



December 18, 2006

Dr. Robert M. Gates
 Secretary of Defense
 United States Department of Defense
 400 Army Navy Drive
 Arlington, VA 22202-4704

Dear Secretary Gates:

On behalf of the American Civil Liberties Union (ACLU), we welcome you as the new Secretary of Defense. Our standing in the world and our commitment to the cherished values of freedom, human rights and the rule of law will depend largely on the path taken by the Department of Defense (DOD) under your leadership, particularly with regard to the treatment of detainees in U.S. custody and full and impartial accountability for acts of torture and abuse which have tarnished our nation's image worldwide. We are confident that adherence to the letter and spirit of U.S. and international law that squarely prohibit torture and abuse will make America stronger and more effective in its mission to ensure both safety and freedom.

The ACLU was appalled to see images in *The New York Times* two weeks ago of the sensory deprivation devices used on Jose Padilla at the South Carolina Naval Brig.¹ The photographs showed Mr. Padilla wearing blacked-out goggles and headphones that block out noise. The use of such sensory deprivation methods constitutes unlawful cruel, inhuman or degrading treatment, and when used in combination with Mr. Padilla's prolonged incommunicado detention, may amount to torture. The use of sensory deprivation techniques against Mr. Padilla was reportedly confirmed in the Navy's inspector general report from 2004 which came to light last week.²

According to a summary of the report, the three detainees who were held at different times as "enemy combatants" in the United States, Mr. Padilla, Ali Saleh al-Marri and Yaser Hamdi, have been subjected to sleep deprivation, denial of basic human conditions "as part of interrogation plan," isolation and denial of access to the International Committee of the Red Cross.³

In a motion filed by Mr. Padilla's lawyers in the U.S. District Court of the Southern District of Florida in October 2006, the lawyers describe in detail the inhumane treatment to which Mr. Padilla was subjected during the three

¹ Deborah Sontag, *Video is a Window into a Terror Suspect's Isolation*, N.Y. TIMES, Dec. 4, 2006.

² Carol D. Leonnig, *'04 Pentagon Report Cited Detention Concerns*, WASH. POST, Dec. 14, 2006.

³ *Id.*

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years and eight months he was held at the Naval Brig as an “enemy combatant.” According to his lawyers, Mr. Padilla was housed in complete isolation without any human contact for over two years, with the exception of interrogations and food delivery. He was reportedly housed in a cell without any natural light and was refused regular access to outdoor recreation or showers. In addition, Mr. Padilla was subjected to sleep deprivation techniques by guards who allegedly opened and slammed his door as he began to fall asleep on his metal bunk, often without a mattress, and at times, in extreme temperatures. Worse yet, Mr. Padilla’s lawyers reported that he was forced to take some form of lysergic acid diethylamide (LSD) or phencyclidine (PCP) during his interrogations.⁴

The cruel and inhumane treatment described by Mr. Padilla’s lawyers in his October motion seems to be consistent with the evidence of abuse shown in the photographs of Mr. Padilla released two weeks ago. In addition, Mr. al-Marri, the Qatari citizen who continues to be held without charge as an “enemy combatant” at the same South Carolina Naval Brig, has described similar treatment.⁵

This treatment, as described, seems designed to undermine Mr. Padilla’s sanity, primarily by imposing a regime of sensory deprivation. The prolonged isolation to which Mr. Padilla and others were subjected has severe mental health consequences and constitutes cruel, inhuman or degrading treatment or punishment, which may amount to torture. According to mental health experts, sensory deprivation causes symptoms that include “an inability to concentrate, heightened anxiety, intermittent disorientation and confusion, a sense of unreality, and a tendency to strike out at the nearest person when the breaking point is reached.”⁶

A federal court ruled in *Madrid v. Gomez* that seriously mentally ill prisoners could not be housed in supermax units, where they were isolated and often experienced sensory deprivation, because it violates the Eighth Amendment. According to this court, “subjecting individuals to conditions that are ‘very likely’ to render them psychotic or otherwise inflict a serious mental illness or seriously exacerbate an existing mental illness can not be squared with evolving standards of humanity or decency.... A risk this grave—this shocking and indecent—simply has no place in civilized society.”⁷

⁴ Motion to Dismiss for Outrageous Government Conduct, *United States of America v. Padilla*, No. 04-60001 (Oct. 2006).

⁵ Human Rights Watch, *Cruel Confinement of ‘Enemy Combatant’ in United States: Complaint Provides First Look at Isolation and Abuse* (Aug. 8, 2005), available at: <http://hrw.org/english/docs/2005/08/08/usdom11612.htm>

⁶ Christine Lehmann, *Putting Prisoners in Isolation Units Causes More Problems Than It Attempts to Correct*, PSYCHIATRIC NEWS, Feb. 5, 1999, at 1, available at: <http://www.psych.org/pnews/99-02-05/prison.html>; see also Physicians for Human Rights, *Break Them Down: Systematic Use of Psychological Torture by U.S. Forces* (May 2005), available at: http://www.phrusa.org/research/torture/report_breakthemdown.html

⁷ 889 F. Supp. 1146, 1266 (N.D. Cal. 1995).

As such, this treatment violates the Fifth and Eighth Amendment. These amendments prohibit torture or other cruel, inhuman or degrading treatment. The Fifth Amendment to the Constitution prohibits conduct against persons in U.S. custody that “shocks the conscience.”⁸ The Eighth Amendment also prohibits such conduct, as its core function is “to proscribe ‘torture(s)’ and other ‘barbar(ous)’ methods of punishment.”⁹ U.S. civilian and military commanders and officials are prohibited from violating the prohibitions of the U.S. Constitution.

Torture and other cruel, inhuman or degrading treatment of detainees are also prohibited under international law. The absolute prohibition against torture is universally recognized and is binding on all persons under all circumstances regardless of location and detaining authority. The U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁰, which was ratified by the United States in 1994, prohibits the use of torture and obligates the U.S. government to prevent acts of cruel, inhuman or degrading treatment or punishment. U.S. military law and regulations incorporate these international and domestic prohibitions against the use of torture or other cruel, inhuman or degrading treatment, and obligate U.S. military personnel to abide by those binding norms. Article 93 of the Uniform Code of Military Justice imposes criminal liability on members of the U.S. military who mistreat detainees in their custody.¹¹

Indeed, the U.S. Government has recently reassured the U.N. Committee Against Torture that “U.S. officials from all government agencies are prohibited from engaging in torture, at all times, and in all places. Every U.S. official, wherever he or she may be, is also prohibited from engaging in cruel, inhuman or degrading treatment or punishment, as defined by our obligations under the Convention Against Torture. This is the case even in situations where the law of armed conflict applies.”¹² In its May 2006 concluding observations, the U.N. Committee Against Torture expressed concern about mistreatment of detainees and the “prolonged isolation periods detainees are subjected to, the effect such treatment has on their mental health,” and called on the U.S. “to review the . . . practice of prolonged isolation.”¹³

⁸ *Rochin v. California*, 342 U.S. 165, 172 (1952).

⁹ *Estelle v. Gamble*, 429 U.S. 97, 102 (1976); see also *Hope v. Pelzer*, 536 U.S. 730 (2002).

¹⁰ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], entered into force June 26, 1987.

¹¹ Uniform Code of Military Justice, 10 U.S.C. §893.

¹² *The United States' Response to the Questions Asked by the Committee Against Torture*, May 8, 2006, available at: <http://www.state.gov/g/drl/rls/68562.htm>

¹³ U.N. Committee Against Torture, *Conclusions and Recommendations of the Committee against Torture, United States of America*, U.N. Doc. CAT/C/USA/C/2, ¶ 36 (2006). See also ACLU, *Enduring Abuse: Torture and Cruel Treatment by the United States at Home and Abroad* (Apr. 2006), available at:

http://www.aclu.org/safefree/torture/torture_report.pdf.

Finally, we note that the reported mistreatment of Mr. Padilla and others is inconsistent with the Detainee Treatment Act (DTA), which prohibits the use of torture and cruel, inhuman, or degrading treatment by any U.S. official or employee operating anywhere in the world. We are encouraged by your support of the July 2006 memorandum issued by Deputy Secretary of Defense England regarding the protection of Common Article 3 of the Geneva Conventions as well as your support of the standards for detainee treatment specified in the revised Army Field Manual on Interrogations FM 2-22.3 issued in September 2006, and we strongly urge you to take the necessary steps in order to end the use of the sensory deprivation devices, as well as any other cruel and inhuman tactics that may have been used by the DOD.

We respectfully request that you:

1. Unequivocally condemn the use of torture and abuse, particularly the use of sensory deprivation techniques;
2. Order the public release of the Navy's inspector general report;
3. Investigate whether these tactics are being used on other detainees or prisoners in the custody of the DOD;
4. Ensure enforcement of the ban on the use of extreme isolation and sensory deprivation devices on detainees and prisoners in U.S. custody.
5. Hold officials accountable for the approval and execution of any inhuman and degrading or torturous tactics used on Mr. Padilla, Mr. al-Maari and Mr. Hamdi or others;
6. Ensure that military training includes clear instructions with regard to the prohibition against torture and other abusive techniques.

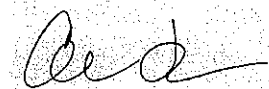
We look forward to your reply about this serious issue.

Sincerely,

Elizabeth Alexander
Director, National Prison Project



Ann Beeson
Associate Legal Director
Director, Programs on National
Security & Human Rights



Caroline Fredrickson
Director, ACLU Washington
Legislative Office

CC:

Mr. Thomas Gimble, Inspector General of the Department of Defense
Rear Admiral Bruce E. MacDonald, Judge Advocate General of the Navy