



Written by [Joe Wolverton, II, J.D.](#) on January 13, 2012

## Guantanamo Bay Detention Facility Marks Decade of Operation

On January 11, 2002, the first 20 prisoners arrived at the U.S. naval base in Cuba, being ordered detained as suspected “enemy combatants” in the global War on Terror which was initiated by the Congress and the President (without, it must be remembered, a declaration of war as mandated by the Constitution) in the wake of the terrorist attacks of September 11, 2001.

Government officials representing both major political parties have praised the facility and the good work done by those charged with administering it.



Recently, Edwin Meese III, Attorney General under Ronald Reagan, writes in a [CNN opinion piece](#) that the Guantanamo Bay prison was a “world-class, state-of-the-art” necessity that “has served and continues to serve an important role in the war against terrorists since it opened 10 years ago.”

Even more head shaking than Meese’s admiration for the activities known to be carried on at Gitmo, especially given the insistence by the Bush administration and others that the prisoners were “enemy combatants,” is the story told by *The New American’s* Thomas Eddlem in [an article published last April](#):

Colonel Lawrence Wilkerson, who was Chief of Staff for Secretary of State Colin Powell, has charged in a sworn affidavit that top officials of the Bush administration — including Secretary of Defense Donald Rumsfeld, Vice President Dick Cheney, and President Bush himself — knowingly left innocent detainees to languish in prison to avoid political fallout. “Their view was that innocent people languishing in Guantánamo for years was justified by the broader war on terror and the capture of the small number of terrorists who were responsible for the September 11 attacks, or other acts of terrorism,” Colonel Wilkerson stated.

In light of such disturbing allegations and the weight of the evidence in proof thereof, many Americans regardless of party affiliation see the continuing operation of the facility as anathema to the principles of liberty and due process of law upon which our Republic was founded.

Beyond the allegations made by many Guantanamo Bay prisoners of human rights violations including torture and deprivation, many if not most of them are being denied some of the most basic of due process rights guaranteed by our Constitution, including one of the oldest — the right of habeas corpus.

Habeas corpus is Latin for “you may have the body.” It typically takes the form of a writ or order through which a prisoner is released from unlawful detention. Habeas corpus has formed a fundamental part of Anglo-American jurisprudence since the early 14th Century (some argue that the foundations of the writ are found in the Magna Carta, written in 1215).

Alexander Hamilton, writing as Publius in [Federalist Number 84](#), declares that the “establishment of the writ of habeas corpus” is one of the “greater securities to liberty and republicanism” found in our



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Constitution and that the "practice of arbitrary imprisonments [has] been the favorite and formidable instruments of tyranny."

With regard to the men being detained at the Guantanamo Bay Naval Facility in Cuba, provisions of the Military Commissions Act of 2006 mandated that prisoners at the facility were no longer entitled to have the merits of their cases heard by judges or juries in the American civil law system and thus, all outstanding habeas corpus petitions were stayed.

On June 12, 2008, however, in the case of [Boumediene v. George W. Bush](#), the Supreme Court of the United States held that the suspension of habeas corpus contained in the Military Commissions Act was unlawful and that all habeas corpus petitions stayed by that law were eligible to be reconsidered and reinstated.

One of those committed to closing Guantanamo and restoring our nation's adherence to the constitutional principles of personal liberty upon which our nation was founded was Barack Obama.

As a candidate for President, Barack Obama promised to shutter the Guantanamo Bay facility. On March 7, 2011, however, President Barack Obama signed [an executive order](#) changing the manner in which the cases of prisoners detained at Guantanamo Bay would be handled.

This order and consequent policy shift represented an outright renegeing on his campaign promises.

In the order, the President calls for review of several cases, but insists that those imprisoned must remain so because they "in effect, remain at war with the United States."

Despite the President's radical repositioning on the issue, the White House maintains that the administration is "committed to closing the detention facility at Guantanamo Bay."

To mark the detention center's decade of existence, Amnesty International (AI) published a [10th anniversary report](#) which pointed out that the existence and practices of the Guantanamo Detention Facility "continue to inflict serious damage on global respect for human rights."

In the same vein, Human Rights Watch (HRW) declared its opposition to the unlawful and indecent indefinite detention "without trial of terrorism suspects at Guantanamo Bay and elsewhere." The group sent [a letter to President Obama](#) appealing to him "to reaffirm his stated commitment to closing Guantanamo by prosecuting detainees in federal court and repatriating and resettling those who will not be prosecuted."

The American Civil Liberties Union [declared in a press release](#) marking the anniversary that "Guantanamo has been a catastrophic failure on every front. It is long past time for this shameful episode in American history to be brought to a close."

Regardless of the taste in the mouth left by many of the ACLU's more outlandish positions on many issues of constitutional relevance, their recrimination in the case of the Guantanamo Bay prison and the federal government's ongoing operation thereof is right on.

Take for example the case of Moazzam Begg. Begg is a 43-year-old British Muslim and former Guantanamo inmate who claims he was wrongly detained, abused, and tortured while being held in the custody of the U.S. military at the Naval base in Cuba. Judging from his own experience, Begg [told CNN during an interview](#) coinciding with the 10th anniversary of the facility that Guantanamo "will never close" and to hope otherwise is "simply fantasy."

Given the flip-flopping by President Obama on the issue of closing the facility, Begg's predictions will



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likely come to pass. Then, there is the issue of whether or not those detained at Guantanamo should be tried in civilian courts or brought before military tribunals.

Originally, President Obama promised to hold civilian trials for those suspected of terrorism. Specifically, he mentioned the case of Khalid Sheik Mohammed. Mohammed, a Kuwaiti national, is accused by the U.S. government of being a member of al-Qaeda, including running the group's propaganda machine since 1999.

According to the report issued by the 9/11 Commission, Khalid Sheik Mohammed was the "principal architect of the 9/11 attacks." His alleged terrorist activities also include playing a major role in the bombing of the World Trade Center in 1993, the bombings of nightclubs in Bali, and personally beheading American journalist Daniel Pearl in 2002.

He was captured on March 1, 2003 in Pakistan and has been detained at the Guantanamo Bay facility in Cuba since September of 2006.

Mohammed, 46, was charged in 2008 by an American military commission with war crimes and murder and faces the death penalty if convicted. Then, just days after the ACLU ran an ad in the *New York Times* calling upon the President to be faithful to his promise to try these suspects in civilian courts, the White House announced that they were contemplating trying Mohammed and his colleagues before a military tribunal.

In fact, Attorney General Eric Holder [announced in April](#) that Mohammed and the other four detainees classified as 9/11 co-conspirators would be arraigned before military tribunals sometime in 2012. All five face the death penalty if convicted of the charges against them. The decision to try these defendants before a military commission rather than in a U.S. federal court was a disavowal of Holder's earlier statement recommending civilian trials for the suspects.

Since 2002, nearly 800 detainees have passed through the Guantanamo Bay Detention Facility. As of January 2012, 171 detainees remain imprisoned at Guantanamo Bay.

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