

## CHAPTER 3

# Gitmo Debate Misses the Point

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Recent press reports detail an internal Bush Administration debate over whether to close the military detention facilities at Guantanamo Bay in Cuba. Whether to close the facility is not at the heart of the issue of how the U.S. treats detainees and prosecutes the war on terrorism. Regardless of where alien combatants are held, the U.S. government has a dual responsibility to uphold the rule of law and to protect the nation. Currently, the detention facilities at Guantanamo Bay are fully meeting those responsibilities. Any plan to move detainees would have to be justified on the basis that it would be more efficient and effective than the current system.

### Doing the Right Thing

Wherever the U.S. military holds combatants, it must meet certain obligations:

- Detainees must be held in a safe, humane, and secure manner;
- Detainees must have their combatant status determined in a time and manner that are reasonable and appropriate,<sup>1</sup> and their detention should be reviewed periodically to ascertain whether detention is still warranted;
- If detainees are suspected to have committed war crimes egregious enough to merit punishment, they should be put on trial at an appropriate time—which historically has been deemed to be only after hostilities have ceased—under a legal system that provides fundamental procedural protections;
- Safety and security should be guaranteed for the guards, support personnel, and legal staffs representing the government and the detainees, as well as the detainees themselves; and
- The government must be able to efficiently and effectively collect intelligence and protect national security.

These basic obligations are the same no matter where aliens who are unlawful combatants are held, and they are all being met at the military detention facilities in Guantanamo Bay, Cuba, in accordance with U.S. law. A legitimate tribunal process determines whether detainees are a threat to the United States. Annually, the tribunal reassesses whether detention should be continued. These reviews have led to the release of a number of detainees. Some have been returned to their home countries or given asylum in other countries, and others are awaiting release while the United States ensures that the countries receiving them will treat them in a humane manner. Still others will be tried as war criminals under a military commission process established and authorized by law. The operations at Guantanamo Bay meet the letter of the law and are performed by the U.S. military in an exemplary manner.

**Changing Course.** Any proposal to move detention operations must articulate how these detention operations can be performed more efficiently and effectively than they are now. Arguing that the U.S. should close the facilities merely to placate criticisms of its detention policies is insufficient. By and large, the criticisms are patently false and

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1. According to new (and novel) Supreme Court law-making, detainees have the right to a meaningful hearing by a neutral decisionmaker if the legitimacy of their detention is in question.

## **Treatment of Detainees and Unlawful Combatants: Selected Writings on Guantanamo Bay**

unjustified. In any case, because the government's responsibilities will not change, it is unlikely that detention operations will be conducted in a significantly different manner in a different location. Merely closing the facilities at Guantanamo Bay is not likely to placate any of America's critics.

The best policy is to continue to do the right thing: protect American citizens, respect the rule of law, and combat transnational terrorism. Moving the jails will not change anything.

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