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U.S. government seeks death penalty against six detainees in military commissions

On February 11, 2008, the U.S. government announced that it was filing charges against six individuals in the military commissions, and seeking the death penalty against these detainees. The six detainees charged are: Khalid Sheikh Mohammed, Walid Muhammad Salih Mubarek Bin 'Attash, Ramzi Binalshibh, Ali Abdul Aziz Ali, Mustafa Ahmed Adam al Hawsawi and Mohammed al Qahtani.

Al-Qahtani is the Guantanamo detainee whose leaked interrogation log helped to shed light on the use of torture and cruel, inhumane and degrading treatment at Guantanamo Bay. The leaked log of the interrogation of Al-Qahtani, in which interrogators used "enhanced interrogation methods," revealed the use of beatings, severe sleep deprivation, sexual humiliation, threats of rendition to countries where he would be tortured or executed, abusive exposure to prolonged cold temperatures and loud music, attacks by dogs, religious abuse and over 160 days of severe isolation. against Al Qahtani.

The military commissions allow for the use of evidence obtained through coercion, as well as classified and secret evidence, and there is a high likelihood that torture evidence will be allowed into the commissions. If the charges are approved by the military authorities, these six detainees will be facing the death penalty in the commissions, despite the fact that many protections provided to criminal defendants or soldiers facing court-martial do not exist for defendants in military commissions, and there is a real potential for the execution of detainees based on torture evidence and secret evidence.

U.S. Congress votes to prohibit waterboarding and other forms of torture

As part of the intelligence authorization bill, which permits U.S. government spending on

intelligence agencies and related expenses, the U.S. Senate voted on February 13, 2008 to prohibit U.S. intelligence agencies, including the Central Intelligence Agency (CIA), from using techniques not allowed by a procedures manual for U.S. military personnel, the Army Field Manual. The manual prohibits harsh interrogation techniques such as waterboarding and other forms of torture and cruel, inhumane and degrading treatment. The U.S. House of Representatives had already voted to support the bill.

However, President Bush has threatened to veto the bill. In secret CIA detention, Guantánamo and in other detention facilities, it is known that many forms of coercive interrogation prohibited by the U.S. Army Field Manual have been used over the last six years. The Bush administration has refused to acknowledge that waterboarding is torture, and has stated that although the CIA used waterboarding in the past, it may not do so at present, but may use waterboarding again in the future should it be approved by the president. Waterboarding is a form of torture that induces drowning in a victim.

Bush Administration Appeals to Supreme Court in Bismullah Case

The Bush Administration filed an appeal in the U.S. Supreme Court on February 14, 2008, seeking to halt a court order requiring it to produce full information about how and why Guantanamo detainees were classified as "enemy combatants."

In *Bismullah v. Gates*, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the government must turn over to detainees challenging their classification under the Detainee Treatment Act all of the information that its tribunals - the Combatant Status Review Tribunals - considered in determining detainees to be "enemy combatants."

When the government argued that it had not preserved all of this evidence, the court stated that the government could convene new tribunals in such circumstances.

Bismullah v. Gates is an appeal under the Detainee Treatment Act, utilizing the DTA's appeal process in an attempt to reverse the classifications of the detainees bringing the appeal. It is a separate case from *Al Odah/Boumediene*, the case currently pending before the U.S. Supreme Court, that challenges the DTA and the Military Commissions Act's attempt to strip the right to habeas corpus hearings from detainees. The Supreme Court ruled in 2004 in *Rasul v. Bush* that the Guantanamo detainees have a right to habeas corpus hearings, challenging their detention in a court of law.

Yemen Conference Convenes to Advocate for Repatriation of Yemeni Detainees

An international conference, "Let Our People Go," was convened in Sana'a, Yemen, on January 9-10, 2008. The conference was convened in order to share information about the status of Yemeni detainees and develop a strategy to secure their trial or release.

The conference was widely attended by over 200 enthusiastic participants, including the Yemeni Minister for Foreign Affairs and the Minister for Human Rights. 64 Yemeni imams attended the conference, pledging to preach about a peaceful resolution to the plight of the prisoners at Friday prayers, and for each mosque to adopt one of the remaining 100 Yemeni detainees. 60 family members of Guantanamo detainees also attended the conference, as did 6 former detainees, including one former "ghost" detainee who spoke about his experience in CIA secret prison. A number of Members of Parliament attended, as did many local NGOs, coordinated by HOOD, a Yemeni NGO.

European Parliament calls for the European Union to Offer Humanitarian Protection to Guantanamo's Refugees

On December 12, 2007, the European Parliament adopted an amendment that calls for the European Union countries to
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work towards offering humanitarian protection to Guantánamo detainees who cannot return to their home countries for fear of torture. The resolution calls for the European Commission and the Council of Europe to "launch an initiative at the European and international level for the resettlement of Guantánamo prisoners from third states that cannot be returned to their countries of origin because they risk being persecuted or tortured." On February 28, 2008, a joint committee meeting in the European Parliament convened to hear further appeals for the European Union to offer humanitarian protection to refugees unable to return to their home countries.

There are approximately 50 detainees at Guantánamo from "high-risk" countries where, should they be forcibly returned, they would be in danger of persecution or torture. To date, Albania - one of the poorest countries in Europe - has been the only country that has accepted a small number of Guantánamo's refugees who could not safely be returned to their home countries. In early August, in a landmark policy change, the British government also called for the release of five non-citizens currently detained in Guantánamo. Three of these men were released to Britain in December 2007.

Protests around the world mark sixth anniversary of Guantánamo camp

On January 11, 2008, protests and actions held around the world marked the sixth anniversary of the arrival of the first prisoners at the detention camp at the US Naval Base at Guantánamo Bay. Protests were held in major cities around the world and across the United States.

These protests were organized by many groups and organizations, including the Center for Constitutional Rights, Witness Against Torture, Amnesty International and the International Federation for Human Rights-over 100 groups in total. In Washington, DC, 400 protesters gathered for an outdoor rally, followed by a solemn march led by protesters clad in orange jumpsuits and black hoods to the U.S. Supreme Court. At the U.S. Supreme Court, 80 protesters who stood on the

steps of the Supreme Court or entered the Court building and spoke about the plight of the Guantánamo detainees, were arrested in a civil disobedience action.

Former chief prosecutor Morris Davis to serve as witness for Salim Hamdan in military commission

In a surprising turn of events, on February 21, 2008, former chief prosecutor at Guantánamo Morris Davis stated that he would serve as a defense witness for detainee Salim Hamdan, who is currently facing a military commission. Air Force Col. Morris Davis has described repeated political interference in the military commissions process. Hamdan's lawyers will challenge the validity of the commissions process due to such political interference.

Hamdan is charged with conspiracy and providing material support to terrorism. It was in his challenge to the initial military commissions process, Hamdan v. Rumsfeld, that the Supreme Court declared the first military commissions process to be invalid and upheld the Geneva Conventions rights of detainees.

In addition, Hamdan is seeking to introduce evidence and written testimony from former CIA ghost detainees that his attorneys argue prove that his actions were minor.

Exculpatory evidence revealed at Omar Khadr military commission, although child soldier expert denied access

Recent events have raised more controversy regarding the validity of military commission charges against Canadian citizen Omar Khadr, who was only 15 when he was detained by the U.S. in 2002. Khadr should be recognized by treaty as a child soldier requiring protection, but he could face a life sentence for charges of murder, conspiracy and material support for terrorism. However, on February 5, 2008, the commission reviewed a document that was accidentally released to the public, that indicated that a U.S. soldier did not know whether it

was Khadr or another man who threw the grenade that killed a U.S. soldier in a battle.

On January 24, 2008, the U.S. government rejected a request by a leading United Nations child soldier expert to attend the Khadr military commission. Khadr's attorneys have petitioned to dismiss the case against him based on his protected status, but the judge in the military commission has not yet ruled on the motion.

Court Refers Motion on Treatment of Former Ghost Detainee for Arguments

On February 15, 2008, a U.S. federal appeals court referred a motion made on behalf of Majid Khan, former CIA "ghost detainee" held at secret black sites before his transfer to Guantánamo Bay in 2006, to judges who will hear arguments about the preservation of evidence relating to torture and whether the treatment of Khan constituted torture.

In December, the same appeals court issued a preliminary order requiring the government to preserve evidence of interrogations, just days after the CIA revealed it destroyed hundreds of hours of videotapes of interrogations of at least two men held in CIA secret detention.

Majid Khan was taken from Pakistan in 2003, and spent three and a half years in secret CIA prisons before being transferred to Guantánamo in September 2006. In the first meetings between Mr. Khan and his attorneys at Guantánamo in October 2007, his attorneys learned extensive details about his treatment and his current conditions.

President Fidel Castro declines to run for a new term in Cuba; Raul Castro elected President

On February 24, 2008, Raul Castro was elected the new President of Cuba, following a public letter by former President Fidel Castro on February 19, 2008, in which he declined to run for any additional government office in Cuba.

Fidel Castro has served as President of

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Cuba since the 1959 revolution that overthrew the U.S.-friendly Batista regime and established Cuba as a socialist country. The Cuban government has argued since 1959 that the U.S. military base at Guantanamo Bay is an invalid occupation of Cuban territory, and refuses to cash checks paid by the U.S. government for rent of the facility or provide electricity, water, or other services to the base.

Judges Dismiss Suit Seeking Damages for Guantanamo Torture

On January 11, 2008, an appeals court in Washington, D.C. dismissed a lawsuit brought by four former British detainees against former U.S. Defense Secretary Donald Rumsfeld and senior military officers for ordering torture and religious abuse. The British detainees - Shafiq Rasul, Asif Iqbal, Ruhel Ahmed and Jamal Al-Harith - spent more than two years in Guantánamo and were released to the U.K. in 2004. They suffered abuses in Afghanistan and Guantánamo before their release.

The court dismissed the complaint which asserted that the U.S. officials had violated the U.S. Constitution, international law, and a U.S. statute that protects religious expression. In a controversial and disappointing decision, the court ruled that the Religious Freedom Restoration Act did not apply to detainees at Guantánamo. The Court ruled that the defendants had not violated the law because "torture is a foreseeable consequence of the military's detention of suspected enemy combatants." Finally, the Court found that, even if torture and religious abuse were illegal U.S. law, defendants could not be held responsible because they could not have reasonably known that U.S. law applied to the detainees at Guantánamo.

Eric Lewis, an attorney for the plaintiffs, said "It is an awful day for our tradition

of respect for religious freedom and for our moral standing in the world when a court finds that these detainees are not 'persons' whose rights to observe their religion with dignity and without harassment are worthy of protection."

Death of Abdul Razzaq Hekmati at Guantanamo

On December 30, 2007, Afghan detainee Abdul Razzaq Hekmati died of cancer at the Guantanamo Bay Naval Base, the first detainee thought to have died of natural causes - although his death was certainly hastened by his detention and poor medical treatment. Hekmati, a long-time opponent of the Taliban government in Afghanistan, had lived in exile from the Taliban since 1999, only returning to Afghanistan in 2002 after the U.S. invasion, the fall of the Taliban government, and the installation of the Karzai regime.

Despite his record of strong opposition to the Taliban, he was arrested by local political and family rivals and turned over to the United States, possibly in return for a bounty. An investigative report published in the New York Times on February 5, 2007, revealed that his attempts to call witnesses to prove his accounts of his experiences in Afghanistan were foiled by the government's process of reviewing detainees at Guantanamo, where he was held for nearly six years despite alliances with high-profile members of the U.S. backed Karzai government in Afghanistan and his record of opposition to the Taliban, before he died.

The inadequacy of medical care at Guantanamo Bay has been raised on numerous occasions by attorneys for sick and ill detainees needing more extensive medical care.

Releases from Guantanamo

In December 2007, 10 Saudis were released from Guantanamo and re-

turned to Saudi Arabia, leaving only 12 Saudis in Guantánamo in March 2008. In addition, two Sudanese aid workers, Adel Hassan Hamad and Salim Muhood Adem, were released in December as well and returned home to their families, where they have since recounted their experiences and demanded compensation for their years of unjust imprisonment. Also, three British residents, Omar Deghayes, Jamil el-Banna and Abdennour Sameur, were released in December to the United Kingdom. The British government, after years of refusing to call for the release of its non-citizen residents, appealed to the U.S. government to release the men. Deghayes and el-Banna are currently fighting Spanish attempts to extradite them to Spain, and all three are home with their families. Approximately 275 detainees remain at Guantanamo Bay Naval Base.

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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