

# GUANTÁNAMO BAY

## SIX YEARS LATER



*Prepared by the*

 centerforconstitutionalrights

## 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 six 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. Only one military commission has been completed – and that with a plea bargain, in which the detainee, David Hicks, received a 9-month sentence and a guaranteed return home to Australia. 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 former 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 six years, the Center for Constitutional Rights has been at the forefront of the legal battle for justice for Guantánamo detainees, organizing hundreds of lawyers to represent the detainees, winning landmark Supreme Court cases, and, now, returning to the Supreme Court once again in order to secure the detainees' rights. 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.

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

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 Guantanamo] 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 Guantanamo Bay, Cuba*

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.

In response, 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.

On **February 20, 2007**, the Court of Appeals of the D.C. Circuit ruled 2-1 against the detainees in the consolidated cases of *Boumediene v. Bush* and *Al Odah v. United States*. The court held that Guantánamo detainees have no constitutional right to habeas corpus review of their detentions in federal court. Because the court also found that the MCA eliminated any statutory right to habeas corpus, it dismissed the cases.

On **March 5, 2007**, CCR and co-counsel petitioned the U.S. Supreme Court to review the Court of Appeals decision that dismissed *Al Odah* and *Boumediene* and to hear the cases on an expedited schedule. On **April 2, 2007**, the Supreme Court declined to hear the combined cases *Boumediene v. Bush* and *Al Odah v. United States*.

On **June 29, 2007**, the Supreme Court, in its first reversal in 60 years, announced that it would hear the consolidated *Al Odah* and *Boumediene* cases on **December 5, 2007**. This marks the third time in the history of the detention camp at Guantánamo Bay that the Supreme Court will hear a case concerning the rights of the detainees.

Six 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.