

## Close Guantanamo Now!

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As president and commander-in-chief, Obama has legal authority to do so. On May 3, New York City Bar president Carey R. Dunne wrote him. He did so on behalf of the organization he heads.

He called indefinite detention “legally and morally indefensible.” He said 25 retired military flag officers said it’s “an effective recruiting tool for our enemies.”

He urged “concrete steps to restart the process toward closure.”

On May 7, the [New York City Bar](#) said “Obama has the authority to close (Guantanamo) under Section 1028 of the National Defense Authorization Act of 2013.”

It’s about transferring detainees “to foreign countries or other foreign entities.”

Obama could begin the process today. He could have done so long ago. He’ll have to explain why not. He bears full responsibility for spurning what he pledged to do.

In 2008, he promised closure. “From both a moral standpoint and a practical standpoint, torture is wrong,” he said.

“Barack Obama will end the use torture without exception. He also will eliminate the practice of extreme rendition, where we outsource our torture to other countries.”

Straightaway as president, he issued [Executive Order](#) titled “Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities.”

A previous article explained. Sec. 3 states: “Closure of Detention Facilities at Guantanamo. The detention facilities at Guantanamo for individuals covered by this order shall be closed as soon as practicable, and no later than 1 year from the date of this order.”

“If any individuals covered by this order remain, they shall be returned to their home country, released, transferred to a third country, or transferred to another United States detention facility in a manner consistent with law and the national security and foreign policy interests of the United States.”

Obama ordered an “immediate review of all” detainees within 30 days.

He halted all proceedings in the “United States Court of Military Commission Review to

which charges have been referred but in which no judgment has been rendered.”

He mandated “humane standards of confinement” be observed in accordance with international humanitarian laws.

On March 7, 2011, his [Executive Order](#) promised “Periodic Review of Individuals Detained at Guantanamo Bay Naval Station Pursuant to the Authorization for Use of Military Force.”

It said in part:

“This order is intended solely to establish a process to review on a periodic basis the executive branch’s continued, discretionary exercise of existing detention authority in individual cases.”

“Detainees at Guantanamo have the constitutional privilege of the writ of habeas corpus, and nothing in this order is intended to affect the jurisdiction of Federal courts to determine the legality of their detention.”

“The Secretary of Defense shall coordinate a process of periodic review.”

“In consultation with the Attorney General, The Secretary of Defense shall issue implementing guidelines governing the process.”

“For each detainee, an initial review shall commence as soon as possible but no later than one year from the date of this order.”

So-called “guidelines” lacks credibility. More on that below. Guantanamo harshness continues. Ending it is nowhere in sight.

More than half the remaining 166 detainees were cleared for release. Innocent victims remain incarcerated. Few were charged or tried.

It’s questionable whether any detainee warranted incarceration. So-called torture obtained confessions lack credibility. No legitimate court would accept them. Secret evidence is no better.

Justice William Brennan once called “proof beyond a reasonable doubt among the essentials of due process and fair treatment.”

The Legal Dictionary says it’s the “standard that must be met by the prosecution’s evidence in a criminal prosecution.”

“Beyond a reasonable doubt is the highest standard of proof that must be met in any trial.”

“Clear and Convincing Proof is evidence that establishes a high probability that the fact sought to be proved is true. The main reason (this high standard) is used in criminal trials is that such proceedings can result in the deprivation of a defendant’s liberty or even in his or her death.”

Innocent unless proved guilty beyond a reasonable doubt is a fundamental legal principle. It’s universal or should be.

Obama spurns it. He governs lawlessly, ruthlessly and recklessly. He broke every major

promise made. He permits torture and extraordinary rendition. He does so after pledging to end them.

He promised Guantanamo closure. It remains open. The Pentagon's Southern Command (SOUTHCOM) plans expanding it. Millions will be spent doing so.

Detainees may rot in gulag hell forever. Around 130 are hunger striking. They're doing so for justice. Most haven't eaten for three months.

They're willing to die for justice. They'd rather perish than remain in gulag hell with no hope for release. That's the stark reality they face.

Release is just a presidential order away. Obama must be pressured to explain his failure to act. He can do so as the New York Bar explained.

He can waive indefinite detentions. He can do so by certifying it's in the national interest. He's not legally constrained. He's not limited by Congress. He's beholden solely to international, constitutional, and US statute laws.

As president and commander-in-chief, he's sworn to uphold them. He's obligated to act responsibly. He can do what he hasn't done throughout his tenure. He spurned rule of law principles across the board.

Doing the right thing is its own reward. He should try it sometime and see.

On May 10, the [Center for Constitutional Rights](#) (CCR) headlined "Congressional Briefing Urges Obama to Use His Authority to Close Guantanamo."

CCR participated in a May 10 congressional briefing. It was titled "From Crisis to Solution." It was co-sponsored by Representatives James Moran (D. VA), Gerry Connolly (D. VA), the Constitution Project, the New America Foundation, and the National Religious Campaign Against Torture."

The previous day, Senate Armed Services Committee Chairman Carl Levin (D. MI) discussed a letter he wrote Obama. He urged him to appoint a high-level White House official to advance the transfer of Guantanamo detainees.

He stressed that Congress granted him authority to close Guantanamo. It's up to him to use it. Waffling doesn't wash.

According to senior CCR staff attorney Pardiss Kebriaei:

"Some of our clients have said they would rather die than live like this - in perpetual detention after 11 years, in now inhuman conditions."

"But their hunger strikes are not acts of suicide. They are acts of last resort to be heard, and for release."

"We came today to urge President Obama to use the certification and waiver process created by Congress to transfer detained men, starting with the 86 men who have been cleared for release by the Obama administration itself."

"Congress has granted President Obama the tools and power he needs to end

indefinite detention and close Guantanamo.”

“He cannot place the blame on Congress for the fact that 166 men still remain (there). He has the power to resolve this crisis, and he must use it to close Guantanamo.”

Straightaway as president, he could have acted responsibly. He chose not to do so. His two Executive Orders were disingenuous. They were head fakes.

Given how he’s governed, it’s not surprising. His March 7, 2011 [Executive Order](#) also authorized indefinite detentions and military commission trials. Doing so broke his pledge to close Guantanamo. It suggests he has no intention to do so.

He also violated America’s Fifth Amendment, stating:

“No person shall be deprived of life, liberty, or property, without due process of law.”

At the time, ACLU executive director Anthony Romero said:

“It is virtually impossible to imagine how (Obama) closes Guantanamo in light of this executive order. In a little over two years, (he’s) done a complete about-face.”

In 2011, attorney David Remes represented 20 detainees. He saw no substantive difference between Bush and Obama policies. Just “a new cast of characters,” he said. Lawlessness continues unabated.

Within a year, the EO authorizes an unclassified review of factors justifying each detainee’s continued incarceration. A government representative will be appointed to do so.

Detainees may hire private counsel if they wish. They’ll have to do so at their own expense. No government funds are provided. A Periodic Review Board is also involved. It’s stacked against detainees. It’s composed of military, intelligence and Justice Department officials.

According to the EO, detainees may appear before the board. They may introduce their own evidence. They may call witnesses “who are reasonably available.”

In other words, Washington won’t pay transportation costs. Detainees were abducted far from Guantanamo. They’re not “reasonably available.” The deck is stacked. So-called periodic reviews exclude fairness.

Indefinite detentions and military commissions are lawless. They’re indefensible. They’re unjustifiable practices. No civil societies should tolerate them.

They constitute guilt by accusation. No recourse is permitted. Appeals aren’t allowed. Rule of law principles don’t matter. Diktat authority has final say.

After his March 7, 2011 Executive Order, Obama contemptuously claimed:

Indefinite detentions and military commissions will “broaden our ability to bring terrorists to justice, provide oversight for our actions, and ensure the humane treatment of the detainees.”

Attorney General Holder added:

“The executive order....strengthens the legal framework under which we will continue to detain those individuals who are at war with our country and who pose a significant threat to the security of the United States.”

Omitted was explaining that virtually all Guantanamo detainees were and continue to be innocent victims. On January 11, 2002, the facility opened.

At least most detainees have been non-belligerents. [Seton Hall University Guantanamo reports](#) revealed that around 95% were seized randomly for bounty.

They were sold to US forces for \$5,000 per claimed Taliban and \$25,000 for alleged Al Qaeda members. No corroborating evidence was sought. Washington needed bodies. It still does. It operates “black sites.”

Innocent victims fill America’s global network of torture prisons. Alleged suspects are snatched and disappeared. It’s done out of sight and mind. Major media scoundrels ignore it. Guantanamo’s the tip of the iceberg.

Obama continues lawless Bush practices. Torture remains official policy. Innocence is no defense. Crimes of war, against humanity and genocide continue.

Waging war on humanity is policy. It continues unabated. Who knows what’s next? It’s shocking to imagine what’s possible.

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