

THE DAVIS GROUP¹
RECOMMENDATIONS FOR THE ESTABLISHMENT OF A
COMMISSION OF INQUIRY
INTO U.S. DETENTION POLICIES AND PRACTICES SINCE 9/11

1. Commission and Mandate. The President of the United States should appoint an Independent Commission of Inquiry into U.S. Detention Policies and Practices Since 9/11 (“the Commission on Detentions”) to provide a full accounting of the facts, circumstances and policies relating to the capture, detention, transfer, interrogation, and treatment of persons who have been detained by, or transferred for detention by others at the direction of the United States since September 11, 2001. The mandate of the Commission on Detentions should also include, but not be limited to, assessing the legality of such policies and practices, making recommendations it deems appropriate, and identifying any lessons learned.

2. The Need for the Commission on Detentions. Like President Obama, many Americans have expressed concerns that the detention, transfer, and treatment of detainees in U.S. custody carried out under expanded powers of the government have eroded the moral foundations upon which our country was built and undermined our national security and military objectives. Others maintain, however, that such expanded powers have been necessary and appropriate to protect our national security. It is only through an independent, nonpartisan, transparent, and thorough investigation into the facts, circumstances, and policies employed in response to the September 11 attacks, that we can begin to objectively assess what has been done in the name of the American people.

3. Composition. The Commission on Detentions should be nonpartisan rather than bipartisan in its composition. Its members should be men and women with a demonstrated commitment to truth and to our nation's founding principles. Commissioners should be individuals of irreproachable integrity, credibility, and independence. Retired military officers, judges, government officials, attorneys, intelligence officials, leading academics and human rights experts are examples of the types of members that should be sought. The Commission should be supported by adequate staff with appropriate expertise to carry out the mandate of the Commission.

¹ The Davis Group is an assemblage of individuals with diverse experiences and backgrounds, including: scholars; retired military officers; human rights specialists; practicing attorneys who have represented detainees held at Guantanamo Bay, Bagram and other locations; individuals with experience in conducting previous government commissions; intelligence specialists; and Constitutional rights experts. The Group first met January 16-18, 2009 at the University of California, Davis. The Davis Group continues to work toward the goal of establishing a United States Commission of Inquiry into U.S. detention policies and practices and has, since the original meeting, added several other experts who concur with this recommendation. These additional signatories are annotated by an asterisk (*) next to their name.

4. Security Clearances. In a manner consistent with existing procedures and requirements, members and appropriate staff of the Commission on Detentions should be granted such security clearances as are necessary to perform the functions of the Commission.

5. Subpoena Powers. Congress should grant the Commission on Detentions the authority of compulsory process, including subpoena power, in furtherance of its mandate.

6. Testimonial Immunity. In order to secure full and truthful disclosures to the Commission on Detentions, and in recognition of the Constitutional right of witnesses against self-incrimination, the Commission should have the authority, at its discretion, to grant limited testimonial immunity to witnesses.

7. Other Remedial Efforts. The Commission on Detentions should not impede other avenues of accountability or related efforts to effect reforms, prosecutions, or reparations.

8. Foreign Testimony. In order to thoroughly investigate and evaluate U.S. detention practices, the Commission on Detentions should solicit testimony and reports from foreign nationals, including former detainees, other nations, and non-governmental and international organizations. Robust efforts to include overseas evidence will also buttress the credibility of the Commission's findings, thereby strengthening foreign relations with our allies and our national security. The Commissions on Detentions may hear such evidence in person, when practical, or through alternative means such as remote testimony or reports of investigative efforts.

9. Transparency. The Commission on Detentions should carry out its mandate as openly and transparently as considerations of privacy and national security will allow.

10. Reporting. The Commission on Detentions should convey its findings by issuing one report in two versions – one public, the other classified. This report should provide the full accounting of the facts, circumstances and policies called for in the Commission's mandate, as well as make recommendations, and identify lessons learned. The public version should contain as much information as may be publicly disclosed. The second version should be classified but only to the extent strictly necessary to protect any classified information contained therein. Both versions should be released simultaneously.

11. Duration. The Commission on Detentions should issue its report no later than two years after it is convened.

12. Funding. The Commission on Detentions should be funded at levels that will enable it to carry out its mandate. These should be comparable to the levels of funding of the 9/11 Commission. The funds are to remain available until expended or until the Commission issues its reports.

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In witness whereof, the undersigned signatures of members of The Davis Group have been affixed this third day of March, 2009.

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