

Death is Preferable to Life at Obama's Guantanamo

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More than 100 of the 166 detainees at Guantanamo are starving themselves to death. Twenty-three of them are being force-fed. "They strap you to a chair, tie up your wrists, your legs, your forehead and tightly around the waist," Fayiz Al-Kandari told his lawyer, Lt. Col. Barry Wingard. Al-Kandari, a Kuwaiti held at Guantanamo for 11 years, has never been charged with a crime. "The tube makes his eyes water excessively and blood begins to trickle from the nose. Once the tube passes his throat the gag reflex kicks in. Warm liquid is poured into the body for 45 minutes to two hours. He feels like his body is going to convulse and often vomits," Wingard added.

The United Nations Human Rights Council concluded that force-feeding amounts to torture. The American Medical Association says that force-feeding violates medical ethics. "Every competent patient has the right to refuse medical intervention, including life-sustaining interventions," AMA President Jeremy Lazarus wrote to Defense Secretary Chuck Hagel. Yet President Barack Obama continues the tortuous Bush policy of force-feeding hunger strikers.

Although a few days after his first inauguration, Obama promised to shutter Guantanamo, it remains open. "I continue to believe that we've got to close Guantanamo," Obama declared in his April 30 press conference. But, he added, "Congress determined that they would not let us close it." Obama signed a bill that Congress passed which erected barriers to closure. According to a *Los Angeles Times* editorial, "Obama has refused to expend political capital on closing Guantanamo. Rather than veto the defense authorization bills that have limited his ability to transfer inmates, he has signed them while raising questions about whether they intruded on his constitutional authority."

"I don't want these individuals to die," Obama told reporters. In fact, Obama has the power to save the hunger strikers' lives without torturing them. Eighty-six - more than half - of the detainees remaining at Guantanamo have been cleared for release for the past three years. Section 1028(d) of the 2013 National Defense Authorization Act empowers the Secretary of Defense to approve transfers of detainees when it is in the national security interest of the United States. Fifty-six of the 86 cleared detainees are from Yemen. Yet Obama imposed a ban on releasing any of them following the foiled 2009 Christmas bomb plot by a Nigerian man who was recruited in Yemen. Obama must begin signing these certifications and waivers at once.

Indeed, Obama said in his press conference, "I think - well, you know, I think it is critical for us to understand that Guantanamo is not necessary to keep America safe . . . It hurts us in terms of our international standing . . . It is a recruitment tool for extremists. It needs to be closed."

In addition, Obama's March 7, 2011 Executive Order 13567 provides for additional administrative review of detainees' cases. The Periodic Review Board (PRB) would provide

an opportunity for a detainee to challenge his continued detention. Yet Obama has delayed by more than a year PRB hearings at which other detainees could be cleared for release. Despite a requirement that the PRB begin review within one year, no PRB has yet been created. Obama should appoint an official to oversee the closure of Guantanamo and commence periodic reviews immediately so that detainees can challenge their designations and additional detainees can be approved for transfer.

Moreover, as suggested by Lt. Col. David Frakt, who represented Guantanamo detainees before the military commissions and in federal habeas corpus proceedings, Obama should direct the attorney general to inform the D.C. Circuit Court of Appeals that the Department of Justice no longer considers the cleared detainees to be detainable. Obama has blocked the release of eight cleared detainees by opposing their habeas corpus petitions. “[W]hen the Obama administration really wants to transfer a detainee, they are quite capable of doing so,” Frakt wrote in *JURIST*.

The Constitution Project’s Task Force on Detainee Treatment, which includes two former senior U.S. generals, and a Republican former congressman and lawyer, Asa Hutchinson, issued a report that concluded the treatment and indefinite detention of the Guantanamo detainees is “abhorrent and intolerable.” It called for the closure of the prison camp by next year.

Twenty-five former Guantanamo detainees issued a statement recommending that the American medical profession stop its complicity with abuse force-feeding techniques; conditions on confinement for detainees be improved immediately; all detainees who have not been charged be released; and the military commissions process be ended and all those be charged tried in line with the Geneva Conventions.

The detainees who are refusing food have been stripped of all possessions, including a sleeping mat and soap, and are made to sleep on concrete floors in freezing solitary cells. “It is possible that I may die in here,” said Shaker Amer through his lawyer, Clive Stafford Smith. “I hope not, but if I do die, please tell my children that I loved them above all else, but that I had to stand up for the principle that they cannot just keep holding people without a trial, especially when they have been cleared for release.” Amer, a British father of four, was approved for release more than five years ago.

Col. Morris Davis, who served as Chief Prosecutor for the Terrorism Trials at Guantanamo, personally charged Osama bin Laden’s driver Salim Hamdan, Australian David Hicks, and Canadian teen Omar Khadr. All three were convicted and have been released from Guantanamo. “There is something fundamentally wrong with a system where not being charged with a war crime keeps you locked away indefinitely and a war crime conviction is your ticket home,” Davis wrote to Obama.

Marjorie Cohn is a professor at Thomas Jefferson School of Law and former president of the National Lawyers Guild. Her most recent book is *The United States and Torture: Interrogation, Incarceration, and Abuse*. See www.marjoriecohn.com.

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