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Barack Obama wins U.S. Presidential election, says will close Guantánamo

Barack Obama, the Democratic candidate for president of the United States, was victorious in the U.S. elections on November 4, 2008 over John McCain, the Republican contender. Obama has pledged to close Guantánamo, has supported habeas corpus and has denounced torture in the past. President-Elect Obama has indicated that closing the prison camp at Guantánamo Bay will be a priority for his administration.

Obama, who will take office on January 20, 2009, is the first Black president of the United States. He pledged during the campaign to oppose many of the abuses of the Bush administration. Advocacy groups are calling upon him to act quickly to sign executive orders closing Guantánamo and ending torture.

5 of 6 detainees in Boumediene case ordered released in court hearing; 3 already returned to Bosnia; other releases from Guantánamo in November and December

On November 20, 2008, a federal judge, Richard Leon, ordered the release of 5 of 6 petitioners in *Boumediene v. Bush*. The Boumediene petitioners' case is the one that reached the United States Supreme Court, prompting its June ruling that Guantánamo Bay detainees have a constitutional right to challenge their detention in a court of law.

Leon, a judge appointed by President George W. Bush, ruled that the government had insufficient evidence to detain 5 of the 6 men, Bosnians originally from Algeria. Judge Leon ordered their re-

lease. The six men were arrested by the Bosnian government at the behest of the U.S., then exonerated by the Bosnian high court in 2002. Instead of being released, however, the men were turned over to the U.S. and sent to Guantánamo. They were never charged with a crime by either the Bosnian or U.S. governments.

Three of the men, Mustafa Ait Idir, Hadj Boudella, and Mohamed Nechla, were returned to Sarajevo, Bosnia, on December 16, 2008. The two other men ordered released, Saber Lahmar and Lakhdar Boumediene, remain at Guantánamo.

Most of the over 200 habeas challenges filed by the men at Guantánamo are currently now proceeding before different judges. The *Boumediene* case proceeded quickly as it was filed early and was before one of two judges who proceeded independently without coordination after the June Supreme Court decision. Of the 23 Guantánamo prisoners to have received a ruling in their habeas case, 22 have been ordered released.

Also in November and December 2008, several other men were released from Guantánamo, including [1 Tajik, 2 Algerians?, ???].

Countries indicate increasing willingness to accept Guantánamo refugees

In a significant breakthrough for the approximately 50 men held at Guantánamo who cannot return to their home countries due to fears of persecution or torture, or because they do not have countries of nationality, several countries have demonstrated an increasing willingness to consider accepting

them into their borders.

On December 11, 2008, Portuguese Foreign Minister Luis Amado said that Portugal is willing to accept Guantánamo detainees who cannot return to their home countries and urged other European Union countries to follow suit. Subsequently other countries have announced their renewed consideration of the request to accept the stranded Guantánamo detainees. These countries include Switzerland, France, Germany, Sweden and Australia.

Thus far, only Albania has accepted refugees from Guantánamo, accepting eight men in 2006. The United States has thus far resisted an October 2008 judicial order that the seventeen Uighurs, men of a Muslim ethnic minority from China, still imprisoned as non-enemy combatants in Guantánamo, be released into the United States. The U.S. government has also claimed that it cannot find other safe third countries to accept the Guantánamo detainees at risk for persecution.

Senate Armed Services Committee report indicates responsibility of U.S. government officials for torture

On December 11, 2008, the Senate Armed Services Committee released a bipartisan report on the abuse of detainees in U.S. custody. The report affirmed that high-ranking Bush administration officials, including former Secretary of Defense Donald Rumsfeld, were directly responsible for the abuse and torture of detainees in Guantánamo, Iraq, and Afghanistan. The report also documented military lawyers' opposition to torture and cruel, inhuman and degrading treatment during interrogation as unethical and ineffective.

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The report was also highly critical of the information obtained from interrogation under torture, noting that these tactics have been used to extract false confessions.

Lawsuit challenging conditions at Guantánamo reinstated by Supreme Court

The U.S. Supreme Court on December 12 directed the Circuit Court to review its prior decision dismissing the first lawsuit challenging torture and violations of religious freedom at Guantánamo. The Supreme Court ordered a federal appeals court to reconsider its previous decision dismissing the case of *Rasul v. Myers* in light of the Supreme Court's June 2008 decision in *Boumediene v. Bush*. The *Boumediene* decision recognized the constitutional right of Guantánamo detainees to challenge their detention in a federal court.

Rasul v. Myers, filed on behalf of four British former Guantánamo detainees, challenges their wrongful detention and the abuses to which they were subjected. The men, who were neither accused of terrorism nor designated "enemy combatants," were systematically beaten, threatened with unmuzzled dogs, subjected to extremes of hot and cold and harassed in their practice of religion, including having their Korans thrown in filthy toilet buckets and having ear-splitting music played during prayer time.

The appeals court which heard their case issued a troubling decision in January 2008. The appellate court's decision held that Guantánamo detainees had no rights under the Constitution clearly established at the time the abuses were committed, and that torture was foreseeable in the context of interrogation and detention and within the scope of employment of

government officials. The court also ruled that the detainees were not entitled to protection under Religious Freedom Restoration Act (RFRA), which protects all "persons" in the exercise of their religion because Guantánamo detainees are not "persons" as defined by RFRA.

Report released following up on released detainees

A new report details the effect of detention and abuse at Guantánamo upon the lives of 62 released detainees. The report, *Guantánamo and Its Aftermath: U.S. Detention and Interrogation Practices and Their Impact on Detainees*, was released in November 2008 by human rights experts at the University of California, Berkeley in partnership with the Center for Constitutional Rights (CCR).

The report is based on a two-year study. Researchers conducted interviews with released detainees in nine countries. Almost two-thirds of the former detainees interviewed reported having psychological problems since leaving Guantánamo. Over half of the study respondents who discussed their interrogation sessions at Guantánamo characterized them as "abusive." Detainees reported being subjected to short shackling, stress positions, prolonged solitary confinement, and exposure to extreme temperatures, loud music, and strobe lights for extended periods—often simultaneously.

Of the more than 770 detainees who have endured Guantánamo since it opened in 2002, over 500 have been released without charge or trial. So far, of the 250 or more who remain in detention, only 23 have been charged with a crime. In nearly seven years, only three men have been convicted including one who pled guilty. The first two men convicted have been released and are now free.

Military Commissions Updates

The Department of Defense filed military commissions charges on December 16, 2008 against two men, Noor Uthman Muhammed and Tariq Mahmoud Ahmed al-Sawah. Muhammed is accused of conspiracy and providing support for terrorism and al-Sawah is charged with providing support for terrorism and conspiring against U.S. and coalition forces. In addition, on December 20, the Defense Department announced that it planned to proceed with capital charges against Abdel Rahim al-Nashiri, who is accused of participating in the bombing of the USS Cole warship in 2000.

Many human rights advocates have called upon the Defense Department to cease military commissions proceedings before the inauguration of President-Elect Obama. Obama's transition team has indicated opposition to the military commissions, and human rights advocates see these charges filed in the last days of the Bush administration as an attempt to keep the commission system alive despite the incoming administration's opposition.

about the news briefing..

This news briefing is produced monthly by the Center for Constitutional Rights, which coordinates the representation of detainees at Guantánamo Bay with a network of over 500 pro bono habeas counsel. It is translated into Arabic and Dari and is available online at

<http://www.ccrjustice.org/learn-more/reports/Guantanamo-newsletter>

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