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On Closing Guantanamo: A Sisyphean Struggle

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With the signing of yesterday's executive orders to close Guantanamo and end torture, we are finally seeing the beginning of a reversal of some of the nastiest inhuman practices of the Bush administration. Yes, it may take another year to close the notorious detention center and yes, there are some aspects of these orders that could be problematic, such as the suggestion that trials outside of federal courts are possible. But despite some reservations, after seven long years of Bush policies that violated human rights, treaties, law and morality, yesterday marked the end of an era. It was an era that caused untold harm to human beings and to the U.S. reputation in the world. Guantanamo was iconic for everything the Bush administration did wrong in the "war on terror," the first steps of the nascent Obama administration symbolize a true break from the wrongheaded policies of the past.

When the Center for Constitutional Rights, in collaboration with leading lawyers Joe Margulies, Clive Stafford Smith and Tom Wilner, first took on cases on behalf of Guantanamo detainees, we did not expect to win. We began filing them a few months after 9/11. The mood in the country was ugly; hate mail poured in and we did not think the courts were ready to restrict Presidential authority. We assumed we would lose, but knew it was necessary to assert a key principle of a government under law: that no person could be imprisoned without the right to go to court and challenge his detention--a right we lawyers call the writ of habeas corpus. It was this right the Bush administration felt could be dispensed with.

It has been a rocky ride since the filing of the first cases. We and other lawyers had victories in the Supreme Court with *Rasul v. Bush* and *Hamdan v. Rumsfeld*. In each case, the court ruled that Guantanamo detainees had the right to challenge their detentions. We thought each ruling would mean the end of Guantanamo, only to then witness Congress overriding the Court.

Finally, the Court ruled in *Boumediene v. Bush* that our clients had constitutional rights; rights which could not be overridden. But Guantanamo remained open. Now, albeit slowly, the federal courts are finding, one by one, that the Guantanamo detainees were wrongly held.

When we began these cases we were few; today we are many. Over 600 lawyers from big firms and small firms, working pro bono, are the attorneys for the hundreds at Guantánamo. These many attorneys understood what was at stake at Guantanamo ---liberty itself. The response of the lawyers, who include Republicans and Democrats, progressives and conservatives, will be seen as one of the great chapters in the battle for fundamental rights in the United States.

This has been a long struggle, much longer than we and others imagined. We have had some amazing successes. We did not expect to find torture. We were naïve. At Guantanamo the most overt aspects of that program ended because we were able to get attorneys into the prison. Now, two-thirds of the Guantánamo detainees have been released, which could not have been possible without litigation.

Our hopes now are for a swift end to the Guantanamo nightmare, faster than the one year maximum promised in the executive order. Another year is simply too long. We applaud the administration for its plan to close this human rights abomination and we are confident that it will either prosecute or repatriate the remaining 245 Guantanamo detainees while rejecting tactics such as preventative detention. At the same time, to ensure that the U.S. never again goes to the "dark side" we must insist on individual accountability. Only by holding government officials responsible for war crimes, through criminal investigations and prosecutions can we deter future lawbreakers and end the culture of impunity that the Bush administration created. The executive orders Obama has signed can be revisited in the next administration. Our adherence to a world under law should not be determined by who is President. It should be dictated, instead, by an unwavering commitment to protecting human rights and the knowledge that there will be consequences for their violations.

Michael Ratner is president of the Center for Constitutional Rights and author of "The Trial of Donald Rumsfeld: A Prosecution by Book."

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