

ISSUE FOCUS

Human Rights of Guantánomo Detainees under International and US Law: Revisiting the US Supreme Court Cases

Patricia Goedde*

This article reviews the US Supreme Court cases regarding detention of alleged terror suspects in Guantanamo Bay, Cuba, and examines the interplay between international human rights law and the American Constitution with respect to the executive policies of the Bush Administration to detain terror suspects. The article first references the international human rights legal framework regarding detainees, specifically the Geneva Conventions and the Convention against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment, and then analyzes seminal cases brought before the Supreme Court by detainees, specifically how the Supreme Court interprets the US Constitution and international law in reaching its decisions regarding detainees at Guantanamo. While the Supreme Court provided detainees the right to challenge the legality of their detentions through habeas corpus petitions, limitations still exist as to the lack of extraterritorial application of rights protections as well as the domestic judicial failure to redress detainees' subjection to torture and other abusive treatment.

Keywords

Guantánomo, Detainees, Habeas Corpus, US Supreme Court, Common Article 3, Geneva Conventions, US Constitution

* Associate Professor of Sungkyunkwan University School of Law, Seoul, Korea. J.D./Ph.D. (U. Washington). ORCID: <http://orcid.org/0000-0002-8251-4691>. The author gratefully acknowledges support from the National Research Foundation of Korea (NRF2013S1A3A2055081). She may be contacted at: pgoodde@skku.edu / Address: Sungkyunkwan University School of Law, 25-2, Sungkyunkwan-ro, Jongno-gu, Seoul 110-745 Korea. DOI: <http://dx.doi.org/10.14330/jeail.2014.7.1.01>

I. Introduction

The phrase ‘nine-eleven’ captures for many the horrors visited upon the United States in September 2001 when four airplanes commandeered by al Qaeda terrorists crashed into New York’s Twin Towers, part of the Pentagon, and into the fields of Pennsylvania in an aborted attempt towards the White House. The deaths of nearly 3,000 American lives and the violation of national peace and security led the administration under President George W. Bush, Jr. to begin the War on Terror. The Bush Administration responded rapidly with force, bombing Afghanistan in the hunt for Osama bin Laden and his al Qaeda operatives, and later invading Iraq in March 2003 under the justification that Saddam Hussein had stockpiled weapons of mass destruction to target the United States.¹

President Bush explained his foreign policy approach toward terrorism in the National Security Strategy of 2002, stating that terrorists groups would be destroyed by “using all means”; “exercising the right of self-defense, whether alone or with international support, in preemptive action against terrorists”; and denying support to terrorists by “convincing or compelling states to accept their sovereign responsibilities.”² Under this foreign policy initiative, also known as the Bush Doctrine, the US government set its sights abroad to capture and contain anti-American terrorist networks. By the end of 2005, the US forces had captured and held more than 83,000 prisoners.³ Among those captured, a total number of 779 suspected terrorists ended up at a detention facility at Guantanamo Naval Bay Station in Cuba.⁴ Approximately 600 have been released without charges, while 155 detainees remain at Guantanamo as of January 2014, of whom 76 have been approved for release but still remain at Guantanamo due to lack of a safe host country to take them.⁵ A total number of seven were convicted by the military convictions, and only six still remain who face formal charges.⁶

¹ See generally National Commission on Terrorist Attacks upon the United States: The 9/11 Commission Report (2004), available at <http://www.9-11commission.gov/report/911Report.pdf> (last visited on Apr. 11, 2014).

² See THE NATIONAL SECURITY STRATEGY OF THE UNITED STATES OF AMERICA, Sep. 2002, available at <http://www.state.gov/documents/organization/63562.pdf> (last visited on Apr. 11, 2014).

³ K. Shrader, *U.S. Has Detained 83,000 in War on Terror*, WASH. POST, Nov. 16, 2005, available at http://www.washingtonpost.com/wp-dyn/content/article/2005/11/16/AR2005111601475_pf.html (last visited on Apr. 11, 2014).

⁴ Human Rights Watch, *Facts and Figures: Military Commissions v. Federal Courts* (Jan. 10, 2014), available at <http://www.hrw.org/features/guantanamo-facts-figures> (last visited on Apr. 11, 2014).

⁵ *Id.*

⁶ *Id.*