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It's Time To Close Guantanamo Bay Detention Camp

By Kenneth G. Eade

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Amnesty international has called the Guantanamo Bay Detention Camp the “gulag of our time.” Since President Obama’s order to close the camp within one year on January 23, 2009, it has remained open because the president decided to amass political capital to use for his domestic agenda instead. On January 7, 2011, Obama signed the 2011 Defense Authorization Bill, which placed restrictions on transferring prisoners to the United States. As of May 2014, there were 149 detainees being held, at a cost to the government of roughly \$1 million per detainee. Some of them have been held, without trial and without charge, since 2003. 46 of them have been declared by the government to be too dangerous to release, but they cannot be tried for any crime because there is insufficient evidence to try them. Approximately half of the detainees held today have been cleared for release, but may never regain their freedom. Many of their native countries have refused to repatriate them, and, because of the new legislation, they cannot be transferred to prisons in the United States.

Courts have upheld detentions at Guantanamo under the Authorization for Use of Military Force passed by Congress three days after the September 11th attacks. The reasoning behind this is to keep enemy soldiers from returning to the battlefield until the conflict is over. However, due to the current conflicts in Iraq and Afghanistan show no sign of being over, especially with the rise in power of ISIS; which is a direct result of U.S. intervention and destruction of infrastructure. Moreover, due to the enormous problem of policing, the incredible expense of

rebuilding, and the \$700 billion US defense budget, it is foreseeable that the “military conflict” could go on for decades, to the delight of military contractors like Halliburton, Lockheed and General Dynamics. War is good for business.

When the United States military arrested the detainees and threw them into Guantanamo Bay Detention Camp indefinitely, they denied them the right to counsel guaranteed by the Sixth Amendment. They also denied them the right to a speedy trial, to confront the witnesses against them, to a trial by jury, and the right to be informed of what they were charged with. They denied them the right to a trial by jury, guaranteed by the Fifth Amendment, their right to due process of the law by holding them indefinitely with no charge, and their privilege against self-incrimination.

Finally, and most importantly, by beating them, torturing them and treating them as less than human, using sensory deprivation and sensory overload as interrogation enhancement techniques, and force feeding and torturing them, the Government denied them the Eighth Amendment guarantee to be free from cruel and unusual punishment. Not only were detainees denied the constitutionally guaranteed rights to which any person imprisoned in the United States would be entitled, no matter what heinous crime of which they stand accused, they were also denied the rights that any enemy soldier captured fighting against the United States would get pursuant to the Geneva Conventions of 1949. Article 3 of the Geneva Conventions prohibits detention practices that are “cruel, degrading, or humiliating.”

President Bush and the military complex under his command continued to deny all basic rights to detainees, including the constitutional guarantee of habeas corpus, and the Congress went along with it, in passing a series of Acts of Congress attempting to limit this constitutional guarantee.

In 2004, the United States Supreme Court held, in *Rasul v. Bush*, that the habeas corpus jurisdiction of United States federal courts extended to Guantanamo Bay. In 2004, the Court also held, in *Hamdi v. Rumsfeld*, that due process mandated that an alleged enemy combatant held on U.S. soil be entitled to a due process challenge of his enemy combatant status.

In June 2006 the Supreme Court, in *Hamdan v. Rumsfeld* threw out section 1005a of the Detainee Treatment Act denying the right of an alien detainee to habeas corpus, and ruled that the structure and procedures of the military commissions established to try detainees violated both the Uniform Code of Military Justice and Common Article 3 of the Geneva Conventions had been violated. Congress passed and Bush signed into law the Military Commissions Act in October 2006, overriding the Supreme Court’s decision.

In 2008, the Supreme Court threw out the Act’s prohibition of the federal courts’ jurisdiction to hear detainees’ habeas corpus petitions as an unconstitutional suspension of habeas corpus in *Boumediene v. Bush*.

District Court Judge Aiken threw out two sections of the Patriot Act that modified the Foreign Intelligence Surveillance Act in *Mayfield v. United States*, but her decision was rendered moot on appeal when the Ninth Circuit Court of Appeal decided that Mayfield could not pursue his declaratory relief claim after he had settled with the government.

The “War on Terror” is still on, and is still being used as an excuse to broaden or extend the broad brush of governmental power. The USA Patriot Act, which was designed to be temporary, has been reauthorized in 2005 and 2006. On February 27, 2010, President Obama signed into law legislation reauthorizing three controversial sections of the Act relating to roving wiretaps, lone wolf surveillance and seizure of property and records. On May 26, 2011, he signed into law the Patriot Sunsets Extension Act to extend key provisions of the Act.

What we are seeing now is an abuse of power by an overzealous president, continued by his successor, and that abuse of power must be stopped. It is turning the United States of America, once a beacon for liberty and freedom, and an example for every other democracy to follow, into an aggressive country that does not respect its own laws and does not play by its own principles. This is unacceptable, and we, as citizens of this country, need to send a clear message to your government that the United States is a good and humane nation, which does not torture prisoners of war. We are a nation of laws, a nation who respects our fellow humans and the rights of our own citizens, as well as the rights of citizens of other countries. We need to start acting like one.