices at Guantánamo Bay.

During the past five years, the Center for Constitutional Rights has been at the forefront of the legal battle for justice for Guantánamo detainees, winning landmark Supreme Court cases and organizing hundreds of lawyers to represent the detainees. CCR was the first human rights organization to fight for the rights of the detainees and continues to work with organizations around the world to call for humane treatment and due process for those the government had branded the "worst of the worst," as well as to fight for the reinstatement of habeas corpus and the rule of law.

## HISTORICAL OVERVIEW

The months following 9/11 saw Congress give President Bush almost unprecedented authority to wage the “war on terror.” He quickly began testing those powers—on **November 13, 2001**, President Bush announced that Taliban and al Qaeda captives would not be classified as prisoners of war, but as “enemy combatants,” a term recognized only by the U.S. government, and authorized their indefinite detention. As lawyers at the Center for Constitutional Rights realized, this meant that the Third Geneva Convention would not be applied to detainees, and there would be no legal guarantee of humane treatment for the prisoners at Guantánamo Bay.

Then, on **January 11, 2002**, 20 detainees from the war in Afghanistan were flown to the U.S. Naval Base at Guantánamo Bay, Cuba, and housed in the chillingly-named Camp X-Ray, little more than a collection of outdoor wire mesh cages.

Quickly realizing the danger to civil liberties and the rule of law that Guantánamo represented, CCR, on **February 19, 2002**, filed *Rasul v. Bush*, a habeas petition on behalf of three detainees, Australian citizen David Hicks, and British citizens Shafiq Rasul and Asif Iqbal. Arguing that everyone has the right to a fair trial and due process, CCR filed the lawsuit during a time when dissent was effectively curtailed by the climate of patriotism fueled by fear.

The American public soon learned that even U.S. citizens were not immune from being sent to Guantánamo or classified as “enemy combatants.” When the government found out Guantánamo detainee Yaser Esam Hamdi was in fact a U.S. citizen, they quickly transferred him out of Guantánamo and into a jail in South Carolina on **April 5, 2002**. He soon filed a writ of habeas corpus, *Hamdi v. Rumsfeld*, challenging the U.S. government’s right to hold him indefinitely, a suit that would reach the Supreme Court in 2004. On **May 8, 2002**, federal agents arrested U.S. citizen Jose Padilla on U.S. soil and subsequently classified him as an “enemy combatant.” Padilla would only be formally charged with a crime three years later, in 2005.

As 2002 continued into 2003, CCR’s cases were denied in all the courts—on **March 11, 2003**, the D.C. Circuit Court of Appeals rejected CCR’s appeal of *Rasul v. Bush*, concluding that detainees have no right to challenge their imprisonment. But on **November 3, 2003**, the Supreme Court agreed to hear *Rasul*, the first legal challenge to the Bush Administration’s detention policies to reach the highest court in the land.

As the months passed and more news came out of Guantánamo Bay detailing the circumstances and treatment of the detainees, it became clear that the rule of law and basic respect for human rights were absent at Guantánamo. What initially was a fight to guarantee that Guantánamo detainees had access to due process and fair trials soon became intertwined with allegations of abuse and torture.

O.K. was 15 years old when he was captured in July 2002. Military officials at Bagram treated him roughly, despite his young age and his poor physical condition. He was interrogated repeatedly by military officials, and on many occasions was brought into the interrogation room on a stretcher. On one occasion, interrogators grabbed and pulled him, he fell and cut his left knee. On some occasions, interrogators brought barking dogs into the interrogation room while his head was covered with a bag. On other occasions, interrogators threw cold water on him. They also tied his hands above the door frame and made him dangle painfully for hours at a time. While his wounds were still healing, interrogators made O.K. clean the floors on his hands and knees. They forced him to carry heavy buckets of water, which hurt his left shoulder where he had been shot. When he was able to walk again, interrogators made him pick up trash, then emptied the trash bag and made him pick it up again. During the interrogation, he was not allowed to use the bathroom, and was forced to urinate on himself.

Around March of 2003, O.K. was taken out of his cell at Camp Delta [in Guantánamo] at approximately 12:00 – 1:00 a.m., and taken to an interrogation room. An interrogator told O.K. that his brother was at Guantánamo, and that he should “get ready for a miserable life.” O.K. stated that he would answer the interrogator’s questions if they brought his brother to see him. The interrogator became extremely angry, then called in military police and told them to cuff O.K. to the floor. First they cuffed him with his arms in front of his legs. Later still, they forced him on his stomach, bent his knees, and cuffed his hands and feet together. At some point, O.K. urinated on the floor and on himself. Military Police poured pine oil on the floor and on O.K., and then, with O.K. lying on his stomach and his hands and feet cuffed together behind him, the Military Police dragged him back and forth through the mixture of urine and pine oil on the floor. Later, O.K. was put back in his cell, without being allowed a shower or change of clothes. He was not given a change of clothes for two days.

*From the Center for Constitutional Rights’ “Report on Torture and Cruel, Inhuman, and Degrading Treatment of Prisoners at Guantánamo Bay, Cuba*

In an **August 1, 2002**, legal memorandum, the Justice Department concluded that the U.S. government was permitted to techniques that are commonly recognized as torture as an interrogation method. To avoid U.S. and international laws prohibiting torture, the memo sharply narrowed the definition of what constitutes torture, stating that interrogators can cause severe pain before it is classified as “torture.” Bodily

torture, the memo stated, “must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function, or even death,” leaving a host of tactics that would not now technically be classified as torture. For psychological methods to rise to the level of mental torture, the psychological harm must last “months or even years.”

Along with memos greenlighting “torture-lite” interrogation methods, allegations of prisoner abuse began to come to light. On **March 9, 2004**, three British detainees, two of whom were petitioners in *Rasul v. Bush*, were released from Guantánamo and wrote a 150-page report that described in detail the abuse and humiliation they and their fellow detainees suffered at the hands of prison guards at the base. This, in conjunction with the torture that occurred at Abu Ghraib prison in Iraq, began to paint a picture of systemic detainee abuse.

Meanwhile, the legal battle continued. On **June 28, 2004**, CCR won a historic victory before the Supreme Court, as the justices ruled 6-3 in *Rasul v. Bush* that detainees can legally challenge their detention in federal courts. The same day, the justices ruled in *Hamdi v. Rumsfeld* that U.S. citizens cannot be held without due process of law.

Following the Supreme Court rulings, CCR quickly organized a network of hundreds of attorneys to represent other Guantánamo detainees in habeas proceedings. Habeas petitions were soon filed on behalf of many detainees, and lawyers began, finally, to meet with their clients at Guantánamo Bay. On **August 30, 2004**, the Center for Constitutional Rights’ Gitanjali Gutierrez became the first civilian lawyer allowed into Guantánamo.

In response to the *Rasul* and *Hamdi* rulings, in the **summer of 2004** the Pentagon announced that it would create Combatant Status Review Tribunals (CSRT’s) to determine whether detainees are in fact enemy combatants or continue to pose a threat to the U.S.. Many lawyers and human rights activists have asserted that the CSRT’s are a sham proceeding, flawed by their very nature– the detainees are not permitted to have their lawyers present and do not have access to the evidence being used against them, some of which may have been obtained through torture – and designed in practice and effect only to justify the continuing indefinite detention of most detainees.

The Bush Administration continued its attempts to erode detainees’ rights in Congress. Signed into law by President Bush on **December 30, 2005**, the Detainee Treatment Act (DTA) purportedly protected detainees from abuse, but also attempted to undo

*Rasul* and eliminate detainees’ rights to file habeas corpus petitions.

The government’s attempt to circumvent the Supreme Court rulings with the DTA, CSRT’s, and military commissions was dealt a setback on **June 29, 2006**, when the Supreme Court ruled in *Hamdan v. Rumsfeld* that those military commissions violate U.S. and international law. Accepting the arguments put forth in amicus briefs by the Center for Constitutional Rights, Common Article 3 of the Geneva Conventions, the Justices stated, did apply to Guantánamo detainees.

Again attempting to undo a Supreme Court decision favorable to detainees, the Bush administration had Congress pass the Military Commissions Act (MCA) in September and signed it into law on **October 17, 2006**. The MCA attempts to corrode habeas corpus even further by proclaiming that non-citizens anywhere in the world, including legal immigrants detained in the U.S., can be picked up and held indefinitely without charge or a fair hearing to challenge their detention. Nor do people have to be labeled an enemy combatant for them to be held, they may merely be “awaiting” a designation..

Five years after the first detainees were sent to Guantánamo, CCR continues to lead the movement for reinstatement of the rule of law and against torture at Guantánamo, at Bagram Airbase in Afghanistan, at Abu Ghraib and elsewhere in Iraq and around the world..

Cases such as *Al Odah v. United States* are challenging the continuing denial of habeas corpus to Guantánamo detainees and contesting the Military Commissions Act of 2006.

## LEGAL TIMELINE

2001	Sept. 18, 2001	Congress approves a resolution giving President Bush authority to use “all necessary and appropriate force” against al Qaeda forces
	Nov. 13, 2001	President Bush issues an executive order authorizing detention of “enemy combatant” non-US citizens
2002	Jan. 11, 2002	20 prisoners sent to Guantánamo Bay from Afghanistan. They are housed outdoors in wire cages.
	Jan. 27, 2002	Vice President Dick Cheney calls the detainees “the worst of a very bad lot. They are very dangerous. They are devoted to killing millions of Americans.”
	Feb. 19, 2002	CCR files <i>Rasul v. Bush</i> , a habeas petition, in D.C. District Court on behalf of David Hicks, Shafiq Rasul and Asif Iqbal
	Feb. 27, 2002	In the first of many organized protests, detainees go on hunger strike to protest a rule against wearing turbans
	Apr. 5, 2002	Detainee Yaser Esam Hamdi is discovered to be a U.S. citizen and moved from Guantánamo to a military prison in South Carolina
	June 11, 2002	Yaser Esam Hamdi files a writ of habeas corpus challenging his detention
2003	Mar. 11, 2003	D.C. Circuit Court of Appeals rejects CCR’s appeal in <i>Rasul v. Bush</i> , ruling that detainees have no legal rights in the United States
	Nov. 10, 2003	Supreme Court agrees to hear <i>Rasul v. Bush</i>
2004	Mar. 9, 2004	Shafiq Rasul and Asif Iqbal, two of the petitioners in <i>Rasul v. Bush</i> , are sent back to Britain and subsequently allege they were tortured and abused while detained
	June 28, 2004	Supreme Court rules 6-3 in <i>Rasul v. Bush</i> that detainees can challenge their detention in federal courts. On the same day, Supreme Court rules in <i>Hamdi v. Rumsfeld</i> that the government cannot detain U.S. citizens without due process of law
	July 7, 2004	Pentagon creates Combat Status Review Tribunals (CSRT’s) to review detainees’ “enemy combatant” status
	Aug. 30, 2004	CCR attorney Gitanjali Gutierrez is the first civilian lawyer to meet detainees at Guantánamo
2005	Nov. 10, 2005	Senate votes 49-42 to approve the Detainee Treatment Act (DTA), which attempts to strip detainees of the right to file habeas corpus petitions
	Dec. 30, 2005	DTA is signed into law by President Bush
2006	June 10, 2006	Three detainees die at Guantanamo
	June 29, 2006	Supreme Court rules in <i>Hamdan v. Rumsfeld</i> that military commissions violate U.S. and international law, and that Common Article 3 of the Geneva Conventions applies to the detainees
	Sept. 6, 2006	President Bush announces that 14 detainees from C.I.A. secret black sites have been transferred to Guantánamo
	Oct. 17, 2006	President Bush signs the Military Commissions Act (MCA) into law. The MCA attempts to make possible the permanent detention and torture of even legal U.S. residents, as long as they are classified as “enemy combatants”

## RELEASED DETAINEES MORE LIKELY TO RECEIVE FAIR TREATMENT FROM OTHER COUNTRIES THAN FROM U.S.

### Background

The past five years have seen the Bush administration make every attempt to circumvent and thwart the principle that all people—including Guantánamo detainees—deserve fair trials and due process of law and have seen the U.S. government condone the use of torture as an interrogation method.

A comparison of the treatment of former prisoners during their detainment versus the treatment they have been given upon return to their home countries shows that the detainees often receive fairer treatment and, in many instances, more due process at home than at Guantánamo. At the same time, the U.S. has sent people back to countries where they face torture and persecution.

Treatment received at Guantánamo	Home Country	By the Numbers	Treatment Released Detainees Receive in Home Country	Examples
<p>While imprisoned at Guantánamo Bay, Cuba, many of the detainees are:</p> <ul style="list-style-type: none"> <li>• never formally charged with a crime;</li> <li>• never given a fair hearing before a neutral decisionmaker;</li> <li>• physically and mentally abused and tortured;</li> <li>• held in solitary confinement;</li> <li>• often denied needed medical treatment; and</li> <li>• prevented from practicing their religion.</li> </ul>	<b>Saudi Arabia</b>	<ul style="list-style-type: none"> <li>• 136 detainees since 2002</li> <li>• 53 have been released</li> </ul>	<ul style="list-style-type: none"> <li>• Upon their arrival in Saudi Arabia, they are allowed to see their families, and they receive medical care.</li> <li>• They receive trials.</li> <li>• If convicted, they complete their sentences and are then released.<sup>1</sup></li> </ul>	<p>Saudi foreign minister Prince Saud al-Faisal has said, "They will be incarcerated and checked, and we'll see what the proof against them is. If the proof against them justifies trial, they will be put on trial. If they are proved guilty, they will be incarcerated. If they are proved innocent, they will be let out."<sup>2</sup></p>
	<b>Kuwait</b>	<ul style="list-style-type: none"> <li>• 12 detainees since 2002</li> <li>• 8 have been released</li> </ul>	<ul style="list-style-type: none"> <li>• They are charged with crimes by the Kuwaiti government.</li> <li>• Six of the eight were released on bail.<sup>3</sup> The two most recently released detainees remain in jail pending a decision on charges being filed.</li> <li>• They receive trials in Kuwaiti courts.</li> <li>• If they are acquitted, they are released.</li> </ul>	<p>Nasser Al-Mutairi was released from Guantánamo in early 2005 and upon his return to Kuwait was charged with carrying out hostile acts against a friendly nation. He was first acquitted, a decision which the government later appealed, and then was finally acquitted by Kuwait's highest court.<sup>4</sup></p>
	<b>Bahrain</b>	<ul style="list-style-type: none"> <li>• 6 detainees since 2002</li> <li>• 4 have been released</li> </ul>	<ul style="list-style-type: none"> <li>• The Bahraini government has made clear that if the U.S. government provides any evidence that Bahraini detainees committed crimes, such evidence would be evaluated to determine whether charges would be brought under Bahraini law.</li> <li>• All of the former detainees were released immediately after returning to Bahrain and not charged with any crime.</li> </ul>	<p>The four released detainees have lived in freedom with their families since returning to Bahrain. Each of them is attempting to rebuild his life: for example, three have returned to college; two have gotten married; one has had a child; and one has reopened his business.</p>

<sup>1</sup> "Saudi frees 18 former Guantánamo detainees," *The Washington Post*, December 26, 2006

<sup>2</sup> "U.S. to Turn Over 16 Saudis From Guantánamo to Riyadh," *The New York Times*, May 18, 2006

<sup>3</sup> "5 from Guantánamo Get Bail in Kuwait," *The New York Times*, March 6, 2006

<sup>4</sup> "Court acquits former Guantánamo prisoner," *Kuwait Times*, July 25, 2005

## TOP 10 MYTHS ABOUT GUANTÁNAMO BAY, CUBA

Myth		Fact
1	Detainees are the “worst of the worst” terrorist members of al Qaeda.	A February 2006 report by Seton Hall professor Mark Denbeaux and attorney Joshua Denbeaux found that 55 percent of the detainees were determined by the government to have committed no hostile acts against the United States or its coalition allies. The report also stated that only 8 percent of the detainees were classified by the government as al Qaeda fighters. <sup>5</sup>
2	They have given the government valuable intelligence.	Guantánamo officials have admitted that less than one in four detainees has any intelligence value.
3	Their detention contributes to national security.	Anger abroad over treatment of detainees is high and has led to heightened anti-American sentiment and fewer intelligence contacts. <sup>6</sup>
4	They’re not tortured or abused and are treated humanely.	Numerous reports have found that U.S. government officials at Guantánamo use interrogation tactics that are tantamount to torture. These include methods such as physical beatings; extreme temperature changes; prolonged stress positions; sleep deprivation; withholding medical care; sexual abuse; and religious and cultural abuse. <sup>7</sup>
5	The rule of law exists at Guantánamo. Combatant Status Review Tribunals and Annual Review Boards ensure that detainees are imprisoned only if they are security threats.	CSRT’s in essence are a sham—detainees cannot have lawyers present and do not have access to the evidence being used against them, evidence which may have been obtained by torture.
6	The military commissions at Guantánamo would provide more fairness than is required under the Geneva Conventions.	Common Article 3 of the Geneva Conventions prohibits “the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.”
7	Living conditions at Guantánamo are humane	This is true for only a handful of prisoners, while the vast majority of detainees live in stark, mind-numbing conditions. <sup>8</sup>
8	Detainees receive good medical care at Guantánamo.	Serious medical conditions often go untreated, and detainees who have been physically abused sometimes go days without treatment. In addition, the mental health of many detainees is precarious.
9	The U.S. honors the detainees’ rights to practice their religion.	There has been no imam at prayer since the removal of Chaplin James Yee. The detainees are also frequently provoked during prayer times. In addition, religious abuse is an express interrogation tactic approved by the Defense Secretary.
10	The U.S. wants to transfer detainees to the custody of other countries, but no country will take them.	Countries are willing to accept detainees but many are not willing to unlawfully detain them, as the U.S. is requesting they do.

<sup>5</sup> Denbeaux, Mark and Denbeaux, Joshua. “Report on Guantánamo Detainees: A Profile of 517 Detainees through Analysis of Department of Defense Data,” February 2006

<sup>6</sup> “Afghans Protest Against U.S. Actions at Guantánamo Bay Prison,” [http://www.pbs.org/newshour/bb/asia/jan-june05/afghanistan\\_5-13.html](http://www.pbs.org/newshour/bb/asia/jan-june05/afghanistan_5-13.html), May 13, 2005

<sup>7</sup> Center for Constitutional Rights. “Report on Torture and Cruel, Inhuman, and Degrading Treatment of Prisoners at Guantánamo Bay, Cuba.” July 2006

<sup>8</sup> “Toilet Paper, Sheets Rationed at Guantánamo Bay,” <http://www.abcnews.go.com/WNT/story?id=2125839&page=1>, June 27, 2006