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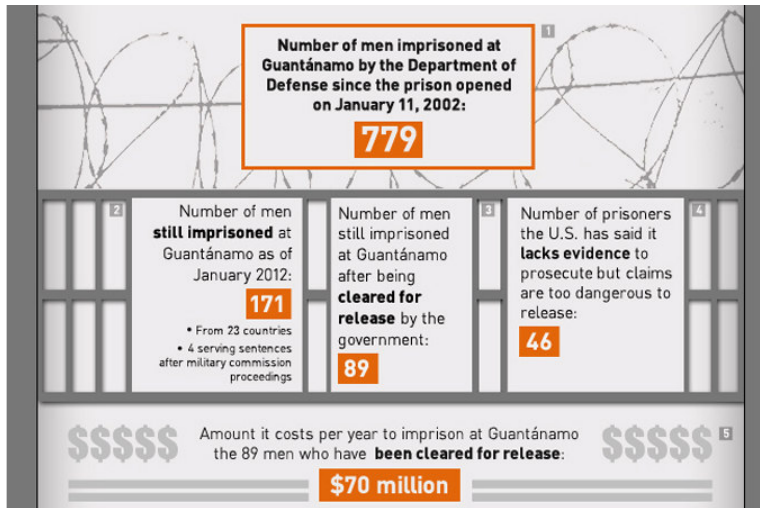
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## The Shame of Guantanamo Bay

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Only six Guantanamo prisoners have been tried before a military commission [ACLU]

**New York, New York** - This week marks the 10-year anniversary of the first prisoner arriving at Guantanamo Bay, making it the longest-standing war prison in US history. Guantanamo has been a catastrophic failure on every front. It has long been past the time for this shameful episode in American history to be brought to a close.

President Obama has failed to shutter Guantanamo, even though on his second day in office he

signed an executive order to close the prison and restore "core constitutional values". In fact, the 2012 National Defence Authorization Act that Obama signed on New Year's Eve contains a sweeping provision that makes indefinite military detention, including of people captured far from any battlefield, a permanent part of American law for the first time in this country's history. This is not just unconstitutional - it's just plain wrong.

Guantanamo was fashioned as an "island outside the law" where terrorism suspects could be held without charge and interrogated without restraint. Almost 800 men have passed through its cells. Today, 171 remain.

As documents secured by the ACLU demonstrate, Guantanamo became a perverse laboratory for brutal interrogation methods. Prisoners were subjected to beatings, sleep deprivation, stress positions, extreme temperatures and prolonged isolation. It started with two false premises: Those who were sent there were all terrorists picked up on the battlefield and that, as "unlawful enemy combatants", they had no legal rights. In reality, a tiny percentage was captured by US forces; most were seized by Pakistani and Afghan militias, tribesmen, and officials, and then sold to the US for large bounties.

Our nation continues to pay the price for those egregious errors. Torture is the principal reason for the astonishing fact that, more than 10 years after 9/11, the alleged perpetrators of those attacks - though in US custody for as long as nine years - have not been brought to justice.

The reputation of the US as a defender of human rights has been profoundly diminished because of Guantanamo's continued existence. Our allies have refused to share intelligence out of concern that it will be used in unfair military commissions, and will not extradite terrorism suspects if they will end up in military detention. Perhaps most critically, military officials acknowledge Guantanamo has been used for years as a recruiting tool by our enemies - creating far more terrorists than it has ever held - thereby undermining rather than enhancing our security. And torture is also why federal courts were rejected in favour of military commissions with looser evidentiary standards. Even under this imbalanced system, only six Guantanamo prisoners have been sentenced for crimes before a military commission.

Each branch of government shares responsibility for the perpetuation of Guantanamo's legacy. Congress has chosen to score political points rather than do what's right. It has repeatedly used its power of the purse to prevent the release or resettlement of Guantanamo prisoners cleared for release, and to bar criminal trials of those against whom there is evidence for prosecution in federal court.

Guantanamo was not a problem of President Obama's making, but it is now one of his choosing. After his pledge to close Guantanamo within a year, the president failed to show the commitment necessary to build Congressional support, provide a logistical plan to release Guantánamo prisoners or bring them to trial. Like President Bush before him, Obama has also claimed the authority to detain without charge or trial terrorism suspects captured far from any theatre of war.

Finally, the courts have refused to articulate and enforce clear limits on the executive's detention

authority. To be sure, the Supreme Court has on three occasions heard challenges to the Guantanamo regime, and every time has repudiated the excesses of the political branches. Those decisions held that Guantanamo prisoners could challenge their detention under habeas corpus, that the Geneva Conventions applied to the fight with Al Qaeda, and that the Executive Branch could not unilaterally create a military commission system with limited rights for the accused.

However, the court has left unanswered two critically important questions: Who is detainable, and what process are they due? It has stood by as a lower court gutted meaningful habeas review, and held that a judge has no power to enforce a decision that a Guantanamo prisoner must be released. It also let stand a ruling that people tortured in Guantanamo could not sue for damages, holding they were not "persons' before the law", and that senior government officials could not have known that torturing non-citizens abroad was banned by the Constitution.

All branches of government must rise to the task. The Supreme Court must define the scope of war-time detention. It must ensure the right to habeas corpus is a meaningful one that tests, and does not rubber stamp, the government's case. Congress must lift the unnecessary restrictions on transfer and release from Guantanamo, particularly for the 89 men whom our security services and military have unanimously determined should be released.

President Obama must also show the courage of his previously stated convictions and either prosecute the other 82 men in federal court or set them free.

Then Guantanamo must close.