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Contents of #3
January 11 marked a decade since the first of the men we once called "the worst of the worst" were brought to Guantanamo Bay, a location handpicked by the Bush administration so that it could detain and interrogate terror suspects far from the prying eyes of the law. In the intervening years much has improved at this remote U.S.-controlled enclave in Cuba. Allegations of ongoing torture have ceased; the detainees have access to lawyers and court
review; and more than 600 of the 779 men once held there have been released.

But in another way, Guantanamo is a **deeper problem** today than it ever was. No longer a temporary exception, it has become a permanent fixture in our national firmament. And although at one time we could blame President George W. Bush’s unilateral assertions of unchecked executive power for the abuses there, the continuing problem that is Guantanamo today is shared by **all three government branches, and ultimately by all Americans**. With President Obama’s signing of the National Defense Authorization Act (NDAA) on New Year’s Eve, the prison is sure to be with us — and its prisoners sure to continue in their legal limbo — for the indefinite future.

**President Bush** undoubtedly committed the original sin. Had he followed the rules governing wartime detention from the outset, Guantanamo would not be an international embarrassment. It has long been established that in an ongoing war a country may detain the enemy for the conflict’s duration. But the laws of war require that we afford hearings to those whose status is in doubt, that we release them when the conflict ends and that we treat them humanely throughout. Bush refused to provide hearings, asserted the prerogative to hold people during a never-ending "war on terror" and authorized systematic cruel and inhuman treatment. For years, Guantanamo was synonymous with Bush's defiantly lawless approach to the "war on terror."

But we can no longer point the finger only at Bush. He's been out of office for three years, and Guantanamo is still very much with us. **Congress**, with the support of many Democrats, has adopted a shortsighted "not in my backyard" attitude, making it impossible for President Obama to deliver on his promise to close Guantanamo. In provisions recently renewed in the NDAA, Congress has barred any transfer of Guantanamo detainees to a U.S. prison, even for criminal trial, and radically restricted the president's authority to transfer detainees to foreign countries, essentially requiring impossible guarantees that they won't ever pose a threat to the United States. As a result, even though more than half of the remaining detainees — eighty-nine of 171 — have been fully cleared for release by a joint review conducted by the military, CIA, FBI and the Department of Homeland Security, they remain stuck there. Locking up people we concede need not be held is the very definition of arbitrary detention, but that has become the norm at Guantanamo.

The **courts** are also implicated. The Supreme Court twice sought to ensure that Guantanamo would be subject to law. In 2004, in a case brought by the Center for Constitutional Rights, which almost no one thought could be won, the Court ruled that the detainees had a statutory right to challenge the legality of their detentions by filing writs of habeas corpus. When Congress repealed the statutory basis for that decision, the Court in 2008 held that the detainees had a constitutional right to seek judicial review — the first time the Court had extended constitutional rights to foreign nationals outside our borders.

But the Court left the details to be worked out by the lower courts, and because all habeas cases must be filed in the District of Columbia, the Court of Appeals for the DC Circuit — the very court the Supreme Court overturned in its habeas rulings — must hear all appeals in the Guantanamo cases. In a series of decisions that come close to echoing the South’s resistance to the 1954 *Brown v. Board of Education* ruling, the DC Circuit has rendered virtually meaningless the judicial review the Supreme Court says the Constitution guarantees.
The DC Circuit allows indefinite detention based on notoriously unreliable intelligence reports, to which it accords a "presumption of regularity," while denying the detainee an opportunity to confront or rebut them. It upholds indefinite detention based on a mere "preponderance of evidence," and several judges have said they would not even require that minimal showing. As Judge Laurence Silberman candidly stated, "I doubt any of my colleagues will vote to grant [release] if he or she believes that it is somewhat likely that the petitioner is an al-Qaida adherent or an active supporter."

D.C. district courts have granted habeas in more than thirty cases, but the DC Circuit court has vacated or reversed every order the government has appealed. The Supreme Court, once celebrated for reintroducing the rule of law to Guantanamo, has now rendered judicial review a charade by repeatedly declining to intervene.

What seems to drive Congress and the courts is the desire to eliminate any risk, no matter how remote, that a detainee might harm us in the future. Neither Congress nor the courts, however, seem to have any problem with the countervailing risk, namely that we may be needlessly and arbitrarily locking up human beings for years who pose no threat whatsoever.

Meanwhile, despite his assessment that "the existence of Guantanamo likely created more terrorists around the world than it ever detained," Obama appears to have abandoned his promise to close the prison. He vowed to veto the NDAA because of its restrictions on his authority vis-a-vis detention and trial of al-Qaida suspects, but he reversed course and signed the bill after a House-Senate conference committee watered down some of its worst provisions. The bill is better because of his veto threat, but it still assures Guantanamo's continued existence.

At the same time, Obama has blocked all efforts at accountability for the abuses committed there. Even though the vast majority of detainees have been released, suggesting they were not "the worst of the worst" after all, and even though it is widely acknowledged that detainees held there were abused and in some instances tortured, the executive has issued no apologies. Guantanamo apparently means never having to say we're sorry.

We used to be able to blame the Bush administration for Guantanamo. No more. And although the executive, legislative and judicial branches are all deeply implicated in the ongoing injustice, we can't really lay the blame on the government. Guantanamo is our problem as citizens. No doubt because only foreigners are held and tried there, Americans have consistently looked the other way, even as the world calls for it to be closed. A 2010 CNN poll found that 60 percent of Americans favor keeping the prison there. Guantanamo will not close until we insist that our government heed the calls for justice that the world has rightly made.

**Related NPR Stories**

- [A Look At Gitmo, 10 Years Later](https://www.npr.org/2012/01/11/145897508/guantanamo-at-10-u-s-weighs-future-of-detainees) Jan. 11, 2012
Notes From a Guantanamo Survivor


Kurnaz begins: "I left Guantanamo Bay much as I had arrived almost five years earlier - shackled hand-to-waist, waist-to-ankles, and ankles to a bolt on the airplane floor. My ears and eyes were goggled, my head hooded, and even though I was the only detainee on the flight this time, I was drugged and guarded by at least 10 soldiers."

READ MORE  http://readersupportednews.org/opinion2/304-justice/9331-notes-from-a-guantanamo-survivor

Obama Signs Homeland Battlefield Bill Into Law

*Sara Sorcher, National Journal*, Dec. 31, 2011, RSN

President Obama today signed the highly controversial War Spending Bill. The National Defense Authorization Act (NDAA), with its so-called Homeland Battlefield provisions, allows the unconstitutional indefinite detention of US citizens by the US military.

READ MORE  http://readersupportednews.org/news-section2/316-20/9200-breaking-obama-signs-homeland-battlefield-bill-into-law

**JANUARY 11 IS THE 10TH ANNIVERSARY OF THE ESTABLISHMENT OF GUANTANAMO BAY PRISON for U.S. ILLEGALLY IMPRISONED AND TORTURED “DETAINEES” FROM AROUND THE WORLD.** A coalition of groups including Amnesty International, the Center for Constitutional Rights, the National Religious Campaign Against Torture, the Catholic Worker, and War Resisters League are planning events. Contact www.amnestyusa.org/; www.witnesstorture.org; www.nrcat.org

The Oct.-Nov. 2011 no. of *THE CATHOLIC WORKER* announced: TEN YEARS TOO MANY: NATIONAL DAY OF ACTION TO SHUT DOWN GUANTANAMO AND END TORTURE. In D. C. a human chain representing the people still detained without charge or fair trial at Guantanamo and Bagram to stretch from the White House to the Capitol. For more info. read the article in the above no. of CW or visit the website www.witnesstorture.org or write to Witness Against Torture care of Catholic Worker, 55 E. 3rd St. , NY, N 10003.
FROM WAR RESISTERS LEAGUE

10 Years of detention and torture: Witness Against Torture January actions.

January 2-12 Witness Against Torture will spend two weeks in Washington D.C. leading up to the 10 year commemoration of the Guantanamo prison and along with it a system of indefinite detention and torture that targets Arab, South Asian, and Muslim men and necessitates the spread of rampant Islamophobia that we have seen escalating over the last decade. January 3rd marks the beginning of a jury trial of 14 WAT activists who disrupted a session of Congress to demand that they stop permanent funding for Guantanamo prison. On January 11th, the date that marks 10 years of detention and torture at Guantanamo Bay, activists will gather for a demonstration against U.S. detention policies and form a human chain from the White House to Congress. Sign-up to join the protests and/or the fast that begins on January 2nd at www.2012.witnesstorture.org

Beyond Guantanamo, a Web of US Prisons for Terrorism Inmates


The report begins: "It is the other Guantanamo, an archipelago of federal prisons that stretches across the country, hidden away on back roads. Today, it houses far more men convicted in terrorism cases than the shrunken population of the prison in Cuba that has generated so much debate. An aggressive prosecution strategy, aimed at prevention as much as punishment, has sent away scores of people. They serve long sentences, often in restrictive, Muslim-majority units, under intensive monitoring by prison officers. Their world is spare."

See Greenwald, With Liberty and Justice for *Some* for full appraisal of BushObama including Guantanamo.

END GUANTANAMO NEWSLETTER #3