



Access to Justice for Guantánamo Detainees

Thirteen years after opening, the prison at Guantánamo Bay still holds 122 foreign prisoners (76 of whom are from Yemen). Fifty-five of these men have been cleared for release—the vast majority were cleared by a U.S. government interagency task force in 2010—yet all remain detained. Another 34 men have been designated for indefinite detention without charge or trial, and 7 men face charges in the flawed military commission system. Torture and ill-treatment, including forced-feeding, at Guantanamo have been well-documented, yet not a single senior government official has been held accountable.

Due to delays by the executive branch as well as Congressional restrictions, the transfer of the detainees who have been cleared for release has been infrequent. These individuals languish in detention without knowing when, if ever, they will be released. There is some recent progress, however. Between September 2014 and January 2015, 27 detainees were released and resettled in third countries. But the pace of transfers and the process established to clear additional detainees for release remain exceedingly slow.

The Periodic Review Boards, which began about a year ago after more than two years of delay, are meant to provide an opportunity for indefinitely imprisoned detainees to challenge their continued detention through an administrative hearing. In their first year, however, the hearings have largely only aggravated the practice of indefinite detention. They have proven to be painfully slow and still lack important due process safeguards. In their first year, the boards held hearings for only nine detainees out of an eligible 71. At that rate, the last detainee will not receive his first review board hearing until April 2026. Further, the admissibility of secret evidence means that detainees and their representatives may be unable to meaningfully contest the government's assertion that a detainee presents a continued threat, or the reliability of the government's information.

The Periodic Review Board system is not meant to replace detainees' right to petition for the writ of habeas corpus, but even that right has been seriously constrained by court decisions adopted at the urging of the executive branch, which give excessive deference to the government's overbroad detention standard and evidentiary claims. The Obama administration has also opposed in court the release of detainees against whom the government has no evidence of wrongdoing, such as ACLU client Mohamedou Ould Slahi (a Mauritanian national). For its part, Congress continues to keep in place provisions banning or otherwise restricting the transfer of detainees.

There are also troubling reports that the Obama administration supports closing the Guantánamo prison by moving detainees to a Department of Defense detention facility in the United States. Indefinite detention in the United States is as unlawful and unacceptable as it is at Guantánamo. Attempts at establishing such a regime could result in efforts by this and future administration to bypass the constitutional and human rights protections of the criminal justice system in favor of indefinite military detention.

Suggested Recommendations

1. Take all necessary measures to transfer and resettle without delay all detainees cleared for release in a manner consistent with international law obligations, and to ensure a timely and meaningful Periodic Review Board process for all detainees held indefinitely.
2. Take all necessary measures to immediately end the practice of indefinite detention, and oppose any efforts to broaden unlawful indefinite detention beyond Guantánamo Bay.
3. End the unfair trials and military commission system at Guantánamo. Where there is credible and untainted evidence of wrongdoing, bring charges against detainees in federal courts.

For more information, contact the Human Rights Program of the ACLU: humanrights@aclu.org

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