

EXHIBIT B

centerforconstitutionalrights
on the front lines for social justice

February 14, 2009

Sandra Hodgkinson
Deputy Assistant Secretary of Defense for Detainee Affairs

Alan Liotta
Principal Director of the Office of Detainee Affairs

Re: Executive Order – Review and Disposition of Individuals Detained at the Guantánamo Bay Naval Base and Closure of Detention Facilities

Dear Ms. Hodgkinson and Mr. Liotta,

We write concerning Section 6 of President Obama's January 22, 2009 Executive Order, "Review and Disposition of Individuals Detained at the Guantánamo Bay Naval Base and Closure of Detention Facilities," related to "Humane Standards of Confinement." This provision requires that the Secretary of Defense "immediately undertake a review of the conditions of detention at Guantánamo to ensure full compliance with this directive" and mandates that the review be completed within thirty days. We write today as counsel from the Center for Constitutional Rights (CCR) who have collectively traveled to Guantánamo over forty times for attorney-client meetings with over forty men and we include the first habeas attorney to meet with a client in Guantánamo in September 2004. Since 2004, we have witnessed the negative changes in our clients' conditions of confinement as well as inhumane circumstances that have remained constant.¹

Specifically, we seek to provide *current* information directly from the men detained in Guantánamo regarding the inhumane conditions of confinement in Camps 5 and 6 that were reported to CCR and other habeas attorneys during January and February 2009. It is imperative that the Secretary of Defense consider information reported directly from the imprisoned men rather than rely exclusive on the Joint Task Force's self-reporting of conditions of confinement. Too often in the past, the Department of Defense (DOD) has sought to conceal the nature of harm to the detained men through a sleight of hand.²

¹ Prior CCR reports concerning the conditions for men detained at Guantánamo include *Report on Torture and Cruel, Inhuman, and Degrading Treatment of Prisoners at Guantánamo Bay, Cuba* (Jul. 2006) and *The Guantánamo Prisoner Hunger Strikes & Protests: February 2002-August 2005* (Sept. 2005).

² This has occurred, for example, with respect to suicide attempts, *see, e.g.*, David Rose, *Guantánamo Bay on Trial*, Vanity Fair, January 2004, available at <http://www.vanityfair.com/politics/features/2004/01/guantanamo20040> (describing the military's reclassification of suicides into "manipulative self-injurious behavior"); Mark Denbeaux, et. al., *The Guantánamo Detainees During Detention: Data From the Department of Defense Records* (2006), available at http://law.shu.edu/news/guantanamo_third_report_7_11_06.pdf (same), actual suicides, *see, e.g.*, CNN, *Admiral: Gitmo Suicides A 'Planned Event'*, June 11, 2006, available at <http://www.cnn.com/2006/WORLD/americas/06/10/guantanamo.suicides/index.html> (characterizing three suicides at Guantánamo as "asymmetrical

Ideally, the Secretary of Defense's review would include interviews with a representative cross-section of men held at Guantánamo to assess the accuracy of the Joint Task Force's claims and, in particular, the implementation of Standard Operating Procedures (SOPs) for Camps 5 and 6. Unfortunately, this does not appear to be a part of the review. In order to alleviate partially this information gap, we provide the following factual summaries from January and February 2009 attorney-client meetings of the inhumane treatment and conditions of confinement that persist at Guantánamo under the Obama Administration. We also provide recommendations for bringing Camps 5 and 6 into compliance "immediately" with "all applicable laws governing the conditions" of their confinement,³ as required by Section 6 of the January 22, 2009 Executive Order.

Recent Efforts to Whitewash Inhumane Conditions in Camp 6

It has become obvious to both our clients and to habeas counsel that in the past few weeks the Joint Task Force has been hastening to gloss over the inhumane conditions in Camp 6 prior to the Secretary of Defense's Section 6 review by instituting minor changes that fail to address the fundamental inhumanity of this facility. In Camp 6, for example, a new weekly "movie night" is now offered, where small groups of men have the "privilege" to be chained to a table to view a movie.⁴ A communal outdoor "recreation" cage surrounded by two-story concrete walls has reportedly been created for compliant men to have "recreation" together for a few hours.⁵ Not only are these new policies or procedures unsatisfactory on paper, their implementation disregards fundamental harms wrought by the overall isolation, psychological stress, and threat of physical violence that permeates the lives of men detained in Camp 6.

First, even these token measures have not been implemented in any fashion in Camp 5 and it remains one of the most inhumane facilities at Guantánamo. Second, while the new Camp 6 procedures may give the impression of improvements, these "privileges" are accessible only to a few men who do not suffer from psychological stress and who have been deemed "compliant" by their captors. These token efforts to provide more "privileges" leaves in place an overall structure that is impermissibly punitive in nature, in violation of the legal standards for individuals in Executive detention. In contrast, men are held in Camp 4, a communal facility, because they are not symptomatic from their physical and psychological abuse and are able to be

warfare"), and hunger strikes, *see, e.g.*, Camp Delta Standard Operating Procedures (SOP), March 1, 2004, § III, 19-8 (classifying men on hunger strikes as participating in "Voluntary Total Fasting").

³ The January 22, 2009 Executive Order requires any individual held in United States custody to be detained "in conformity with all applicable laws governing the conditions of such confinement, including Common Article 3 of the Geneva Conventions." The applicable legal standards have been set forth in the letter to your office submitted on February 10, 2009 by Ramzi Kassem, Supervising Attorney, National Litigation Project, Lowenstein International Human Rights Clinic, Yale Law School. As Mr. Kassem explains, these legal standards include the Fifth and Eighth Amendments to the United States Constitution, the Third and Fourth Geneva Conventions and Protocols, Common Article 3 of the Geneva Conventions, the International Covenant on Civil and Political Rights, the Standard Minimal Rules for the Treatment of the Prisoners, and the Body of Principles for the Protection of Any Persons Under Any Form of Detention or Imprisonment.

⁴ Candace Gorman, Feb. 4, 2009 Unclassified Attorney Notes (on file with author); Pardiss Kebriaei, Nov. 11, 2008 Unclassified Attorney Notes (on file with author).

⁵ Candace Gorman, Feb. 4, 2009 Unclassified Attorney Notes (on file with author).

“compliant” with camp rules. People exhibiting symptoms from prolonged isolation and arbitrary confinement remain in restrictive detention in Camps 5 and 6.

Moreover, the men held in Camp 6 have been facing the psychological and physical torture of severe isolation, among other abuses, for at least over two years without any appropriate treatment for their trauma. The symptoms from their trauma are frequently understood by military guards, who are untrained in working with trauma victims, as “noncompliant” or “defiant” behavior that results in the loss of “privileges,” such as any human contact. Many, if not the majority, of the men live in daily fear of beatings and punishment due to the frequent and unpredictable use of the Immediate Reaction Force (IRF).⁶ As the military punishes individuals, the men become more traumatized and symptomatic. The more symptomatic they become, the more the military isolates and abuses them. As this cycle repeats and escalates, the existence of a “movie night” or similar rewards for men who do not manifest symptoms does little to alleviate the inhumanity of Camp 6 for the majority of the men detained there.

The effort to whitewash Camp 6 is reminiscent of the Joint Task Force’s attempt in July and August of 2004 to “improve” the isolation huts in Camp Echo prior to the first habeas attorney-client meeting conducted by Gitanjali Gutierrez in September 2004 with British citizens Moazzam Begg and Feroz Abbasi. Mr. Begg and Mr. Abbasi had been held for years in severe isolation in windowless, unventilated huts. In the eight weeks leading up to their first client meetings, air conditioning, a new small frosted window and other “improvements” were made to their isolation cells. These cosmetic changes, however, did not eliminate the reality that both men continued to be held in mind-numbing solitary confinement. It was not until the November 2004 district court decision in *Hamdan v. Rumsfeld*,⁷ which ordered that Mr. Hamdan be held as a prisoner of war, that the men in Camp Echo were moved as a group into a more communal living facility in Camp Delta. After nearly two years of living next to each other in isolation, British citizens Mr. Begg and Mr. Abbasi first met one another face-to-face in Camp Delta. Both were released in January 2005 and are living productive and peaceful lives.

CCR urges the Secretary of Defense not to repeat mistakes of the past. The minor changes to the procedures in Camp 6 fail to alleviate the more systematic and widespread psychological stress and physical injuries suffered by the men detained in this facility due to conditions of confinement that fall well below the standards required by the applicable law.

January-February 2009 Conditions in Camps 5 and 6

The following factual information concerning the conditions of confinement at Camps 5 and 6 is derived from attorney-client meetings and phone calls that occurred in January and February 2009. The descriptions of ongoing, severe solitary confinement, incidents of violence and the threat of violence from guards, and widespread forcible tube-feeding of peaceful hunger strikers raises substantial concerns that the inhumane practices of the previous Administration persist today at Guantánamo.

⁶ The Immediate Reaction Force is a team of military guards trained to respond to disturbances with force. They are uniformed in riot gear and respond to reports of noncompliance on the cell blocks.

⁷ F. Supp. 2d 152 (D.D.C. 2004), *rev'd* 415 F. 3d 33 (D.C. Cir.), *rev'd* 548 U.S. 557 (2008).

Solitary Confinement and Lack of Mental Stimulation

The majority of the men imprisoned in Guantánamo are held in solitary confinement or isolation in the super-maximum security confinement conditions in Camp 5 and Camp 6,⁸ including men who have been cleared for release from Guantánamo by DOD for years because the agency has determined they are not dangerous and hold no intelligence value.⁹ The conditions go far beyond what is permissible under the applicable law and are harshly punitive.

Confined to their small cells for at least twenty to twenty-two hours a day, the prisoners have virtually no human contact or mental stimulation. Food is delivered through a slot in the door. The men may try to shout to one another through the slot with great difficulty, and at risk of disciplinary sanction that results in the loss of “privileges” and imposition of twenty-four hour lock down in their cell or, as described below, aggressive attacks by the IRF team. The walls of the cells in Camps 5 and 6 are blank. One client reported to his Federal Public Defender that in his isolation cell in Echo Block in Camp 5, he has only a hole for a toilet with no toilet seat and a faucet with no wash basin.¹⁰ The limited “recreation” time when men are permitted briefly to leave their cells, does little to alter their near-constant isolation.

The short time that “compliant” men are allowed out of their cells and placed in outdoor cells does little to alleviate the effects of prolonged, mind-numbing solitary confinement. At a maximum, they are allowed no more than two to four hours in an outside cell a day. If the guards determine that any infraction has occurred, the individual will remain in lock down in his cell with no human contact. This could occur because an individual failed to return his food tray quickly enough or cursed at a guard.¹¹ If the men do exercises while in the outdoor cages, the guards will take them back to their cell immediately, sometimes with force.¹² In Camp 6, this outdoor time occurs in a pen surrounded by two-story high concrete walls with mesh wire across the top blocking out most sun. In Camp 5, this time is spent in an enclosure similar to a dog cage.

The men rarely have physical contact with any other living thing, except the gloved hands of the guards. The prisoners never touch the soil, or see plant life, or view the ocean. Because the time in these outdoor cages is often scheduled in the middle of the night, reportedly due to a lack of space to accommodate daytime recreation for all prisoners,¹³ an individual can go weeks without seeing the sun. Many prisoners decline nighttime recreation in a vain attempt to get sleep, and thus remain isolated in their cells for days at a time.

⁸ The exact number of prisoners Camps 5, 6 and Echo has not been made public by DOD, but it is likely that more than one-half of the Guantánamo population live in solitary confinement. Camp 4, the only camp which currently allows for communal living, can accommodate eighty men, which is approximately one-third of the current population.

⁹ See, e.g., *Zalita v. Obama*, Civil Action No 05-1220 (RMC) (D.D.C.), Petr’s Status Report, filed Jul. 18, 2008.

¹⁰ Federal Public Defender, Jan. 22, 2009 Unclassified Attorney Notes (on file with the author).

¹¹ Gitanjali Gutierrez, Jan. 4, 2009 Unclassified Attorney Notes Regarding Mohammed Taher (on file with author).

¹² Gitanjali Gutierrez, Jan. 3, 2009 Unclassified Attorney Notes Regarding Mohammed Khantumani (on file with author).

¹³ *Parhat v. Gates*, No. 06-1397 (D.C. Cir. Jan. 20, 2007) (Decl. of Sabin Willett at ¶20).

A written description of the isolation conditions of the camps can not properly convey the grueling reality that the men must endure indefinitely. Little has changed since habeas attorney Sabin Willett described the day-to-day reality of life in Camp 6 from the perspective of his client, Abdusemet, in 2007:

Alone, he rises at about five-thirty to wash (in the sink) and pray, then returns to his bed. Breakfast arrives through the hatch at about 7. He eats alone, then returns the trash through the hatch to the MPs. Sometimes he kneels and places his mouth to the small gap between door and floor and tries to shout a greeting. Then he sits on his bed for four to six hours. He tries to read the Koran. At mid-day he prays. He sits on the bed, waiting for lunch, which arrives at about one. He eats and returns the trash through the hatch. Then he sits on his bed for the afternoon, or paces. He converses with no one. He tries to read the Koran. He prays. Sometimes he hears voices in his head. When dinner arrives, he eats the dinner and returns the trash through the hatch. Then he sits on the bunk, or paces until evening prayer. He prays. He tries to sleep. He may hear the voices. He hears the banging of doors and the rumble of the HVAC [air-conditioning]. In the middle of the night, an MP raps on the door, asking if he wants "rec time." He says, "Just the shower." Half asleep, he stands at the door and is shackled. He is led to the shower area. On the way he peers into the doors on the pod [cell block], but at night the lights are off. He showers, and then is led back to the cell. He stands at the door while he is unshackled through the hatch. He returns to bed.

The next day, he repeats this, except that rec time occurs during the afternoon, and he participates in it.¹⁴

The severe, prolonged solitary confinement in Camps 5 and 6 is plainly punitive and in violation of the January 22, 2009 Executive Order.

Sensory Deprivation and Environmental Manipulation

In addition to their confinement in cells with no access to natural light and blank walls, the men are also subject to environmental manipulations and sensory over- and under-stimulation. The temperature in the cells remains consistently too cold, jeopardizing the men's health and causing ongoing mental stress. They have no control over the temperature in the cells themselves. Cold temperatures can exacerbate rheumatism, particularly for men whose thin sleeping mats have been removed. When men block the air-conditioning vents, they are disciplined.

¹⁴ *Parhat v. Gates*, No. 06-1397 (D.C. Cir. Jan. 20, 2007) (Decl. of Sabin Willett at ¶25, 26). On October 7, 2008, a federal judge ruled in favor of Abdusemet and 16 other Uighurs detained at Guantánamo in their *habeas* case, finding that they were not enemy combatants and should be immediately freed into the United States. The ruling was appealed and the Uighurs remain in Guantánamo. In response to the Court's order that they be freed, DOD merely moved them into a communal living space in Camp Iguana. Prior to their *habeas* hearing, the Uighurs were already cleared for transfer and were held in Camp 6, as are many other prisoners currently detained in Camp 6.

Another man characterized the conditions in his cell as “indirect torture” because of the cold temperatures and three strong lights on at all times between 5am and 10pm and a smaller light on during the normal sleeping hours at night.¹⁵

Sleep Deprivation

Camp conditions prevent the men from sleeping. Florescent lights are on in their cells twenty-four hours. Items such as bed-sheets are considered a privilege, and linens are often removed as a disciplinary measure. The guards kick the cell doors, and the sounds of guard activity echo through the metal walls of Camps 5 and 6 at a high volume. Prisoners are woken up as late as 2 a.m. for nighttime recreation.

As one of the now-released men described in 2007, the constant lack of sleep pushes the men to the brink of sanity:

Bisher al-Rawi is, slowly but surely, slipping into madness. . . . Bright lights are kept on 24 hours a day. Bisher is given 15 sheets of toilet paper per day, but because he used his sheets to cover his eyes to help him to sleep, his toilet paper - considered another comfort item... - has been removed for ‘misuse.’¹⁶

During the entire operation of Camps 5 and 6, individuals have reported an inability to sleep that continues to this day.

Physical and Psychological Damage Leads to Self-Harm and Attacks by “Immediate Reaction Force”

It is well-established that solitary confinement, especially in combination with severely restricted stimuli and activity, can cause serious, and potentially permanent, psychological and physical damage. Psychological damage can include hallucinations, extreme anxiety, hostility, confusion, and concentration problems. Physical symptoms of solitary confinement can include impaired eyesight, weight loss, and muscular atrophy.¹⁷

The situation of CCR client Mohammed Khantumani emphasizes how the psychological damage from severe isolation and restrictive conditions is acerbated by cycles of self-harm and physical attacks by the guards or IRF team. Mr. Khantumani is at a psychological breaking point. On December 20, 2008, Mr. Khantumani cut multiple slashes across his inner arm and a vein in his hand. Multiple reports from other men confirm that Mr. Khantumani has been banging his head

¹⁵ Federal Public Defender, Jan. 22, 2009 Unclassified Attorney Notes (on file with author).

¹⁶ Brent Mickum, *Guantánamo's Lost Souls*, THE GUARDIAN, Jan. 8, 2007. Mr. al-Rawi was released on March 31, 2007, after four years in prison.

¹⁷ Stuart Grassian, *Psychological Effects of Solitary Confinement*, AMERICAN J. OF PSYCHIATRY, 140:1450-1454, 1984; Terry A. Kupers, *The SHU Syndrome and Community Mental Health*, COMMUNITY PSYCHIATRIST, Summer 1998; Craig Haney, *Mental Health Issues in Long-Term Solitary and ‘Supermax’ Confinement*, CRIME AND DELINQUENCY, vol. 49, no. 1, January 2003; Amnesty Int’l, *UK Special Security Units – Cruel, Inhuman and Degrading Treatment*, 1997 (AI Index: EUR 45/06/97), cited in *Cruel and inhuman: Conditions of isolation for detainees at Guantánamo Bay*, AMNESTY INT’L 4, April 5, 2007.

against the walls of his cell for hours at a time and smearing his cell walls with his own excrement. Imprisoned at the age of seventeen, Mr. Khantumani has spent almost a third of his life in Guantánamo. After being isolated in Camp 6 for over two years, and forbidden from contacting his father (another Guantánamo prisoner), Mr. Khantumani, is exhibiting signs of serious mental trauma that are a clear result of his indefinite and extended solitary confinement. At a recent attorney-client meeting, Mr. Khantumani suffered high anxiety, was unable to concentrate on his legal case despite his intense desire to challenge his detention, and was threatening to harm himself again.¹⁸

Mr. Khantumani has been subjected to harsh discipline since he cut himself, which is likely to exacerbate his mental condition. All objects were removed from his cell, including linens, and he has been forbidden to participate in recreation or go outdoors. He was told he would only be allowed to eat if he took medicines in his food. A guard threatened Mr. Khantumani, telling him that if he cut himself again, he would never see his father. Mr. Khantumani's requests to call his attorney were denied.¹⁹

Two weeks ago, Mr. Khantumani's attorneys began receiving alarming reports from other attorneys that their client was, again, in dire circumstances. Although he was visited twice by attorneys in January 2009, CCR attorneys arranged for an emergency phone call to determine if his circumstances had changed. We learned that shortly after his second meetings with attorneys in January, he began losing his sanity and smeared excrement on the walls of his cell again. He had been unable to sleep at all because of guards banging on his cell door and shouting. A guard told him, "Nobody cares; we're going to kill you." When Mr. Khantumani did not clean up the excrement, a large IRF team of about ten soldiers rushed into his cell and beat his head, feet and hands. The guards sprayed so much tear gas or other noxious substance after the beating that it made some of the guards vomit. At the time of his phone call days after this incident, Mr. Khantumani's skin was still red and burning from the gas. The guards also completely stripped his cell, including depriving him of even his thin sleeping mat. After this violence, he pounded his head against the wall until it was bleeding. When he spoke with his attorney on the phone he had been in a bare cell with the walls covered in excrement, in a smock, for three days nonstop. During the phone call, Mr. Khantumani told his lawyer, "I'm in despair right now and don't know what to do. I'm going crazy." He has been told by a guard that he is an animal. He begged his lawyers to do something to stop what he described as torture. At that point, he had been held in his cell for approximately twenty days without any other items and was detained wearing only a smock.²⁰

Mr. Khantumani's behavior was clearly a result of despair and psychological trauma due to his indefinite solitary confinement,²¹ but he was beaten and furthered damaged rather than given

¹⁸ Gitanjali Gutierrez, Jan. 8, 2009 Unclassified Attorney Notes Regarding Mohammed Khantumani (on file with author).

¹⁹ Gitanjali Gutierrez, Jan. 3 and 8, 2009, Unclassified Attorney Notes Regarding Mohammed Khantumani (on file with author).

²⁰ Pardiss Kebriaei, Feb. 5, 2009 Unclassified Attorney Notes Regarding Mohammed Khantumani (on file with author).

²¹ Psychotic behavior, including smearing one's feces and incoherent mumbling and screaming is common among people who are kept in solitary confinement. See Stuart Grassian, *Psychiatric Effects of Solitary Confinement*, *Journal of Law & Policy*, Vol. 22:325 (2006), 351. Attorney Clive Stafford Smith reported that "[my client]

access to the fresh air, sunlight, social interaction, and contact with his father necessary for his stable mental health.

Other Unjustified Physical Attacks on Detained Men

In both Camp 5 and Camp 6, the traumatized men live in constant fear of physical violence. Frequent attacks by the IRF team heightened this anxiety and reinforce that violence can be inflicted by the guards at any moment for any perceived infraction, or sometimes without provocation or explanation.

On the afternoon of January 7, 2009, Yasin Ismael was spending time in one of the Camp 6 outdoor cages. The cage was entirely in the shade. Mr. Ismael asked to be moved to the adjoining empty cage because it had sunlight entering from the top. The guards—who were outside the cages—refused. One guard told Mr. Ismael that he was “not allowed to see the sun.” Angered, Mr. Ismael through a shoe against the mesh side of the cage; the shoe bounced harmlessly back onto the cage floor. The guards, however, accused Mr. Ismael of attacking them. As punishment, they left him in the cage. He eventually fell asleep on the floor of the cage, but hours later he was awakened by the sound of an IRF team entering the cage in the dark. The team shackled him and he put up no resistance. They then beat him. They blocked his nose and mouth until he felt that he would suffocate, and hit him repeatedly in the ribs and head. They then brought him back to the cell. As he was being brought back, a guard urinated on his head. Mr. Ismael was badly injured and his ear started to bleed, leaving a large stain on his pillow.²²

While at Guantánamo on January 13, 2009 for client meetings, Attorney Sarah Havens received a note from a client held in Camp 6 apologizing for his inability to attend their scheduled meeting:

To the lawyers: First of all, please accept my apologies for not coming because of the disgraceful conditions we are suffering from in the camp. To sum up, you may have heard about the disgraceful conditions we suffer like beating, violence, IRF teams and aggressions from soldiers. All of us are almost [on] hunger strike except for a few people who can't but the majority are on strike. We suffer from force feeding by tubes which in increasing everyday. IRF teams enter our cells more than fifteen times a day. We suffer from cruelty, beatings and bodily torture by them. As for Mohammed²³ . . . IRF teams terrified him and deliberately cut his hands by scissors. When they were asked about this, they said that they were attempting to cut the plastic shackles. Also,

smear feces on his cell walls. When I asked him why . . . , he told me he had no idea.” William Glaberson, *Detainees' Mental Health is Latest Legal Battle*, NEW YORK TIMES, April 26, 2008.

²² David Remes, Jan. 18, 2009 Unclassified Attorney Notes Regarding Yasin Ismail (on file with author). The attack on Mr. Ismael was confirmed by at least one other detained man. Gitanjali Gutierrez, Jan. 8, 2009 Unclassified Attorney Notes Regarding Mohammed Khantumani (on file with author).

²³ The name of this individual has been changed to protect his identity.

Ahmed²⁴ . . . was terrified and beaten up by the IRF teams, and then they took him to an unknown location.

Anyway, we cannot move here; we are afraid to go out with the soldiers to any place, because they are beating us up and insulting us while we are handcuffed, and then they claim that we started the violence. Certainly, the administration is giving the soldiers all the authority to practice violence against us. Now we are all staying here [in our cells] and will never go anywhere—no interrogations and no lawyers. We never go to any other locations, we are just on a hunger strike in our cells. We demand our rights and require to be released just as Salim Hamdan, the driver of Al-Qa'eda leader, who was released

* * *

As I told you, we are in very bad condition, suffering from aggression, beating and IRF teams, as well as the inability to sleep except for a few hours. Soldiers here are on a high alert state and if one of us dares to leave his cell and comes back without any harm, he is considered as a man who survived an inevitable danger.

I have a lot to say, but they want me to finish writing now. I wish there will be no problems at the time of your next visit so that I can see you. Hope by now you understand my situation and that it's out of my hands.

Another man detained in Camp 5, Mohammed Taher, who has reached the breaking point with the constant threat of violence and the stress of the conditions in that camp, simply stated, "Now people think, if they are going to torture me, just let me die."²⁵

Hunger Strikes/Force Feeding

The men detained at Guantánamo have participated in on-going and widespread hunger strikes as a manner of protesting their ongoing detention and abusive treatment. Rather than bring their conditions and detention into compliance with basic standards for humane treatment and the rule of law, the government's response has been to restrain the men in chairs, force tubes down their noses and throats, and pump food into their stomachs.

The first hunger strike began at Guantánamo as early as February 2002. The strikes have involved as many as 200 or more prisoners from across the camps and have continued for months each time, although individual men have carried out their strikes for much longer periods. The strikes have reportedly often been sparked by an individual act of abuse – in 2002, the forced removal of a prisoner's turban during prayer by a military police officer or, in 2005,

²⁴ The name of this individual has been changed to protect his identity.

²⁵ Gitanjali Gutierrez, Jan. 4, 2009 Unclassified Attorney Notes Regarding Mohammed Taher (on file with author).

the beatings of several prisoners by military guards – and grew into large-scale protests by the detained men for fair trials, respect for their religion and improvements in their conditions.²⁶

In December 2005, the practice of using “restraint chairs” to force feed men was introduced. Prisoners subjected to the process describe a tortuous experience, where men are strapped into the chairs – marketed by their manufacturer as a “padded cell on wheels” – and restrained at the legs, arms, shoulders, and head. A tube described by the men as the thickness of a finger is forcibly inserted up their noses and down into their stomachs and as much as 1.5 liters of formula is pumped through the tube. In the case of hunger strikers, this amount can be more than their stomachs can comfortably hold and the effect can be an uncomfortable, sometimes painful bout of nausea, vomiting, bloating, diarrhea, and shortness of breath. Men are kept strapped to the chairs for an hour after “feeding” to prevent them from purging the formula. No sedatives or anesthesia are given during the procedure. The tubes are generally inserted and withdrawn twice a day, and the same tubes, covered in blood and stomach bile, are reportedly used from one patient to another without adequate sanitization.²⁷

This treatment continues to this day under the Obama Administration. Attorney Matthew O’Hara met with his client Maasoum Abdah Mouhammad on February 3, 2009. According to Mr. Mouhammad, at least sixteen men, including himself, were participating in a hunger strike in Camp 6 and refused to leave their cells for tube feedings. As a result, they are attacked by the IRF team. He reported men being dragged, beaten, and stepped on and their arms and fingers twisted painfully. During the tube feedings, the men are strapped into restraints for hours at a time. After twenty days of hunger striking, an individual is forcibly overfed using the feeding tube for many days. Then the process repeats itself. Mr. Mouhammad described that men were vomiting while being overfed. Some men keep their feeding tubes inserted in their noses when not in the restraint chair; the tubes continue to be very painfully inserted. Interrogators continue to pressure and coerce the men on hunger strikes to eat, making promises that if they begin eating, they will be moved to the communal living camp. Mr. Mouhammad describes these experiences as “torture, torture, torture.”²⁸

Lt. Col. Yvonne Bradley represents Binyam Mohamed, who is currently participating in a long-term hunger strike. She stated on February 9, 2009, “If this keeps getting dragged out, he will leave Guantánamo Bay insane or in a coffin.”²⁹

In contrast to the conditions at Guantánamo, the Bureau of Prison regulations for individuals convicted of crimes provide guidelines for force-feeding hunger strikers, and require that all force-feeding of inmates must be humane.³⁰ The World Medical Association, of which the American Medical Association is a part, has also stated that force-feeding is a violation of

²⁶ *Al-Zahrani, et al., v. Rumsfeld, et al.*, No. 09-cv-00028 (D.C. Cir. Jan. 29, 2009) (Amended Complaint at ¶ 66)

²⁷ *Id.* at ¶ 69.

²⁸ Matthew O’Hara, Feb. 3, 2009 Unclassified Attorney Notes Regarding Maasoum Abdah Mouhammad (on file with author).

²⁹ Richard Norton-Taylor, *Lawyer of Alleged Torture Victim Makes Plea to MPs*, The Guardian, Feb. 10, 2009.

³⁰ Bureau of Prisons, *Hunger Strikers*, 5562.005, July 29, 2005, available at http://www.bop.gov/policy/progstat/5562_005.pdf.

medical ethics, and that force-feeding that is accompanied by threats, coercion, force and the use of physical restraints is considered inhuman and degrading treatment.³¹

Religious Abuse

The men detained in Guantanamo continue to suffer from religious humiliation and the inability to engage in religious practices. New searching procedures in Camps 5 and 6, ones not applied in the Camp 4 communal facility, require the men to submit to a full body scan or strip search every time they leave their cell for attorney meetings or to be placed in the outdoor cell. The scanning device reveals an image of the man's nude body to all those around, a highly offensive act for observant Muslims. The only alternative that is offered is to submit to a full body strip search, including visual examination of his genitals. As a result, the vast majority of men in Camps 5 and 6 have refused to leave their cells for any reason.

A Federal Public Defender's client explained to his lawyer during a January 22, 2009 meeting that the most important condition to him and his fellow men detained in Camp 5 on Echo Block to remedy was being denied the right to congregational prayer. The camp authorities have told the men that the military views praying at the same time in their cells as congregational prayer. This individual points out, however, that prayer while isolated in a room alone is not sufficient under the Muslim religion.³²

Astoundingly, a Muslim Chaplain has also not been available to provide religious counseling to any individual at Guantanamo since 2003 despite repeated requests by the detained men to have one available. No explanation has been given for this deficiency. In light of the Geneva Conventions protections for religious practice, including the right to receive ministry, it is difficult to imagine the United States holding individuals of other religious faiths for over seven years without providing them access to religious counseling.

Forced Separation of Family Members and Denial of Adequate Family Communications

Article 82 of the 4th Geneva Convention (relative to the Protection of Civilian Persons in Time of War) states:

Throughout the duration of their internment, members of the same family, and in particular parents and children, shall be lodged together in the same place of internment Internees may request that their children who are left at liberty without parental care shall be interned with them.

Wherever possible, interned members of the same family shall be housed in the same premises and given separate accommodation from other internees, together with facilities for leading a proper family life.

³¹ World Medical Association Declaration on Hunger Strikers, art. 21, Oct. 2006, available at <http://www.wma.net/e/policy/h31.htm>.

³² Federal Public Defender, Jan. 22, 2009 Unclassified Attorney Notes (on filed with author).

Mohammed Khantumani was only 17 years old when he and his father were imprisoned in Guantánamo. Father and son have been held separately, forbidden from any communication, for the majority of the seven years of their imprisonment. Mr. Khantumani has begged military authorities to let him see his father, but his requests have been denied. A military psychologist who met with Mr. Khantumani told him that he needs to be with his father to alleviate his harmful psychological stress. Instead, his interrogators have ignored this recommendation and continue to inflict severe pressure against Mr. Khantumani to provide statements against his father.

For clients who are not detained with family members, the International Committee of the Red Cross facilitates family letters but the one or two page letters take months to reach the imprisoned men's families due primarily to the military's lengthy clearance and redaction procedures. Moreover, for the first six years of their detention, the men were forbidden from making phone calls to their families, except in the instance of the death of a relative. Now prisoners are allowed only one phone call a year,³³ which is monitored by military authorities. These limited and long-overdue phone calls are entirely inadequate to allow the detained men to maintain their relationships with their families, particularly after six or seven years of almost no communications.

Recommendations

In addition to the dire need for prompt resolution of their unlawful detention at Guantánamo, the men held in Camps 5 and 6 desperately need to be moved to facilities with lawful and humane conditions of confinement. Camps 5 and 6 are in flagrant violation of the Geneva Conventions, Constitution, and applicable international human rights law. CCR makes the following recommendations for ensuring that the conditions at Guantánamo satisfy the applicable legal standards and comply with the mandate of the January 22, 2009 Executive Order:

- Camps 5 and 6 should be immediately closed and the men detained in these facilities must be moved into lawful communal housing appropriate for their status as individuals in nonpunitive custody of the United States;
- Should the United States wish to detain any individual in more restrictive conditions of confinement as a consequence of disciplinary infractions occurring in Guantánamo, the individuals must be given adequate process to challenge the accusations of infractions;
- Any punitive restrictions of the conditions of confinement must be limited in nature and appropriate for the adjudicated infractions;

³³ The Federal Bureau of Prisons regulates that inmates who have not had telephone use restricted as a result of specific institutional disciplinary sanction should be permitted to as least one telephone call each month. See Telephone Regulations for Inmates, 28 C.F.R. § 540.100. At the federal supermax facility, the United States Penitentiary Administrative Maximum Facility (ADX), in Florence, Colorado, even prisoners with high security concerns are allowed one to two personal phone calls a month, and those subject to special disciplinary measures are allowed a phone call every 90 days. See United States Penitentiary, Administrative Maximum Facility, Florence, Colorado, "Telephone Regulations for Inmates," Institutional Supplement, FLM 5264.07D, April 20, 2007, pp. 3-4; United States Penitentiary, Administrative Maximum Facility, Florence, Colorado, "Visiting Procedures," Institutional Supplement, FLM 5267.08A, March 5, 2008, p. 1.

- DOD should immediately redress the violations of the detained individuals' right to practice their religion freely by allowing communal prayer and by assigning a Muslim Chaplin to Guantánamo;
- Personal care items and basic necessities should be reclassified from "privileges" to necessities and interrogators must no longer control the detained individuals access to these items, including but not limited to toothpaste, toothbrushes, deodorant, soap, sleeping mat and blankets;
- No individual at Guantánamo should be subject to temperature manipulations and each individual should have the opportunity to sleep without lights;
- Each individual detainee at Guantánamo should have regular and unrestricted access to fresh air and sunlight during daytime hours; and
- No individual should be force-fed against his will or under coercive circumstances; and
- Individuals who freely and knowingly consent to force-feeding must be provided medically sound procedures.

Please do not hesitate to contact us if we can provide your office with further information or if your office would like to interview any of our clients concerning their conditions of confinement at Guantánamo. We thank you for your consideration of this information and prompt remedy of these issues.

Sincerely,

/s/ Gitanjali S. Gutierrez

Gitanjali S. Gutierrez
Shayana Kadidal
J. Wells Dixon
Pardiss Kebriaei
Emi Mclean
Attorneys
Center for Constitutional Rights
666 Broadway
New York, New York 10012