

# GUANTÁNAMO BAY DETENTION CAMP: LEGAL CHALLENGES

**IMPACT:** U.S. legislation and case law have both upheld and challenged the legal authority of the Guantánamo Bay military prison. This includes the 2001 Authorization for Use of Military Force (AUMF) and the Military Commissions Act of 2006, as well as Supreme Court cases such as *Hamdan v. Rumsfeld* (2006) and *Boumediene v. Bush* (2008). Serious legal issues have arisen around the legal rights and protections of those imprisoned, including the right to habeas corpus and the right to be tried under the U.S. legal system (as opposed to U.S. military tribunals). Attorneys for those imprisoned at Guantánamo Bay military prison have been subjected to surveillance and interference by the U.S. government, and the U.S. government tightly controls the release of information about the military prison and those imprisoned there.

- **Part of the legal justification for the existence of Guantánamo Bay comes from the 2001 Authorization for Use of Military Force (AUMF)**, which was passed only a week after the September 11, 2001 attacks. AUMF allows the president to take military action against any person or organization affiliated with the 9/11 attackers. It has been used to justify a wide range of military actions in fourteen countries, the indefinite detention of adults and minors at Guantánamo Bay military prison, and ongoing drone warfare.
- In the **early days of the Guantánamo Bay military prison, the U.S. government designated the individual's it had imprisoned as “unlawful combatants” rather than “prisoners of war” or “lawful combatants.”** This distinction was important because it allowed U.S. officials to claim that the imprisoned men were not technically covered by the Geneva Conventions, which set strict limits on the conditions of detention, length of detention, and interrogation allowed for prisoners of war. This stance was overturned by the Supreme Court decision *Hamdan v. Rumsfeld* (2006), which found that rights guaranteed by the Geneva Conventions do in fact apply to those imprisoned at the Guantánamo Bay military prison.
- Five men in Guantánamo are currently being tried for their roles in the September 11, 2001 attacks and stand accused of conspiracy, murder in violation of the law of war, and terrorism. A conviction could result in the death penalty. **Although the defendants were arraigned in 2012, they are currently still in the pretrial stage and the trial itself is not due to begin until January 11, 2021.** Delays have been caused by a number of factors, including disputes over what evidence should be ruled inadmissible because of its connection to torture, the fact that three judges overseeing the trial have quit or retired, and the logistical difficulty of transporting lawyers and judges between Guantánamo Bay and the United States.
- Defense lawyers for the men on trial have repeatedly struggled with government interference. For example, **the CIA has forbidden defense lawyers from contacting any person involved with the blacksites in order to interview them. In 2013, lawyers discovered listening devices hidden in smoke detectors in rooms where they met with their clients. The following year two FBI agents approached a contractor working with the defense team and attempted to recruit him as an informant,** and in 2015 it was revealed that an interpreter in the Guantánamo courtroom had previously worked for the CIA at blacksites and had lied about that fact in his interview with the defense lawyers. Lawyers argued that this might have been an attempt to infiltrate the defense team.
- Some of the **legal rights denied to the adults and minors imprisoned in Guantánamo Bay include the right to legal representation, the right to habeas corpus, the right to be tried under the U.S. legal system, and the right to be treated as a Prisoner of War under the Geneva Conventions.** Since 2002 a number of lawsuits have challenged these rights violations, including four Supreme Court

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cases that have overturned some of these legal stances: *Rasul v. Bush* (2004), *Hamdi v. Rumsfeld* (2004), *Hamdan v. Rumsfeld* (2006), and *Boumediene v. Bush* (2008).

- **Only 0.01 percent of the total number of people who have been imprisoned in Guantánamo—ten people—have been formally charged with crimes and nine have been brought to trial in military commission tribunals instead of federal courts.** The military commission system consists of military courts used to try “enemy combatants,” and its rules differ from those used in civilian courts. The system lacks many of the legal protections and rights the federal court system provides, including trial by jury, protection from self-incrimination, protection from coerced testimony, the right to a speedy trial, and the prohibition of hearsay evidence. Additionally, **in many cases, the defense does not have access to classified evidence, whereas defendants in federal criminal courts are entitled to all evidence against them.** The military commission trials have been heavily criticized by groups like Human Rights Watch and members of the American Bar Association.
- **The rules for military commission trials have been challenged in U.S. federal court and changed several times.** The earliest version of the military commissions allowed testimony obtained by torture; the Military Commissions Act of 2009 made evidence obtained through torture officially forbidden. The 2006 Supreme Court case *Hamdan v. Rumsfeld* found that the military commissions violated the Geneva Convention and the Uniform Code of Military Justice, and were therefore illegal. In response to that decision, the U.S. Congress passed the Military Commissions Act of 2006 which established new procedures for military commissions. Among other things, it forbade any person detained at Guantánamo Bay from entering a habeas corpus plea, a provision that was overturned two years later in the Supreme Court case *Boumediene v. Bush*.
- The U.S. government tightly controls all information that is released about people held in the Guantánamo Bay prison and about past conditions in the prison; it continues to be very difficult to obtain information. For example, **every word said by the men currently imprisoned is automatically considered classified.** In 2013 it was revealed that the CIA was secretly monitoring courtroom proceedings and had the ability to shut off the courtroom video feed at its own discretion. **When Mohamedou Slahi, a former prisoner, wrote his memoir about his experiences in Guantánamo Bay prison it took seven years for the government to approve it for release, with large segments of the book redacted.** Similarly, in 2017 the John Jay College of Criminal Justice in Manhattan held an art show that displayed pieces made by current and former prisoners. Following this exhibit, the Pentagon announced that in the future, no more art would be permitted to leave the prison as it is property of the U.S. government. If the artist is released, their art will either be archived or destroyed.