

March 30, 2021

Dear Members of the Periodic Review Board,

We have written repeatedly to the Secretary of Defense to express our grave concern over Sharqawi Al Hajj's health and medical needs.¹ We write now to urge the Periodic Review Board to ensure that when determining whether to recommend Mr. Al Hajj – or any detainee – for transfer out of the Guantánamo detention facility, the Board assesses relevant information fairly, accurately, and consistent with President Biden's and Secretary of Defense Austin's commitment to closing Guantánamo.

Many of the detainees who remain at Guantánamo endured torture for which the United States government bears responsibility. Some were tortured by the CIA (as documented in the Senate Intelligence Committee's 2014 report on the CIA's Detention and Interrogation Program),² some by the U.S. military (as documented in the Senate Armed Services Committee's 2008 report on the treatment of detainees in U.S. custody),³ and some by foreign countries to which they were rendered by the United States.⁴

Detainees suffering the physical, psychological, and behavioral effects of torture and prolonged indefinite detention do not have access to effective rehabilitation, which as we have explained previously cannot be provided at Guantánamo.⁵ Detainees are also increasingly exhibiting health conditions that Guantánamo's medical care system is incapable of managing—a dangerous situation about which both independent medical experts⁶ and a former SOUTHCOM commander⁷ long ago warned. COVID-19 and attendant restrictions further isolating detainees from contact with the outside world have intensified both problems.

Sharqawi Al Hajj is a case in point. Mr. Al Hajj was taken into custody by U.S. and Pakistani forces in February 2002 then rendered by the United States to Jordan. For nearly two years he was detained there – hidden from the International Committee of the Red Cross – and tortured, including through extensive beatings on his feet and threats of electrocution and sexual abuse. He was then rendered to a CIA black site prison in Afghanistan “where he ‘was kept in complete

¹ Letter to the Hon. Mark T. Esper from human rights, civil liberties, and faith-based organizations (Sept. 10, 2019), available at https://www.fcni.org/sites/default/files/documents/12_organizations_call_for_medical_examination_for_guantanamo_detainee.pdf; Letter to the Hon. Mark T. Esper from the Center for Victims of Torture and Physicians for Human Rights (March 31, 2020), available at https://www.cvt.org/sites/default/files/attachments/u101/downloads/cvt-phr_ltr_to_sec_esper_3-31.pdf.

² Report of the Senate Select Committee on Intelligence, Committee Study of the Central Intelligence Agency's Detention and Interrogation Program (Dec. 9, 2014), Executive Summary available at <https://www.intelligence.senate.gov/sites/default/files/publications/CRPT-113srpt288.pdf>.

³ Inquiry Into the Treatment of Detainees in U.S. Custody, Report of the Committee on Armed Services, United States Senate (Nov. 20, 2008), available at https://www.armed-services.senate.gov/imo/media/doc/Detainee-Report-Final_April-22-2009.pdf.

⁴ Human Rights Watch, Double Jeopardy, CIA Renditions to Jordan, April 7, 2008, available at <https://www.hrw.org/report/2008/04/07/double-jeopardy/cia-renditions-jordan> (“Double Jeopardy”).

⁵ Deprivation and Despair: The Crisis of Medical Care at Guantánamo, a report by the Center for Victim of Torture and Physicians for Human Rights (June 2019), available at https://www.cvt.org/sites/default/files/attachments/u131/downloads/2019_phr-medical-report_v5.pdf. (“Deprivation and Despair”).

⁶ *Id.*

⁷ Posture Statement of General John F. Kelly, United States Marine Corps Commander, United States Southern Command, Before the 113th Congress House Armed Services Committee at 23-24, March 20, 2013, available at http://www.au.af.mil/au/awc/awcgate/usmc/posture_usmc_20mar2013.pdf.

darkness and subjected to continuous loud music” until his transfer in 2004 to Guantánamo. Mr. Al Hajj has now been detained at Guantánamo without charge or trial for 16 years and six months.⁸

According to multiple independent medical experts, Mr. Al Hajj has a history of chronic mental health problems – including depression, anxiety, and suicidality – and is continuing to deteriorate. These are exacerbated by the effects of his prolonged hunger strikes, and coupled with longstanding physical health problems, including profound weakness and fatigue, recurrent jaundice, severe abdominal pain, and difficult painful urination.⁹

There are several ways in which nearly two decades of confinement under these types of circumstances should influence how the Board assesses whether Mr. Al Hajj’s continued detention, and that of other detainees, “is necessary to protect against a significant threat to the security of the United States.”¹⁰

First, any refusal to participate in the PRB process should not weigh against a recommendation for transfer. A decision not to participate, especially given the adversarial and intense nature of the process, could be influenced by posttraumatic symptoms caused by torture and/or prolonged indefinite detention that have not been diagnosed or treated. These can include difficulty concentrating, intrusive fear reactions, memory impairment, fatigue, anxiety, depression, and feelings of hopelessness and suicidality.

Moreover, there are currently six detainees cleared for transfer out of Guantánamo, all but one of whom have had that designation for between five and eleven years, and yet they continue to languish. If the process that the United States government has established to determine whether detainees should be transferred does not actually result in transfers, detainees have little incentive to participate.

Second, behavior in detention that the government characterizes as misconduct, or otherwise perceives as antagonistic or dangerous, should not weigh against a recommendation for transfer. Not only is such information generally immaterial to the question before the Board, but also the Board has no way of knowing what behavior is a manifestation of untreated trauma.

According to the Substance Abuse and Mental Health Services Administration, and consistent with our clinical and related organizational experience, “the impact of trauma can be subtle, insidious, or outright destructive.” The most common [post-event] emotional reactions to trauma, which “some survivors have difficulty regulating,” include “anger, anxiety, sadness, and shame.” Some trauma survivors attempt to regulate these emotions through “engagement in high-risk or self-injurious behaviors [and] disordered eating,” among other behaviors.¹¹

⁸ Double Jeopardy at 23-25; Al Hajj v. Trump, Case No. 09-cv-745 (RCL) at 1-2, (D.D.C. May 23, 2011) (Memorandum Opinion).

⁹ Deprivation and Despair at 38-40.

¹⁰ Executive Order 13567, Periodic Review of Individuals Detained at Guantánamo Bay Naval Station Pursuant to the Authorization for Use of Military Force (March 7, 2011).

¹¹ Trauma-Informed Care in Behavioral Health Services, Chapter 3: Understanding the Impact of Trauma, Substance Abuse and Mental Health Services Administration (2014), available at <https://www.ncbi.nlm.nih.gov/books/NBK207191/>.

Mental health professionals previously stationed at Guantánamo have said publicly that they were told, or otherwise understood, not to ask about a detainee’s interrogation experiences, either at Guantánamo or with the CIA.¹² Independent medical professionals who have spent substantial time at Guantánamo and evaluating detainees confirm that omission—including that detainees’ medical records are devoid of trauma histories. Detainees have been misdiagnosed, improperly treated, or not diagnosed or treated at all, as a result.¹³

It would be morally and ethically reprehensible to effectively penalize a detainee for exhibiting symptoms of trauma – whether a consequence of torture, prolonged indefinite detention, or both – that the United States caused but will not, and at Guantánamo cannot, remedy.

This is even more so because effective rehabilitative care *could* be made available through properly constructed transfer agreements. In other words, rather than continuing to detain these men, the Board could recommend negotiating transfer agreements with other countries that guarantee comprehensive support structures. For example, detainees could be resettled in a manner that provides them medical and psychological care, housing, education, job training, a living stipend for some period, family reunification, and secure legal status with a clear track to permanent residency.

The United States could fund all of these basic needs and services for far less than the \$13,000,000 *annually* it costs to continue to hold a single detainee at Guantánamo.

Third, a detainee’s reluctance to “confess” to decades old, disputed factual allegations should not weigh against a recommendation for transfer, for several reasons. For men who have been detained nearly 20 years, to date with no prospect of discretionary transfer, contesting the legality of their detention in federal court has been their only hope for leaving Guantánamo. It is unreasonable to hold against them any refusal to make statements to the Board that their lawyers have correctly advised them – absent the government providing assurances to the contrary – could be used against them in litigation.

Irrespective of pending or future litigation, the Board cannot fairly condition recommendations for transfer on a detainees’ willingness to admit to conduct the government alleges when such admissions appear to have supported other Board decisions to recommend *against* transfer.

Finally, pursuant to the United States human rights and humanitarian law obligations, Mr. Al Hajj’s credible allegations of torture, sixteen and a half years of indefinite detention without charge or trial, and complex medical needs, should weigh in favor of his transfer.

President Biden’s interim national security strategic guidance, with which he directed all departments and agencies to align their actions, emphasizes that the United States must “remain committed to realizing and defending the democratic values at the heart of the American way of life,” “lead by the power of our example,” and “liv[e] up to our ideals.”¹⁴ For the Periodic

¹² Sheri Fink, Where Even Nightmares Are Classified: Psychiatric Care at Guantanamo, NY Times, Nov. 12, 2016, available at <https://www.nytimes.com/2016/11/13/world/guantanamo-bay-doctors-abuse.html>.

¹³ Deprivation and Despair at 20-21.

¹⁴ Interim National Security Strategic Guidance (March 2021), available at <https://www.whitehouse.gov/wp-content/uploads/2021/03/NSC-1v2.pdf>.

Review Board process to reflect that guidance, its focus should be on identifying support services and systems (of the kind described above) necessary for detainees to heal from what they have endured and rebuild stable lives. Transfer agreements could then be constructed accordingly. This approach is the best way to mitigate any risk the Board believes a transfer might otherwise pose, redress harm that the United States has caused, and make progress towards fulfilling the President's commitment to close Guantánamo safely and responsibly.

For all of these reasons, a fair and accurate review of Mr. Al Hajj's case should result in a recommendation for transfer.

Thank you for your consideration. Please direct any questions or response to Scott Roehm, Washington Director, the Center for Victims of Torture (sroehm@cvt.org).

Sincerely,

The Center for Victims of Torture

Physicians for Human Rights