

URGENT ACTION

OPPOSE DETAINEE TRANSFERS TO GUANTÁNAMO

The US authorities are preparing for possible detainee transfers to the US naval base at Guantánamo Bay, Cuba. President Trump has ordered the Secretary of Defense to make policy recommendations by 30 April. The last detainee transfer to the base was in 2008.

On 30 January 2018, President Donald Trump signed an executive order revoking his predecessor's 2009 order to close the Guantánamo Bay detention facility. The new order states that detention operations there "shall continue", and that "in addition, the United States may transport additional detainees" to Guantánamo "when lawful and necessary to protect the Nation." The Secretary of Defense, in consultation with other executive agencies, is required by 30 April to develop recommendations "regarding the disposition of individuals captured in connection with an armed conflict, including policies governing transfer of individuals to US Naval Station Guantánamo Bay." In a speech shortly after signing the order, President Trump said he was seeking congressional action "to ensure that in the fight against ISIS and al-Qa'ida, we continue to have all necessary power to detain terrorists wherever we chase them down, wherever we find them. And in many cases, for them, it will now be Guantánamo Bay."

Two detainees who are said to be under consideration for transfer to Guantánamo are **Alexandra Kotey** and **El Shafee Elsheikh**. They are alleged members of the armed group calling itself Islamic State (IS) who are being held by the US-backed Syrian Democratic Forces after being taken into custody in Syria in early February 2018. The US Department of State labelled both men as "Specially Designated Global Terrorists" in early 2017. The two are the subject of ongoing diplomatic discussions between the USA and UK. Alexandra Kotey was born in the UK and El Shafee Elsheikh grew up in the UK. It is reported that the UK authorities have stripped both of their UK citizenship, and it is unclear if the UK will be willing to accept the two men for trial there. A US Department of State official has said the administration is considering the men's transfer to Guantánamo, and the Department of Justice is reported to be examining the option of bringing them to the USA to face trial in federal court, on possibly capital charges.

Amnesty International considers that the Guantánamo detentions violate the USA's obligations under international human rights law. It has long called for all detainees held there to be brought to fair trial or released, for the system of military commission trials to be abandoned because it does not meet international fair trial standards, and for closure of the detention facility. Amnesty International opposes the death penalty unconditionally.

Please write immediately in English or your own language, in your own words:

- Calling on the officials to recommend to the President that no more detainees be sent to Guantánamo, including Alexandra Kotey and El Shafee Elsheikh; to work for the fair trial in civilian court or release of the detainees still held at the naval base, and for a return to the policy of closing the detention facility there forthwith;
- Calling for anyone in US custody against whom there is admissible evidence of responsibility for crimes under international law, including in the context of armed conflicts in Iraq and Syria, to be charged and brought to fair trial in a civilian court with jurisdiction to try the crimes;
- Urging that there be no recourse to the death penalty in any case.

PLEASE SEND APPEALS BEFORE 30 APRIL 2018 TO:

James N. Mattis
Secretary of Defense
US Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000, USA
Fax: +1 703 571 8951
Email: osd.pa.dutyofficer@mail.mil
Salutation: Dear Secretary of Defense

Thomas Bossert
Assistant to the President for Homeland
Security and Counterterrorism, The
White House, 1600 Pennsylvania Ave
NW, Washington, DC 20500, USA
Email: thomas.p.bossert@nsc.eop.gov
Salutation: Dear Mr Bossert

Rex Tillerson
Secretary of State
US Department of State
2201 C Street NW,
Washington, DC 20520, USA
Email: <https://register.state.gov/contactus/contactusform>
Salutation: Dear Secretary of State

Also send copies to diplomatic representatives accredited to your country. HIS EXCELLENCY WOODY JOHNSON, U.S. Embassy
London, 33 Nine Elms Lane, London, SW11 7US, United Kingdom, Phone: (0)20 7499-9000
Please check with your section office if sending appeals after the above date.

**AMNESTY
INTERNATIONAL**



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ADDITIONAL INFORMATION

Detainee operations at Guantánamo began on 11 January 2002 under what then President George W. Bush dubbed the global “war on terror” after the attacks in the USA of 11 September 2001 (9/11). A total of 779 individuals have been held there, with detainee transfers to the base tailing off as global condemnation of them grew: 632 were taken there in 2002, 117 in 2003, 10 in 2004, none in 2005, 14 in 2006, five in 2007 and one in 2008. No new detainee has arrived at Guantánamo since 14 March 2008. On 22 January 2009, then President Barack Obama signed an executive order committing his administration to ending the detentions and closing the detention facility. He failed to meet this goal, and there were 41 detainees still there at the time of the inauguration of President Trump, who had made a campaign pledge to keep the detention facility open and to “load it up with some bad dudes”. A year on, the 41 are still held; some have been at Guantánamo for over 16 years, all for more than a decade, and most of them without charge or trial (see: <https://www.amnesty.org/en/documents/amr51/7822/2018/en/>).

President Trump’s executive order of 30 January 2018 reiterates the US position that among the authorities underpinning the detentions is the Authorization for Use of Military Force (AUMF), passed by Congress with little debate in the wake of the 9/11 attacks. The US federal courts have endorsed the AUMF as the legal authority permitting the detentions. President Trump’s executive order asserts that the AUMF “and other authorities authorized the United States to detain certain persons who were a part of or substantially supported al-Qa’ida, the Taliban, or associated forces engaged in hostilities against the United States or its coalition partners.” It adds that: “Today, the United States remains engaged in an armed conflict with al-Qa’ida, the Taliban, and associated forces, including with the Islamic State of Iraq and Syria.” The question as to whether US courts would deem the AUMF to cover IS detainees brought to Guantánamo is an open one, as no such detainee has yet been transferred there.

The fact that no one has yet been sent to Guantánamo under the Trump administration may be an indication of the uncertainty about the basis in US law for IS detentions there in the absence of a “new AUMF”. It is also not clear just how enthusiastic President Trump is to restart transfers to Guantánamo despite his campaign pledge and executive order. Prompted by a journalist in November 2017 as to whether he would support the transfer of a man suspected of an attack in New York City, the President responded that “I would certainly consider that”. The suspect was charged for trial in federal court and remains in civilian custody; the President noted that the “process” at Guantánamo “takes much longer than going through the Federal system”. Another concern with broad implications was the President’s call via Twitter for the New York suspect to get the death penalty, in addition to other tweets which flouted rule of law principles. Meanwhile, at Guantánamo the military commission process has fallen into further shambles. On 16 February 2018, a military judge suspended “indefinitely” pre-trial proceedings in the capital case against ‘Abd al Nashiri following the earlier withdrawal of defence counsel because of alleged government monitoring of attorney/client meetings (see <https://www.amnesty.org/en/documents/amr51/7413/2017/en/>).

Amnesty International believes that anyone suspected, on the basis of reasonable grounds, of having responsibility for crimes under international law must be brought before civilian courts and receive a fair trial that meets international standards, excluding recourse to the death penalty. This includes foreign fighters suspected on such grounds of crimes under international law such as war crimes or crimes against humanity committed during non-international armed conflicts in Iraq and Syria. Provided there is sufficient admissible evidence, they must be brought to justice through a fair trial, which could take place in any judicial system with the necessary jurisdiction, be it in in their country of nationality, Syria, Iraq, or The Hague or in a third country applying universal jurisdiction over such crimes. Amnesty International opposes the death penalty unconditionally. Today 142 countries are abolitionist in law or practice and international tribunals established to try the most serious crimes under international law do not allow for the death penalty.