



February 6, 2009

Joseph A. Benkert
Assistant Secretary of Defense
2900 Defense Pentagon
Washington, DC 20301-2900

Dear Mr. Benkert:

Thank you for the opportunity to provide comments to Admiral Patrick Walsh about the conditions of confinement in which prisoners at Guantánamo Bay are held. Given the short timeframe, we are unable to provide a comprehensive discussion of our concerns. However, we have endeavored below to highlight some of our concerns with a focus on practical issues that can – and should – be addressed immediately.

A. Applicable Law

We are encouraged that the President's mandate requires Admiral Walsh to consider whether conditions of confinement at Guantánamo conform to Common Article 3 of the Geneva Conventions and to "other applicable laws." In this context, other applicable laws would include:

- The Third and Fourth Geneva Conventions. The general provisions of Common Article 3 with respect to treatment must be interpreted in accordance with the more specific provisions of the Third and Fourth Geneva Conventions. These include provisions with respect to: treatment (GCIII, Articles 13-16; GCIV, Articles 27-32); shelter, food, and clothing (GCIII, Articles 25-27; GC IV, Articles 85-90); hygiene and medical attention (GCIII, Articles 29-31; GCIV, Articles 91-92); religious, intellectual and physical activities (GCIII, Articles 34-38; GCIV, Articles 93-94); and the ability to receive family news (GC III, Article 71; GCIV, Article 25). Treatment and conditions required by these Geneva Convention provisions are reflected in Army Regulation 190-8, Enemy Prisoner, Retained Personnel, Civilian Internees and Other Detainees (1997) and the Army's Field Manual on Military Police Internment/Resettlement Operations No. FM3-19.40.
- International legal instruments that protect prisoners against unsafe or unhygienic conditions and cruel, inhuman, or degrading treatment. Such legal instruments would include the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other

Cruel, Inhuman or Degrading Treatment or Punishment, which the United States ratified in 1992 and 1994 respectively, and the U.N. Standard Minimum Rules for the Treatment of Prisoners and U.N. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

- International legal instruments that protect child soldiers. Detainees who were juveniles when they were captured are entitled to special treatment that, at a minimum, is intended to rehabilitate and reintegrate them into society, in accordance with the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which the United States ratified in 2002.
- The U.S. Constitution. The Fifth Amendment to the U.S. Constitution protects prisoners against treatment that shocks the conscience. It protects prisoners against, among other things, unsafe conditions of confinement, abusive treatment, prolonged isolation, and the denial of social and familial contact. The First Amendment guarantees prisoners the right to religious texts, news, and books.

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B. Specific Conditions

The conditions of confinement at Guantánamo clearly violate both domestic and international law. Below is a partial list of our concerns.

- The use of isolation. Many prisoners are being held in solitary confinement in Camps 5 and 6; some of them have been held in isolation for extended periods. Isolation can include restrictions on all human contact except for interaction with guards for the limited purpose of feeding and transport. In another form of prolonged isolation, Mohamed Jawad, whom the ACLU represents in habeas proceedings, was held for months without contact with anyone who speaks his language, except for a single mentally-ill detainee. A psychologist who examined Mr. Jawad reported that “th[e] type of solitary confinement [in which Mr. Jawad has been held] has been shown to be associated with, among other things, depression, anxiety, panic attacks, suicidal ideation, poor concentration, memory problems, and thought disorder. . . . Mr. Jawad is at risk of suffering more of these psychological symptoms if his confinement continues to be one of predominant isolation.”
- The continued approval of inhumane interrogation methods. Although Army Field Manual 2-22.3 is certainly an improvement over the prior manual, it still permits the use of unlawful interrogation techniques. For example, Appendix M of the Field Manual permits the physical removal of a detainee from other detainees and their environment for up to 30 days and (with review and approval) for longer periods as well. While

purporting to prohibit the use of sensory deprivation, the new Field Manual does permit the use of goggles, blindfolds, and earmuffs as an alternative to physical separation. This kind of sensory deprivation can be cruel and extremely damaging, especially if it mirrors the detainees' experiences in rendition or torture episodes.

- The subjection of prisoners to sensory deprivation during transport. Sensory deprivation is used outside the interrogation context as well. It is our understanding that none of the so-called "High-Value Detainees" are transferred outside Camp 7 (where they are housed) without the use of goggles and earmuffs. Ramzi bin al Shibh's counsel cited this treatment during transport as one reason Mr. bin al Shibh was unwilling to attend his own court appearances. (Mr. bin al Shibh's co-defendants ultimately persuaded him to attend by informing him that the Defense Department would conduct a forced cell extraction if he did not attend voluntarily.) The forced blindness and deafness are particularly cruel because they inevitably recall abuse and torture inflicted upon the HVDs while in the custody of the CIA, including hooding; forced transport while hooded and shackled; positional stress while hooded or blindfolded; sensory deprivation, sometimes while naked; and the head-wrapping that accompanied waterboarding. It should be noted that counsel for several of the HVDs have offered to have their own eyes and ears covered and be transported to their clients to spare their clients the same treatment, but that compromise has been rejected. The government has also failed to provide a place at Camp 7 for attorney-client meetings.
- The failure to provide special treatment to prisoners who were apprehended as juveniles. The three current prisoners who are known to have been apprehended as juveniles – Mohamed Jawad, Omar Khadr, and Mohammed el-Gharani – have been held with the adult populations throughout their incarceration at Guantánamo. None of these prisoners has been provided with special and appropriate educational or rehabilitation services. (Note that Guantánamo previously held other prisoners apprehended as juveniles. Yasser Talal al-Zahrani, a Saudi national, was 17 when he was seized in Afghanistan. He was one of three Guantánamo prisoners who committed suicide in June 2006. The Defense Department has acknowledged that 12 former or current Guantánamo prisoners were apprehended as juveniles.)
- The failure to respond humanely to hunger strikes. As of early January 2009, thirty of the 245 men currently detained at Guantánamo were on hunger strike, the highest number in months. Twenty-five were force fed through tubes inserted in their noses. The unlawful force-feeding procedure requires that guards and medical professionals strap the detainee into a chair, Velcro his head to a metal restraint, then tether a tube into his stomach through his nose to pump in liquid nourishment

twice a day. Two of the striking detainees have been force-fed through tubes in their noses since August 2005. One of these detainees, Imad Hassan, a 30-year old Yemeni, has been fed through a tube periodically for the last three years and suffers from digestive and pancreatic problems, among other severe health issues.

- The mistreatment of suicidal detainees. Documents recently released by the Defense Department in response to an ACLU FOIA request indicate that Immediate Reaction Force (IRF) Teams respond to suicide attempts by prisoners by performing a forced cell extraction on the prisoner and spraying the prisoner with pepper spray. In at least some instances, the Defense Department has punished prisoners who attempted suicide by depriving them of comfort items, including clothing.
- The refusal to allow family contact. Prisoners held at Guantánamo are routinely denied appropriate contact with their families. No family visits are permitted, and prisoners go for extended periods without any contact with family members except for letters through the ICRC. Recently, the policy has reportedly changed, but only to permit a single family call per year.
- The exposure of prisoners to extreme temperatures and noise. The all-metal or all-concrete cells in which prisoners are housed are kept at an extremely cold temperature. The activities of guards appear designed to create loud noises outside prisoners' cells in order to keep them from sleeping. These practices have a significant adverse effect on prisoners' health, and in some instances the effects have been so severe as to impair the ability of prisoners to communicate and cooperate with their attorneys.
- The failure to provide hygienic conditions. Prisoners have been prevented from showering on a regular basis. Worse, conditions in the cells can become extremely unhygienic. Mr. Jawad, for example, describes several incidents in which feces in the hallway outside of his cell has leaked into his cell.
- The failure to inform prisoners of rules and regulations. The conditions in Camps 5 and 6 are punitive. In theory, prisoners in Camp 5 and 6 who abide by regulations can be moved to cells in less restrictive camps. In practice, however, prisoners often do not know what the regulations are, and accordingly they do not know what they have to do in order to be moved to less restrictive camps. Mr. Jawad, for example, is highly motivated to comply with confinement regulations and procedures but he simply does not know what more he needs to do in order to be moved to a different camp.

- The failure to provide prisoners with reading material. Many prisoners held at Guantánamo have no access to any reading material except the Qu'ran. While other books have been made available, in many instances they have not been made available in languages that the prisoners can read. (We understand this is true, for example, with respect to the Uigher prisoners.) Moreover, the books rarely change and prisoners are generally limited to one book a week – so, for example, prisoners are not allowed both a general book and a dictionary to help them read it. Prisoners' access to magazines or newspapers is also restricted. There is no accommodation for illiterate prisoners who want to learn to read.
- The failure to allow adequate time for ensuring adequate physical health. Prisoners in Camps 5 and 6 are often held without daylight for 22 hours a day and permitted only two hours of "recreation" that occur alternatively in the day or late at night, when the prisoner may be asleep. In some instances, prisoners have been woken for "recreation" as early as 2:00 a.m. "Recreation" time is spent in a small area, approximately three by four meters, surrounded by high concrete walls. Prisoners may go for weeks without seeing the sun.

The discussion above is based on information that was obtained by the ACLU from public sources, from its monitoring work at the military commissions, from its FOIA litigation, from its representation of Mohamed Jawad, and from its representation of HVDs through the John Adams Project. With respect to the HVDs however, the military and civilian lawyers possess a great deal of information about treatment and conditions that they cannot share in this context. The military commissions process for the HVDs has taken place under a blanket of secrecy. Information about conditions of confinement has been classified at the highest level and attorneys are prohibited from sharing the information even with those who come within the "For Official Use Only" ambit. Further, attorneys' notes about conditions of confinement must be stored in secured facilities and any discussion among cleared counsel about those conditions must be conducted in secured facilities as well. We strongly urge you to contact the attorneys who represent the HVDs and to meet with them, under appropriate conditions to discuss the conditions of their clients' confinement. While it is clear from information in the public domain that the HVD prisoners are held in conditions that are profoundly inhumane, the attorneys for these prisoners will be able to provide you with detail that we cannot provide to you in this letter. If you would be interested in speaking with attorneys for the HVDs, please let us know so that we can endeavor to coordinate a meeting. As you may know, the civilian attorneys for the HVDs are associated with the ACLU's and NACDL's John Adams Project.

Thank you again for the opportunity to provide these comments. While we are grateful for the chance to support Admiral Walsh's review, however, we also reiterate our request for full access to the Guantánamo Bay detention

camps, a request that we sent to the President on January 30th. The ACLU, which houses the only national litigation program for prisoners, has unparalleled expertise in issues relating to conditions of confinement. As we stressed in our letter of January 30th, independent review of conditions of confinement by the ACLU and other human rights organizations will assist the administration's effort in revising the policies and improving detention conditions in the camps in order to comply with relevant national and international standards and guidelines on persons in detention.

Sincerely

A handwritten signature in black ink, appearing to read 'Anthony D. Romero', written over a faint, circular stamp or watermark.

Anthony D. Romero
Executive Director

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