

# Guantanamo Bay: “Indefinite Detention is Unconstitutional”

Human Rights Lawyer David Remes on Guantanamo Bay detainees

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by Amelia Smith

‘The courts have taken themselves out of the picture as far as Guantanamo goes because they don’t want to interfere with the President’s powers in this context’

In 2002 the United States set up a detention camp at its naval base in Guantanamo Bay, Cuba designed to imprison and interrogate suspects in the war on terror. Their methods to extract information include the force-feeding of hunger strikers, water boarding and long periods in solitary confinement.

Two years after it was opened the Supreme Court ruled that the prisoners had a right to have lawyers and trials. At the time David Remes worked at a big corporate law firm, which took on some of these cases. By July 2008 he had given up his corporate job to focus exclusively on representing the detainees.

“They were so moving and meaningful to me that I devoted more and more time to that work and less and less time to my corporate work. I reached a point when I couldn’t have it both ways and I made a choice” he says.

14 of Remes’ clients are from Yemen. Historically, the United States hasn’t had a good relationship with the Yemeni government, he tells me. In fact the four largest nationalities represented at Guantanamo have been, in this order, the Afghans, the Saudis, the Yemenis and the Pakistanis. Whilst only a handful of Afghans, Saudis and Pakistanis are still incarcerated there, the great majority of Yemenis remain.

President Obama has not released the men mainly for political reasons, says Remes. “He has been afraid of controversy about Guantanamo from the beginning of his presidency. And even though this was a signature issue for him,” he says referring to Obama’s pledge to shut down the detention facility during his first presidential campaign, “he runs at the slightest hint of opposition. It was simply the safest course not to release Yemenis.”

If President Obama transferred them, the Republicans would criticise him on the basis he was sending people back to Yemen who would then go back to the battlefield. “So it became a political football and President Obama just didn’t have the courage to follow through on his own promises.”

In February of this year, detainees began a six-month hunger strike after guards mishandled

their Qur'ans during a cell search. At the peak of the protest more than two thirds of prisoners were on strike. But to avoid fatalities, authorities were strapping the detainees to chairs and force-feeding them protein via a tube pushed through their nostrils.

The horrific nature of the strike made global headlines and turned the spotlight back on to the detention facility, bringing the issue back into the consciousness of the American people, the political elite and opinion makers, says Remes. Last week two Algerians were released, in part a result of this attention. But the question is, says Remes, whether it or not that was just a gesture.

"It really forced President Obama to get the show on the road. He has begun to take baby steps but the recent release of the two Algerians, while it's certainly a good thing, it's only a droplet. If he releases the detainees two by two it will take about 60 years or more to empty Guantanamo."

One of the released detainees, Nabil Hadjarab, was actually cleared for release in 2007 yet went on to serve six more years in prison. In fact, of the 164 detainees that remain, over half of them have been cleared for release yet many have been held for more than a decade.

Hadjarab recently featured in an [article](#) written in the New York Times by lawyer turned writer John Grisham. Upon finding out that some of his books were banned at Guantanamo, Grisham tracked down one of his fans - Hadjarab - to talk to him. The article revealed a sombre portrait of life inside the prison.

Apart from the hunger strike, international pressure from institutions like Amnesty international and articles in newspapers like Grisham's piece, is really the only alternative source of pressure says Remes. "The American people don't really care and think that the men in Guantanamo are terrorists. And the politicians all run in the other direction and the courts have all taken them out of the equation."

If the pressure mounted or Obama did decide to shut down Guantanamo tomorrow, it would not be that easy, says Remes. "Congress has passed a law that specifically forbids him to bring detainees into the US, so his only options are to transfer them or to keep them at Guantanamo." There are now 71 detainees being held indefinitely, without trial at the prison.

"Law is only law if the courts are willing to enforce it" he says on the question of whether or not indefinite detention is legal. "The courts have taken themselves out of the picture as far as Guantanamo goes because they don't want to interfere with the President's powers in this context."

"We believe that indefinite detention is unconstitutional and violates international law in this instance but our government does not. At the end of the day they do the law one way, we do the law the other way, and we have no means of enforcing our view of the law. Too often the position of the United States is that it can do whatever it wants and nobody can stop it."

Imminent US intervention in Syria, regardless of opposition within the Security Council, is another example of just this. "The grain of truth in the analogy is that the US has no regard

for international law and all it can do is be pressured by public opinion” he says.

With America consistently placing themselves above international law, is it likely that the guards at the prison, for example those that force-feed the detainees, will be brought to justice for torture? It’s a prospect he describes as “bleak.” Every single lawsuit that has attempted to hold officials accountable for torture has failed. The courts just won’t let them go forward he says.

“This is a time of great shame for our judiciary. It buckled in the same fashion back in the 1950s when we had the cold war and communism was the enemy. The courts simply pulled back and let the executive do more or less what it wanted to do.”

“There are few profiles in judicial courage where national security is involved” he adds.

Of the detainees left in Guantanamo there are those that can be sent back to their home countries and, ironically, under the convention of torture there are those that have to be resettled in other countries because the US fears they will be tortured if they return home.

One detainee, who can be returned to his own country, is Shaker Aamer a British resident who was arrested in Afghanistan in 2001. Yet he has been held in Guantanamo without trial or charge for a total of eleven years. The US professes to want to transfer him says Remes, and the UK professes to want him back. “With respect to Shaker, it’s a mystery because both say he should go back and yet he’s still there.”

“One can only speculate as to why the governments are both urging that he go back, and yet he’s still in Guantanamo. There is some kind of issue under the table that we don’t know about and it may well be the concern that on England’s side that Shaker will expose the UK’s complicity in his torture, and on the US side that he will expose its torture.”

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