

BACKGROUND | JANUARY 2021

CLOSE THE GUANTÁNAMO BAY DETENTION CENTER

**TOTAL NUMBER OF
DETAINEES HELD AT
GUANTÁNAMO: 780**

**NUMBER OF DETAINÉES
CURRENTLY HELD AT
GUANTÁNAMO: 40**

**NUMBER OF DETAINÉES
WHO HAVE DIED AT
GUANTÁNAMO: 9**

**AGE OF OLDEST DETAINEE:
72**

**NUMBER OF CURRENT
DETAINEES WHO
HAVE BEEN CLEARED
FOR TRANSFER: 6**

WHY IS THIS ISSUE IMPORTANT?

The U.S. Government opened the detention center at Guantánamo Bay in January 2002, to house people outside the reach of the law after the attacks of September 11, 2001. Since then, 780 men have been detained at Guantánamo. Nineteen years after its opening, 40 detainees remain. Most have never been charged with a crime. President-elect Joe Biden promised to close the prison when he was Vice President, and he should follow through as soon as he's in charge.

International human rights law requires that each detainee either be fairly tried in a civilian court or released to a country where their rights will be respected. Many of the men remaining at Guantánamo without charge or trial were tortured or otherwise ill-treated by U.S. agents. This is a violation of human rights and illegal under U.S. and international law.

**AMNESTY
INTERNATIONAL**



BACKGROUND

Guantánamo continues to operate as a symbol of Islamophobia that embodies the fear-mongering and xenophobia that defined Trump's presidency. Those who are cleared must be transferred immediately, and all other prisoners should either be charged and fairly tried or released, to allow this shameful institution to close permanently.

Since the first person was transferred to Guantánamo Bay in 2002 we have been campaigning for all detainees to be immediately released or charged with a recognizable criminal offense and given a fair trial. We campaign to close Guantánamo and ensure accountability for torture.

CASE STUDY

Toffiq al-Bihani, a 48-year-old Yemeni national, has been held at Guantánamo Bay since early 2003. He has never been charged with a crime. Although all relevant U.S. national security agencies determined in 2010 that al-Bihani does not pose a security risk and can be safely transferred out of Guantánamo, he remains imprisoned there, nearly a decade later. Toffiq al-Bihani has family in Saudi Arabia, where he was born and raised, and they are eager for him to return home.

Al-Bihani is one of six detainees at Guantanamo who were cleared to leave the prison, yet remain stuck there still without charge or trial.

WHAT IS AIUSA ASKING CONGRESS TO DO:

We are asking Congress to lift current restrictions on transferring Guantánamo detainees to the U.S., including for trial or medical treatment. Current U.S. law says the government must try and treat detainees at the detention center, which

limits trial options as well as the medical services the government will provide to detainees.

The detainees in Guantánamo are aging and experiencing considerable health issues (some as a result of the torture they endured at the hands of U.S. Government agents), and the approach to health care in the facility is becoming increasingly cruel. With the aging population, The New York Times has referred to the facility as a "nursing home." And the trials at Guantánamo, the military commissions, have barely moved forward: they are still unfair, and deny detainees fair-trial rights.

We are also asking Congress to refuse to fund expansion of the prison, ban any new transfers to Guantánamo, and to transfer all detainees who will not be charged with crimes to countries where they will be safe and treated fairly and humanely. As Vice President, Joe Biden promised to close Guantánamo, and should follow through on that as soon as he's President. Congress can help smooth the way there.

SHORT SUMMARY OF BILL

The likely legislative vehicle for most Guantánamo-related changes would be the National Defense Authorization Act (NDAA), the annual Department of Defense budget and spending bill.

The White House can also order changes to operations at Guantánamo, but these changes may be restricted or prevented by details in previous NDAA's.

TARGETS

Targets should include Democratic members of the Senate Armed Services Committee and House Armed Services Committee. HASC Committee Chair Adam Smith (D-WA) is a key target. SASC Committee Chair Jack Reed (D-R.I.) is also an important target. Republican or Independent members who have advocated for civil liberties—advocating trying terrorism suspects in U.S. courts or expressing discomfort with the legal justifications for targeted killing or torture, for example—are good targets as well.

COUNTERARGUMENTS AND RESPONSES

COUNTERARGUMENT:

RELEASING TERRORISTS IS DANGEROUS.

RESPONSE:

Most detainees have been held without charge or trial for over a decade in violation of internationally agreed standards of justice and human rights or tried in the unlawful military commission trials. Additionally, the prison has come to symbolize torture, rendition and indefinite detention, inspiring terrorist propaganda and bolstering recruitment. Closing Guantánamo will be an important step toward restoring the legal legitimacy of U.S. counterterrorism efforts and releasing those detainees who cannot be tried in accordance with international law is an essential part of that process.

COUNTERARGUMENT:

TRYING OR TREATING GUANTÁNAMO DETAINEES IN THE UNITED STATES CREATES HAZARDS FOR COURTHOUSES, PRISONS, AND THE SURROUNDING COMMUNITIES.

RESPONSE:

Numerous federal districts around the United States have safely tried, housed, and provided medical treatment to individuals accused of terrorism, gang leaders, and serial killers with no attacks on courthouses, prisons, or surrounding communities. Representatives of the American Correctional Association and Bureau of Prisons have also testified that U.S. federal prisons could safely hold Guantánamo detainees. A 2012 Government Accountability Office report also concluded that the United States could hold Guantánamo detainees in prisons on U.S. soil.¹

¹ <https://www.humanrightsfirst.org/sites/default/files/Gondles-statement-for-the-record-April-2016.pdf>, https://www.feinstein.senate.gov/public/_cache/files/3/9/396aa814-9eb8-4349-83e3-dcb9c795a45c/C00F65F261D9430BDD82821521DAE33F.gao-gtmo-report.pdf

COUNTERARGUMENT:

MEMBERS MAY AGREE, BUT THEIR STAFF MAY SAY THAT THEIR BOSSES CANNOT PUSH FOR CLOSING GITMO, SINCE IT IS NOT POLITICALLY VIABLE.

RESPONSE:

When Congress or the White House show the political will, progress can be made. When pressured, the Obama Administration transferred multiple cleared detainees and restarted the Periodic Review Board process. Congress has also in the past supported measures to prevent further restrictions on detainee transfers. With a Democratic majority in Congress, progress is possible. Closing Guantánamo has also been a bipartisan issue, such as during the 2008 presidential campaign, during which both Barack Obama and John McCain supported the issue. Even President George W. Bush supported closing Guantanamo by the end of his presidency.