

UNITED STATES OF AMERICA

v.

SALIM AHMED HAMDAN

Defense Motion
for Relief from Punitive Conditions of
Confinement and for Confinement Credit, or,
Alternatively, Abatement

1 February 2008

1. **Timeliness:** This motion is filed within the time frame permitted by the Military Commissions Trial Judiciary Rules of Court and the Military Judge's order dated 20 December 2007.
2. **Relief Sought:** Defendant Salim Ahmed Hamdan requests that the Commission order the government to remove Salim Hamdan from the punitive conditions of confinement in which he is currently being held, or that the Commission abate proceedings until he is removed from solitary confinement. Additionally, the Defense requests that Salim Hamdan receive three days of confinement for each of day he has spent in these conditions.
3. **Overview:** The prohibition against pretrial punishment is firmly rooted in Anglo-American jurisprudence. MAGNA CARTA (1215) (“No freeman shall be taken, imprisoned, . . . or in any other way destroyed...except by the lawful judgment of his peers, or by the law of the land.”) This fundamental right has been incorporated into Common Article 3, which unequivocally prohibits “the passing of sentences . . . without previous judgment pronounced by a regularly constituted court” Common Article 3, ¶ 1(d). Mr. Hamdan cannot be subjected to punitive conditions of confinement until he has been convicted and sentenced by a regularly constituted court. Hamdan seeks an immediate release from his punitive conditions of confinement and credit for the time he has spent under such conditions.
4. **Facts:**
 - A. Mr. Hamdan was held in solitary confinement at Camp Echo from approximately December 2003 to October 2004.

- B. Within a matter of weeks, the solitary confinement at Camp Echo led to depression, anxiety, severe moods swings, and difficulty in concentrating on matters relating to his legal defense. *See* Declaration of Daryl Matthews, M.D., Ph.D., Attachment A; Declaration of Emily A. Keram, M.D. (“Keram Declaration”), Attachment B.
- C. Following an order from U.S. District Judge James Robertson, in November 2004 Mr. Hamdan was moved to general population at Camp 4. (Order, dated 8 November 2004, Attachment C.) Camp 4 is a medium-security detention facility. (Affidavit of Colonel Michael I. Bumgarner, dated 6 April 2006 (“Bumgarner Affidavit”), Attachment D.) It allows inmates to have social contact with each other, some recreation, and access to natural air and light. (Donna Miles, *New Guantanamo Camp to Pave Way for Future Detention Ops*, Am. Forces Information Serv. News Articles (June 28, 2005) (Attachment E); Kathleen T. Rhem, *Detainees Living in Varied Conditions at Guantanamo*, Am. Forces Information Serv. News Articles (Feb. 16, 2005) (Attachment F).)
- D. In December 2006, following dismissal of Mr. Hamdan's case by Judge Robertson based on section 7 of the MCA (which purports to strip federal courts of jurisdiction over habeas actions brought by Guantanamo detainees), Mr. Hamdan was moved from general population at Camp 4 to Camp 6. (Declaration of Andrea J. Prasow (“Prasow Declaration”) ¶ 3, Attachment G.) In Camp 6, Mr. Hamdan was held in isolation for 23 hours per day in a cell measuring approximately 8 feet by 10 feet. There was no access to natural air or light, and artificial light was on in his cell 24 hours per day.
- E. Camp 6 is a maximum-security facility in which inmates are kept in solitary confinement. Their only access to anyone or anything outside their cells is through the ports for food trays in their cells and limited individual exercise

periods and showers. (Amnesty International, United States of America, Cruel and Inhuman: Conditions of Isolation for Detainees at Guantánamo Bay (Apr. 2007) (Attachment H); Ben Fox, *Life Harsher in New Guantanamo Unit*, ABC News/Associated Press (Feb. 3, 2007) (Attachment I); R. Jeffrey Smith & Julie Tate, *Uighers' Detention Conditions Condemned*, Wash. Post (Jan. 30, 2007) (Attachment J); Tim Golden, *Military Taking a Tougher Line with Detainees*, N.Y. Times (Dec. 16, 2006) (Attachment K).)

- F. Following his return to solitary confinement at Camp 6, Mr. Hamdan grew increasingly agitated. During visits with his legal counsel, he described the tremendous suffering due to his ongoing solitary confinement. He found it difficult to concentrate, his eyesight deteriorated, and he experienced constant harassment from the guards. His level of desperation grew to the point where he requested to meet with interrogators in the hopes that they might improve his conditions of confinement. (Prasow Declaration ¶ 5, Attach. G.)
- G. In December 2007, Mr. Hamdan was briefly moved to Camp 1 and then moved to Camp 5. (Prasow Declaration ¶¶ 10-11, Attach. G.) Camp 5 is a maximum-security detention facility. (Bumgarner Affidavit, Attach. D.) Conditions at Camp 5 are similar to those at Camp 6. It is a regime of isolation in a small cell, with no access to natural light or air, for 22-23 hours per day.
- H. Between December 24, 2007 and January 24, 2008, Mr. Hamdan only received two exercise periods. (Prasow Declaration ¶ 12, Attach. G.)
- I. Camp 5, like Camp 6, is a maximum-security facility in which inmates are kept in isolation. Its conditions are similar to, but even harsher than, conditions in Camp 6. (Amnesty International, *supra* (Attachment H); Fox, *supra* (Attachment I).)
- J. Mr. Hamdan was previously interviewed by Dr. Emily Keram, a clinical and forensic psychiatrist who was retained by the Defense. Dr. Keram observed signs

of Posttraumatic Stress Disorder in Mr. Hamdan, including nightmares, intrusive thoughts, memories and images and amnesia for details of traumatic events.

(Keram Declaration ¶ 5, Attach. B.) Dr. Keram also observed symptoms of a Major Depressions. (*Id.*)

- K. During her interviews of Mr. Hamdan, Dr. Keram observed that his symptoms were exacerbated by isolation of even one day in solitary confinement. (Keram Declaration ¶ 5, Attach. B.)
- L. In addition to exacerbating existing psychiatric problems, solitary confinement is associated with, among other things, depression, anxiety, panic attacks, suicide ideation, poor concentration and memory and thought disorder. (Keram Declaration ¶ 7, Attach. B.)
- M. Mr. Hamdan has exhibited significant signs of a deteriorating mental state during the period in which he has been in solitary confinement. (Prasow Declaration ¶¶ 5; 15, Attach G.) His mental impairment as a consequence of his conditions of confinement has interfered with his ability to maintain an attorney-client relationship with his existing counsel and to form an attorney-client relationship with Detailed Defense Counsel. (Prasow Declaration ¶¶ 14-16, Attach. G; Keram Declaration ¶ 9, Attach B.)
- N. Mr. Hamdan's isolation in solitary confinement places him at risk of developing more serious psychiatric disorders, including the risk of suicidal thoughts and behaviors. (Keram Declaration ¶ 10, Attach B.)

5. Law and Argument:

A. Common Article 3 and International Law Prohibit Pretrial Punishment

Common Article 3, a part of all four Geneva Conventions, applies in this proceeding and sets forth minimum protections that must be afforded to Mr. Hamdan. It is well-established that Common Article 3 applies to all armed conflicts, both international and non-international. *See*

Hamdan v. Rumsfeld, 126 S. Ct. 2749, 2796 n.63 (2006); Commentary to Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field 23, Geneva, 12 August 1949 (“Article 3 refers only to cases of conflict not of an international character. But, if these provisions represent (as they do) the minimum applicable in non-international conflict, that minimum must a fortiori be applicable in an international conflict.”). The United States Supreme Court has already held that Common Article 3 applies to Mr. Hamdan, can be invoked by him, and applies in this case. *Hamdan*, 126 S. Ct. at 2796.¹ Congress also recognized the applicability of Common Article 3 when enacting the Military Commissions Act of 2006 (“MCA”), 10 U.S.C. §§ 948a-950w. See 10 U.S.C. § 948b(f) (stating that military commissions established under the MCA comply with Common Article 3); M.M.C., Executive Summary (Manual for Military Commissions is “intended to ensure” that the guarantees of Common Article 3 are provided).

Common Article 3's protections are for all persons, regardless of status. Jordan J. Paust, *Executive Plans and Authorizations to Violate International Law Concerning Treatment and Interrogation of Detainees*, 43 Colum. J. Transnat'l L. 811, 817-18 (2005) (“Common Article 3 assures that any person detained has certain rights ‘in all circumstances’ and ‘at any time and in any place whatsoever,’ whether the detainee is a prisoner of war, unprivileged belligerent,

¹ Any contention that Common Article 3 provides no protection to Mr. Hamdan based MCA § 948b(g) (“No alien unlawful enemy combatant subject to trial by military commission under this chapter may invoke the Geneva Conventions as a source of rights”) must be rejected, as Congress cannot validly strip Mr. Hamdan of preexisting rights recognized by the Supreme Court in this very case. Such an effort would constitute an impermissible intrusion into the judicial function. See *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 227 (1995) (“Congress may not declare by retroactive legislation that the law applicable to *that very case* was something other than what the courts said it was.”); *United States v. Klein*, 80 U.S. 128, 146 (1871) (striking down a statute that prevented courts from giving effect to a presidential pardon, which would violate separation of powers by “prescrib[ing] rules of decision to the Judicial Department of the government in cases pending before it”); see also *Sanchez-Llamas v. Oregon*, 126 S. Ct. 2669, 2684 (2006) (“If treaties are to be given effect as federal law under our legal system, determining their meaning as a matter of federal law ‘is emphatically the province and duty of the judicial department,’ headed by the ‘one supreme Court’ established by the Constitution.”) (quoting *Marbury*, 5 U.S. (1 Cranch) 173, 177 (1803)). In addition, such an application of MCA § 948b(g) would operate as an invalid Bill of Attainder and ex post facto law. See *Cummings v. Missouri*, 71 U.S. 277, 320 (1866) (“deprivation of any rights, civil or political, previously enjoyed may be punishment” and constitute a bill of attainder); *Collins v. Youngblood*, 497 U.S. 37, 49 (1990) (“A law that abolishes an affirmative defense” violates the Ex Post Facto Clause); *Beazell v. Ohio*, 269 U.S. 167, 169-70 (1925) (“[A]ny statute . . . which deprives one charged with crime of any defense available according to law at the time when the act was committed, is prohibited as *ex post facto*.”).

terrorist, or noncombatant.”); Jordan J. Paust, *Judicial Power to Determine the Status and Rights of Persons Detained Without Trial*, 44 Harv. Int’l L.J. 503, 514 (2003) (“If any person detained during an armed conflict is not a POW, such person nevertheless benefits from protections under common Article 3 of the Geneva Conventions, which applies today in all armed conflicts and which incorporates customary human rights to due process into the conventions.”); *see also Kadic v. Karadzic*, 70 F.3d 232, 243 (2d Cir. 1995) (describing the mandates of Common Article 3 as the “most fundamental requirements of the law of war”).

Specifically, Common Article 3 prohibits “the passing of sentences . . . without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.” Common Article 3, ¶ 1(d).

B. The Constitution Prohibits Pretrial Punishment

The Military Commissions Act must be read in context of the Constitution. It is the role of the courts, including the military commissions, to determine what the law is. The Constitution is the supreme law. Article VI, § 2 of the United States Constitution establishes: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land . . .” U.S. Const. art. VI, § 2. Therefore, the courts must consider the Constitution’s meaning.

In *Marbury v. Madison*, Chief Justice Marshall declared “that an act of the legislature, repugnant to the constitution, is void.” *Marbury v. Madison*, 1 Cranch 137, 177 (1803). Because it is for the courts to decide what the law is, the courts must consider the Constitution when considering the law. “So if a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the constitution; or conformably to the constitution, disregarding the law; the court must determine which of these conflicting rules governs the case. This is of the

very essence of judicial duty.” *Id.* at 178. Therefore, it is inherent in the duty of the courts to consider arguments from the Constitution when interpreting the law.

Not only must the courts strike down laws conflicting with the Constitution, but a court must also strive to interpret the law in a manner that accords with the Constitution if at all possible.² As the Supreme Court has noted: “The principle is old and deeply imbedded in our jurisprudence that this Court will construe a statute in a manner that requires decision of serious constitutional questions only if the statutory language leaves no reasonable alternative.” *United States v. Five Gambling Devices*, 346 U.S. 441, 448 (1953). Therefore, the military commission must attempt to interpret the MCA in a manner that would not raise any conflicts with the Constitution. This interpretation can only be made by considering the Constitution. Therefore, the Military Judge must consider the Constitution when interpreting the M.C.A.

Any argument that the Constitution does not need to be considered because it does not apply to the military commissions when outside of the United States must fail because such a position is in clear conflict with the Supreme Court’s ruling in *Hamdan*. The Court ruled that the President had “authority to convene military commissions in circumstances where justified under the Constitution and laws, including the law of war,” despite the fact that the military commissions were convened outside the U.S. 126 S. Ct. at 2755. This holding indicates that the powers of the military commission are dependent on the laws and Constitution of the United States regardless of its location.

The Constitution prohibits pretrial punishment. No person shall be “deprived of life, liberty, or property, without due process of law.” U.S. CONST. amend. V; *see also Schall v. Martin*, 467 U.S. 253, 269 (1984) (“It is axiomatic that ‘due process requires that a pretrial detainee not be punished.’”) (internal citations omitted). Due process is violated if pretrial

² *United States v. Rumely*, 345 U.S. 41, 45 (1953). *See also Richmond Screw Anchor Co. v. United States*, 275 U.S. 331, 346 (1928) (“It is our duty in the interpretation of federal statutes to reach a conclusion which will avoid serious doubt of their constitutionality.”).

conditions of confinement equate with punishment. *Stevenson v. Carroll*, 495 F.3d 62, 67 (3d Cir. 2007); *Ullrich v. Canyon County Det. Ctr.*, 84 Fed. Appx. 752, 753 (9th Cir. 2003).

This Court must determine if the conditions accompanying pretrial detention are “imposed for the purpose of punishment or whether [they are] but an incident of some other legitimate governmental purpose.” *Bell v. Wolfish*, 441 U.S. 520, 538 (1979). An intent to punish may be inferred when a condition of pretrial detention is not reasonably related to a legitimate governmental goal. *McMillian v. Johnson*, 88 F. 3d 1554, 1564 (11th Cir. 1996). In determining whether a condition of pretrial detention is reasonably related to a legitimate governmental objective, the *Bell* Court utilized the factors announced in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963) to distinguish conditions of confinement that are punitive from those that are not:

- (1) The sanction involves an affirmative disability or restraint;
- (2) It has historically been regarded as a punishment;
- (3) It comes into play only on a finding of *scienter*;
- (4) Its operation promotes the traditional aims of punishment-retribution and deterrence;
- (5) The behavior to which it applies is already a crime;
- (6) An alternative purpose to which it may rationally be connected is assignable for it;
- (7) It appears excessive in relation to the alternative purpose assigned.³

“[I]f a restriction or condition is not reasonably related to a legitimate goal—if it is arbitrary or purposeless—a court permissibly may infer that the purpose of the governmental action is

³ *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168 (1963).

punishment that may not constitutionally be inflicted upon detainees *qua* detainees.” *Bell*, 441 U.S. at 539.

C. Indefinite Pretrial Solitary Confinement Constitutes Illegal Pretrial Punishment

The Human Rights Committee has stated that prolonged solitary confinement may amount to a violation of the prohibition against torture and ill-treatment in Article 7 of the International Covenant on Civil and Political Rights. Human Rights Committee, General Comment 20, Para. 6, 44th Session (1992). Accordingly, the United Nations General Assembly has urged that its use as a means of punishment be restricted if not abolished. G.A. Res. 45/111 ¶ 7, U.N. Doc. A/45/49 (1990). And the Inter-American Commission has stated: “Prolonged solitary confinement is not a measure considered by the law to be a sentence, and therefore there is no justification for its frequent use.” Annual Report of the Inter-American Commission, 1981-1982, OEA/Ser.L/V/II.57, doc. 6 rev. 1, (1982). Not surprisingly, the Court of Military Appeals declared the U.S. Navy’s practice of sentencing convicted sailors to solitary confinement to be “illegal” fifty years ago. *United States v. Stiles*, 9 U.S.C.M.A. 384, 386 (C.M.A. 1958). In *Stiles*, the Court found that solitary confinement was not a punishment authorized by the President in the Manual for Courts-Martial. Fifty years later, the President has declined to authorize its use as punishment in either the Manual for Courts-Martial or the Manual for Military Commissions. But whatever the merits of solitary confinement as a lawful means of punishment may be, it remains punishment.

The presumption of innocence is “the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.” *Coffin v. United States*, 156 U.S. 432, 453 (1895). Congress provided for this “elementary” principle in the M.C.A. 10 U.S.C. § 949m (2006). This presumption requires that Mr. Hamdan not be subjected to any deprivations or restrictions beyond those necessary to assure his presence at trial. *O’Bryan v. County of Saginaw*, 437 F. Supp. 582, 595 (E.D. Mich. 1977). Similarly, the Inter-

American Court has stated that the presumption of innocence requires that any restrictions on a person's liberty must be limited to those which are strictly necessary. *Suarez Rosero Case*, Ecuador (Nov. 12, 1992). This is consistent with Uniform Code of Military Justice, which prohibits the imposition of conditions of confinement that are "any more rigorous than the circumstances require to insure" the presence of the accused for trial. 10 U.S.C. § 813 (2006). While the M.C.A. contains no statutory corollary to Article 13, UCMJ, such a provision would be superfluous given the codification of the presumption of innocence and because Common Article 3 and the Fifth Amendment prohibit pretrial punishment.

Prolonged pretrial detention in solitary confinement constitutes illegal pretrial punishment. *Magluta v. Samples*, 375 F.3d 1269, 1276 (11th Cir. 2004) (accepting allegations of Petitioner as fact, Fifth Amendment violated where pretrial detainee spent 500 days in solitary confinement); *United States v. Basciano*, 369 F. Supp. 2d 344, 353 (E.D.N.Y. 2005) ("nuclear option" of pretrial solitary confinement found to violate Fifth Amendment)

An application of the *Mendoza-Martinez* factors further reinforces the fact that Mr. Hamdan's continued detention in solitary confinement is punishment. As noted above, solitary confinement is an affirmative disability that is universally recognized as punishment. *See also, Christy v. Hammel*, 87 F.R.D. 381, 390 (M.D. Penn. 1980) (Solitary confinement is "peculiarly punitive . . ."). While the imposition of solitary confinement upon adjudged prisoners has withstood constitutional challenge, *Sandin v. Conner*, 515 U.S. 472, 485 (1995), its imposition upon pretrial detainees has been limited to instances where segregation was necessary for security or for the orderly running of the institution. *See, e.g., United States v. McGriff*, 468 F. Supp. 2d 445, 448 (E.D.N.Y. 2007); *United States v. Gotti*, 755 F. Supp 1159, 1164 (E.D.N.Y. 1991); *United States v. Catalan-Roman*, 329 F. Supp. 2d 240, 253 (D.P.R. 2004); *United States v. Suleiman*, 1997 U.S. Dist. LEXIS 5793 (S.D.N.Y. 1997). And solitary confinement may only be imposed upon pretrial detainees for disciplinary infractions after a hearing. *Mitchell v. Dupnik*, 75 F.3d 517 (9th Cir. 1996); *Rapier v. Harris*, 172 F.3d 999, 1006 (7th Cir.1999).

Importantly, the government has provided no explanation for the onerous conditions of Hamdan's confinement. "‘Prison authorities are not afforded unbridled discretion’ because the detainee is either notorious or newsworthy or both." *Gotti*, 755 F. Supp. at 1164 (citing *Boudin v. Thomas*, 533 F. Supp. 786, 791 (S.D.N.Y. 1982)). The fact that Hamdan was confined at Camp 4, where he had access to other detainees, for two years without incident suggests that there is no legitimate government purpose for imposing upon him the arduous conditions of solitary confinement.

An application of the *Mendoza-Martinez* factors to this case confirms what is already readily apparent: Mr. Hamdan is currently being subjected to punitive conditions of confinement.

Accordingly, Mr. Hamdan respectfully requests that the Commission order the government to remove him from the punitive conditions of confinement in which he is currently being held, or that the Commission abate proceedings until he is removed from solitary confinement. Additionally, the defense requests that Mr. Hamdan be credited with three days of confinement for each of the 2,256 days he has spent in these punitive conditions.

D. The Imposition of Solitary Confinement on Mr. Hamdan Interferes with His Right to Counsel and His Right to Be Present at Trial

Mr. Hamdan has the constitutional and statutory rights to receive the assistance of counsel and to be present for all proceedings of the military commission (unless in exceptional circumstances such as the defendant is disruptive). U.S. Const. amend. 6; 10 U.S.C. § 949a(b)(B) and (C); *see also* R.M.C. 804(a) ("*Presence required*. The accused shall be present at the arraignment, the time of the plea, every stage of the trial including sessions conducted without members"). Mr. Hamdan has been held in solitary confinement continuously since December 2006. During that period, his mental condition has deteriorated considerably, significantly impeding his ability to assist in his own defense.

Joint Task Force-Guantanamo (“JTF-GTMO”) has moved Mr. Hamdan to different detention facilities repeatedly over the course of his detention. Following an order from District Judge Robertson, Mr. Hamdan was moved to Camp 4 – a medium-security detention facility – in November 2004. Mr. Hamdan perceives his current solitary confinement as a failure of his defense counsel. He has observed that other detainees, including Omar Khadr who is being tried by military commission, are located in Camp 4. (Letter Regarding Conditions of Confinement, Exhibit 4 to Prasow Declaration, Attach. G.) Counsel have repeatedly requested that Mr. Hamdan be returned to Camp 4, but that request has simply been ignored. (Prasow Declaration ¶¶ 7-10.) JTF-GTMO’s refusal to comply with counsel’s request, and refusal to provide any basis for Mr. Hamdan’s transfer, have materially interfered with Mr. Hamdan’s relationship with his counsel. Mr. Hamdan grew so desperate that he requested to meet with interrogators in an effort to alleviate his conditions. (Prasow Declaration ¶¶ 5; 15, Attach. G.) He believes the interrogators are the only people who can change his burdensome conditions as he has witnessed other detainees receive comfort items after cooperating with interrogators. (Letter Regarding Conditions of Confinement, Ex. 4 to Prasow Declaration, Attach. G.) This is particularly ironic considering Mr. Hamdan has always cooperated with interrogators yet nevertheless is being treated differently from other detainees who are afforded the relative increased comfort of detention in Camp 4.

The unlawful pretrial solitary confinement has caused Mr. Hamdan to question his attorneys’ motives and abilities even in the face of the vigorous defense has received so far. (Prasow Declaration ¶¶ 14; 16, Attach. G.) These conditions are preventing him from forming an attorney-client relationship with Detailed Defense Counsel LCDR Mizer, and from maintaining his relationship with his other attorneys. Mr. Hamdan has been unable to materially assist his counsel in preparing motions and reviewing discovery for several months due to his detention in solitary confinement. His right to a fair trial is being significantly infringed.

Additionally, in Mr. Hamdan's current mental state, he cannot be "present" within the meaning of R.M.C. 804 at his own commission proceedings. He has repeatedly expressed to counsel an inability to focus on details of his case. (Prasow Declaration ¶ 14, Attach. G.) His conditions are so onerous that he can only concentrate attempting to alleviate them. If Mr. Hamdan cannot understand and focus on the proceedings, he is not effectively "present" at them. Therefore, in order to comply with R.M.C. 804, Mr. Hamdan's conditions of confinement must be materially alleviated to permit him to participate in his own defense.

6. Request for Oral Argument: The Defense requests oral argument. Oral argument is necessary to provide the Commission with the opportunity to fully explore the legal issues raised by this motion. As provided by R.M.C. 905(h), "Upon request, either party is entitled to an R.M.C. 803 session to present oral argument or have an evidentiary hearing concerning the disposition of written motions."

7. Request for Witnesses: The Defense believes the following witnesses will materially assist the commission in considering this motion:

- A. Salim Hamdan
- B. Omar Khadr
- C. Dr. Emily Keram
- D. CAPT Patrick McCarthy, Staff Judge Advocate, JTF-GTMO

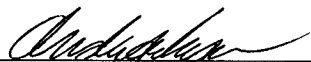
8. Conference with Opposing Counsel: The Defense has conferred with opposing counsel. The Prosecution objects to the requested relief.

9. Attachments:

- A. Declaration of Dr. Daryl Matthews
- B. Declaration of Dr. Emily Keram
- C. Order of Judge James Robertson
- D. Affidavit of Michael I. Bumgarner

- E. Donna Miles, *New Guantanamo Camp to Pave Way for Future Detention Ops*, Am. Forces Information Serv. News Articles (June 28, 2005)
- F. Kathleen T. Rhem, *Detainees Living in Varied Conditions at Guantanamo*, Am. Forces Information Serv. News Articles (Feb. 16, 2005)
- G. Declaration of Andrea J. Prasow
- H. Amnesty International, United States of America, *Cruel and Inhuman: Conditions of Isolation for Detainees at Guantánamo Bay* (Apr. 2007)
- I. Ben Fox, *Life Harsher in New Guantanamo Unit*, ABC News/Associated Press (Feb. 3, 2007)
- J. R. Jeffrey Smith & and Julie Tate, *Uighers' Detention Conditions Condemned*, Wash. Post (Jan. 30, 2007)
- K. Tim Golden, *Military Taking a Tougher Line with Detainees*, N.Y. Times (Dec. 16, 2006)

Respectfully submitted,

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Attachment A

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Lieutenant Commander CHARLES SWIFT, a
resident of the State of Washington, as next
friend for SALIM AHMED HAMDAN,
Military Commission Detainee,
Camp Echo,
Guantanamo Bay Naval Base,
Guantanamo Bay, Cuba,

Petitioner,

v.

DONALD H. RUMSFELD, United States
Secretary of Defense; JOHN D.
ALTENBURG, Jr., Appointing Authority for
Military Commissions, Department of Defense;
Brigadier General THOMAS L.
HEMINGWAY, Legal Advisor to the
Appointing Authority for Military
Commissions; Brigadier General JAY HOOD,
Commander Joint Task Force, Guantanamo,
Camp Echo, Guantanamo Bay, Cuba;
GEORGE W. BUSH, President of the United
States,

Respondents.

NO CV04-0777L

DECLARATION OF
DARYL MATTHEWS, M.D., Ph.D.

DECLARATION OF DARYL MATTHEWS, M.D., Ph.D.

DARYL MATTHEWS, M.D., Ph.D., hereby declares and states as follows:

1 1. I am over the age of eighteen (18) years. The following is true and correct to
2 the best of my knowledge. I have personal knowledge of the matters stated herein and, if
3 called upon to testify, could competently testify thereto.
4

5 2. My qualifications to render expert psychiatric opinions include my education
6 and training and my professional experience, set forth in detail in my curriculum vitae,
7 which is attached as Exhibit A.
8

9 3. I received my M.D. degree in 1973 from the Johns Hopkins University
10 School of Medicine. My postgraduate medical education included a residency in psychiatry
11 at Johns Hopkins Hospital from 1973 to 1976 and a fellowship in forensic psychiatry at the
12 University of Virginia Schools of Law and Medicine. I am board certified in psychiatry and
13 forensic psychiatry by the American Board of Psychiatry and Neurology, serve as an
14 Examiner for that Board, and as a member of the Board's Forensic Psychiatry Examination
15 Committee.
16

17 4. I have held faculty positions in medicine and public health at the Johns
18 Hopkins University, Boston University, The University of Virginia, and the University of
19 Arkansas, and am currently Professor of Psychiatry and Director of the Forensic Psychiatry
20 Program at the John A. Burns School of Medicine at the University of Hawaii.
21

22 5. I have conducted psychiatric evaluations of more than 1,000 patients or
23 forensic examinees, hundreds of them within the confines of jails, prisons, and similar
24 facilities. These have included scores of facilities in 12 states, of all security levels,
25 operated by local, state, civilian federal, and military authorities.
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27 6. My evaluations and expert opinions have been admitted into evidence in
28 more than 500 legal proceedings, including commitment hearings, civil trials, and criminal
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1 trials. I have been admitted to testify as an expert at trial by state and federal courts and
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3 military courts-martial in 20 states.
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5 7. My sources of information in this matter are:
6

7 (a) Affidavit of Mr. Salem Ahmed Salem Hamdan, (translated by Mr. Charles
8 Schmitz), of February 9, 2004, and
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10 (b) Representations made to me by Mr. Hamdan's attorney, LCDR Charles
11 Swift.
12

13 8. According to his affidavit and his attorney, Mr. Hamdan is approximately 34
14 year-old married Yemini male, father of two children ages 4 and 2, who is currently
15 confined at the U.S. Naval Base, Guantanamo Cuba.
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17 9. Since December 2003 Mr. Hamdan has been confined alone in a cell, in a
18 house that is guarded by a single non-Arabic-speaking guard. A translator is rarely
19 available. He receives 60 minutes of exercise outdoors three times a week, only at night.
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21 10. Mr. Hamdan has met his attorney, but he has not been charged with any
22 offense. He has been told that he is facing trial before a military commission, but does not
23 know when this is to occur. He understands that, even if acquitted, he potentially faces
24 indefinite confinement at the discretion of the U.S. government.
25

26 11. Mr. Hamdan has described his moods during his period of solitary
27 confinement as deteriorating, and as encompassing frustration, rage (although he has not
28 been violent), loneliness, despair, depression, anxiety, and emotional outbursts. He asserted
29 that he has considered confessing falsely to ameliorate his situation. LCDR Swift has
30 described Mr. Hamdan's condition to me, as observed during their meetings, as initially
31 agitated and withdrawn, with a brightening mood as the visit proceeds, but ending with
32 Mr. Hamdan begging him not to leave.
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1 12. Mr. Hamdan's past history includes the death of both parents before he was
2
3 12 years old, followed by periods of non-supervision and homelessness.

4
5 13. The medical literature has described the harmful mental effects of solitary
6
7 confinement at least since 1854; the recent literature confirms their presence. Adverse
8
9 effects include hypersensitivity to external stimuli, hallucinations, perceptual distortions,
10
11 derealization experiences, depression, anxiety, mood liability, difficulties in concentration
12
13 and memory, paranoid thinking, and problems with impulse control. The extent of these
14
15 appears to vary with the length of solitary confinement and the degree of isolation
16
17 experienced. There is evidence that some prisoners suffer long term psychological damage
18
19 as a result of such confinement.

20
21 14. It is my opinion, to a reasonable medical certainty, that Mr. Hamdan's current
22
23 conditions of confinement place him at significant risk for future psychiatric deterioration,
24
25 possibly including the development of irreversible psychiatric symptoms. Additionally the
26
27 conditions of his confinement make Mr. Hamdan particularly susceptible to mental coercion
28
29 and false confession in conjunction with his case.

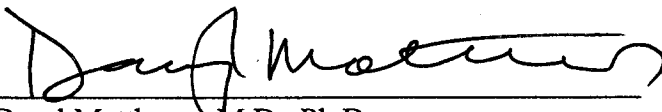
30
31 15. The conditions of confinement described by Mr. Hamdan and his legal
32
33 counsel may also cause deterioration to the point of significant impairment of his ability to
34
35 assess his legal situation and assist defense counsel. His array of pre-isolation stressors
36
37 place him at particularly high risk, as does the psychological stress of the uncertainty he
38
39 faces over his lack of charges and about the nature and duration of his future confinement.

40
41 16. It is my medical opinion that a release from solitary confinement and a return
42
43 to the general population combined with a definite advisement as to potential charges and
44
45 proceedings would significantly mitigate the risk of mental impairment/coercion in
46
47 Mr. Hamdan's case.

1 17. These opinions were reached without my conducting a personal examination
2
3 of Mr. Hamdan due to government restrictions preventing access to Mr. Hamdan for all but
4
5 cleared persons.
6

7 I declare under penalty of perjury under the laws of the State of
8 Washington that the foregoing is true and correct to the best of my
9 knowledge and belief.
10

11
12 DATED this 31 day of March, 2004.
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19 Daryl Matthews, M.D., Ph.D.
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State of Illinois

County of Cook.

Signed and sworn (or affirmed) to before me on March 31, 2004 (date)
by (name) Daryl Matthews.

Martha A. Ortiz
Signature of Notary Public



Exhibit A

Curriculum Vitae

DARYL BRUCE MATTHEWS, M.D., Ph.D.

Office Address: 4224 Waialae Avenue, Suite 5
Honolulu, Hawaii 96816
Telephone: (808) 734-8920
Facsimile: (808) 735-6164
email: dmatthews@jhu.edu

Date of Birth: September 26, 1947 (Cleveland, Ohio, U.S.A.)

Citizenship: United States of America

FORMAL EDUCATION

1971-1977	The Johns Hopkins University <u>Doctor of Philosophy (Sociology)</u>
1969-1973	The Johns Hopkins University <u>Doctor of Medicine</u>
1967-1969	The Johns Hopkins University <u>Bachelor of Arts (Human Biology)</u>
1965-1967	Dartmouth College

POSTGRADUATE MEDICAL EDUCATION

1981-1982	Fellow in Forensic Psychiatry Institute of Law, Psychiatry, and Public Policy Schools of Law and Medicine The University of Virginia
1973-1976	Resident in Psychiatry The Johns Hopkins Hospital
1973-1976	Fellow in Psychiatry and Behavioral Sciences The Johns Hopkins Hospital

MEDICAL QUALIFICATIONS

Licensure: Active: Hawaii, Arkansas, Tennessee
Inactive: Maryland, Massachusetts, Virginia

Certification: American Board of Psychiatry and Neurology
Psychiatry, 1984
Subspecialty of Forensic Psychiatry, 1994
American Board of Forensic Psychiatry, 1986

CURRENT APPOINTMENTS

- 2002- Professor of Psychiatry and Director,
Forensic Psychiatry Program
John A. Burns School of Medicine
University of Hawaii
Honolulu, Hawaii
- 1995- Consultant, U.S. Army Medical Command, and
Co-Director of Training in Forensic Psychiatry
Tripler Army Medical Center
Honolulu, Hawaii

PRIOR POSITIONS

- 1995-2001 Clinical Professor of Psychiatry
John A. Burns School of Medicine
University of Hawaii
Honolulu, Hawaii
- 1990-1995 Professor and Director of Education
Department of Psychiatry
University of Arkansas for Medical Sciences
Little Rock, Arkansas
- 1994-1995 Adjunct Faculty
School of Law
University of Arkansas at Little Rock
Little Rock, Arkansas
- 1987-1990 Associate Professor of Psychiatry
John A. Burns School of Medicine
University of Hawaii
- 1982-1987 Associate Clinical Professor of Psychiatry
John A. Burns School of Medicine
University of Hawaii
- 1982-1984 Chief, Kauai Community Mental Health Center
Lihue, Hawaii
- 1981-1982 Associate Professor of Behavioral Medicine
and Psychiatry
University of Virginia School of Medicine
- 1976-1981 Assistant Professor of Psychiatry and of
Socio-Medical Sciences and Community Medicine
Boston University School of Public Health

1973-1976 Lecturer in Behavioral Sciences
The Johns Hopkins University
School of Public Health

OTHER PROFESSIONAL ACTIVITIES

2002- Director, Forensic Psychiatry Evaluation Service
Department of Psychiatry
University of Hawaii School of Medicine

2001- Training Director
Forensic Examiner Certification Program
State of Hawaii, Department of Health

2001- Forensic Psychiatry Consultant
State of Hawaii, Department of Health

2001- Forensic Psychiatry Committee
American Board of Psychiatry and Neurology

1999 Visiting Professor of Psychiatry
University of Madrid, Spain

1998-2002 Admissions Interviewer
John A Burns School of Medicine
University of Hawaii

1998-2000 Education Co-Chair
Scientific Program Committee
World Psychiatric Association
Conference on Forensic Psychiatry
Madrid, Spain

1996- Specialist Site Visitor in Forensic Psychiatry
Residency Review Committee for Psychiatry
Accreditation Council for Graduate Medical Education

1995-1998 Hawaii State Task Force on Individuals with Mental
Illness in the Criminal Justice System

1995- Private Practice of Forensic Psychiatry

1993-1995 Arkansas Attorney General's Committee
on Anti-Stalking Legislation

1993 Visiting Professor
Department of Psychiatry
John A. Burns School of Medicine
University of Hawaii

1992-1995 Medical Ethics Faculty
Division of Medical Humanities
University of Arkansas for Medical Sciences

1992- Editorial Board
Psychiatry Resident in Training Examination
American College of Psychiatrists

1992- Article Referee
Bulletin of the American Academy of
Psychiatry and the Law; Journal of the American
Academy of Psychiatry and the Law

1991 Visiting Professor
Tripler Army Medical Center
Honolulu, Hawaii

1990-1995 Medical Expert
Department of Health and Human Services
Social Security Administration

1989 Article Referee
Journal of Forensic Sciences

1988-1990 Chairman
Kauai Service Area Board for
Mental Health and Substance Abuse

1988-1990 Steering Committee
Certification Program in Forensic Mental Health
Department of Health, State of Hawaii

1988- Examiner in Psychiatry
American Board of Psychiatry and Neurology

1987- Psychiatric Consultant
Threat Assessment Group, Inc.
Newport Beach, California

1985-1990 Medical Advisory Committee
Department of Commerce and Consumer Affairs
State of Hawaii
(psychiatric consultant in matters affecting
professional and vocational licensure)

1983-1985 Board of Editors
Law, Medicine & Health Care

1982-1990	Private practice of general and forensic psychiatry
1981-1983	Associate Editor Law, Medicine & Health Care
1981-1982	Member Commissioner's Committee on Forensic Services Virginia Department of Mental Health
1981-1982	Certified Forensic Examiner State of Virginia
1980-1981	Member of the Council (Medicine) American Society of Law and Medicine
1980	Chair Special Studies Institutional Review Board Bridgewater State Hospital Bridgewater, Massachusetts
1979-1981	Associate Editor Medicolegal News
1979-1980	Chair, Admissions Committee Boston University School of Public Health
1979-1980	Consulting Psychiatrist Complaint Committee Massachusetts Board of Registration in Medicine
1976-1981	Associate Director of Undergraduate Education Division of Psychiatry Boston University School of Medicine

HOSPITAL STAFF APPOINTMENTS

2001-	Academic Medical Staff Hawaii State Hospital Honolulu, Hawaii
1995-2001	Courtesy Medical Staff Hawaii State Hospital Honolulu, Hawaii
1990-1995	Medical Staff University Hospital Little Rock, Arkansas

1990-1992	Consulting Staff North Little Rock Veterans Administration Hospital North Little Rock, Arkansas
1983-1990	Courtesy Medical Staff G.N. Wilcox Memorial Hospital Lihue, Hawaii
1989-1990; 1982-1986	Active Medical Staff Samuel Mahelona Memorial Hospital Kapaa, Hawaii
1981-1982	Visiting Physician University of Virginia Medical Center Charlottesville, Virginia
1981-1982	Psychiatric Consultant Forensic Evaluation Unit Western State Hospital Staunton, Virginia
1976-1981	Assistant Visiting Physician University Hospital, Boston, Massachusetts

HONORS, AWARDS, & LISTINGS

Outstanding Teacher 2002-2003, University of Hawaii, Department of Psychiatry

Distinguished Fellow, American Psychiatric Association, 2003

Fellow, American Psychiatric Association, 1999

Member, American College of Psychiatrists, 1999

Emile Eckart Award for Excellence in Resident Education, University of Arkansas for Medical Sciences, 1995

Arkansas Institute of Continuing Legal Education:
Best of CLE 1992

Who's Who of Emerging Leaders in America

West's Who's Who in Health & Medical Services

Who's Who Among Human Services Professionals

Who's Who in Medicine and Healthcare

Who's Who in Science and Engineering

Who's Who in the South and Southwest

Who's Who in the West

Sol. W. Ginsburg Fellow, Group for the Advancement of Psychiatry

Commonwealth Fund International Fellow in Medical Care

Haas Memorial Fund Scholar

PROFESSIONAL ORGANIZATIONS

American Academy of Forensic Sciences

American Academy of Psychiatry and the Law
Councilor, 1996-1999

Education Committee, 1991-1997; 1999-
Chair, 1994-1997

Ethics Committee, 1995-1999
Chair, 1995-1999

Nominating Committee 1997-1999

Learning Resource Committee, 1994-1996

Program Committee, 1994-1997

Awards Committee, 1994-1997

Task Force on Practice Guidelines

for Forensic Evaluations, 1995-1999

Liaison to Spanish Society for Legal Psychiatry, 1999-
Committee on Computers and Forensic Psychiatry, 2003-

American Association of Directors of Residency Training in
Psychiatry

American Association for Social Psychiatry

American College of Psychiatrists

Psychiatry Resident in Training Exam, Editorial Board, 1999-2005

American Psychiatric Association

Committee on Confidentiality, 1999-2000

Fellow, 2000-2003

Committee on Judicial Action 2002-2005

Distinguished Fellow 2003-

Arkansas Psychiatric Society 1990-1995

President, 1993-1994

President-elect, 1992-1993

Secretary, 1991-1992

Local Arrangements Chairman, 1991-1992

Program Committee, 1990-1992

Association of Directors of Forensic Psychiatry Fellowships

Hawaii Psychiatric Medical Association 1982-1990; 1995-
Legislative Committee 1999-
Task Force on Involuntary Medication 1999-2000
Chair, Forensic Committee 2001-

International Academy of Forensic Mental Health Services

International Academy of Law and Mental Health

Sociedad Española de Psiquiatría Legal

SELECTED (1990-) PRESENTATIONS AND ABSTRACTS

1990

"Psychotropic Medications and Malpractice," Defense Research Institute,
San Francisco, California, March.

"Stalking Behavior," National Academy of Sciences, Institute of
Medicine, Washington, DC, April.

"Cults that Kill," University of Hawaii, John A. Burns School
of Medicine, Department of Psychology, grand rounds, Honolulu, Hawaii,
April.

"Forensic Psychiatry and Mental Injury," Pulaski County Bar Association,
Little Rock, Arkansas, October.

1991

"Current Liability Issues in Mental Health Care," Health Services
Research Center, special conference series, Little Rock, Arkansas,
February.

"Malpractice Issues for Community Mental Health Professionals," Mental
Health Council of Arkansas, 19th Annual Mental Health Institute, Hot
Springs, Arkansas, August.

"The Insanity Defense," Arkansas Institute for Continuing Legal
Education, criminal law seminar, Little Rock, Arkansas, October.

"Mental Health Issues in Capital Sentencing," Arkansas Psychological
Association, annual meeting, Little Rock, Arkansas, November.

"Patient-Therapist Sexual Relations and the Law," Arkansas Psychiatric
Society, annual meeting, Little Rock, Arkansas, November.

1992

"The Tarasoff Case," Youth Home of Arkansas, Little Rock, Arkansas, January.

"The Role of Forensic Psychiatry in Civil Litigation," Arkansas Trial Lawyers' Association, midwinter conference, Little Rock, Arkansas, February.

"Current Issues in Forensic Mental Health Training in State Mental Health Systems and University Settings," American College of Forensic Psychiatry, annual meeting, San Francisco, California, April.

"The Insanity Defense," Arkansas Institute for Continuing Legal Education, Little Rock, Arkansas, June.

"The Defense of Mental Disorder," Arkansas Bar Association, annual meeting, Little Rock, Arkansas, June.

"Recent Developments in the Law of Insanity," Louisiana State University Medical Center, Shreveport, Louisiana, September.

1993

"The Insanity Defense and the Role of the Forensic Psychiatrist," UALR School of Law, Little Rock, Arkansas, February.

"Something Special for Our Residents: Propranolol?," Association for Academic Psychiatry, annual meeting, Tucson, Arizona, March.

"Duty to Protect" Arkansas Psychological Association, annual meeting, Little Rock, Arkansas, April.

"Testifying in Court," St. Vincent Infirmary Medical Center, Little Rock, Arkansas, April.

"Malpractice Issues in Managed Care," American Psychiatric Association, annual meeting, San Francisco, California, May.

"Malpractice Liability and Managed Care," Mental Health Council of Arkansas, 21st Annual Mental Health Institute, Hot Springs, Arkansas, August.

"Murder, Madness, & Medicine," BridgeWay Hospital, North Little Rock, Arkansas, August.

"Implications of DSM-IV for Forensic Psychiatry," American Academy of Psychiatry and the Law, 24th annual meeting, San Antonio, Texas, October.

1994

"The Videotaped Good-Bye of the Perpetrator of a Mass-Murder/Suicide," University of Arkansas for Medical Sciences, Department of Psychiatry, grand rounds, Little Rock, Arkansas, January.

"A Cluster of Multiple Personality Disorder Cases in a State Forensic Hospital," American Academy of Forensic Sciences, 46th annual meeting, San Antonio, Texas, February.

"Developments in the Law of Sanity and DSM-IV," University of Arkansas at Little Rock School of Law, Criminal Law Association, program entitled Psychiatric Issues in Criminal Trials, Little Rock, Arkansas, March.

"Workplace Violence," Arkansas Division of Mental Health Services, First Annual Forensic Conference, Arkansas Department of Mental Health Services, North Little Rock, Arkansas, April.

"Workplace Violence," Violence in Today's Society, first annual forensic conference, North Little Rock, Arkansas, April.

"Update on Malpractice Issues in Managed Care," American Psychiatric Association, annual meeting, Philadelphia, Pennsylvania, May.

"Impaired Drivers, HIV, and Abandonment," Arkansas Psychiatric Society and Arkansas Psychological Association (joint meeting), Little Rock, Arkansas, June.

1995

"Lecture Attendance and Performance on NBME Shelf Examination in Sophomore Behavioral Sciences Course," Association for Academic Psychiatry, annual meeting, San Antonio, Texas, March.

"Professional Ethics in Mental Health," Arkansas Psychological Association, spring conference, Little Rock, Arkansas, April.

"On-Line Database Searching in Forensic Psychiatry" in Course, "Computers in Forensic Psychiatry: An Introduction," American Academy of Psychiatry and Law, 26th Annual Meeting, Seattle, October.

1996

"Medicolegal Aspects of Inpatient Violence," Grand Rounds, Tripler Army Medical Center, Honolulu, February.

"Ethical Practice in Forensic Psychiatry: The AAPL Ethical Guidelines" American Academy of Psychiatry and Law, 27th Annual Meeting, San Juan, October.

"Medicolegal Issues in Inpatient Psychiatry," Grand Rounds, Tripler Army Medical Center, Honolulu, November.

1997

"Social Policy Issues in Severe Mental Illness," University of Hawaii School of Social Work, Honolulu, February.

"Current Issues in Psychiatry and Criminal Law," Annual Symposium, State of Hawaii, Office of the Public Defender. Honolulu, May.

"The Use and Misuse of Psychiatrists in Criminal Cases," Annual Meeting, Association of Government Attorneys in Capital Litigation, San Antonio, July.

"Physician Sexual Misconduct," Physicians Insurance Company, Defense Counsel Seminar, Seattle, October.

"Multiple Homicide," VIIth National Congress, Sociedad Española de Psiquiatría Legal, Avila, Spain, October.

"Ethics and Pre-Arrestment Psychiatric Evaluations," American Academy of Psychiatry and Law, 28th Annual Meeting, Denver, October.

"Psychiatric Issues in Sex Offenses," Kauai Community Mental Health Center, Lihue, December.

1998

"Evaluation of Mental State at the time of Alleged Offense," University of Hawaii, School of Social Work, Honolulu, February

"Psychiatric Illness and Occupational Stress," State of Hawaii, Department of Education, Honolulu, July.

"Murder Followed by Suicide," G.M. Wilcox Memorial Hospital, Lihue, Hawaii, August.

"Murder Followed by Suicide," Department of Psychiatry and Psychological Medicine, University of Madrid, Spain, September.

"The Analysis and Presentation of Forensic Data," VIIIth National Congress, Sociedad Española de Psiquiatría Legal, San Sebastian, Spain, October.

1999

"Multiple Homicide," University of Hawaii School of Social Work, Honolulu, March.

"Malpractice Liability for Suicide," Department of Psychiatry and Psychological Medicine, University of Madrid, Spain, July.

2000

Stalking and Murder/Suicide, University of Hawaii School of Social Work, March.

Competency for Execution, Psychiatric Grand Rounds, Tripler Army Medical Center, May.

The Forensic Evaluation of the >False Memory Syndrome= World Psychiatric Association Conference on Forensic Psychiatry, Madrid, Spain, June.

The Weed Becomes a Rose: The Development of Forensic Training and Practice in the United States of America, World Psychiatric Association Conference on Forensic Psychiatry, Madrid, Spain, June.

Psychiatric Issues in Capital Litigation, Capital Litigation Symposium, Office of Legal Education, Executive Office for United States Attorneys, U.S. Department of Justice, National Advocacy Center, Columbia, South Carolina, October.

2001

Psychiatric Evaluations in Workplace Homicides: The Honolulu Xerox Shooting, University of Hawaii, School of Social Work, Honolulu, February.

Forensic Issues in Psychiatric Social Work, Department of Social Work, Hawaii State Hospital, Kaneohe, May.

Assessing Competency to Stand Trial, Psychiatric Grand Rounds, Hawaii State Hospital, Kaneohe, June.

2002

Psychiatry and the Death Penalty, Department of Psychology, Reed College, Portland Oregon, April.

Assessing the Risk of Violence in Psychiatric Patients; Hawaii State Department of Health, Kauai and Maui, Hawaii, May.

Criminal and Civil Litigation Involving Selective Serotonin Reuptake Inhibitors, Sociedad Española de Psiquiatría Legal, Oviedo, October.

2003

Barriers to Culturally Competent Forensic Exams for Guantanamo Detainees, American Academy of Psychiatry and the Law, October.

Forensic Psychiatry in the Evaluation of Clergy Sexual Misconduct, Sociedad Española de Psiquiatría Legal, Almagro, November.

Ethical and Cultural Issues in the Forensic Evaluation of the Guantanamo Detainees, Sociedad Española de Psiquiatría Legal, Almagro, November.

Absence of U. S. Criminal Law Protections in the Trials of the Guantanamo Detainees: Implications for Professional Ethics, New College, Oxford University, UK, November.

PUBLICATIONS

Books

D. Matthews, Disposable Patients: Situational Factors in Emergency Psychiatric Decisions, Lexington Books, 1980.

N. Scotch, J. Swazey, and J. Sorenson, with D. Matthews and C. Kavanagh, Reproductive Pasts, Reproductive Futures: Genetic Counseling and Its Effectiveness, Alan R. Liss, 1981.

W. Tseng and D. Matthews, Cultural Competency in Forensic Psychiatry, Brunner/Routledge, forthcoming 2004.

Chapters

R. Hingson, D. Matthews, and N. Scotch, "The Use and Abuse of Psychoactive Substances," in H. Freeman, S. Levine, and L. Reeder (eds.) Handbook of Medical Sociology (Third Edition), Prentice-Hall, 1978.

P. Dietz, S. Platman, and D. Matthews, "The Organization and Delivery of Mental Health Services," in G. Balis et al. (eds.) The Psychiatric Foundations of Medicine, Butterworth, 1978.

D. Matthews and W. Tseng, "Forensic Psychiatry" in W. Tseng and J. Streltzer (eds.) Cultural Competency in Psychiatry, American Psychiatric Press, Inc., In press.

Articles

D. Matthews, "The Noncompliant Patient," Primary Care, Vol. 2, No. 2 (June, 1975).

D. Matthews and R. Hingson, "Improving Patient Compliance: A Guide for Physicians," Medical Clinics of North America, Vol. 61, No. 4 (July, 1977).

D. Matthews and P. Dietz, "Labeling Theory and the Family Dynamics of Schizophrenia," Child Psychiatry Quarterly, Vol. 11, No. 4 (October, 1978).

D. Matthews, "Where There's Smoke There's Ire," Medicolegal News, Vol. 7, No. 4 (Winter, 1979).

C. Kavanagh, D. Matthews, J. Sorenson, and J. Swazey, "Multi-Institutional Review of a Genetic Counseling Study," I.R.B.: A Review of Human Subjects Research, Vol. 1, No. 2 (April, 1979).

D. Matthews, "The Right to Refuse Psychiatric Medication," Medicolegal News, Vol. 8, No. 2 (April, 1980).

D. Matthews and P. Coyne, "Arbeit Macht Frei: Vocational Rehabilitation and Virginia's Criminally Insane," University of Richmond Law Review, Vol. XVI, No. 3 (Spring, 1982).

P. Dietz, D. Matthews, J. Warren, C. Van Duyne, T. Stewart, J. Crowder, and D. Martell, "Threatening and Other Inappropriate Letters to Hollywood Celebrities," Journal of Forensic Sciences, Vol. 36, No. 1 (January 1991).

P. Dietz, D. Matthews, D. Martell, T. Stewart, D. Hrouda, and J. Warren, "Threatening and Other Inappropriate Letters to Members of Congress," Journal of Forensic Sciences, Vol. 36, No. 5 (September 1991).

K. Rost, G. R. Smith, D. Matthews, and B. Guise, "The Deliberate Misdiagnosis of Major Depression in Primary Care," Archives of Family Medicine, Vol. 3 (April 1994).

S. Tisza, J. Mottl, D. Matthews, "Current trends in workers' compensation stress claims," Current Opinion in Psychiatry, In Press.

revised 11/03

Attachment B

UNITED STATES OF AMERICA

v.

SALIM AHMED HAMDAN

Defense Motion

for Relief from Punitive Conditions of
Confinement and for Confinement Credit, or,
Alternatively, Abatement

Declaration of Emily A. Keram, M.D.

1 February 2008

I, Emily A. Keram, M.D., declare pursuant to 28 U.S.C. § 1756, that the following information is true and correct:

1. I am a clinical and forensic psychiatrist retained by the defense for Salim Hamdan in the case of *United States v. Hamdan* to formulate and render opinions related to various aspects of Mr. Hamdan's mental state and its effects on his behavior.

2. My experience as a forensic psychiatrist is as follows:

- a. I completed a Fellowship in Forensic Psychiatry with the United States Department of Justice in June 1992.
- b. I am Board Certified in Psychiatry and Neurology with added Board Certification in Forensic Psychiatry.
- c. Throughout my career, the majority of my professional activity has consisted of the clinical evaluation and treatment of patients.
- d. Over the past fifteen and a half years I have conducted hundreds of civil and criminal forensic evaluations as an expert witness in the field of psychiatry.
- e. I have conducted the majority of these evaluations as a court-appointed expert. My involvement in the remainder of the evaluations arose from

consultations initiated by the defense and prosecution/plaintiff in approximately equal numbers.

f. I have qualified as an expert witness in psychiatry in United States District Courts in North Carolina and the Northern District of California, and California Superior Courts in Sonoma and San Francisco Counties.

3. I have spent approximately seventy (70) hours with Mr. Hamdan in order to formulate and render opinions related to various aspects of Mr. Hamdan's mental state and its effects upon his behavior.

4. At each of my meetings with Mr. Hamdan I assessed his psychiatric symptoms. At each meeting Mr. Hamdan met diagnostic criteria for Posttraumatic Stress Disorder and Major Depression.

5. At each meeting, I saw Mr. Hamdan in Camp Echo, where he had been previously kept in solitary confinement. During the days over which I met with Mr. Hamdan he was similarly kept in solitary confinement. During the course of my interviews with Mr. Hamdan, I observed symptoms of Posttraumatic Stress Disorder including nightmares, intrusive thoughts, memories and images, amnesia for details of traumatic events, lack of future orientation, anxiety, irritability, insomnia, poor concentration and memory, exaggerated startle response, and hypervigilance. I also observed symptoms of Major Depression including depressed mood, sleep and cognitive disturbances as above, anergia, anhedonia, hopelessness, and helplessness. At times his symptoms impaired his ability to participate in the evaluation. These symptoms were severely exacerbated by his incarceration in solitary confinement. At one point during my preliminary evaluation, Mr. Hamdan was housed in the general population at Guantanamo Bay. In advance of

our meetings, he was moved to isolation in Camp Echo. The effects of even one night of isolation on Mr. Hamdan's mental state were so pronounced that I advised his counsel to request that Mr. Hamdan be returned to the general population each night to minimize his time in solitary confinement and to permit me to work with him.

6. I have been advised that Mr. Hamdan has been in solitary confinement in Camps 6, 1 and 5 since December 2006.

7. Solitary confinement has profound effects on a person's personality. In addition to exacerbating any ongoing psychiatric symptoms, solitary confinement has been found to be associated with depression, anxiety, irritability, panic attacks, hopelessness, helplessness, suicidal ideation, poor concentration and memory, hypersensitivity to perceptual stimuli, perceptual distortions, illusions, and thought disorder. Persons so confined may develop paranoia, obsessional thoughts, and primitive thoughts of harm to self and others, which may be acted upon. Impulse control may be impaired. Solitary confinement may lead to psychotic symptoms including delusional thinking and hallucinations. Persons kept in solitary confinement may develop chronic psychiatric symptoms which do not resolve once they are removed from such confinement. In addition to the above-mentioned symptoms, persons kept in solitary confinement may develop intolerance of interaction with others, which may impair their ability to function effectively in future roles in which contact with others is necessary.

8. I have spoken with Andrea Prasow, Assistant Detailed Defense Counsel, regarding Mr. Hamdan's behavior during her visit with him on January 24 and 25, 2008. Her description of his behavior is consistent with my observations of Mr. Hamdan's

9. Based on my personal interviews with Mr. Hamdan, my preliminary assessment at that time, and my conversations with counsel regarding his behavior over the last several months, I believe Mr. Hamdan is unable to materially assist in his own defense.

10. I believe that if Mr. Hamdan remains in solitary confinement, his condition will deteriorate and he will be at risk for developing more serious psychiatric symptoms as described in paragraph 7 above. These include the risk of suicidal thoughts and behavior.

I declare under penalty of perjury that the foregoing is true and correct.

By: /s/ Emily A. Keram, M.D.

Date: February 1, 2008

Attachment C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SALIM AHMED HAMDAN,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Civil Action No. 04-1519 (JR)
	:	
DONALD H. RUMSFELD,	:	
	:	
Defendant.	:	

ORDER

For the reasons set forth in the accompanying memorandum opinion it is

ORDERED that the petition of Salim Ahmed Hamdan for habeas corpus [1-1] is **granted in part**. It is

FURTHER ORDERED that the cross-motion to dismiss of Donald H. Rumsfeld [1-84] is **denied**. It is

FURTHER ORDERED that, unless and until a competent tribunal determines that petitioner is not entitled to the protections afforded prisoners-of-war under Article 4 of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949, he may not be tried by Military Commission for the offenses with which he is charged. It is

FURTHER ORDERED that, unless and until the rules for Military Commissions (Department of Defense Military Commission Order No. 1) are amended so that they are consistent with and not contrary to Uniform Code of Military Justice Article 39, 10

U.S.C. § 839, petitioner may not be tried by Military Commission for the offenses with which he is charged. It is

FURTHER ORDERED that petitioner be released from the pre-Commission detention wing of Camp Delta and returned to the general population of Guantanamo detainees, unless some reason other than the pending charges against him requires different treatment. And it is

FURTHER ORDERED that petitioner's remaining claims are **in abeyance**, the Court having abstained from deciding them.

JAMES ROBERTSON
United States District Judge

Attachment D

AFFIDAVIT

I, Colonel Michael I. Bumgarner, United States Army, under the penalties of perjury, hereby state that, to the best of my knowledge, information, and belief, the following is true, accurate, and correct:

I am a Colonel in the United States Army with over twenty four (24) years of active duty service as a Military Policeman. I am currently assigned as the Commander, Joint Detention Group, for the Joint Task Force Guantanamo, Guantanamo Bay, Cuba. As Detention Group Commander, I am responsible for all aspects of detention operations associated with the care and custody of Enemy Combatants from the Global War on Terror that are being held at U.S. Naval Station, Guantanamo Bay, Cuba. I have served in this position since April 2005. I answer directly to the Joint Task Force Commander, RDML Harris, or the Deputy Commander, BG Leacock.

It is my responsibility, among others, to see that the detention mission is performed in a humane manner that protects the safety and security of the detainees, and the safety of security personnel at JTF-Guantanamo. I am completely familiar with all of the detention areas within the Joint Task Force, including the actual structure and conditions within each area, and the policies and procedures for detention operations in each of those areas.

As of approximately 30 March 2006, eight of ten Enemy Combatants charged with war crimes and scheduled to appear before a military commission have been co-located together on a tier of one of the newest detention camps, known as Camp 5. The other two charged detainees are housed in a different facility. It is my intention to move the remaining charged commissions defendants to this same location when operationally feasible.

Prior to co-locating the charged detainees on the same tier of Camp 5, they were spread out across the camps, living in a number of different facilities. For example, three were living in Camp 4 (including Detainee Khadr), three were living in Camp 3, one in Camp 5. The living conditions of the various charged detainees varied, depending on which camp they were in.

Camp 5 is an American Corrections Association certified maximum-security detention facility. It was designed after a federal maximum-security facility in Indiana. The charged commissions detainees are held in one tier within the same wing of the Camp 5 facility. On this tier, there are 12 cells, of which eight are occupied by the charged detainees.

I am familiar with the American Corrections Associations standards and, with respect to the conditions of the detention, neither Detainee Khadr nor the other commissions detainees are segregated, held in isolation, or in solitary confinement. The charged detainees are held in individual concrete cells. The cells are not audio isolated and there is no effort made to disrupt any communication between the detainees from within their cells. They are allowed to participate in daily prayers, which occurs five times each day, and one of the detainees leads those prayers. The tier in which they are housed also has a reading room for the detainees' use on a scheduled periodic basis.

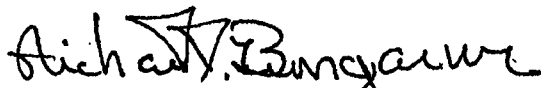
Each detainee is allowed two hours of recreation a day. The recreation fields are divided into eight sections, separated by a link fence. They are able to communicate with each other, but cannot physically touch each other or play games, such as soccer. Six of the detainees participate in recreation at the same time. Two detainees participate in recreation activities in the newer recreation yard. Each recreation yard has physical exercise equipment, such as an elliptical machines for cardio-vascular exercise.

By comparison, Camp 4 is a medium-security, communal living facility in which detainees reside in open bays, with ten detainees per bay. They are able to recreate in groups, including having the opportunity to play games such as soccer, basketball or even chess.

I supported and approved the decision to co-locate the charged detainees within the same tier of Camp 5. I then recommended the movement to the then-Joint Task Force Commander, MG Hood. He approved the decision and the relocation was made. This decision was well-advised and carefully thought out. Input from senior leaders within the Joint Detention Group was obtained in consideration of this decision. It was not arbitrary. The movement was not and does not punish the charged detainees. Furthermore, it was not done to affect the commissions process, and it in fact does not.

There were two primary reasons why the charged individuals were moved to the same wing of Camp 5. First, JTFGTMO is consolidating detainee operations due to a variety of factors, including a reduction in personnel and the anticipation of opening the new detention facility, known as Camp 6, sometime later this year. Some camps are being shut down and others are being moved around. Moving the charged detainees to the same wing in Camp 5 helps manpower issues and makes for smoother camp operations.

Second, Joint Task Force Guantanamo is trying to comply with AR 190-47 and AR 190-8, and sound correctional doctrine which recommend separating various classes of detainees, such as keeping pre-trial detainees separate from others and keeping detainees separated based upon the seriousness of the charged offenses. While it can be said that all of the detainees are pre-trial, the fact that ten individuals have been charged changes the operational security for their care and custody. Consistent with AR 190-47 and AR 190-8 separating the group from the uncharged individuals increases the safety and security of the facilities for all detainees and allows more efficient operation of the guard force.


MICHAEL I. BUMGARNER
Colonel, United States Army
Commander, Joint Detention Group
Joint Task Force Guantanamo

Executed on: 06 April 2006

Attachment E



AMERICAN FORCES PRESS SERVICE
NEWS ARTICLES

New Guantanamo Camp to Pave Way for Future Detention Ops

By Donna Miles
American Forces Press Service

NAVAL STATION GUANTANAMO BAY, Cuba, June 28, 2005 – For a glimpse at what's ahead for the detention facility here for enemy combatants, look no farther than Camp 4, one of five camps that make up Camp Delta here along Radio Ridge.

Camp 4, the only medium-security camp at Guantanamo Bay, is the most sought-after camp here for detainees here. It's reserved only for those who live by the camp rules and offers them the privilege of living in a communal setting that offers more freedoms and perks than less-cooperative detainees receive.

Army Brig. Gen. Jay Hood, commander of Joint Task Force Guantanamo Bay, said the camp is proving so successful in encouraging detainees to cooperate with camp rules that he's incorporating lessons learned here in Camp 6, a new, permanent facility to be built here.

"Everyone here knows about Camp 4, and everyone wants to be here," Hood told military analysts who traveled here June 24 to observe detention operations.

Camp 4 offers a wide range of incentives for good behavior. It features a common area that allows detainees to eat, sleep and pray together, Hood explained. Instead of the unpopular orange jumpsuits less cooperative detainees wear, those in Camp 4 wear white clothes that represent something of a status symbol among the detainee population. They get seven to nine hours a day outside their living quarters for recreation. Instead of having their meals delivered to their cells on a tray, they get containers of prepared food that they dish up and eat family-style.

Detainees at Camp 4 get access to volleyball nets and ping-pong tables and are treated to ice cream every Sunday, Hood said. They can request copies of the National Geographic magazines they love and occasionally get to watch Arabic family TV shows and soccer highlights. And five times a day, when the Muslim call to prayer sounds over the camp's speaker system, they get to pull out their prayer rugs, orient them with arrows throughout the camp that point toward Mecca, and pray as a group.

"One thing that is really different in this camp is that we have a working relationship with these people," said Chief Warrant Officer Tom Peal, officer in charge of the camp. "We're here to make them feel as comfortable as possible."

Hood stressed that entree to Camp 4 is not based on how forthcoming a detainee is during interrogations. The price of admission to the camp is simply following camp rules.

"There's a big incentive for detainees to want to be here," said Command Sgt. Maj. Anthony Mendez. In fact, during the two years that he's served at Guantanamo Bay, Mendez said he's seen only about 10 detainees get transferred to another camp for bad behavior.

Less cooperative detainees - those who spit at or throw urine and excrement at guards, refuse to leave their cells when ordered to or break other camp rules - live in four other camps, all with more restrictions.

A new facility that recently received funding, Camp 6, will build on successes at Camp 4 in promoting good behavior among detainees, Hood explained.

The camp, the second permanent facility to be built here, will provide a living environment more suitable to long-term detention, officials said. It will offer more communal living, increased access to exercise areas, activities, mail and foreign-language materials, and enhanced medical facilities.

Other perks will be offered depending on detainees' behavior. "We'll be able to ratchet it up or down, based on (a detainee's) compliance," Hood said.

Hood said experience at Guantanamo Bay demonstrates that it generally works to everyone's advantage when there's cooperation on both sides. Detainees are less violent. Guards are safer. Interrogators are more able to build rapport and gather intelligence.

In running a detention facility, "there has to be some give and take," Hood said.

"We're going to treat these detainees humanely. That's the bottom line. But we also want to find some ways to establish rapport and promote cooperation," he said. "That's the best way for us to accomplish our mission here."

Related Sites:

[Naval Station Guantanamo Bay, Cuba](#)

Attachment F

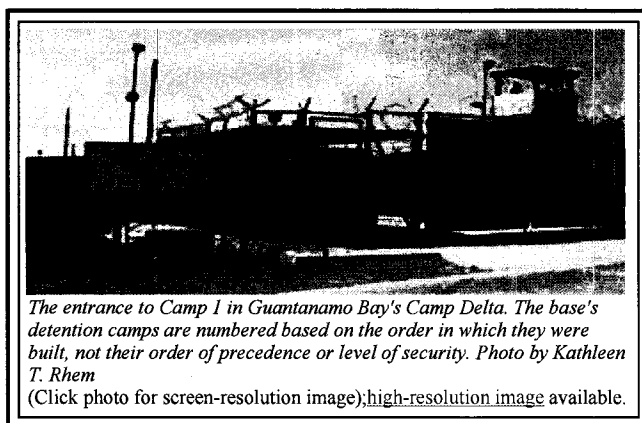


AMERICAN FORCES PRESS SERVICE **NEWS ARTICLES**

Detainees Living in Varied Conditions at Guantanamo

By Kathleen T. Rhem
American Forces Press Service

NAVAL BASE GUANTANAMO BAY, Cuba, Feb. 16, 2005 – The detainee population at the U.S. naval base here is a diverse group. The roughly 545 detainees hail from some 40 countries and speak at least 17 different languages.



The entrance to Camp 1 in Guantanamo Bay's Camp Delta. The base's detention camps are numbered based on the order in which they were built, not their order of precedence or level of security. Photo by Kathleen T. Rhem
(Click photo for screen-resolution image); [high-resolution image](#) available.

But nearly as diverse as the individuals themselves are the conditions in which they're held.

Since U.S. officials began holding enemy combatants here in January 2002, an elaborate system to manage those detainees in a humane manner, protect guards and maximize intelligence has evolved here.

Today, prisoners are divided into four levels, based on how well they comply with camp rules, explained a senior Navy petty officer serving

here.

Navy Master Chief Petty Officer Tracy Padmore, an aviation maintenance technician from Naval Air Station Jacksonville, Fla., explained that detainees are placed in levels based solely on how well they cooperate with guards' instructions. "(The levels) have nothing to do with what a detainee's (intelligence) value is or what he might say or do in an interrogation booth," he said.

"Humane" and "consistent" seem to be watchwords for members of the joint task force here. Anyone working with detainees uses these words right off the bat when describing what they do. Guards and officers at Guantanamo consistently appear genuinely offended when asked about allegations in the civilian media about detainee abuses at Guantanamo Bay.

"I'm not here to say we're all perfect," Padmore said. "But these young men and women carry out their duties in a highly professional manner." He added that when minor infractions of the rules by guards have occurred, they've been punished swiftly.

"Detainees here at Guantanamo are treated in a humane manner at all times by the security folks and the intelligence folks who work with them," Army Brig. Gen. Jay Hood, commander of Joint Task Force Guantanamo, said.

He said all JTF members are strongly focused on their mission, "the safe, secure, humane custody of the detainees under our charge."

Hood explained that information collected since the detainees have been held here has helped officials learn how best to handle the detainees' continued detention and to design suitable facilities.

Level 1 detainees wear white "uniforms" and share living spaces with other detainees. At the other end of the spectrum, Level 4 detainees wear orange, hospital scrub-type outfits and have fewer privileges.

Padmore, who is assigned to Joint Task Force Guantanamo based on prior corrections experience, described a typical Level 1 detainee as "compliant and willing to follow camp rules." Whereas, Level 4 detainees generally "have a litany of offenses," from threatening other detainees or guards to hurling bodily fluids at guards or refusing to come out of the cell when ordered.

To a certain extent, the level a detainee is placed in determines where he is housed, as well. Most Level 1 detainees are afforded extra privileges in Camp 4. (Camps are numbered based on the order in which they were built, not their order of precedence or level of security.)

Gone are the days of concrete slabs and open-air chain-link enclosures in Camp X-Ray. Hood explained that Camp X-Ray was a hastily built structure to deal with a rapidly changing situation in the war on terrorism and that the facilities there were never meant to be used for long-term detention. Engineers began construction on Camp Delta, which replaced Camp X-Ray in April 2002, shortly after detainees began arriving here, he said.

In Camp 4, part of Camp Delta, detainees live in 10-man bays with nearly all-day access to exercise yards and other recreational privileges.

Sgt. 1st Class Todd Rundle, an Army Reserve military police officer, explained that Camp 4 is Camp Delta's only medium-security facility. Doors in the camp are normally opened with keys, but a mechanical override can be controlled from inside the centrally located "Liberty Tower," the camp's command post, in an emergency.

Detainees generally are allowed out in exercise yards attached to their living bays seven to nine hours a day. Exercise yards include picnic tables under cover and ping-pong tables. Detainees also have access to a central soccer area and volleyball court.

Rundle said the large amount of outdoor time is a huge incentive for detainees to want to be transferred to Camp 4, which is based on good behavior. "The increased incentive of the additional time out here, that's a big thing for detainees to be able to come out for that duration of time over the course of every single day of the week," he said.

Part of the rationale behind the living arrangements at Camp 4 is to rebuild detainees' social skills, "which might have been lost over time," Rundle said. Detainees are provided games -- chess, checkers and playing cards are the most requested items -- and are responsible for keeping their own living areas clean.

They also eat meals together within their cellblocks. Food-service personnel bring the food, always culturally sensitive, and detainees apportion it among themselves at mealtime. Padmore said a guard always supervises so "Detainee A is not getting three plates while Detainee B gets none."

Books and other reading material are available during periodic visits from a designated librarian. A security official explained Agatha Christie books in Arabic are very popular and that camp officials are working to get copies of the Harry Potter books in Arabic.

Also in Camp 4, detainees are issued a full roll of toilet paper each week. In other camps detainees have to ask guards to apportion toilet paper when they need it. Padmore said many people take toilet paper for granted and that the detainees in Camp 4 value having their own supplies.

Other privileges unique to Camp 4 include electric fans in the bays, ice water available around the clock, plastic tubs with lids for the detainees to store their personal items, and the white uniforms. White is a more culturally respected color and also serves as an incentive to detainees in other camps.

"It's almost like a status symbol," he said. "Detainees come past and see detainees from Camp 4 playing volleyball, playing soccer or in white uniforms. The hope is that other detainees will play by the rulebook and aspire to get to Camp 4 to get those privileges afforded to them."

Not too far away, in Camp 1, some detainees are just one step away from being moved to Camp 4. They wear tan uniforms and are afforded such comfort items as prayer rugs and canvas sneakers. Many of these detainees are being considered for transfer to Camp 4, Rundle said.

Detainees in Camp 1 are housed in individual cells with a toilet and sink in each cell. They have 30 minutes in one of two exercise yards at the end of each cellblock twice a week, Padmore explained. Showers are allowed in outdoor shower stalls after exercise periods.

There are 10 cellblocks with 48 cells each, but guards generally don't fully populate the cellblocks to minimize the guard-to-detainee ratio.

Movement into and within the camp is funneled through "sally ports," entrances and passageways with two gates. One gate must be closed before the next can be opened. Military police officers man each sally port from inside.

Each detainee gets basic items such as a "finger toothbrush" -- short and stubby so it can't be used as a weapon -- toothpaste, soap, shampoo, plastic flip flops, and cotton underwear, shorts, pants and a shirt.

Guards are not allowed to remove basic items, but comfort items can be taken away for behavior infractions. Comfort items can include such simple things as Styrofoam cups and caps to the water bottles.

Some seemingly innocent items are kept from detainees to prevent them from harassing guards. For instance, sport tops on water bottles can make it easier for detainees to shoot bodily fluids onto guards, Padmore said.

The most recently completed detention facility, Camp 5, is a state-of-the-art prison that many states would envy. The \$16 million facility, completed in May 2004, is composed of four wings of 12 to 14 individual cells each.

The two-story maximum-security detention and interrogation facility can hold up to 100 people and houses Level 4 detainees and those deemed to be the most valuable intelligence assets. The camp is run from a raised, glass-enclosed centralized control center that sits in the middle of the facility, giving the MPs a clear line of sight into both stories of each wing. Army National Guard Maj. Todd Berger called the control room "the nerve center of the camp."

Berger, who in civilian life is a state trooper in New Jersey, explained that all detainee movement in Camp 5 is monitored and controlled through touch-screen computers in the control center.

Thick steel airlock doors clang shut with a hiss and an echo as guards move through the cellblocks. In Camp 5, media and other visitors are not permitted to tour occupied cellblocks. The modern facility features some cells equipped with overhanging sinks and grab bars on the toilets for detainees with a physical disability and 10-foot-by-20-foot outdoor exercise yards that detainees generally have access to for an hour every day.

Camp rules are posted in four languages -- Arabic, Farsi, Urdu, and Pashto -- in the exercise yards in each of the camps. Recently, the enclosed bulletin boards have also featured posters with information about the Afghan elections. "It talks about the fact that 10 million Afghans freely elected their own government," Rundle said. "So it's a bit of news from home for a chunk of the detainee population here."

Cultural sensitivity is consistently practiced in each of the camps. Respect for Islam is evident in many of the policies. For instance, in each cell in Camp 1, a Koran is stored hanging in a surgical mask from the cell wall. The purpose of the surgical mask is to hold the Muslim holy book "in a place of reverence," Padmore said.

In each cell block a painted arrow points toward Mecca, Saudi Arabia, so the detainees know which way to face during their daily prayers. During Ramadan, detainees were allowed to break their daily fast with water and dates at the appropriate time, and prayer calls are broadcast over loudspeakers five times a day.

Regardless of his assigned level or camp, no detainee is considered to be more or less dangerous than another. "I can't say who's dangerous and who's not," Padmore said. "I consider them all dangerous people because they're here."

Related Sites:

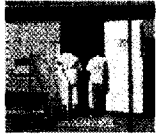
[Joint Task Force Guantanamo](#)



A Koran hangs in a surgical mask in Camp 1. The Muslim holy book is hung up on the wall to give it a place of reverence. Photo by Kathleen T. Rhem

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Two detainees in white "uniforms" stand in the doorway of their bay in Camp 4. To a certain extent, a detainee's level is determined by where he is housed, as well. Most Level 1 detainees are afforded extra privileges in Camp 4. Photo by Kathleen T. Rhem

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Detainees walk in an exercise yard in Camp 4, where they live in 10-man bays with nearly all-day access to the yard and other recreational privileges. Photo by Kathleen T. Rhem

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The newly completed Camp 5 state-of-the-art facility features cells equipped for detainees with disabilities. This cell includes an overhanging sink to accommodate someone who uses a wheelchair and a grab bar on the commode. Photo by Kathleen T. Rhem

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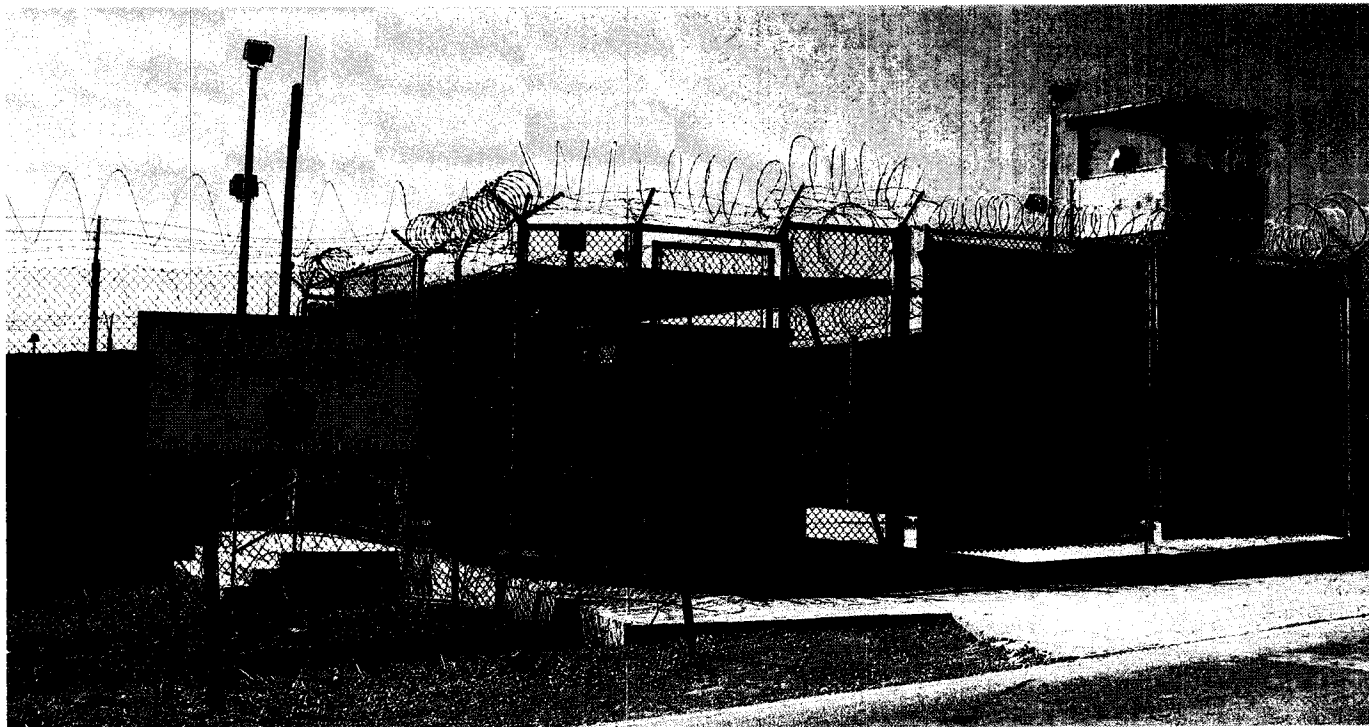
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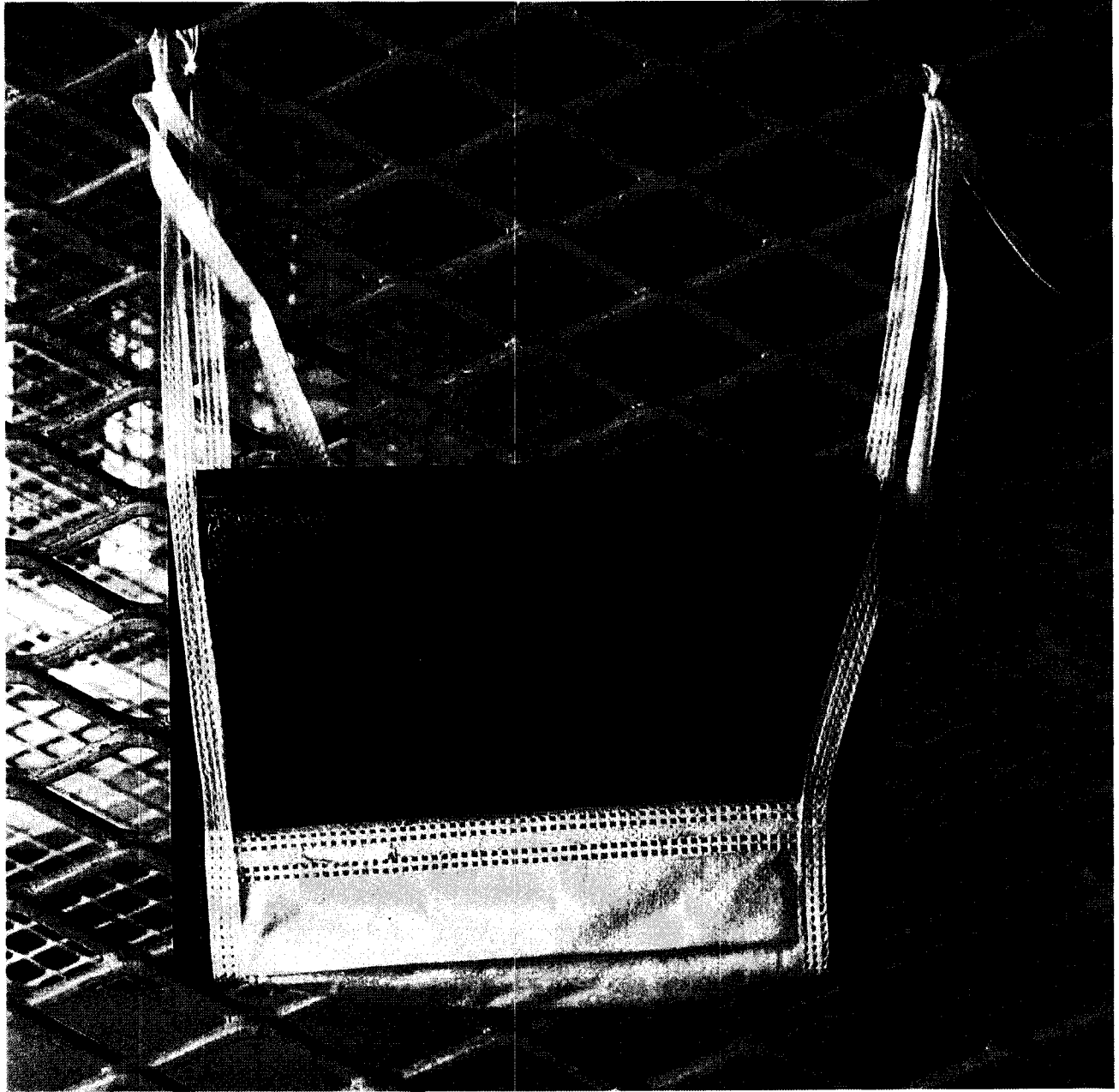
This view shows an unoccupied wing in the state-of-the-art Camp 5, a \$16 million facility completed in May 2004. Photo by Kathleen T. Rhem

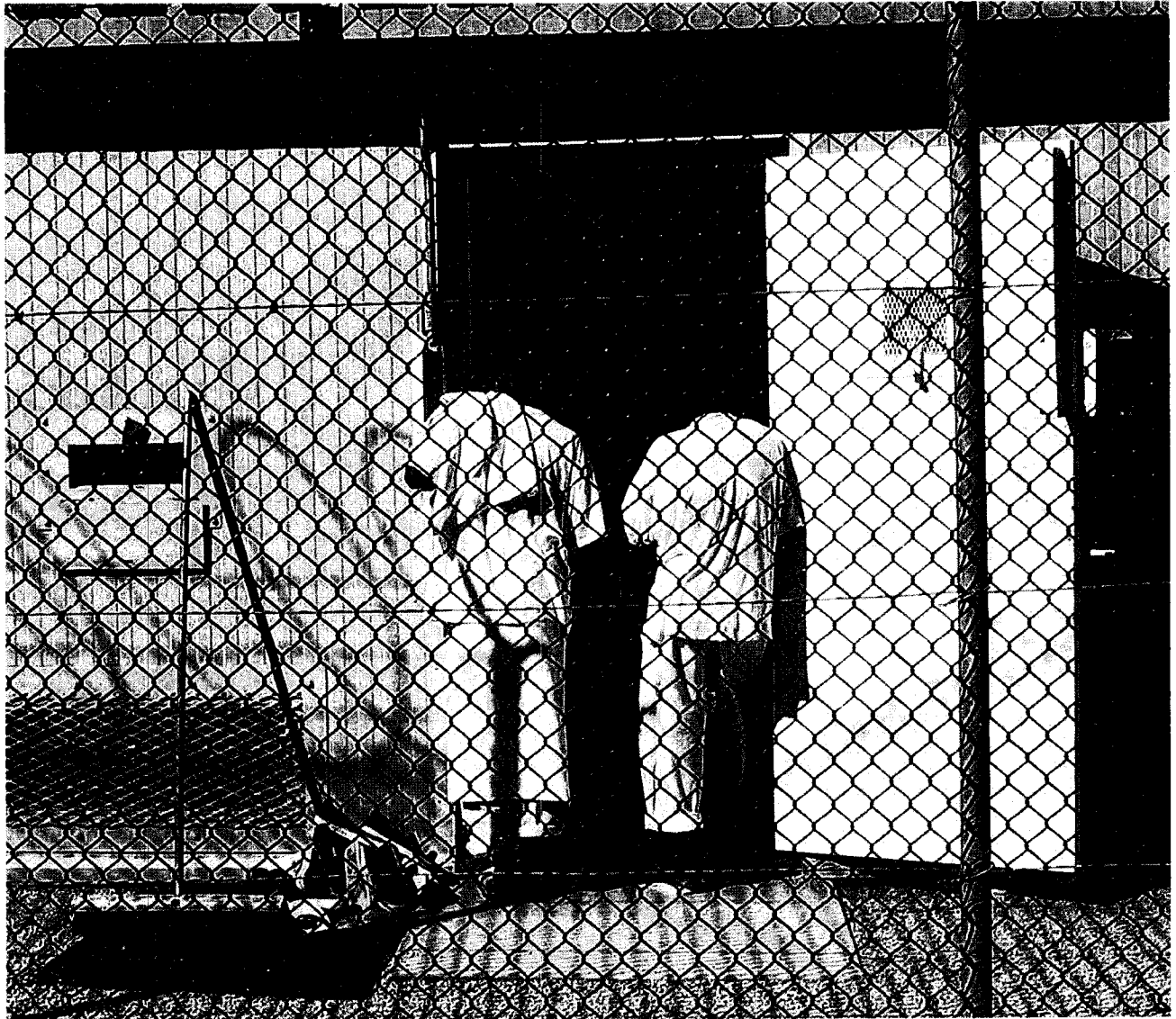
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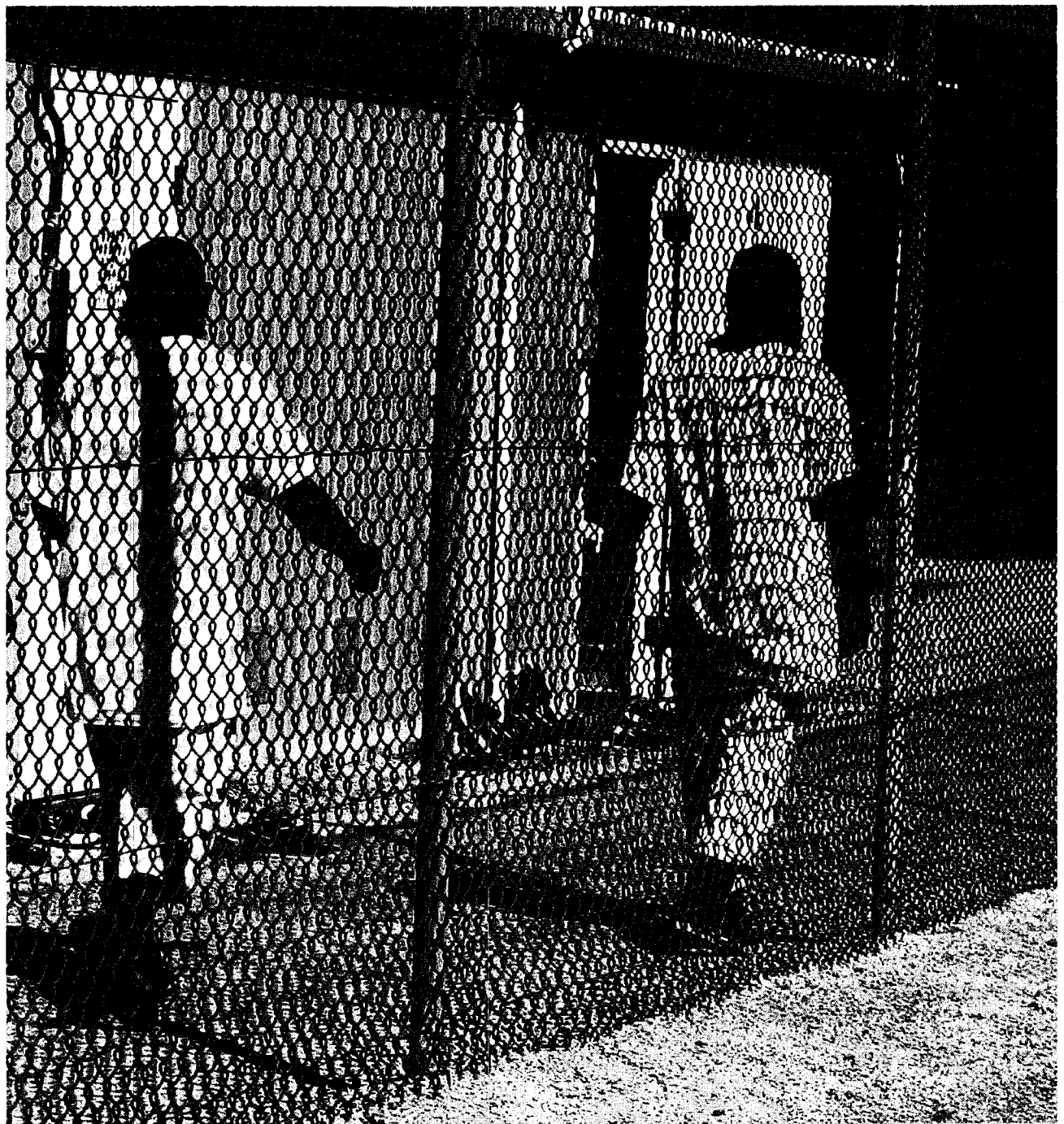
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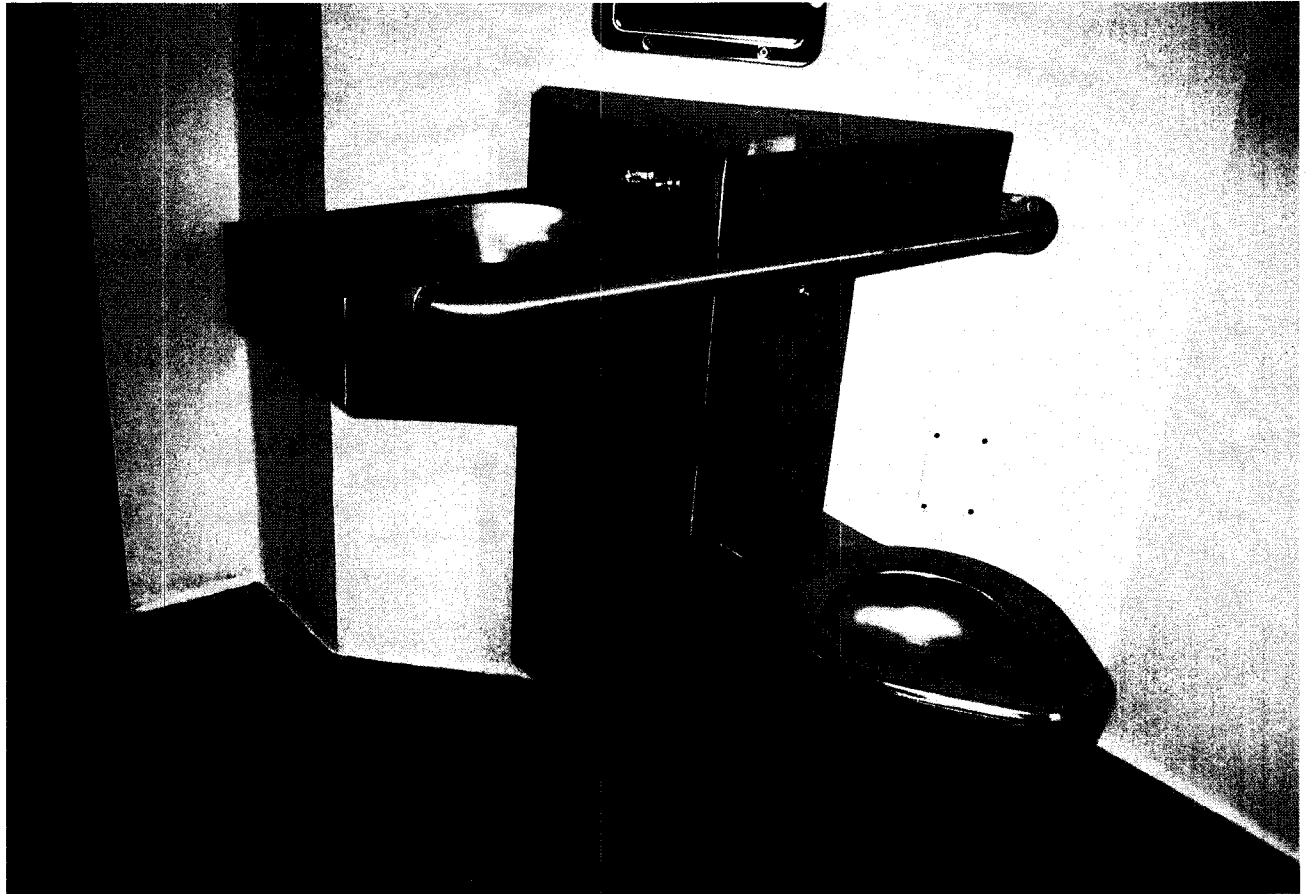


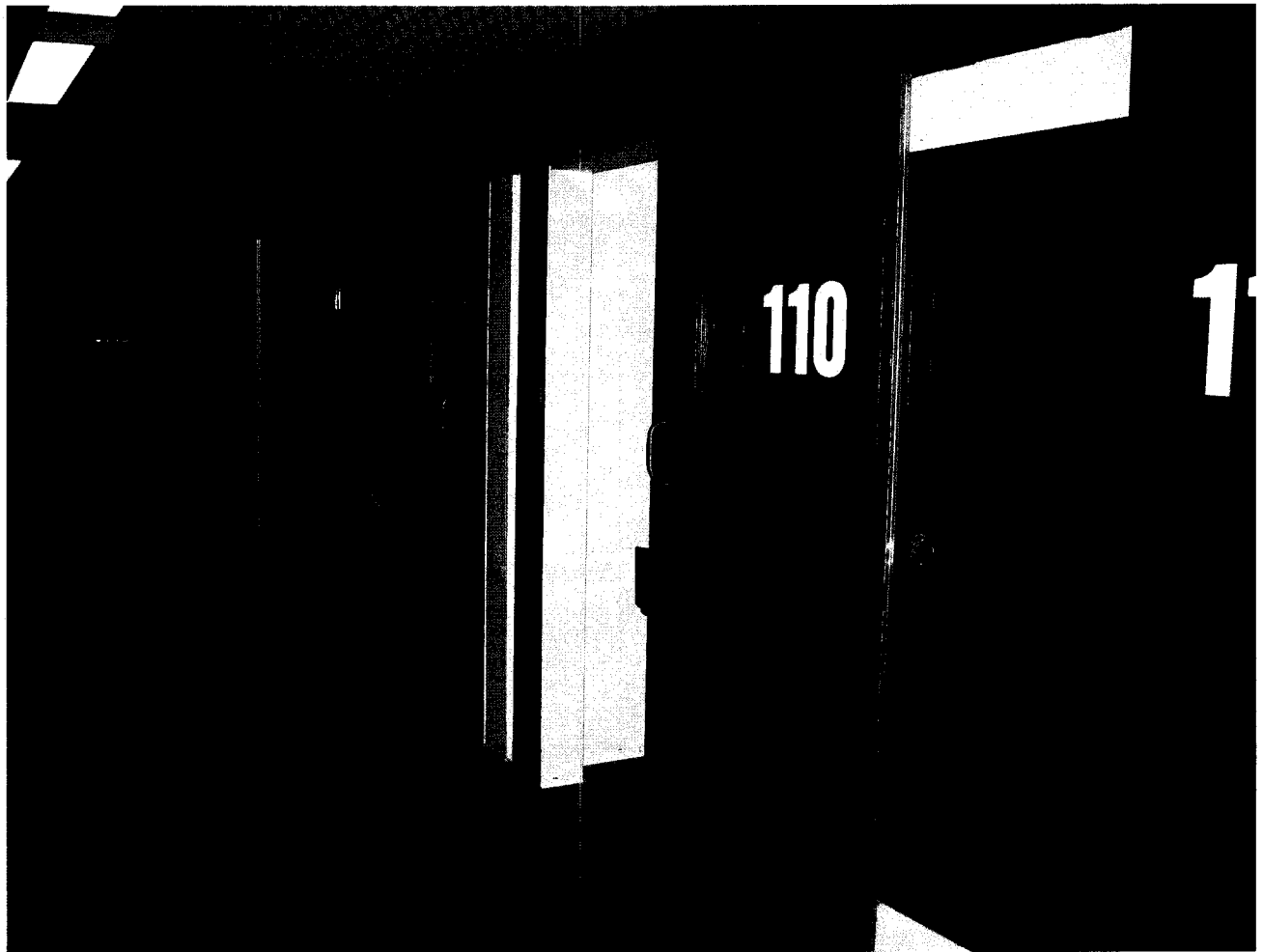
The entrance to Camp 1 in Guantanamo Bay's Camp Delta. The base's detention camps are numbered based on the order in which they were built, not their order of precedence or level of security. Photo by Kathleen T. Rhem
(Click photo for screen-resolution image); [high-resolution image available.](#)











Attachment G

UNITED STATES OF AMERICA

v.

SALIM AHMED HAMDAN

Defense Motion

for Relief from Punitive Conditions of
Confinement and for Confinement Credit, or,
Alternatively, Abatement

Declaration of Andrea J. Prasow

1 February 2008

I, Andrea J. Prasow, declare pursuant to 28 U.S.C. § 1756, that the following information is true and correct:

1. I am Assistant Detailed Defense Counsel in the case of *United States v. Hamdan*.

I have been detailed to Mr. Hamdan's case since April 2007.

2. I have met with Mr. Hamdan for approximately two to three days per month since May 2007.

3. Pursuant to court order, Mr. Hamdan was previously detained in Camp 4 – a medium-security, communal-living style facility. Following dismissal of his *habeas* case by District Judge Robertson in December 2006, Mr. Hamdan was moved to solitary confinement in Camp 6. He has been in solitary confinement every since.

4. During the course of our meetings, I have had the opportunity to personally observe Mr. Hamdan's demeanor. Over the last several months, I have observed a significant change in Mr. Hamdan's personality.

5. Mr. Hamdan has grown increasingly agitated. He has described tremendous suffering due to his ongoing solitary confinement. He finds it difficult to concentrate, his eyesight has deteriorated, and he experiences constant harassment from the guards. His level of desperation grew to the point where he requested to meet with interrogators in the hopes that they might improve his conditions of confinement.

6. Mr. Hamdan has a history of extreme emotional distress when placed in solitary confinement. His difficulty concentrating on his case due to the effects of solitary confinement was previously identified by Dr. Emily A. Keram, a forensic psychiatrist retained by the Defense to assist in the preparation of Mr. Hamdan's case. During a period when Mr. Hamdan was housed in general population, he would be transported to isolation in Camp Echo in advance of attorney visits. Dr. Keram noted that his ability to participate was so seriously hampered by even one night in solitary confinement that the Defense requested that Mr. Hamdan be returned to general population during the evening between attorney interviews. A true and correct copy of the Memorandum from LCDR Charles Swift to Commander, JTF, Guantanamo, dated May 30, 2005, attaching memoranda from Dr. Keram to LCDR Swift dated May 16 and 17, 2005, is attached as Exhibit 1 to this Declaration.

7. Due to Mr. Hamdan's deteriorating mental condition, and in light of the Military Judge's Order of June 4, 2007 that Mr. Hamdan might be a prisoner-of-war, I requested that he be moved to the less restrictive, non-solitary confinement facility in Camp 4. A true and correct copy of that request is attached as Exhibit 2 to this Declaration.

8. Having failed to receive a response to this request, on October 9, 2007, I reiterated my request in writing. A true and correct copy of that request is attached as Exhibit 3 to this Declaration. During October 2007, I spoke to CAPT McCarthy, Staff Judge Advocate ("SJA"), in person and asked to be informed of the status of the request that Mr. Hamdan be moved to Camp 4. CAPT McCarthy informed me that he had forwarded the request through appropriate channels. I never received any further response.

9. After meeting with Mr. Hamdan in December 2007, I grew so concerned about his mental state that I submitted an additional request to the SJA that Mr. Hamdan be moved from solitary confinement to Camp 4, and that he be allowed a telephone call with his wife. I am aware that Omar Khadr, who is being prosecuted by military commission, and Ibrahim al Qosi, who was charged under a previous commission process, are or were both housed in Camp 4. I am also aware that Mr. Khadr has received at least one telephone call from his family. A true and correct copy of that request, dated December 17, 2007, is attached as Exhibit 4 to this Declaration.

10. On December 19, 2007, I received a response from the SJA's office. I was informed that Mr. Hamdan had been moved to Camp 1. A true and correct copy of that response is attached as Exhibit 5 to this Declaration.

11. On January 24, 2008, I arrived at my scheduled visit with Mr. Hamdan and discovered that he had been moved to Camp 5. Mr. Hamdan informed me that he had been in Camp 1 until December 24, 2007, after which time he was moved to Camp 5 – another solitary confinement facility.

12. Mr. Hamdan informed me that during the entire month he had been in Camp 5 he had only been allowed two exercise periods.

13. Mr. Hamdan informed me that during the month he had been in Camp 5 he had written three separate letters to his attorneys but that the guards had refused to collect them. During our meeting, Mr. Hamdan provided me with those letters.

14. Over the last several months, Mr. Hamdan has grown increasingly frustrated with his legal team. Mr. Hamdan has told me several times that he cannot focus on preparing for his trial because his conditions of confinement are so strenuous and all-consuming.

Mr. Hamdan perceives his isolation in solitary confinement while other detainees are in the less-restrictive setting of Camp 4 as a failure of his defense team.

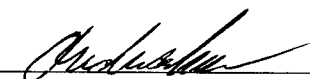
15. Mr. Hamdan's desperation was so severe that he requested to meet with interrogators believing they were the only people who could improve his conditions of confinement.

16. At the conclusion of our last meeting on January 25, 2008, Mr. Hamdan expressed a desire to meet with the Chief Defense Counsel as soon as possible in order to discuss his options regarding choice of counsel.

17. It is apparent to me even as a lay person that Mr. Hamdan's mental state is precarious. During the course of our meetings, he has vacillated between being friendly and cooperative to sudden outbursts of anger. When I have attempted to discuss details of his case, Mr. Hamdan's mind appears to wander. He is frequently unable to engage in any real discussion of his case, instead focusing on his conditions of confinement and our failure to improve them.

18. I do not believe that Mr. Hamdan will be able to materially assist in his own defense if his conditions do not improve in the near future.

I declare under penalty of perjury that the foregoing is true and correct.

By: 

Date: 1/2/08

Exhibit 1



DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF DEFENSE COUNSEL
1620 DEFENSE PENTAGON
WASHINGTON, DC 20301-1620

30 May 2005

From: LCDR Charles Swift, JAGC, USN, Detailed Defense Counsel
To: Commander, JTF Guantanamo

Subj: VISITATION OF SALIM AHMED HAMDAN, ISN 149

Encl: (1) Dr. E. Kerham's memo of 16 May 05
(2) Dr. E. Kerham's memo of 17 May 05

1. Dr. Emily Kerham is an expert forensic and clinical psychiatrist with extensive experience in the penal setting. She holds her medical degree from the University of North Carolina, completed an internship and residency in psychiatry in the University of North Carolina Hospitals, and served as fellow Department of Justice at the Federal Corrections Institute in Butner, North Carolina. She is currently an assistant Clinical Professor of Psychiatry in the Psychiatry and the Law Program at the University of California, San Francisco and on staff at the VA Mental Health Clinic where her practice centers on the treatment of veterans suffering from Post Traumatic Stress Syndrome including former POWs and torture survivors. She has published extensively in the fields of forensic psychiatry and issues surrounding the use of force by law enforcement.

2. Dr. Kerham is currently in the process of making a forensic evaluation of Mr. Hamdan. During her evaluation sessions, Dr. Kerman has found that Mr. Hamdan suffers from Post Traumatic Stress Disorder and Major Depression single episode. Enclosure (1). Additionally, Dr Kerham has observed that Mr. Hamdan demonstrates physical symptoms consistent with a previous diagnosis of sciatica. During the course of visitation from 15 May – 18 May 05, Dr. Kerham observed that Mr. Hamdan mental and physical condition combined with changes to conditions of visitation negatively impacted Mr. Hamdan's ability to participate in the preparation of his defense. Enclosures (1) and (2). In particular, Dr. Kerham observed that the failure to return Mr. Hamdan to Camp Delta despite assurance to the contrary by the Sergeant of the Guard for Camp Echo on 16 May 05, undermined Mr. Hamdan mental state and his trust in his defense team to the point that 8 hours of forensic evaluation planned for 17 May 05 had to be foregone in favor of therapy in order to resume evaluation. Enclosures (1) and (2).

3. Previous to the 15 – 18 May visit, I previously advised the JTF Staff Judge Advocate's (SJA's) office of the detrimental affect on both productivity and attorney-client relations of Mr. Hamdan remaining in Camp Echo overnight during attorney visits. In conjunction with that advisement, it was requested that Mr. Hamdan be returned overnight to Camp Delta. The SJA's office made every effort to accommodate these requests. Communication failures, however, resulted in Mr. Hamdan remaining in Camp Echo overnight for a minimum of a night during each of the previous visits. On each occasion an increase in the disruption of the subsequent visit was experienced.



4. At the conclusion of the 15-18 May visit, the SJA orally communicated that, due to the increased rate of visitation by Habeas Counsel, in the future JTF intend to hold Mr. Hamdan in Camp Echo for the duration of his attorney visit. This reversal in policy, due to the visitations by habeas counsel, is inappropriate. Unlike the non-military commission detainees, Mr. Hamdan has already spent nine months at Camp Echo in solitary confinement. A federal judge has already ruled that Mr. Hamdan must be released from Camp Echo due to the tremendous damage further time in Camp Echo can do to Mr. Hamdan. *See Hamdan v. Rumsfeld*, 344 F.Supp.2d 152 (D.D.C. 2004). That decision is on appeal, but the Department of Justice decided not to seek a stay of that Order. It therefore remains the law of the land. Mr. Hamdan, however, is not situated similarly to other detainees in Camp Delta. Unlike the non-commission detainees, Mr. Hamdan must prepare for a criminal trial, where the charges against him carry the possibility of life imprisonment. There is absolutely no warrant for treating him like an ordinary habeas detainee.

5. Placing Mr. Hamdan back in Camp Echo, a place that significantly aggravates his post-traumatic stress disorder, will induce flashbacks and set the defense back, perhaps permanently. Based on Dr. Kerham's evaluation and personal observation such a change of policy adversely impacts on Mr. Hamdan's ability to interact with counsel and to prepare his defense. In order to minimize the potential for further damage to Mr. Hamdan's mental state, prudence requires that attorney visits with Mr. Hamdan be limited to single day during each trip, thereby avoiding holding Mr. Hamdan overnight in Camp Echo. Due to the difficulty and minimum duration of travel to Guantanamo Bay, adding extra days for each visit with Mr. Hamdan will both significantly increase the cost and efficiency of preparation of a defense for Mr. Hamdan in the event that trial by military commission is resumed. Consequently on behalf of Mr. Hamdan, I request that the practice of returning him overnight to Camp Delta during attorney visits be continued and formalized as policy. In order to assist in the implementation every effort will be made by Mr. Hamdan's defense team to visit during periods of no or minimum Habeas visitation.

6. Prior to the 16 May 2004, visitation, Mr. Hamdan was restrained by a single leg iron during attorney visitation. Single leg restraint allowed Mr. Hamdan to adjust his sitting position in order to relieve back pain associated with his sciatica. During more than 25 visitation periods in single leg iron no threatening or hostile actions toward any member of the defense team was observed. On 16 May 2005, the guard force interrupted visitation in order to place Mr. Hamdan in double leg restraints. Thereafter, Dr. Kerham observed a significant increase in the level of pain experienced by Mr. Hamdan. (Enclosure 1). Mr. Hamdan's inability to tolerate extended periods of sitting in a stationary position resulted in an increased need to take breaks during interviews and decreased ability to concentrate. In order to ensure maximum productivity and minimize the physical pain suffered by Mr. Hamdan during attorney visits, I request on behalf of Mr. Hamdan that he be returned to single restraints for attorney visits.

7. During Mr. Hamdan confinement in pre-trial isolation Mr. Hamdan experienced a significant decrease in the interest in food resulting from a loss of appetite. During client

visits Mr. Hamdan's defense team noted that spiced food significantly increased his willingness to eat. In an effort to stimulate interest in food outside of attorney visits Mr. Hamdan's defense team was permitted by the guard force to leave spices with the guards for distribution to Mr. Hamdan during meal times beginning in August 2004. This practice was continued through April 2005 with a resulting reverse in weight loss and a weight gain of approximately eight pounds. (Mr. Hamdan has lost approximately 50 pounds during his detention.) During the 15 to 18 May visit the ability of the defense team to leave spices with Mr. Hamdan was rescinded without explanation. As noted by Dr. Kerham in Enclosure 1, loss of appetite is symptomatic of Clinical Depression and that the use of spices to stimulate interest in food is an appropriate mitigation measure. Consequently on behalf of Mr. Hamdan, I request that defense team be permitted to continue to provide spices for Mr. Hamdan's use.

8. Since his pre-trial confinement in Camp Echo beginning in December of 2003, Mr. Hamdan has been required to exercise in isolation. This practice has been continued following Mr. Hamdan's return to Camp Delta pursuant to judicial order despite the fact that to the defense's information and belief Mr. Hamdan is considered by the JTF to be Level 1 detainee and consequently authorized exercise with another detainee. As indicated by Dr. Kerham in Enclosure (1), social activity is an important factor in addressing and treating PTSD. Additionally, exercise is an important element in the treatment of sciatica. Mr. Hamdan receives an additional half-hour of recreation at the direction of the JTF medical staff. The need for recreation is particularly acute during periods of attorney visits due to the aggravation of Mr. Hamdan's condition caused by prolonged sitting. Enclosure (1). Unfortunately to the defense's information and belief, Mr. Hamdan often misses daily recreation during the period of attorney visitation. On behalf of Mr. Hamdan, the defense requests that Mr. Hamdan be permitted exercise in with another detainee and that to the extent feasible Mr. Hamdan be given recreation during attorney visits. In order to facilitate recreation during attorney visits, Mr. Hamdan's defense team will adjust if necessary the time at which daily visitation is commenced.

9. Each of the above requests is supported by Dr. Kerham's medical recommendations. A written response to addressing each of the above requests is respectfully requested. In the event that a request cannot be accommodated explanation of the reason's associated with denial of the request is respectfully requested. Should there be any question concerning the above requests please contact me at 703 607 1521 ext 191 or e-mail swiftc@dodgc.osd.mil.


C. D. SWIFT

Copy to: Chief Defense Counsel, Military Commissions
Appointing Authority, Military Commissions

INTEROFFICE MEMORANDUM

TO: LCDR CHARLES D. SWIFT, JACG, USN
FROM: EMILY A. KERAM, M.D. *EAK*
SUBJECT: SALEM HAMDAN, PSYCHIATRIC AND MEDICAL CONSEQUENCES OF CONDITIONS OF CONFINEMENT
DATE: MAY 16, 2005

1. I am a medical doctor and a forensic psychiatrist. I have worked in both federal and state prisons. I have provided treatment to inmates in General Population, Administrative Segregation, and Death Row. I currently work as a staff psychiatrist for the Department of Veterans Affairs and have expertise in the treatment of Posttraumatic Stress Disorder (PTSD) and Major Depression. I have been retained by defense counsel for Salem Ahmed Salem Hamdan. Mr. Hamdan is currently in custody in Camp Delta. He previously spent ten months in isolative confinement at Camp Echo, ending approximately September 2004. As of this date I have interviewed Mr. Hamdan on five separate days for over 20 hours. These interviews took place at Camp Echo, necessitating Mr. Hamdan's transport from Camp Delta.
2. In addition to interviewing Mr. Hamdan, I have reviewed records of the medical care he has received since arriving at GTMO in May 2002. Based on the information I have obtained, it is my opinion that Mr. Hamdan currently meets diagnostic criteria for both PTSD and Major Depression, single episode. I have not completed my evaluation, and therefore have not determined the other psychiatric disorders he may have. With respect to his medical condition, Mr. Hamdan's GTMO medical record indicates, and his current report of symptoms is consistent with, a diagnosis of sciatica.
3. Mr. Hamdan's current symptoms of PTSD include anxiety, initial and middle insomnia, nightmares, daytime fatigue, disturbance of concentration and memory, distractibility, hypervigilance, and increased startle reflex. He was significantly traumatized by his previous ten months in isolative confinement at Camp Echo. Mr. Hamdan reports an increase in symptoms of PTSD each time he is brought to Camp Echo to participate in meetings, as his return there again subjects him to conditions of that confinement. It is my observation and Mr. Hamdan's report that his symptoms of PTSD negatively impact upon his ability to participate in discussions that take place at Camp Echo. Mr. Hamdan experiences some relief in the intensity of these symptoms when he is allowed to return to Camp Delta at night. It would decrease his symptoms of PTSD and increase his ability to participate in pre-trial preparations if he were allowed to return to Camp Delta each evening once meetings in Camp Echo have concluded for the day. In addition, a mainstay of treatment of PTSD is to support activities that increase social interaction. It would decrease Mr. Hamdan's symptoms of PTSD if he were allowed to take his recreation time with other detainees.

Encl (1)

TO: LCDR CHARLES D. SWIFT, JAGC, USN
FROM: EMILY A. KERAM, M.D. *EAK*
SUBJECT: INTERVIEW OF SALEM HAMDAN 5/17/05
DATE: 5/17/2005

- Encl (2)

4. Mr. Hamdan's current symptoms of Major Depression include depressed mood, decrease in appetite, and anhedonia (lack of interest in previously pleasurable activities). As a result, he has little interest in eating and finds it difficult to maintain his caloric intake. I note from his GTMO medical record that as of this date he has lost approximately 35 pounds since May 2002. He has not been on a hunger strike in one year. Mr. Hamdan reports that having the ability to add spices to his food makes the food more appealing, increases his interest in eating, and as a result, increases his caloric intake. Allowing Mr. Hamdan to continue to have access to spices at Camp Delta would allow him to curtail his weight loss and perhaps to regain some of the weight he has lost.
5. Mr. Hamdan's current symptoms of sciatica include significant lower back pain radiating into the right buttock and lower extremity, and worsening pain with immobility. Mr. Hamdan is customarily placed in a single leg restraint during meetings at Camp Echo. It is my observation that this position, although uncomfortable, is tolerable for Mr. Hamdan. He is able to move about a bit, which eases his back pain. Today he was placed in double leg restraints during our interview. This significantly and unnecessarily increased his back pain. During defense team visits, Mr. Hamdan should be placed in a single leg restraint based on the length of the visits and his demonstrated behavior, unless future behavior dictates additional security for the safety of his defense team. Treatment for his sciatica should include daily recreational time, for a minimum of one hour. On days that he is scheduled to attend meetings at Camp Echo, he should be given recreational time either before he leaves for Camp Echo, or after his return. Finally, Mr. Hamdan reported that he is frequently not given Tylenol or other analgesic medication when he requests it for back pain. Physicians providing treatment to Mr. Hamdan at GTMO have diagnosed him with sciatica and have ordered these analgesic medications. Steps should be taken to ensure that medication is given to Mr. Hamdan as ordered when he requests it.

Exhibit 2



DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF DEFENSE COUNSEL
1620 DEFENSE PENTAGON
WASHINGTON, DC 20301-1620

20 June 2007

MEMORANDUM

From: Andrea J. Prasow, Assistant Detailed Defense Counsel
To: Staff Judge Advocate, Joint Task Force Guantanamo

Subj: Salim Ahmed Hamdan, ISN 0149

1. On 4 June 2007 Judge Allred dismissed the case of *United States v. Hamdan* that was pending before a military commission. (The Order is enclosed for your convenience.) As part of his ruling, Judge Allred noted that no competent authority has made an individualized determination that Mr. Hamdan is not a prisoner of war entitled to all the requisite protections under the Geneva Conventions. Pursuant to AR 190-8, which implements the Geneva Conventions for the Department of Defense, enemy prisoners of war must be "quartered under conditions as favorable as those for the force of the detaining power billeted in the same area." AR 190-8 § 3-4.e. Accordingly, Mr. Hamdan requests an immediate move to Camp IV, in which he will be billeted with other detainees in a communal-style living facility that approximates the requirements of AR 190-8 and the Geneva Conventions.
2. Further, to my knowledge, Mr. Hamdan has consistently complied with detention regulations and does not pose a security threat, nor is he in a punishment status that would militate against transfer to Camp IV.
3. I appreciate your prompt attention to this matter.

Very respectfully,

A handwritten signature in black ink, appearing to read "Andrea J. Prasow", is written below the text "Very respectfully,".

ANDREA J. PRASOW

Encl: 1. Decision and Order - Motion to Dismiss for Lack of Jurisdiction



Exhibit 3



DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF DEFENSE COUNSEL
OFFICE OF MILITARY COMMISSIONS
OFFICE OF THE GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, D.C. 20310

9 Oct 07

From: Andrea J. Prasow, Assistant Detailed Defense Counsel
To: Staff Judge Advocate, Joint Task Force Guantanamo Bay

Subj: OUTSTANDING REQUESTS FROM DEFENSE COUNSEL ICO SALIM AHMED
HAMDAN, ISN 0149

1. The defense for Salim Ahmed Hamdan, ISN 0149, notes that several requests which have been sent to your office are still outstanding. The following is a consolidated list:

- a. Request made 22 June 2007 for clearance of a letter by Mr. Hamdan's wife.
- b. Request made 28 June 2007 for clearance of two books and a magazine. E-mail correspondence between LN1 Holt and LN1 Lindee indicates that the person charged with clearing reading materials for detainees was on leave for part of the summer. The last e-mail received from LN1 Holt was on 6 August 2007 stating that he would check on the status. We have not received any additional information in writing and during the team's visit in September no one in your office was able to provide additional information.
- c. Request made 22 June 2007 for a transfer of Mr. Hamdan from his current location to Camp 4 in compliance with international law and the military judge's acknowledgment that Mr. Hamdan may be a prisoner of war.
- d. Request made 10 September 2007 for screening of a DVD, photos, and letters from Mr. Hamdan's family. The defense believes these documents are critical to Mr. Hamdan's ability to make decisions related to the disposition of his case.

2. Copies of these letters can be provided to your office, if required. We look forward to resolving these outstanding matters as quickly as possible.

Very respectfully,

A handwritten signature in black ink, appearing to read "Andrea J. Prasow", is written over a horizontal line.

ANDREA J. PRASOW

Exhibit 4



DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF DEFENSE COUNSEL
OFFICE OF MILITARY COMMISSIONS
OFFICE OF THE GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, D.C. 20310

17 Dec 07

From: Andrea J. Prasow, Assistant Detailed Defense Counsel
To: Staff Judge Advocate, Joint Task Force Guantanamo Bay

Subj: CONDITIONS OF CONFINEMENT ICO SALIM AHMED HAMDAN, ISN 0149

1. The defense for Salim Ahmed Hamdan, ISN 0149, is concerned that Mr. Hamdan's conditions of confinement are materially interfering with our ability to prepare Mr. Hamdan's defense in the military commission. Specifically:

- a. Mr. Hamdan is housed in Echo block of Camp VI, a solitary confinement wing during which he is in isolation for 23 hours per day;
- b. Lack of access to the outside has caused Mr. Hamdan's eyesight to deteriorate significantly since he was relocated to Camp VI;
- c. Interrogators meet with detainees on Mr. Hamdan's block routinely. The interrogators provide additional comfort items to those detainees, such as food, spices and movies, as well as provide letters from the detainees' family members. Mr. Hamdan never receives these comfort items and experiences mental distress due to the disparity of treatment;
- d. The guards on Mr. Hamdan's block continually harass him by turning the hot water off and increasing the level of air conditioning in his cell, among other things. Mr. Hamdan has reported the harassment to officers in charge who have failed to respond;
- e. Mr. Hamdan is aware that Omar Khadr, who is currently facing charges before a military commission, and Ibrahim Al Qosi, who was charged under the previous commission system, are both housed in Camp IV;
- f. Mr. Hamdan is aware that many detainees are housed in Foxtrot block of Camp I;
- g. Mr. Hamdan is aware that other detainees, including Mr. Khadr, have received telephone calls from their families;
- h. Mr. Hamdan is aware that his family has written letters to him and created DVDs, which include footage of the daughter he has never seen. Those letters DVDs were submitted by the defense several months ago for clearance by your office. To date, Mr. Hamdan has not received them;

- i. Mr. Hamdan's conditions are so detrimental to his mental health that he has previously requested to speak to interrogators in the hope that they would provide him letters and DVDs of his family as they have for other detainees.
2. On visits with defense counsel beginning shortly after Mr. Hamdan was transferred to solitary confinement in Camp VI, Mr. Hamdan has been emotionally distraught and withdrawn to the point of being unable to focus for any length of time on substantive issues relating to his case. From the perspective of defense counsel, this represents a profound personality change, one that has materially degraded his ability to cooperate in his own defense and that corresponds directly to the isolation imposed on Mr. Hamdan in Camp VI.
3. The environment in which Mr. Hamdan is housed creates such serious psychological pressure that he might attempt to plead involuntarily to a charge in order to alleviate his conditions.
4. Accordingly, the defense requests that Mr. Hamdan immediately be moved to Camp IV. We note that we previously submitted a request that he be moved to Camp IV and have still not received a response to that request.
5. Alternatively, the defense requests that Mr. Hamdan immediately be moved to Camp I, Foxtrot block.
6. We further request that Mr. Hamdan immediately be provided access to the letters from his family submitted by the defense for review, and that the DVDs of his family submitted for review be approved and made available for the next scheduled visit by the defense team.

Very respectfully,

/s/

ANDREA J. PRASOW

Exhibit 5



DEPARTMENT OF DEFENSE
HEADQUARTERS, JOINT TASK FORCE GUANTANAMO
U.S. NAVAL STATION, GUANTANAMO BAY, CUBA
APO AE 09360

JTF-GTMO-SJA


19 December 2007

MEMORANDUM FOR Andrea Prasow

SUBJECT: Detainee ISN 149 – Response to 17 December 2007 Memorandum

1. You request that ISN 149 be moved from Camp 6 to Camp 4 or Camp 1, F Block. The detainee has been living in Camp 1 since 5 December 2007.
2. You state that you submitted family DVDs several months ago that have not been delivered to the detainee. Our records indicate that you submitted one DVD for ISN 149 on 10 September 07. On 17 October 07, MAJ Hansen provided a request to you stating that, "in order to clear the family DVD for ISN 149, the JTF needs a written explanation regarding how the contents of the DVD are directly related to the detainee's defense." See the enclosure. We did not receive a response from you, so the DVD has not yet been cleared.
3. You state that you submitted family letters several months ago that have not been delivered to the detainee. Our records indicate that on 10 September 07, you submitted nonlegal mail consisting of the following: 30 pages in Arabic, a card with a two page letter enclosed, and one "For You" book in Arabic. These documents are still being translated as part of the clearance review process. To expedite the clearance process in the future, please provide an English translation with foreign language documents.
4. All other nonlegal mail items that you submitted have been cleared and delivered to the detainee (7 photos submitted on 6 August 07, 24 photos submitted on 10 September 07, and 17 photos submitted on 19 October 07).

Encl



PATRICK M. MCCARTHY
Captain, U.S. Navy
Staff Judge Advocate

Attachment H

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UNITED STATES OF AMERICA

Cruel and Inhuman: Conditions of isolation for detainees at Guantánamo Bay

Introduction

Without question, the isolation of a prisoner from the general population for an indefinite period of time raises Eighth Amendment issues, and due process concerns.

US federal judge, 27 August 2004¹

As of 1 April 2007, approximately 385 men of around 30 nationalities were detained without trial in the US military base at Guantánamo Bay, Cuba. Designated by the US authorities as “unlawful enemy combatants”, many have been held for more than five years without knowing if or when they will be released or brought to any form of judicial process. None of those currently held has had the lawfulness of his detention reviewed by a court. A few face the prospect of trials by military commission under procedures that violate international fair trial standards.²

Amnesty International has raised concerns about the treatment of the detainees ever since the first of them were transferred by plane from Afghanistan to Guantánamo – hooded, shackled and tied down – in January 2002.³ From the outset, the US authorities have asserted that all the detainees in its custody are treated “humanely”. That such assertions should be treated with extreme caution has become clear over the years. Even when official investigations have revealed interrogation techniques and detention conditions that clearly violate the international prohibition on torture or other cruel, inhuman or degrading treatment, US investigators and officials have concluded that no law was breached.⁴

Despite being provided with what the US government has called “high quality” medical care, adequate food, sanitation and access to religious items, most detainees have languished in harsh conditions throughout their detention, confined to mesh cages or enclosed maximum security cells. Moreover, in December 2006, a new facility opened on the base. This facility, known as Camp 6, has created even harsher and apparently more permanent

¹ *Hamdi v. Rumsfeld*, In the US District Court for the Eastern District of Virginia. The Eighth Amendment of the US Constitution prohibits, among other things, “cruel and unusual punishments”.

² USA: *Justice delayed and justice denied? Trials under the Military Commissions Act*, AI Index: AMR 51/044/2007, March 2007, <http://web.amnesty.org/library/Index/ENGAMR510442007>.

³ See, for example, *Afghanistan/USA: Prisoners must be treated humanely*, AI Index: AMR 51/004/2002, 10 January 2002, <http://web.amnesty.org/library/Index/ENGAMR510042002>; USA: *AI calls on the USA to end legal limbo of Guantánamo prisoners*, AI Index: AMR 51/009/2002, 15 January 2002, <http://web.amnesty.org/library/index/engamr510092002>.

⁴ For example, see USA: *Rendition – torture – trial? The case of Guantánamo detainee Mohamedou Ould Slahi*, AI Index: AMR 51/149/2006, September 2006, <http://web.amnesty.org/library/Index/ENGAMR511492006>.

conditions of extreme isolation and sensory deprivation in which detainees are confined to almost completely sealed, individual cells, with minimal contact with any other human being.

The US authorities have described Camp 6 as a “state of the art modern facility” which is safer for guards and “more comfortable” for the detainees. However, Amnesty International believes that conditions in Camp 6, as shown in photographs or described by detainees and their attorneys, contravene international standards for humane treatment. In certain respects, they appear more severe than the most restrictive levels of “super-maximum” custody on the US mainland, where conditions in some units have been criticized by international bodies and US courts as incompatible with human rights and US correctional standards.

The organization is concerned that, as well as being inhumane, conditions in Camp 6 could have a serious adverse effect on the psychological and physical health of many of the detainees held there, exacerbating the stress inherent in their indefinite detention without trial or access to their families. Lawyers who have recently visited Camp 6 have expressed concern about the impact of the conditions on the mental state of a number of detainees.

Isolation has been an aspect of the treatment of detainees in Guantánamo that has caused serious concern over the years, including its use as an interrogation technique or as punishment.⁶ Released detainees have recalled that the use of isolation became more pronounced from late 2002.⁷ In a meeting with the Guantánamo authorities in October 2003,

“Reports indicate that the treatment of detainees since their arrests, and the conditions of their confinement, have had profound effects on the mental health of many of them. The treatment and conditions include the capture and transfer of detainees to an undisclosed overseas location, sensory deprivation and other abusive treatment during transfer; detention in cages without proper sanitation and exposure to extreme temperatures; minimal exercise and hygiene; systematic use of coercive interrogation techniques; long periods of solitary confinement; cultural and religious harassment; denial of or severely delayed communication with family; and the uncertainty generated by the indeterminate nature of confinement and denial of access to independent tribunals. These conditions have led in some instances to serious mental illness, over 350 acts of self-harm in 2003 alone, individual and mass suicide attempts and widespread, prolonged hunger strikes. The severe mental health consequences are likely to be long term in many cases, creating health burdens on detainees and their families for years to come.”

Report of five United Nations experts on situation of detainees at Guantánamo Bay, 2006⁵

⁵ UN Doc: E/CN.4/2006/120. *Situation of detainees at Guantánamo Bay*. Report of the Chairperson-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 27 February 2006.

⁶ See, for example, Section 4.2 of *USA: Human dignity denied – Torture and accountability in the ‘war on terror’*, AI Index: AMR 51/145/2004, <http://web.amnesty.org/library/index/engamr511452004>.

the International Committee of the Red Cross (ICRC) raised its concern about the “excessive isolation of detainees”, and noted that there had been “no improvement” on this issue, according to a leaked Pentagon document.⁸ Three and a half years later, in addition to Camp 6, Amnesty International remains concerned about other isolation facilities on the Guantánamo base, including Camp 5, built as a long-term detention and interrogation centre where detainees classed as “non-compliant” are also held in solitary confinement.

At the time of writing, about 300 of the Guantánamo detainees – nearly 80 per cent of the current detainee population – were believed to be held in isolation in Camps 5, 6 or Camp Echo. According to the Pentagon, 165 detainees had been transferred to Camp 6 from other facilities on the base by mid-January 2007. Around 100 detainees are held in Camp 5, and some 20 more are believed to be held in isolation in Camp Echo, a facility set apart from others on the base, which was originally used to hold detainees selected for trial by military commissions. Fourteen “high value” detainees transferred from years of secret detention to Guantánamo Bay in September 2006 are also held in isolation on the base, although their exact location is unknown. It was also not known at the time of writing in which part of the base Abdul Malik, a detainee transferred from Kenya to Guantánamo over the weekend of 24/25 March 2007, was being held.

The information in this report is based on various sources including lawyers who have visited detainees in Guantánamo;⁹ photographs and articles appearing in the press by journalists given controlled tours of the base (none of whom were allowed to speak to detainees); and public statements and photographs issued by the Department of Defense. Amnesty International has made several requests to visit Guantánamo and speak to detainees since the detention facility opened in January 2002 but these requests have been turned down.

Conditions in Camp 6

Built to accommodate around 178 detainees, the compound known as Camp 6 is surrounded by high concrete walls with no windows visible on the façade. Inside, detainees are confined for a minimum of 22 hours a day in individual steel cells with no windows to the outside. The only view from each cell is through strips of glass only a few inches wide in and adjacent to the cell door which looks onto an interior corridor patrolled by military police. There are no

⁷ For example, “[A] point came at which you could notice things changing. That appeared to be after General Miller around the end of 2002... Before when people were put into isolation they would seem to stay for not more than a month. After he came, people would be kept there for months and months and months.” Detention in Afghanistan and Guantanamo Bay. Statement of Shafiq Rasul, Asif Iqbal and Ruhel Ahmed. July 2004. Available at: <http://www.ccr-ny.org/v2/reports/docs/Gitmo-compositestatementFINAL23july04.pdf>.

⁸ Memorandum for Record. Subject: ICRC Meeting with MG Miller on 09 Oct 03. Department of Defense, Joint Task Force 170, Guantanamo Bay, Cuba.

⁹ Including detailed discussions at Reprieve, a London-based human rights charity which currently provides legal representation for 37 detainees in Guantánamo Bay (see www.reprieve.co.uk). Lawyers have not been allowed into the housing areas of Camps 5 or 6 but only the attorney visitation rooms.

opening windows and detainees are completely cut-off from human contact while inside their cells.

The housing cells are arranged around a central area on the ground floor which has fixed metal tables and chairs, originally designed so that detainees could have communal dining. However, this area was closed off to detainees before the facility opened, following a tightening of security and a change in the prison's mission to one that amounts to an administrative segregation facility. Detainees now eat all meals inside their cells.

The only way in which detainees can communicate with other inmates is by shouting through a narrow gap at the bottom of the cell door. Reportedly detainees have been punished for shouting to other inmates. One detainee told his lawyer that after several weeks in the facility, he still had no idea of who was in the facility apart from the five other inmates in his immediate "pod".

Contrary to international standards, the cells have no access to natural light or air, and are lit by fluorescent lighting which is on 24 hours a day and controlled by guards. The lighting is reportedly dimmed at night, although it is unclear by how much. The only source of air in the cells is from air-conditioning controlled by guards. Lawyers who visited detainees in January 2007 reported that they consistently complained of being too cold in the steel cells, with the air-conditioning turned up too high.¹⁰ One lawyer has described how in the visiting room her client was huddled on the floor, trying to warm himself with his arms and was too cold to sit on the chair. Reportedly, detainees in Camp 6 have now been given thermal shirts to wear under their jumpsuits, but these may be taken away as punishment through "loss of privileges": one detainee reportedly had his shirt taken away when he was found with a small item in his pocket when he went to shower.

The cells are sparsely furnished with a built-in bunk, and a combined metal toilet and sink unit; some if not all cells also have a small table fixed to the wall near the door with a shelf for the Qu'ran.¹¹ Detainees reportedly have no possessions in their cells apart from a copy of the Qu'ran, and (if "compliant") a prayer rug and beads and one book a week from a library cart. The library is reportedly poorly stocked, and there are few books in the Sunni tradition, despite most of the detainees being Sunni; there are a lot of children's books, and some which are reportedly culturally insensitive. A clock is reportedly positioned in the corridor outside the cells so that detainees can see the time for prayer.

As well as having few materials or possessions in their cells, detainees are cut off from the outside world by not being allowed newspapers, radio or TV. Once a week the guards will reportedly put up articles printed from the internet in the recreation area. Amnesty International has been told that these are nearly all in English, which the large majority of detainees cannot read. Furthermore, the articles do not constitute any meaningful synopsis of the "news" and have sometimes included crude propaganda: a photograph of Saddam Hussain

¹⁰ The manipulation of temperature via air conditioning has been authorized and used in Guantánamo as an interrogation technique known as "environmental manipulation".

¹¹ The table was reportedly in a cell viewed by journalists. It is not shown in photographs although it may have been obscured by the door.

was reportedly pinned up at the time of his execution with a caption by the US military stating that he “was executed because he did not co-operate with the Americans”. On another occasion, captions had reportedly been added to pictures of children along the lines of “Daddy, I don’t remember what you look like. Please cooperate with the Americans so you can come home”.

Detainees are allowed two hours of exercise a day. This is taken in a yard which was originally intended to be a communal sports and recreation area but has now been divided into individual areas by chain-link fences. During exercise, detainees are reportedly able to have some minimal communication with inmates in adjacent areas, although touching, such as hand-shaking, is forbidden. There appears to be no equipment of any kind in the yard for exercise or other activities, apart from a ball in some pens.

The exercise yard is surrounded by high concrete walls, with mesh fencing covering the top, so that while technically it is an outside area there is no view to the outside. Detainees have told their lawyers that, although they can see the sky from the yard during the day, the height of the walls and the mesh fencing means the sun filters through only for a short period of the day, and only in patches so that they have little, if any, exposure to the sun. Furthermore, detainees have reported that they are often offered exercise late at night, in which case they may not see daylight for days at a time. Guards also reportedly encourage detainees to refuse yard time at night and take a shower only, to which they usually agree.

The lack of human contact in Camp 6 appears to be reinforced by other operating procedures. The cell doors are operated by remote control, and guards escorting the detainees to and from the exercise yard wear thick gloves. There is an opening in the door through which food is slotted so that detainees rarely come into direct contact with another human being. Guards are reportedly silent during most of their contact with detainees. Detainees are also escorted in shackles whenever they leave their cells. Visits with attorneys take place in a small, windowless room, and detainees are reportedly shackled to the floor during visits.

One common complaint by detainees in Camp 6 is their constant exposure to guards. Several detainees have described their distress at being observed by guards while using the in-cell toilets. Reportedly, detainees in Camp 6 have not been allowed to cover themselves while using the toilet and they may be observed by female staff. It is further alleged that, contrary to former operating rules, female guards now observe detainees while they are taking showers. The towels provided are alleged to be too small to provide adequate covering. Amnesty International considers that allowing female guards to watch male detainees in the circumstances described can amount to a form of sexual abuse in violation of international standards prohibiting cruel, inhuman or degrading treatment; the constant observation may also violate the right to privacy and respect for human dignity, both of which are enshrined in the International Covenant on Civil and Political Rights.

Another complaint relates to constant noise deriving from the way Camp 6 is constructed. The cell areas consist of prefabricated units arranged on two storeys. Cell walls,

doors, ceilings, and even the floors on the second storey¹², are made of steel, as are the walkways which are patrolled by military police every two or three minutes. Amnesty International was told that every movement causes the steel to reverberate and echo, so that there is constant amplified noise. This reportedly goes on throughout the night, with guard patrols and people taken for exercise at virtually all hours, so that there is no respite. This causes sleep disturbance and considerable stress to detainees: as one lawyer put it, time spent in Camp 6 is “a combination of no peace and nothing to do”.

General restrictions on communication with relatives and lawyers

Detainees in Guantánamo are denied family visits and mail from relatives is often delayed and heavily censored. The father of Guantánamo detainee David Hicks recently said that even words of affection were blacked out and removed in letters to and from his son.¹³ Detainees are generally not allowed any phone calls. In March 2007, Omar Khadr, aged only 16 when first brought to Guantánamo after his capture in Afghanistan in July 2002, was allowed to speak to his mother on the telephone for the first time in more than five years.

Amnesty International has been told that detainees are usually not allowed to keep paper and pens in their cells and are provided with these items for only half an hour a week; if they are unable to complete a letter to their family or lawyer within this period, they have no extra time to do so. This can make it difficult for detainees to communicate with their families or lawyers adequately or assist in preparing a legal case, contrary to international standards.¹⁴ Furthermore, there is no time for detainees to assist those who are illiterate, in areas where communication between detainees is possible.

Move to permanent lockdown for most detainees: conditions worse than before

As noted above, 165 prisoners – more than a third of the total Guantánamo detainee population – had been moved to Camp 6 from other facilities in the base by January 2007. Around 100 other detainees are held in Camp 5, an isolation and interrogation facility for “non-compliant” detainees that opened in October 2004. Amnesty International has previously expressed concern about conditions in Camp 5, where detainees (including at least two who were juveniles when taken into custody) have been confined for up to 24 hours a day in small, enclosed cells. Camp 5 cells appear similar to those in Camp 6 and have solid metal doors with a small window looking onto an interior corridor; however, they also have a

¹² The only area which is not made of steel is the concrete floor on the ground floor cells.

¹³ Australian national David Hicks is the only detainee known to have had access to family members.

¹⁴ AI was told that detainees may be allowed a pen and paper the day before an annual review board hearing (an administrative hearing at which the detainee is not represented by a lawyer). International standards state that prisoners shall be allowed to communicate with family and friends through correspondence and visits (see section on standards). Principle 8 of the UN Basic Principles on the Role of Lawyers states that “All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality”.

narrow frosted window on the outside wall which provides some access to natural light, if no view to the outside. Amnesty International has been told that the exercise yard in Camp 5 is surrounded by fencing so appears less enclosed than in Camp 6. While conditions in both camps are extremely harsh, according to a contact who has viewed cells in each facility, the difference in Camp 6 is that detainees have no way of knowing whether it is day or night from the physical environment in the cells. One detainee has described Camp 6 as being a “dungeon above the ground”.¹⁵

The Pentagon claims that conditions in Camp 6 are superior to those in older housing areas such as Camp 1 as detainees now have more “privacy” and larger cells as well as a standardized two hours of daily exercise. Detainees in Camp 1 are confined to small cages in cell blocks, with little opportunity for exercise. Harsh as these conditions are, however, the meshed walls allow communication between detainees as well as access to some natural light and fresh air (many of the cells appear to have windows). Lawyers have reported that detainees formerly in Camp 1, or in Camps 2 and 3 which are similar, find conditions in Camp 6 much more oppressive, particularly in terms of the isolation and lack of natural light.

Disturbingly, dozens of detainees transferred to Camp 6 used to be held in Camp 4, a medium security facility where they lived communally in barracks, ate at picnic tables, prayed together and had all-day access to an outside recreation area with sports equipment. They include some or all of the 14 Uighurs who have been cleared by review boards as eligible for release but who cannot be returned to China because of the risk of persecution.¹⁶ Most of the Uighurs had been transferred from Camp 4 to Camps 1-3 prior to their transfer to Camp 6; however they had never before been held in conditions of such blanket isolation. They are now reportedly dispersed among separate pods and are even more isolated as they don’t speak Arabic. According to the Department of Defense, as of early March 2007, more than 80 of the approximately 385 detainees currently held at Guantánamo were designated for release or transfer, following review board decisions.¹⁷ A significant number of these may now be held

¹⁵ Declaration of Sabin Willett, January 20, 2007 in case of *Huzaiifa Parhat et al v Robert M Gates*, before United States Court of Appeals, District of Columbia Circuit, Case No. 06-1397

¹⁶ According to their lawyers, Combatant Status Review Tribunal (CSRT) records show that their case histories are similar to those of five ethnic Uighurs (Chinese Muslims) released from Guantánamo to Albania in 2006, long after they were determined to be no longer a threat to the USA. The CSRTs are administrative review bodies set up in July 2004, more than two years after detentions began, to review the “enemy combatant” status of detainees. The CSRT determination is a one-off procedure, followed up by an annual Administrative Review Board (ARB). Both the CSRT and ARB procedures are wholly inadequate replacements for full judicial review of detentions. Both tribunals can rely on coerced or secret evidence against a detainee denied legal representation and presumed to be an “enemy combatant” unless he can prove otherwise. See *USA: Guantánamo and beyond: The continuing pursuit of unchecked executive power*, AI Index: AMR 51/063/2005, May 2005, <http://web.amnesty.org/library/index/engamr510632005>.

¹⁷ News Transcripts from the Department of Defense, 6 March 2007: *Annual Administrative Review Boards for Enemy Combatants Held at Guantánamo attributable to senior Defense officials*. <http://www.defenselink.mil/transcripts/transcript.aspx?transcriptid=3902>.

in Camps 5 or 6.¹⁸ It appears that many detainees may have been transferred there because there was room in the facility, not because of their individual behaviour.

Some of the harshest conditions anywhere at Guantánamo appear to be in Camp Echo. In its meeting with the Guantánamo authorities on 9 October 2003, the ICRC had expressed shock to discover that “Camp Echo had expanded”, and described conditions in the facility as “extremely harsh”.¹⁹ Camp Echo, which is still operational three and a half years later, is a collection of windowless shacks situated in a separate part of the base. One half of each shack is divided into two small individual cells: a sleeping area and a shower area which the detainee is reportedly allowed to use for 10 minutes a day. The other half is a room with a table and chairs, which is used for attorney visits and reportedly sometimes for interrogations. Detainees can only access this room by passing through the shower area. Detainees spend 23 or 24 hours a day confined to the individual cells at the back of each hut. The huts have no natural light and fluorescent lighting is on 24 hours a day. Some detainees in Camp Echo have reportedly been denied outdoor exercise for weeks at a time; others have been allowed exercise only a few times a week.

Detainees first named to appear before military commissions were at one time held in Camp Echo but are now in Camp 6. For example, after being named as eligible for trial by military commission in 2003, Yemeni national Salim Ahmed Hamdan was transferred to Camp Echo. The military claimed that “detainees at Camp Echo are not in solitary confinement”.²⁰ However, Salim Ahmed Hamdan was held for almost a year in solitary confinement in Camp Echo:

“The ICRC focussed on the effects that the interrogations were having on the mental health of the detainees. The ICRC feels that interrogators have too much control over the basic needs of detainees. That the interrogators attempt to control the detainees through the use of isolation. [The ICRC] stated that the interrogators have total control of the level of isolation in which the detainees were kept; the level of comfort items detainees can receive; and also the access of basic needs to the detainees. According to [the ICRC], detainees are kept in uncertainty as to their future and are often given contradictory information about their repatriation.”

Leaked Department of Defense memorandum of a meeting between ICRC and Guantánamo authorities, October 2003.

“Since December 2003 Mr Hamdan has been confined alone in a cell, in a house that is guarded by a single non-Arabic-speaking guard. A translator is rarely available. He receives 60 minutes of exercise outdoors three times a week, only at night... Mr Hamdan has described his moods during his period of solitary confinement as deteriorating, and as encompassing frustration, rage (although he has not been

¹⁸ One lawyer AI spoke to in March 2007 has six clients slated for release: five are in Camp 6 and one in Camp 5.

¹⁹ Memorandum for Record. Subject: ICRC Meeting with MG Miller on 09 Oct 03. Department of Defense, Joint Task Force 170, Guantánamo Bay, Cuba.

²⁰ Fact sheet: Camp Echo and Camp Five. Updated: June 2004. JTF Public Affairs.

violent), loneliness, despair, depression, anxiety, and emotional outbursts. He asserted that he has considered confessing falsely to ameliorate his situation."²¹

Several detainees who acted as leaders during a brief period of negotiation with the authorities in 2005 were sent to Camp Echo after negotiations broke down. At least one former negotiator, Shaker Aamer, a UK resident, has been held in Camp Echo continuously since September 2005 and, at the time of a visit with his attorney in August 2006, had not been outside for 64 consecutive days. He has reportedly suffered beatings and harassment by guards and has had his clothes and mattress removed.²² Saber Lahmer, another former camp negotiator, was returned to Camp Echo in June 2006 where he remained as of late March 2007 without any explanation being given to his attorneys. Both men are reportedly totally isolated and denied personal possessions and basic materials, such as pen and paper. Saber Lahmer was apparently too depressed to see his lawyer during his last visit to the base (see cases, below). Amnesty International has been told that as many as 20 detainees may currently be held in Camp Echo, although exact numbers are hard to come by given the facility's isolated location.

The transfer of most detainees to lockdown conditions marks a shift in policy, reversing moves over the past two years to apply less restrictive conditions for detainees. Following the Abu Ghraib torture revelations and other allegations of detainee abuse, commanders in Guantánamo reportedly began easing conditions for detainees after 2004, with Camp 4 seen as a model and incentive for non-disruptive detainees. The Army reported in 2005 that part of the rationale behind the living arrangements in Camp 4 was to rebuild detainees' social skills "which may have been lost over time": to this end detainees were provided with social activities and were responsible for maintaining their own living quarters.²³ Camp 6 was also reportedly designed to be a medium security facility allowing socializing among inmates, increased access to exercise areas and activities, mail and foreign-language materials.²⁴ The former warden of Guantánamo also started a direct dialogue over detainee complaints, meeting several times in 2005 with a council of detainee leaders.

However, a series of events precipitated a clamp-down by the authorities. These included the resumption in August 2005 of a hunger strike by detainees in protest at their indefinite detention and conditions, which continued into January 2006 amid reports of ill-treatment of detainees during force-feeding through nasal tubes. Other incidents were a disturbance in Camp 4 in May 2006;²⁵ and the deaths of three prisoners in Camp 1 in June

²¹ *Swift v. Rumsfeld*, Declaration of Daryl Matthews, M.D., Ph.D., US District Court, Western District of Washington, 31 March 2004.

²² Declaration of Zachary Philip Katznelson (attorney), 19 December 2006. The declaration suggests that Shaker Aamer has been treated particularly poorly because he speaks fluent English, is outspoken, and has therefore been an interlocutor between the US military and the detainees.

²³ Article by Kathleen T. Rhem, American Forces Press Service, 16 February 2005.

²⁴ See for example, *New Guantánamo Camp to Pave Way for Future Detention Ops*, by Donna Miles, American Forces Press Service, June 28, 2005.

²⁵ There are conflicting accounts of what transpired during what the US military calls a "riot" in Camp 4 on 18 May, but it appears to have started when a tactical squad entered the camp after two detainees

2006, allegedly from suicide. It was after the deaths that security at Guantánamo appears to have been dramatically tightened, with the opening of Camp 6 delayed while it was retrofitted as a high maximum security facility. This involved the communal areas in Camp 6 being closed off, the landings fenced in and the exercise yard divided into individual pens.

Statements by the military indicate that Camps 5 and 6 are intended to be permanent facilities for the long-term confinement of detainees, with the large majority of detainees housed there in the future. According to a military spokesperson, Camp 4 is unlikely to house many more than the 35 detainees currently held there, down from 180 in May 2006.

The US authorities have justified the restrictive regime in Camp 6 by emphasising that “the most dangerous” detainees, including those still “intent on killing Americans”, are held there. Such statements are consistent with a pattern by the administration of presuming the guilt of detainees who have not been charged or convicted. The authorities maintain that the prison combines humane treatment with security needs, citing incidents such as assaults by detainees on guards with bodily fluids in more open facilities. However, Amnesty International considers that conditions in Camp 6 and other isolation facilities are unacceptably harsh and breach international standards for the treatment of persons deprived of their liberty.

Amnesty International is disturbed that in applying such punitive conditions, the government has disregarded the severe psychological impact on detainees of indefinite confinement, a concern first raised by the ICRC more than four years ago.²⁶ Such disregard was shown in the authorities’ description of the apparent suicides in June as “a good PR move” and an example of “asymmetrical warfare”. A similar attitude was displayed when officials referred to the hunger strikes as “voluntary fasting”.²⁷ Amnesty International believes that the

“He told me that even when a detainee is being good they will take their personal items away. He said they do this to anger the detainees so that they can punish them when they object or complain. I asked Steven why he treats the detainees this way. He said it is because he hates the detainees and that they are bad people... Steven also added that his ‘only job was to keep the detainees alive’.”

Affidavit of Sergeant Heather N. Cerveney, US Marine Corps, 4 October 2006, relating a discussion she says she had with a Guantánamo military guard, Steven, who had worked in Camp 5 and was moving to Camp 6.

in another part of the base were found to have taken an overdose from hoarded drugs; later on the same day a detainee in Camp 4 is alleged to have been suspected by guards of preparing to hang himself with a sheet, although this is disputed by detainees. The situation reportedly escalated when some older detainees refused to allow their Qu’rans to be searched. Soldiers reportedly used large quantities of pepper spray and other non-lethal weapons against detainees.

²⁶ See page 20 of USA: *The threat of a bad example: Undermining international standards as ‘war on terror’ detentions continue*, AI Index: AMR 51/114/2003, August 2003,

[http://web.amnesty.org/library/pdf/AMR511142003ENGLISH/\\$File/AMR5111403.pdf](http://web.amnesty.org/library/pdf/AMR511142003ENGLISH/$File/AMR5111403.pdf)

²⁷ *Guantanamo Tube Feedings Humane, Within Medical Care Standards*. American Forces Press Service, 1 December 2005, <http://www.defenselink.mil/news/newsarticle.aspx?id=18672>.

only way forward is for the US government to restore the rule of law and ensure fair procedures and humane treatment for all detainees, in accordance with its obligations under international law.

In raising these concerns, Amnesty International also notes that despite the disturbances cited above, there are reportedly far fewer violent incidents and assaults on staff than in the average maximum security prison in the USA. Guantánamo is staffed by military police most of whom have little or no experience in working in prisons or detention facilities; better training and the application of humane standards of treatment would benefit guards as well as detainees.

The United Nations (UN) Committee against Torture has called for the closure of Guantánamo, concluding that indefinite detention without charge is itself a violation of the Convention against Torture.²⁸ Amnesty International is also calling for Guantánamo to be closed and for the detainees to be charged and tried under international fair trial norms or else released (see appendix). In the meantime, those still detained should be confined in the least restrictive and most humane conditions possible.

At the time of writing, dozens of detainees are reported to have continued or resumed a hunger strike in protest at their conditions as well as indefinite detention. They include at least two detainees held in total isolation in Camp Echo as well as Camps 5 and 6. A number of them were reportedly being force-fed through nasal tubes.

Standards for humane treatment

“Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation”.
Article 57 of the United Nations (UN) Standard Minimum Rules for the treatment of Prisoners.

“Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out under the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic and Social Rights, and the International Covenant on Civil and Political Rights ... as well as such other rights as are set out in other United Nations covenants.” Basic Principles for the Treatment of Prisoners, adopted by the UN General Assembly (1990).

The US government is obliged under international law to treat all those in its custody humanely, regardless of their status or location. Since the US Supreme Court ruling in *Hamdan v. Rumsfeld* in June 2006, the US government claims that its treatment of the Guantánamo detainees complies with Article 3 common to the four Geneva Conventions of

²⁸ Conclusions and recommendations of the Committee against Torture on the USA, 25 July 2006: <http://daccessdds.un.org/doc/UNDOC/GEN/G06/432/25/PDF/G0643225.pdf>.

1949 which prohibits, *inter alia*, torture, cruel treatment and “outrages upon personal dignity, in particular humiliating or degrading treatment”.²⁹ The Detainee Treatment Act of 30 December 2005 also prohibits the cruel, inhuman or degrading treatment or punishment, as defined under US law, of persons of any nationality under the custody or control of the US government anywhere in the world.

The US government has declared the Guantánamo detainees to be “unlawful enemy combatants”, a status unrecognized in international law. Under its global “war on terror” paradigm it maintains that its detention activities outside the USA are exclusively regulated by the law of war, as it defines it, and that human rights law is inapplicable in this global armed conflict. However, contrary to this assertion, it is widely agreed by international experts that the two bodies of law, far from being mutually exclusive, are complementary.³⁰ As the International Criminal Tribunal for the former Yugoslavia has emphasized,

*“The essence of the whole corpus of international humanitarian law as well as human rights law lies in the protection of the human dignity of every person... The general principle of respect for human dignity is... the very raison d'être of international humanitarian law and human rights law; indeed in modern times it has become of such paramount importance as to permeate the whole body of international law. This principle is intended to shield human beings from outrages upon their personal dignity, whether such outrages are carried out by unlawfully attacking the body or by humiliating and debasing the honour, the self-respect or the mental well being of a person.”*³¹

The International Court of Justice (ICJ) has stated that “the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation...”³² The USA has made no such derogation.

Amnesty International considers that the conditions under which detainees are held in Guantánamo contravene universally applicable standards, including international human rights treaties, and a range of standards and guidelines applying to the treatment of persons in custody.

The USA has ratified the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), both of which prohibit torture and other ill-treatment.

²⁹ Common Article 3 reflects customary international law applicable to international and non-international armed conflicts (but does not apply where there is no such conflict).

³⁰ For further information and discussion, see Section 2 of *USA: Justice delayed and justice denied? Trials under the Military Commissions Act*, AI Index: AMR 51/044/2007, March 2007, <http://web.amnesty.org/library/Index/ENGAMR510442007>.

³¹ *Prosecutor v. Furundzija*, No. IT-95-17/1-T, Judgment of 10 December 1998, para. 183.

³² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, para. 106. <http://www.icj-cij.org/icjwww/idocket/imwp/imwpframe.htm>.

Article 10 (1) of the ICCPR requires that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”³³.

The Human Rights Committee, the ICCPR monitoring body, has emphasized that the prohibition on torture and other cruel, inhuman or degrading treatment or punishment is a peremptory norm of international law, non-derogable and binding on all states.³⁴ According to the Committee, this absolute prohibition under Article 7 of the ICCPR “relates not only to acts that cause physical pain but also to acts that cause mental suffering” and that “prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7”³⁵.

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles),³⁶ states under Principle 6 that:

“the term ‘cruel, inhuman or degrading treatment or punishment’ should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or his awareness of place of the passing of time”.

Amnesty International believes that the conditions described in Camps 5 and 6 and Camp Echo, particularly when applied long-term or indefinitely, constitute cruel, inhuman or degrading treatment in violation of the above standards. This conclusion is based on the isolation and prolonged cellular confinement; the conditions inside the cells including the enclosed environment and lack of any view to the outside; the lack of access to natural light and fresh air, particularly in Camp 6; the constant and allegedly intrusive observation; the paucity of possessions or equipment available to detainees; and the absence of social or external stimuli or almost any form of activity, together with minimal contact with the outside world.

³³ In May 2006, the UN Committee Against Torture urged the USA to: “recognize and ensure that the Convention [against Torture] applies at all times, whether in peace, war or armed conflict, in any territory under its jurisdiction”. In July 2006, the UN Human Rights Committee called upon the USA to “acknowledge the applicability of the [International] Covenant [on Civil and Political Rights] in respect of individuals under its jurisdiction and outside its territory, as well as in times of war”

³⁴ Human Rights Committee, General Comment 29 (States of Emergency, Article 4), UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001.

³⁵ Human Rights Committee General Comment 20, on Article 7. See also the Basic Principles for the Treatment of Prisoners, Article 7, G. A. res. 45/111 (1990), stating that “Efforts addressed to the abolition of solitary confinement as punishment, or to the restriction of its use, should be undertaken and encouraged”.

³⁶ While not a treaty, the Principles apply to all countries and represent an authoritative set of internationally recognized standards, drafted over a number of years and adopted by consensus by the UN General Assembly in 1988.

Conditions inside the cells

The lack of natural light and fresh air in the Camp 6 cells is in clear contravention of the UN Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules), which state that

“In all places where prisoners are required to live or work, (a) windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation.” (Article 11).

While the Standard Minimum Rules do not have the binding force of a treaty they are minimum standards considered acceptable for the living conditions and treatment of prisoners worldwide. The rules set out standards for convicted and untried prisoners, and prisoners held without trial, with Article 11 among the rules for general application. Fresh air and natural light are fundamental elements of the quality of life to which all human beings are entitled.

Standards for adult correctional facilities set out by the American Correctional Association also require that “all inmate rooms/cells provide access to natural light” and an opening window in the case of general population prisoners confined to cells more than 10 hours a day.³⁷ The ACA standards appear to allow for a natural light source within 20 feet of a cell rather than directly into the cell itself. This may be acceptable in old-style facilities where cells have bars through which light can enter from a central skylight. However, it appears that no meaningful level of natural light can filter into the enclosed cells in Camp 6 from the central area. While the facility was originally designed so that detainees could spend more time out of their cells, the present lockdown conditions mean that the facility is not meeting ACA standards on natural light.

The US military authorities reportedly take the ACA standards into account in the operation of the facility. Although the standards are not mandatory, Amnesty International is disturbed that the authorities should disregard the standard on access to natural light. It considers this would be unacceptable in any detention facility, and certainly does not conform to what would be required in a facility described as “state of the art”.

The cell conditions in Camp Echo, including the lack of window and natural light also fall short of ACA and international standards. While the size of the cells in Camps 5 and 6 reportedly meet ACA minimum standards, the cells in Camp Echo and Camps 1-3 measure a maximum of six by eight feet. This is considerably less than the minimum 80 square feet of total floor space per occupant recommended by the ACA when inmates spend more than 10 hours a day in their cells.³⁸ The standards also require 35 square feet per prisoner of unencumbered space, yet the Camp Echo cells reportedly provide only around a third of this

³⁷ 4-4147- 4-4148, Standards for Adult Correctional Institutions, 4th Edition. The rules also state under 4-4140 that “segregation housing units provide living conditions that approximate those of the general population”.

³⁸ ACA Standard 4-4131 (Standards for Adult Correctional Institutions, 4th Edition). Camp 5 and Camp 6 cells reportedly measure 9x12 and 6x12 feet in totality.

after the bed, toilet and sink are taken into account. Such a shortfall from minimum standards is particularly disturbing given the extremely long periods detainees in Guantánamo spend in such cells.

The apparent lack of furniture other than a bed, toilet and sink in isolation cells in Guantánamo, possibly including Camp 6 cells, may also fall short of ACA correctional standards.³⁹

Amnesty International is also concerned at the possible health risk in requiring detainees to eat all meals in their cells, given the enclosed environment and close proximity to the toilet and sink unit. The lack of any chair with a back support may also cause discomfort and physical problems when prisoners are confined to cells for such prolonged periods.

The denial of regular outdoor exercise in the case of detainees in Camp Echo and possibly elsewhere is in breach of the Standard Minimum Rules which state that all prisoners shall have at least one hour of exercise in the open air daily if the weather permits (Rule 21.1).

General concerns

All relevant international standards provide that, except for limitations demonstrably necessitated by the fact of incarceration, prisoners have the same human rights and fundamental freedoms set out under the Universal Declaration of Human Rights and other treaties. The UN Human Rights Committee reasserts this principle in its General Comment on Article 10 of the ICCPR that persons deprived of their liberty may not be

“... subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in an enclosed environment”, and that:

“Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule ... This rule must be applied without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.⁴⁰

While Camp 4 allows detainees to engage in some form of social activity within the confines of Guantánamo, the absence in Camps 5 and 6 of any social interaction or activities which are a basic part of human life is contrary to the above principle. This is even more disturbing as all detainees in Guantánamo already suffer through the absence of family visits or regular contact with the outside world - itself a violation of international standards.

³⁹ ACA Standard 4-4134 provides that each inmate confined to a cell/room for ten or more hours daily should be provided with bedding, a writing surface and proximate area to sit; storage for personal items; and adequate storage space for clothes and personal belongings. Amnesty International has been told that there is a small storage space built into Camp 6 cells but detainees are not allowed to keep anything there for security reasons, not even a copy of the Qu’ran.

⁴⁰ Human Rights Committee General Comment 21.

The Body of Principles and the Standard Minimum Rules provide that prisoners should be able to communicate at regular intervals with family and friends both by correspondence and by receiving visits.⁴¹ Cutting a prisoner off from his or her family is also a violation of the right to protection of family life contained under the Universal Declaration of Human Rights and article 23 of the ICCPR. The Body of Principles further state that a detained or imprisoned person “shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations” (Principle 19), and the Standard Minimum Rules provide that prisoners should be kept informed regularly of what is going on in the outside world, by the reading of newspapers, periodicals or other means (Rule 39).

In keeping with the general principle that persons deprived of liberty retain the same basic human rights as non-imprisoned persons, international standards emphasize the importance of prisoners and detainees engaging in recreational, social, cultural, educational and religious activities for their mental and physical wellbeing, recognizing that such measures are also necessary to prepare individuals for their eventual return to society.⁴² US federal rules also emphasize the importance of social, recreational and educational programs for all inmates in the federal system.⁴³

Super-maximum security prisons in the USA

Camps 5 and 6 provide a regime similar to those in so-called super-maximum security facilities on the US mainland.⁴⁴ These are prisons, or units within prisons, designed for the extended segregation for administrative or disciplinary purposes of prisoners considered too violent or too disruptive to be held in the general prison population. Indeed, the conditions in Camps 5 and 6 appear as restrictive as some of the highest security levels in super-maximum units, some of which have been criticized by US courts. A US federal judge found, for example, that conditions in Pelican Bay prison in California, where prisoners are confined for 22-23 hours a day to sealed, windowless cells, “may press the outer bounds of what most humans can psychologically tolerate”.⁴⁵

International human rights bodies have also criticized conditions in US super-maximum prisons. In his 1999 annual survey of country practices, the UN Special Rapporteur on Torture, for example, raised concern about conditions in two facilities in Indiana, noting

⁴¹ Principle 19 of the Body of Principles and article 37 of the Standard Minimum Rules.

⁴² For example, Principle 28 of the Body of Principles states that a detained or imprisoned person shall have the right to obtain “reasonable quantities of educational, cultural and informational material”; article 40 of the Standard Minimum Rules states that every institution shall have a library for the use of all categories of prisoners “adequately stocked with both educational and instructional books”; elsewhere the rules stress the importance of providing prisoners with educational, recreational, religious and vocational programs, with Article 95 stating that all measures applying to convicted prisoners should apply to persons detained without charge “when conducive to the benefit of this special group of persons in custody”.

⁴³ 28 CFR 540.30-34 and 544.80-83.

⁴⁴ Some 25,000 prisoners in more than 40 US states are reported to be currently held in such facilities.

⁴⁵ *Madrid v Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995).

that inmates were held in solitary confinement for 22 and a half hours a day in cells with little natural light and fresh air, with most human contact reduced to the minimum. He referred to evidence of the damaging psychological effects of such confinement.⁴⁶ In its May 2000 report on the USA's obligations under the Convention against Torture, the Committee against Torture expressed concern about the "excessively harsh" conditions in US supermaximum prisons and in its report in May 2006 called on the USA to "review the regime imposed" in such facilities.⁴⁷ In its July 2006 report on US obligations under the ICCPR, the Human Rights Committee reiterated its concern that conditions in some super-maximum security prisons in the USA were incompatible with Article 10 (1) of the ICCPR.⁴⁸

Inmates assigned to US mainland super-max facilities are usually convicted offenders who have committed further serious offences or rule violations in prison. While conditions remain extremely harsh in most super-max facilities, conditions for Guantánamo detainees in Camps 5 and 6 are in some respects even more severe. The detainees are more isolated than mainland prisoners, for example, in not being allowed even limited visits with family members or telephone calls.⁴⁹ Segregated prisoners in the USA must have their status periodically reviewed, and some super-max facilities provide a level system where prisoners can move from the most restrictive custody units to less severe conditions. Some systems provide in-cell activities or programs at even the strictest custody levels. In ADX Florence, the only federal super-max (level 6) prison in the USA, prisoners in the "general population" have some group recreation at each of the three security stages; prisoners housed in solitary cells in the Security Housing Unit (SHU) at ADX-Florence are allowed TV, radio and craft materials in their cells, unless these are removed for disciplinary purposes.⁵⁰ Detainees in Camps 5 and 6 reportedly have no access to such items. The segregated cells in ADX Florence have windows giving a view of outside exercise yards.

Crucially, inmates of US prisons may seek to have their treatment or conditions reviewed by the courts or other oversight bodies. Although results have been limited, litigation has led to the amelioration of conditions in several US super-max facilities.⁵¹ In addition, the US Supreme Court has ruled that prisoners are entitled to procedural safeguards

⁴⁶ E/CN.4/1999/61 Report of the Special Rapporteur on Torture, 12.01.99.

⁴⁷ Conclusions and Recommendations of the Committee against Torture: United States of America. CAT/C/USA/CO/2, 18 May 2006,

<http://www.ohchr.org/english/bodies/cat/docs/AdvanceVersions/CAT.C.USA.CO.2.pdf>.

⁴⁸ Human Rights Committee, Concluding Observations: United States of America, 28 July 2006,

<http://www.ohchr.org/english/bodies/hrc/docs/AdvanceDocs/CCPR.C.USA.CO.pdf>.

⁴⁹ As noted above, Omar Khadr, who was a juvenile when first detained in Guantánamo, received his first phone call from his family in five years in March 2007. To AI's knowledge, the vast majority of detainees have never received a phone call from their families.

⁵⁰ Information from an Amnesty International visit to ADX in July 2001.

⁵¹ Litigation in Wisconsin led to improvements which included removal of the mentally ill from the state's supermax, and substantially reduced the level of lighting in cells at night (*Jones 'El v Berge*, 164 F. Supp.2d 1096 (W.D.Wisc 2001); a judicial order in Indiana covered medical and mental health issues plus access to radios, TVs, additional reading and personal property, increased educational opportunities and reduced night lighting in cells (*Taifa v Bayh*, 946 F. Supp 723 (N.D. Ind 1994).

when assigned to super-max facilities which impose “atypical and significant hardship”; such safeguards include notice of the factual basis for such an assignment and an opportunity to rebut the decision at a hearing.⁵²

The Guantánamo detainees, on the other hand, have no access to the courts or statutory oversight bodies and their treatment is entirely at the discretion of the US government. The Military Commissions Act, signed into law by President Bush on 17 October 2006, stripped US courts of the jurisdiction to consider *habeas corpus* appeals challenging the lawfulness or conditions of detention of any non-US citizen held as an “enemy combatant” in US custody. Although a number of *habeas corpus* applications have been filed on behalf of Guantánamo detainees, and challenges to the new law are pending, none of those currently detained has had his case reviewed by a court. Even before the MCA was passed, government opposition to briefs filed previously have delayed proceedings over the years. Judicial review is a vital safeguard against cruel conditions of detention and other ill-treatment as well as arbitrary detention.

Mental health problems and other health concerns

There is a significant body of evidence in the USA and elsewhere that prolonged isolation can cause serious psychological and physical harm, particularly if accompanied by other deprivations such as conditions of reduced sensory stimulation, enforced idleness and confinement to an enclosed space. Sometimes referred to as the “SHU syndrome”, mental health experts who have examined prisoners in isolation, including US super-max facilities, have described symptoms that include perceptual distortions and hallucinations, extreme anxiety, hostility, confusion, difficulty with concentration, hyper-sensitivity to external stimuli and sleep disturbance as well as physical symptoms.⁵³ A study by health experts on prisoners held in isolation units in the UK found inmates suffered from physical disorders resulting from their highly restricted surroundings which included impaired eyesight, weight loss, muscle wastage and memory loss and that some inmates had developed “mental illnesses which go beyond the ordinary and expected anticipatory anxiety”.⁵⁴

Several US courts have ruled that the isolating conditions in super-max facilities can lead to serious mental injury in some cases, and have ordered the removal of prisoners with

⁵² *Wilkinson v Austin*, No 04-495, Supreme Court ruling 13 June 2005.

⁵³ Findings of studies have been described in a number of articles, including Stuart Grassian, “Psychological Effects of Solitary Confinement”, *American Journal of Psychiatry*, 140:1450-1454, 1983; 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) and in court rulings and testimony.

⁵⁴ January 1997 report by three independent psychiatrists who examined prisoners in UK Special Security Units (SSUs). An official inquiry by the UK Prison Service recommended in an unpublished report in 1996 that prisoners in SSUs should be held there for as short a period as possible and more provision should be made for mental stimulation and physical exercise and that prisoners should have access to open visits with members of their immediate family. The study’s findings are described in an Amnesty International report, *UK Special Security Units – Cruel, Inhuman and Degrading Treatment*, 1997 (AI Index: EUR 45/06/97).

pre-existing mental illness, or who risk developing psychosis, from such units. A judge in Wisconsin ruled that confinement under conditions prevailing in the state's super-max facility "is known to cause severe psychiatric morbidity, disability, suffering and mortality", even in individuals with no history of mental breakdown, noting that: "Many prisoners are not capable of maintaining their sanity in such an extreme and stressful environment: a high number attempt suicide".⁵⁵

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the expert body which is part of the Council of Europe, has stated, "It is generally acknowledged that all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long-term, to have damaging effects resulting in deterioration of mental faculties and other social abilities".⁵⁶ The CPT has recommended that all forms of solitary confinement should last for as short a time as possible, with compensatory measures for those held in high security units, such as enhanced exercise facilities, choice of activities and opportunities to meet fellow inmates within the units.

In Guantánamo, detainees generally have not had access to independent, outside mental health experts.⁵⁷ However, the ICRC noted in 2003 that the totality of the conditions under which they were held, including their indefinite confinement, had led to a worrying deterioration in the psychological health of many detainees. The ICRC continues to express its concern that "uncertainty about the prisoners' fate has added to the mental and emotional strain experienced by many detainees and their families".⁵⁸ Lawyers have also reported on health problems suffered by detainees, particularly individuals held for prolonged periods in solitary confinement, some of whom had been allegedly subjected to torture or other ill-treatment during interrogation. Complaints about the mental state of detainees appear to have increased since the opening of Camp 6. Lawyers who have visited clients in Camp 6 have consistently reported a marked decline in the mental and physical health of detainees since their transfer to Camp 6.

- A document describing the impact on five Uighurs of their transfer to Camp 6 states how they all expressed feelings of "despair, crushing loneliness, and abandonment by the world", during visits with their lawyers in January 2007. None had been subjected to such strict conditions of isolation before. One detainee who during previous visits "had appeared gentle and pleasant, quick to laugh and smile" now "appeared to be in despair" and said he was "beginning to hear voices". Another described how his cell neighbour was "constantly hearing noises, shouting out, and being punished".⁵⁹

⁵⁵ Jones' El, 164 F. Supp. 2d at 1101, 1102.

⁵⁶ CPT Report to the Finnish Government on the Visit to Finland, conducted between 10 and 20 May 1992, Strasbourg, France, 1 April 1993, CPT/Inf (93) 8.

⁵⁷ David Hicks, an Australian national, had a visit from an Australian psychiatrist in February 2005. Requests for a follow-up visit were reportedly refused by the US authorities.

⁵⁸ ICRC, Operational update, 31 December 2006, <http://www.icrc.org/web/eng/siteeng0.nsf/html/usa-detention-update-121205?opendocument>.

⁵⁹ *Huzaiifa Parhat et al v. Robert M. Gates et al*, Petitioners' Emergency Motion For Leave to Supplement The Record on Pending Motions with January 20, 2007 declaration of Sabin Willett.

- David Hicks, an Australian national detained for more than five years in Guantánamo, was reported to have deteriorated physically and mentally after being held in virtual total solitary confinement in Camps 5 and 6 from March 2006. He was transferred to Camp 6 in December 2006. Lawyers who visited him in January 2007 described how they were shocked by how much he had changed. Chained to the floor in the Camp 6 visitation room, Hicks reportedly looked far older than his 31 years, was hollow-eyed, unkempt and dishevelled and extremely despondent, and had difficulty in communicating for the first part of the interview. His lawyers said he was suffering the effects of prolonged isolation and a lack of privacy, being forced to use the toilet in his cell in full view of the guards. His hairbrush and comb had also been confiscated in Camp 6. There were complaints that, in Camp 5, his cell had often been kept very cold and he had not been given sufficient clothing. Hicks' family had expressed concern about his condition in July 2006, when Hicks had been incoherent during a telephone call. In December, the US authorities reportedly denied a request for a follow-up visit from an independent psychiatrist who had visited Hicks in February 2005.

On 26 March 2007, David Hicks pleaded guilty at a military commission hearing in Guantánamo to a single count of "providing material support for terrorism". On 30 March, as part of a pre-trial agreement, he was sentenced to seven years all but nine months of which were suspended and was due to be returned to Australia within 60 days.⁶⁰

- In January 2007 the lawyer for Bisher al-Rawi, an Iraqi-born UK resident detained in Guantánamo for more than four years, described how his "once healthy and extremely articulate" client was "slowly but surely slipping into madness" after nine months of solitary confinement in Camp 5 with no end in sight. Bisher al-Rawi's cell was reported often to be "unbearably cold" with the air-conditioning turned up to the maximum. Sometimes guards removed his orange jump suit and sheet, leaving him only in his shorts. When he tried to warm himself by covering himself with his prayer rug, one of the few "comfort items" permitted to him, guards removed it for "misuse". His toilet paper was also reportedly removed because he was using it to shield his eyes from constant light in his cell. He was reportedly being punished with isolation when he refused to undergo any further interrogations.⁶¹ In late March 2007 Bisher al-Rawi was transferred to the UK where he was subsequently released.
- A lawyer for three other Guantánamo detainees reported that they had been "remarkably psychologically strong" and hopeful during a visit in October but two had later been transferred to Camp 6 and one to Camp 5. During a visit to Camp 6 in January 2007 one of the men who had been vulnerable but bearing up well before,

⁶⁰ See *USA: David Hicks pleads guilty on one count. AI observer attends arraignment at Guantánamo*, AI Index: AMR 51/052/2007, 27 March 2007, <http://web.amnesty.org/library/Index/ENGAMR510522007>.

⁶¹ Article by al-Rawi's attorney G. Brent Mickum, in *The Guardian*, January 9, 2007.

was now “visibly shaken and in great despair”; he had reportedly not seen daylight in 15 days.

- Saber Lahmer, an Algerian transferred to Guantánamo after being seized in Bosnia, has been held in solitary confinement in Camp Echo since late June 2006. A camp doctor had reportedly admitted to him that he needed exercise for serious nerve damage and muscle atrophy in both his legs. However, at Camp Echo he was allowed exercise only every 10 days or so, in a very limited space. When his lawyers visited him in November 2006, he appeared both psychologically and physically debilitated, appearing “extremely depressed”, with severe leg pains.⁶² He was completely isolated from anyone but guards as there were no detainees in any adjacent cells; he was not allowed to send or receive mail from his family on a regular basis or to keep mail from his lawyers in his cell and was often refused a pen and paper. He was denied all reading material except for the Qu’ran.

When his lawyers returned to Guantánamo in March 2007 for a pre-arranged legal visit with Saber Lahmer guards told them that he did not want to be moved from his cell to go to an interview. Deeply disturbed that this was a sign of his further mental decline, his lawyers sought permission to visit him in his Camp Echo cell or at least the visitation room adjoining the cell. This request was also refused. On 22 March, just before they left the base, his lawyers made a formal written request to the Camp Command to move Saber Lahmer from his isolation in Camp Echo to a more social environment. They had not received a response at the time of writing.

As noted above, indefinite detention can itself cause severe psychological trauma and the ICRC has reported at various times on what they have observed to be a deterioration in the mental health of a large number of the Guantánamo detainees since January 2002. Twelve independent mental health experts who examined the impact of indefinite detention on eight detainees in the UK found this had led to clinical depression in all eight cases as well as signs of depression in three spouses interviewed.⁶³ The severe psychological impact of years of indefinite confinement and lack of contact with the outside world is likely to be exacerbated by the conditions of isolation and other deprivations described above. On the US mainland, there is evidence that inmates held in isolation cells, with few amenities or privileges, are at a greater risk of suicide than other prisoners, especially if they already suffer from depression or other mental health problems.

There had been more than 40 attempted suicides by detainees at Guantánamo before the three deaths by apparent suicide in June 2006. The men who died were held in maximum

⁶² His lawyers had administered a proxy examination of him in 2005, which was prepared and then evaluated by forensic psychologist Dr Daryl Matthews of the University of Hawaii who said that at that time he met the criteria for a Major Depressive Episode and Post Traumatic Stress Disorder.

⁶³ *The psychiatric problems of detainees under the 2001 Anti-Terrorism Crime and Security Act*, Robbins, I., Mackeith, J., Kopelman, M., et al. (2004), *Psychiatric Bulletin* (2005) 29:407-409, the Royal College of Psychiatrists. <http://pb.rcpsych.org/cgi/content/full/29/11/407>. Each of the detainees was seen by more than one clinician on more than one occasion and there was a high degree of consensus amongst the expert opinion on the detainees.

security custody in Camp 1. While the physical conditions in Camp 1 meant they were not so isolated as detainees in Camps 5 or 6, they were nevertheless confined to small cells with little exercise or amenities, conditions likely to be extremely stressful over time. One of the three, Yasser al-Zahrani from Saudi Arabia, was only 17 when he was first incarcerated at Guantánamo; he died aged 21. He is among a number of detainees who were under 18 when first held in the base, some of whom had reportedly spent time in isolation or prolonged cellular confinement.⁶⁴ International standards prohibit punishing children with solitary or cellular confinement.⁶⁵

In recognition of the health implications of solitary or isolated confinement, the UN Standard Minimum Rules states that

“Punishment by close confinement ... shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it” (Rule 32 (1)) and that

“The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health” (Rule 32 (3)).

ACA standards for correctional facilities also state that inmates in segregation should receive at least daily visits from a qualified health care official.⁶⁶

However, Amnesty International is concerned that the mental or physical health of Guantánamo detainees in isolation may not be adequately monitored or treated. One detainee sent to Camp 6 reported that he had not been seen by a doctor or mental health professional more than two months after being transferred there, despite repeated requests. A detainee in Camp Echo had reportedly not been permitted to see a doctor during two months of solitary confinement, despite having health problems (see Saber Lahmar case, below). Amnesty International has been told that in general it can be difficult to see a doctor, rather than a lower level health technician.

Relevant professional and ethical standards require that health professionals in prisons or places of detention should raise any concerns about conditions and their effects on prisoners with the authorities. Amnesty International is unaware of whether such action has been taken in regard to conditions of isolation, but notes that mental health and other health professionals at the base are not independent as they are employed by the military. The organization is concerned, for example, by reports that military psychiatrists at one time downplayed some of the suicide attempts at Guantánamo, reclassifying them as “manipulative

⁶⁴ Research undertaken by the UK group Reprieve in 2006 suggests that there may have been at least 17 detainees who were taken to Guantánamo when they were under 18 years old; most international legal standards recognize children as being under 18.

⁶⁵ *UN Rules for the Protection of Juveniles Deprived of their Liberty*, rule 67.

⁶⁶ Standard 4-4258, *Adult Correctional Institutions*, Fourth Edition

self-injurious behaviour”, resulting in a decrease in the number of such attempts officially reported.⁶⁷

While detainees in isolation in Guantánamo receive visits by health care technicians, and occasionally by doctors and psychiatrists, they are reportedly assessed only cursorily and some detainees have stated that they are afraid to complain. Amnesty International has been told that problems with the delivery of mental health care are compounded by detainees’ mistrust of health professionals at Guantánamo because of a history of mental health care personnel at the base having worked with interrogators.⁶⁸ Army medical personnel are alleged to have assisted in using detainees’ medical records to design individual prisoner interrogation plans that included sleep deprivation, prolonged isolation and exposure to temperature extremes, and to have coached interrogators on questioning techniques. Such practices are a gross violation of international standards which state that it is a breach of medical ethics for health personnel to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical or mental health.⁶⁹

There are also concerns about the delivery of other medical care. Amnesty International is aware of several cases where doctors reportedly advised that detainees needed more exercise for medical conditions, but the advice was ignored. One case concerned a heart patient held in restraints in the medical facility and another a detainee transferred to isolation (see Saber Lahmer case, above). Such reports are extremely disturbing and inconsistent with the US authorities’ claims to provide excellent medical care at Guantánamo. Amnesty International is also disturbed at reports that prisoners in the medical facility are routinely held in four-point restraint, sometimes for prolonged periods without exercise. Holding someone immobile in restraints for a prolonged period can lead to serious and potentially fatal health conditions, including blood clots. The practice is contrary to both international and US health professional standards on use of restraints.⁷⁰

⁶⁷ David Rose, *Vanity Fair*, January 2004.

⁶⁸ This is based on a number of sources, including a leaked copy of a Department of Defense memorandum relating to an October 2003 meeting between Guantánamo authorities and members of the ICRC. Memorandum for Record. Subject: ICRC Meeting with MG Miller on 09 Oct 03. Department of Defense, Joint Task Force 170, Guantanamo Bay, Cuba.

⁶⁹ UN Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by General Assembly resolution 37/194 of 18 December 1982).

⁷⁰ For example, in its Standards for Health Services in Correctional Institutions, the American Public Health Association (APHA) states that restraints should be used only when inmates pose a great risk of serious injury to themselves or others and only on the order of a physician; that restraints must be applied as humanely as possible and the level of restraint reduced as quickly as possible to the least restriction necessary; and should be automatically terminated after four hours, renewable for a maximum of four more hours. The UN Standard Minimum Rules state that restraints should be used only when other measures are ineffective and only for so long as is “strictly necessary” (Rules 33 and 34).

- Jumah al Dossari, a Bahraini national who has reportedly attempted suicide at least 12 times during his detention, has been held in the mental health unit at Guantánamo for over a year in a windowless cell. He has told his lawyer that the lights are always off outside his cell and the air-conditioning turned up high so it is always very cold and dark. His communication with other detainees is reportedly limited because of the severe psychological problems suffered by many others in the mental health unit, some of whom he has seen crying. After the June 2006 deaths, he was permitted to have only a blanket, mattress and Qu'ran in his cell, with his possessions increased some months later to allow a toothbrush, toothpaste and soap.

Although he is visited daily by a psychiatric technician and weekly by two psychiatrists, they reportedly spend only a few minutes with him, asking the same questions: whether he is eating and sleeping well, and whether he thinks about harming himself or others. He alleges that all detainees have learned to report that they are well because otherwise they are held under even stricter conditions.

- Saifullah Paracha was moved to the Guantánamo hospital in November 2006 after suffering serious chest pains and was diagnosed as needing cardiac catheterization. During the week he spent in hospital he was reportedly held in four-point restraint with both his hands and both feet chained to the bed at all times (except for one hand at meal times). A consulting cardiologist reportedly recommended that Saifullah Paracha walk around the hospital four times a day for 20 minutes at a time, but security personnel refused the request. Saifullah Paracha refused to undergo medical treatment at Guantánamo as he was not confident that his medical needs would be adequately met or that after the operation he would receive appropriate monitoring. No longer able to tolerate being in restraints, he asked to be returned to his cell in Camp 5 and the doctor agreed.⁷¹

Recommendations

Amnesty International is calling on the US government to close Guantánamo and to charge detainees with recognized crimes and bring them to trial under fair trial procedures or else release them with full protections against further abuses (see appendix). In the meantime the US government should ensure that all detainees are treated in accordance with international law and standards, including the International Covenant on Civil and Political Rights, the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and other international instruments relevant to the treatment of persons deprived of liberty. In particular, the US government should take immediate steps to:

- ensure that no detainee is subjected to cruel, inhuman or degrading treatment or punishment, including prolonged solitary or cellular confinement in conditions of

⁷¹ Declaration of Zachary Philip Katznelson, representing petitioner in *Paracha v Bush*, Case No. 04-CV-2022. His lawyers applied to the US courts for him to be transferred to the USA for treatment but this was denied.

reduced sensory stimulation. No detainee should be held for a prolonged period in a cell with no window to the outside or without access to natural light or fresh air;

- improve the living conditions for detainees to allow them more association, meaningful activities and recreation; the communal areas in Camp 6 should be fully utilized. More equipment should be provided in the exercise yards. The library should be better stocked and detainees should have access to recreational and educational programs, including through TV and video where feasible, and should be kept informed regularly of the more important items of news. All detainees should have regular, daily exercise in the fresh air, during daylight hours;
- ensure that all detainees are treated with respect for their human dignity; steps should be taken to prohibit intrusive, culturally or sexually humiliating observation of detainees, such as allowing female guards to observe detainees while showering;
- Detainees should be treated with respect for their religious beliefs and practices, including with regard to handling of the Qu'ran;
- allow independent health care professionals into Guantánamo to examine detainees in private;
- allow visits by independent human rights organizations and the UN special procedures. Such visits should include access to all parts of the facility and the ability of delegates to speak privately with detainees;
- allow contact with detainees' families through regular, and where possible uncensored, mail, with opportunities for phone calls and visits.

Appendix: Fair trials and an end to unlawful detentions

General⁷²

1. Any detention facility which is used to hold persons beyond the protection of international human rights and humanitarian law should be closed. This applies to the detention facility at Guantánamo Bay, where, in more than five years of detention operations, the US administration has failed to establish procedures which comply with international law and standards. The USA's secret detention program should be immediately and permanently ended and any secret detention facilities, wherever in the world they may be situated, closed down.
2. Closing Guantánamo or other facilities must not result in the transfer of the human rights violations elsewhere. All detainees in US custody must be treated in accordance with international human rights law and standards, and, where relevant, international humanitarian law. All US detention facilities must be open to appropriate external scrutiny, including that of the International Committee of the Red Cross (ICRC).
3. The responsibility for finding a solution for the detainees held in Guantánamo and elsewhere rests first and foremost with the USA. The US government has created a system of detention in which detainees have been held without charge or trial, outside the framework of international law and without the possibility of full recourse to US courts. It must redress this situation in full compliance with international law and standards.
4. All US officials should desist from further undermining the presumption of innocence in relation to the Guantánamo detainees. The continued public commentary on their presumed guilt puts them at risk in at least two ways – it is dangerous to the prospect for a fair trial and dangerous to the safety of any detainee who is released. It may also put them at further risk of ill-treatment in detention.
5. All detainees must be able to challenge the lawfulness of their detention in an independent and impartial court, so that that court may order the release of anyone whose detention is not lawful. The Military Commissions Act should be repealed or substantially amended to bring it into conformity with international law, including by fully ensuring the right to *habeas corpus*.
6. President George W. Bush should fully rescind his 13 November 2001 Military Order authorizing detention without charge or trial, as well as his executive order of 14 February 2007 establishing military commissions under the Military Commissions Act.
7. Those currently held in Guantánamo should be released unless they are to be charged and tried in accordance with international standards of fair trial.

⁷² This framework, with additional notation, appears in *USA: Justice delayed and justice denied? Trials under the Military Commissions Act*, AI Index: AMR 51/044/2007, March 2007, <http://web.amnesty.org/library/Index/ENGAMR510442007>.

8. No detainees should be forcibly sent to their country of origin if they would face serious human rights abuses there, or to any other country where they may face such abuses or from where they may in turn be forcibly sent to a country where they are at such risk.

Fair trials

9. Those to be charged and tried must be charged with a recognizable crime under law and tried before an independent and impartial tribunal established by law, such as a US federal court, in full accordance with international standards of fair trial. There should be no recourse to the death penalty.
10. Any information obtained under torture or other cruel, inhuman or degrading treatment or punishment should not be admissible in any tribunal. In light of the years of legal, physical and mental abuse to which detainees in US custody have been subjected, any trials must scrupulously respect international standards and any sentencing take into account the length and conditions of detention in Guantánamo or elsewhere prior to being transported there.

Solutions for those to be released

11. There must be a fair and transparent process to assess the situation of each of the detainees who is to be released, in order to establish whether they can return safely to their country of origin or whether another solution must be found. In all cases detainees must be individually assessed, be properly represented by their lawyers, be provided interpreters if required, given a full opportunity to express their views, provided with written reasons for any decision, and have access to a suspensive right of appeal. Relevant international agencies, such as the Office of the United Nations High Commissioner for Refugees (UNHCR), could be invited to assist in this task, in line with their respective mandates. The options before the US government to deal in a manner which fully respects the rights of detainees who are not to be tried and who therefore ought to be released without further delay include the following:
 - (a) **Return.** The US authorities should return released detainees to their country of origin or habitual residence unless they are at risk there of serious human rights violations, including prolonged arbitrary detention, enforced disappearances, unfair trial, torture or other ill-treatment, extrajudicial executions, or the death penalty. Among those who should be released with a view to return are all those who according to the laws of war (Geneva Conventions and their Additional Protocols) should have been recognized after their capture as prisoners of war, and then released at the end of the international armed conflict in Afghanistan, unless they are to be tried for war crimes or other serious human rights abuses. Again, all detainees who are not to be charged with recognizable crimes should be released.
 - (b) **Diplomatic assurances.** The US authorities must not seek or accept diplomatic assurances from the prospective receiving government about how a detainee will be treated after return to that country as a basis for sending individuals to countries where they would otherwise be considered at risk of

torture or other ill-treatment. Diplomatic assurances under these circumstances breach international human rights obligations; are unreliable and unenforceable; and are inherently discriminatory in that they apply only to particular individuals. In addition, the USA must not impose conditions upon the transfer of detainees under which the receiving state would, by accepting such conditions, be violating their obligations under international human rights law.

- (c) **Asylum in the USA.** The US authorities should provide released detainees with the opportunity to apply for asylum in the USA if they so wish, and recognize them as refugees if they meet the requirements international refugee law. The US authorities must ensure that any asylum applicants have access to proper legal advice and to fair and effective procedures that are in compliance with international refugee law and standards, including the opportunity to contact UNHCR. Asylum applicants should not be detained except in the most exceptional circumstances.
- (d) **Other forms of protection in the USA.** Persons who do not qualify for refugee status, but are at risk of serious human rights abuses in the prospective country of return must receive other forms of protection and should be allowed to stay in the USA if they wish, pursuant to obligations under domestic and international human rights law, including the International Covenant on Civil and Political Rights, and the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment. They should not be detained, unless in each individual case it is established before a court that their detention is lawful, for a purpose recognized as legitimate by international human rights law, and necessary and proportionate to the objective to be achieved, with the lawfulness of the detention periodically reviewed by the courts, in accordance with international human rights law and standards.
- (e) **Transfer to third countries.** The US authorities should facilitate the search for durable solutions in third countries for those who cannot be returned to their countries of origin or habitual residence, because they would be at risk of serious human rights abuses, and who do not wish to remain in the USA. Any such solution should address the protection needs of the individuals, fully respect all of their human rights, and take into account their views. All transfers to third countries should be with the informed consent of the individuals concerned. UNHCR should be allowed to assist in such a process, in accordance with its mandate and policies. Released detainees should not be subjected to any pressures and restrictions that may compel them to choose to resettle in a third country. Transfers must not occur to third countries from where individuals may in turn be forcibly sent to a country where they would be at such risk.

Reparations

12. The USA has an obligation under international law to provide prompt and adequate reparation, including restitution, compensation, rehabilitation, satisfaction, and fair and guarantees of non-repetition, to released detainees for the period spent unlawfully detained and for other violations that they may have suffered, such as torture or other ill-treatment. The right of victims to seek reparations in the US courts must not be limited.

Transparency pending closure

13. The USA should invite the five UN experts who have sought access – the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on the independence of judges and lawyers, the Special Rapporteur on freedom of religion or belief, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention – to visit Guantánamo without the restrictions that led them to turn down the USA's previous invitation. In particular, there should be no restrictions on the experts' ability to talk privately with detainees.

Other countries

14. Other countries should give serious consideration to accepting released detainees voluntarily seeking resettlement there, especially countries of former habitual residence or countries where released detainees have had close family or other ties.
15. Other governments should reject conditions attached to detainee transfers requested by the USA which would violate the receiving country's obligations under international human rights law.
16. All countries should actively support closure of the Guantánamo detention camp and all other facilities operating outside the rule of international human rights and humanitarian law, and an end to secret detentions and interrogations.
17. No state should transfer anyone to US custody in circumstances where they could be detained in Guantánamo or elsewhere where they may be held outside the protections of international law, or in cases where they could face trial by military commission.
18. No state should provide any information to assist the prosecution in military commission trials. This applies in all instances, and is especially compelling in cases where the death penalty is sought.

Attachment I



Life Harsher in New Guantanamo Unit

Life Harsher for Detainees in Guantanamo's Newest Prison Unit, Maximum-Security Camp 6

By **BEN FOX**

The Associated Press

GUANTANAMO BAY NAVAL BASE, Cuba

Abdul Helil Mamut's good behavior earned him a spot in a medium-security compound at the Guantanamo Bay prison, where he slept in a barracks, shared leisurely meals with other prisoners and could spend more than half the day in an outdoor recreation area.

But in December, the detainee was among dozens transferred from Camp 4 to the maximum-security Camp 6, the newest section of Guantanamo Bay's military prison.

Now Mamut, an ethnic Uighur from China captured in Pakistan, spends all but two hours a day isolated in his cell. He eats and prays by himself. His only recreation comes in a concrete courtyard surrounded by high walls, separated from other prisoners by a chain-link fence.

The U.S. government says the unit provides detainees with more private and comfortable quarters.

But Mamut and other Uighur prisoners complain their days are now filled with "infinite tedium and loneliness," said Sabin Willett, an attorney for the men, in an affidavit filed in a Washington court.

"All expressed a desperate desire for sunlight, fresh air and someone to speak to," Willett wrote after a January visit to the prison, located on the U.S. military base in southeastern Cuba, where the U.S. holds nearly 400 men suspected of links to al-Qaida or the Taliban.

Wells Dixon, who also represents Uighurs held at Guantanamo, predicted the lack of human interaction in Camp 6 will cause detainees to lose their grip on reality.

"It will very soon become an insane asylum," he told The Associated Press in a phone interview after he returned from the base in January.

The military, however, says Camp 6 has improved the lives of detainees

A guard at Camp 6, an Army sergeant whose name cannot be disclosed under military rules, insisted that the prisoners prefer the new air-conditioned cells and the privacy.

"It's kind of like having their own apartment," he said.

Camp 6 houses about 160 men more than a third of the total at Guantanamo and is similar to the highest-security U.S. prisons, even though no one at the prison has been convicted.

When the first detainees arrived in the new unit in December, they found on their bunks two pieces of baklava a sweet pastry common in the Middle East to welcome them to their new quarters, according to one prison official.

Originally, Camp 6 was going to be more like Camp 4, with detainees allowed to congregate in a common area and share meals. But the commander of the detention center, Navy Rear Adm. Harry B. Harris, said that plan changed after 10 detainees attacked guards in Camp 4 last May and three prisoners committed suicide in June in Camp 1.

"Our understanding of the detainees improved and evolved," Harris said.

In Camp 6, guards handcuff detainees through a slot in the steel door before escorting them to the recreation area.

"They never touch another living thing," Willett said. "They never see, smell, or touch plants, soil, the sea or any creature, except insects."

Willett said he does not know why Mamut, who is about 30, or the other Uighurs were moved out of Camp 4. The military will not discuss individual detainees or decisions about their custody but officials say tight security is warranted in all cases.

"I firmly believe that the detainee population that we have right now is literally still at war with us," said Army Col. Wade Dennis, the detention center warden. "We have to be constantly vigilant."

Willett believes Mamut does not deserve to be in a high-security section, saying he is among the more than 100 detainees slated for release or transfer from Guantanamo.

Uighurs have been accused by China of leading a violent Islamic separatist movement in the western province of Xinjiang, though their supporters say Beijing uses claims of terrorism as an excuse to crack down on peaceful pro-independence sentiment.

Under U.S. law, they cannot be deported to China because of concern they could face political persecution. Five Uighurs were sent to Albania last year, but other countries have been unwilling to accept the 17 or so remaining in Guantanamo.

Camp 6 was built for \$37 million by KBR, a subsidiary of Houston-based Halliburton Co. The military has transferred prisoners there from other parts of the detention center, including from Camps 1, 2 and 3, where detainees were held in steel mesh cells that allowed them to easily communicate with each other but also left guards vulnerable to being spat upon or splashed with other bodily fluids.

Another unit, Camp 5, is reserved for the least compliant and "high value" detainees, who are also kept in individual, solid-wall cells and also allowed outside for only 2 hours a day of recreation in an enclosed area.

Camp 4, where detainees could spend 12-14 hours a day outside and could congregate freely, now holds about 35 prisoners, down from about 180 at the time of the attack on guards in May. Harris said it will never return to its previous size.

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In this Dec. 6, 2006 file photo, reviewed by a U.S. Dept of Defense official, a shackled detainee is escorted while being transported inside the detention center at Guantanamo Bay U.S. Naval Base, Cuba. Guantanamo's Camp 6, the new, high-tech prison where prisoners stay alone in virtual isolation, is the focus of current accusations by attorneys and other detainee advocates of much harsher conditions at Guantanamo in the newest section of the detention center. (AP Photo/Brennan Linsley)

Attachment J

washingtonpost.com

Uighurs' Detention Conditions Condemned

Lawyers' Complaint Part of Effort to Get Expedited Review

By R. Jeffrey Smith and Julie Tate
Washington Post Staff Writers
Tuesday, January 30, 2007; A04

Chinese Uighurs who have been imprisoned for the past month at a new state-of-the-art detention camp at Guantanamo Bay, Cuba, are being held around the clock in near-total isolation, a circumstance their lawyers say is rapidly degrading their mental health, according to an affidavit filed in federal court yesterday.

The lawyers' complaint is the latest step in their efforts to force an expedited review of the Uighurs' confinement by the U.S. Court of Appeals, a review that the Bush administration opposes and that Congress made more difficult in legislation it passed late last year.

The Uighurs' (pronounced *weegurs*) detention by the U.S. military, after being sold for bounty by Pakistanis in early 2002, has long attracted controversy. The men had just arrived from Afghanistan, where, they said, they had received limited military training because they opposed Chinese government control of their native region. But they said they never were allied with the Taliban or opposed to the United States, and had fled to Pakistan only to escape the U.S. bombing campaign.

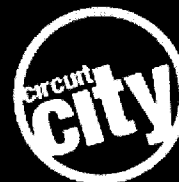
By 2005, U.S. military review panels determined that five of the 18 captured Uighurs were "no longer enemy combatants," but they continued to be held at the Guantanamo Bay prison until their release last year. The panels did not reach that conclusion about the other 13, though all had given similar accounts of their activities during the reviews, according to declassified transcripts of the sessions.

U.S. District Judge James Robertson ruled in December 2005 that the government was unlawfully imprisoning the Uighurs who were found not to be combatants.

Because China views Uighurs as members of a rebellious ethnic minority, the U.S. government declined to return the five men to China, where they faced retribution, and dozens of other nations refused to accept them. Ultimately they were sent last year from Guantanamo Bay to Albania, where they are housed in a compound run by the United Nations.

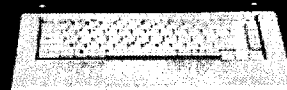
Lawyers for the remaining 13 Uighurs say the men were moved in December to Guantanamo Bay's Camp 6, a high-security facility at the base completed last August at a cost of \$37.9 million. The lawyers say the government provided no explanation for the move, which came shortly after they filed a court petition in Washington seeking the expedited review.

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In Camp 6, the Uighurs are alone in metal cells throughout the day, are prohibited for the most part from conversing with others, and take all their meals through a metal slot in the door, lawyer P. Sabin Willett said in his affidavit, which was based on what he was told during his visit Jan. 15-18. They have little or no access to sunlight or fresh air, have had nothing new to read in their native language for the past several years, and are sometimes told to undertake solitary recreation at night, he said.

"They pass days of infinite tedium and loneliness," according to Willett's court filing. One Uighur's "neighbor is constantly hearing voices, shouting out, and being punished. All describe a feeling of despair . . . and abandonment by the world." Another Uighur, named Abdusumet, spoke of hearing voices himself and appeared extremely anxious during Willett's visit, tapping the floor uncontrollably, he said.

The account matches another offered by Brian Neff, a lawyer who in mid-December visited a Yemeni imprisoned in Camp 6. "Detainees in Camp 6 are not supposed to talk to others, they are punished for shouting, and if they talk during walks outside they will be punished," Neff said in an e-mail yesterday. "We are extremely concerned about the . . . conditions of Camp 6 -- in particular, the fact that the detainees there are being held in near-total isolation, cut off from the outside world and any meaningful contact."

Some other "high-value" detainees are being held at a CIA-run camp at Guantanamo Bay that officials say is reserved for the most dangerous and important suspects, but virtually no information has emerged about their treatment.

Navy Cmdr. Robert Durand, a spokesman at Guantanamo Bay, confirmed that Camp 6, which houses 160 detainees, has no communal living spaces. Its design originally included them, but they were omitted after detainees attacked guards at Camp 4 in May 2006. Detainees eat and pray in their cells, he said.

Durand said that as repairs are completed at Camp 4, where communal spaces still exist, "detainees in Camp 6 will have the opportunity to earn their way into Camp 4" after first passing through another camp with medium-security conditions.

He said that while he cannot comment on specific detainees, all "have regular, daily human contact. In Camp 6 they can communicate with other detainees in the cell block. Detainees pray together through the food ports in their doors. . . . When detainees recreate, they do so in individual units in a recreation yard with access to see and speak to other detainees."

Willett said that one of his clients, named Abdunnasser, contends that he was cleared for release from detention during one of the military's annual administrative reviews. But Willett has been unable to confirm that claim, or determine why none of the other detained Uighurs are aware of such annual reviews.

The Justice Department, in court papers, has maintained that the appellate court should delay reviewing the Uighurs' detention until cases related to other detainees are resolved. It also has said that legislation passed last year by Congress, which created new military panels to try Guantanamo Bay detainees on criminal charges, seriously limits the court's jurisdiction to question government decisions on their detention.

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Chinese Uighurs are being held in almost complete isolation at a new detention camp at Guantanamo Bay, Cuba, their lawyers say.

Photo Credit: By Brennan Linsley -- Associated Press Photo

Most Viewed Photos (3:31 p.m. ET)

- Limited Brands provided this screenshot from a Victoria's Secret ad scheduled to run during Super Bowl XLII on Sunday, Feb. 3, 2008. Advertisers are banking more than ever on the Super Bowl as the writers' strike fells hit TV shows. (AP Photo/Limited Brands)
- Photo - 02/01/2008
- Employees are seen at the club Rick's Cabaret in the French Quarter of New Orleans on Thursday, Jan. 24, 2008. The city's tourism industry, getting back on its feet after Hurricane Katrina, is counting on a big weekend crowd leading up to Mardi Gras (Fat Tuesday) on Feb. 5. A manager at the club said that on a weekend or during a special event, a waitress can pull in up to \$500 while entertainers can see \$2,000 to \$3,000. (AP Photo/Cheryl Gerber)

Attachment K



December 16, 2006

Military Taking a Tougher Line With Detainees

By [TIM GOLDEN](#)

GUANTÁNAMO BAY, Cuba, Dec. 10 — As the first detainees began moving last week into Guantánamo's modern, new detention facility, Camp 6, the military guard commander stood beneath the high, concrete walls of the compound, looking out on a fenced-in athletic yard.

The yard, where the detainees were to have played soccer and other sports, had been part of a plan to ease the conditions under which more than 400 men are imprisoned here, nearly all of them without having been charged. But that plan has changed.

“At this point, I just don't see using that,” the guard commander, Col. Wade F. Dennis, said.

After two years in which the military sought to manage terrorism suspects at Guantánamo with incentives for good behavior, steady improvements in their living conditions and even dialogue with prison leaders, the authorities here have clamped down decisively in recent months.

Security procedures have been tightened. Group activities have been scaled back. With the retrofitting of Camp 6 and the near-emptying of another showcase camp for compliant prisoners, military officials said about three-fourths of the detainees would eventually be held in maximum-security cells. That is a stark departure from earlier plans to hold a similar number in medium-security units.

Officials said the shift reflected the military's analysis — after a series of hunger strikes, a riot last May and three suicides by detainees in June — that earlier efforts to ease restrictions on the detainees had gone too far.

The commander of the Guantánamo task force, Rear Adm. Harry B. Harris Jr., said the tougher approach also reflected the changing nature of the prison population, and his conviction that all of those now held here are dangerous men. “They're all terrorists; they're all enemy combatants,” Admiral Harris said in an interview.

He added, "I don't think there is such a thing as a medium-security terrorist."

Admiral Harris, who took command on March 31, referred in part to the recent departure from Guantánamo of the last of 38 men whom the military had classified since early 2005 as "no longer enemy combatants." Still, about 100 others who had been cleared by the military for transfer or release remained here while the State Department tried to arrange their repatriation.

[Shortly after Admiral Harris's remarks, another 15 detainees were sent home to Saudi Arabia, where they were promptly returned to their families.]

The detainee population here has also been reshaped by the arrival in September of 14 terror suspects, including the accused mastermind of the Sept. 11 attacks, who had been held by the [Central Intelligence Agency](#) in secret prisons overseas.

United States officials said these so-called high-value suspects were being held apart from the rest of the Guantánamo prisoners, at a secret detention facility supervised by C.I.A. officers. The 14 have been visited twice by representatives of the International Committee of the Red Cross, but have not yet been interrogated by military intelligence officials, these officials said.

Next year, after the Defense Department finishes rewriting rules for the military tribunals that the Bush administration first established in November 2001, the intelligence agency's prisoners are to be charged with war crimes. The timetable for their prosecutions remains uncertain.

Military officials said they would continue to try to improve conditions at the prison to the extent that security considerations allowed. They said they have abandoned special cell blocks for discipline and segregation, so that prisoners who violate rules are now punished simply by the withdrawal of various privileges in their regular cells. The authorities have also standardized rules for exercise, allowing each detainee at least two hours a day, they said.

Nonetheless, the tightening of security at the detention center represents a significant shift in Guantánamo's operations.

Since spring 2004, the military's handling of the detainees had been heavily influenced by the political and diplomatic pressures that grew out of the Abu Ghraib scandal and other cases of prisoner abuse. At the same time, Guantánamo's focus was shifting from interrogations to the

long-term detention of men who, for the most part, would never be charged with any crime.

With little guidance from Washington, senior officers here began in 2005 to edge back toward the traditional Geneva Convention rules for prisoner treatment that President Bush had disavowed after 9/11 for the fight against terrorism, military officials said. Military officers began listening more attentively to the prisoners' complaints, and eventually met a few times with a council of detainee leaders.

Those talks were quickly aborted in August 2005. The hunger strikes were effectively broken last January, when the military began strapping detainees into padded "restraint chairs" to force-feed them through stomach tubes.

But those protests gave way to several drug overdoses in May and the hangings in June of three prisoners — all of whom had previously been hunger strikers.

The current Guantánamo commanders eschewed any criticism of their predecessors. But they were blunt in laying out a different approach.

Asked about his discussions with prisoners, Colonel Dennis said he basically had none. As for the handful of detainees who have continued to wage hunger strikes, including three who were being force-fed last week, he said they would get no "special attention" from him.

"If they want to do that, hook it up," he said, apparently referring to the restraint chair system for force-feeding. "If that's what you want to do, that's your choice."

Admiral Harris said he had ordered a hardening of the security posture on the basis of new insights into the threat that the detainees pose. "We have learned how committed they are, just how serious they are, and how dangerous they are," he said.

Several military officials said Admiral Harris took over the Guantánamo task force with a greater concern about security, and soon ordered his aides to draw up plans to deal with hostage-takings and other emergencies.

He and Colonel Dennis both asserted that Camp 4 — where dozens of detainees rioted during an aggressive search of their quarters last May — represented a particular danger.

Admiral Harris said detainees there had used the freedom of the camp to train one another in terrorist tactics, and in 2004 plotted unsuccessfully to seize a food truck and use it to run over

guards.

“Camp 4 is an ideal planning ground for nefarious activity,” he said.

But according to several recent interviews with military personnel who served here at the time, the riot in May did not transpire precisely as military officials had described it. The disturbance culminated with what the military had said was an attack by detainees on members of a Quick Reaction Force that burst into one barracks to stop a detainee who appeared to be hanging himself.

But officers familiar with the event said the force stormed in after a guard saw a detainee merely holding up a sheet and that his intentions were ambiguous. A guard also mistakenly broadcast the radio code for multiple suicide attempts, heightening the alarm, the officers said.

Admiral Harris conceded that an error “could have been” made, but said “it was certainly no accident” that the prisoners had slicked the floor of their quarters with soapy water and excrement, and fought the guards with makeshift weapons. He said he believed the guards acted properly.

The May 18 search took place after at least two prisoners were found unconscious from overdoses of hoarded drugs. The detainees who attacked the guards were known as especially religious, and had been angered in the past by searches of their Korans.

After the three suicides in June, Camp 6 was substantially reconfigured. Staircases and catwalks were fenced in so that detainees could not jump from them to attack guards or try to kill themselves. Shower stalls were built higher so they could not be used for hangings. Exercise yards were divided up into a series of one-man pens.

The detainees will still look out the small windows of their computer-controlled cell doors to see the stainless steel picnic tables where they were once supposed to have shared their meals; they just will not be able to sit at those tables with other detainees.

Military officials confirmed that since the suicides in June, three detainees who were part of the council that negotiated with military commanders had been kept isolated from nearly all other prisoners in Camp Echo, a collection of bungalows where detainees often see their lawyers.

Those detainees include Shaker Aamer, a Saudi resident of Britain who is accused of having ties to [Al Qaeda](#); Ghassan al-Sharbi, a Saudi electrical engineer who was charged earlier with plotting to make bombs for Qaeda forces in Afghanistan; and Saber Lahmar, an Algerian religious scholar seized in Bosnia.

Lawyers for Mr. Aamer and Mr. Lahmar said that they had been alone for most of that time, and that the isolation was causing them psychological damage.

“They have thrown away the key and forgotten him even though he is spiraling down physically and psychologically,” Mr. Lahmar’s lawyer, Stephen H. Olesky, said.

Noting that a petition for relief on behalf of Mr. Lahmar has been before a federal appeals court for nearly two years, he added, “They know we do not have a judge to take this case to, so they can pile on the detainee.”

Colonel Dennis, the commander of the detention group, said Mr. Lahmar was being allowed to exercise and had access to any medical attention he required.

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Brennan Linsley/Associated Press

A part of the Camp 6 center at Guantánamo, which had been intended to be common area. With the tighter security, however, the inmates will not be sharing meals there. Camp 6 also has one-man exercise pens.