

INTRODUCTION

James Jay Carafano, Ph.D.

Today, the United States is engaged in a global armed conflict. As a result of that conflict, the Department of Defense currently holds about 350 captured unlawful enemy combatants at military facilities in Guantanamo Bay, Cuba. The care and treatment of detainees remains one of the most important aspects of the global war combating transnational terrorism. This collection summarizes research by scholars at The Heritage Foundation on this critical and controversial issue. The findings of this research include the following:

- **The U.S. government has fulfilled its obligations under the Constitution, the Geneva Conventions, and U.S. law.** Regardless of where the detainees are held, the U.S. government has a dual responsibility to uphold the rule of law and protect the nation. Currently, the detention facilities at Guantanamo Bay are fully meeting those responsibilities. Just as enemies captured in wartime have traditionally been handled, these detainees are being held for the duration of hostilities or until the military is satisfied that they pose no further threat. Detaining these enemy combatants is important to national security for two significant reasons: They are valuable sources of intelligence, and they cannot return to the battlefield.
- **The U.S. military has fulfilled its mission.** The operations at Guantanamo Bay meet the letter of the law and are performed by the U.S. military in an exemplary manner. A legitimate tribunal process determines whether detainees are a threat to the United States. Each year, the tribunals reassess whether detentions should be continued. These reviews have led to the release of a number of detainees. Some have returned to their home countries or have been given asylum in other countries, and some have returned to the battlefield to wage war again against the U.S. and its allies or to kill civilians in suicide attacks. 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 that is established and authorized by law.
- **The military detention facilities at Guantanamo Bay meet the highest international standards.** Despite the frequent claims of prisoner abuse at Guantanamo Bay, there is little evidence to back up those claims. The Pentagon spends \$2.5 million each year on Korans, prayer rugs, and special meals for Muslim prisoners. Moreover, there are on average two lawyers for every detainee at Guantanamo, and detainees have challenged their status before the U.S. Supreme Court. By any measure, the U.S. government has extended our deadly enemies unprecedented legal rights.

Despite its admirable record in dealing with the challenges posed by unlawful combatants, the U.S. government has received unwarranted criticism. Human rights activists, media outlets, and critics of the Administration have derisively characterized the U.S. military detention facility at Guantanamo as the “gulag of our times.”¹ Specifically, they argue that the detention of enemy combatants at Guantanamo Bay violates international law and that the U.S. is unlawfully denying detainees the right to habeas corpus.

Granting unwarranted legal rights to these detainees puts soldiers and civilians at risk by rewarding treachery with privilege. The detainees willfully violated the laws of war and are therefore classified as “unlawful” enemy combatants. Most of the detainees at Guantanamo were captured while fighting for the Taliban or al-Qaeda and wore no

1. Irene Khan, Secretary General, Amnesty International, Foreword to *Amnesty International Report 2005: The State of the World's Human Rights*, May 25, 2005, at <http://web.amnesty.org/report2005/message-eng>.

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

uniforms or insignia, refused to carry their arms openly, and—perhaps most important—represented no government and thus no military hierarchy.

Consequently, the detainees are not entitled to Prisoner of War (POW) status or the full protection of the Geneva Conventions, let alone unfettered access to U.S. courts. Summarily granting them these privileges would cripple the integrity of the laws of war.

Moreover, even if the detainees were granted POW status, the Geneva Conventions require that combatants be released from custody only “after the cessation of active hostilities.”² The U.S. Supreme Court recently affirmed the principle that the detention of enemy combatants is a “fundamental and accepted . . . incident of war” and concluded that the President is therefore authorized to hold detainees for the duration of the conflict in Afghanistan.³

What is missing from critics’ arguments for closing Guantanamo Bay is a sense of perspective. Any proposal to move detention operations must articulate how these detention operations can be performed more efficiently and effectively than they are being performed now. Arguing that the U.S. should close the facilities merely to placate criticisms of its detention policies is insufficient. The government’s responsibilities will not change, and it is therefore 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 research presented in The Heritage Foundation’s Guantanamo Bay collection clearly indicates that Congress should not interfere with the U.S. military’s policy of detaining unlawful alien enemy combatants at Guantanamo Bay. The United States is engaged in an ongoing armed conflict against al-Qaeda in Afghanistan and therefore has no obligation—legal, moral, or otherwise—to release captured enemy soldiers so that they may return to the battlefield.

Short-sighted legislation extending unprecedented rights to foreign terrorists and other enemy combatants undermines U.S. troops deployed in the field in Afghanistan and Iraq. These detainees should not be released until the cessation of hostilities in Afghanistan and elsewhere.

2. Geneva Convention Relative to the Treatment of Prisoners of War, August 12, 1949, Article 118.

3. *Hamdi v. Rumsfeld*, 542 U.S. 507, 518 (2004).