

Statement of Members of the Human Rights and Security Coalition
on
“Closing Guantánamo: Ending 20 Years of Injustice”
Before the Senate Judiciary Committee
December 7, 2021

The undersigned members of the Human Rights and Security Coalition are pleased to submit this statement for the Committee’s December 7, 2021 hearing: Closing Guantánamo: Ending 20 Years of Injustice.

Our coalition seeks to ensure that the United States’ national security policies abide by its human rights obligations. It does so by promoting transparency, accountability, and oversight in furtherance of our collective human security.

Currently, our coalition is working to dismantle the war-based policy and legal architecture that has led to endless war, unlawful killing, unlawful detention, torture, conflict, mass displacement, and other abuses particularly against Muslim, Brown and Black communities abroad. We recognize these policies also harmfully impact communities in the United States, and seek to highlight those connections.

Guantánamo: 20 Years of Injustice

On January 11, 2022, the detention facility at the U.S. Naval Base in Guantánamo Bay, Cuba will mark its 20th year. Nearly eight hundred Muslim men and boys have been held at Guantánamo since 2002, all but a handful without charge or trial. Thirty-nine remain, at the astronomical cost of \$540 million per year, making Guantánamo the most expensive prison in the world. Thirteen of them have been recommended for resettlement or repatriation by the administrative review process known as the Periodic Review Board (“PRB”).

Many of the remaining men are torture survivors, some formerly disappeared at “black sites” before being sent to Guantánamo. All of them have been exposed to the [physical and psychological trauma](#) associated with prolonged indefinite detention. They are also aging rapidly and [increasingly exhibiting](#) complex medical conditions that staff at Guantánamo are not equipped to manage.

Among a broad range of human rights violations perpetrated against predominantly Muslim communities, Guantánamo – which was designed specifically to evade legal constraints, and where Bush administration officials incubated torture – is the iconic example of the post-9/11 abandonment of the rule of law. Guantánamo embodies the fact that, for nearly two decades following the September 11, 2001 attacks, the United States government has viewed communities of color – citizens and non-citizens alike – through a security threat lens, to devastating consequences. This is not a problem of the past. Guantánamo continues to cause escalating and profound damage to the men who still languish there, and the approach it exemplifies continues to fuel and justify bigotry, stereotyping, and stigma. Guantánamo

entrenches racial divisions and racism more broadly, and risks facilitating additional rights violations.

The illegitimate and fundamentally broken military commission system, which operates almost entirely outside of public view, is one of Guantánamo's core features. This system was established out of whole cloth purportedly to bring justice for 9/11, but it has produced [the opposite](#). For example, as Georgetown University Law professor David Luban has correctly observed:

It is hardly news that Military Commissions have been dogged by one scandal after another, beginning as early as 2004 when [a veteran Marine Corps prosecutor withdrew](#) because he became convinced that he would have to present evidence obtained through torture. There was [the hearing blacked out to observers](#) by someone unknown to the judge, the moment the CIA black sites were mentioned; there was the interpreter detailed to the defense team who had [previously worked for the CIA at a black site](#); there were the [microphones disguised as smoke detectors](#) installed in attorney-client interview rooms; and the prohibition on defense counsel doing independent investigations of the torture program; and so many more.

It is not surprising, then, that the commissions' eight convictions have mostly been [overturned](#) in whole or in part on appeal. Those results have cost, according to [government auditors](#), \$679.6 million from 2012 to 2018 alone. The Defense Department has [said](#) it plans to spend \$1 billion more through at least 2023.

The Department of Justice is Obstructing Guantánamo's Closure

It is appropriate for the Senate Judiciary Committee to be holding this hearing because the Department of Justice ("DOJ" or "the Department") has an important role to play in closing Guantánamo – including ending indefinite detention without charge or trial – and the military commissions. We are dismayed that instead the Department continues to obstruct that goal – both directly and through its participation in unjust military commissions proceedings – and otherwise to undermine President Biden's stated commitments to [human rights](#) and [human dignity](#).

For example, notwithstanding nearly two decades of imprisonment, DOJ continues to refuse to acknowledge that due process under the Constitution applies to the men at Guantánamo, a position that many Committee Members, led by Chairman Durbin, have rightly criticized. And it has done so in a case where it is opposing release of a man – Abdulsalam Ali Abdulrahman Al-Hela – who the PRB (on which the Justice Department sits, and which operates by consensus) *has already recommended for transfer*. Mr. Al-Hela's case is not the only such case that DOJ continues to fight, and in so doing makes these men's transfers more difficult.

Nothing prevents the Department from instead standing down in these cases, as it [has before](#), in order to facilitate transfers.

Justice Department lawyers detailed to the military commissions have acted particularly egregiously, participating in [efforts](#) to use torture-derived evidence in a capital prosecution. Use

of torture-derived evidence violates black letter law, and also flatly contradicts public declarations that both the Biden administration and previous administrations have [made](#) affirming the government's unequivocal commitment to exclude torture-derived statements from military commissions.

Rather than expending time and resources on violating the prohibition of torture, the Justice Department could be working with the Office of the Convening Authority (which is responsible for the overall management of the military commissions process), and the military commissions' chief prosecutor, to bring the commissions swiftly to a close in a way that is least unjust for all involved.

Conclusion

Putting an end to the [extralegal, abhorrent, and wasteful](#) policies and practices with which Guantánamo will forever be synonymous is a human rights obligation, a moral responsibility, and a national security imperative. That is why calls for Guantánamo's closure have ranged from the [military](#) to [medical professionals](#); [international jurists](#) to [local activists](#); [organizations](#) with focusses on human rights, civil liberties, immigrants' rights, racial justice, anti-Muslim discrimination, and more; to the late Senator John McCain.

We commend the Committee for its attention to the U.S military prison at Guantánamo Bay, and urge continued oversight. It is important to note that the overwhelming majority of work necessary to close Guantánamo – especially the steps that are most pressing – can and should be done by the Biden administration using its current authorities. Specifically, Congress does not need to act either for the administration to transfer men out, or for it to change course in the military commissions. It is clear, however, given the minimal progress the administration has made toward closing Guantánamo, that Members must hold the administration accountable for fulfilling President Biden's pledge to do so.

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