

CURRENT CONDITIONS OF CONFINEMENT AT GUANTÁNAMO

STILL IN VIOLATION OF THE LAW

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Introduction

“I’m fighting for my sanity.”

The same prisoner, in Guantánamo’s Camp 5, a year later:

“The walls are really beginning to close in on me now.”¹

After over seven years of unlawful executive detention, the approximately 240 men who remain imprisoned at the U.S. Naval Base at Guantánamo Bay, Cuba continue to be held in inhumane conditions that violate U.S. obligations under the Geneva Conventions, the U.S. Constitution, and international human rights law. Most of these men have never been charged or had an opportunity to challenge the legality of their detention in a habeas hearing.

On January 22, 2009, within days of his inauguration, President Barack Obama issued several key executive orders concerning Guantánamo and U.S. policies on executive detention. The executive order specific to Guantánamo, among other things, requires the closure of the prison within one year, and mandates a review of the status of all of the men held there.² Furthermore, the order requires “humane standards of confinement” during this review and detention “in conformity with all applicable laws governing the conditions of such confinement, including Common Article 3 of the Geneva Conventions.” It also tasks the Secretary of Defense with conducting a full review of conditions of detention at Guantánamo, to be completed within 30 days of the order.

The applicable laws governing conditions of confinement at Guantánamo include Common Article 3 of the Geneva Conventions, but also the more specific provisions of the Third and Fourth Geneva Conventions. Other relevant laws include international human rights treaties the United States has ratified protecting prisoners against unsafe or unhygienic conditions, torture and cruel, inhuman or degrading treatment, and treaties protecting the rights of juveniles in detention.³ In addition, the Fifth and Eighth Amendments to the U.S. Constitution prohibit cruel and unusual punishment and protect prisoners against treatment that shocks the conscience, including unsafe conditions, the denial of social or family contact, and prolonged isolation. The First Amendment protects prisoners’ rights to religious texts and books.

Currently at Guantánamo, the majority of detainees are being held in conditions of solitary confinement in one of two super-maximum facilities – Camps 5 and 6 – or in Camp Echo. The conditions in these camps are harshly punitive and violate international and U.S. legal standards for the humane treatment of persons deprived of their liberty. Solitary confinement, sensory deprivation, environmental manipulation, and sleep deprivation are daily realities for these men and have led to the steady deterioration of their physical and psychological health.

In addition, detainees are subjected to brutal physical assaults by the Immediate Reaction Force (IRF), a team of military guards comparable to a riot squad, who are trained to respond to alleged “disciplinary infractions” with overwhelming force. Detainees have also been deprived of virtually all meaningful contact with their families, and have suffered interference with and abuse related to their right to practice their religion.

Contrary to statements by the military, conditions at Guantánamo have not improved for the majority of detainees and are still in violation of the law. In this report, we describe the current conditions of confinement for the men at Guantánamo and make recommendations for bringing Camps 5, 6 and Echo into immediate compliance with “all applicable laws” governing the conditions of confinement of detainees, as required by President Obama’s Executive Order.

The Center for Constitutional Rights (CCR) has represented men detained at Guantánamo since the prison opened in 2002 and has been responsible for organizing and coordinating over 500 pro bono lawyers across the country to represent hundreds of other detainees. CCR attorneys have traveled to Guantánamo over 40 times since 2004 to meet with detainees.⁴ The factual information in this report is based on direct accounts from detainees and their attorneys, including recent accounts received in January and February 2009.

Conditions at Guantánamo in 2009

The descriptions of ongoing, severe solitary confinement, other forms of psychological abuse, incidents of violence and the threat of violence from guards, religious abuse, and widespread forced tube-feeding of hunger strikers indicate that the inhumane practices of the Bush Administration persist today at Guantánamo, despite President Obama’s Executive Order, and should be remedied immediately.

Solitary Confinement

“It’s kind of like having their own apartment.”

- Camp 6 Guard, Guantánamo Bay Naval Station

“I am in my tomb.”

- Abdelli Feghoul, Camp 6 prisoner, cleared for release since at least 2006⁵

Solitary confinement is the norm for the majority of detainees at Guantánamo. 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, yet that is inconsistent with the reality. Many men slated for release are held in these camps, including some who languish because they are unable to be safely transferred to their home countries. The largest communal facility at Guantánamo, Camp 4, has only 80 beds—sufficient for barely one-third of the remaining detainees—meaning that the remainder are necessarily relegated to the extreme conditions in the other camps.

The military refuses to acknowledge that there is solitary confinement in Guantánamo at all. Instead, they speak in euphemisms of greater “privacy” and “single-occupancy cells.”⁶ Similar language is being used by the Obama administration.⁷ The conditions, however, speak for themselves.

Confined to small steel and concrete cells for at least 20 hours a day, the prisoners in Camps 5, 6 and Echo have virtually no human contact or mental stimulation. Food is delivered through a

metal slot in the door and the men eat all their meals alone. The men can try to shout to one another through the slot with great difficulty, and at risk of disciplinary sanction that can result in the loss of “privileges” and imposition of 24-hour lock down in their cell or aggressive attacks by IRF teams. Items such as toothpaste, a toothbrush, deodorant, soap, and blankets are classified as “privileges” and can be taken away at will. Camp 6 has no windows that face the outside, and Camp 5 has only a thin opaque window slit in each cell. One prisoner reported to his attorney that in his isolation cell in Camp 5, he has only a hole for a toilet with no toilet seat and a faucet with no wash basin.⁸ Lights are kept on 24 hours a day in Camp 5.

At most, detainees are allowed no more than two to four hours in an outdoor cell a day, called “recreation” time by the military. In Camp 6, this outdoor time occurs in a pen surrounded by two-story high concrete walls with mesh wire across the top, blocking out most sunlight. In Camp 5, recreation time is spent in a cage-like pen. Detainees have reported that when they have tried to do exercises during their recreation time, guards have taken them back to their cell immediately, sometimes with force.⁹ Recreation time as currently permitted for “compliant” detainees in Camps 5, 6 and Echo thus does little to alleviate the effects of their prolonged solitary confinement.

Sabin Willett, an attorney representing men at Guantánamo, described the life of one of the men he represents:

[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.¹⁰

If guards determine that a detainee has committed any infraction, the detainee remains in lockdown in his cell and loses his recreation “privilege.” Infractions can include failing to return a food tray promptly or cursing at a guard.¹¹

Detainees rarely have physical contact with any other living thing, except the gloved hands of the guards. The men never touch the soil, see plant life, or view the ocean. Because recreation time is sometimes scheduled in the middle of the night, reportedly due to a lack of space to accommodate daytime recreation for all prisoners,¹² a detainee can go weeks without seeing the sun. Many prisoners decline nighttime recreation in an attempt to get sleep, and thus remain isolated in their cells for days at a time.

A written description alone of the isolation conditions of the camps cannot adequately convey the oppressive reality that the men have already suffered for years and must continue to endure indefinitely. Little has changed since Willett described the day-to-day reality of life in Camp 6 from the perspective of Abdusemet, one of the men he represents, in 2007:

Alone, he rises at about five-thirty to wash (in the sink) and pray, then returns to his bed. Breakfast arrives through the hatch at about 7. He eats alone, then returns the trash through the hatch to the MPs. Sometimes he kneels and places his mouth to the small gap between door and floor and tries to shout a greeting. Then he sits on his bed for four to six hours. He tries to read the Koran. At mid-day he prays. He sits on the bed, waiting for lunch, which arrives at about one. He eats and returns the trash through the hatch. Then he sits on his bed for the afternoon, or paces. He converses with no one. He tries to read the Koran. He prays. Sometimes he hears voices in his head. When dinner arrives, he eats the dinner and returns the trash through the hatch. Then he sits on the bunk, or paces until evening prayer. He prays. He tries to sleep. He may hear the voices. He hears the banging of doors and the rumble of the HVAC [air-conditioning]. In the middle of the night, an MP raps on the door, asking if he wants "rec time." He says, "Just the shower." Half asleep, he stands at the door and is shackled. He is led to the shower area. On the way he peers into the doors on the pod [cell block], but at night the lights are off. He showers, and then is led back to the cell. He stands at the door while he is unshackled through the hatch. He returns to bed.

The next day, he repeats this, except that rec time occurs during the afternoon, and he participates in it.¹³

On October 7, 2008, a federal judge ruled in favor of Abdusetmet and 16 other Uighur detainees in their habeas corpus case, finding that the men are not enemy combatants and should be immediately freed into the United States. The ruling was reversed on appeal in February 2009 and the Uighurs, members of a Muslim minority from Western China who fear return to China and need a safe third country to offer them protection, remain trapped at Guantánamo. In response to the Court's order that they be released from Guantánamo, the Department of Defense merely moved them into a communal living space in Camp Iguana, another detention facility at Guantánamo. Prior to this ruling, the Uighurs had already been slated by the military to be able to leave Guantánamo and were being held in Camp 6, which is the situation of numerous other prisoners currently detained in Camp 6.

The prolonged solitary confinement of the men in Camps 5, 6 and Echo is punitive, violates the standards imposed by President Obama in his Executive Order, and has severely impacted the physical and psychological health of the men, who have been imprisoned without charge or trial for over seven years.

Sensory Deprivation and Environmental Manipulation

"You're not allowed to see the sun."

- Guard to Yasin Ismail¹⁴

Detainees are also subjected to environmental manipulation and sensory over- and under-stimulation. The temperature in their cells is consistently too cold, and out of the control of the detainees, causing health problems for many of the men as well as ongoing mental stress. Cold temperatures, for example, can exacerbate rheumatism, particularly for detainees whose thin sleeping mats have been removed as a punitive measure. When detainees block the air-conditioning vents in an attempt to regulate the temperature to a more acceptable level, they are disciplined.

One man characterized the conditions in his cell as “indirect torture” because of the cold temperatures and constant lighting. Three strong lights remained on between 5 a.m. and 10 p.m. and a smaller light continued during the night.¹⁵

Sleep Deprivation

Detainees in Camps 5, 6 and Echo have consistently reported being prevented from sleeping because of the conditions in the camps. Items such as bed sheets are considered a privilege, and linens are often removed as a disciplinary measure. Guards often kick the cell doors and the sounds of guard activity loudly echo through the metal walls of Camps 5, 6 and Echo. Prisoners are woken up as late as 2 a.m. for recreation time. Fluorescent lights are on in the cells in Camp 5 24 hours a day.

As the attorney for one detainee, now released, described in 2007, the constant lack of sleep has pushed detainees to the brink of sanity:

Bisher al-Rawi is, slowly but surely, slipping into madness. . . . 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.’¹⁶

Mr. al-Rawi was released on March 31, 2007, after four years in prison, without ever being charged or tried for any crime.

Physical Attacks on Detained Men: Immediate Reaction Force (IRF) and Other Forms of Physical Abuse

As I told you, we are in very bad condition, suffering from aggression, beating and IRF teams, as well as the inability to sleep except for a few hours. Soldiers here are on a high alert state and if one of us dares to leave his cell and comes back without any harm, he is considered as a man who survived an inevitable danger.

- Camp 6 detainee, January 2009

In Camps 5, 6 and Echo, detainees live in constant fear of physical violence. Frequent attacks by IRF teams heighten this anxiety and reinforce that violence can be inflicted by the guards at any moment for any perceived infraction, or sometimes without provocation or explanation.

On the afternoon of January 7, 2009, Yasin Ismael was in one of the outdoor cages of Camp 6 for “recreation” time. The cage was entirely in the shade. Mr. Ismael asked to be moved to the adjoining empty cage because it had sunlight entering from the top. The guards, who were outside the cages, refused. One guard told Mr. Ismael that he was “not allowed to see the sun.” Angered, Mr. Ismael threw a shoe against the inner mesh side of the cage; which bounced harmlessly back onto the cage floor. The guards, however, accused Mr. Ismael of attacking them and left him in the cage as punishment. He eventually fell asleep on the floor of the cage, but hours later he was awakened by the sound of an IRF team entering the cage in the dark. The team shackled him and he put up no resistance. They then beat him. They blocked his nose and mouth until he felt that he would suffocate, and hit him repeatedly in the ribs and head. They then took him back to his cell. As he was being taken back, a guard urinated on his head. Mr. Ismael was badly injured and his ear started to bleed, leaving a large stain on his pillow.¹⁷ The attack on Mr. Ismael was confirmed by at least one other detainee.

While at Guantánamo in mid-January 2009, attorney Sarah Havens received a note from a detainee in Camp 6 apologizing for his inability to attend their scheduled meeting:

To the lawyers: First of all, please accept my apologies for not coming because of the disgraceful conditions we are suffering from in the camp. To sum up, you may have heard about the disgraceful conditions we suffer like beating, violence, IRF teams and aggressions from soldiers. All of us are almost [on] hunger strike except for a few people who can't but the majority are on strike. We suffer from force feeding by tubes which in increasing everyday. IRF teams enter our cells more than fifteen times a day. We suffer from cruelty, beatings and bodily torture by them. As for Mohammed¹⁸ . . . IRF teams terrified him and deliberately cut his hands by scissors. When they were asked about this, they said that they were attempting to cut the plastic shackles. Also, Ahmed¹⁹ . . . was terrified and beaten up by the IRF teams, and then they took him to an unknown location.

Anyway, we cannot move here; we are afraid to go out with the soldiers to any place, because they are beating us up and insulting us while we are handcuffed, and then they claim that we started the violence. Certainly, the administration is giving the soldiers all the authority to practice violence against us. Now we are all staying here [in our cells] and will never go anywhere—no interrogations and no lawyers. We never go to any other locations, we are just on a hunger strike in our cells. We demand our rights and require to be released just as Salim Hamdan, the driver of Al-Qa'eda leader, who was released . . .

* * *

As I told you, we are in very bad condition, suffering from aggression, beating and IRF teams, as well as the inability to sleep except for a few hours. Soldiers here are on a high alert state and if one of us dares to leave his cell and comes back without any harm, he is considered as a man who survived an inevitable danger.

I have a lot to say, but they want me to finish writing now. I wish there will be no problems at the time of your next visit so that I can see you. Hope ^{by} now you understand my situation and that it's out of my hands.²⁰

Another man detained in Camp 5, Mohammed Ahmed Taher, who has reached the breaking point with the constant threat of violence and the stress of the conditions in that camp, simply stated, "Now people [detainees at Guantánamo] think, if they are going to torture me, just let me die."²¹

Abuse of Psychologically Ill Detainees

"I'm in despair right now and I don't know what to do. I'm going crazy."

- Muhammed Khan Tumani, detained at age 17

Solitary confinement, especially in combination with severely restricted stimuli and activity, can cause serious and potentially permanent psychological and physical damage. Psychological damage can include hallucinations, extreme anxiety, hostility, confusion, and concentration problems. Physical symptoms of solitary confinement can include impaired eyesight, weight loss, and muscular atrophy.²² According to medical experts, prolonged solitary confinement has contributed to the severe mental health problems suffered by Guantánamo prisoners. The combination of sensory deprivation and overstimulation has disoriented detainees' sense of space and time, intensified depression by depriving the men of social contact necessary for emotional release, comfort, or distraction, and led some to harm themselves and attempt suicide.

Many detainees at Guantánamo have demonstrated symptoms of psychological distress as a result of their detention, conditions of confinement and others forms of abuse. Lawyers have recounted numerous instances of detainees less able to concentrate and assist in their own defense; or visible deterioration as their time in detention has progressed. Detainees themselves have reported many attempts to commit suicide or otherwise harm themselves.

Yet, instead of providing appropriate and adequate medical care in response to clear signs of psychological abuse, detainees have faced further abuse. Mentally ill prisoners have been grossly mistreated and mismanaged in ways that have exacerbated their mental illnesses and suffering. Psychiatric visits are often cursory, and detainees who have reported problems to psychiatrists have been placed in more restricted isolation and denied basic items, termed

“privileges” or “comfort items.” Suicide attempts have been downplayed and classified as “manipulative self-injurious behavior.” Members of the medical staff have assisted with or acquiesced to beatings by military guards. Some have gone so far as to verbally abuse detainees and laugh at their pain. Prisoners have been denied information about their test results, existing diseases, and the nature and risk of drugs and procedures to which they were subjected. They have been forced to accept unwanted medical care. Medical staff have permitted guards without medical training to assist in administering treatment. They have failed to address conditions of detention that undermined the health and well-being of the prisoners, such as inadequate and insufficient food, water, sanitation, shelter from inclement weather, as well as isolation, fear, mistreatment, and the mental anguish caused by indefinite detention. Improper or insufficient food, water, and sanitation has led detainees to suffer from, among other symptoms, renal pain, chronic constipation, weight loss, rotted teeth and receded gums.

The U.S. government has denied detainees access to independent medical experts, leaving them in the exclusive care of medical staff, including psychiatrists and psychologists, that have collaborated with interrogators and systematically violated their legal and ethical duties to oppose, stop, record, and report abuse. Further, detainees have been subjected to medical examinations for non-therapeutic purposes, including vetting for interrogations designed, pursuant to medical findings, to be harmful to the prisoners’ physical and mental health. Medical treatment, including mental health treatment, has been deliberately withheld or dispensed conditioned on prisoners’ cooperation with interrogation, and interrogation-related medical exams have been kept apart from the prisoners’ medical files, facilitating the concealment of injuries suggesting abuse.

The situation of Muhammed Khan Tumani exemplifies how psychological damage from severe isolation and restrictive conditions is exacerbated by cycles of self-harm and physical attacks by prison guards or IRF teams when he should instead receive proper care and treatment. Imprisoned at the age of 17, Mr. Khan Tumani has spent almost a third of his life in Guantánamo. He has been separated from his father, another Guantánamo prisoner, for the entire period of his detention and has been held in isolation in Camp 6 for over two years. At this point, he is exhibiting signs of serious mental trauma that are a clear result of his indefinite and prolonged solitary confinement. In late December 2008, Mr. Khan Tumani cut multiple slashes across his inner arm and a vein in his hand. Other detainees in nearby cells report that Mr. Khan Tumani has been banging his head against the walls of his cell and smearing his cell walls with his own excrement. At a recent meeting with his attorney, Mr. Khan Tumani was highly anxious and unable to concentrate on his legal case despite his intense desire to challenge his detention. In complete despair, he threatened to harm himself again.²³

Mr. Khan Tumani was subjected to harsh discipline after he cut himself, which is only likely to exacerbate his mental condition. All objects were removed from his cell, including linens, and he was denied recreation time. He was told that he would only be allowed to eat if he took medicines with his food. A guard threatened that if he cut himself again, he would never see his father.²⁴

Mr. Khan Tumani’s condition has rapidly continued to deteriorate over the past few months. In late January 2009, he began smearing excrement on the walls of his cell again. When Mr. Khan

Tumani did not clean up the excrement, a large IRF team of ten guards was ordered to his cell and beat him severely. The guards sprayed so much tear gas or other noxious substance after the beating that it made at least one of the guards vomit. Mr. Khan Tumani's skin was still red and burning from the gas days later. The guards also completely stripped his cell, depriving him even of his thin sleeping mat. In a state of complete agony and distress following the assault, he started pounding his head against the walls of his cell until he began bleeding. After his beating, he was placed in his bare cell with the walls covered in excrement, in only a smock, for at least three days. During a phone call with his attorneys three days after the beating, Mr. Khan Tumani begged his lawyers to do something to stop his torture.²⁵

Mr. Khan Tumani's behavior was clearly a result of despair and psychological trauma due to his indefinite solitary confinement. Psychotic behavior, including smearing one's feces and incoherent mumbling and screaming is common among people who are kept in solitary confinement.²⁶ Rather than taking measures to prevent the downward spiral of Mr. Khan Tumani's mental health, for example, by giving him access to fresh air, sunlight, social interaction, and contact with his father, the military instead harshly disciplined and beat him.

Hunger Strikes and Force-Feeding

“If this keeps getting dragged out, he will leave Guantánamo Bay insane or in a coffin.”

- Lt. Col. Yvonne Bradley, lawyer for hunger striking detainee Binyam Mohamed, February 2009²⁷

The men detained at Guantánamo have participated in on-going and widespread hunger strikes as a manner of protesting their ongoing detention and abusive treatment. Rather than bring their conditions and detention into compliance with basic standards for humane treatment and the rule of law, the government's response has been to restrain the men in chairs, force tubes down their noses and throats, and pump food into their stomachs.

The first hunger strike began at Guantánamo as early as February 2002. The strikes have involved as many as 200 or more prisoners from across the camps and have continued for months each time, although individual men have carried out their strikes for much longer periods. The strikes have reportedly often been sparked by individual acts of abuse – in 2002, the forced removal of a prisoner's turban during prayer by a military police officer or, in 2005, the beatings of several prisoners by military guards – and grew into large-scale protests by the detained men for fair trials, respect for their religion and improvements in their conditions.²⁸

In December 2005, the practice of using “restraint chairs” to force feed men was introduced. Prisoners subjected to the process describe a tortuous experience, where men are strapped into the chairs – marketed by their manufacturer as a “padded cell on wheels” – and restrained at the legs, arms, shoulders, and head. A tube described by the men as the thickness of a finger is forcibly inserted up their noses and down into their stomachs and as much as 1.5 liters of formula is pumped through the tube. In the case of hunger strikers, this amount can be more than their stomachs can comfortably hold and the effect can be an uncomfortable, sometimes painful bout

of nausea, vomiting, bloating, diarrhea, and shortness of breath. Men are kept strapped to the chairs for an hour after “feeding” to prevent them from purging the formula. No sedatives or anesthesia are given during the procedure. The tubes are generally inserted and withdrawn twice a day, and the same tubes, covered in blood and stomach bile, are reportedly used from one patient to another without adequate sanitization.²⁹

The policy of force-feeding with restraint chairs continues to this day under the Obama Administration. According to information given by Maasoum Abdah Mouhammad to his attorney Matthew O’Hara in early February 2009, at least 16 men, including Mr. Mouhammad, were participating in a hunger strike in Camp 6 and were refusing to leave their cells for force-feedings. As a result, they had been attacked and forcibly extracted from their cells by IRF teams. Mr. Mouhammad reported men being dragged, beaten, and stepped on and their arms and fingers twisted painfully. After twenty days of hunger striking, an individual is forcibly overfed using the feeding tube, a process that is repeated for a number of consecutive days. Once the forcible overfeeding using the tube is interrupted, detainees resume hunger striking. Mr. Mouhammad described that men were vomiting while being overfed. Some of the striking detainees had kept their feeding tubes in their noses even when not being force-fed just to avoid having the tubes painfully reinserted each time. Mr. Mouhammad reported that interrogators were pressuring and coercing the men on hunger strike to eat, making promises that they would be moved to the communal living camp if they began eating. Mr. Mouhammad described these experiences as “torture, torture, torture.”³⁰

Ahmed Abdul Aziz was beaten by an IRF team so badly that he was taken to the hospital on January 8, 2009, after refusing tube feeding. Ahmed Ghappour, his attorney, met with him on January 19, 2009 and could see that his left knee was still visibly injured, bruised, crooked and swollen to at least a third of its normal size. Mr. Abdul Aziz was unable to bend his knee, and his right ankle was swollen, causing him to walk with a limp. His shoulder appeared to be dislocated and he could not lift his arm more than 60 degrees from the waist in any direction. His left thumb was swollen and he was unable to make a grip strong enough to hold a pen. Mr. Ghappour received a letter from Mr. Abdul Aziz in early February 2009 indicating that he had still not received proper medical care for his condition following the beating resulting from his refusal to be force fed.³¹

In contrast to the conditions at Guantánamo, the Bureau of Prison regulations for individuals convicted of crimes provide guidelines for force-feeding hunger strikers, and require that all force-feeding of inmates be humane.³² The World Medical Association, of which the American Medical Association is a part, has also stated that force-feeding is a violation of medical ethics, and that force-feeding that is accompanied by threats, coercion, force and the use of physical restraints is considered inhuman and degrading treatment.³³

Religious Abuse

The men detained at Guantánamo continue to suffer from religious humiliation and the inability to engage in religious practices. Continued religious abuses include the invasion of privacy and unnecessary forced nudity, the denial of the right to pray communally, and the deprivation of a Muslim Chaplain.

New body search procedures in Camps 5 and 6, which are not applied in the Camp 4 communal facility, require detainees to submit to a full body scan or strip search every time they leave their cell for attorney meetings or recreation time. The scanning device reveals a naked image of the detainee's body to the guards. The only alternative detainees have is to submit to a full body strip search, including visual examination of their genitals. To avoid the humiliating and degrading experience of being subjected to these searches, particularly given the highly religious background of detainees, the vast majority of men in Camps 5 and 6 are now refusing to leave their cells for any reason.

One prisoner told his lawyer during a meeting in late January 2009 that the most important condition he and his fellow detainees in Camp 5 on Echo Block wished to have improved was to be allowed the right to pray communally. Prison authorities have stated that the military views the ability of detainees to pray at the same time in their cells as communal prayer and have actually boasted of this, stating that "for the duration of the five separate prayer calls during each day, the feed tray slots of the prayer caller and prayer leader are opened to facilitate even easier communication between detainees in order to conduct prayer call."³⁴ According to detainees, however, these conditions do not sufficiently allow for communal prayer as prescribed by Islam.³⁵

Astoundingly, a Muslim Chaplain has also not been available to provide religious counseling to any detainee at Guantánamo since 2003, despite repeated requests by the detainees. No explanation has been given for this deficiency. In light of the protections of the Geneva Conventions relating to the practice of religion, including the right to receive ministry, it is difficult to imagine the United States detaining individuals of other religious faiths for over seven years without providing them access to religious counseling.

Forced Separation of Family Members and Denial of Adequate Family Communications

Detainees at Guantánamo have been denied access to family members, further heightening their psychological suffering. Only recently have detainees had any telephonic access to family members, and that has been extraordinarily limited. In the rare instances in which detainees of the same family have been detained together, the Department of Defense has prevented, and continues to prevent, related detainees from accessing one another, causing further trauma.

Article 82 of the Fourth Geneva Convention (relative to the Protection of Civilian Persons in Time of War) states that detained family members and "in particular parents and children", are to be detained jointly. However, the Defense Department continues to deny a father and son detained at Guantánamo access to one another. The son, who was a juvenile when initially detained, has been detained in the solitary confinement conditions of Camp 6 while his father remains in Camp 4.

Mohammed Khan Tumani was only 17 years old when he and his father were imprisoned in Guantánamo. They have been held separately and forbidden from any communication for the majority of the seven years of their imprisonment. Mr. Khan Tumani has begged military authorities to let him see his father, but his requests have been denied. A military psychologist who met with Mr. Khan Tumani told him that he needs to be with his father to alleviate his

harmful psychological stress. Instead, his interrogators have ignored this recommendation and continue to inflict severe pressure against Mr. Khan Tumani to provide statements against his father.

The detainee population more generally has had extraordinarily limited access to communication with their family members. The International Committee of the Red Cross facilitates family letters but the one or two page letters take months to reach the imprisoned men's families due primarily to the military's lengthy clearance and redaction procedures. For the first six years of their detention, the men were forbidden from making phone calls to their families, except in the instance of the death of a relative. Now prisoners are allowed only one phone call a year, which is monitored by military authorities. These limited and long-overdue phone calls are entirely inadequate to allow the detained men to maintain their relationships with their families, particularly after six or seven years of almost no communication. The Federal Bureau of Prisons requires in general that inmates be permitted to make at least one telephone call each month. At the federal supermax facility in Florence, Colorado, even prisoners with high security concerns are allowed one to two personal phone calls a month, and those subject to special disciplinary measures are allowed a phone call every 90 days.³⁶

Efforts to Whitewash Inhumane Conditions

“There are no solitary confinement detention areas at JTF-GTMO.”

- Col. Bruce Vargo, Commander of the Joint Detention Group at Guantánamo, February 13, 2009

The Obama administration, to date, has continued to hold to the same posture as the Bush administration in attempting to sanitize the conditions for the men detained in the most restrictive facilities—Camps 5, 6 and Echo. In a declaration made on February 13, 2009, Col. Bruce Vargo, commander of the Joint Detention Group at Guantánamo, stated that:

Detainees in each detention area within JTF-GTMO [the prison at Guantánamo] receive daily opportunities for recreation and regular opportunities to maintain adequate personal hygiene. There are no solitary confinement detention areas at JTF-GTMO. In all detention areas, detainees have regular contact with other detainees, guards, medical corpsmen who visit the cell block on a regular basis, and other personnel involved in the delivery of other services to detainees. Detainees typically are able to communicate with other detainees either face-to-face or by spoken word from their cells throughout the day.³⁷

Col. Vargo's description of Guantánamo is both deeply deceptive and a disturbing signal from the Obama administration. In Camps 5, 6, and Echo, the daily opportunities for recreation referred to by Col. Vargo sometimes take place in the middle of the night. Col. Vargo further stated that in Camp 6, “detainees talk with other detainees in adjoining cells and with detainees housed near them, as well as with guards, medical staff, library and mail delivery personnel. . . .

[W]ith a raised voice an individual at one end of a ‘pod’ [group of 22 cells] can readily and effectively communicate with a detainee on the opposite end of a pod.”³⁸ The opportunities to “communicate” referred to by Vargo, for those detained in Camps 5 and 6, reference the ability to yell through the metal food slot in the solid steel doors of detainees’ cells and through the crack between the door and the floor. This hardly undermines the assertions that detainees remain in solitary confinement without meaningful communication with others.

All of this is designed to obscure the fact that detainees in Camps 5, 6, and Echo - the majority of men at Guantánamo - are held in isolation. The ability to yell underneath a cell door does nothing to mitigate that reality.

In late January and early February 2009, the military command overseeing the base responded to President Obama’s executive order requiring a review of conditions at the base by instituting minor changes that fail to address the fundamental inhumanity of this facility. In Camp 6, for example, a new weekly “movie night” is now offered, where small groups of men have the “privilege” to be chained to a table to view a movie.³⁹ A communal outdoor “recreation” cage surrounded by two-story concrete walls has reportedly been created for compliant men to have “recreation” together for a few hours.⁴⁰ Not only are these new policies or procedures unsatisfactory on paper, but their implementation disregards fundamental harms wrought by the overall isolation, psychological stress, and threat of physical violence that permeates the lives of men detained in Camp 6.

First, even these token measures have not been implemented in any fashion in Camp 5, which remains one of the most inhumane facilities at Guantánamo. Second, while the new Camp 6 procedures may give the impression of improvements, these “privileges” are accessible only to a few men who have been deemed “compliant” by their captors. These token efforts to provide more “privileges” leave in place an overall structure that is impermissibly punitive in nature, in violation of the legal standards for individuals in executive detention.

Men who demonstrate the greatest symptoms of psychological problems as a result of their detention face more restrictive and punitive conditions. Inexplicably, their psychological deterioration is presented as a failure to comply with camp rules, rather than as a medical issue requiring concern and care.

Col. Vargo states that “detainees with psychological issues” are not considered “highly compliant” and are thus kept out of collective housing in Camp 4, as are detainees who are deemed “self harm risks.”⁴¹ People exhibiting symptoms of psychological disturbance from prolonged isolation and arbitrary confinement remain in restrictive detention in Camps 5, 6 and Echo, further preventing their mental health from recovering. The most psychologically vulnerable men in the prison, therefore, are kept in the most coercive and damaging conditions of confinement.

Many, if not the majority, of the men live in daily fear of beatings and punishment due to the frequent and unpredictable use of force by the IRF teams. As the military punishes individuals, the men become more traumatized and symptomatic. The more symptomatic they become, the more the military isolates and abuses them. As this cycle repeats and escalates, the existence of

a “movie night” or similar rewards for men who do not manifest symptoms does little to alleviate the inhumanity of Camp 6 for the majority of the men detained there.

Furthermore, the military command at Guantánamo has shown little interest in following up on reports of physical, psychological and religious abuse of detainees. On December 22, 2008, attorney Ahmed Ghappour requested an investigation and a meeting with the Joint Detention Group overseeing the prison after numerous reports of abuse from the men he represents. Sixty days after his request, in February 2009, he had still not heard a status update, nor had he been able to meet with Col. Vargo to discuss these serious incidents, which include: seven incidents of prisoners being stripped by having their clothes cut from them with scissors or shears, in violation of standard operating procedure; three men, suffering from hemorrhoids, being given toilet paper that had been pepper sprayed, causing severe injury and burning; a man being beaten with a broomstick; a man being pepper sprayed through his cell door, in violation of prison procedure; and a man who was beaten by an IRF team.⁴²

This effort to whitewash Camp 6 and to deny the abusive conditions of confinement at Guantánamo is reminiscent of the military command’s attempt in July and August of 2004 to “improve” the isolation huts in Camp Echo prior to the first meeting between detainees and a civilian attorney, conducted by attorney Gitanjali Gutierrez in September 2004 with British citizens Moazzam Begg and Feroz Abbasi. Mr. Begg and Mr. Abbasi had been held for years in severe isolation in windowless, unventilated huts. In the eight weeks leading up to their first meetings, air conditioning, a new small frosted window and other “improvements” were made to their isolation cells. These cosmetic changes, however, did not eliminate the reality that both men continued to be held in mind-numbing solitary confinement. It was not until the November 2004 district court decision in *Hamdan v. Rumsfeld*,⁴³ which ordered that Mr. Hamdan be held as a prisoner of war, that the men in Camp Echo were moved as a group into a more communal living facility in Camp Delta. After nearly two years of living next to each other in isolation, British citizens Mr. Begg and Mr. Abbasi first met one another face-to-face in Camp Delta. Both were released in January 2005 and are living productive and peaceful lives.

The minor changes to the procedures in Camp 6 fail to alleviate the more systematic and widespread psychological stress and physical injuries suffered by the men detained in this facility due to conditions of confinement that fall well below the standards required by the applicable law.

Recommendations

In the brief interim period while the closure of Guantánamo is being implemented, it is critical that the conditions of detention at Guantánamo be improved. The men held in Camps 5, 6 and Echo desperately need to be moved to facilities with lawful and humane conditions of confinement. These camps are in violation of the Geneva Conventions, the U.S. Constitution, and applicable international human rights law. Physical and psychological abuse must cease and investigations into abusive treatment must be executed promptly and thoroughly.

CCR makes the following recommendations for ensuring that the conditions at Guantánamo satisfy applicable legal standards and comply with the mandate of President Obama’s Executive Order:

1. End solitary confinement and close Camps 5, 6 and Echo

- Camps 5, 6 and Echo should be immediately closed and the men detained in these facilities moved into lawful communal housing appropriate for their status as individuals in nonpunitive custody of the United States.
- Individuals detained in more restrictive conditions of confinement as a consequence of alleged disciplinary infractions must be given adequate process to challenge the accusations of infractions.
- Personal care items and basic necessities should be reclassified from “privileges” to necessities. Interrogators must no longer control detainees’ access to these items, including but not limited to toothpaste, toothbrushes, deodorant, soap, sleeping mat and blankets.

2. End religious abuse of detainees

- End the use of the scanning machine that shows images of the men’s naked bodies in Camps 5 and 6, which constitutes degrading and humiliating treatment and an inappropriate invasion of privacy.
- Immediately redress the violations of detainees’ right to practice their religion freely by allowing communal prayer and assign a Muslim Chaplain to Guantánamo.

3. End physical and psychological abuse of detainees and end the use of the Immediate Reaction Force (IRF)

- End the use of temperature manipulation, and sleep deprivation, including through constant exposure to light.
- Allow regular and unrestricted access to fresh air and sunlight during daylight hours.
- Thoroughly and fully investigate all abuses reported at Guantánamo, and prosecute those responsible for violations of detainees’ rights.

4. End the feeding of individuals against their will or under coercive circumstances. For individuals who freely and knowingly consent to artificial feeding, provide them with artificial feeding procedures that are medically appropriate, ethical, and humane.

5. Allow detainees immediate access to independent medical and psychological professionals and cease the practice of forcible medication of detainees.

6. Cease illegal interrogations

7. Allow access to detainees by independent domestic and international human rights observers.

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- ¹ Rebecca Dick, unclassified attorney notes, cited in Center for Constitutional Rights, “Solitary Confinement at Guantanamo Bay,” available at <http://ccrjustice.org/learn-more/faqs/solitary-confinement-guantanamo-bay>.
- ² Executive Order, “Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities,” January 22, 2009.
- ³ These treaties include the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights, and other international instruments that help interpret the provisions of those treaties, including the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.
- ⁴ Prior CCR reports concerning the conditions for men detained at Guantánamo include *Report on Torture and Cruel, Inhuman, and Degrading Treatment of Prisoners at Guantánamo Bay, Cuba* (Jul. 2006) and *The Guantánamo Prisoner Hunger Strikes & Protests: February 2002-August 2005* (Sept. 2005).
- ⁵ Center for Constitutional Rights, “Solitary Confinement at Guantanamo Bay,” available at <http://ccrjustice.org/learn-more/faqs/solitary-confinement-guantanamo-bay>
- ⁶ William Glaberson, *Detainees’ Mental Health is Latest Legal Battle*, NEW YORK TIMES, April 26, 2008; Ben Fox, *GTMO’s Camp 6: extra privacy or harsh isolation?*, AP, February 4, 2007.
- ⁷ See Efforts to Whitewash Conditions at Guantánamo, *infra*.
- ⁸ Federal Public Defender, Jan. 22, 2009 Unclassified Attorney Notes (on file with the author).
- ⁹ Gitanjali Gutierrez, Jan. 3, 2009 Unclassified Attorney Notes Regarding Mohammed Khan Tumani (on file with author).
- ¹⁰ Sabin Willett, Testimony to the House Committee on Foreign Affairs’ Subcommittee on International Organizations, Human Rights and Oversight, May 20, 2008.
- ¹¹ Gitanjali Gutierrez, Jan. 4, 2009 Unclassified Attorney Notes Regarding Mohammed Taher (on file with author).
- ¹² *Parhat v. Gates*, No. 06-1397 (D.C. Cir. Jan. 20, 2007) (Decl. of Sabin Willett at ¶ 20).
- ¹³ *Id.* at ¶¶ 25, 26.
- ¹⁴ Warren Richey, *The Case of the Guantanamo Detainee Who Wanted to See the Sun*, CHRISTIAN SCIENCE MONITOR, Feb. 23, 2009
- ¹⁵ Federal Public Defender, Jan. 22, 2009 Unclassified Attorney Notes (on file with author).
- ¹⁶ Brent Mickum, *Guantánamo’s Lost Souls*, THE GUARDIAN, Jan. 8, 2007.
- ¹⁷ David Remes, Jan. 18, 2009 Unclassified Attorney Notes Regarding Yasin Ismail (on file with author). Gitanjali Gutierrez, Jan. 8, 2009 Unclassified Attorney Notes Regarding Mohammed Khan Tumani (on file with author).
- ¹⁸ The name of this individual has been changed to protect his identity.
- ¹⁹ The name of this individual has been changed to protect his identity.
- ²⁰ Sarah Havens, January 13, 2009 Unclassified attorney notes.
- ²¹ Gitanjali Gutierrez, Jan. 4, 2009 Unclassified Attorney Notes Regarding Mohammed Taher (on file with author).
- ²² 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 *Cruel and inhuman: Conditions of isolation for detainees at Guantánamo Bay*, AMNESTY INT’L 4, April 5, 2007.
- ²³ Gitanjali Gutierrez, Jan. 8, 2009 Unclassified Attorney Notes Regarding Mohammed Khan Tumani (on file with author).
- ²⁴ Gitanjali Gutierrez, Jan. 3 and 8, 2009, Unclassified Attorney Notes Regarding Mohammed Khan Tumani (on file with author).
- ²⁵ Pardiss Kebriaei, Feb. 5, 2009 Unclassified Attorney Notes Regarding Mohammed Khan Tumani (on file with author).
- ²⁶ See Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, Journal of Law & Policy, Vol. 22:325 (2006), 351. Attorney Clive Stafford Smith reported that “[my client] smeared feces on his cell walls. When I asked him why . . . , he told me he had no idea.” William Glaberson, *Detainees’ Mental Health is Latest Legal Battle*, NEW YORK TIMES, April 26, 2008.
- ²⁷ Richard Norton-Taylor, *Lawyer of Alleged Torture Victim Makes Plea to MPs*, The Guardian, Feb. 10, 2009.
- ²⁸ Center for Constitutional Rights, *The Guantanamo Prisoner Hunger Strikes and Protests: February 2002 – August 2005* (September 2005), available at

<http://ccrjustice.org/files/Final%20Hunger%20Strike%20Report%20Sept%202005.pdf> and *Al-Zahrani, et al., v. Rumsfeld, et al.*, No. 09-cv-00028 (D.C. Cir. Jan. 29, 2009) (Amended Complaint at ¶ 66)

²⁹ Adam Zagorin, *At Guantanamo, Dying is not Permitted*, TIME, Jun. 30, 2006. available at <http://www.time.com/time/nation/article/0,8599,1209530,00.html>.

³⁰ Matthew O'Hara, Feb. 3, 2009 Unclassified Attorney Notes Regarding Maasoum Abdah Mouhammad (on file with author).

³¹ Ahmed Ghappour, Unclassified Attorney Notes regarding Ahmed Abdul Aziz (on file with author).

³² Bureau of Prisons, *Hunger Strikers*, 5562.005, July 29, 2005, available at http://www.bop.gov/policy/progstat/5562_005.pdf.

³³ World Medical Association Declaration on Hunger Strikers, art. 21, Oct. 2006, available at <http://www.wma.net/e/policy/h31.htm>.

³⁴ *Khan Tumani v. Obama*, No. 05-cv-526 (D.C. Cir. Feb. 13, 2009) (Declaration of Bruce E. Vargo at ¶ 8).

³⁵ Federal Public Defender, Jan. 22, 2009 Unclassified Attorney Notes (on file with author).

³⁶ See Telephone Regulations for Inmates, 28 C.F.R. § 540.100. See United States Penitentiary, Administrative Maximum Facility, Florence, Colorado, "Telephone Regulations for Inmates," Institutional Supplement, FLM 5264.07D, April 20, 2007, pp. 3-4; United States Penitentiary, Administrative Maximum Facility, Florence, Colorado, "Visiting Procedures," Institutional Supplement, FLM 5267.08A, March 5, 2008, p. 1.

³⁷ *Khan Tumani v. Obama*, No. 05-cv-526 (D.C. Cir. Feb. 13, 2009) (Declaration of Bruce E. Vargo at ¶ 4).

³⁸ *Id.* at ¶ 8.

³⁹ Candace Gorman, Feb. 4, 2009 Unclassified Attorney Notes (on file with author); Pardiss Kebriaei, Nov. 11, 2008 Unclassified Attorney Notes (on file with author).

⁴⁰ Candace Gorman, Feb. 4, 2009 Unclassified Attorney Notes (on file with author).

⁴¹ *Khan Tumani v. Obama*, No. 05-cv-526 (D.C. Cir. Feb. 13, 2009) (Declaration of Bruce E. Vargo at ¶¶ 11-12).

⁴² Ahmed Ghappour, Unclassified Attorney Notes (on file with author).

⁴³ F. Supp. 2d 152 (D.D.C. 2004), *rev'd* 415 F. 3d 33 (D.C. Cir.), *rev'd* 548 U.S. 557 (2008).