

The Trump Administration's Executive Order on Guantanamo

During the 2016 presidential campaign, then-candidate Donald Trump pledged to “load [Guantanamo] up with some bad dudes.”¹ Just prior to his first State of the Union address, President Trump signed Executive Order (EO) 13823 to keep open the detention facilities at Guantanamo.² The new Guantanamo EO does the following:

Reverses the longstanding policy of closing the detention facilities at Guantanamo. Instead, it requires Guantanamo to remain open and allows for the transfer of additional detainees there.

- The George W. Bush Administration, which opened the Guantanamo detention center, ultimately decided to work to close it because, in the words of President Bush, “the detention facility had become a propaganda tool for our enemies and a distraction for our allies.”³
- The Obama Administration continued the Bush Administration’s policy of pursuing Guantanamo’s closure when President Obama signed an Executive Order on January 22, 2009, calling for Guantanamo to be closed within one year.⁴ President Trump’s Guantanamo EO reverses this aspect of President Obama’s EO.

- To facilitate Guantanamo’s closure, President Bush transferred out over 500 detainees and President Obama transferred 197. Forty-one detainees remain at Guantanamo, five of whom are cleared for transfer.⁵ The Trump Administration has not transferred any detainees to or from Guantanamo. No detainees have been transferred to Guantanamo since 2008.
- Many top officials from Democratic and Republican administrations have called for Guantanamo’s closure.⁶

Requires the Secretary of Defense, in consultation with other agencies and departments, to submit to the president, within 90 days, detention policy recommendations “regarding the disposition of individuals captured in connection with an armed conflict, including policies governing transfer of individuals to U.S. Naval Station Guantanamo Bay.”

- Since 9/11, U.S. detention policy has included robust use of U.S. federal courts to prosecute terrorism suspects. Federal courts have successfully prosecuted more than 660 terrorism suspects since 9/11. Of these, 113 were captured overseas, including al Qaeda spokesman and Osama bin Laden’s son-in-

¹<https://www.npr.org/sections/parallels/2016/11/14/502007304/trump-has-vowed-to-fill-guantanamo-with-some-bad-dudes-but-who>.

² <https://www.gpo.gov/fdsys/pkg/FR-2018-02-02/pdf/2018-02261.pdf>.

³ <http://bit.ly/2EzGWIX>.

⁴ <https://www.gpo.gov/fdsys/pkg/FR-2009-01-27/pdf/E9-1893.pdf>.

⁵ For more, see fact sheet *Guantanamo by the Numbers*, <https://www.humanrightsfirst.org/resource/guantanamo-numbers>.

⁶ <https://www.humanrightsfirst.org/resource/former-top-us-officials-who-support-closing-guantanamo>.

law Suleiman Abu Ghaith, currently serving a life sentence in U.S. federal prison.⁷ Other individuals successfully prosecuted in federal court include Zacarias Moussaoui, the 20th 9/11 hijacker, “shoe bomber” Richard Reid, and eight men involved in the 1998 bombings of U.S. embassies in Kenya and Tanzania.⁸

- By contrast, the Guantanamo military commissions system has been an impediment to justice. The military commissions have concluded only eight cases, three of which have been overturned.⁹ The cases currently before the commissions face unprecedented delays and disruption. For example, the 9/11 case has been in pre-trial hearings since 2012.¹⁰

Requires that the current Periodic Review Board (PRB) process apply to any detainees that are brought to Guantanamo in the future.

- The PRB process reviews Guantanamo detainees’ cases to determine if a detainee should be transferred out of the prison because he does not pose an unmanageable risk, or should continue to be detained.¹¹

Unlike prior drafts of the Trump Administration’s Guantanamo EO, it does not reverse President Obama’s EO on

torture, suspend transfers from Guantanamo, or provide for a process to revisit and potentially re-establish the CIA detention and interrogation program.

- President Obama’s EO on torture requires all persons detained by the United States during armed conflict to be treated humanely. It explicitly prohibits (among other things) “violence to life and person,” “cruel treatment,” “torture,” “outrages upon personal dignity,” and “humiliating and degrading treatment.”¹²
- The CIA’s program authorized torture and other cruel treatment, in violation of both domestic and international law.¹³ Service members have a duty to disobey illegal orders. If the CIA’s program were reinstated, U.S. service members would be required to disobey and report an order to torture or otherwise abuse or mistreat a detainee.¹⁴ If not, they could be criminally responsible for war crimes.¹⁵
- Professional interrogators and intelligence experts have resoundingly expressed their view that coercive methods, such as those used as part of the CIA’s interrogation program, are ineffective at procuring reliable intelligence and cooperation from suspects.¹⁶

⁷ <https://www.nytimes.com/2014/03/27/nyregion/bin-ladens-son-in-law-is-convicted-in-terror-trial.html>.

⁸ <http://www.humanrightsfirst.org/sites/default/files/Gondlesstatement-for-the-record-April-2016.pdf>,

<https://www.justice.gov/opa/speech/attorney-general-eric-holderspeaks-theamerican-constitution-society-convention>.

⁹ <http://www.miamiherald.com/news/nationworld/world/americas/guantanamo/article2163210.html>.

¹⁰ For more, see

<https://www.humanrightsfirst.org/sites/default/files/Detention-Policy-Issue-Brief.pdf>.

¹¹ See <https://www.humanrightsfirst.org/resource/guantanamo-periodic-review-boards>.

¹² <https://www.gpo.gov/fdsys/pkg/CFR-2010-title3-vol1/pdf/CFR-2010-title3-vol1-eo13491.pdf>.

¹³ See <http://www.humanrightsfirst.org/sites/default/files/Issue-Brief-Laws-Against-Torture.pdf>; for more on the CIA’s program, see <https://www.humanrightsfirst.org/senate-report-cia-torture>.

¹⁴ <https://www.lawfareblog.com/can-us-service-members-disobey-order-waterboard-terrorist>.

¹⁵ <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/ART/390-550004?OpenDocument>.

¹⁶ <https://www.humanrightsfirst.org/resource/statement-national-security-intelligence-and-interrogation-professionals>.