

URGENT ACTION

GUANTÁNAMO TRANSFER POLICY UNDER WRAPS

The US Secretary of Defense has sent the White House his policy recommendations on detainee transfers to Guantánamo. The details have not been made public. Meanwhile, the first detainee transfer out of the base under the Trump administration has occurred.

On 30 January 2018, President Trump revoked his predecessor's 2009 order to close the Guantánamo Bay detention facility. He ordered Secretary of Defense James Mattis, 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 Guantánamo. On 3 May, the Pentagon spokesperson confirmed that Secretary Mattis had sent his recommendations to the President, but did not elaborate. She said that "ultimately the White House will decide how we move forward with the policy and we'll make those announcements."

At a press briefing on 30 April, Secretary Mattis was asked what the USA's plans were for members of the armed group calling itself Islamic State (IS) who are being held by the US-backed Syrian Democratic Forces (SDF). He responded that, to his knowledge, the number of foreign fighters held by the SDF is "well over 400". He said that the USA, principally the Department of State, has been "engaging with their home countries. Home being the country they were a citizen of when they left to go fight. Now, in some cases, those countries have stripped them of their citizenship, so they have a different view as far as what their status is today. So this is not simple." On 3 May, the Pentagon spokesperson reiterated that "we are trying to encourage countries to take back their citizens".

On 2 May, the Pentagon announced that Ahmed Mohammed Ahmed Haza al Darbi had been transferred from Guantánamo to Saudi Arabia. In February 2014, he pled guilty at a military commission under a pre-trial agreement. The announcement said that "having complied with the terms of that agreement, al Darbi will serve out the balance of his 13-year sentence in Saudi Arabia." This is the first detainee transfer out of the base since President Trump took office in January 2017, and leaves 40 detainees still held at the base.

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.

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

- Calling on the authorities to recommend to the President that no more detainees be sent to Guantánamo, 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 immediately;
- 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.

PLEASE SEND APPEALS BEFORE 22 JUNE 2018 TO:

National Security Advisor

John Bolton
The White House, 1600 Pennsylvania Ave NW, 1st Floor, West Wing, Washington, DC 20500, USA
Email: millicent.s.hennessey@nsc.eop.gov (Special Assistant, please ask for your email to be forwarded to Mr Bolton)
Salutation: **Dear Mr Bolton**

Secretary of State

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

Also send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:

Name Address 1 Address 2 Address 3 Fax Fax number Email Email address Salutation Salutation

Please check with your section office if sending appeals after the above date. This is the first update of UA 42/18. Further information: www.amnesty.org/en/documents/amr51/7929/2018/en/

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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. No new detainee has arrived at Guantánamo since 14 March 2008. There were 41 detainees still there at the time of the inauguration of President Trump (see: <https://www.amnesty.org/en/documents/amr51/7822/2018/en/>).

President Trump’s executive order of 30 January 2018 reiterated 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. There have been and are still moves in Congress to pass a new AUMF, including with the aim of filling this perceived gap in US law.

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 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.

Ahmed Muhammed Haza al Darbi, a Saudi Arabian national, was arrested by civilian authorities at the airport in Baku, Azerbaijan, on 4 June 2002, and held in Azerbaijani custody for about two months. In August 2002, he was handed over to US agents, and transported to the US airbase in Bagram, Afghanistan where he was held for eight months, before being transferred to Guantánamo in late March 2003. He pled guilty before a military commission judge in February 2014 to conspiracy, attacking civilian objects, hazarding a vessel, terrorism. Under a pretrial agreement, he agreed to waive his right to appeal, and also would agree not to initiate “any legal claims” against the USA or any US officials in relation to his “capture, detention, confinement conditions, or alien unlawful enemy combatant or alien unlawful enemy belligerent status”. Under the agreement, sentencing was delayed for three years and six months. In October 2017, he was sentenced to 13 years’ imprisonment. In its 2 May 2018 news release announcing the transfer, the Department of Defense stated that “The United States coordinated with the government of the Kingdom of Saudi Arabia to ensure the transfer took place in accordance with established standards for security and humane treatment.”

Name: detainees at risk of transfer to Guantánamo Bay

Further information UA: 42/18 Index: AMR 51/8390/2018 Issue Date: 11 May 2018