

# Background on Guantánamo Bay Prison

## The Basics

- ✓ **Detainees:** The first detainees arrived at the Guantánamo Bay detention facility on January 11, 2002. Since it opened, 780 detainees have been held there. The Bush Administration transferred over 500 detainees out of the prison, the Obama Administration transferred 197, and the Trump Administration has transferred one. Only 40 detainees remain, with five cleared for transfer by all relevant U.S. national security agencies. Twenty-six more have been slated for indefinite detention (but are eligible for periodic review of that designation), seven have been charged and/or are in pre-trial hearings in the military commission system, one is serving a military commission sentence, and one is awaiting sentencing.<sup>1</sup>
- ✓ **Costs:** The prison at Guantánamo costs approximately \$445 million per year to run.<sup>2</sup> With the current population, continuing its use costs more than \$10 million per detainee per year – much more than comparable federal or military prisons, which cost about \$78,000 per prisoner annually.<sup>3</sup> Even with the costs of building new facilities or modifying existing facilities, housing detainees in the United States would save around \$85 million per year.<sup>4</sup> Guantánamo has been called “the most expensive prison on earth,”<sup>5</sup> and

due to deteriorating infrastructure, costs will likely rise if the prison remains open.

## Guantánamo Complicates Diplomacy and National Security Cooperation

- ✓ **Countries limit national security cooperation:** Because of the questionable legitimacy of the Guantánamo military commissions and the human rights concerns over indefinite detention at the prison, countries have refused to extradite terrorism suspects to the United States or share intelligence without promises that those individuals will not be tried in military commissions and that the intelligence will not be used in military commission trials.<sup>6</sup>
- ✓ **Guantánamo makes diplomacy more difficult and diminishes American influence on human rights issues:** According to the White House, the existence of the Guantánamo detention facility “plagues our bilateral and multilateral relationships, creates friction with governments whose nationals we detain, [and] provides cover for regimes whose detention practices we oppose.”<sup>7</sup> Former Secretary of State Colin Powell has expressed frustration with this as well, noting: “As secretary of state, Guantánamo was a heavy load to carry as I went around the world talking

<sup>1</sup> <http://projects.nytimes.com/guantanamo>

<sup>2</sup> [http://www.defense.gov/Portals/1/Documents/pubs/GTMO\\_Closure\\_Plan\\_0216.pdf](http://www.defense.gov/Portals/1/Documents/pubs/GTMO_Closure_Plan_0216.pdf)

<sup>3</sup> <http://www.miamiherald.com/news/nation-world/article1953705.html>

<sup>4</sup> [http://www.defense.gov/Portals/1/Documents/pubs/GTMO\\_Closure\\_Plan\\_0216.pdf](http://www.defense.gov/Portals/1/Documents/pubs/GTMO_Closure_Plan_0216.pdf)

<sup>5</sup> <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article1938974.html>

<sup>6</sup> <http://www.justice.gov/iso/opa/ag/speeches/2012/ag-speech-1203051.html> , [http://www.lawfareblog.com/2011/12/peter-](http://www.lawfareblog.com/2011/12/peter-margulies-on-the-ndaa-and-extradition/)

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<sup>7</sup> [https://archive.org/stream/777815-white-house-plan-to-close-guantanamo/777815-white-house-plan-to-close-guantanamo\\_djvu.txt](https://archive.org/stream/777815-white-house-plan-to-close-guantanamo/777815-white-house-plan-to-close-guantanamo_djvu.txt)

about human rights, talking about how you treat prisoners, talking about how you can't have indefinite detention or the use of torture to get things out of people. And I always had pushback at me, 'But look at what you were doing at Guantanamo.'"<sup>8</sup>

- Human rights violations at the prison complicate relations with Cuba:** The terms of the United States' lease on Guantanamo Bay may preclude building a prison, as a State Department diplomat acknowledged in 2006, writing, "The United States is technically in default, and has been for many years, because the lease provides that the base is to be used only for a coaling station," and not for a military prison.<sup>9</sup> The Cuban government has cited human rights violations at Guantanamo as a reason to close the base and return the land to Cuban control. In 2013, Cuban Foreign Minister Bruno Rodriguez noted to the United Nations, "One hundred and sixty six persons have remained under detention for ten years now, without any guarantees, without being tried by a court or the right to legal defense ... That prison and military base should be shut down and that territory should be returned to Cuba."<sup>10</sup>

## Restrictions on Transfers

- Current Congressional restrictions:** The National Defense Authorization Act for Fiscal Year 2016 (NDAA), the annual defense allocation bill, imposes serious restrictions on the Obama Administration's ability to transfer Guantanamo detainees and close the prison. The law bans transfers to the United States, even for trial or emergency medical care. It also bans building or modifying prison facilities in the United States to

house any Guantanamo detainees, and adds more onerous restrictions on transferring detainees to other countries for resettlement, even after they have been cleared for transfer by all relevant national security agencies.<sup>11</sup>

## The Military Commission System

- Fundamental flaws:** The Guantanamo military commission system, conceived to try detainees for war crimes, still fails to meet U.S. constitutional fair trial standards.<sup>12</sup> It has also been extremely ineffectual: Since 9/11, the military commissions have convicted only eight detainees. Three of those convictions were overturned completely and one partially after the offenses they were convicted of were found not to be war crimes. In the same period, federal courts on U.S. soil have tried and convicted over 620 people on terrorism-related charges.<sup>13</sup>
- Procedural confusion and delays:** Pre-trial hearings in the 9/11 and USS *Cole* trials have hit procedural roadblock after roadblock. Despite multiple revisions of the military commission rules, confusion continues over which rules apply (including the Constitution), partially because of the commissions' attempt to mix rules from military and civilian courts. In comparison, U.S. federal courts, authorized by Article III of the U.S. Constitution, can draw on decades of precedent and have clear and time-tested procedures. Federal courts regularly—and speedily—handle terrorism trials without incident.<sup>14</sup> For example, in 2014 Osama bin Laden's son-in-law was tried, convicted, and sentenced to life in prison in New York federal court, eighteen months after he was captured.<sup>15</sup>

<sup>8</sup> <http://www.politico.com/story/2016/02/colin-powell-guantanamo-bay-219739>

<sup>9</sup> <https://news.vice.com/article/will-cuba-now-cash-55-years-worth-of-guantanamo-rent-checks>

<sup>10</sup> <http://www.euronews.com/2016/02/04/foreign-affairs-minister-bruno-rodriguez-parrilla-spells-out-cuba-s-new/>

<sup>11</sup> <http://www.humanrightsfirst.org/resource/guantanamo-provisions-fy2016-ndaa>

<sup>12</sup> <http://moritzlaw.osu.edu/students/groups/oslj/files/2012/01/8-Glazier.pdf>

<sup>13</sup> <http://www.humanrightsfirst.org/sites/default/files/NSD-Terrorism-Related-Convictions.pdf>

<sup>14</sup> <http://www.humanrightsfirst.org/resource/some-key-facts-military-commissions-v-federal-courts>

<sup>15</sup> <http://www.humanrightsfirst.org/blog/life-sentence-bin-ladens-son-law-hardly-soft-terrorism>