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12 YEARS OF GUANTÁNAMO DETENTIONS, 12 YEARS OF DOUBLE STANDARDS

In retrospect, the entire detention and interrogation strategy was wrong. We squandered the goodwill of the world after we were attacked by our actions in Guantánamo, both in terms of detention and torture
Major General Michael Lehnert (ret.), first commander of detentions at Guantánamo (2002), December 2013[1]

As the US detentions at Guantánamo enter their 13th year, the world should take the USA to task for its abject failure to live up to the international human rights standards it so often demands of others.

The recent flurry of detainee transfers from Guantánamo – nine in December 2013, transfers which followed a mass hunger strike at the base during the year[2] – cannot disguise the fact that under its flawed "law of war" framework the USA has yet to fully recognize its human rights obligations in this context, let alone apply them. Instead this US detention regime continues to undermine principles of criminal justice and remains an affront to the Universal Declaration of Human Rights and other international instruments, the very same standards against which the USA yearly assesses the human rights records of other countries.

Twelve years after the first detainees were brought to Guantánamo, strapped down in planes like cargo, more than 150 men remain held there, most of them held without charge or trial. A few face trial under a military commission system that does not meet international fair trial standards.

Meanwhile, impunity for crimes under international law committed by US personnel against current and former Guantánamo detainees is a festering injustice that leaves the USA in serious violation of its international law obligations on truth, accountability and remedy.

Any other country responsible for creating and maintaining such a human rights vacuum would surely have drawn the USA's condemnation. Instead, every year that this notorious prison camp has been in operation, the USA has continued to trumpet its commitment to human rights principles.

Even as it authorized torture or other cruel, inhuman or degrading treatment against detainees held at Guantánamo and elsewhere, or denied them access to lawyers and the courts, the Bush administration criticized other countries for such abuses. Among the many targets of its criticism was the government of Cuba, including for comparable abuses against detainees committed in the very same country in which the USA was operating the Guantánamo facility.

Four of the 14 men transferred in September 2006 to military custody at Guantánamo after years of secret CIA detention have said that they were held in Guantánamo in 2003 or 2004. In other words, Guantánamo was the location for one of the CIA's 'black sites" at which detainees were subjected to enforced disappearance. In 2003 and 2004, the US government criticized the Cuban authorities for a range of abuses, including subjecting prisoners to prolonged isolation, using military tribunals to try civilians in certain cases under a 'special law', and denying access to lawyers for certain detainees. The USA itself was carrying out the same or similar violations at Guantánamo. The USA reported that there

[1] Here's why it's long past time that we close Guantánamo, Detroit Free Press, 12 December 2013, http://www.freep.com/apps/pbcs.dll/article?AID=2013312120025

[2] See, for example, USA: 'I have no reason to believe that I will ever leave this prison alive': Indefinite detention at Guantánamo continues; 100 detainees on hunger strike, 3 May 2013, http://www.amnesty.org/en/library/info/AMR51/022/2013/en; and USA: 'I am fallen into darkness': The case of Obaidullah, Guantánamo detainee now in his 12th year without trial, 25 July 2013, http://www.amnesty.org/en/library/info/AMR51/051/2013/en

were no instances of enforced disappearances in Cuba, something it was itself carrying out on Cuban soil and for which there has been zero accountability.

Perhaps the Obama administration would say that it has stopped the use of torture and enforced disappearance as carried out under its predecessor and so this issue is old news. But the absence of accountability means that a line cannot be drawn under these human rights violations, something the USA itself recognizes when it comes to other countries. When recording in the 2013 State Department human rights report in relation to Afghanistan, for example, that "official impunity for those who committed human rights abuses" was a "serious" problem in that country, the USA was not applying the standards it set for Afghanistan to itself, including in relation to past US human rights violations in that same country.

USA AND HUMAN RIGHTS: DO AS WE SAY, NOT AS WE DO[3]

2002 – "*As we defend our security after the tragic events of September 11, we have placed the preservation of human rights and democracy at the foundation of our efforts.*"

2003 – "*In a world marching toward democracy and respect for human rights, the United States is a leader, a partner and a contributor. We have taken this responsibility with a deep and abiding belief that human rights are universal.*"

2004 – "*Promoting respect for universal human rights is… a commitment inspired by our country's founding values and our enduring strategic interests. As history has repeatedly shown, human rights abuses are everybody's concern.*"

2005 – "*Under the leadership of President Bush the United States has stepped forward with its democratic allies to reaffirm our commitment to human rights*"

2006 – "*We must call countries to account when they retreat from their international human rights commitments.*"

2007 – "*These fundamental rights, reflected in the United Nations Universal Declaration of Human Rights, constitute what President Bush calls the non-negotiable demands of human dignity.*"

2008 – "*The United States' efforts to promote human rights and democratic freedoms around the world reflect the core values of the American people.*"

2009 – "*Not only will we seek to live up to our ideals on American soil, we will pursue greater respect for human rights as we engage other nations and people around the world.*"

2010 – "*Human rights are universal, but their experience is local. This is why we are committed to hold everyone to the same standard, including ourselves.*"

2011 – "*Through these reports, through our diplomacy, and through our example, we will continue to press for the universal human rights of all individuals.*"

2012 – "*The United States stands with all those who seek to advance human dignity, and we will continue to shine the light of international attention on their efforts.*"

2013 – "*Significant progress is being made in some places, but in far too many others governments fall short of the Universal Declaration of Human Rights' vision*".

In March 2010, two months after the Guantánamo detentions were supposed to have been resolved and the detention facility closed under President Obama's executive order of 22 January 2009, the Department of State legal adviser described the Obama administration's relationship to international law as one under which the USA would follow "universal standards, not double standards".[4]

Six Guantánamo detainees are currently facing the possibility of death sentences after unfair trials by military commission. Any imposition of the death penalty after a trial that does not meet international standards of fairness would violate the right to life under international law. All six were held in secret CIA custody prior to their transfer to Guantánamo in 2006. All six had been subjected to enforced disappearance, and at least two of them to the torture technique known as "water-boarding", effectively mock execution by interrupted drowning. No-one has been brought to justice to the abuses to which these men and others held in the CIA programme were subjected. The details of what happened to them and others are still classified at the highest level of secrecy. A 6,000 page report on the CIA programme produced by the Senate Select Committee on Intelligence remains classified also.

No government should be permitted to diminish the quality of justice to compensate for its own past injustices, even if that injustice took place under a previous executive and legislature. The human rights violations of the past cannot provide any valid excuse for further disregard of human rights in the present. After 12 years of detentions at Guantánamo, only one detainee has been transferred to the USA for prosecution in ordinary federal court. Among the detainees still held at the base there are individuals who should be brought to justice – in the sense of being brought before the ordinary courts for fair criminal trial – on charges of responsibility in relation to the 11 September 2001 attacks or other serious human rights abuses. Indeed, from the perspective of respect for the right to justice of the victims of such attacks, those individuals should been charged and brought to fair trial years ago.

[3] The quotes are taken from the prefaces or introductions to the US Department of State's annual assessments of human rights practices in other countries. Year given is the year of publication (as opposed to year of coverage).

[4] The Obama administration and international law, 25 March 2010, http://www.state.gov/s/l/releases/remarks/139119.htm

Any Guantánamo detainee who cannot be brought to fair trial should be released. This is true whether the government does not have enough evidence to bring a prosecution or whether the evidence the government does have has been rendered inadmissible in a fair trial by the way in which it was obtained, for example through torture or other ill-treatment. If a person is released and subsequent investigation generates sufficient admissible evidence that the person is then engaging in criminal activity, he can still be brought to justice in a fair trial.

The US authorities have recently begun holding "Periodic Review Board" (PRB) hearings for those Guantánamo detainees who have not already been approved for transfer, to determine whether as a matter of executive determination they should continue to be held under the "law of war".[5] This is a process operated by the executive branch and is not aimed at determining lawfulness of detention, a matter which remains one for the federal courts to determine in habeas corpus proceedings brought in individual cases.

The USA recognizes impunity as a violation of human rights obligations when it comes to other countries. For example, the 2013 US State Department country reports included:

Iraq: "A culture of impunity largely protected members of the security services, as well as those elsewhere in the government, from investigation and successful prosecution for human rights violations".

Jordan: "Impunity remained widespread, and the government did not take steps to investigate, prosecute, or punish officials who committed abuses".

Pakistan: "Abuses often went unpunished, fostering a culture of impunity. Authorities punished government officials for human rights violations in very few instances".

Russia: "The government failed to take adequate steps to prosecute or punish most officials who committed abuses, resulting in a climate of impunity".

Yemen: "Impunity for security officials remained a problem as the government was slow to act against officials implicated in committing abuses."

The essence of habeas corpus proceedings has for centuries been that government authorities are required to bring an individual physically before the court and demonstrate that a clear legal basis exists for their detention. Normally, if the government is unable to do so promptly, the court is to order the individual released. A court's power to obtain the immediate release of an unlawfully held individual must be real and effective and not merely formal, advisory, or declaratory. This is the bedrock guarantee against arbitrary detention (reflected in article 9(4) of the International Covenant on Civil and Political Rights, for example). If it is not fully respected by the government and courts in every case, the right to liberty and the rule of law are more generally undermined.

Guantánamo was chosen as a location for detentions in order to bypass this principle. By the time that the US Supreme Court ruled in *Boumediene v. Bush* in June 2008 that the Guantánamo detainees had the constitutional right to challenge the lawfulness of their detention in habeas corpus petitions filed in federal court, detainees had been held there, not for a few days, but for *six and a half years*. Today, five and a half years since the *Boumediene* decision, the notion that the detainees can obtain the "prompt" habeas corpus hearing ordered by the Supreme Court has long since evaporated.

Even now, it can be years before a Guantánamo detainee gets a hearing on the merits of his habeas corpus challenge. Once he does receive a hearing, he will find that domestic law – under a global war paradigm largely accepted by the federal judiciary – has placed substantial obstacles in the way of him winning a court ruling that his detention is unlawful. The habeas courts have themselves essentially adopted and applied the global war theory as a matter of US domestic law, relying on the vague language of the Authorization for Use of Military Force (AUMF) passed by US Congress with little substantive debate on 14 September 2001; the courts have themselves undermined their own authority to compel the government to give effect to judicial rulings that detentions are unlawful and to orders that detainees unlawfully held be immediately released.[6]

The pace of the PRB process itself has been glacial. President Obama signed the executive order establishing them in March 2011. Nearly three years later, with some 71 detainees apparently eligible for PRB review,[7] the Pentagon announced the first PRB decision: "Continued law of war detention", it said, was no longer necessary for Yemeni national Mahmud Abd Al Aziz al-Mujahid who was therefore "eligible for transfer" if certain conditions were met.[8] The decision does not necessarily mean his

[5] As of January 2014, there were 76 detainees approved for transfer, whether sooner or later, if varying conditions are met.
[6] E.g., *Kiyemba v. Obama*, US Court of Appeals for the District of Columbia Circuit, 28 May 2010. ("It is for the political branches, not the courts, to determine whether a foreign country is appropriate for resettlement"; it is "within the exclusive power of the political branches to decide which aliens may, and which aliens may not, enter the United States, and on what terms").
[7] The figure of 71 is apparently made up of 46 of the 48 detainees slated by the Guantánamo Review Task Force in its January 2010 report for "law of war" detention under the AUMF (two have since died) and 25 listed by the Task Force as "referred for prosecution" and who have neither been convicted nor have charges currently pending against them.
[8] Completion of first Guantánamo Periodic Review Board, 9 January 2014. US Department of Defense, http://www.defense.gov/releases/release.aspx?releaseid=16473

release any time soon. Many other detainees have long been "approved for transfer" by the executive authorities, some of them for years, but have nevertheless remained in the base. Mahmud Abd al-Mujahid has been in Guantánamo – without charge or trial – since the day it opened, 11 January 2002.

Regardless of whether the PRB review process will prove in practice to operate any better than similar executive boards operated by the Bush administration, its establishment can only have yet further corrosive effect on the fundamental role the fairness protections of the criminal justice system play in upholding the right to liberty.

The ingredient missing both from President Obama's PRB order and his 2009 order to close the Guantánamo facility within a year was a commitment to apply international human rights law. Absent the necessary change in approach, the Guantánamo detentions have continued.

A human rights approach means abandoning military commission trials in favour of fair trials in ordinary civilian courts, and releasing those detainees whom the USA has no intention of prosecuting – if repatriation is not possible then into the USA or any safe alternative. The USA should not place any conditions on transfers of detainees that would, if imposed by the receiving government, violate international human rights law and standards. The USA also must ensure full accountability and access to a remedy for human rights violations, as well as the truth about such violations. The USA should also drop any pursuit of the death penalty against anyone, regardless of the forum in which they are tried.

The Obama administration has blamed Congress, which has indeed placed obstacles in the way of resolving the detentions. In this regard there is some cause for a little more optimism now than at the same time a year and two earlier. Signing the National Defense Authorization Act (NDAA) for Fiscal Year 2014 on 23 December 2013, President Obama noted that "For the past several years, the Congress has enacted unwarranted and burdensome restrictions that have impeded my ability to transfer detainees from Guantánamo." He welcomed that this latest NDAA "provides the Executive greater flexibility to transfer Guantánamo detainees abroad, and [I] look forward to working with the Congress to take the additional steps needed to close the facility."[9]

International law does not accept the notion of one branch of government blaming another for failure to comply with the country's human rights obligations. Each branch must comply with such obligations. In the case of other countries, the USA does not seek to excuse human rights violations on the grounds of inter-branch tensions or disagreements. After all, any such excuse is illegitimate. The USA should cease making such excuses for its own conduct.

LEAVING GUANTÁNAMO BY DEATH OR GUILTY PLEA: Nine deaths, seven convictions by military commission (five under pre-trial plea bargains)

June 2006 – Three detainees, two Saudi Arabian nationals, Mane'i bin Shaman al-'Otaybi and Yasser Talal al-Zahrani, and one Yemeni, Salah Ahmed al-Salami, die at Guantánamo, reportedly by suicide
March 2007 – In a pre-trial arrangement, David Hicks pleads guilty under the Military Commissions Act (MCA) of 2006 and is sentenced to seven years in prison, all but nine months suspended which is to be served in his native Australia. He is repatriated in May 2007
May 2007 – Saudi Arabian detainee Abdul Rahman al-Amri dies, reportedly by suicide
December 2007 – Afghan detainee Abdul Razzak Hekmati dies, reportedly of cancer
August 2008 – Tried under the MCA, Yemeni national Salim Ahmed Hamdan is sentenced to 66 months in prison, all but five of which are suspended. He is transferred from Guantánamo to Yemen in late 2008
November 2008 – At a military commission in Guantánamo, Yemeni national Ali Hamza al-Bahlul is sentenced to life imprisonment
June 2009 – Yemeni detainee Mohammed Ahmed Abdullah Saleh al-Hanashi dies, reportedly by suicide
August 2010 – Sudanese national Ibrahim al-Qosi is sentenced to 14 years under MCA 2009 (signed into law by President Obama in 2009, revising MCA 2006). In exchange for his guilty plea entered in July, all but two years of his sentence are suspended. He is transferred from Guantánamo to Sudan in July 2012
October 2010 – Pleading guilty under the MCA, Canadian national Omar Khadr is sentenced to 40 years in prison, limited to eight years under a plea agreement, and possible return to Canada after a year. He was 15 when taken into custody in Afghanistan in 2002. He is repatriated in September 2012.
February 2011 – Afghan Awal Gul dies, reportedly of natural causes
February 2011 – Sudanese detainee Noor Uthman Muhammed is sentenced to 14 years in prison under the MCA, all but 34 months suspended under the terms of a guilty plea and promise to cooperate in future proceedings. He is transferred to Sudan in December 2013
May 2011 – Afghan detainee Inayatollah dies, reportedly by suicide
February 2012 – Majid Khan pleads guilty under MCA at a hearing in Guantánamo. Under the terms of a pre-trial agreement he will be sentenced in four years' time after having co-operated with the government in the interim
September 2012 – Yemeni detainee Adnan Farhan Abdul Latif dies, reportedly by suicide

By **9 January 2014**, of the **155** detainees at Guantánamo – **two** had been convicted under the MCA (Majid Khan, Ali Ali Bahlul), **six** had capital charges pending against them (Walid bin Attash, Ramzi bin al-Shibh, Mustafa Ahmed al Hawsawi, Khalid Sheikh Mohammed, Ammar al Baluchi (Ali Abdul-Aziz Ali)); and charges had been sworn against **one** other which not been referred for trial (Ahmed al Darbi)

The most recent releases from Guantánamo were of three Chinese ethnic Uighur men, transferred to Slovakia more than five years after a federal judge ruled their detention unlawful under US law.

[9] Statement by the President on HR 3304, 26 December 2013, http://www.whitehouse.gov/the-press-office/2013/12/26/statement-president-hr-3304

Announcing the transfers on 31 December 2013, the Department of Defense said that "The United States is grateful to the government of Slovakia for this humanitarian gesture and its willingness to support US efforts to close the Guantánamo Bay detention facility."[10]

While Slovakia's move can indeed be welcomed, what the Pentagon failed to mention was that the three detainees could have been released immediately following the federal court ruling in October 2008 if the US government had been willing to allow them into the USA. Instead, this self-proclaimed champion of human rights has continued to expect other countries to do what it itself refuses to.

The first commander in charge of detentions at Guantánamo after the first detainees were transferred there on 11 January 2002, Major General Michael Lehnert, said last month that Guantánamo was a prison that "should never have been opened". He is right. And if the USA squandered the "goodwill of the world" by setting up the Guantánamo detention facility, as Major General Lehnert suggests, it is hardly going to win it back through its double standards on human rights.

Appendix

NO TRIAL, NO REMEDY, NO ACCOUNTABILITY, NO JUSTICE

2 CASE CHRONOLOGIES – MOHAMED AL-QAHTANI AND ABU ZUBAYDAH, AMONG THE TORTURE SURVIVORS STILL AT GUANTÁNAMO

17 September 2001 – President Bush authorizes the CIA to conduct secret detentions outside the USA
13 November 2001 - President Bush orders Secretary of Defense to find an "appropriate location" to hold detainees and to establish military commissions to try some of them
27 December 2001 – Saudi Arabian national Mohamed al-Qahtani handed over to US forces in Afghanistan after 11 days in Pakistani custody
10/11 January 2002 – First detainees transferred to the US naval base at Guantánamo Bay in Cuba
7 February 2002 – President Bush signs memorandum that common Article 3 to the Geneva Conventions will not apply to Taleban or al-Qa'ida detainees, adding that "our values as a nation… call for us to treat detainees humanely, including those who are not legally entitled to such treatment". The CIA has campaigned for the Geneva Conventions not to apply.
13 February 2002 – Mohamed al-Qahtani transferred to Guantánamo
28 March 2002 – Stateless Palestinian Zayn al Abidin Muhammad Husayn, more commonly known as Abu Zubaydah, arrested in Pakistan and transferred to secret CIA custody.
April – June 2002 – Held incommunicado in isolation at a secret CIA facility believed to be in Thailand, Abu Zubaydah is subjected to forced nudity (including being kept naked for a month during interrogations), loud rock music blasted into his cell, sleep deprivation, and temperature manipulation
Mid-July 2002 – Evidence of Mohamed al-Qahtani's possible link to the 9/11 attacks emerges, with US authorities suspecting him of being a possible '20th hijacker'.
27 July 2002 – Mohamed al-Qahtani moved to Maximum Security Facility at Camp Delta, Guantánamo
1 August 2002 – The US Department of Justice signs off on two memorandums to the CIA on torture and other ill-treatment, one of which gives legal approval to 10 interrogation techniques for use against Abu Zubaydah, including physical assaults, cramped confinement, stress positions, sleep deprivation of up to 11 days at a time, exploitation of insect phobia, and "water-boarding". During August, Abu Zubaydah is subjected to at least 83 applications of water-boarding.
8 August 2002 – Mohamed al-Qahtani is moved to isolation in Guantánamo's Navy Brig. He will later say hat the Brig was "the worst place I was taken to". He will recall that his cell window was covered, he could not tell what time of day it was, he never saw sunlight for the six months he was held there, the lights on his cell were lit 24 hours a day, his cell was very cold, he was allowed no recreation, the guards covered their faces when in his presence, and while he sometimes had a mattress this would be taken away if his interrogators did not like his answers.
2 October 2002 – A meeting is held at Guantánamo at which various military personnel as well as the chief legal counsel to the CIA Counterterrorist Center are present. According to the paraphrased minutes, the latter advises that while torture is prohibited under the UN Convention against Torture, US domestic law implementing the treaty is "written vaguely". He also points out that the USA did not "sign up" to the international prohibition of cruel, inhuman or degrading treatment which "gives us more licence to use more controversial techniques". He states that the Department of Justice had "provided much guidance" on this issue. The meeting discusses Mohamed al-Qahtani, including "how he has responded to certain types of deprivation and psychological stressors".

[10] Detainee transfer announced. US Department of Defence, 31 December 2013, http://www.defense.gov/releases/release.aspx?releaseid=16457

8 October 2002 – An FBI agent who has observed the military interrogations of Mohamed al-Qahtani sends an email describing techniques being used, including sleep deprivation, loud music, bright lights and "body placement discomfort". In an interrogation three days earlier, a dog had been brought into the room and had "barked, growled, and snarled at Al-Qahtani in very close proximity to him". The use of dogs as an interrogation tool is based on the understanding within the military that Arabs fear dogs

11 October 2002 – Major General Michael Dunlavey, Commander of Joint Task Force 170 at Guantánamo asks the Commander of US Southern Command, General James Hill, to approve "counter-resistance" interrogation techniques that go beyond the US Army Field Manual.

12 November 2002 – General Hill orally approves use of "counter-resistance" techniques for use on Mohamed al-Qahtani, including stress positions, deprivation of light and auditory stimuli, hooding, 20-hour interrogations, forced shaving, exploitation of detainee phobias (such as dogs) to "induce stress", and removal of clothing.

13 November 2002 – General Hill approves an interrogation plan for Mohamed al-Qahtani. Under phase 4 of the interrogation plan, if implemented, Mohamed al-Qahtani would be send "off island" either temporarily or permanently to Egypt, Jordan or another third country for interrogation

23 November 2002 – After receiving approval from Major General Geoffrey Miller, commander of the Guantánamo detentions, interrogations of Mohamed al-Qahtani under the special interrogation plan begin. He is taken to Camp X-Ray for interrogations, apparently "to scare him". A psychiatrist involved will later say that just before the interrogations began, al-Qahtani was "made to believe he was sent to a hostile country which advocated torture" and "led to believe he himself might be killed if he did not cooperate with questioning". For the next two months he is interrogated by a "special projects" team of US military intelligence personnel. During this period, he is subjected among other things, to stress positions, stripping, 20-hour interrogations, sleep deprivation, fear of dogs, water poured repeatedly on head, forced shaving, sexual humiliation, being treated like an animal, and forced physical training

2 December 2002 – Secretary of Defense Rumsfeld, "as a matter of policy", authorizes the Commander of US Southern Command, "in his discretion", to use a variety of "counter-resistance" techniques "to aid in the interrogation of detainees" (plural) at Guantánamo. The techniques include stress positions, deprivation of light and auditory stimuli, hooding, 20-hour interrogations, forced shaving, exploitation of detainee phobias (such as dogs) to "induce stress", and "removal of clothing".

Early December 2002 – Abu Zubaydah moved to another secret facility, believed to be in Poland

15/16 January 2003 – Mohamed al-Qahtani's interrogation under special interrogation plan ends and at some point he is returned to Camp Delta after six months of isolation

22 September 2003 – Although still unconfirmed, it is believed that Abu Zubaydah was transferred out of secret facility in Poland to secret CIA detention elsewhere possibly including Guantánamo, Morocco, Lithuania and Afghanistan until his transfer to military custody in Guantánamo in September 2006

28 June 2004 – US Supreme Court rules that the US courts can consider habeas corpus petitions for Guantánamo detainees. The administration litigates to render this ruling meaningless to the detainees.

5 October 2005 – Habeas corpus petition filed in District Court on behalf of Mohamed al-Qahtani

9 November 2005 – The CIA destroys videotapes of interrogations, including under water-boarding, of Abu Zubaydah. No one will be brought to justice for this, despite the fact that the tapes apparently contained evidence of crimes under international law

4 September 2006 – Abu Zubaydah, along with 13 other detainees, is transferred from secret CIA custody at undisclosed locations to military detention at Camp 7 of Guantánamo

11 February 2008 – Mohamed al-Qahtani charged for death penalty trial by military commission

13 May 2008 – Pentagon announces that the charges against Mohamed al-Qahtani have been dismissed. The Convening Authority will later reveal that her decision not to refer the case for trial was because "We tortured Qahtani. His treatment met the legal definition of torture."

12 June 2008 – US Supreme Court rules in *Boumediene v. Bush* that the Guantánamo detainees have right to challenge the legality of their detention in US District Court

25 August 2008 – Amended habeas corpus petition filed in federal court for Abu Zubaydah

22 January 2010 – The Guantánamo Review Task Force decides that the "final disposition" for both Abu Zubaydah and Mohamed al Qahtani is "referred for prosecution". No such referral has been made.

November 2010 – In his memoirs, George W. Bush asserts that he personally authorized the use of "enhanced interrogation techniques" against Abu Zubaydah. No criminal investigation has followed.

January 2011 – In his memoirs, Donald Rumseld confirms his authorization of interrogation techniques for use against Mohamed al-Qahtani. No criminal investigation has followed.

13 December 2013 – Federal judge grants motion to continue stay in Mohamed al-Qahtani's habeas case as the detainee "still appears to be incompetent and unable to assist effectively in this case".

9 January 2014 – Mohamed al-Qahtani and Abu Zubaydah remain in Guantánamo without trial.