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Guantanamo Detainees

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Updated: February 4, 2004 1



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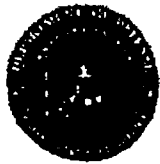
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Summary

- The war against al-Qaida and its affiliates is a real (not a rhetorical) war, and we have to fight it that way, not just as a law enforcement matter.
- The law of war therefore applies and allows us to hold enemy combatants without trial or charges until the end of the conflict; we are following the applicable rules.
- We have a thorough process for reviewing and regularly assessing detainees to make sure that (a) they are enemy combatants and (b) their continued detention is necessary in light of the threat they pose to the U.S. and the international community.
- The detainees at Guantanamo include not only rank and file jihadists who took up arms against us, but also senior al Qaida and Taliban operatives who would pose a serious threat to the international community if released.
- We have released detainees when we conclude they do not pose a significant threat, but those who we believe would launch new attacks if released must continue to be detained.
- We are working to transfer some detainees to the custody of other governments who are prepared to assume responsibility for ensuring that they do not pose a threat.
- We plan to prosecute some of the detainees for war crimes before military commissions, which are a recognized means of prosecuting enemy forces in wartime, and the process will be fair and open.

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Al Qaida and Its Affiliates are Fighting ^{DRAFT} a Real War on the U.S. and Its Allies

- **1996: Osama bin Laden** declared war against the United States, saying "*Terrorising you...is a legitimate and morally demanded duty.*"
- **1998: Osama bin Laden** again declared war against the United States, calling upon his followers "*to kill U.S. citizens -- civilian or military -- and their allies everywhere.*"
 - August 1998: Al Qaida conducted the bombings of the US Embassies in Kenya and Tanzania that killed at least 300 innocent civilians and injured more than 5,000.
- **October 2000:** al Qaida directed the attack on the USS Cole in the port of Aden, Yemen
 - Killed 17 U.S. service members and injured 39 others. U.S. responded with missile strikes on al Qaida camps in Afghanistan.
- **September 11, 2001:** Al Qaida attacks on the World Trade Center, the Pentagon, and in Pennsylvania killed nearly 3,000 people from more than 90 countries. U.N. Security Council, NATO and others recognized the events as an armed attack on the United States and agreed that our Nation is entitled to respond in self-defense. The U.S. Congress also authorized the use of force in self-defense against those responsible for the September 11th attacks.
- **November 2001: President Bush** stated that: "*international terrorists...have carried out attacks on ... the United States on a scale that has created a state of armed conflict that requires the use of the United States Armed Forces.*" U.S. and coalition forces undertook Operation Enduring Freedom to remove al Qaida and its Taliban supporters from their stronghold in Afghanistan.

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- **December 22, 2001:** Attempted bombing of a commercial transatlantic flight from Paris to Miami by al Qaida shoe bomber Richard Reid.
- **April 2002:** Al Qaida firebombing of synagogue in Djerba, Tunisia killed 19 people and injured 22.
- **May 2002:** Al Qaida affiliate Salafia Jihadia bombings in Casablanca, Morocco killed 44 people.
- **October 2002:** Recording attributed to bin Laden ally **al-Zawahiri** stated: *"God willing, we will continue targeting the keys of the American economy."*
- **October 6, 2002:** Al Qaida directed a suicide attack on the MV Limburg off the coast of Yemen that killed one and injured four.
- **October 8, 2002:** Al Qaida gunmen attacked U.S. soldiers on Failaka Island, Kuwait while conducting non-live-fire exercises. One US Marine killed, one wounded.
- **October 12, 2002:** Al Qaida affiliate Jemaah Islamiya bombing of nightclub in Bali, Indonesia killed more than 200 international tourists and injured about 300.

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- **November 28, 2002:** In Mombasa, Kenya a vehicle containing three suicide bombers drove in to the front of the Paradise Hotel, killing 15 persons and wounding 40 others. Al Qaida claimed responsibility.
- **November 28, 2002:** Two anti-aircraft were launched but missed downing a Boeing 757 taking off from Mombasa enroute to Israel. Al Qaida claimed responsibility.
- **May 12, 2003:** In Saudi Arabia, Al Qaida suicide bombers attacked 3 residential compounds for foreign workers killing 34, including 10 U.S. citizens.
- **August 5, 2003:** Car bomb exploded outside the JW Marriot Hotel in Jakarta, killing 10 and wounding 150. Al Qaida-affiliated group Jemaah Islamiya responsible.
- **February/October 2003:** Taped voice reputed to be bin Laden urged his followers to "take up jihad" and stated "*We stress the importance of the martyrdom operations against the enemy – operations that inflicted harm on the United States...*"
- **September-December 2003:** Taliban militants stepped up insurgency in southern and eastern provinces of Afghanistan, including attacks on innocent civilians and coalition forces.

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Al Qaida and Its Affiliates are Fighting ^{DRAFT} a Real War on the U.S. and its Allies

- **November 15, 2003:** Two suicide truck bombs exploded outside the Neveshalom and Beth Israel synagogues in Istanbul, killing 25 and wounding 300 more. Al Qaida-related group claimed responsibility.
- **November 20, 2003:** Two suicide truck bombings exploded near the British Consulate and the HSBC Bank, killing 25—including the British Consul General—and injuring 309. Al Qaida claimed responsibility.
- **November 2003:** Taliban bombings killed U.S. and Romanian soldiers and several Afghan civilians.
- **November 2003:** Al-Qaida bombing in Riyadh, Saudi Arabia killed 17 and injured more than 100.
- **January 2004:** Taliban bombings in Afghanistan killed UK and Canadian soldiers.
 - 11 U.S. soldiers have been killed in combat with Taliban/al Qaida forces in Afghanistan since August 2003.
- *The al Qaida network is a multinational terrorist organization with operations in more than 60 countries, sophisticated military weaponry and tactics, and substantial financial resources.*
 - The al Qaida network consists of several thousand members and associates, operating worldwide.
 - Despite coalition successes in Afghanistan and around the world, al Qaida and its affiliated operatives continue to plan additional attacks, blending into communities wherever they move.

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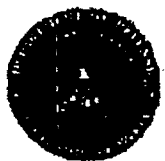
The Law of War Sets the Rules ^{DRAFT} for Detaining Enemy Combatants

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- **The law of armed conflict governs the war between the U.S. and al Qaida, including the rules for detention of enemy combatants. There is no “legal limbo” for Guantanamo detainees.**
- **The United States has the authority, under the law of armed conflict, to detain enemy combatants for the duration of hostilities.**
 - The United States and its coalition partners remain at war, both in Afghanistan and in operations around the world against al Qaida and its affiliates.
 - We continue to fight against enemy combatants who are planning and conducting attacks against us and our friends.
- **Detention of enemy combatants is not an act of punishment but of security and military necessity. It serves the purpose of preventing these combatants from continuing to fight against us.**
- **There is no requirement in the law of armed conflict that a detaining power charge enemy combatants with crimes or give them lawyers or access to the courts in order to continue their detention. States in prior wars have generally not done so.**
- **To release enemy combatants before the end of the hostilities and allow them to rejoin the fight would only prolong the conflict and endanger innocent civilians as well as coalition forces.**

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Detainees Are Not POWs Under the Geneva Conventions

- Geneva Convention accords POW status only to enemy forces who follow certain rules, which include: wear uniforms, do not deliberately target civilians, and otherwise fight in accordance with the laws and customs of war.
- Al Qaida and the Taliban militia did not follow these rules because, as groups, they systematically and deliberately have attacked innocent civilians and they do not wear uniforms that distinguish them from civilians.
- Moreover, Al Qaida is not a party to the Geneva Conventions and its fighters therefore do not receive those protections.
- Accordingly, the United States is under no obligation to grant al Qaida and Taliban forces POW status and did not do so; rather, they are unlawful combatants who enjoy fewer protections as detainees under the law of war. (By contrast, in the war in Iraq, captured Iraqi soldiers are entitled to POW status and the U.S. has treated them as such.)
- Giving POW status to those who ignore the law of armed conflict would undermine the law and threaten the civilians whom the law was designed to protect.

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Geneva Conventions (cont.)

- The Department of Defense is treating the detainees at Guantanamo humanely and providing them many privileges similar to what POWs would receive, including:
 - Three meals per day that meet cultural dietary requirements;
 - Adequate shelter and clothing;
 - The opportunity to worship (including copies of the Koran and prayer beads);
 - The means to send and receive mail;
 - Reading materials; and
 - Excellent medical care.

- Even if the detainees were POWs, they would not have the right to lawyers, access to the courts, or release prior to the end of hostilities.
 - Nothing in the Geneva Conventions provides POWs such rights and POWs in past wars have not generally been given these rights.

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Process for Identification/ Detention of Enemy Combatants

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- **Basis for Initial Enemy Combatant Determination:** At the time of capture and based on available information, Combatant and Field Commanders decide whether a captured individual was part of, or otherwise supporting, forces hostile to the United States or coalition partners and engaged in an armed conflict against the United States. Such persons are enemy combatants..
- **Enemy Combatant Determination Screening Process**
 - *There is a multi-step process for determining who is detained as an enemy combatant and, further, which enemy combatants should be transferred to Guantanamo.*
 - **Assessments in the Field**
 - First, in a hostile environment, soldiers detain those who are posing a threat to U.S. and coalition forces based on available information or direct combat.
 - After a period of initial detention, the individual is sent to a centralized holding area.
 - **Centralized Assessments in the Area of Operations**
 - A military screening team at the central holding area reviews all available information, including interviews with the detainee.
 - With assistance from other USG officials on the ground (including military lawyers, intelligence officers, and Federal law enforcement officials) and considering all relevant information (including the facts from capture and detention, threat posed by the individual, intelligence value and law enforcement interest), this military screening team assesses whether (1) the detainee should continue to be detained and (2) whether transfer to Guantanamo is warranted.

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Further Review and Process

- *Enemy Combatant Determination Screening Process continues:*
 - A General Officer designated by the Commander of Central Command then makes a third assessment of those enemy combatants who are recommended for transfer to Guantanamo Bay.
 - The general officer reviews recommendations from the central holding area screening teams and determines whether enemy combatants should be transferred to Guantanamo.
 - In determining whether a detainee should be transferred, the combatant commander considers the threat posed by the detainee, his seniority within hostile forces, possible intelligence that may be gained from the detainee through questioning, and any other relevant factors.
- **Department of Defense officials in Washington also review those proposed for transfer to Guantanamo prior to transfer.**
 - An internal Department of Defense review panel, including legal advisors, determines whether to accept or reject Central Command's recommendation that a detainee should be transferred to Guantanamo.
 - All available information is considered at this stage, including information provided by other governments and obtained from the detainees themselves.
- **Approximately 10,000 individuals have been screened in Afghanistan and released.**
 - Less than 10 % of those screened have been moved to Guantanamo.

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The Review Process Continues at Guantanamo

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Immediately upon arrival at Guantanamo, detainees are interviewed and further assessments are made.

- **Within 90 days of the arrival of a detainee at Guantanamo, the commander of Southern Command, who has responsibility for the base at Guantanamo, reviews each case to determine whether the detainee is being properly held under the law of war.**
 - This review is based on: summaries of all relevant information, information derived from questioning of detainees, information obtained from the field, information obtained from U.S. intelligence and law enforcement sources, and information obtained from foreign governments.
 - The combatant commander makes a determination based on this information as to whether the individual is an enemy combatant who can be detained under the law of war.
- **A detainee's status is reviewed annually thereafter by U.S. Southern Command to ensure that any new information has not undermined the basis for the Commander's conclusion that the individual is being properly held as an enemy combatant.**

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Process for Assessing the Threat DRAFT Posed by Detainees

- In addition to the review process described above, there is also an detailed process for gauging the threat posed by each detainee to determine whether, notwithstanding his status as an enemy combatant, he can be released or transferred to the custody of a foreign government, consistent with our national security interests.
- Each individual case is reviewed by an integrated team of interrogators, analysts, behavioral scientists, and regional experts.
- Individual detainee cases are assessed according to the threat posed to the national security of the United States and our allies.
 - Threat assessments are based on all available information from interagency sources, and are provided to Southern Command for review.
- During questioning of detainees, new information is constantly revealed, confirmed, and analyzed to determine its reliability.
 - Unfortunately, many detainees are deceptive and prefer to conceal their identities and actions, which makes the assessment process more difficult.
- The commander of Southern Command (or his designee) then makes a recommendation in each individual case based on the threat the detainee poses to the United States as well as intelligence value and/or law enforcement interest.
- Continued detention of enemy combatants is appropriate not only when a detainee is identified as posing a significant threat if released, but also when further investigation is required, or if there is a substantial law enforcement or intelligence interest.

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Oversight and Interagency Reviews

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- The commander of Southern Command (or his designee) then forwards his recommendation to an interagency committee in Washington that includes law enforcement, intelligence, and defense representatives who review each case, as well as the recommendations, to make a more fully integrated assessment.
- The Secretary of Defense or his designee is ultimately responsible for making decisions about the release or transfer of detainees from Guantanamo.
 - However, no determination is made without full consideration of interagency positions.
- This is a thorough process that incorporates additional information about the detainees as it becomes available in the course of questioning and investigation.
 - Thorough review is required to help ensure that dangerous individuals are not inadvertently released.
 - This process is not without risk, however, and assessments are made in light of the best available information at that time.

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Release Process

- **In sum, in this war, even more so than in other wars, the United States has made every effort to obtain as much information as we possibly can about those whom we have captured and whether they belong in detention. We have no interest in holding innocent people, and to do so would be inconsistent with fundamental values in which the American people strongly believe and to which we have long been committed.**
- **This is a lengthy and complicated process, but it is critical to our national security.**
 - **The review process takes a substantial amount of time. The USG works hard to avoid mistakes that ultimately may result in the death of innocent civilians. The fact that al Qaida and the Taliban do not distinguish themselves from the civilian population makes our job much more difficult than it is in more traditional conflicts.**
- **There is substantial risk that detainees at Guantanamo, upon release, would set out to kill Americans or other innocent civilians around the world.**
- **As a result of our process, more than 80 detainees have been released from Guantanamo thus far.**
- **The fact that some enemy combatants are released prior to the cessation of hostilities does not mean they were not properly determined to be enemy combatants under the law of armed conflict.**
- **Releases are not without risk if the individuals decide to resume fighting against us.**
 - **Even though we have been careful and thorough in our screening, we now believe that several of the released detainees have returned to the fight against US and coalition forces.**

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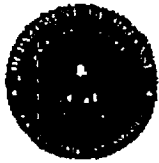
Transfer Process

- The U.S. Government is also working to transfer detainees, under appropriate conditions, to the custody of other governments that are willing to accept responsibility for ensuring that the detainees will not pose a threat to the international community.
- Four detainees have been transferred thus far, to Saudi Arabia. More transfers are anticipated in the near future.
- Various factors must be considered before any such decision to transfer is reached, including:
 - Threat posed by the detainee,
 - Law enforcement interests,
 - Intelligence interests,
 - Appropriate transfer terms, including humane treatment.
- Even though transfers are a complex process, they are extremely important.
 - Many countries must work together in fighting global terrorism.



Examples of Guantanamo Detainees

- An admitted al Qaida explosives trainer who has given us information on the September '01 assassination of Northern Alliance leader Masood and on the al Qaida organization's use of mines.
- An individual who completed advanced terrorist training at camps in Afghanistan and who participated in an attempted hijacking/escape while in custody that resulted in the deaths of Pakistani guards.
- An individual involved in terrorist financing who has provided us detailed information on Osama bin Laden's front companies and their accounts and on international money movements for financing terror.
- A Taliban fighter who spent three months fighting on the front lines in Afghanistan and is linked to al Qaida operatives connected to the East Africa Embassy bombings.
- Al Qaida operative linked to recruiting the terrorist pilots for the WTC attacks.



The Value of Detention – An Overview

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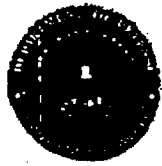
Relevant information is critical to the successful conduct of the Global War on Terrorism and flows from Guantanamo regularly.

The primary and continuing intelligence contribution of Guantanamo detainees is to **improve the security of our nation and coalition partners** by expanding our understanding of al-Qaida, its affiliates, and other extremely dangerous terrorist groups that threaten our security.

The combined effect of **this stream** of information is critical in the ongoing efforts to disrupt al-Qaida attack plans throughout the world.

- Detainees have revealed al-Qaida leadership structures, operatives, funding mechanisms, communications methods, training and selection programs, travel patterns, support infrastructures, and plans for attacking the United States and other countries.
- Information has been used by forces on the battlefield to identify significant military and tribal leaders engaged in or supporting attacks on US and coalition forces.
- Detainees continuously provide information that confirms other reporting regarding the roles and intentions of al-Qaida and other terrorist operatives.

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Valuable Information Gained through Detention

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Information on Support Operations to Al Qaida and its Affiliates:

- Detailed information on travel routes used by terrorists to reach the United States via Latin America.
- Identification of Hezb-I Islam/Gulbuddin (HIG) associates in Afghanistan.
- Detailed information on transnational funding operations in support of al-Qaida, Taliban, and HIG, as well as information on individuals suspected of money laundering for terrorist organizations.
- Information on Non-Governmental Organizations (NGOs) providing financial and material support to terrorist organizations.

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Actionable Results

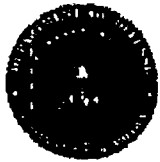
By connecting the dots, information obtained through analysis at Guantanamo is helping in the war on terrorism.

US and Coalition forces have:

- Used this information in planning and executing counter-terrorism missions.
- Developed countermeasures to disrupt terrorist travel routes into the United States.
- Focused collection on associates of Usama bin Laden and al-Qaida network operatives.
- Initiated projects to focus intelligence and law enforcement resources on the financing of terrorism.
- Expanded understanding of jihadist motivation, selection, and training processes.

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Military Commissions

- The United States plans to prosecute some detainees at Guantanamo for war crimes before military commissions.
- Military tribunals are the recognized way to try enemy combatants during wartime under the Geneva Convention, and they have been used by many countries in past wars, e.g. by the Allies in WWI and WWII.
- The military commissions will be fair and open and will include:
 - Presumption of innocence
 - Proof beyond a reasonable doubt
 - Right to counsel
 - Right to present evidence/witnesses in one's behalf
 - Right to cross examine evidence/witnesses of prosecution
 - Right not to testify, with no adverse inference to be drawn
 - Right to exculpatory evidence known to prosecution
 - Right to appeal
 - Prohibition on double jeopardy
 - Proceedings must be open to maximum extent practicable

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