



19 October 2015

Dear President Obama,

With your presidency nearing its final year, we write to you concerning the future of the detention facility at Guantánamo Bay. While Amnesty International USA acknowledges your repeatedly expressed commitment to close the facility, we regret that dozens of detainees remain there nearly six years after your initial deadline for closure. In addition, today we are deeply concerned by reports of your administration's plan to close the Guantánamo detention facility by, among other steps, bringing indefinite "national security" detention to the U.S. mainland.

Relocating Guantánamo detainees to the U.S. mainland for indefinite detention would perpetuate, not fix, the problem. Not only would the United States be relocating these detentions, it would be relocating the violations of international law associated with them. Moreover, there is a risk that the United States would be further mainstreaming into its legal landscape a detention regime that has undermined principles of ordinary criminal justice.

As described below, we urge you to ensure that any plan to close Guantánamo includes the following three elements: 1) ending indefinite detention without charge or trial; 2) abandoning the military commissions in favor of fair trials in civilian courts; and 3) ensuring accountability and redress for human rights violations, including crimes under international law such as torture and enforced disappearance, committed against these and other detainees. Furthermore, we would urge you to end any pursuit of the death penalty.

End, do not relocate, indefinite detention

We urge you to abandon any plans to move individuals into the United States for indefinite detention without charge or trial. Bringing to the United States a system of indefinite detention, including by basing it on the premise of an essentially permanent and global "war," would entrench the fundamental flaws of Guantánamo and further perpetuate the violations of international law associated with it.

Moreover, particularly at a time of anti-Muslim and anti-immigrant sentiment in the United States, instituting a system of indefinite detention without charge or trial on the U.S. mainland would risk opening a Pandora's Box.¹ Even if your administration's explicit intention is to limit detention without charge to the remaining Guantánamo detainees, in addition to violating these detainees' human rights, it is also all too easy to imagine a subsequent administration seeking to fill a 'Guantánamo north'-style detention facility with new detainees.

Likewise, even if your administration seeks to preserve some form of judicial review for this detention regime, it is all too foreseeable that U.S. courts would give deference to elastic detention standards argued for by a future administration. These standards could be applied on the basis of prejudice and fear, with echoes of some of the most troubling chapters of U.S. history—including Japanese internment.

Recent history also provides reason for caution about steps by a subsequent administration. In the immediate aftermath of the 9/11 attacks, more than 1,200 foreign nationals—most of Arab or South Asian origin—were taken into custody by the U.S. government in nationwide sweeps for possible suspects. Largely detained on minor immigration violations for which they might not normally be detained, some were held for weeks or months pending secret FBI "security" clearances. In 2002, the Bush administration reportedly drew up plans to expand detention of U.S. citizens in military camps—beyond Jose Padilla and Yaser Hamdi—based on a secret review process.

In 2009, we welcomed your executive order requiring resolution of the detentions at Guantánamo and closure of the detention facility there by 22 January 2010. We also, however, noted your endorsement of the Bush administration's global "war" paradigm and the resort to indefinite detention under that theory. We regret that your

¹ Indefinite detention on national security grounds would in significant ways depart from current U.S. practice. We acknowledge, however, that immigration detention in the United States already amounts to a widespread system of indefinite detention (pending removal proceedings) and that U.S. officials have held individuals in detention without charge on the basis of the material witness statute and other federal laws.

administration has yet to let go of this deeply flawed framework and to address the detentions under the United States' international human rights obligations. Your failure to embrace human rights principles now and to end—rather than relocate—these indefinite detentions threatens to encourage future administrations to pursue the same path.

Even if it does not come to fruition, a proposal to bring indefinite detention to the United States is harmful to your administration's broader effort to close the Guantánamo detention facility. In political and media debate, your administration's proposal regarding a limited number of the remaining detainees is already being distorted to stoke fears about the dangerousness of detainees—whether or not they have been cleared for transfer by national security agencies. Such fear-mongering was an aspect of the previous administration's public commentary on the detentions, which undoubtedly helped reduce public and political opposition to them.

Today, discussions of potential U.S. sites to house detainees in the United States have played into renewed fear-mongering rhetoric of political figures. By shrinking and warping the spectrum of political debate on Guantánamo, a proposal to relocate indefinite detention would further undermine efforts to roll back restrictions Congress has placed on your administration's ability to transfer detainees out of Guantánamo.

Abandon the military commissions

We also urge that any plan to close the Guantánamo detention facility abandon the military commissions. These ill-conceived tribunals simultaneously fail to respect human rights principles or achieve justice.

To be sure, anyone responsible for the crimes against humanity committed on September 11, 2001 should be brought to justice in fair trials. Guantánamo and the military commissions have not—and cannot—provide that justice. The 14th anniversary of the 9/11 attacks recently passed, and those who lost loved ones in the attacks have a right to see justice in their lifetime. However, not only do the military commission trials seem unlikely to begin—much less conclude—for years to come, when they do take place they will fail to meet international fair trial standards.

Amnesty International calls for trials for human rights violations and other crimes under international law to take place before civilian courts, not military courts, and opposes the trial of civilians by military courts. While the UN Human Rights Committee has not yet held that trials of civilians before military courts are altogether prohibited, it has stated, on the right to a fair trial under article 14 of the International Covenant on Civil and Political Rights (which the United States ratified in 1992), that the trial of civilians (anyone who is not a member of a state's armed forces) by special or military courts must be strictly limited to exceptional and temporary cases where the government can show that resorting to such trials is "necessary and justified by objective and serious reasons," and where "with regard to the specific class of individuals and offences at issue the regular civilian courts are unable to undertake the trials." The U.S. government cannot point to any such rationale. It can only point to domestic politics. The military commissions are not by any measure tribunals of demonstrably legitimate necessity, but creations of political choice. They should be abandoned.

As an abolitionist organization, we are additionally concerned that the U.S. government continues to intend to seek the death penalty against a number of the Guantánamo detainees. Any pursuit of this cruel and irrevocable punishment should be dropped, regardless of the forum in which any individual is brought to trial. Though international human rights law recognizes the existence of the death penalty in some countries, it simultaneously promotes abolition as desirable human rights progress. Moreover, any execution after a trial that fails to meet international standards would be a clear violation of the right to life under international law.

Ensure accountability and redress for enforced disappearance, torture and other human rights violations

As you consider your legacy in relation to Guantánamo, we urge you to prioritize accountability and real access to meaningful redress for those subjected to the crimes under international law of enforced disappearance, torture and other human rights violations.

At least 29 of the men still held at Guantánamo were subject to the secret detention program operated by the Central Intelligence Agency (CIA). Most if not all were

subject to the crime under international law of enforced disappearance, and most if not all were subject to interrogation techniques or detention conditions that violate the prohibition of torture and other cruel, inhuman or degrading treatment.

The treatment of such detainees, to the extent discovered by the Senate Select Committee on Intelligence, is detailed in Volume III of its 6,600-page report of the Committee's review into the CIA program. Only the declassified summary of this report has been provided to the public, despite the fact that the full report undoubtedly contains information about crimes under international law committed in the program. The summary describes torture and other ill-treatment of individuals who remain at Guantánamo, including sodomy and forced "rectal feeding" and "rectal rehydration."

Some of these individuals report inadequate medical care and the authorities' failure to provide any form of rehabilitative services appropriate for torture survivors. For example, according to the Senate report, Mustafa al-Hawsawi was subjected to excessive force during rectal examinations that were used for behavioral control. Military authorities responsible for his care have reportedly failed to remedy his chronic and severe medical conditions, which include a torn rectum that requires manual reinsertion of his rectal tissue after bowel movements.

Compounding the injustice, your administration has met the wealth of evidence of criminal wrongdoing provided in the Senate report and other materials with inaction and silence. The Department of Justice has not only declined to re-open investigations, it has also made inconsistent statements about whether Department officials have even read the full report. We urge you to direct the Justice Department to review evidence in the Senate report with a view to expand and reopen investigations into the human rights violations and other crimes under international law committed in the CIA program.

Moreover, we urge you to establish an interagency panel to review additional measures that the administration can take to prevent a return to enforced disappearance, torture and other forms of ill-treatment under a future administration. This could include declassification of details about the CIA program, including by

ending attempts to block Freedom of Information Act requests for the full Senate torture report and the CIA's internal report known as the Panetta review. It could also include declassification of reports prepared during your administration, such as the 2009 report of the Special Task Force on Interrogations and Transfers that describe reform efforts.

There is precious little time remaining in your presidency, yet you still have opportunities to forge a strong human rights legacy, and Guantánamo is one of them. You began your presidency with an executive order to end the Guantánamo detentions and to close the detention facility there. We urge you to make this a reality now with an unequivocal denunciation of the injustice of indefinite detention without charge or trial, wherever its location, and by embracing the human rights principles which the U.S. government so often expects of other countries but has failed to apply to its own conduct.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven W. Hawkins". The signature is fluid and cursive, with the first name "Steven" and last name "Hawkins" clearly legible.

Steven W. Hawkins
Executive Director