

NATIONAL SECURITY COUNCIL

ID 0304952

REFERRAL

DATE: 12 JUN 03

MEMORANDUM FOR: MARRIOTT, W

EXECSEC

DOCUMENT DESCRIPTION:

TO: PRESIDENT

SOURCE: BARNITZ, LAURA

DATE: 08 MAY 03

SUBJ: LTR FM YAP INTL RE DETAINEES IN GTMO

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REQUIRED ACTION: DIRECT REPLY FURNISH INFO COPY

DUE DATE:

COMMENT: NSC POC: JOHN BELLINGER



FOR

NSC RECORDS MANAGEMENT OFFICE

SecDef

W00713-03  
ACLU (DP) 1303

DOD 059621



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*Stone Holly*

George W. Bush  
The President  
The White House  
1600 Pennsylvania Avenue  
Washington DC 20500  
USA

May 8, 2003

Dear Mr. President:

I am writing on behalf of Youth Advocate Program International to express deep concern that children are among the more than 600 detainees being held at the U.S. Naval Base in Guantanamo Bay. Although we are heartened by reports that at least some children will be released in the near future, we urgently request your assurances that the United States will abide by its international obligations in relation to these detained children, including their right to legal representation.

Reports indicate that a "handful" of children, described as being between the ages of 13 and 15 years old, are being held in Guantanamo Bay as enemy combatants. We further note that a 16-year-old Canadian national, Omar Khadr, was transferred in late 2002 from Afghanistan to the Naval Base. We are concerned by reports indicating that it took six months for even the Canadian government to have access to him. Along with all the other detainees, he remains without access to legal counsel or his family.

International law and standards recognize the particular vulnerability of children and require, among other things, that children be detained only as a last resort and for the shortest time possible. When in detention, children must be fully protected according to their general and special needs. We note reports that at least some of the children are being held in facilities with other youth and not kept in isolation. However, we would emphasize that the definition of a "child", according to U.S. law and most international legal standards, is anyone under age 18, and we have no idea how many 16- and 17-year-old youth are being held in Guantanamo Bay.

Despite the fact that the U.S. Senate ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts last summer and your administration completed the process in December to make it legally binding, it appears that high-ranking members of the U.S. government are unfamiliar with these standards. We are shocked and dismayed by Secretary of Defense Donald Rumsfeld's statement that the detained children under 16 are "not children." It is imperative that representatives of the U.S. government respect the protections international law and U.S. law affords to all children under age 18. All necessary protections and safeguards must be extended to all children, including any 16 and 17 year olds who may be held at the Naval Base.

It is unconscionable that the United States—one of the first countries to ratify the Optional Protocol on the Involvement of Children in Armed Conflicts—is now treating these children

(page 1 of 2)

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SecDef

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ACLU (DP) 1304

in a way that makes a mockery of the Protocol itself. Article 6 of the Protocol provides that "States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration."

In addition to the Optional Protocol, it is a fundamental principle of international human rights law that anyone deprived of his or her liberty be allowed to challenge the lawfulness of his or her detention in a court of law. We further point out that in December 2002, the United Nations Working Group on Arbitrary Detention noted that where prisoner of war status is not recognized, "the situation of detainees would be governed by the relevant provisions of the International Covenant on Civil and Political Rights (ICCPR) and in particular by Articles 9 and 14 thereof, the first of which guarantees that the lawfulness of a detention shall be reviewed by a competent court, and the second of which guarantees the right to a fair trial."

Article 9.4 of the ICCPR states: "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful". The Human Rights Committee has stressed that this "important guarantee... applies to all persons deprived of their liberty by arrest or detention".

We recall that Secretary of State Colin Powell recently released the State Department's report on human rights practices in other countries and referred to "the steadfast commitment of the United States to advance internationally agreed human rights principles worldwide". We urge that our government acts on such sentiments in relation to the youth detained in Guantánamo Bay.


We would be grateful to learn how many children under age 18 at the time of their detention are currently held at Bagram Air Base and of the circumstances and conditions under which all of them are held.

We call for all under-18-year-olds held in Guantánamo Bay to have immediate access to lawyers and their families. They should be promptly charged and tried within a reasonable time in accordance with fair trial standards, or released into appropriate and safe circumstances.

Finally, I would like to take this opportunity to request that Youth Advocate Program International delegates have access to Guantánamo Bay and Bagram Air Base to visit officials and youth detainees there.

Thank you for your serious consideration of this letter. We await your response.

Yours Sincerely,

  
Laura Barnitz  
Program Director  
Youth Advocate Program International

CC: Secretary of Defense Donald Rumsfeld  
Secretary of State Colin Powell

SecDef

TOTAL P.03  
ACLU (DP) 1305

DOD 059623

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**FAX TRANSMITTAL**

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**To: President George W. Bush, the White House**  
**Fax: (b)(7)(C)**  
**From: Laura Barnitz, program director**  
**Date: 5/8/03**  
**Total pages: 3 pages**

**Re: Children Detained in Guantanamo Bay at U.S. Naval Base**

**PLEASE SEE FOLLOWING LETTER**

SecDef

ACLU (DP) 1306

DOD 059624

**THE WHITE HOUSE  
CORRESPONDENCE TRACKING WORKSHEET**

**ID#** 564540  
**PAGE** 1

**DATE RECEIVED:** 05/19/2003

**NAME OF CORRESPONDENT:** MS. LAURA BARNITZ

**SUBJECT:** EXPRESSES CONCERN THAT CHILDREN ARE AMONG THE MORE THAN 600 DETAINEES BEING HELD AT THE UNITED STATES NAVAL BASE IN GUANTANAMO BAY

		<u>ACTION</u>		<u>DISPOSITION</u>		
<u>ROUTE TO:</u>		<u>ACTION</u>	<u>DATE</u>	<u>TYPE</u>	<u>C</u>	<u>COMPLETED</u>
<u>OFFICE/AGENCY</u>	<u>(STAFF NAME)</u>	<u>CODE</u>	<u>YY/MM/DD</u>	<u>RESP</u>	<u>D</u>	<u>YY/MM/DD</u>
NATIONAL SECURITY COUNCIL	STEVE HADLEY	ORG	2003/05/19			

**ACTION COMMENTS:** \_\_\_\_\_

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**COMMENTS:**

**ADDITIONAL CORRESPONDENTS:** 0

**MEDIA:** FAX

**INDIVIDUAL CODES:**

**REPORT CODE:**

**USER CODE:**

**SCANNED  
BY  
ORM**

**ACTION CODES:**

A - APPROPRIATE ACTION  
C - COMMENT/RECOMMENDATION  
D - DRAFT RESPONSE  
F - FURNISH FACT SHEET  
I - INFO COPY/NO ACT NECESSARY  
R - DIRECTORY W/ COPY  
S - FOR SIGNATURE  
X - INTERIM REPLY

**DISPOSITION CODES:**

A - ANSWERED  
B - NON-SPEC-REFERRAL  
C - COMPLETED  
S - SUSPENDED

**OUTGOING CORRESPONDENCE:**

TYPE RESP = INITIALS OF SIGNER  
CODE = A  
COMPLETED = DATE OF OUTGOING

**REFER QUESTIONS AND ROUTING UPDATES TO RECORDS MANAGEMENT (ROOM 72, OEOB) EXT-62590 KEEP THIS WORKSHEET ATTACHED TO THE ORIGINAL INCOMING LETTER AT ALL TIMES AND SEND COMPLETED RECORD TO RECORDS MANAGEMENT.**

SecDef

ACLU (DP) 1307

DOD 059625



OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE  
WASHINGTON, D.C. 20301-2500

SPECIAL OPERATIONS:  
LOW-INTENSITY CONFLICT

JUL 14 2003

Laura Barnitz  
Program Director  
Youth Advocate Program International  
4545 42<sup>nd</sup> Street, NW, Suite 209  
Washington DC 20500

Dear Ms. Barnitz,

Thank you for your recent letter to President George W. Bush expressing concern with reports of younger detainees at Guantanamo Bay and your request to visit Guantanamo Bay and Bagram Air Force Base.

We cannot agree to your request for access to Guantanamo Bay or the Bagram Air Base. Access to detainees is provided to the International Committee of the Red Cross, and on a case by case basis to government officials for legitimate governmental purposes.

The United States is engaged in an armed conflict with al Qaida and its supporters. In this war, as in every war, captured enemy combatants have no right to counsel or right of access to courts for the purpose of challenging their detention. Should a detainee be charged with a crime, he would have access to counsel and other fundamental rights recognized by the international law of armed conflict.

All enemy combatants under the control of U.S. Armed Forces continue to be treated humanely, and in accordance with military necessity, in a manner consistent with the principles of the Third Geneva Convention of 1949. They are provided with proper shelter and excellent medical care. Each is allowed to exercise their religious beliefs, and all are provided food consistent with their religious requirements.

As a matter of policy, and for operational reasons, DoD does not discuss specifics pertaining to detainees – to include their ages or nationalities. That said, there are a very small number of detainees whom we have assessed to be under the age of 16. It is difficult to determine the exact age for detainees, as birth records are not readily available.

As with other detainees, these individuals were transferred to Guantanamo because they are enemy combatants who pose a threat to our forces. These particular individuals were captured while actively participating in hostilities. The U.S. must detain enemy combatants who take up arms against our forces and remove them from the battlefield to prevent their participation in further hostilities. Age is not a determining

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factor. As with all detainees their release is contingent upon the determination that they are not a threat to our nation.

Additionally, we recognize the special needs of younger detainees and the difficult or unfortunate circumstances surrounding their situation. Their needs are being addressed by medical professionals and others who are experienced in dealing with issues involving juveniles. In short, every effort is made to provide them a secure environment, segregated from the older detainee population, as well as the special physical, psychological and related care they may require. We are, in fact, treating young enemy combatants in a manner appropriate to their status and age.

Our preference would be to detain none of these younger combatants. But as long as terrorists and others continue to abuse young men and turn them into fighters against U.S. forces, we will continue to detain those who fight against us.

Sincerely,



Marshall Billingslea  
Principal Deputy