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## Excuses for Detention

It appears to me that, in general, the arguments made for and against the Guantánamo prison correlate highly with conservative and liberal politics, respectively. However, the reasons for my involvement in this legal battle are apolitical. In my mind, humanity transcends politics, and human rights should never be compromised for political reasons. I represent Guantánamo detainees to preserve their human rights, regardless of their guilt or innocence. I write this article to preserve the historical record, even though some may use it against me. Of course, the statements and opinions expressed in this essay are mine and mine alone.

As people and a nation, our morals and ethics are best tested during trying times. The attack of September 11, 2001 has been described as a national crisis reminiscent of the attack on Pearl Harbor. At no other time has this great nation been more unified in giving the executive branch as much power as it required (even craved) to take action. This action took place on two fronts: an external military battle against the nations that harbored the ones responsible for 9/11; and an internal political and legal battle to expand the powers of the executive and infuse in our society a military-driven ideology reminiscent of the cold war era. Communism was conveniently replaced with terrorism as a cause of action. “Bring them on,” said the cowboys.

On the external front, the United States and the world gave a clear and appropriate message to the Taliban and al Qaeda that harboring terrorists and committing terrorism will be punished in the most extreme way. The multinational war on the Taliban was a show of human solidarity against an inhumane regime. That is where the story should have ended. Unfortunately, the administration wasted all of its political credit and goodwill around the world (as well as a national budget surplus) with the invasion of Iraq. While an analysis of the effects of the war on Iraq are beyond the scope of this short essay, it suffices to say that they will be felt by generations to come in the United States and throughout the world. In my opinion, the Iraqi war will be remembered as a major turning point for the United States as a credible and influential power in the world, and more particularly in the Middle East.

On the internal front, another war was being waged. Without the use of bombs or bullets, the Bush administration started chipping away the wall of rights protecting the individual from the mighty State. Fundamental legal and human rights were compromised in the name of the war on terror. The trademark of our prosperous democracy—the delicate balance between the executive, judicial and legislative branches—has been diluted in the name of security. This is not another conspiracy theory; it is an undeniable conclusion from the actions of the current Bush administration. In this war, I am a soldier for civil liberties and human rights.

One of these actions is the executive order establishing the Guantánamo Bay detention camp for detaining what the administration calls “enemy combatants,” the definition of which is still being debated. While initially the term was used to describe al Qaeda and/or Taliban fighters captured on the battlefield, the scope of the definition is unclear in light of the argument that, in the war on terror, the battle field is anywhere in the world. The designation of “enemy combatant” and the extraterritoriality of the detention camp are undeniable indications of the Administration’s

intention to circumvent international law generally and U.S. law specifically. This is a textbook example of the Executive branch compromising the oversight of the judicial branch and upsetting the delicate balance of our government that guarantees equality and freedom of oppression.

Through over 200 years of social, political and legal developments, this great nation has recognized and upheld various fundamental rights that made it a model for other developing nations to follow. The list is long, but this essay will primarily address the *writ of habeas corpus*, which in summary, is the name of a legal action, through which a person can seek relief from unlawful detention. The *writ of habeas corpus* has historically been an important instrument for the safeguarding of individual freedom against arbitrary state action.

In the few years after 9/11, the country was passionately debating the social, political and legal issues surrounding over 700 detainees at the Guantánamo prison. The legal debate revolved around the detainees' access to counsel and to non-military courts for challenging their indefinite detention with no due process (as of the date of this essay, the military commission resulted in two convictions, over 500 detainees have been released with no charge, and about 265 detainees remained imprisoned for over seven years).

My *habeas* work with Guantánamo detainees started in 2005 when I was a member of a team representing various detainees. One of those detainees was a Yemeni national that tragically died in Guantánamo in June 2006, before he had any opportunity to meet with counsel. At that time, the question of detainees' access to counsel, which I consider to be a fundamental human right, was unfortunately still being debated in court. The haunting question is whether this detainee's, and other detainees', deaths could have been prevented had they had access to counsel or a meaningful way of challenging their detention. I was overwhelmed by a sense of loss even though I never met my deceased client. As the only Arabic speaker on the team, I was extremely anxious about delivering the tragic news to his father.

It should be noted that the circumstances surrounding this detainee's death are controversial. Much has been reported about the wave of detainee deaths in June of 2006. The circumstances surrounding the deaths of detainees in Guantánamo are shrouded in mystery for various reasons, the least of which being the unwillingness of the government to have an unbiased third party conduct an independent autopsy. Regardless of how you interpret the circumstances surrounding the deaths of detainees in Guantánamo, the point is that these circumstances should have occurred. And the purpose of my continued involvement is to ensure that they never do.

I am currently representing several Yemeni detainees that are challenging their detention and classification as "enemy combatant." Even though much has happened since 2006, the legal progress has been very slow. As a result of multiple Supreme Court rulings, I am now able to meet with the detainees I represent, and their *habeas* petitions are active in the U.S. District Court for the District of Columbia. Nevertheless, the administration continues to argue for, and some judges have adopted, procedural rules that completely undermine the civil liberties that this Nation proudly adopted over the last century. For example, the administration is arguing to reverse the burden of proof of guilt, requiring the detainee to be considered guilty until he proves his innocence. Also, judges have ruled to admit hearsay evidence and to set the burden of proof as low as a preponderance of evidence standard (as opposed to "clear and convincing evidence" or

“beyond the shadow of a doubt.”) In other words, the administration’s way of giving a detainee a meaningful way of challenging his detention is by holding that he is guilty until proven innocent, while preventing him from reviewing and challenging classified information that allegedly proves his guilt. While I appreciate the need to classify some intelligence, combining classification with a reversal of the burden of proof results in an absurd outcome that denies detainees their basic human rights and guarantees their infinite detention.

With every passing day, the stain of the Guantánamo prison on our society darkens. After more than seven years of virtually *incommunicado* detention, the detainees (and the world) have a deeply rooted distrust in our legal system, and a lack of respect for a society that would allow this practice. It is unclear how the Guantánamo prison makes the United States safer. The powerlessness of the detainees and their lawyers has given the critics of the United States much ammunition, and is continuously fueling the terrorist propaganda. In protesting his indefinite detention, one of my clients has been on a hunger strike and force-fed for over two years. Whether you see this as Jihad propaganda or not, it is impossible to ignore that humanity is offended. While it may seem that what happens in Guantánamo has no direct impact on our daily life, it’s been said that every time we compromise our civil liberties, we build a new link in a chain that can chain us all.