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USA: PRESIDENT TRUMP SIGNS ORDER ON GUANTÁNAMO AND SETS STAGE FOR FIRST NEW DETAINEE ARRIVALS SINCE 2008

As a presidential candidate in early 2016 Donald Trump said: “This morning, I watched President Obama talking about Gitmo, right, Guantánamo Bay, which, by the way, which, by the way, we are keeping open, which we are keeping open. And we’re going to load it up with some bad dudes, believe me. We’re going to load it up.” Two years later, in his State of the Union address delivered in Congress on the evening of 30 January 2018, President Trump announced:

“Terrorists who do things like place bombs in civilian hospitals are evil. When possible, we have no choice but to annihilate them. When necessary, we must be able to detain and question them. But we must be clear: Terrorists are not merely criminals. They are unlawful enemy combatants. And when captured overseas, they should be treated like the terrorists they are.... So today, I am keeping another promise. I just signed, prior to walking in, an order directing Secretary Mattis... to re-examine our military detention policy and to keep open the detention facilities in Guantánamo Bay... I am asking Congress 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.”¹

So there it is. In addition to a disturbing view of the use of lethal force, the perpetuation of an unlawful detention regime. It comes with a reiteration of the ill-judged “war on terror” framework developed under the administration of President George W. Bush to avoid constitutional and international human rights law protections in relation to certain individuals taken into custody. This framework contributed to countless human rights violations, including crimes under international law of torture and enforced disappearance committed with impunity by US personnel at Guantánamo and elsewhere.

Entitled ‘Protecting America through Lawful Detention of Terrorists’, the new executive order signed by President Trump on 30 January 2018 revokes his predecessor’s order to close the Guantánamo detention facility.² That order was signed by President Barack Obama on 22 January 2009 and committed his administration to closing the facility within a year. Eight years later, we see the poisonous fruits of the failure to see that order through.

President Trump’s order states not only that detention operations “shall continue” at the base, but that “in addition, the United States may transport additional detainees to US Naval Station Guantánamo Bay when lawful and necessary to protect the Nation.” Within 90 days of the order, the Secretary of Defense, in consultation with other executive agencies, has to come up with policies to recommend to President Trump “regarding the disposition of individuals captured in connection with an armed conflict, including policies governing transfer of individuals to US Naval Station Guantánamo Bay.”

The order states that underpinning this is the President’s constitutional authority as Commander-in-Chief and Chief Executive, as well as the Authorization for Use of Military Force (AUMF), which Congress passed with little debate in the immediate wake of the attacks of 11 September 2001.

The new order maintains the system of executive “periodic review” of future detentions “to determine whether continued law of war detention is necessary”. The order holds open the possibility of detainee transfers out of the base. It also states that “Nothing in this order shall prevent the Attorney General from, as appropriate, investigating, detaining, and prosecuting a terrorist subject to the criminal laws and jurisdiction of the United States.”

There has been no new detainee arrival at Guantánamo since 14 March 2008. No detainee has been transferred from the base since President Trump took office on 20 January 2017.

Among those long calling for the closure of Guantánamo over the years have been UN treaty monitoring bodies and UN experts. This is a matter of the USA’s international law obligations. The executive order leaves the USA on the wrong side of these obligations. Other governments and the international community more broadly should take the USA to task on this regressive step.

¹ As delivered. Remarks as prepared for delivery, <https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-state-union-address/>

² The order is available at <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-protecting-america-lawful-detention-terrorists/>

SOME NUMBERS

- There are 41 persons in detention at Guantánamo today, as there were at the time of the presidential inauguration on 20 January 2017.
- A total of 779 individuals have been held at Guantánamo since detention operations began on 11 January 2002.³
- 632 were taken to Guantánamo in 2002, 117 in 2003, 10 in 2004, none in 2005, 14 in 2006, 5 in 2007 and 1 in 2008.
- There were 240 detainees in Guantánamo at the time of transition from President Bush to President Obama.

How long have the 41 been there?

- 2 have been there since day one of detention operations in January 2002.
- 15 have been there since year one.
- 40 have been held there for more than 10 years (the 41st will pass that mark in March 2018); all 41 have been in US custody for longer than they have been held in Guantánamo; some have already been held for over 16 years.
- At least 24 of the 41 were in secret CIA custody prior to transfer to Guantánamo, some for years.

What is their detention 'status'?

- 31 of the 41 are held in indefinite detention without charge.
- 25 of these 31 are deemed to be in “continued law of war detention” under the Authorization for Use of Force (AUMF) a broadly-worded resolution passed by Congress on 14 September 2001 without reference to detention. One of these 25 has had charges sworn against him, but these charges have not been referred on for trial.
- Of the 6 others (31 minus 25), 1 is a Yemeni national who has for more than eight years been deemed to be eligible for transfer but held in “conditional detention” under the AUMF “given the current security situation in Yemen”; 2 have been approved for transfer since at least January 2010, under the findings of the Guantánamo Review Task Force (GRTF) established under President Obama’s executive order on closing the detention facility; 3 were previously in GRTF-determined “law of war detention” but have since been recommended for transfer by Periodic Review Board (PRB).
- 1 is serving a life sentence imposed by military commission. 1 is serving a 13-year prison sentence imposed in 2017 by a military commission pursuant to a guilty plea made in 2014 after 12 years in custody.
- 1 is awaiting sentencing after pleading guilty before military commissions in 2012 pursuant to a pre-trial agreement under which sentencing was deferred for several years, currently to 2019.
- 8 of the 41 detainees have been charged, 7 of whom have had those charges referred on for trial and are facing unfair trial by military commission; 6 of those seven face the death penalty if convicted. The USA considers that it can return detainees to “law of war” detention if acquitted by military commission.

Accountability for human rights violations against the detainees

- 0 individuals have been prosecuted for the crimes under international law of torture or enforced disappearance committed in Guantánamo or in the CIA secret detention programme

An example of torture and enforced disappearance committed with impunity

- Abu Zubaydah has been in US custody for nearly 16 years, since March 2002. He was subjected to enforced disappearance for the first four and half of those years, at multiple locations. He was subjected to other forms of torture and other cruel, inhuman and degrading treatment during this time. No one has been brought to justice for the crimes committed against him.⁴ He has been in Guantánamo continuously since September 2006. He had been there before. Part of his earlier secret detention had been at the base when the CIA operated a “black site” there. In January 2010, the Obama administration Task Force labelled him as “referred for prosecution”. He has never been charged. He is in “continued law of war” detention, reaffirmed by the PRB in September 2016. His conditions of detention at Guantánamo are classified.

³ Given that in 2003 and 2004 Guantánamo was the location for a CIA “black site”, this number could be inaccurate. See page 62 of USA: Crimes and impunity, <https://www.amnesty.org/en/documents/amr51/1432/2015/en/>

⁴ See also USA: Call for human rights vetting as Deputy CIA Director announced, 3 February 2017, <https://www.amnesty.org/en/documents/amr51/5620/2017/en/>

What about the USA's international treaty obligations?

- It is now nearly 12 years since the UN Committee Against Torture, after scrutinizing the USA's compliance with its obligations under the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified by the USA in 1994), called on the US authorities to "cease to detain any person at Guantánamo Bay and close this detention facility". This treaty monitoring body noted that "detaining persons indefinitely without charge constitutes *per se* a violation of the Convention" (2006).
- It is now nearly 12 years since the UN Human Rights Committee, after scrutinizing the USA's compliance with its obligations under the International Covenant on Civil and Political Rights (ratified by the USA in 1992), called on the US authorities to "conduct prompt and independent investigations into all allegations concerning suspicious deaths, torture or cruel, inhuman or degrading treatment or punishment inflicted by its personnel (including commanders) as well as contract employees, in detention facilities in Guantánamo Bay, Afghanistan, Iraq and other overseas locations. The State party should ensure that those responsible are prosecuted and punished in accordance with the gravity of the crime" (2006).
- Such calls have continued as the USA has remained on the wrong side of its treaty obligations in relation to the Guantánamo detentions. In 2014, for example, with the USA's record under the ICCPR again before it, the UN Human Rights Committee called for the Guantánamo detainees' "trial or their immediate release and the closure of the Guantánamo Bay facility." The USA "should end the system of administrative detention without charge or trial and ensure that any criminal cases against detainees held in Guantánamo and in military facilities in Afghanistan are dealt with through the criminal justice system rather than military commissions, and that those detainees are afforded the fair trial guarantees enshrined in article 14 of the Covenant."
- Also in 2014, the UN Committee Against Torture reiterated that detaining people without charge is *per se* a violation of the Convention Against Torture and called on the USA to "Ensure that detainees held at Guantanamo Bay who are designated for potential prosecution are charged and tried in ordinary federal civilian courts. Any other detainees who are not to be charged or tried should be immediately released." And to "Investigate allegations of detainee abuse, including torture and ill-treatment, appropriately prosecute those responsible, and ensure effective redress for victims".
- Again in 2014, the UN Committee on the Elimination of Racial Discrimination, after assessing the USA's record under the International Convention on the Elimination of All Forms of Racial Discrimination (which the USA ratified in 1994) called upon the USA to "end the system of administrative detention without charge or trial and ensure the closure of the Guantánamo Bay facility without further delay." Recalling its prior general recommendations on discrimination against non-citizens and on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee called on the USA to "guarantee the right of detainees to a fair trial, in compliance with international human rights standards, and to ensure that any detainee who is not charged and tried is released immediately."
- In December 2017, the UN Special Rapporteur on torture again drew attention to impunity, pointing out that "In 2014, a Senate Intelligence Committee report on the CIA's detention and interrogation programme publicly acknowledged the systematic use of torture in US custody.⁵ To this day, however, the perpetrators and policymakers responsible for years of gruesome abuse have not been brought to justice, and the victims have received no compensation or rehabilitation." Some of those torture survivors are still at Guantánamo. In his statement, the Special Rapporteur renewed a long-standing request to conduct an official visit to the Guantánamo detention facility and to interview detainees: "I very much regret that, despite repeated requests, my predecessors and I have consistently been refused access to Guantánamo and other high security facilities in accordance with the standard terms of reference of my UN mandate".⁶

⁵ See USA: Crimes and impunity, April 2015, <https://www.amnesty.org/en/documents/amr51/1432/2015/en/>

⁶ US must stop policy of impunity for the crime of torture - UN rights expert, 13 December 2017, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22532&LangID=E>

Who are the 41 detainees?

KEY

PRB/D = Periodic Review Board/Detention
PRB/T = Periodic Review Board/Transfer
GRTF/CD = Guantanamo Review Task Force/Conditional Detention
GRTF/T = Guantanamo Review Task Force/Transfer
MC/CTP = Military Commission/Capital Trial Pending
MC/TP = Military Commission/Trial Pending
MC/CS = Military Commission/Charges Sworn
MC/SD = Military Commission/Sentencing Deferred
MC/S = Military Commission/Life Imprisonment
SSCI = Senate Select Committee on Intelligence

1. **PRB/D. Uthman Abdul Rahim Mohammed Uthman.** Yemeni. Taken into custody by Pakistani forces in mid-December 2001; transferred to US military custody at Kandahar in Afghanistan on 26/27 December 2001. Transferred to Guantánamo on 16 January 2002. In 2010, a federal judge ruled that his detention was unlawful and ordered his release. The Obama administration appealed and in 2011 the US Court of Appeals reversed the order. 2010 GRTF Final: Continued detention under the AUMF. PRB upheld this status in May 2016 and again on 17 January 2017.
2. **PRB/D. Moath al Alwi.** Yemeni. Taken into custody by Pakistani forces in mid-December 2001. Transferred to US military custody at Kandahar in Afghanistan on 26/27 December 2001. Transferred to Guantánamo on 16 January 2002. 2010 GRTF Final: continued detention under the AUMF. PRB upheld this status in October 2015, and again on 21 December 2016.
3. **GRTF/T. Ridah Bin Saleh al Yazidi.** Tunisian. Taken into custody by Pakistani forces in mid-December 2001. Transferred to US forces on 26/27 December 2001. Transferred to Guantánamo on 11 January 2002. 2010 GRTF Final: Approved for transfer.
4. **MC/LI. Ali Hamza al-Bahlul.** Yemeni. Taken into custody by Pakistani forces in mid-December 2001, handed to US forces at Kandahar, Afghanistan on 26/27 December 2001. Transferred to Guantánamo on 11 January 2002. Charged for trial by military commission. Sought to boycott his 2008 trial and did not present a defence. Convicted of conspiracy to commit war crimes, solicitation of others to commit war crimes, and providing material support for terrorism. The DC Circuit Court of Appeals vacated his convictions for material support and solicitation, but has allowed his conspiracy conviction to stand. Serving a life sentence.
5. **PRB/D. Mohammed al Qahtani.** Saudi Arabian. Taken into custody by Pakistani forces in mid-December 2001. Transferred to US custody at Kandahar in Afghanistan on 26/27 December 2001. Transferred to Guantánamo on 13 February 2002. On 13 May 2008, the Department of Defense announced that capital charges sworn against Mohamed al-Qahtani in February 2008 had been dismissed. In January 2009, the Convening Authority for the military commissions revealed that she had dismissed the charges because of the torture to which Mohammed al Qahtani had been subjected in Guantánamo in late 2002 and early 2003. 2010 GRTF Final: Referred for prosecution, but he has been held without charge ever since. In July 2016, the PRB “determined that continued law of war detention of the detainee remains necessary”.
6. **GRTF/CD. Tawfiq Nasir Awad al-Bihani.** Yemeni. Arrested in late 2001 or early 2002 by Iranian police and held in Iranian custody until mid-March 2002, when he was transferred to Afghan custody. He apparently remained in Afghan custody until he was transferred to US custody at Bagram airbase around mid-December 2002. According to the SSCI summary, he was in secret CIA custody for 50-59 days. Subjected to 72 hours of sleep deprivation between his arrival at Detention Site Cobalt (Afghanistan) and his interrogation in October 2002.⁷ Guantánamo transfer, 6 February 2003. His “final disposition” as of 22 January 2010 was “at this time, given the current security situation in Yemen conditional detention pursuant to the Authorization for Use of Military Force, as informed by the laws of war. Before the closure of Guantanamo, the detainee may be transferred if the security situation in Yemen improves, an appropriate rehabilitation program or third-country resettlement option becomes available, or Yemen has demonstrated its ability to [redacted] or mitigate any threat they pose. At the time of the closure of Guantanamo, the detainee will be reconsidered for transfer to Yemen, a third country, or a detention facility in the United States”.
7. **PRB/T. Khalid Ahmad Qasim.** Yemeni. Taken into custody by Afghan forces on or around 18 December 2001, transferred to US custody at Kandahar on 31 December, and to Guantánamo on 1 May 2002. GRTF 2010 Final, continued detention under AUMF. PRB March 2015, “continued law of war detention remains necessary”. On 8 December 2016, the PRB decided “law of war detention” no longer deemed necessary, and recommended “resettlement to a GCC country with a strong rehabilitation and reintegration program and mental health access”.
8. **PRB/T. Abdul Latif Nasir.** Moroccan. Taken into custody by Northern Alliance forces on or about 15 December 2001 and taken to Kabul Prison, transferred to US custody in Kandahar on 21 January 2002. Transferred to Guantánamo on 3 May 2002. 2010 GRTF Final: Continued detention under AUMF. PRB July 2016, “continued law of war detention is no longer necessary”, recommended transfer “only to Morocco”.

⁷ For further information on colour-coded detention sites, as contained in SSCI summary, see USA: Crimes and Impunity, *op. cit.*

9. **GRTF/T. Muieen Adeen al Sattar.** According to the Guantánamo authorities, he is “an ethnic Rohingya Burmese who claims Pakistani citizenship” and who was born in United Arab Emirates. Taken into custody by Pakistani forces in mid-December 2001, transferred to US custody on 5 January 2002, and transported to Guantánamo on 9 February 2002. 2010 GRTF Final recommendation was “transfer to a country outside the United States that will implement appropriate security measures”.
10. **PRB/D. Suhayl al Sharabi.** Yemeni. Taken into custody on 7 February 2002 by Pakistani Inter-Services Intelligence Directorate (ISID) officials during a raid on a house in Karachi. He was turned over to US forces on 27 February 2002. Transferred to Guantánamo on 5 May 2002. GRTF final disposition in January 2010 was “referred for prosecution”. In March 2016, the PRB decided that “continued law of war detention of the detainee remains necessary”.
11. **PRB/D. Sharqawi Ali Abdu al-Hajj.** Yemeni. Taken into custody on 7 February 2002, and transferred to custody of “a foreign government” (believed to be Jordan) later that month. Nearly two years later, in January 2004, he was “rendered into the CIA’s Detention and Interrogation Program”. He was in CIA custody for between 120 and 129 days before being transferred to US military custody in May 2004. On 19 September 2004, he was transferred from US military custody in Afghanistan to Guantánamo. His “final disposition” as of 22 January 2010, was “referred for prosecution”. In April 2016, the PRB decided that “continued law of war detention of detainee remains necessary”. It decided this again on 30 March 2017.
12. **PRB/D. Ghassan al Sharbi.** Saudi Arabian. Taken into custody by Pakistani forces in a raid on a guesthouse in Faisalabad on 28 March 2002. He was then detained in Lahore for two days and then in Islamabad for two months. From Islamabad, he was handed over to US forces and taken to Bagram Airbase for 18 days, and then to Kandahar for 10 days. Transferred to Guantanamo on 19 June 2002. He was charged for trial by military commission in 2005, but the charges were dismissed in 2008. He was again charged for trial by military commission in 2009, but again the charges were dismissed in 2013. GRTF final determination in January 2010 was “referred for prosecution”. In July 2016, PRB decided that “continued law of war detention of detainee is necessary”.
13. **PRB/D. Said bin Brahim bin Umran Bakush also known as Abdul Razak Ali.** Algerian. Taken into custody by Pakistani authorities in Faisalabad on 28 March 2002. Held by Pakistani authorities first in a prison in Lahore, and then at a prison in Islamabad. Transferred to US custody sometime in May 2002. Transferred to Guantánamo on 19 June 2002. GRTF final disposition in January 2010 was “referred for prosecution”. In July 2016, the PRB decided that the “continued law of war detention of the detainee remains necessary”.
14. **PRB/T. Sufiyan Barhoumi.** Algerian. Taken into custody by Pakistani forces in Faisalabad on 28 March 2002. Transferred to Guantánamo on 18 June 2002. He was charged for trial by military commission in 2005, but the charges were dismissed in 2008. GRTF final disposition was “referred for prosecution”. In August 2016, the PRB decided that “continued law of war detention of the detainee is no longer necessary” and recommended “repatriation to Algeria”.
15. **PRB/D. Zayn al Abidin Muhammad Husayn, also known as Abu Zubaydah** – Palestinian. Arrested, 28 March 2002, Pakistan. In CIA custody for 1,610-1619 days. Placed in isolation for 47 days from 18 June 2002 to 4 August 2002, at which point “CIA interrogators re-established contact with Abu Zubaydah and immediately began to subject Abu Zubaydah to the non-stop use of the CIA’s enhanced interrogation techniques for 17 days, which included at least 83 applications of the waterboard interrogation technique”. This was in Detention Site Green (Thailand). Then held in Detention Site Blue (Poland). Nudity, cramped confinement, walling, sleep deprivation, prolonged isolation, prioritization of interrogation over medical care, subjected to “rectal fluid resuscitation” for “partially refusing liquids”. Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. His “final disposition” as of 22 January 2010, was “referred for prosecution”. In September 2016, PRB decided that “continued law of war detention of the detainee remains necessary”.
16. **PRB/D. Omar Mohammed Ali al-Rammah (Zakaria).** Yemeni. Detained in Georgia, April 2002. Initially held in a warehouse, later taken to an airport and put on a plane. When detainee landed, an “American interrogator” told him he was in Afghanistan. Held in the Afghan National Directorate of Security Prison; transferred to US custody at Bagram on 9 April 2003. According to SSCI summary, was in CIA custody for 370-379 days. Guantánamo transfer, 9 May 2003. His “final disposition” as of 22 January 2010 was “continued detention pursuant to the Authorization for Use of Military Force (2001), as informed by principles of the laws of war, subject to further review by the Principals prior to the detainee’s transfer to a detention facility in the United States”. In August 2016, the PRB decided that “continued law of war detention of detainee remains necessary”.
17. **PRB/D. Ismael Ali Faraj al Bakush.** Libyan. Was taken into custody in May 2002 in Lahore by Pakistani authorities. Transferred to Guantánamo on 5 August 2002. GRTF final disposition as of January 2010 was continued detention under the AUMF. In August 2016, the PRB decided that “continued law of war detention of detainee remains necessary”.
18. **MC/S. Ahmed Muhammed Haza al Darbi.** Saudi Arabian. Ahmed al Darbi 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. In a declaration signed in 2009, Ahmed al Darbi recalls how these agents, “blindfolded me, wrapped their arms around my neck in a way that strangled me, and cursed at me. [Redacted], and somebody else kept saying ‘fuck you’ in my ear. I was terrified and feared for my life, because I did not know who had seized me, which government’s custody I was in, or where they were taking me. They did not tell me where we were going. I was eventually taken to a place that I now know was Bagram Air Force Base in Afghanistan. I was imprisoned at Bagram for about eight months... In late March 2003, I was transferred to Guantánamo.” Charged for trial by military commission in 2007, but charges were dismissed in 2009. A 2009 brief filed in habeas corpus case in federal court alleged “Mr Al Darbi has been beaten, suspended by his arms and placed in other excruciating positions for extended periods of time, sexually assaulted, threatened with further sexual assault and rape, sexually humiliated,

forced to perform hard labor, exposed to loud music and bright lights, kept in isolation for extended periods of time, and deprived of sleep for extended periods of time. To this day, Mr Al Darbi continues to suffer mental and physical harm as a result of his torture, reporting headaches, mood swings, recurring nightmares involving his interrogators, night terrors, incontinence and, until recently, back pain.” Charged for trial by military commission. Pleaded guilty in 2014 to conspiracy, attacking civilian objects, hazarding a vessel, terrorism. Sentencing delayed for three years and six months. In October 2017, he was sentenced to 13 years’ imprisonment.

19. **PRB/D. Mohammed Ahmad Ghulam Rabbani also known as Abu Badr.** Pakistani (born Saudi Arabia). Arrested in Karachi, Pakistan on 10 September 2002. In secret CIA custody for 550-559 days. Forced standing, attention grasps, and cold temperatures without blankets in November 2002. Subjected to EITs without CIA HQ approval. Guantánamo transfer, 19 September 2004. His “final disposition” as of 22 January 2010, was “referred for prosecution”. In October 2016, the PRB decided that “continued law of war detention of the detainee remains necessary.”
20. **MC/CTP. Ramzi bin al Shibh.** Yemeni. Arrested in Karachi, Pakistan, on 11 September 2002. Was rendered to the custody of a “foreign government” for five months. Was rendered to Detention Site Blue (Poland) in February 2003. Held in CIA secret detention in Guantánamo in 2003 and 2004. In CIA custody for 1,300-1,309 days. Subjected to “multiple” use of facial hold, rectal feeding and threats of rectal hydration. Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. Facing death penalty trial by military commission.
21. **PRB/D. Hassan Bin Attash.** Yemeni. Arrested 11 September 2002, Karachi, Pakistan. Was in CIA custody for 120-129 days. Believes he was held in Jordan between September 2002 and January 2004 and has claimed that he was tortured there. Guantánamo transfer, 19 September 2004. His “final disposition” as of 22 January 2010, was “referred for prosecution”. In October 2016, the PRB decided that “continued law of war detention of the detainee remains necessary”.
22. **PRB/D. Abdul Rahim Ghulam Rabbani.** Pakistani (born in Saudi Arabia). Arrested in Karachi, Pakistan on 11 September 2002. In CIA custody for 550-559 days. Guantánamo transfer, 19 September 2004. His “final disposition” as of 22 January 2010, according to the Guantánamo Review Task Force, was “referred for prosecution”. In August 2016, the PRB decided that “continued law of war detention of the detainee remains necessary”.
23. **PRB/D. Sa’id Salih Sa’id Nashir.** Yemeni. Arrested in Karachi, Pakistan, 11 September 2002. In CIA custody for 30-39 days. Allegedly “mistreated and beaten by Americans while blindfolded and stripped down to his underwear in [redacted]”. Guantánamo transfer, 28 October 2002. His “final disposition” as of 22 January 2010, was “continued detention pursuant to the Authorization for Use of Military Force, as informed by principles of the laws of war”. In November 2016, the PRB decided that “continued law of war detention of the detainee remains necessary”. This was reaffirmed on 11 January 2017.
24. **PRB/D. Abd al Salam al Hela.** Yemeni. Seized in or rendered from Egypt in September 2002. In CIA custody for 590-599 days. Has alleged torture or other ill-treatment. Guantánamo transfer, 19 September 2004. His “final disposition” as of 22 January 2010, was “continued detention pursuant to the Authorization for Use of Military Force (2001), as informed by principles of the laws of war, subject to further review by the Principals prior to the detainee’s transfer to a detention facility in the United States”. In June 2016, the PRB decided that “continued law of war detention of the detainee remains necessary”.
25. **MC/CTP. ‘Abd al Rahim al-Nashiri.** Saudi Arabian. Arrested United Arab Emirates, October 2002. In CIA custody for 1,390–1,399 days. Taken to Detention Site Cobalt (Afghanistan) in November 2002 and later that month to Detention Site Green (Thailand) and subjected among other things to waterboarding. Taken to Detention Site Blue (Poland), and subjected to “Unapproved nudity and approximately two-and-a-half days of sleep deprivation in December 2002, with his arms shackled over his head for as long as 16 hours”. A January 2003 cable refers to him being held “in the standing position, with hands tied overhead, overnight”. In Detention Site Blue, he was also subjected to mock execution and various other “unauthorized” techniques. From 2003 was held in a “temporary patch” detention arrangement (thought to be in Morocco), and from there taken to secret custody at Guantánamo, in 2004 back to Morocco, and subsequently to Detention Site Black (Romania). In May 2004, while on a hunger-strike, he was subjected to rectal force feeding. Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. Facing death penalty trial by military commission.
26. **PRB/D. Sanad ‘Ali Yislam al-Kazimi.** Yemeni. Arrested in Dubai in January 2003. In CIA custody for 270-279 days. He has alleged torture in UAE and CIA custody. Guantánamo transfer, 19 September 2004. His “final disposition” as of 22 January 2010 was “referred for prosecution”. In June 2016, the PRB decided that “continued law of war detention of the detainee remains necessary”.
27. **MC/CTP. Khalid Sheikh Mohammed.** Pakistani. Arrested in Pakistan, 1 March 2003. In CIA custody for 1,280-1,289 days. Subjected to water-boarding, nudity, standing sleep deprivation, attention grab and insult slap, facial grab, abdominal slap, kneeling stress position, walling, rectal hydration, threats to his children, water dousing. Was in Detention Site Cobalt (Afghanistan) in March 2003 from where he was taken to Detention Site Blue (Poland). He was in Detention Site Black (Romania) in November 2003. Transferred to Detention Site [redacted] in 2005 and to Detention Site Brown (Afghanistan) in March 2006. Guantánamo transfer, presumably from Detention Site Brown, 4 September 2006. Facing death penalty trial by military commission.
28. **MC/CTP. Mustafa Ahmad al-Hawsawi.** Saudi Arabian. Arrested in Pakistan, 1 March 2003. In CIA custody for 1,280-1,289 days. Was subjected to water-dousing in Detention Site Cobalt (Afghanistan). Excessive force in rectal examination. Had serious medical problems while held in Detention Site Violet (Lithuania). Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. Facing death penalty trial by military commission.
29. **MC/SD. Majid Khan.** Pakistani. Arrested on 5 March 2003 in Pakistan and taken into Pakistani custody. In CIA

custody for between 1,200 and 1,209 days. For a period in 2003 appears to have been in a CIA “safehouse” in Afghanistan. He was subjected to “enhanced” interrogation immediately upon being taken into CIA custody. The cable referred to is dated 24 May 2003. Subjected to sleep deprivation, nudity, dietary manipulation, immersion in bath ice water bath, rectal feeding. Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. Pled guilty in 2012. In 2016 he withdrew his guilty plea to one of the offences. Sentencing is deferred currently until February 2019.

30. **MC/CTP. Ammar al-Baluchi.** Pakistani. Arrested in Pakistan, 29 April 2003 in a “unilateral operation by Pakistani authorities resulting from criminal leads”. Rendered into CIA custody the following month, around 15 May. In CIA custody for 1,200-1209 days. Was subjected to EITs immediately upon being rendered into CIA custody in May 2003, including sessions from 17 May to 20 May 2003. Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. Facing death penalty trial by military commission.
31. **MC/CTP. Khallad (Walid) Bin Attash.** Yemeni. Arrested in Pakistan, 29 April 2003 in a “unilateral operation by Pakistani authorities resulting from criminal leads”. Rendered into CIA custody the following month, around 15 May. In CIA custody for 1,200 to 1,209 days. Was subjected to EITs immediately upon being rendered into CIA custody, including from 16 May to 18 May 2003 and then again 18 July to 29 July 2003. Sleep deprivation, facial grabs, facial insult slaps, abdominal slaps, walling, water dousing, threats of rectal hydration. Was held in Detention Site Blue (Poland). Guantánamo transfer, presumably from Detention Site Brown (Afghanistan) 4 September 2006. Facing death penalty trial by military commission.
32. **PRB/D. Zubair, also known as Mohammed Farik Bin Amin.** Malaysian. He was taken into custody by the authorities in Thailand on 8 June 2003 and held in Thai custody. He was rendered to CIA custody around 20 June 2003. Upon arrival at Detention Site Cobalt he was immediately subjected to EITs. CIA chief of interrogations “placed a broomstick behind the knees of Zubair when Zubair was in a stress position on his knees on the floor”. He was questioned about a particular topic on 25 June 2003, “days” after his transfer from Thailand to Detention Site Cobalt (Afghanistan). Yet, in the list of detainees, it states that he was in CIA custody for 1,170 days – 1,179 days. He was taken to Guantánamo on 4 September 2006 and transferred to military custody. In which case, this would put his rendition to CIA custody as having occurred sometime between 4 and 13 July 2003. Guantánamo transfer, presumably from Detention Site Brown, 4 September 2006. His “final disposition” as of 22 January 2010 was “referred for prosecution”. In September 2016, the PRB decided that “continued law of war detention of the detainee remains necessary”.
33. **PRB/D. Saifullah Paracha.** Pakistani. Seized in Bangkok, Thailand, in July 2003 by US agents, hooded, handcuffed, and thrown into the back of a vehicle. He was held for over a year in Bagram before being transferred to Guantánamo on 19 September 2004. GRTF final disposition as of January 2010 was “referred for prosecution”. In April 2016, the PRB decided that “continued law of war detention of the detainee remains necessary”. The PRB decided this again on 20 April 2017.
34. **PRB/D. Lillie, also known as Bashir bin Lap.** Malaysian. Arrested in Thailand, 11 August 2003. “Enhanced” interrogation “almost immediately” upon his arrival at Detention Site Cobalt (Afghanistan) in August 2003. He was “stripped of his clothing”, and “placed in a cell in the standing sleep deprivation position in darkness”. He has said that following three to four days held naked in Thailand, he was held for nine days naked and seven days in the prolonged stress standing position in the secret Afghanistan facility, during which time he was forced to defecate and urinate on himself. In CIA custody for 1,110-1,119 days. Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. “Final disposition” as of 22 January 2010 was “referred for prosecution”. In September 2016, the PRB decided that “continued law of war detention remains necessary”.
35. **PRB/D/MC/CS. Hambali, also known as Riduan bin Isomuddin.** Indonesian. Arrested in Thailand by the Special Branch of the Thai police on 11 August 2003. He has said he was in Thailand, in US custody, for four to five days, before being taken to secret CIA detention in Afghanistan for two months, where he was held naked for most of the time. Rendered to CIA custody in August 2003. He was “almost immediately subjected to the CIA’s enhanced interrogation techniques. In CIA custody for 1,110–1,119 days. Transfer to Guantánamo, presumably from Detention Site Brown (Afghanistan), on 4 September 2006. His “final disposition” as of 22 January 2010 was “referred for prosecution”. In September 2016, the PRB decided that “continued law of war detention of the detainee remains necessary”. In June 2017, charges were sworn against him for trial by military commission but have not yet been referred on for trial.
36. **PRB/D. Hassan Guleed.** Somalian. Taken into custody in Djibouti on 4 March 2004 “based on information from a foreign government and a CIA source”. He was in CIA custody for 900-909 days. Transferred to Guantánamo on 4 September 2006, this would mean that he was transferred to CIA custody between 9 and 18 March 2004. Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. His “final disposition” as of 22 January 2010 was “continued detention pursuant to the Authorization for Use of Military Force, as informed by principles of the laws of war, subject to further review by the Principals prior to the detainee’s transfer to a detention facility in the United States”. In September 2016, the PRB decided that “continued law of war detention remains necessary”.
37. **PRB/D. Mustafa Faraj Muhammad Mas’ud al-Jadid al-Uzaybi, also known as Abu Faraj al-Libi.** Libyan. Taken into custody in Pakistan on 2 May 2005. Was rendered to CIA custody in Detention Site Orange (Afghanistan) later that month, possibly around 23 May, followed by transfer to Detention Site Black (Romania) within days of that, still in May 2005. Subjected to EITs from 28 May to 2 June 2005 and from 17 June to 28 June 2005. In CIA custody for 460-469 days. Guantánamo transfer, presumably from Detention Site Brown (Afghanistan), 4 September 2006. His “final disposition” as of 22 January 2010 was “referred for prosecution”. In September 2016, the PRB decided that “the continued law of war detention of the detainee remains necessary”.
38. **MC/TP. Abd al-Hadi al-Iraqi.** Iraqi. Rendered to CIA detention in early November 2006, after being taken into custody

in Turkey. In CIA custody for 170-179 days. Subjected to interrogations in incommunicado detention in November and December 2006 and January 2007. He may have been protected from subjection to “enhanced” techniques because President Bush had not yet signed the post-*Hamdan v. Rumsfeld* executive order that he would eventually sign in July 2007. The use of EITs against him was discussed at CIA Headquarters from February 2007. Guantánamo transfer, 27 April 2007. Facing trial by military commission.

39. **PRB/D. Haroon al Afghani.** Afghanistan. Taken into custody by Afghan National Directorate of Security on 4 February 2007. Transferred to Guantánamo on 22 June 2007. The GRTF final determination in 2010 was “referred for prosecution”. In July 2016, the PRB decided that “continued law of war detention of the detainee remains necessary”. It decided this again on 27 April 2017.
40. **PRB/D. Mohammed Abdul Malik Bajabu.** Kenyan. He was arrested in February 2007 by police in Kenya before being handed over “to the Americans, who took me to Djibouti, Bagram, Kabul and Guantánamo Bay”. He remains in Guantánamo, without charge or trial, nearly 10 years after he was taken there on 23 March 2007. The GRTF 2010 determination was detention under the AUMF. In June 2016, the PRB decided that “continued law of war detention of the detainee remains necessary”.
41. **PRB/D. Muhammad Rahim al-Afghani.** Afghan. Arrested on 25 June 2007 in Pakistan. Rendered to Detention Site Brown (Afghanistan) and held in CIA custody for 240-249 days. Subjected to attention grasp, facial hold, abdominal slaps, facial slaps, shackling in standing position for sleep deprivation, use of diapers, liquid diet. Guantánamo transfer, 14 March 2008. “Final disposition” as of 22 January 2010 was continued detention under the AUMF. In September 2016, the PRB decided that “continued law of war detention of the detainee remains necessary”.

MILITARY COMMISSION CONVICTIONS SINCE 2002

Convicted and sentenced by military commission

1. **David Hicks**, Australian. Convicted in 2007 after pleading guilty to material support for terrorism. Transferred to Australia to serve nine months of seven year sentence. In 2015, the Court of Military Commission Review overturned his conviction based on the 2014 Court of Appeals ruling in the al Bahlul case below.
2. **Salim Ahmed Hamdan**, Yemeni. Taken into custody in 2001 and transferred to Guantánamo in 2002. Convicted in a 2008 trial of material support for terrorism, but acquitted of conspiracy to commit war crimes. Sentenced to 66 months’ imprisonment with credit for some of the time he had been in detention, and transferred to Yemen in November 2008. His conviction was overturned in 2012 by US Court of Appeals for the DC Circuit. Noting that the relevant conduct of which he was accused took place between 1996 and 2001 and with the Court of Appeals “read[ing] the Military Commissions Act not to retroactively punish new crimes, then “because material support for terrorism was not a pre-existing war crime under [US law], Hamdan’s conviction for material support for terrorism cannot stand.”
3. **Ali Hamza Ahmad Suliman Al Bahlul**, Yemeni. Sought to boycott his 2008 trial and did not present a defence. He was convicted of conspiracy to commit war crimes, solicitation of others to commit war crimes, and providing material support for terrorism. Sentenced to life imprisonment. The DC Circuit Court of Appeals vacated his convictions for material support and solicitation, in light of *Hamdan* decision above, but allowed his conspiracy conviction to stand.
4. **Ibrahim Al Qosi**, Sudanese. Convicted in 2010 under a plea of guilty to conspiracy and providing material support for terrorism. Transferred to Sudan after serving two year sentence.
5. **Omar Ahmed Khadr**, Canadian. Taken into US custody in 2002 at the age of 15. Pled guilty in 2010 to murder and attempted murder in violation of the law of war, providing material support for terrorism, conspiracy, and spying. Transferred to Canada to serve remainder of eight-year sentence.
6. **Noor Uthman Mohammed**, Sudanese. Pled guilty to providing material support for terrorism and conspiracy to provide such support. Was sentenced to 34 months’ imprisonment under a plea agreement and transferred to Sudan in 2013. In January 2015, the Convening Authority for military commissions “set aside” the findings of guilty and “the sentence is disapproved”, in light of the Court of Appeals rulings in the Hamdan and al Bahlul cases, “it appears that it was legal error” to try these offences before a military commission, he wrote.
7. **Ahmed al Darbi**, Saudi Arabian. Pled guilty in 2014 to conspiracy, attacking civilian objects, hazarding a vessel, terrorism. Sentencing delayed for three years and six months. In October 2017, sentenced to 13 years’ imprisonment.

Convicted, awaiting sentencing

1. **Majid Khan**, Pakistani. Pled guilty in 2012 to murder and attempted murder in violation of the law of war, providing material support for terrorism, spying, and conspiracy. Has withdrawn his guilty plea to providing material support, in light of the al-Bahlul decision above. Sentencing deferred, currently until February 2019

Charges sworn but not yet referred on for trial

1. **Hambali, also known as Riduan bin Isomuddin.** The first charging of a detainee under the Trump administration came on 20 June 2017 when this Indonesian national had charges sworn against him under the Military Commissions Act (MCA) of 2009. The charges were “murder in violation of the law of war”; attempted murder in violation of the law of war; intentionally causing serious bodily injury; terrorism; attacking of civilians; attacking civilian objects; destruction of property in violation of the law of war. The charge sheet states that the detainee was informed of the charges on 21 June 2017. The charges relate to bomb attacks in Indonesia in 2002 and 2003.