

**“Guantánamo Two”
Upholding the Rights of Resettled Former Detainees**

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Executive Summary

The United States has unlawfully detained men at Guantánamo Bay for decades. Although the United States began releasing detainees during the Bush administration, a process that continues at the time of the writing of this report, these men were not and have not been afforded their full human rights. They have been transferred to countries where they had never been and where they had no family or other social contacts. These transfers occurred through secret resettlement agreements brokered by the United States.

This policy report examines the unique status of these released detainees. It considers the rights of detainees through a historical lens regarding the treatment of people outside of their country of origin and compares former Guantánamo detainees' rights to the rights of persons in analogous categories – stateless persons, refugees, and those with mental health issues – under domestic and international law. The report examines the harms perpetrated on former detainees and explores how they may be able to regain the status of persons with fundamental human rights—a status to which they are unambiguously entitled.

Section I introduces the premises of this report, that is, how the use of Guantánamo as a detention center as part of the CIA extraordinary rendition and torture program has continued to violate the rights of detainees even after their release from detention.

Section II offers an in-depth review of the experiences of former Guantánamo detainees in narrative form, allowing one to follow along with their stories.

Section III analyzes human rights principles and the rights owed to former Guantánamo detainees through the lens of history, focusing primarily on what the history of the law of war and exile can teach us.

Section IV explores the rights of persons in analogous categories under international law as a means to demonstrate that these same rights are due former detainees. It focuses particularly on the rights of former detainees to those of stateless persons, refugees, persons experiencing coerced migration, formerly incarcerated persons, and the rights of all human beings.

Section V considers the rights the United States owes to former Guantánamo detainees according to the framework of U.S. domestic law and domestic law as interpreted through its international law obligations.

Section VI provides a brief survey of nations-of-origin and receiving nations' domestic laws and demonstrates how such foreign domestic laws may be said to mandate repatriation or

resettlement practices that protect human rights. Included in the body of the report is a review of the domestic law of Yemen, selected because it is the country of origin of just over half of transferred detainees, and Serbia because of more is known about its treatment of detainees as a receiving country compared with other countries. (A fuller list of the relevant foreign domestic law of countries of origin and receiving countries may be found in the Appendix attached to the report.)

Section VII focuses on contradictions and comparisons: first, the contradictions of the critiques by the United States of other nations that surveil and restrict the rights of groups deemed to be a national security threat. It then moves to a comparison of how other countries have accepted some responsibility for their wrongful actions with regard to the United States may learn from other approaches.

Section VIII concludes with a description of the ways in which the United States is wedded to cruel treatment of detainees even as they are being released. The Section describes the policies that have attempted to prohibit detainees from possessing the works of art they were able to create in Guantánamo notwithstanding the torture they suffered, discusses the value of art for detainees and the harm that deprivation of said art has caused. This section finds its basis in international and domestic rights to art and details the destruction of art from Guantánamo by the government.

I. Introduction

Following the attacks of September 11, 2001, former President George W. Bush declared a global “War on Terror,” which, for many Muslim individuals across the world, brought devastation for decades to come.¹ The United States, through its Central Intelligence Agency (CIA), set up what would become recognized as the extraordinary rendition program, through which it captured, detained, tortured, and forcefully ostracized those it suspected of terrorist affiliation.² This systemic torture began with the “dark sites” or “black sites” the CIA established across the Middle East, and eventually culminated in the torture program used at Guantánamo Bay, a U.S. military prison located in eastern Cuba.³ For those who survived Guantánamo, many were released under secret agreements between the United States and other countries.⁴ While only limited information is available regarding these agreements or the conditions of them, some former detainees have shared their stories and what they know about their transfers.⁵ Some of the individuals who have shared their stories are Mansoor Adayfi, Lakhdar Boumediene, Sabri Muhammad Al-Qurashi, and Mohamedou Ould Slahi. While the men’s experiences display the plethora of human rights offenses exercised against former detainees, they are by no means exclusive or indicative of all former detainee narratives.

II. Former Detainee Narratives

The narratives of individuals who were detained and tortured in Guantánamo and then transferred out countries where they had no ties or history are included here as illustrative of the plight of many others who also deserve and are entitled to recognition of the harms they have suffered. Mansoor Adayfi, Lakhdar Boumediene, Sabri Al-Qurashi, and Mohamedou Ould Slahi are individuals whose stories and circumstances we were most readily able to excavate as a result of interviews we conducted, written works and public documentation we were able to review, and other means of communication in the course of the writing of this document. There are others, some of whose stories are told elsewhere, or others whose stories should be told as they may desire.

A. Mansoor Adayfi

Mansoor Adayfi exemplifies what those rendered under secret agreements have endured.⁶ He was subjected to extraordinary rendition, tortured, detained, and released per secret agreement circumstances.⁷ He has been a particularly voice in describing the ongoing suffering he and others similarly situated have experienced and has authored a book, articles and blog posts, as well as public interviews, despite threats made on his life.⁸ But before Guantánamo, Mr. Adayfi was a young boy growing up in the hills of Yemen.⁹

Raised in a rural area, Mr. Adayfi spent his first 18 years as a goat herder and, later, a security guard.¹⁰ He had just moved to Sanaa, the capital of Yemen, to study computer science, and traveled to Afghanistan on a research assignment.¹¹ Just before he was to head back home, Mr. Adayfi recalls that Afghan fighters ambushed and abducted him, and gave him to the CIA in exchange for a bounty.¹² This abduction was a result of the U.S. bounty program where U.S. troops had dropped leaflets in Afghanistan, promising bounties in exchange for Al-Qaeda members.¹³

After he was kidnapped, Mr. Adayfi was taken to a black site in Kandahar, where he was tortured.¹⁴ He was then stripped of his clothes, bound and hooded, and sent to Guantánamo Bay in Cuba, where he wouldn't leave for 14 years.¹⁵ While at Guantánamo, Mr. Adayfi and his fellow prisoners endured beatings, solitary confinement, and other methods of torture, which they protested through various means including hunger strikes.¹⁶ Much like the practices implemented during the Holocaust, Mr. Adayfi recalls that the men at Guantánamo were stripped of their names, known as little more than a number—for Mr. Adayfi, “Detainee 441.”¹⁷ He

described the sort of brotherhood that formed between the men detained at Guantánamo through the music they would sing to comfort one another.¹⁸

Mr. Adayfi was deprived of counsel for years, finally receiving a lawyer during President Obama's term in office.¹⁹ At that time, he improved his English skills and completed a computer class.²⁰ He emphasized that this permissive, "golden period" of detainment fell apart when a "stricter regime" came to power.²¹ In 2016, after 14 years, Mr. Adayfi had never been formally charged with any crime, nor had the government ruled whether his detention was lawful.²² However, deeming Mr. Adayfi to not be a threat, he was transferred out of Guantánamo and flown to Serbia.²³ As Mr. Adayfi notes, "the United States looked at those people, the prisoners, as a problem that they needed to get rid of."²⁴ He had never been to Serbia, but it is where he remains today.²⁵

Serbia represents death to many Muslims, as all Mr. Adayfi knew of Serbia when he was forced to live there was that Serbian forces had slaughtered Muslims during the Balkan Wars of the 1990s.²⁶ He said that although he would have preferred to be rendered to Qatar, where he had family, or even Oman, which he understood to treat former Guantánamo detainees well, he was met with a Serbian team prior to his departure from Cuba.²⁷ They told him he would be treated as a citizen and would have opportunities to finish his education and receive a passport and identification.²⁸ They promised him a fresh start.²⁹

When he arrived in Serbia, however, the government greeted him with news that they had made a deal with the United States to keep him for two years, during which he would have no rights, and then they would deport him.³⁰ He found surveillance cameras around the apartment provided to him in Belgrade.³¹ But, more than the sense of restriction and of being watched was the loneliness that he experienced there.³² Mr. Adayfi described it as being of "a new kind" of loneliness as compared to the loneliness in Guantánamo.³³ Mr. Adayfi couldn't leave Serbia and, regardless of where he went, he was followed by police who would warn off anyone with whom he tried to start a friendship or seek comradeship.³⁴ He described many instances where acquaintances were later interrogated by police about Mr. Adayfi, and so he told them to delete his phone number for their protection.³⁵ Mr. Adayfi was engaged to a woman who was stalked by Serbian authorities, scaring her away and ending their romantic relationship.³⁶ He urges Americans to "imagine being taken and tortured, and then . . . sent to a country [in] total isolation with no friends, no family, no support, no rights."³⁷

Mr. Adayfi says that while some of the government's public smearing of former detainees has declined, it varies depending on the contemporary political climate and those in power.³⁸ Under the Obama administration, the State Department was monitoring former detainees' situations abroad, but former President Donald Trump shut that department down and amped up the torture used at Guantánamo, promising to fill the prison once more.³⁹

Mr. Adayfi receives government financial help but struggles to find work because of the years he spent in Guantánamo, which leads to financial hardships because the aid is not enough.⁴⁰ Additionally, the government requirements associated with any assistance he receives has isolated him. For example, Mr. Adayfi lives in his government-issued apartment, far from other Muslims.⁴¹ When Mr. Adayfi was seen praying outside, he was removed by police from the area.⁴² He laments the Serbs' fear of former detainees, even within the Muslim community, noting that the media played a major role in shaping peoples' minds about them.⁴³ Serbia, he says, simply does not like Muslims.⁴⁴

Despite the challenges he faced in doing so, Mr. Adayfi recently completed a bike tour.⁴⁵ He said that even to do that, to leave Belgrade, he was required to report to authorities in advance of any travel and specify where he was going.⁴⁶ Initially, the Serbian authorities told him he was prohibited from going, but he informed them that he was not asking for permission, but rather informing them of his planes per the advice of his U.S. attorney.⁴⁷ He recalls that during this trip, he and others made a conscious effort not to take photos in public places for fear of retaliation by the Serbs.⁴⁸ Of being sent to Serbia with no information regarding his transfer, Mr. Adayfi denounced the United States' role in torturing someone to the point that they are damaged physically and mentally, and then shipping them off to a place where they have no support.⁴⁹ He said, "[y]ou've handed a broken person to ignorant people who do not care."⁵⁰

Mr. Adayfi said that his view of an ideal life after Guantánamo would culminate in his marriage to a Muslim woman through traditional means and building a family with her.⁵¹ Although he made a connection with a woman abroad in 2019, authorities refused his request to travel to see her which ended the possibility of a relationship.⁵² He said that the pain of losing her was of a different kind than in Guantánamo—"the worst pain, it touches your soul."⁵³

Mr. Adayfi recently finished his bachelor's degree in management and is now pursuing a master's degree, for which he is developing his thesis on reintegrating former detainees into society.⁵⁴ While he celebrates this personal victory as the first of what he was initially promised

in Serbia coming to fruition, Mr. Adayfi said, “[Guantánamo] follows [him] every place [he] go[es]. America punishes you for 15 years, and then the rest of the world punishes you for the rest of your life . . . people just cannot believe that America would make a mistake.”⁵⁵

While Mr. Adayfi’s transfer conditions are notably worse than those who were transferred to more hospitable countries,⁵⁶ he acknowledges there are others—such as those in Saudi Arabia and the United Arab Emirates—who cannot speak up because they’ve been kept in years of solitary confinement and further tortured in their nations of resettlement or repatriation.⁵⁷ One man, he says, upon arrival to his destination country, was denied necessary medical care and died four months later.⁵⁸ But Mr. Adayfi explains that any narrative that tells his story is only a fragment, saying “I’m still in the process of living my story,” and there is still so much to be done.⁵⁹ Mansoor Adayfi has since written a book, *Don’t Forget Us Here: Lost and Found at Guantánamo*, published in 2021.⁶⁰

B. Lakhdar Boumediene

In October 2001, Lakhdar Boumediene was arrested upon instruction from the United States along with five other Algerian men in Bosnia.⁶¹ These men were arrested on allegations of a bomb plot against the Sarajevo U.S. embassy—allegations that were later deemed unfounded.⁶² After a brief, three-month detainment in a Bosnian prison, Mr. Boumediene was transferred to Guantánamo in January 2002 and remained there for seven-and-a-half years.⁶³

Mr. Boumediene served as the lead petitioner in the Supreme Court case *Boumediene v. Bush*,⁶⁴ which established the constitutional right of Guantánamo detainees to challenge in federal court the lawfulness of their detention by the United States.⁶⁵ After being formally cleared of wrongdoing by the Supreme Court, he was released to friends and family in France.⁶⁶ Although his conditions are more favorable than other resettled former detainees, he was sent to an unfamiliar country and has yet to receive reparations or an apology from the United States.⁶⁷

Perhaps the most tragic element of Mr. Boumediene’s story is the loss of time he suffered.⁶⁸ He decries the fact that “The United States stole seven years from me,” and when he was released, he reported that his wife saw him as a stranger because the trauma he experienced in Guantánamo left him in a difficult psychological state.⁶⁹ Similarly, he says his two daughters that were born prior to his incarceration did not recognize him when he returned.⁷⁰ He has had three more children since that time, but conveys the deep sadness he experiences having missed seven years of his daughters’ lives.⁷¹ His life after release has been strained in many ways.

Algerian authorities, despite granting him a passport via the consulate three years into his residence in France, refused to receive him upon his clearance and release from Guantánamo because they did not want to take a “potential criminal,” even though he was formally found innocent.⁷² He explains that he would have much preferred to return to Algeria or Bosnia, but given that both countries refused to accept him following his detainment, he now has lost trust that he could find a better life in either location.⁷³

Mr. Boumediene has residual mental health issues as a result of torture and detention in Bosnia and Guantánamo for which he sought treatment when he first came to Nice, France.⁷⁴ Because of limited options, he was required to travel to the Amnesty International-referred therapist’s office in Marseilles which meant an entire day public transportation.⁷⁵ Eventually, he became so exhausted by the burdens of the trip, he could no longer go for therapy visits.⁷⁶ He hopes to return to it, especially now that he finally has health insurance.⁷⁷ After searching unsuccessfully for six years for employment because of the stigma surrounding his detention, he finally got a job in a bread factory.⁷⁸ There, Mr. Boumediene worked triple shifts, which consisted of hard physical labor.⁷⁹ At one point, he suffered a back injury at work, likely due in part to his deterioration in Guantánamo and lack of control over work circumstances in Nice.⁸⁰

Mr. Boumediene published a book, *Witnesses of the Unseen: Seven Years in Guantánamo*,⁸¹ in 2017, but reports that while at Guantánamo, he was prohibited from having any tools for creative expression because of a refusal to end his hunger strike.⁸² He recalls the guards chastised and threatened that he could only have these items if he would give up his protest.⁸³ He refused to eat until they agreed to tell him the charges that were filed against him.⁸⁴ He never did get an answer.⁸⁵ Mr. Boumediene now works as an Uber driver and often gives travel tips to tourists.⁸⁶ He reported one instance where a client, to whom he offered travel guidance, was friendly until she found out about his time in Guantánamo, after which she indicated that she was fearful of him.⁸⁷ After enough of these interactions, he no longer shares his story with others.⁸⁸

C. Sabri Al-Qurashi

Sabri Al-Qurashi is a Yemeni man living in Kazakhstan, where he was resettled after release from Guantánamo in 2014 after 12 years of imprisonment.⁸⁹ Mr. Al-Qurashi was born in Yemen, raised in Hafer al-Baltin, Saudia Arabia.⁹⁰ He dropped out of middle school to assist his father in a small perfume business and later worked with the International Islamic Relief

Organization for two years.⁹¹ Mr. Al-Qurashi performed religious missionary work, and traveled to Pakistan to purchase goods for his business and continue his mission work.⁹² On September 17, 2000, Mr. Al-Qurashi went with 10 other Yemeni nationals as part of a *dawa* (preaching) mission to Krachi.⁹³ While working in a low-level position at a training camp, he was arrested by Pakistan's Inter-Service Intelligence Directorate, which was working with the United States.⁹⁴ He was then transferred to Kandahar Detention Facility and handed over to U.S. custody.⁹⁵

Mr. Al-Qurashi was transferred to Guantánamo on May 5, 2002.⁹⁶ One reason he was under heightened suspicion after capture was that officials claimed he offered conflicting or differing stories in interrogations.⁹⁷ He denied all association with Al-Qaeda and the Taliban, but was still believed to be a member of Al-Qaeda and kept in detainment as medium-risk.⁹⁸ As of November 5, 2004, Mr. Al-Qurashi remained an enemy combatant, according to Mark H. Buzby of the U.S. Navy.⁹⁹ Per former President Obama's executive order from January 22, 2009, the Interagency Guantánamo Review Task Force conducted a review of Mr. Al-Qurashi's case, and he and four other men were repatriated to Kazakhstan in December of 2014.¹⁰⁰ The five men had been cleared for release since 2009, when the task force had initially reviewed their cases.¹⁰¹ Three of those men had been approached for release under former President Bush, however, none of them were released until 2014.¹⁰² The Obama administration said at the time that the men were "free . . . for all intents and purposes after the transfer."¹⁰³

Yet, after his resettlement in a small city located on a former nuclear test site in Kazakhstan, Mr. Al-Qurashi discovered just how many freedoms he lacks.¹⁰⁴ Now, he remains there alone, unable to leave, in a "state worse than jail," because, he says, "at least [at Guantánamo] [he] had hope [he] would one day be in a better place."¹⁰⁵ Contrary to what the government of Kazakhstan told him prior to repatriation, he has no citizenship status, no ID, and no friends or connections in Kazakhstan.¹⁰⁶ He recounts often being stopped by police when he ventures outside his apartment, only to be asked to present identification he does not possess.¹⁰⁷ Upon his inability to produce an ID, he is sometimes taken to the police station until, hours later, someone from the International Committee of the Red Cross comes to retrieve him.¹⁰⁸ He is also prohibited from accessing medical care he needs for facial nerve damage sustained after being punched by a disguised police officer who asked him to remove his jacket.¹⁰⁹

Seven years ago, Mr. Al-Qurashi was married to a Yemeni woman via a family arrangement.¹¹⁰ However, because of their circumstances, they have never met—he cannot leave

and she cannot travel to Kazakhstan to live with him.¹¹¹ Despite his pleas to the government for permission to leave, his situation remains stagnant.¹¹² Since his resettlement from Guantánamo, Mr. Al-Qurashi has pursued a career in art.¹¹³ He has publicly asked President Biden to release the art he made while detained, along with six other petitioners.¹¹⁴

D. Mohamedou Ould Slahi

Mr. Slahi was born in southern Mauritania, in Rosso, and grew up in Nouakchott, the Mauritanian capital.¹¹⁵ Mr. Slahi was a bright young man and was the recipient of a scholarship to study engineering in Germany.¹¹⁶ Over the next few years of young adulthood, he lived in Germany, Canada, and Mauritania.¹¹⁷ He joined Afghan Mujahideen forces opposed to Afghanistan's Soviet-backed government in the early 1990s, but has had no ties with what emerged as Al-Qaeda.¹¹⁸ Despite his lack of ties to Al-Qaeda, Mr. Slahi agreed to questioning by Mauritanian officers regarding alleged terrorist activity in 2001.¹¹⁹ He was transferred to the custody of whom he believed to be Jordanian intelligence officers, detained in a Jordanian prison, and then transferred to a military base known as a dark site in Bagram, Afghanistan.¹²⁰ In August of the following year, he was sent to Guantánamo.¹²¹

Mr. Slahi took pen to paper and wrote throughout his incarceration, leading to the publication of his memoir, *Guantánamo Diary*,¹²² in 2015, while he was still detained.¹²³ The United States only permitted the publication of his writings after multiple sections of the diary were redacted.¹²⁴ In 2017, after his release, he republished the diary with the redacted passages included.¹²⁵ His book has now been published in over 25 countries and translated to other languages across the world.¹²⁶ It details his physical and psychological abuse experience at Guantánamo.¹²⁷ *The Mauritanian*, a film adaptation of his memoir, was released in February 2021, and Mr. Slahi has garnered critical acclaim and international recognition for both his memoir and the film adaptation.¹²⁸

Mr. Slahi, by his attorneys, filed multiple habeas petitions, and requested his medical records using the Freedom of Information Act.¹²⁹ After a tumultuous dispute with the Department of Defense (DoD) and the Department of Justice (DoJ), the records were finally received.¹³⁰ It was immediately clear that those who had tortured Mr. Slahi had read his records, specifically targeting their torture to inflict the most harm on his pre-existing injuries.¹³¹ The records also proved that those who tortured Mr. Slahi had broken his ribs, contributing to the chronic pain he endures to this day.¹³² Mr. Slahi also had a gallbladder removal surgery while in

Guantánamo, which has notably poor medical facilities for detainees, and this has caused him lasting pain.¹³³

Mr. Slahi was reviewed by a Periodic Review Board in July 2016, the entity which determines whether continued detention of individuals at Guantánamo remains necessary, and was cleared for release.¹³⁴ He was flown to Mauritania that October.¹³⁵ Once there, he was informed that Mauritania, per an agreement with the United States, would not issue him a passport for the first two years after his arrival.¹³⁶ Further, despite Mr. Slahi's application for a new national ID which was filed within a few weeks after he arrived, he did not receive a Mauritanian national ID card until July of the following year.¹³⁷ Mr. Slahi applied for a passport in Nouakchott in January of 2019—more than two years after his arrival to Mauritania—but did not receive either a passport or response from the government for months.¹³⁸ Nor was given any written statement of the rationale for the government's refusal to provide him with a passport or other travel papers.¹³⁹ Similarly, he was never allowed to challenge Mauritania's refusal.¹⁴⁰

These circumstances violated Article 10 of Mauritania's Constitution which guarantees that citizens may enter and leave Mauritania at their leisure.¹⁴¹ Article 12 of the African Charter on Human and Peoples Rights, as well as Article 12 of the International Covenant on Civil and Political Rights (ICCPR), also provides this right, subject to specified restrictions codified in law.¹⁴² Mauritania has signed on to these treaties, in addition to its own provision of this right.¹⁴³

Additionally, pleas by Mr. Slahi's legal team to the Mauritanian authorities regarding his inability to get treatment in Mauritania for chronic back pain and other torture-related health concerns failed in granting him the ability to travel for medical treatment.¹⁴⁴ He finally received his passport on the third anniversary of his repatriation to Mauritania.¹⁴⁵ He has since visited the United Kingdom and the Netherlands, although the process for obtaining visas to those countries has been an arduous one, as well.¹⁴⁶

Since his release, Mr. Slahi has not gone back to engineering work, choosing instead to focus on his career as a writer.¹⁴⁷ He has gone on to write several other books—and has rewritten the three books that have never been returned to him from his time in Guantánamo.¹⁴⁸ Mr. Slahi is also currently married and has a young son.¹⁴⁹

As noted in the introduction to this section, there are other former Guantánamo detainees

who have had some parts of their stories told and many others who should as they may desire. The narratives included here illustrate the horrific circumstances faced by detainees who have left Guantánamo and have entered the realm of what is now referred to as “Guantánamo *Two*.”

III. History as a Foundation for Human Rights Principles

Human rights principles are well-established in the modern, post-World War II world.¹⁵⁰ But, human rights history did not begin in 1945. Principles underlying today's human rights law have clear roots in the enlightenment. Less clear, but ever present, are the roots of human rights stretching back to antiquity. These are codified rights deeply rooted in history and natural law. Beyond that, there are significant historical antecedents for the protection of groups analogous to released Guantánamo detainees. Legal systems do not stand alone in history. Stories, anecdotes, and examples of implementation accompany the law. These historical vignettes offer insight into a world far beyond the seventy-odd years of formalized human rights systems.

History is “who we are and why we are the way we are.”¹⁵¹ We teach it to our children from a young age.¹⁵² It remains vital to our legal system and political institutions. We watch history television shows and movies, listen to history podcasts, and read books about history. History matters, and history can help win hearts and minds.

The United States has done little for men held at Guantánamo. For years, activists have tried to secure justice with little success.¹⁵³ The United States has sidestepped accountability and avoided any semblance of justice.¹⁵⁴ Expect nothing less when dealing with a country that has a fraught relationship with international and human rights law.¹⁵⁵ The United States has a hesitant relationship with international systems, which are the foundation of much human rights law.

This section will offer a historical perspective. The fight for justice is not a fight for a panacea. A winning legal argument is not enough, at least not in this context where the legal wrongs are clear and no justice is done.¹⁵⁶ For the men resettled in a country that is not their home, there is little protection or provision. They do not fit neatly into any protected group or class. So, we turn to history to discern what the United States owes them.

In the second half of the 20th century, human rights laws reached a zenith, beginning with adoption of the United Nations Charter and the Universal Declaration of Human Rights (UDHR). After the pall of global war lifted in 1945, uncovering horrendous abuses by the Nazi regime, human rights law flourished. The world adopted major multilateral treaties to protect individuals and human rights. Sprawling networks of non-governmental organizations, activists, lawyers, and governments blossomed to protect and enforce human rights. But history began earlier.

Principles of modern human rights law have existed since time immemorial. However, no ancient culture understood the equality of all individuals.¹⁵⁷ Then again, neither does any nation

today, not even the most strident proponents of human rights.¹⁵⁸ Although no culture or society was perfect, there are lessons to learn from the past. Past human rights practices can give insight into our obligations to former Guantánamo detainees today. History is a long story of increasing respect for individual humanity and greater protection of human rights. We can build on the past to determine our duties now.

Our concern is twofold: how history has given us the foundation of today's human rights laws, and best practices from history that we should exceed in a world that is always moving towards greater justice. Tracing the development of the law of war allows us to see how interwoven the past and modern law is. Insight into past laws and practices should inform our treatment of Guantánamo detainees today. If we divorce the present from the past, it becomes too easy to argue that the past is impertinent.

A. The History of the Law of War

From Ancient Rome to the Rome Statute of 2002 that established the International Criminal Court, the law of war is an interconnected story through history. Much of that story is rooted in ancient religious practices, and principles of the law of war are influenced in large part by religious law. In a religious country such as the United States,¹⁵⁹ stories from the religious tradition can be effective at garnering support. Here, where Islamophobia persists in the long wake of 9/11,¹⁶⁰ it is helpful to consider Islam's approach to enemies.

A close examination of Hebrew and Christian scripture yields not only accounts of extraordinary violence and inhumanity, but some of the earliest accounts of laws that formed the basis of human rights traditions up to the modern age. Laws and proverbs regarding treatment of enemies are common, often as glimpses into mercy and humanity. Much like the Hebrew Bible, the Qur'an contains myriad indications of mercy, equality, and rights. Less gracious approaches to enemies appear in both the Old Testament and the Qur'an as well, but clear underpinnings exist for a humane, gracious, just, and merciful system of treatment for enemies. The Old Testament offers a story of these principles played out. The Israelites had their enemy surrounded within the walls of an Israelite city.¹⁶¹ The king of Israel, seeking guidance on how to handle the enemy, consulted the prophet, Elisha.

“My father, shall I kill them? Shall I kill them?’ . . .
‘You shall not kill them. Would you kill those whom you have taken captive with your sword and bow? Set food and water before them, that they may eat and drink and go to their master,’ Elisha

answered.”¹⁶²

The king then prepared a great feast for the Syrians. They ate, drank, and the king sent them away to their master.¹⁶³

This interaction indicates an understanding in Israelite culture that the treatment of their enemies should be one of mercy. “Would you kill those whom you have taken captive with your sword and bow?” shows that this is a broader sentiment than just the particular situation. Elisha appeals to the standard treatment for enemies captured by force—that they not be killed. And what alternative treatment is there to them being killed? Here, it is to provide them with food and drink and send them back to their people. The Israelites provide food and drink for their enemies and send them away. This is an act of mercy not even required by today’s humanitarian law.

The long history of the law of war undergirds our international humanitarian law. But the present legal system doesn’t offer much insight into the unique situation of resettled Guantánamo detainees. Still, religious laws of war offer significant insight into how we should treat our enemies. Logic tells us that we should treat those who are not our enemies—the falsely imprisoned, tortured, and innocent—with even more kindness, mercy, and care.

One challenge of applying the laws of war to the former Guantánamo detainees is that they are not soldiers, nor enemy combatants, and they are no longer prisoners. The principles underlying international humanitarian law give us guidance, but even they are incomplete. Many religious roots of the law of war concern themselves with the treatment of one’s enemies. These men released from Guantánamo are not enemies, they have done no wrong. But, again, logic must prevail—our treatment of them must, at least, be that which we owe to our enemies.

Here, we can take a page from the ancient Israelite playbook. These men are at the mercy of the United States and mercy should be extended to them. We have spared their lives, although, as the following discussion of exile makes clear, we have as good as condemned them to capital punishment. History tells us we owe them more. We owe them a bountiful feast, to provide for their needs, and to support them and give them safe passage back to their home.

B. The History of Exile

Cultures throughout history considered exile to be a fate as bad as, or worse than, death. In Greek tragedies, Roman law, Islam, and even Shakespeare, there is a common thread of exile being a nearly unbearable fate. This understanding should inform our responsibilities to the men that we have sent to exile today. In the late Roman Republic, exile was often considered an

alternative to capital punishment. Before the middle of the first century, exile in Roman society was largely a voluntary process for individuals to avoid legal trouble.¹⁶⁴

The function of exile in the Roman legal system shifted over time. *Exilium* was the form of voluntary exile, obtainable before a formal conviction.¹⁶⁵ Depending on the forum in which the case was heard, *exilium* could also be chosen after a conviction.¹⁶⁶ Exile functioned at this time as a way to avoid punishment, and nearly all capital trials in the Republic ended in *exilium*.¹⁶⁷ *Exilium* always resulted in banishment from Rome, often from Italy as a whole, and most likely from any community that held Roman citizenship.¹⁶⁸ The *aquae et ignis interdictio* (stripping of rights and property) was used to prevent those pre-conviction exiles from returning to Rome once the populace had forgotten the crime.¹⁶⁹ The tribune of the plebs were the moving party in initiating this interdiction action, and it was enforced by the consuls.¹⁷⁰

The *aquae et ignis interdictio* became a bona fide criminal penalty during the late Republic. When non-voluntary exile was first used as a punishment in 63 BCE, it did not impose the *interdictio*, but by 52 BCE, with creation of the *lex Pompeia de vi*, it was likely included as a penalty for a capital offense.¹⁷¹ Voluntary exile persisted, but by the end of the Republic and into the Principate, some crimes were punished by permanent exile, given teeth by the *interdictio*.¹⁷²

Alongside, and even preceding *exilium* as a penalty at law, the Roman magistrates were able to order a person to leave Rome through *relegatio* (banishment).¹⁷³ This was a method rarely used against Roman citizens, but often used to remove unwanted foreigners.¹⁷⁴ The punishment of *relegatio* continued past the death of the Republic and was used frequently in the Empire as a criminal penalty.¹⁷⁵ Among those banished by *relegatio* was Ovid, the Roman poet.

Ovid, banished by Augustus Caesar in 8 CE, wrote *Tristia*, a collection of poetic letters, during exile.¹⁷⁶ Exiled to Tomis on the Black Sea, Ovid writes in *Tristia* of his exile as a living death,¹⁷⁷ and wishes for death to escape the pains of exile.¹⁷⁸ For Ovid, death would have been a sweet relief. For broader Roman society, exile was an alternative to death in a capital case. This understanding does not extinguish with the fall of the Roman Republic or Roman Empire.

William Shakespeare, no stranger to writing about the law,¹⁷⁹ wrote about themes of exile in many of his plays.¹⁸⁰ Exile as a horrible fate is most explicitly laid out in *Romeo and Juliet*.

Romeo has killed Tybalt and waits to hear his fate. The friar tells him he will not face execution:

Friar: A gentler judgement vanish'd from his lips,
Not bodies death but body's 'banishment.'

Romeo: Ha! Banishment! Be merciful, say 'death,'

For exile hath more terror in his look
Much more, than death. Do not say ‘banishment.’

...
‘Tis torture and not mercy.¹⁸¹

Romeo understood banishment to be a more severe punishment than death. This is a similar sentiment to that from Roman law and writers. Exile is to be condemned to a virtual death.

Themes of exile arise in Greek tragedy, as well. In Euripides’ *Medea*, exile plays a large role, and the titular character speaks from such, “I have no land, no home, no refuge from my pain.”¹⁸² In Islam, exile is a punishment for the apostate who fights Allah and His Apostle.¹⁸³ For the man guilty of that crime, exile is an alternative punishment to being killed or crucified.¹⁸⁴

History also gives a sterling example of how harm caused by exile can be remedied. In the late 600s BCE, Nebuchadnezzar, ruler of the Babylonian Empire, was driving the Egyptians out of Asia.¹⁸⁵ Nebuchadnezzar crushed Israel’s historic enemies and Israelite people were supportive.¹⁸⁶ The good relations between the Jews and Nebuchadnezzar screeched to a halt when he suffered a serious defeat at the hands of the Egyptians in the Sinai desert.¹⁸⁷ In 598 BCE, Nebuchadnezzar led his army into Palestine, conquered Judah, and laid siege briefly to Jerusalem.¹⁸⁸ The city was spared complete destruction, but the temple was looted.¹⁸⁹ Jehoiakin, who had inherited the throne, was exiled to Babylon with around 3,000 Jewish nobleman.¹⁹⁰

The new king, Zedekiah, was loyal to Nebuchadnezzar for nine years before the 558 BCE rebellion, which was crushed.¹⁹¹ The king was dragged to Babylon with around 15,000 other Jews.¹⁹² In five years’ time, the Babylonians returned to crush another rebellion and hauled off several thousand more Jews to Babylon.¹⁹³ The captivity of the Jews in Babylon would last for around 70 years, but the exiles were free to move through Babylonia and communicate with what relatives may have remained back home.¹⁹⁴

In 539 BCE, the Persian ruler Cyrus conquered Babylon.¹⁹⁵ For the Jews, the conquering Persians offered relief from the tyranny of Babylon.¹⁹⁶ At the same time he was restoring pagan sanctuaries that Babylonians had desecrated, Cyrus issued an edict concerning repatriation of the exiled Jews.¹⁹⁷ The edict read:

“This is what Cyrus king of Persia says: . . . Anyone of his [God’s] people among you – may his God be with him, and let him go up to Jerusalem in Judah and build the temple of the Lord, the God of Israel, the God who is in Jerusalem. And the people of any place where survivors may now be living are to provide him with silver

and gold, with goods and livestock, and with freewill offering for the temple of God in Jerusalem.”¹⁹⁸

This treatment of the Jews is not isolated. Cyrus repatriated other exiled groups and showed no special favors.¹⁹⁹ The Cyrus Cylinder, commissioned within months of Cyrus entering Babylon, indicates that he gathered displaced Mesopotamians to return them to their homes and places emphasis on social rehabilitation.²⁰⁰ Resettled former Guantánamo detainees are more analogous to exiles than any other category discussed. A hostile power has torn them from their homes and banished them to a third country—away from family, friends, and their homeland. But there is also a vital difference between former detainees and historical examples of exile—these men have committed no crime. They have not been charged with a crime. They are innocent, yet, they have suffered severe punishment. History would understand their exile to be the most extraordinary verdict, akin to death. We have given capital sentences to the innocent.

The ancient Roman understanding of exile was as a fate alternative to death, often imposed as punishment for capital crimes. Ovid would rather have died than continue his exile from Rome. Shakespeare, through Romeo, understood it as much the same—that death would have been preferable to banishment from Verona. How, then, can we sentence former Guantánamo detainees to exile, a virtual death sentence? Dozens of innocent men have been exiled by the United States and we have the duty to return them home. History would be appalled at our treatment of them and would demand their return. Cyrus gives us a model to follow. Justice requires not just that we return them to their homes, but that we give them protection and support to get there and rebuild their lives.

Offering to return former detainees to their home is the bare minimum. To do otherwise is to send them into exile and condemn them to death. The longing of the poet Ovid from exile should ring in our ears as we consider these men. He writes, speaking to the book he is writing to be read in Rome, his home, “[f]ind someone who sighs about my exile, and reads your verses with wet eyes, and silently wishes, unheard by enemies, my punishment lightened by a gentler Caesar [T]he Leader’s anger done, grant me the right to die in my native country.”²⁰¹ We similarly owe these men the right to live and die in peace in their native country. As Cyrus stood astride the ancient earth, as Rome conquered the known world, so the United States reigns as the preeminent global power. Let us take our power in hand, be a gentler Caesar, and lighten the punishment we have imposed upon these men.

History cannot answer all our questions, and neither can the law. Where the law fails us, we should turn to history to learn. What we find in the depths of historical study might not always be helpful, but the arc of history is long, and it bends toward justice. That does not mean that we can just sit by and watch it bend—we must get up and help it on its way. We can do that by ensuring that our present policy does not fall short of past practice. Where our treatment of former Guantánamo detainees is worse than past cultures' treatment of similarly situated men, we know we are standing on the wrong side of history.

IV. Rights of Persons Under International Law: Considering Analogous Categories

A. The Process of Release from Guantánamo

The process of getting released from Guantánamo is unlike being released from a prison in the United States after being charged with a crime, convicted through trial, and sentenced to a finite amount of time in prison. Guantánamo detainees are not afforded similar due process, or any process at all. First, many former detainees were never formally charged with any crime, likely because they may have never committed any.²⁰² Moreover, those who had been convicted did not have fair trials or were coerced into pleading guilty in exchange for release.²⁰³ Thus, when detainees are released, it is not because they have served a justly imposed sentence, but, rather, because of mounting domestic and international political pressure.²⁰⁴

While the release process has evolved over the last two decades, this section will focus on the present as the most recent example of due process and other violations. From 2013 to the present day, the government has established a Periodic Review Board (PRB) that continually evaluates remaining detainees to decide whether it is necessary to continue holding them.²⁰⁵ However, even if the PRB approves a transfer, detainees have no say in where they are taken. Further, these transfers are subject to secret resettlement agreements²⁰⁶ brokered by the United States.²⁰⁷ Although the United States has publicly committed to brokering humane resettlement agreements,²⁰⁸ many former detainees are facing a variety of security measures, surveillance, and are barred from traveling after release.²⁰⁹ Therein lies the legal issue. They are transferred to countries with which they lack familiarity or knowledge without formal residency or travel documents. The men feel like they are stuck in a new, different kind of prison, hence the name *Guantánamo Two*.²¹⁰

B. Statelessness After Guantánamo

The international community defines a stateless person as someone “who is not considered as a national by any State under the operation of its law.”²¹¹ By definition, the former detainees are still citizens of their home countries; however, they are not afforded any protection by state laws. These persons reside in a grey area, a status that customary international law vehemently opposes because of the state of vulnerability it creates. The Universal Declaration of Human Rights, while not a treaty, serves as a foundational document that captures the fundamental concepts of international human rights laws and is deemed to be customary

international law.²¹² Under Article 15(1), “[e]veryone has the right to a nationality.”²¹³ Moreover, under the American Convention on Human Rights, “[e]very person has the right to leave any country freely, including his own.”²¹⁴ However, former detainees are not afforded these fundamental rights after release.

1. The History of Statelessness and the UNHCR’s Creation and Involvement

In 1950, the United Nations created an agency to assist World War II refugees with resettlement—the United Nations High Commissioner for Refugees (UNHCR).²¹⁵ The UNHCR has since expanded their role of helping refugees to include helping stateless people due to the hardships they face as a result of their involuntary legal status.²¹⁶

a. The Global Action Plan to End Statelessness: 2014-2024

The UNHCR first addressed statelessness through the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.²¹⁷ The United States has not acceded to either convention.²¹⁸ In 2014, the UNHCR launched their “#IBelong Campaign to End Statelessness by 2024.”²¹⁹ This global Action Plan “establishes a guiding framework comprising 10 Actions to be undertaken by States.”²²⁰ While each action may play a role in ameliorating the status of former detainees, this section discusses Action 1.

b. Action 1 of the Global Action Plan

Action 1 seeks to “resolve existing major situations of statelessness.”²²¹ The UNHCR has offered support when statelessness is “due to discriminatory social attitudes” by initiating dialogue, reconciliation, and confidence building.²²² The organization explained that “pledges made by particular states in the context of UNHCR’s 2011 Ministerial Meeting” can “facilitate implementation of this action.”²²³ The 2011 Ministerial Meeting gathered representatives from the United Nations Member States to commemorate the 50th anniversary of the 1961 Convention on the Reduction of Statelessness.²²⁴ The United States was in attendance, represented by Hillary Clinton in her capacity as Secretary of State.²²⁵ During the Ministerial Meeting, the United States made one pledge with regards to statelessness: to address statelessness through foreign policy initiatives by “focus[ing] U.S. diplomacy on preventing and resolving statelessness among women and children, including efforts to raise global awareness about discrimination against women in nationality laws and to mobilize governments to repeal nationality laws that discriminate against women.”²²⁶

While the United States failed to pledge support for all stateless persons, they are obligated to apply their pledge to former detainees who have been rendered stateless due to the

U.S. government's own actions. Moreover, the Supreme Court has recognized that statelessness is a "form of punishment more primitive than torture."²²⁷ The government's goal is to "focus U.S. diplomacy on . . . resolving statelessness."²²⁸ Thus, the Biden administration and Congress have an obligation and opportunity to put forth policy initiatives resolving the never-ending Guantánamo problem that rendered persons who were wrongfully captured, tortured, and now transported to an unfamiliar place where they have few rights and protections.

A viable solution to the statelessness issue is to simply offer detainees the choice of where they want to reside. If the men are free, without any charges or convictions, then they should be treated as such. While some countries may harbor similar fears about terrorism as the United States, particularly because of Islamophobia and the taint associated with detainment at Guantánamo, many European Union nations have agreed to accept detainees into their countries.²²⁹ Coupled with giving these individuals a choice in their resettlement, the United States should also refrain from creating obstacles to citizenship, as a matter of reparations.

To fulfill their pledge, the United States should ensure the accessibility of residency and travel documents. The government should omit any condition in the secret resettlement agreements²³⁰ that would allow the receiving countries to restrict the issuance of travel documents, including passports and ID cards. Moreover, the agreements should emphasize that the former detainees are innocent.²³¹ Thus, they should be afforded full human rights and treated on par with other persons lawfully authorized to be in those countries.

Furthermore, customary international law recognizes the right to free movement,²³² and while the United States may not be a signatory to formal international treaties, it also recognizes this right to freedom of movement. Under the Fifth Amendment, the United States recognizes that no one shall be "deprived of life, liberty or property without due process of law."²³³ Liberty encapsulates freedom to move from place to place, unobstructed. The United States Supreme Court has reaffirmed its commitment to the right to liberty numerous times.²³⁴ Moreover, the government can take steps to extend due process protections to former detainees. These individuals have a right to be informed of the process guiding their release and transfer, the right to an attorney,²³⁵ and the right to an opportunity to be heard²³⁶—in other words, they should have not only a choice in where they are transferred, but also a transparent release process. The United States, as a normative matter, is obligated to protect these rights and to avoid taking any action that would deny them to former detainees in order to avoid undermining the principles to which

it propounds. The government has the opportunity to fulfill its pledge to protect against statelessness by giving the released men a better chance at a new life.

C. Former Detainees as Refugees

One approach to the problem that released detainees face is to examine their circumstances through the lens of international laws relating to refugees and refugee immigration in the United States, even if this is not a strict legal fit. The United Nations' 1951 Refugee Convention and the 1967 Protocol Relating to the Status of Refugees defines a refugee as "someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion."²³⁷ Many of the freed men from Guantánamo fit neatly into this definition. They are unable to return to their home countries in some cases because they believe they will be persecuted or tortured.²³⁸

1. Refugee Status Under International Law

The Universal Declaration of Human Rights (UDHR) and other international conventions also provide a framework for refugees seeking asylum. Article 14 of the UDHR recognizes a person's right to seek asylum from persecution in other countries.²³⁹ Moreover, Article 5 of the UDHR and Article 7 of the International Covenant on Civil and Political Rights (ICCPR), to which the United States is party, states, "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."²⁴⁰ The United States is also a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which states in Article 3(1) that "[n]o State Party shall expel, return ('refouler') or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."²⁴¹ This refoulment prohibition applies to "any form of removal or transfer of persons, regardless of their status."²⁴² Thus, it applies to former detainees being transferred from Guantánamo, as fear of persecution has been established.²⁴³

The United States is not a party to the 1951 Refugee Convention Relating to the Status of Refugees; however, it is party to its 1967 Protocol Relating to the Status of Refugees. Articles 26, 27, and 28 of the 1951 Refugee Convention deal with freedom of movement, identity papers, and travel documents.²⁴⁴ Article 26 compels countries to "accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory."²⁴⁵ The fundamental right to choose is not only a human right, as stated in multiple international

treaties,²⁴⁶ it is also a right encapsulated by the Fifth and Fourteenth Amendments to the U.S. Constitution.²⁴⁷ Thus, the United States would uphold the principles of the 1951 Convention, as well as its own constitution, by sending former detainees to countries that have acceded to and abide by the 1951 Refugee Convention Relating to the Status of Refugees.

Article 27 of the 1951 Convention provides that states “shall issue identity papers to any stateless person in their territory who does not possess a valid travel document.”²⁴⁸ Article 28 requires states to issue travel documents to refugees.²⁴⁹ These articles demonstrate yet another affirmation of core principles underlying customary international law. States party to the 1951 Convention have a duty to issue identity and travel documents to any refugee in their territory,²⁵⁰ and the United States, as party to the 1967 Protocol to the 1951 Convention, has a duty to uphold these principles and transfer former detainees to countries that respect these rights as well.

D. Former Detainees Under the Coerced Migration Model

Refugee law encompasses a wide array of legal statuses and definitions. T. Alexander Aleinikoff, Director of the Zolberg Institute on Migration and Mobility, conceptualized the various statuses under three basic models: the statelessness model, the human rights model, and the coerced migration model.²⁵¹ The coerced migration model is focused on those fleeing harm.²⁵² Moreover, the coerced migration model recognizes that “there are reasons for flight that merit protection beyond those [typically] identified,” such as war and natural disasters.²⁵³ Thus, this model takes into account the socially invisible persecution that former detainees face.

Furthermore, this perspective “identifies loss of community as the fundamental harm,” and identifies the solution as “restoration of community either through return (when conditions permit) or the creation of community elsewhere.”²⁵⁴ This is the crux of *Guantánamo Two*. These former detainees are stripped of human dignity, tortured, and when finally released, they are robbed of the family, friends, and community they knew before.²⁵⁵ Reparations and restorative justice must include, if not begin with, an attempt to reunite these men with family and a support system. Therefore, in considering solutions to the consequences of *Guantánamo*, borne mainly by the former detainees, the United States, policy makers, and human rights advocates should view resettlement policies through the perspective of the coerced migration model.

E. Former Detainees Under the Mandela Rules

“We are still in jail” are the famous words of Mr. Adayfi as he expressed denunciation of injustice that he, and many others, continue to suffer from, even after release into the so-called

free world.²⁵⁶ Many released per secret agreements with the United States continue to suffer extreme rights violations that restrict ability to engage in day-to-day social activities contributing to a healthy life, and suffer from harassment, disparagement, and isolation as a result.²⁵⁷

Horrors and taint brought by Guantánamo detainment triggers legal obligations which dictate how we should treat people after release. While former detainees are resilient, it is reasonable to expect significant problems in the aftermath of the trauma. Thus, they are entitled to protections and rights under international law.²⁵⁸ Several international legal norms apply to these individuals, including various provisions under the Mandela Rules, the Geneva Convention, UDHR, and Convention on the Rights of Persons with Disabilities (CRPD). This section will focus on the pertinent Mandela Rules and the Geneva convention.

1. The Rights of Formerly Detained Individuals Post-Release Under the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)

Detention and imprisonment are traumatizing experiences, especially when an individual has been wrongfully detained, isolated, and denied all ability to communicate with family or other supportive individuals. Individuals released from prison often need help and resources for rehabilitation and reintegration into society. The Nelson Mandela Rules provide the standard minimum rules for the treatment of prisoners during incarceration and post-release.²⁵⁹ While these rules are not promulgated in the form of a treaty, they provide compelling and powerful global agreement on basic standards.²⁶⁰ As advocates and justice seekers, we have obligations to the former detainees even after their release.

2. The Governing Mandela Rules

Mandela Rule 90 states that “[t]he duty of society does not end with a prisoner’s release. There should, therefore, be governmental or private agencies capable of lending the released prisoner efficient aftercare directed towards the lessening of prejudice against him or her and towards his or her social rehabilitation.”²⁶¹ Rule 38 provides that “[f]or prisoners who are, or have been, separated, the prison administration shall take the necessary measures to alleviate the potential detrimental effects of their confinement on them and on their community following their release from prison.”²⁶²

Mandela Rule 110, addressing the health conditions that arise from incarceration, states that “[i]t is desirable that steps should be taken, by arrangement with the appropriate agencies, to

ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric aftercare.”²⁶³ Rule 108 requires “[s]ervices and agencies . . . which assist released prisoners in re-establishing themselves in society shall provide[] released prisoners with appropriate documents and identification papers, [ensure they] have suitable homes and work to go to, [and guarantee that they] have sufficient means to reach their destination.”²⁶⁴

3. The Applicability of the Governing Mandela Rules

Mr. Adayfi, as of today, cannot work in Serbia, or *almost* anywhere else, because of his prior wrongful detention and wrongful characterization as someone associated with detention.²⁶⁵ As he has stated, he is looked down upon and depicted as a criminal who is undeserving of the opportunity to earn a livelihood.²⁶⁶ Mohamed Jawad, a former detainee who was captured in his teenage years, was repatriated to his home country of Afghanistan after spending more than six years in Guantánamo is still forced to remain under restrictions due to his status as a former Guantánamo detainee.²⁶⁷ The U.S. government bears responsibility for such prejudice against former detainees and should be held accountable for the ramifications of its actions by lending the former detainees the proper care to lessen prejudice against them.

Mr. Adayfi, who should have been provided with all of the rehabilitative services that he rightfully deserves, could have then decided to return to a country of his choice where he could exercise agency and determine his life course, including educational opportunities, employment opportunities, support from family and friends, and most of all, treatment with dignity and respect. Mr. Jawad should be given the same opportunity, as well. Had he been given the chance to experience the world as an adult outside of prison and recover from traumatic experiences that changed the course of his teen years, he might have decided to reside in a country that caters to opportunities he seeks and life goals he has. Regrettably, that is not the case.

Implicit in the U.S. government’s duty of social rehabilitation and to mitigate the prejudice against detainees is the obligation to assure that they are granted the opportunity to decide their fate and life circumstances irrespective of their status as former detainees and are fully supported in their decisions.²⁶⁸ Given that the United States and many countries receiving detainees have entered into agreements to impose significant controls and restrictions on these individuals, it is reasonable to interpret Mandela Rules 38 and 110 as requiring the administration to alleviate the harms that result from confinement after release and resettlement.²⁶⁹

These obligations are starkly required considering the trauma resulting from shackling, waterboarding, forced feeding, psychological torture, and many other forms of torture, leaves the individual in a state of disarray and dissociation.²⁷⁰ Flashbacks, panic attacks, hyper arousal, sleep problems, grief, self-harm, and suicidal feelings are all common mental health effects of trauma.²⁷¹ However, most of the former detainees are not provided with physical health services, let alone mental health services.²⁷² Lakhdar Boumediene, a former detainee whose innocence was declared by the highest tribunal in the United States, was the exception, in that he received mental health services upon his arrival in France.²⁷³ Even then, the psychiatric services that he was offered were not easily accessible as a result of the resettlement conditions and limited his ability to benefit from such services.²⁷⁴

Former detainees should be afforded the opportunity to address emotional, physical, and psychological difficulties that arose during confinement and make a decision based on the best course of action that would address their needs.²⁷⁵ The United States should provide them with counseling, health services, and economic opportunities to help rehabilitate them and allow them to reintegrate into the society of their choice.²⁷⁶ Given the stress and trauma that former detainees endured, failing to provide accessible mental health services would further exacerbate their existing mental health conditions, undermining the purpose of mental health treatment and recovery services.²⁷⁷ As such, there needs to be additional safeguards to ensure that former detainees are able to access mental health services in close proximity to their residence.

Mandela Rule 108 also makes it clear that released individuals are entitled to suitable homes, stable jobs, and the means to travel without restrictions and otherwise move about and arrive at their chosen destination.²⁷⁸ A suitable home includes establishing a home in a society where they may live their lives in accordance with their interests and needs. This rule also protects rights that are fundamental to the well-being of the individual, such as the right to have a fulfilling job and to make a living.²⁷⁹ One's prospects for a job is much higher in a country or place that is welcoming, understanding, and supportive of the individual's background and life circumstance. One's prospect to be independent, successful, and content are also much higher in a place where they can realize their dreams, live without restraint, prejudice, and discrimination, and be able to provide for themselves. Therefore, former detainees should be afforded the opportunity to reside in countries that support their interests and values.

4. The Mandela Rules Provide a Guiding Framework for Treatment of Former Detainees

The Mandela Rules confer upon prisoners and detained individuals basic human rights, including rights to communicate with family and friends, to be treated as members of the community, to rehabilitation, to work, and to practice their religion.²⁸⁰ For example, Mandela Rules 58, 59, 65, 88, and 96 guarantee that detainees remain connected with their families and communities, and that they are entitled to rehabilitative work.²⁸¹ If detained individuals are guaranteed these rights, then what about released individuals who have been deemed faultless?²⁸² The basic rights of detained individuals under the Mandela Rules provide a helpful framework for determining the minimum rights that should be guaranteed to released individuals.

F. The Rights of Formerly Detained Individuals Under the Geneva Convention Relative to the Treatment of Prisoners of War

Although the United States ratified the Third Geneva Convention,²⁸³ it has attempted to evade the law by creating an unfounded label for Guantánamo detainees as “enemy combatants,” in order to remove its actions from the purview of international law.²⁸⁴ The Geneva Convention sets the minimum standards of care for the treatment of prisoners, particularly prisoners of war, and prohibits the use of cruel and degrading treatment.²⁸⁵ The Bush Administration reasoned that because Afghanistan is not a functioning state, the President has authority to suspend performance of the Geneva III obligations to Afghanistan, and by association, the Taliban militia.²⁸⁶ However, a review of the background of detainees undermines what is best described as an irrational interpretation of the law. More than half of the detainees are non-Afghanis with no ties to Afghanistan or the Taliban.²⁸⁷ The Administration erred when it created a new label for detainees and did so without justification and in disregard of the facts.²⁸⁸ In fact, the Geneva Convention should apply to Guantánamo detainees in accordance with international law.

Article 21 of the Convention states that

“[p]risoners of war may be partially or wholly released on parole or promise, in so far as is allowed by the laws of the Power on which they depend. Such measures shall be taken particularly in cases where this may contribute to the improvement of their state of health. No prisoner of war shall be compelled to accept liberty on parole or promise.”²⁸⁹

Sending individuals who were unlawfully detained to other countries under secret agreements

may be compared to releasing prisoners on parole. While this is not the most favorable outcome for ex-detainees, it is still pertinent to the analysis of rights protections for detainees released from Guantánamo.

Article 111 mandates that “[t]he Detaining Power, the Power on which the prisoners of war depend, and a neutral Power agreed upon by these two Powers, shall endeavor to conclude agreements which will enable prisoners of war to be interned in the territory of the said neutral Power until the close of hostilities.”²⁹⁰ There is a major emphasis on the receiving country being a “neutral power,” which is defined as a “nation[] not taking part in hostilities.”²⁹¹ While Serbia did not directly participate in the rendition and detainment of individuals in Guantánamo, it cannot be considered a neutral power considering its hostile disposition toward Guantánamo detainees. Moreover, the Serbian government has a history of violence against Muslims.²⁹²

Released detainees, as with released prisoners of war, should be residing in places where they do not continue to experience the horrors related to their unlawful detention.²⁹³ The Serbian government, indirectly, is an accomplice and instigator in the human rights violations suffered by Guantánamo detainees.²⁹⁴ Finally, it is important to acknowledge that it is the United States that entered into a secret agreement with countries, including Serbia, to accept the transfer of Guantánamo detainees.²⁹⁵ It must be assumed that the United States bears significant, if not all, responsibility for the egregious circumstances in which released individuals find themselves.

Prisoners of war should only be released to environments and locations that contribute to their well-being and the improvement of their condition.²⁹⁶ Similarly, former detainees should only be sent to countries that would foster their welfare, and not to countries under the watch of the U.S. government and other foreign governments.²⁹⁷ Serbia, particularly the area in which Mr. Adayfi is currently living, does not contribute to Mr. Adayfi’s well-being, but undermines it.²⁹⁸ A country or place that is Islamophobic, unaccepting of individuals with a record of detention, lacking the resources and willingness to support diverse individuals, and that is completely abhorrent to the individual’s basic rights surely does not contribute to the well-being of Mr. Adayfi, a Muslim Yemeni man who has been unlawfully detained for over 15 years.²⁹⁹

G. The Protections and Guarantees for Formerly Detained Individuals Under the UDHR and CRPD

The Universal Declaration of Human Rights (UDHR), to which the United States is a signatory, guarantees the right to life and the right to be secure in one’s person.³⁰⁰ Some

provisions of the UDHR ensure that individuals who may not be physically and mentally secure, as a result of human rights violations they have suffered, have a basic and foundational right to guarantees of support in order to attain security and well-being.³⁰¹ The right to security in the event of disability includes security derived from choosing their place of residence, to freely travel, to live a private life free of intrusion and surveillance, to freely work and earn a fair living, to freely and creatively think and explore, and to see and bond with family.³⁰²

Many provisions of the Convention on the Rights of Persons with Disabilities (CRPD)³⁰³ are applicable to Guantánamo detainees whose circumstances upon release, notwithstanding their resilience, have exacerbated their suffering—particularly their mental health and well-being.³⁰⁴ Although the United States has yet to ratify the CRPD, other countries implicated in the human rights violations of Guantánamo detainees, like Serbia,³⁰⁵ are signatories. Serbia has knowledge of the torture that Mr. Adayfi experienced,³⁰⁶ and has an affirmative obligation as a CRPD signatory to take steps to enhance Mr. Adayfi’s rights as a person who experienced torture, to extend protections and guarantees of the treaty, and to not enter into agreement with the United States for conditions that would exacerbate his mental and physical harms.³⁰⁷

V. Rights Owed by the United States to Persons to be Released from Unlawful Detainment in Guantánamo Pursuant to Domestic Law and Mediated by U.S. International Obligations

This section focuses on the rights that the United States owes to the men held unlawfully in Guantánamo, now released, by examining the rights guaranteed by the U.S. Constitution as informed generally by international human rights law. Chiefly, this section covers the right to due process, the right against cruel and unusual punishment, and the right of double jeopardy; as well as the fundamental medical rights violated by the 2011 National Defense Authorization Act.

A. Due Process Clause of the Fifth Amendment Interpreted Through Binding International Human Rights Principles

The U.S. Supreme Court affirmed in *Boumediene v. Bush*³⁰⁸ that Guantánamo detainees are entitled to *habeas corpus* protections as provided by the U.S. Constitution. In holding that their extraordinary situation does not deprive them of constitutional due process rights, the Court stated that “[l]iberty and security can be reconciled; and in our system they are reconciled within the framework of the law.”³⁰⁹ The Court concluded that “[t]he Framers decided that habeas corpus, a right of first importance, must be a part of that framework, a part of that law.”³¹⁰ The scope of due process applicability has been in dispute since *Boumediene* was resolved.³¹¹ Nevertheless, a critical analysis sheds light on the logic of *Boumediene* in providing a means to seek remedies for violations enumerated by international law that the United States, as party, may not unilaterally abridge within its own domestic legislative framework.³¹²

Arguably the most pressing due process concern at issue is the PRB’s continued violations of safeguards under domestic and international human rights law by failing to take into consideration the needs of the detainee upon release and the appropriateness of the country to which he is transferred.³¹³ Typically, once a detainee is transferred to a receiving country, the U.S. government leaves to said country whether it will seek further legal proceedings or security measures against the detainee, and whether and how his human rights will be protected.³¹⁴ The United States’ position has been that the federal government need only comply with the principle of non-refoulement and its own laws. The principle of non-refoulement is that “[n]o state has the right to expel, return or otherwise remove any individual from its territory whenever there are ‘substantial grounds’ for believing that the person would be in danger of being subjected to torture in the State of destination.”³¹⁵

The laws related to the transfers of detainees that are to be followed by the United States are set out in Executive Order 13567 and the Foreign Affairs Reform and Restructuring Act (FARRA) which is consistent with the framework of various laws, including the Authorization for Use of Military Force and the Laws of War.³¹⁶ Specifically, United States representatives have reduced the federal government's duties to preventing the repatriation or resettlement of former detainees to countries that may torture them upon arrival.³¹⁷ This is in reference to FARRA § 1242(a), prohibiting the United States from “effect[ing] the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture.”³¹⁸

The only other provision of FARRA concerning involuntary returns is § 1241(a), which prohibits “the involuntary return by the United States of any [refugees] to a country in which the [refugee] has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion,” except as exempted by the statute.³¹⁹ That said, the Inter-American Commission on Human Rights (IACHR) has equated the condition of Guantánamo detainees to that of refugees under international law;³²⁰ thus, there may be no persuasive grounds on which to exclude Guantánamo detainees from the due process rights in § 1241(a) other than the federal government's mere reluctance to recognize the comparison and its tendency to abuse semantics for the sake of maintaining these detainees beyond the protections of the law. These provisions create the context of understanding how the United States has deprived detainees of due process upon their release from Guantánamo.

1. Lack of Domestic Accountability for the Periodic Review Board's Violations of Due Process and of the Principle of Non-Refoulement

The stated position of the United States is that it shall only transfer a Guantánamo detainee to a receiving country if various factors for humaneness are met, including:

“[T]he individual's allegations of prior or potential future mistreatment in the receiving State; the specific factors suggesting that the individual in question is at risk of being tortured . . .; whether similarly situated individuals have been tortured . . .; and any humane treatment assurances provided by the receiving State (including assessment of their credibility).”³²¹

However, by transferring former Guantánamo detainees without providing them with an opportunity to be heard on the circumstances of the proposed release to countries posing a

significant risk to their lives and safety, the United States has demonstrably failed to adhere to its stated policy.

For example, this was the case of former detainee Djamel Ameziane, who was forcibly transferred to his birthplace of Algeria by the United States in December 2013, despite expressing well-founded fear of arbitrary punishment by the Algerian authorities.³²² Specifically, Ameziane had communicated to the U.S. government that he feared being unlawfully arrested in Algeria “on the basis of: stigma relating to his time in Guantánamo, his prior application for asylum in Canada, and his and his family’s status as observant Muslims in their hometown of Kabylie, Algeria.”³²³ Elaborating on the stigma of his time held in custody by the United States, Ameziane’s brother added that “everyone thinks my family is connected to terrorism because [Mr. Ameziane] is in Guantánamo,” illustrating that Ameziane would be received upon his arrival not as a wrongful detainee, but as a permanent suspect of international terrorism.³²⁴

The IACHR condemned this forcible transfer as a “violation of international human rights law,” particularly the principle of non-refoulement and IACHR’s precautionary measures 211/08 and 259/02.³²⁵ Measure 211/08 requested that Ameziane be free from “torture or . . . cruel, inhuman, or degrading treatment” and that he not be transferred to another country that may inflict these or other unlawful evils upon his person.³²⁶ Measure 259/02 called on the United States to immediately shut down Guantánamo detention facilities, transfer remaining detainees in compliance with non-refoulement and other applicable international law, ameliorate conditions of confinement for any detainees subject to trial, and fully enforce due process guarantees.³²⁷

However, the U.S. District Court for the District of Columbia viewed the stigma of having been detained in Guantánamo as insufficient to support an action for *habeas* relief pursuant to 28 U.S.C. § 2241.³²⁸ Ameziane contended that a court finding that his detention was unlawful would help mitigate any suspicions of dangerousness due to his detention in a facility often described by top U.S. officials as reserved for “the worst of the worst.”³²⁹ Still, the court held that being labeled a former detainee carries “neither a ‘concrete effect’ nor a ‘civil disability’ susceptible to judicial correction.”³³⁰

Ameziane’s case illustrates the inadequacy of federal courts’ use of the Guantánamo legislative and regulatory framework in addressing the United States’ due process violations as informed by international human rights law and in sufficiently compensating the victims of the United States for its despicable and longstanding abuse and degradation of their humanity.

2. U.S Due Process Violations as Determined by the IACHR

The United States is bound by obligations enshrined in the American Declaration of the Rights and Duties of Man as a State nominally committed to adhere by, and uphold, international human rights law as established in the Charter of the Organization of American States (OAS).³³¹ The United States signed onto the Charter in 1948 and ratified its membership in 1951.³³² As the IACHR stated in its report on the Ameziane case described above, Article 20 of its Statute and Rules of Procedure empower it to hear matters involving human rights abuses by member parties, including due process and all other cases arising out of United States violations of international law in Guantánamo.³³³

Moreover, the IACHR's interpretation of the American Declaration, as well as its other instruments, deems it "both appropriate and necessary to take into account member states' obligations under *other* human rights and humanitarian law treaties, which together create an interrelated and mutually reinforcing regime of human rights protections."³³⁴ That is, the American Declaration is to be treated as part of a larger-scale framework of applicable international human rights law that bears on U.S. domestic law. Furthermore, "one instrument may not be used as a basis for denying or limiting other favorable or more extensive human rights that individuals might otherwise be entitled to under international or domestic law or practice,"³³⁵ so that different instruments act interrelatedly to supplement and enhance this framework, preempting member states from referencing one instrument of international law to abridge or undermine its responsibilities as stated in other, more expansive instruments.

In its report on Ameziane, the IACHR identified the relevant instruments informing the interpretation and application of the American Declaration to be the ICCPR (1967), the CAT (1984), and the 1967 Protocol to the 1951 Convention on the Status of Refugees.³³⁶ The IACHR also lists the American Convention on Human Rights as a relevant authority, although noting that the United States has not ratified the treaty and the Commission cannot apply it directly in evaluating the United States' actions.³³⁷ Still, the IACHR has stated elsewhere, and the Inter-American Court of Human Rights has affirmed, that the Convention may inform the Commission's interpretation of an OAS State party's obligations under the American Declaration regardless of whether the party has ratified the Convention.³³⁸

It follows that these instruments would likely also inform similar disputes from other former detainees suffering as a result of the United States' refusal or neglect to comply with the

principle of non-refoulement, or otherwise from the United States' failure to enforce sufficient safeguards to ensure that non-refoulement be honored as a non-derogable due process right that international law reserves for former detainees during, and following, transfer to another country.

B. Cruel and Unusual Punishment Clause of the Eighth Amendment Through the Lens of the Convention Against Torture

Advocates, such as the Center for Constitutional Rights (CCR) which has defended the rights of detainees since the inception of Guantánamo as a detention facility post 9/11, has for years observed that conditions at Guantánamo are violative of the Eighth Amendment's right against "cruel and unusual punishment."³³⁹ Though this argument has not been taken up by the Supreme Court,³⁴⁰ the reality remains that Guantánamo detainees commonly suffer unconscionable conditions, including the denial of access to counsel and the decades-long detention without trial at the deliberate indifference of the federal government.³⁴¹

The United States has attempted to abridge its Eighth Amendment obligations as required by the Convention Against Torture (CAT), a treaty it has signed and ratified.³⁴² As with other treaties, through its adoption of reservations and understandings to the treaty, the United States has asserted that CAT is a non-self-executing treaty and further included a reservation to limit the meaning of "cruel, inhuman or degrading treatment or punishment" to the limitations of the Fifth, Eighth, and Fourteenth Amendment.³⁴³ CAT, however, establishes the customary international legal definition for torture and the United States cannot plausibly argue that the unlawful rendition, detention, and torture program did not rise to the level of conduct prohibited by such Amendments. Moreover, notwithstanding the status of CAT as a non-self-executing treaty, the United States has enacted federal statutes to "domesticate" CAT.³⁴⁴ As the Congressional Research Service has observed,

“[t]o implement CAT Articles 4 and 5, Congress did not enact a new provision to criminalize acts of torture committed within the jurisdiction of the United States: It was presumed that such acts would ‘be covered by existing applicable federal and state statutes,’ such as those criminalizing assault, manslaughter, and murder. However, the United States did add chapter 113C to the United States Criminal Code (Federal Torture Statute, 18 U.S.C. §§ 2340-2340B), which criminalizes acts of torture that occur *outside* of the United States.”³⁴⁵

These abuses that violate the Eighth Amendment and U.S. obligations under CAT ought to be

considered by the PRB during its review determination so as to procure an appropriate remedy or means of mitigation.

C. Double Jeopardy Clause of the Fifth Amendment

Guantánamo detainee Majid Khan, following completion of his sentence in Guantánamo upon trial conviction, raised a complaint against the Biden administration for failure to release him and for extending his incarceration far beyond the limits predetermined in his sentence.³⁴⁶ Although Khan’s situation is unique among Guantánamo detainees, the vast majority of whom have never been convicted of any crimes, the argument for double jeopardy may nevertheless extend to their condition as well. Assuming *arguendo* that any future trials were to find any remaining detainees guilty of a crime—unlikely considering the consistently high rate of clearance from wrongdoing by the PRB—the Double Jeopardy Clause may serve to indicate that their years-long detainment not only counts toward satisfaction of such a sentence, but also preempts continued detainment as repeated punishment over the same crime.

In other words, double jeopardy stands as a useful tool to safeguard persons released from Guantánamo from being held in custody again by the United States for the same purported charges, if any arise. Furthermore, the Geneva Convention Relative to the Treatment of Prisoners of War, art. 86, prohibits prisoners of war from being “punished more than once for the same act, or on the same charge.”³⁴⁷ If former Guantánamo detainees were ever finally convicted or acquitted, customary international humanitarian law of the Geneva Convention, as well as the International Criminal Court, International Covenant on Civil and Political Rights, and American Convention on Human Rights,³⁴⁸ would act to prevent former detainees from having to live in fear of further prosecution or abusive punishments relative to their detainment in Guantánamo.

D. Medical Rights Guaranteed by the Department of Defense and Binding International Human Rights Principles

DoD Instruction 2310.08 directs that “[t]o the extent practicable, treatment of detainees should be guided by professional judgments and standards” involving consistent quality care, respectful treatment, and security and safe environments.³⁴⁹ However, detainees who have developed severe health conditions from their detention in Guantánamo—as is the case of Mohammed al-Qahtani, whose torture at the hand of U.S. officers led him to develop schizophrenia, depression, and post-traumatic stress disorder³⁵⁰—are deprived of necessary care to treat their conditions. They are prohibited from entering U.S. mainland, and consequently

from accessing its healthcare facilities under the 2011 National Defense Authorization Act.³⁵¹

The medical rights owed to detainees under domestic law are more fully set forth in the various international human rights norms that are binding on the United States, both as a matter of customary international law and treaty obligations. These obligations include the prohibition of torture and other cruel, inhuman and degrading treatment under articles 1 and 2 CAT, articles 7 and 10 of the ICCPR including the right to humane treatment of persons held in detention, and the right to redress and rehabilitation pursuant to article 2(3) of the ICCPR and 14 of the CAT.

The dire circumstances pertaining to the medical conditions of detainees whose rights to treatment and rehabilitation have been violated were the recent subject of the International Committee of the Red Cross which “issued a rare statement of alarm” about these circumstances.³⁵² Similarly, seven United Nations human rights investigators issued an eighteen-page report protesting the lack of health care for detainees at Guantánamo, and referenced dozens of guarantees provided by binding international human rights laws ignored by the United States.³⁵³ The failure to assure compliance with these effectively undermines provision of care to persons held in Guantánamo and, at minimum, merits a heightened urgency in the PRB’s determinations for release and enhanced standard of care during actual release and resettlement or repatriation.

VI. Foreign Domestic Law: Legal Rights and Pathways for Repatriation or Resettlement

A. Introduction

Along with rights established by international law, another important but often overlooked, source of rights for former Guantánamo detainees flows from foreign domestic law; both via the nations-of-origin and receiving nations. While international law is largely aspirational, often lacking meaningful enforcement mechanisms, many countries have codified international human rights law and norms into domestic law. Thus, foreign domestic law ought to provide an alternative avenue for recourse for former detainees who are functionally stateless.³⁵⁴ Of course, even if a country has incorporated international law into its domestic law, many factors influence the availability of foreign domestic law as a source of relief. Statutes and court opinions that limit the scope of often broad constitutional guarantees, as well as political pressure, public sentiment, government instability, and even locating the correct forum and an attorney willing to advocate on behalf of a former detainee are all impediments to restoring the rights of former detainees. Despite these challenges, foreign domestic law represents a realistic means of enforcing generally accepted human rights norms and is often the first step required to reach regional or international courts, as most of these venues require plaintiffs to exhaust all domestic options prior to petitioning for relief.³⁵⁵

Because the U.S. government which controls the men detained in Guantánamo and the circumstances of their release has been opaque with regard to the details and circumstances surrounding detainees' release, determining which nation's laws to examine required exploring open-source materials to identify former detainees who were resettled to nations other than their country-of-origin. The New York Times Guantánamo docket contains a list of over 700 individuals who were transferred from Guantánamo.³⁵⁶ Of these individuals, over 150 former detainees were transferred by the United States to countries other than their nation-of-origin. Sifting through the names on the list resulted in the identification of 20 nations-of-origin and 32 receiving nations common to the former detainees who were not repatriated to their homelands.

The Appendix attached to this report includes a survey of 17 of the 20 nations-of-origin's domestic laws relating to nationality, citizenship, freedom of movement, and the right to return. China and Russia were excluded as former detainees from those countries, Uyghurs and Chechens, avoided religious and ethnic persecution by not returning.³⁵⁷ Additionally, Palestine

was excluded due to the difficulty of finding domestic law on the topics of nationality and citizenship. The Appendix also includes a survey of 20 of the 32 receiving nations' domestic laws codifying various international human rights law and norms. Belgium, Bermuda, Britain, France, Germany, Italy, Ireland, and Switzerland were excluded as those nations have attempted to respect former detainees' human rights while integrating them into society.³⁵⁸ Saudi Arabia and Afghanistan's domestic human rights laws are covered under the nation-of-origin survey.³⁵⁹ The United Arab Emirates was excluded as the country inexplicably repatriated the vast majority of former detainees it received.³⁶⁰ The former detainees in the remaining 20 countries have all struggled to gain recognition of the rights owed to them under host-nation domestic law.

B. Background

Appreciating the legal significance of the incorporation of international human rights law and norms into foreign domestic law as it relates to former detainees requires understanding the conditions former detainees are experiencing post-release. As an initial matter, the details of the post-release agreements between the United States and receiving third nations are largely shrouded in secrecy. While State Department officials assert that multiple factors are considered in determining where to send detainees, including receiving nations' commitment to upholding human rights and country-of-origin instability, the most important factor seems to be willingness of the third country to monitor detainees and mitigate any future security concerns posed by them to the United States. However, virtually nothing is known about what conditions the United States has imposed on receiving nations during transfer negotiations.³⁶¹ Without knowing the stipulations of transfer agreements, it is difficult to assess whether the deplorable conditions being experienced are a direct result of United States policy or receiving nation indifference. Regardless, stories of former detainees, as they try to adapt post-Guantánamo, provide invaluable insights into animosity and stigma they are forced to endure in their new homes.

Roughly 30% of former detainees who were resettled in third countries have not been granted legal status, which has created a profoundly negative impact on every aspect of their lives.³⁶² Furthermore, the home countries of former detainees have done little, if anything, to protect their rights abroad, support them in securing legal status, or even assist with efforts to repatriate them.³⁶³ There are a host of discernible issues that accompany the deprivation of legal status, including restricted movement, both within and outside the host nation; inability to procure a driver's license or identification; inability to gain meaningful employment, access

healthcare, or pursue an education; food and housing insecurity; disenfranchisement; and access to myriad other, everyday activities that most people take for granted.³⁶⁴

When former detainees in these host nations confront public officials regarding treatment, at best they are met with indifference, at worst they provoke open hostility and retaliation. For example, former detainee Hisham Bin Ali Bin Amor Sliti reached out to the Slovakian government to complain about his treatment and living conditions, stating “I don’t have money to pay for energy for my apartment, and for food, I don’t know what to do about it. You brought me to your country with [an] agreement, it is unbelievable that you are letting us walk on such a dark path. If you don’t want us, take us back to Guantánamo. Contact the U.S. government to find a solution to this issue.” The official replied, “Dear Hisham, as you wish, I will let the U.S. government know about your preference to live in a solitary confinement in Cuba.”³⁶⁵

Moreover, being functionally stateless is the source of an array of invisible injuries that, while less apparent than not having a job or a passport, are no less deleterious. Picture being confined for 20 years in a foreign prison, without due process, in spite of your protestations of innocence, where you are subjected to the most extreme forms of humiliation, degradation, and violence, including rape and torture, without knowing if or when you will ever return home. Then, imagine you are informed that you are being released, but instead of returning home to your friends and family, you are being sent against your will to another foreign country that has a history of persecuting people of your religious faith. Upon arrival, despite assurances to the contrary, you are cut off from society—unable to speak the language, without any identification, unable to find a job or house, unable to leave, under constant government surveillance, unable to form meaningful relationships due to the stigma and restrictions that surround you, and living with the constant uncertainty that at any moment the government will detain or deport you. It seems unfathomable, but this is the reality many former detainees face post-release.³⁶⁶

The psychological toll inflicted on former detainees by this harrowing experience is well-documented and cannot be overstated. Even before release, conditions in the prison were such that hundreds of detainees were diagnosed with post-traumatic stress, depression, anxiety, panic attacks, or self-harming behavior.³⁶⁷ The conditions and stigma many former detainees are now experiencing post-release only further exacerbate the psychological harm caused by the U.S.’ systematic program of torture.³⁶⁸ In fact, Brigitte Ambühl, a Swiss expert on torture and the head of medicine and therapy at the Red Cross Clinic for victims of Torture and War, stated that even

in a positive environment, with access to quality healthcare, former detainees would likely need years of therapy to manage the stress of their experience in Guantánamo.³⁶⁹ Unfortunately, for former detainees without legal status, a positive environment, one that meets basic needs of food, shelter, and sustenance while providing room to heal, remains elusive and unattainable.

Given the obstacles to reintegration that many former detainees face, it is imperative that they find means to compel their host nations to recognize their rights. While public outrage often coalesces with international law to produce results, most people do not consider former detainees as sympathetic victims. Despite never having been charged or convicted of a crime, the stigma attached to Guantánamo is often enough to deter even the most sympathetic supporter. Likewise, with every passing day, the plight of former detainees grows more distant from the public eye. Without broad public support and a concrete means of enforcement, resorting to international law to resolve former detainees' plights can be ineffectual. Thus, for former detainees hoping to vindicate their rights, foreign domestic law represents a promising starting point.

C. Analysis of Nation-of-Origin Domestic Law – (See Appendix for Fuller List)

As noted above, the domestic law of Yemen is included in the body of this report because it is the country of origin of just over half of transferred detainees.

1. The Example of Yemen: Domestic Law of Yemen

Beginning with the nation-of-origin domestic law, the focus is primarily on nationality law, right to return, and the duties a nation owes to its citizens while they are abroad. Roughly 76 of the 150 former detainees who were transferred to countries other than their nation-of-origin were originally from Yemen.³⁷⁰ Thus, it makes sense to begin the analysis with the rights, duties, and obligations Yemen owes to its citizens.³⁷¹ That being said, Yemen is in a state of upheaval, in the midst of a violent civil war fueled by United States support for a Saudi-led coalition, which has led to a “humanitarian catastrophe” of epic proportion.³⁷² Over 200,000 people have died and more than 24 million people are on the brink of disaster owing to food scarcity and lack of medical assistance.³⁷³ Given the state of disarray, likelihood of holding the provisional government of Yemen accountable for duties it owes to former detainees is slim at best.

Article 44 of the Constitution of Yemen states that a “Yemeni shall not be deprived of his nationality”³⁷⁴ Article 17 of the Citizenship Law of Yemen reemphasizes this point by stating that “[i]n accordance with the Constitution, no Yemeni may be deprived of the Yemeni Nationality”³⁷⁵ Article 57 of the Constitution of Yemen goes on to state that “no citizen may

be . . . denied return to Yemen.”³⁷⁶ Moreover, according to Article 48, “[t]he state shall guarantee to its citizens their personal freedom, preserve their dignity and their security”³⁷⁷ In the event that a Yemeni citizen’s rights have been violated, Article 51 states that “[c]itizens have the right of recourse to the courts to protect their rights and lawful interests. They also have the right to submit their complaints . . . to the various government bodies directly or indirectly.”³⁷⁸

At first glance, both the Constitution and Citizenship Law of Yemen suggest that former detainees from Yemen cannot forfeit their nationality without due process of law. It follows that, despite their internment in Guantánamo and subsequent resettlement to third countries, former detainees are owed the right to return to their homelands if they so desire. Furthermore, based on Article 48 of the Constitution, Yemen has failed its duty to safeguard the freedom, dignity, and security of its citizens abroad during their time in Guantánamo and after their release. Ideally, upon notice of human rights violations suffered by citizens at the hands of the United States, the Yemeni government would take concrete steps to lodge complaints with the United Nations Human Rights Council against the United States and petition the United States for immediate release and extradition of its citizens.³⁷⁹ However, due to ongoing turmoil created by civil war, the Yemeni government was in no position to demand return of its citizens.³⁸⁰ Moreover, until the conflict is resolved, holding government officials accountable for their inaction is unrealistic.

While the Yemeni Constitution guarantees the former detainees’ right to return, conditions in the country are such that returning is impracticable and exceedingly dangerous. In fact, forced repatriation of 18 former detainees by the United Arab Emirates drew the ire of the United Nations and international condemnation as it likely violated the principle of non-refoulement.³⁸¹ The concern was substantiated when a former detainee, Abdulqadir al Madhfari, after repatriation and brief reunion with his family, was abducted and imprisoned in an unknown location.³⁸² According to credible reports, both parties to the civil war are operating secret prisons throughout the country where torture and other human rights violations are common.³⁸³ Given the persistent violence and lawlessness, former Yemeni Detainees exercising the right to return is fraught with peril.

D. Analysis of Receiving Nation Domestic Law

Turning to host nations, the majority of countries that received former detainees have codified international human rights law into their domestic law. The bulk of nations surveyed have enacted laws guaranteeing rights of stateless persons on par with that of citizens, including:

the right to leave; freedom of movement within the country; right to work; right to associate; prohibitions against torture, inhumane, or cruel punishment; due process rights; equal protection; and observation of international human rights law and norms. Despite these guarantees, the rights owed to former detainees by domestic law have largely been ignored by receiving nations. As explained above, the domestic law of Serbia has been included in the body of this report because more is known about its treatment of detainees as a receiving country compared with other countries.

1. The Example of Serbia: Domestic Law of Serbia

Mansoor Adayfi was 19 years old when he arrived at Guantánamo. After 14 years of being tortured, beaten, and force fed under United States supervision, he was finally released. But, instead of returning home to Yemen, the United States sent him to Serbia, a country with a history of open hostility toward Muslims. The Serbian and U.S. governments promised Adayfi freedom and the opportunity to start a new life, but those promises have yet to materialize. Since resettlement, Adayfi has been denied identification and travel documents, unable to work, under constant government surveillance, and has not been allowed to move freely within the country or to exit.³⁸⁴ He has experienced housing insecurity due to stigma surrounding his past, struggled to access healthcare and education, and has been unable to build or maintain relationships with others due to government interference.³⁸⁵ In sum, for himself and other former detainees in the country, Adayfi laconically states, “[w]elcome to our life. This, our life: It’s hell.”³⁸⁶ Given Adayfi’s experience in Serbia, one could mistakenly assume that Serbia did not offer any protection for foreign citizens residing within its territory. However, that conjecture is erroneous.

Article 3 of the Serbian Constitution states that the “[r]ule of law is a fundamental prerequisite for the Constitution which is based on inalienable human rights”³⁸⁷ Article 16 provides that “[t]he foreign policy of the Republic of Serbia shall be based on generally accepted principles and rules of international law”³⁸⁸ Article 17 avows “[p]ursuant to international treaties, foreign nationals in the Republic of Serbia shall have all rights guaranteed by the Constitution and law with exception of rights to which only the citizens of the Republic of Serbia are entitled under the Constitution and law.”³⁸⁹ Article 57 provides that “[a]ny foreign national with reasonable fear of prosecution based on his race, gender, language, religion, national origin or association with some other group, political opinions, shall have the right to asylum in the Republic of Serbia. The procedure for granting asylum shall be regulated by the law.”³⁹⁰

Moreover, Article 18 asserts “[t]he Constitution shall guarantee, and as such, directly implement human and minority rights guaranteed by the generally accepted rules of international law, ratified international treaties and laws.”³⁹¹ Article 20 allows human rights restrictions only “to the extent necessary to meet the constitutional purpose of restriction in democratic society and without encroaching upon the substance of the relevant guaranteed right”³⁹²

Here, in the case of Adayfi, the Serbian Constitution appears to guarantee that his rights and treatment should be commensurate to that of a citizen, with the exception of suffrage and military service. Likewise, based on conditions and treatment of former detainees forcibly repatriated to Yemen, Article 57 seems to suggest that Adayfi meets requirements for asylum. Article 18 of the Constitution suggests the government should uphold his human rights and that any restrictions should be justified based on current behavior, not stigma of his past confinement in Guantánamo. Furthermore, according to Article 20, any limitations to his rights should be proportionate to the goal of the restriction without infringing on the substance of the right, which, without having committed a crime, it is difficult to comprehend how the Serbian government rationalizes the current restrictions beyond the fact that Adayfi is a former detainee.

As to the rights that the Serbian government has denied Adayfi, Article 39 states that

“[e]veryone shall have the right to free movement and residence in the Republic of Serbia, as well as the right to leave and return. Freedom of movement and residence, as well as the right to leave the Republic of Serbia may be restricted by the law if necessary for the purpose of conducting criminal proceedings, protection of public order . . . or defense of the Republic of Serbia. Entry and stay of foreign nationals in the Republic of Serbia shall be regulated by the law”³⁹³

Article 42 provides that the “[p]rotection of personal data shall be guaranteed . . . Everyone shall have the right to be informed about personal data collected about him, in accordance with the law, and the right to court protection in case of their abuse.”³⁹⁴ Article 60 states that the “[r]ight to work shall be guaranteed in accordance with the law. Everyone shall have the right to choose his occupation freely”³⁹⁵ Finally, Article 68 guarantees that “[e]veryone shall have the right to protection of their mental and physical health”³⁹⁶

Here again, Serbia’s restrictions and treatment of Adayfi are in clear violation of its own domestic law. Denying him travel documents and identification, coupled with his inability to

move freely within the country, without due process, is in direct contradiction with Article 39, which guarantees freedom of movement. Likewise, these same restrictions prevent his ability to freely exit the country, which also implicates Article 39. Furthermore, the ongoing government surveillance he is experiencing is a direct violation of his right to privacy, codified by Article 42. In addition, without identification it is virtually impossible for Adayfi to secure meaningful employment, which violates his right to work. Finally, the same issue arises with the right to the protection of mental and physical health in that, without identification or a job, Adayfi's options for accessing and paying for healthcare are severely limited.

Even assuming Adayfi had somehow violated Serbian law, according to the Serbian Constitution, Adayfi should have the right to challenge the unlawful restrictions in court. Under Article 21 of the Constitution,

“[a]ll are equal before the Constitution and law. Everyone shall have the right to equal legal protection, without discrimination. All direct or indirect discrimination based on any grounds, particularly on race, sex, national origin, social origin, birth, religion, political or other opinion, property status, culture, language, age, mental or physical disability shall be prohibited”³⁹⁷

Additionally, Article 22 guarantees “[e]veryone shall have the right to judicial protection when any of their human or minority rights guaranteed by the Constitution have been violated or denied, they shall also have the right to elimination of consequences arising from the violation”³⁹⁸ Article 25 further states that “[n]obody may be subjected to torture, inhuman or degrading treatment or punishment”³⁹⁹ Article 26 guarantees “[e]qual protection of rights before courts and other state bodies Everyone shall have the right to an appeal or other legal remedy against any decision on his rights, obligations or lawful interests.”⁴⁰⁰ Article 37 provides that “[e]veryone shall have legal capacity”⁴⁰¹

Article 76 states “[p]ersons belonging to national minorities shall be guaranteed equality before the law and equal legal protection. Any discrimination on the grounds of affiliation to a national minority shall be prohibited”⁴⁰² Article 56 states:

“[e]veryone shall have the right to put forward petitions and other proposals alone or together with others, to state bodies, entities exercising public powers, bodies of the autonomous province and local self-government units and to receive reply from them if they so request. No person may suffer detrimental consequences for opinions stated in the petition or proposal unless they constitute a

criminal offense.”⁴⁰³

Likewise, Article 67 provides that “[e]veryone shall be guaranteed right to legal assistance under conditions stipulated by the law”⁴⁰⁴ Article 145 suggests all “[c]ourt decisions are based on the Constitution and Law, the ratified international treaty and regulation passed on the grounds of the Law.”⁴⁰⁵ Article 166 clarifies the appropriate venue for challenging violations of constitutional guarantees, in that “[t]he Constitutional Court shall be an autonomous and independent state body which shall protect constitutionality and legality, as well as human and minority rights and freedoms. The Constitutional Court decisions are final, enforceable and generally binding.”⁴⁰⁶ Furthermore, Article 167 states “[t]he Constitutional Court shall decide on: 1. Compliance of laws and other general acts with the Constitution, generally accepted rules of international law and ratified international treaties, 2. Compliance of ratified international treaties with the Constitution”⁴⁰⁷

Article 168 suggests that, regardless of citizenship, “[a]ny legal or natural person shall have the right to an initiative to institute a proceedings of assessing the constitutionality and legality”⁴⁰⁸ Article 170 delineates the scope of a challenge in that “[a] constitutional appeal may be lodged against individual general acts or actions performed by state bodies or organisations exercising delegated public powers which violate or deny human minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been applied or not specified.”⁴⁰⁹ Article 149 posits that:

“[t]he Constitution shall be the supreme legal act of the Republic of Serbia. All laws and other general acts enacted in the Republic of Serbia must be in compliance with the Constitution. Ratified international treaties and generally accepted rules of the international law shall be part of the legal system of the Republic of Serbia Laws and other general acts enacted in the Republic of Serbia may not be in noncompliance with the ratified international treaties and generally accepted rules of the International Law.”⁴¹⁰

Moreover, Article 198 exhorts that:

“[i]ndividual acts and actions of state bodies, organisations with delegated powers, bodies of autonomous provinces and local self-government must be based on the Law. Legality of final individual acts deciding on a right, duty or legally grounded interest shall be subject to reassessing before the court in administrative proceedings, if other form of court protection has not been stipulated by the Law.”⁴¹¹

Finally, Article 199 provides that “[e]veryone shall have the right to use his/her language in the proceedings before the court, other state body or organization performing public powers, when his/her right or duty is decided on”⁴¹²

Again, despite constitutional guarantees, Adayfi has been unable to access courts to challenge restrictions imposed on him by the Serbian government. Arguably, his restrictions amount to degrading and inhuman treatment in violation of Article 25. Likewise, without any illicit behavior, the restrictions can only be motivated by the politics of his past, his nation or social origin, religion, language, or a combination of these factors in contravention of the equal protection clause of Article 21. According to Articles 67 and 199, Adayfi should be entitled to legal assistance in his own language, but again, lacking identification, along with the stigma associated with his past and government interference, has made it impossible for him to find a Serbian attorney willing to take his case. Finally, even without an attorney, as a person with legal capacity, Adayfi should be able to petition the Constitutional Court of Serbia to challenge the government restrictions. However, limitations on his movement, and unwillingness by the courts to recognize his personhood, have meant that these guarantees are meaningless.

Although not without challenges, foreign domestic law offers a realistic path for former detainees to gain host nation recognition of their rights and to move on from anguish and torment that is Guantánamo 2.0. For nations that claim to respect international human rights law and norms, indifference towards the functional statelessness that former detainees are experiences makes these nations just as culpable as the United States for continuing Guantánamo’s legacy of torment. For nations that are unwilling or unable to acknowledge the rights and duties owed to former detainees, public pressure or United States intervention might be the best option to compel the enforcement of the former detainees’ rights. Regardless, the United States cannot absolve itself of 20 years of systematic torture and abuse by offloading former detainees onto foreign soil; it has an obligation to make good on the promises it made to these men. The failure to fulfill this obligation is just as appalling as Guantánamo itself. For a nation founded on the principles of liberty and justice for all, it is imperative that the United States make this right; not only for the men affected by this aberration, but also for posterity.

VII. Double Standards, Contradictions and Comparisons

A. Introduction

With much of the discourse about Guantánamo shrouded in secrecy, examining the circumstances of the Uyghurs provides an opportunity to reflect on the double standards and contradiction with regard to the treatment and resettlement of Guantánamo detainees. This section will examine treatment of the Uyghurs as a way to demonstrate the U.S.’ double standard with regard to the treatment of this minority group. Although the United States is vocal in its criticisms of the treatment of Uyghurs in China, it has perpetrated similar harms by its wrongful detention of Uyghurs and its resettlement of these individuals in Palau where they have suffered in isolation and under suspicion. It will then review the approaches of some Commonwealth countries which have taken some steps to acknowledge culpability and restore the rights of their citizens and others whose detention in Guantánamo was a result of their wrongful acts. These responses, however inadequate, provide a way forward for improved U.S. practices toward former detainees.

B. Surveillance: The Uyghur Diaspora

Many in the United States characterize Chinese intimidation policies toward the Uyghurs as “crimes against humanity,” yet at the same time fail to recognize that such policies are not unlike the surveillance faced by former Guantánamo detainees in third-party receiving countries, including the formerly detained Uyghurs at the behest of the United States government.⁴¹³ Uyghurs, a Turkic minority, continually face prosecution under the guise of counter-terrorism offensives.⁴¹⁴ Within the Xinjiang Uyghur Autonomous Region, approximately 1.8 million Uyghurs, as well as other Muslim ethnic minorities, are arbitrarily detained in a labyrinth of extrajudicial mass internment camps and subjected to forced labor, torture, and political indoctrination.⁴¹⁵

This persecution does not end at China’s borders. Over the past 24 years, 1,149 Uyghurs living abroad have been detained by their host country’s government per the request of China’s security services, while 427 Uyghurs were deported back to China.⁴¹⁶ These deportations are a violation of various international human rights frameworks including the CAT, particularly Article 3, as well as Article 15 clause 2 of the UDHR.⁴¹⁷

Uyghurs abroad are disproportionately targeted for surveillance, both in-person and through their social media. Across North America, Asia, and Europe, 95.8% of Uyghurs reported

feeling threatened online and 73.5% mentioned they had experienced threats, felt they were taking risks using social media, and believed they were under surveillance.⁴¹⁸ In Australia, Uyghurs have received calls telling them to stop protesting and going to the mosque, while Uyghurs in the United States faced financial blackmail by their coerced relatives.⁴¹⁹ Additionally, the Chinese government's surveillance of the diaspora's social media presents a moral dilemma, since Uyghurs fear repercussions toward their families left behind.⁴²⁰

Uyghurs deported from Guantánamo also suffer at the hands of their respective receiving states selected by the United States. After being captured by mercenary bounty workers for the United States in the early 2000s, 17 Uyghurs were imprisoned in Guantánamo.⁴²¹ Many of the Uyghurs were cleared for release by 2004; however officials determined they could not be returned to China due to fears of torture.⁴²² Palau, a small Oceanic state, struck a secret deal with the United States to house six former detainees.⁴²³ For the price of \$93,333 per person, the United States was able to fly the former detainees, shackled to their seats, to the island on a military aircraft.⁴²⁴ For many of the Uyghurs, the island was just “a bigger, lushier Guant[á]namo.”⁴²⁵ Unable to leave or readily access religious services because of Palau's remoteness and the small number of Muslims in a predominantly Christian country, many Uyghurs felt that the United States and Palau left them “homeless, stateless, [and] moneyless.”⁴²⁶

Although Palau is described by the U.S. State Department as a “sovereign nation,” its true status is complicated since the United States exercises full authority and responsibility for defense and security matters within and relating to Palau.⁴²⁷ This oversight authority comes from the Compact of Free Association (COFA) which governs relations among the United States, Micronesia, the Marshall Islands, and Palau.⁴²⁸ COFA grants the United States broad latitude to “assist or act on behalf of the Government of Palau in the area of foreign affairs as may be requested and mutually agreed.”⁴²⁹ Additionally, the United States provides immense economic support to Palau, totaling \$296.4 million as of March 2022.⁴³⁰ Due to this dependence, some commentators claim that Palau is a “client state” of the United States.⁴³¹ Critics argue that the United States cares little about the fate of its client states, acts to the detriment of client states' citizens, and governs without regard for their “colonial” legacy.⁴³² The result of this relationship may be evident with the circumstances of the Uyghurs. After Uyghurs' living stipends inexplicably ran out amid allegations that the Palauan president mishandled funds appropriated for their resettlement, the United States offered no solutions and required none from Palau.⁴³³

Despite the Uyghur's treatment by the Chinese being described as a "cautionary tale," the discourse surrounding this issue fails to recognize the parallel situation occurring in both Palau and Eastern Europe.⁴³⁴ Former Guantánamo detainees report that they face similarly repressive forms of surveillance, stymieing their ability to forge relationships or worship freely.⁴³⁵ The circumstances of the Uyghurs may not be that different from that of Mr. Adayfi, whose story is explored in section II.A, and who was barred from integrating into Serbian society.⁴³⁶ The continual harassment of Adayfi and his colleagues by the Serbian police harmed his ability to work, form relationships, and speak to the media.⁴³⁷ Less is known about the circumstances of the Uyghurs but from the little public information, their circumstances, particularly with regard to their religious practices are likely similar.

While Western nations swiftly condemned the Chinese government's actions, the same cannot be said about the treatment of former detainees in Eastern Europe. Many of the proposed human rights suggestions for Xinjiang's Uyghurs within Congress' Executive commission on China's Annual Report could also serve as a solution for Guantánamo detainees. There could be greater United Nations involvement in the welfare of former detainees. Just as the United States seeks to "call upon China to allow UN special rapporteurs who work on minority issues such as racial discrimination, freedom of religion or belief, and the protection of human rights while countering terrorism," special rapporteurs could be appointed to assist former detainees deported to third-party nations.⁴³⁸ The expertise of these rapporteurs could regulate the dysfunctional system of third-country repatriation and push the current policy towards accepted human rights norms. To address the obstacles to religious worship, the United States could adapt their own proposed policy which urges Chinese authorities to allow "Muslim ethnic minority populations to freely engage in Islamic religious rituals, as a matter of their right to religious freedom" in accordance with the UDHR and the ICCPR.⁴³⁹

Solutions could be gleaned from COFA itself. Section 121(b) asserts that Palau "shall act in accordance with principles of international law."⁴⁴⁰ If both countries complied, the Uyghurs would have been granted freedom of movement sooner, pursuant to Article 13 of the UDHR.⁴⁴¹ Although it is unlikely that the United States will cast the same critical eye towards to the treatment of the Uyghurs, the irony still stands that the United States has already proposed easily applicable solutions.

C. Some Lessons from Commonwealth Country Approaches

Commonwealth countries as well as the United States violated the rights of the detainees discussed in Section II. However, some Commonwealth nations did take some steps, albeit insufficient overall, to rectify their wrongs. In the United Kingdom, government officials and advocates for British citizens detained pushed for their repatriation.⁴⁴² The British government settled claims for significant sums of money for failure to protect them from torture and detention.⁴⁴³ Recently, former detainee Moazzam Begg was allowed to obtain his British passport, although it should be mentioned that it was a result of an eight-year struggle.⁴⁴⁴ Moreover, the courts of the U.K. prohibited the government from relying on so-called “secret evidence” as justification for the wrongful treatment of detainees in contrast with U.S. courts who have obstructed such relief based on the state secrets doctrine.⁴⁴⁵

A holistic view of reparations informed Canada’s consideration of culpability and due process. For example, Omar Khadr, imprisoned at age 15, received redress because Canada recognized his diminished liability.⁴⁴⁶ The Canadian Supreme Court found that Khadr’s treatment offends “the most basic Canadian standards” concerning the treatment of juveniles.⁴⁴⁷ Rather than the current punitive approach of the U.S. juvenile justice system, embracing rehabilitation could help reintegrate former detainees. Additionally, the Australian government ensured access to due process for David Hicks. Officials won concessions prohibiting the death penalty, securing the presence of an independent legal expert, facilitating unmonitored attorney-client communications, and, if convicted, guaranteeing that Hicks would serve the remainder of his sentence in Australia.⁴⁴⁸ Most detainees rarely receive this level of consideration.

VIII. Human Rights and Detainees' Right to their Artwork

At some point during their detention at Guantánamo, detainees were able to create art to help them process their trauma and display to others their experience there.⁴⁴⁹ Former President Obama allowed art classes and supplies for Guantánamo detainees in 2010.⁴⁵⁰ Before then, detainees reported they kept their poems, art, songs, and writings hidden from prison personnel.⁴⁵¹ In October 2017, John Jay College displayed an art show featuring the work of Guantánamo detainees, titled “Ode to the Sea.”⁴⁵² According to the curator of the exhibit, Professor Erin Thompson, the exhibit was a way “of showing that indefinite detention harms detainees and the people working in the prison.”⁴⁵³ According to Thompson, the artists were excited to show Americans that “they were human beings, not the monsters the authorities had claimed.”⁴⁵⁴ And just as quickly as that avenue of visual communication opened, it was “slammed shut.”⁴⁵⁵ Just a month following the exhibit, the Department of Defense declared that the artwork could no longer leave the prison at Guantánamo.⁴⁵⁶

In addition to the cathartic experience and hope that the paintings and other forms of art brought to detainees during their imprisonment, the potential for profits from the sales of the art also provided some promises for those struggling to start anew after losing 10-15 years of their lives while wrongfully detained.⁴⁵⁷ Seven former detainees, and one still held at Guantánamo, have signed a letter to President Biden, asking that he overturn the Trump-era decision to keep their artwork from them.⁴⁵⁸ Khalid Qasim, the detainee still has at Guantánamo, says that if the U.S. government does not release his art, he will not leave Guantánamo either.⁴⁵⁹ He says “[t]he U.S. [government] has destroyed my life. My paintings are the only part left of me.”⁴⁶⁰

A. International and Domestic Right to Art

Article 10 of the International Covenant on Civil and Political Rights (ICCPR) includes the provision that “the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.”⁴⁶¹ Additionally, the Geneva Convention Relative to the Treatment of Prisoners of War, art. 119, provides prisoners of war with the right to take with them any personal effects, correspondence, and parcels from their time incarcerated.⁴⁶²

Under the ICCPR, social rehabilitation and reformation are the primary goals of incarceration.⁴⁶³ Thus, according to the provisions of the treaty, the deprivation of detainees’ access to their art, particularly is it may provide detainees who may wish to sell their art with the

possibilities of economic supports and more, contradicts this reformative aim and violates human rights obligations.⁴⁶⁴ Additionally, deprivation of access to their art is a direct violation of the Geneva Convention Relative to the Treatment of Prisoners of War, art. 119 which allows them to take their personal effects; indeed, their art is, essentially, the only “personal effect” they have left after years of detainment.⁴⁶⁵

The issue of depriving one’s art as a form of stripping them of their human dignity is not a new one.⁴⁶⁶ Nazis looted art from Jewish homes during the Holocaust and families have struggled for years to have it returned to them, a symbol of their ancestors’ culture and humanity.⁴⁶⁷ It can reasonably be assumed that the U.S. government feared that the American people and the rest of the world might – through the art that they created-- begin to see the victims of their torture as human beings, worthy of dignity and fundamental rights.⁴⁶⁸

According to Alka Pradham, a human rights attorney representing Ammar al-Baluchi, a former Guantánamo detainee, public displays of art from the prison humanized the prisoners, and the commentary about the exhibit “was overwhelmingly sympathetic” to the detainees.⁴⁶⁹ The controversial policy prohibiting detainees from keeping their art cast the DoD in a negative light and as Pradhan notes, there is no legal reason why detainees who were never charged and cleared for release should not be allowed to sell their art.⁴⁷⁰ Not only is artwork therapeutic for former detainees, it’s also a “powerful mitigation tool for defense attorneys in prosecution, . . . [and] no other prison has exerted this kind of control over detainee artwork.”⁴⁷¹

Additionally, Article 27 of the Universal Declaration of Human Rights (UDHR) provides that “[e]veryone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement of its benefits.”⁴⁷² Similarly, Article 15 of the International Covenant on Economic, Social, and Cultural Rights provides all individuals with the right “[t]o benefit from the protection of the moral and material interests resulting from any scientific, literary, or artistic production of which he is the author.”⁴⁷³

These international human rights provisions provide individuals the ability to participate in artistic and cultural endeavors, but also to benefit from the “material interests” resulting from them—i.e. the sales of Guantánamo art.⁴⁷⁴ Article 19(2) of the ICCPR also provides the right to freedom of expression, including the “freedom to seek, receive and impart information and ideas of all kinds . . . in the form of art.”⁴⁷⁵ Under this provision, the former detainees are endowed with rights to express their experiences through art, and also to communicate that experience via

their art to others.⁴⁷⁶ Their art should not remain locked away, invisible to the world.⁴⁷⁷

Along with international law, the United States has federal regulation and policy that enables artistic expression and access to detained individuals.⁴⁷⁸ Under Army Regulation 190-8, a detaining power must transport personal effects and property with a detainee in the event he is transferred or repatriated.⁴⁷⁹ Inmates in the Federal Bureau of Prisons system are permitted to create art and crafts and distribute them to family and visitors, display them in public spaces, and sometimes sell them.⁴⁸⁰

According to the United Nations handbook regarding treatment of violent extremist prisoners, “[t]he creative process also enables the communication of feelings and emotions associated with significant life events and can help in coming to terms with trauma, depression, and mental health issues,” which is why it is recommended by the United Nations to include art therapy in carceral spaces to engage with detainees.⁴⁸¹ To be stripped of one’s humanity through the torture tactics at Guantánamo and then, upon release, be prevented from taking the one personal effect left after decades of imprisonment, only builds on the existing trauma of those who suffered at Guantánamo.⁴⁸²

B. Destruction of Guantánamo Detainees’ Art

In addition to locking away the artwork of detainees, the government has also destroyed art from Guantánamo, presumably both as punishment and to prevent it from being seen by the rest of the world.⁴⁸³ In fact, reports note that “much of the art . . . over the years has been destroyed.”⁴⁸⁴ Prior to locking down the art in 2017, 100 detainees went on a hunger strike in 2013 and military personnel invaded the prison and took artwork and legal documents from detainees’ cells.⁴⁸⁵ Since then, legal counsel and families of detained people have endeavored to protect and safekeep the arts so that some prominent pieces have seen the light of day.⁴⁸⁶ For those who lacked legal representatives or a pathway of communication with family, their art remains unattainable and hidden away from them.⁴⁸⁷

Many critics consider destruction of one’s expression as a form of censorship, especially when driven by motive to repress messages that paint government in a negative light.⁴⁸⁸ While some may claim detainees are not entitled to protection under the First Amendment’s free expression provision because they are not U.S. citizens or technically on U.S. soil, they are in the care and control of U.S.-sanctioned actors at a U.S. military prison.⁴⁸⁹ Regardless, destruction violates the spirit that the United States boasts as a place of free expression, even when

expression is critical of government.⁴⁹⁰

Detainees self-censor much of their art already, knowing that if they were to paint what was happening to them in Guantánamo, their art would “almost certainly not be allowed out.”⁴⁹¹ But, making art was also a form of escape for those in detainment.⁴⁹² It “represented an expression of feelings about the unclear future—things [they] were deprived of, things [they] dreamed of.”⁴⁹³ “It helped. Yes, it relieved the stress, made people less aggressive, and the beautiful thing is that instead of seeing things around [them] in a trivial way, it makes [detainees] see them with an artist’s eye, which [gave them] a feeling of spiritual evasion from the prison,” said Djamel Ameziane, a Guantánamo artist.⁴⁹⁴ As for the future of Guantánamo art, signatories of the letter to President Biden have amplified their cause in the media and through other channels.⁴⁹⁵

As of the writing of this report was concluding, the Pentagon partially lifted the ban, and decreed that detainees would be allowed to take “a practicable quantity of their art” upon release; however, the art would remain the property of the United States.⁴⁹⁶ The policy is both vague and continues to encroach on the rights of the detainees to their property. As Mansoor Adayfi has written,

the questions we must ask the defence department, specifically, are: what makes detainees’ artwork US property? Where exactly in the US constitution does it state that prisoners’ artwork belongs to the government? What about detainees’ intellect? What about their creativity? Are these also the government’s property? Who owns the copyright to the prisoners’ artworks? If it is government property, how are they going to treat it? Where is it now?

This is slavery, theft and cruelty. The defence department needs to explain its future policy regarding detainees’ artwork. People need to know what will happen, and current and former prisoners have the right to know too.⁴⁹⁷

The road is long, but the artists remain hopeful.⁴⁹⁸

Conclusion

Guantánamo is a stain on U.S. history and a stain on the lives of every former detainee who was never charged with a crime, never convicted, and never given the opportunity to properly rebuild their lives after release. As a matter of domestic U.S. law, foreign domestic law, and international law, the former detainees are entitled to the right to choose their place of residence, the right to obtain proper residency and travel documents, and to be resettled in ways that afford them full human rights, including freedom of movement, ability to seek medical care and treatment and freedom from persecution in countries with known hostile dispositions toward Guantánamo detainees and Muslims.

The rights of former detainees and approaches to reparations and statelessness can be viewed through myriad analogous categories under which persons are afforded greater rights and protections than Guantánamo detainees have ever received but to which they are entitled. International law regarding both statelessness and refugees includes fundamental human rights principles that the United States has a duty to implement.

It is clear from the narratives of former detainees, as well as the unambiguous history of torture, destruction of property, and censoring of self-expression, that persons detained at Guantánamo have suffered unimaginable consequences without being so much as charged with a crime. Former detainees are burdened with a unique status, never fitting perfectly into any one category that would afford them full protections under any one law. As the ones responsible for detainment and repatriation, as well as the care of persons while detained at Guantánamo, the United States government must take the first step in restoring the liberty and full human rights of the former detainees.

Appendix

The Appendix that reviews Foreign Domestic Law: Legal Rights and Pathways for Repatriation or Resettlement can be found at

¹ Letta Tayler & Elisa Epstein, *Legacy of the “Dark Side,” The Costs of Unlawful US Detentions and Interrogations Post-9/11*, HUMAN RIGHTS WATCH (originally published by COSTS OF WAR, A PROJECT AT THE WATSON INSTITUTE OF INTERNATIONAL AND PUBLIC AFFAIRS AT BROWN UNIVERSITY) (Jan. 9, 2022, 12:01 AM), <https://www.hrw.org/news/2022/01/09/legacy-dark-side>.

² *See id.*

³ *Id.*

⁴ Joel Gunter, *Life After Guantánamo: “We Are Still in Jail,”* BBC NEWS (June 13, 2022), <https://www.bbc.com/news/world-us-canada-61609417>.

⁵ *Id.*

⁶ Zoom Interview with Mansoor Adayfi (Nov. 10, 2022) (on file with author).

⁷ *Id.*

⁸ *Id.* Mansoor Adayfi, DON’T FORGET US HERE: LOST AND FOUND AT GUANTÁNAMO, (2021).

⁹ Ben Hubbard, *He Spent 14 Years at Guantánamo. This is His Story.*, N.Y. TIMES (Aug. 17, 2021), <https://www.nytimes.com/2021/08/17/books/review/dont-forget-us-here-mansoor-adayfi.html>. (this quasi second phase of Guantánamo has now become known as Guantánamo 2 to former detainees and human rights advocates across the world).

¹⁰ *Id.*

¹¹ Gunter, *supra* note 4.

¹² Hubbard, *supra* note 9.

¹³ Gunter, *supra* note 4.

¹⁴ Hubbard, *supra* note 9.

¹⁵ *Id.* For a more complete description of the human rights violations inherent in the practice of capturing and extraordinarily rendering Guantánamo detainees, *see* DEBORAH M. WEISSMAN ET AL., UNIV. OF N.C. SCH. OF LAW, THE NORTH CAROLINA CONNECTION TO EXTRAORDINARY RENDITION AND TORTURE, 11, 15 (2012), <https://law.unc.edu/wp-content/uploads/2019/10/renditionreportjan2012.pdf>.

¹⁶ *Id.*

¹⁷ *See id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *See Id.*

²⁴ Adayfi, *supra* note 6.

²⁵ Gunter, *supra* note 4.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Adayfi, *supra* note 6.

³¹ Gunter, *supra* note 4.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ Adayfi, *supra* note 6.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Gunter, *supra* note 4.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Adayfi, *supra* note 6.

⁴⁴ *Id.*
⁴⁵ *Id.*
⁴⁶ *Id.*
⁴⁷ *Id.*
⁴⁸ *Id.*
⁴⁹ *Id.*
⁵⁰ *Id.*
⁵¹ Gunter, *supra* note 4.
⁵² Adayfi, *supra* note 6.
⁵³ *Id.*
⁵⁴ *Id.*
⁵⁵ *Id.*
⁵⁶ *Id.* Mr. Adayfi denotes that the “lucky ones” were sent to Ireland, Germany, and Portugal, among other places, where they were integrated with social and governmental support because the receiving nations wanted them to become productive members of society. He notes that these men now have families, citizenship status, and all their rights as citizens.
⁵⁷ *Id.*
⁵⁸ *Id.*
⁵⁹ *Id.*
⁶⁰ MANSOOR ADAYFI, DON’T FORGET US HERE: LOST AND FOUND AT GUANTANAMO (2021).
⁶¹ *Boumediene Released from Guantánamo Bay*, WILMERHALE, <https://www.wilmerhale.com/insights/news/boumediene-released-from-guantanamo-bay>.
⁶² *Id.*
⁶³ *Id.*
⁶⁴ *Boumediene v. Bush*, 553 U.S. 723 (2008).
⁶⁵ *Id.*
⁶⁶ *Boumediene Released from Guantánamo Bay*, *supra* note 61.
⁶⁷ *Id.*
⁶⁸ Adayfi, *supra* note 6.
⁶⁹ Zoom Interview with Lakhdar Boumediene (Nov. 9, 2022) (on file with author).
⁷⁰ *Id.*
⁷¹ *Id.*
⁷² *Id.*
⁷³ *Id.*
⁷⁴ *Id.*
⁷⁵ *Id.*
⁷⁶ *Id.*
⁷⁷ *Id.*
⁷⁸ *Id.*
⁷⁹ *Id.*
⁸⁰ *Id.*
⁸¹ LAKHDAR BOUMEDIENE & MUSTAFA AIT IDIR, WITNESSES OF THE UNSEEN: SEVEN YEARS IN GUANTANAMO (2017).
⁸² Boumediene, *supra* note 69.
⁸³ *Id.*
⁸⁴ *Id.*
⁸⁵ *Id.*
⁸⁶ *Id.*
⁸⁷ *Id.*
⁸⁸ *Id.*
⁸⁹ *Detainee Transfer Announced*, U.S. DEPARTMENT OF DEFENSE (Dec. 30, 2014), <https://www.defense.gov/News/Releases/Release/Article/605334>.
⁹⁰ *Sabri Muhammad Ibrahim Al Qurashi*, THE TELEGRAPH 1, 2 (Apr. 27, 2011, 12:12 PM), <https://www.telegraph.co.uk/news/wikileaks-files/guantanamo-bay-wikileaks-files/8477532/Guantanamo-Bay-detainee-file-on-Sabri-Muhammad-Ibrahim-Al-Qurashi-US9YM-000570DP.html>.
⁹¹ *Id.*

⁹² *Id.* at 3.

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* at 5.

⁹⁷ *Id.* It is important to remember that changing stories during torturous interrogation is not unique—often, confessions at Guantánamo were coerced and quite literally beaten out of individuals. Similarly, under varying conditions with different interrogating officers, detainees had various responses in interrogation. It is not necessarily a sign of guilt that a person changed his or her story.

⁹⁸ *Id.*

⁹⁹ *Id.* at 12.

¹⁰⁰ *Detainee Transfer Announced*, *supra* note 89.

¹⁰¹ Andy Worthington, *Who Are the Five Guantánamo Prisoners Given New Homes in Kazakhstan*, ANDY WORTHINGTON (April 1, 2015), <https://www.andyworthington.co.uk/2015/01/04/who-are-the-five-guantanamo-prisoners-given-new-homes-in-kazakhstan/>.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Gunter, *supra* note 4.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Alexandra Tremayne-Pengelly, *Guantánamo Bay Inmates Created Art in Detention But the U.S. Military Says It's Not Theirs to Keep*, OBSERVER (Oct. 20, 2022, 12:01 PM), <https://observer.com/2022/10/guantanamo-bay-inmates-created-art-in-detention-but-the-u-s-military-says-its-not-theirs-to-keep/>.

¹¹⁴ *Id.* (Some of Al-Qurashi's art can be viewed at <https://www.artfromguantanamo.com/sabri-al-qurashi>).

¹¹⁵ *Mauritania: Allow Ex-Guantánamo Detainee to Travel*, HUMAN RIGHTS WATCH (June 13, 2019, 2:00 AM), <https://www.hrw.org/news/2019/06/13/mauritania-allow-ex-guantanamo-detainee-travel>.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² MOHAMEDOU OULD SLAHI, *GUANTÁNAMO DIARY* (2015)

¹²³ *Mauritania: Allow Ex-Guantánamo Detainee to Travel*, *supra* note 115.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Zoom Interview with Nancy Hollander, Mr. Slahi's attorney (Nov. 1, 2022) (on file with author).

¹²⁹ *Id.*

¹³⁰ *Id.* Mr. Slahi's attorney, Nancy Hollander, noted this was a major victory, as many other former detainees were unable to attain their medical records later.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* Ben Taub, *Guantánamo's Darkest Secret*, THE NEW YORKER, Apr. 15, 2019, at <https://www.newyorker.com/magazine/2019/04/22/guantanamos-darkest-secret>.

¹³⁴ *Mauritania: Allow Ex-Guantánamo Detainee to Travel*, *supra* note 115.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ Hollander, *supra* note 128.

¹⁴⁵ *Mauritania: Allow Ex-Guantánamo Detainee to Travel*, *supra* note 115.

¹⁴⁶ Hollander, *supra* note 128.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Mauritania: Allow Ex-Guantánamo Detainee to Travel*, *supra* note 115.

¹⁵⁰ *The Core International Human Rights Instruments and their monitoring bodies*, U.N. HUM. RTS. OFFICE OF THE HIGH COMM’R., <https://www.ohchr.org/en/core-international-human-rights-instruments-and-their-monitoring-bodies> (last visited Nov. 16, 2022). In addition to the Universal Declaration of Human Rights, there have been nine human rights instruments that have been widely ratified since the end of World War II: International Convention on the Elimination of All Forms of Racial Discrimination (1965); International Covenant on Civil and Political Rights (1966); International Covenant on Economic, Social and Culture Rights (1966); Convention on the Elimination of All Forms of Discrimination against Women (1979); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); Convention on the Rights of the Child (1989); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); International Convention for the Protection of All Persons from Enforced Disappearance (2006); Convention on the Rights of Persons with Disabilities (2006).

¹⁵¹ *Historian Addresses Wesleyan*, N.Y. TIMES (Jun. 4, 1984),

<https://www.nytimes.com/1974/06/04/nyregion/historian-addresses-wesleyan.html>. (quoting historian David McCullough’s address to the graduating class of Wesleyan University in 1984).

¹⁵² See Sarah Schwartz, *Who Decides What History We Teach? An Explainer*, EDUC. WK. (Aug. 11, 2021), <https://www.edweek.org/teaching-learning/who-decides-what-history-we-teach-an-explainer/2021/08>. The United States has no national history standards for schools. However, history is taught broadly in K-12 schools and all students receive some sort of history education from an early age.

¹⁵³ Hina Shamsi, *20 Years Later, Guantánamo Remains a Disgraceful Stain on Our Nation. It Needs to End*. ACLU (Jan. 11, 2022), <https://www.aclu.org/news/human-rights/20-years-later-guantanamo-remains-a-disgraceful-stain-on-our-nation-it-needs-to-end>.

¹⁵⁴ *Id.*

¹⁵⁵ See Anya Wahal, *On International Treaties, the United States Refuses to Play Ball*, COUNCIL ON FOREIGN RELS. (Jan. 7, 2022, 5:08 PM), <https://www.cfr.org/blog/international-treaties-united-states-refuses-play-ball> (describing the United States’ hesitancy to fully engage with international law and prioritize national interests instead).

¹⁵⁶ See Shamsi, *supra* note 153.

¹⁵⁷ MICHELINE R. ISHAY, *THE HISTORY OF HUMAN RIGHTS: FROM ANCIENT TIMES TO THE GLOBALIZATION Era* 1, 7 (2004).

¹⁵⁸ See *World Report 2021*, HUM. RTS. WATCH, <https://www.hrw.org/world-report/2021> (outlining that the report contains developments on more than 100 countries but does not include others due to limited capacity of Human Rights Watch).

¹⁵⁹ Jeffrey M. Jones, *How Religious Are Americans?*, GALLUP: THE SHORT ANSWER (Dec. 23, 2021), <https://www.news.gallup.com/poll/358364/religious-americans.aspx>. In 2021, according to Gallup Polling, three in four Americans self-identified with a religious faith.

¹⁶⁰ Besheer Mohamed, *Muslims Are a Growing Presence in U.S., but Still Face Negative Views from the Public*, PEW RSCH. CTR. (Sep. 1, 2021), <https://www.pewresearch.org/fact-tank/2021/09/01/muslims-are-a-growing-presence-in-u-s-but-still-face-negative-views-from-the-public/>. Seventy-eight percent of U.S. adults say Muslims face some or a lot of discrimination. Muslims consistently rank among the most negatively viewed religious groups in the country. Nearly half of Muslim American adults in 2017 said they had personally faced some form of discrimination due to their religion.

¹⁶¹ 2 *Kings* 6:20.

¹⁶² 2 *Kings* 6:21.

¹⁶³ 2 *Kings* 6:21-22.

¹⁶⁴ GORDON P. KELLY, *A HISTORY OF EXILE IN THE ROMAN REPUBLIC* 1, 2 (2006).

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- ¹⁶⁵ *Id.* at 18.
- ¹⁶⁶ *Id.*
- ¹⁶⁷ *Id.* at 19.
- ¹⁶⁸ *Id.* at 18-19.
- ¹⁶⁹ *Id.* at 26-27.
- ¹⁷⁰ *Id.* at 28, 32.
- ¹⁷¹ *Id.* at 43-44.
- ¹⁷² *Id.* at 45, n. 112.
- ¹⁷³ *Id.* at 65.
- ¹⁷⁴ *Id.*
- ¹⁷⁵ *Id.* at 67.
- ¹⁷⁶ DANIELLE LEE, UNROMAN ROMANS ch. 31 *Ovid and Exile*, available at <https://www.pressbooks.bccampus.ca/unromantest/chapter/ovid-and-exile/> (accessed Nov. 18, 2022).
- ¹⁷⁷ Sabine Grebe, *Why Did Ovid Associate His Exile with a Living Death?*, 103-4 THE CLASSICAL WORLD 491, 493 (2010).
- ¹⁷⁸ OVID, TRISTIA III.II:15-20 (A.S. Kline trans. 2003)
 (“Still, while I was hurled, anxious, over land and sea,
 The effort masked my cares, and my sick heart:
 So now the journey’s done, the toil is over,
 And I’ve reached the country of my punishment,
 Only grieving pleases, there’s no less rain from my eyes
 Than water from the melting snow in springtime.
 Rome’s in my thoughts, and home, and longed-for places,
 Whatever of mine remains in the city I’ve lost.
 Ah, how often I’ve knocked at the door of my own tomb
 And yet it has never opened to me!
 Why have I escaped so many swords, so many
 Storms that threatened to overwhelm an ill-starred life?
 Gods, I’ve found too constant in cruelty,
 Sharers of the anger one god feels,
 I beg you, drive my slow fate onwards
 Forbid the doors of death to close!”).
- ¹⁷⁹ Shakespeare deals with the law in various ways in many of his works, but law makes a particularly significant appearance in *Measure for Measure* and *The Merchant of Venice*.
- ¹⁸⁰ For example, exile appears in Shakespeare’s works: *Romeo and Juliet*, *Richard II*, *2 Henry IV*, *Titus Andronicus*, *As You Like It*, *King Lear*, *The Tempest*, *The Two Gentlemen of Verona*, and others. For more detail on this see Betty Prohodskey, *Exile in Shakespeare: The Character in Adversity* (Aug. 1965) (M.A. Thesis, Kansas State Teachers College), <https://www.esirc.emporia.edu/bitstream/handle/123456789/3162/Prohodskey%201965.pdf?sequence=1>.
- ¹⁸¹ WILLIAM SHAKESPEARE, ROMEO AND JULIET act III, sc. III.
- ¹⁸² EURIPIDES, *Medea*, in EURIPIDES I at 799 (Rex Warner trans., David Grene et al. eds. 2013).
- ¹⁸³ This comes from Sunan Abu Dawud, an Islamic text compiled by Imam Hafiz Abu Dawud Sulaiman bin Sh’ath, and is considered to be one of the six canonical collections of hadith. *The Book of Legal Punishments in 1 ENGLISH TRANSLATION OF SUNAN ABU DAWUD 16* (Hafiz Abu Tahir Zubair ‘Ali Za’I ed., Yaser Qadhi trans. 2008).
- ¹⁸⁴ *Id.*
- ¹⁸⁵ REZA ZARGHAMEE, DISCOVERING CYRUS: THE PERSIAN CONQUEROR ASTRIDE THE ANCIENT WORLD 1, 219-20 (2013).
- ¹⁸⁶ *Id.* at 220.
- ¹⁸⁷ *Id.* at 221.
- ¹⁸⁸ *Id.*
- ¹⁸⁹ *Id.*
- ¹⁹⁰ *Id.*
- ¹⁹¹ *Id.*
- ¹⁹² *Id.* at 222.
- ¹⁹³ *Id.*
- ¹⁹⁴ *Id.* at 223.
- ¹⁹⁵ *Id.* at 207.

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- ¹⁹⁶ *Id.* at 225.
- ¹⁹⁷ *Id.* at 232.
- ¹⁹⁸ *Ezra* 1:2-4.
- ¹⁹⁹ ZARGHAMEE, *supra* note 185, at 236.
- ²⁰⁰ *Id.* at 484.
- ²⁰¹ OVID, TRISTIA T.I:27-34 (A.S. Kline trans. 2003).
- ²⁰² See DAVID BALUARTE, FROM MARIEL CUBANS TO GUANTÁNAMO DETAINEES: STATELESS PERSONS DETAINED UNDER U.S. AUTHORITY 1, 38 (Equal Rights Trust 2010), https://www.equalrightstrust.org/ertdocumentbank//Statelessness_in_USA_17_Jan.pdf (“A February 2006 report analyzing the records of 517 Guantanamo detainees’ CSRT proceedings found that: (1) 55% of the detainees were not determined to have committed any hostile acts against the United States or its coalition allies; (2) only 8% of the detainees were characterized as al-Qaeda fighters – and of the remaining detainees, 40% had no definitive connection with al-Qaeda at all and 18% had no definitive affiliation with either al-Qaeda or the Taliban.”); CONOR FRIEDERSDORF, *Former State Department Official: Team Bush Knew Many at Gitmo Were Innocent*, THE ATLANTIC (2013), <https://www.theatlantic.com/politics/archive/2013/04/former-state-department-official-team-bush-knew-many-at-gitmo-were-innocent/275327/> (discussing how most detainees were innocent).
- ²⁰³ *Guantánamo Bay: 14 Years of Injustice*, AMNESTY INT’L UK (May 18, 2020, 5:41 PM), <https://www.amnesty.org.uk/guantanamo-bay-human-rights>.
- ²⁰⁴ Jonathan Masters, *Guantánamo Bay: Twenty Years of Counterterrorism and Controversy*, COUNCIL ON FOREIGN RELS. (2022), <https://www.cfr.org/article/Guantánamo-bay-twenty-years-counterterrorism-and-controversy#chapter-title-0-7>, (“Critics . . . argue that the counterterrorism policies and practices associated with Guantánamo . . . have done lasting damage to U.S. moral standing . . . Moreover, they claim that other bad actors around the world will point to U.S. counterterrorism policies to justify their own human rights violations, and that this could lead to a broad deterioration of the rules-based international order.”).
- ²⁰⁵ Sarah Almukhtar et. al., *The Guantánamo Docket*, N.Y. TIMES (Sep. 23, 2022), <https://www.nytimes.com/interactive/2021/us/guantanamo-bay-detainees.html>.
- ²⁰⁶ Hilal, *Freed from Guantánamo, but Imprisoned by Borders*, AL JAZEERA (Mar. 13, 2019), <https://www.aljazeera.com/opinions/2019/3/13/freed-from-guantanamo-but-imprisoned-by-borders>.
- ²⁰⁷ Noa Yachot, *Exclusive: Many Resettled Guantánamo Detainees in Legal Limbo, Analysis Shows*, THE GUARDIAN (Jan. 9, 2022, 5:05PM), <https://www.theguardian.com/us-news/2022/jan/09/guantanamo-resettled-no-legal-status>.
- ²⁰⁸ *Id.* (discussing that about 30% of former detainees have not been granted legal status and many of the men have not been given residency documents).
- ²⁰⁹ Sacha Pfeiffer, *The Future of Guantánamo Bay Detention Camp and the 39 Prisoners Still There*, NPR (Jan. 11, 2022, 5:18 PM), <https://www.npr.org/2022/01/11/1072183473/the-future-of-Guantánamo-bay-detention-camp-and-the-39-prisoners-still-there>.
- ²¹⁰ *Guantánamo 2.0: Former Prisoner Mansoor Adayfi says Injustice Continues Even After Release*, DEMOCRACY NOW! THE WAR AND PEACE REP. (Jan. 11, 2022) (downloaded using iTunes) (“So, basically, you know, we live Guantánamo 2.0 – no legal status, some of us cannot travel, you know, live in the stigma of Guantánamo, viewed by the hosting countries as a terrorist, as killers.”).
- ²¹¹ *About Statelessness*, UNHCR, <https://www.unhcr.org/ibelong/about-statelessness/> [hereinafter *About Statelessness*].
- ²¹² G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 3 (Dec. 10, 1948) [hereinafter UDHR].
- ²¹³ *Id.* at art. 15(1).
- ²¹⁴ Organization of American States, American Convention on Human Rights, art. 22(2), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123 [hereinafter American Convention on Human Rights].
- ²¹⁵ *Id.*
- ²¹⁶ *Id.*
- ²¹⁷ UNHCR, ENDING STATELESSNESS WITHIN 10 YEARS (2014) [hereinafter UNHCR Report].
- ²¹⁸ *Id.* at 4-5.
- ²¹⁹ *About Statelessness*, *supra* note 211.
- ²²⁰ UNHCR, GLOBAL ACTION PLAN TO END STATELESSNESS: 2014-2024 (2019), [unhcr.org/ru/wp-content/uploads/sites/73/2019/09/End-Statelessness-GlobalActionPlan-2019-Final-web.pdf](https://www.unhcr.org/ru/wp-content/uploads/sites/73/2019/09/End-Statelessness-GlobalActionPlan-2019-Final-web.pdf) [hereinafter *Global Action Plan*]. (The 10 Actions include “Action 1: Resolve existing major situations of statelessness; Action 2: Ensure that no child is born stateless; Action 3: Remove gender discrimination from nationality laws; Action 4: Prevent denial, loss or deprivation of nationality on discriminatory grounds; Action 5: Prevent statelessness in cases of State succession; Action 6: Grant protection status to stateless migrants and facilitate their naturalization; Action

7: Ensure birth registration for the prevention of statelessness; Action 8: Issue nationality documentation to those with entitlement to have it; Action 9: Accede to the UN Statelessness Conventions; Action 10: Improve quantitative and qualitative data on stateless populations.”) *Id.* at 5.

²²¹ *Id.* at 9.

²²² *Id.*

²²³ *Id.*

²²⁴ UNHCR, PLEDGES 2011: MINISTERIAL INTERGOVERNMENTAL EVENT ON REFUGEES AND STATELESS PERSONS (2012), <https://www.unhcr.org/4ff55a319.pdf> [hereinafter Pledges].

²²⁵ UNHCR, *List of Participants* (2011), <https://www.unhcr.org/en-us/events/commemorations/4eea16a49/ministerial-meeting-list-participants.html>; *Remarks by Secretary of State Hillary Rodham Clinton at UNHCR Commemorations Ministerial Meeting*, UNHCR (2011), <https://www.unhcr.org/4edf43a76.html>. While Hillary Clinton remarked that “protecting and assisting refugees, internally displaced and stateless persons, and other vulnerable populations, is among my government’s highest humanitarian priorities,” the United States is still not a party to the 1954 Convention Relating to the Status of Stateless Persons nor the 1961 Convention on the Reduction of Statelessness.

²²⁶ Pledges, *supra* note 224, at 38.

²²⁷ *Trop v. Dulles*, 356 U.S. 86, 101 (1958).

²²⁸ Pledges, *supra* note 224, at 38.

²²⁹ See Nick Amies, *Europeans Still Resisting Obama over Guantánamo Inmates*, DEUTSCHE WELLE (2010), <https://www.dw.com/en/europeans-still-resisting-obama-over-guantánamo-inmates/a05257326>.

²³⁰ Hilal, *supra* note 206, at 311.

²³¹ See BALUARTE, *supra* note 202, at 38; Friedersdorf, *supra* note 202.

²³² See UDHR, *supra* note 212, at art. 15(1); American Convention on Human Rights, *supra* note 214, at art. 22(2).

²³³ U.S. CONST. amend. VI.

²³⁴ See *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Kelo v. City of New London*, 545 U.S. 469 (2005).

²³⁵ *Gideon v. Wainwright*, 372 U.S. 335, 334-45 (1963).

²³⁶ *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976).

²³⁷ G.A. Res. 2545, 1951 Refugee Convention, July 28, 1951, 189 U.N.T.S. 137 [hereinafter 1951 Refugee Convention]; G.A. Res. 8791, 1967 Protocol Relating to the Status of Refugees, Jan. 31, 1967, 606 U.N.T.S. 267 [hereinafter 1967 Protocol Relating to the Status of Refugee].

²³⁸ See Harriet Hu, *Stateless and Stranded: Guantánamo Detainees in Palau*, THE CULTURE TRIP (Aug. 13, 2021), <https://www.theculturetrip.com/pacific/palau/articles/stateless-and-stranded-guant-namo-detainees-in-palau/>; BALUARTE, *supra* note 202 at 42 (“By all accounts, many of these men cannot return to their country of nationality or last habitual residence, due to the likelihood of torture, a threat in many cases that arises from their branding as Guantánamo detainees.”).

²³⁹ UDHR, *supra* note 212, at art. 14.

²⁴⁰ *Id.* at art. 5; G.A. Res. 2200A (XXI), International Covenant on Civil and Political Rights, art. 7, Dec. 16, 1966 [hereinafter ICCPR].

²⁴¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3(1), Dec. 10, 1984, 36 T.I.A.S. 94-1120.1 [hereinafter CAT].

²⁴² *Id.*

²⁴³ *Id.* See discussion *infra* Part VI.A.1.

²⁴⁴ G.A. Res. 5158, 1954 Convention Relating to the Status of Stateless Persons, art. 26-28, Sept. 28, 1954, 360 U.N.T.S. 117 [hereinafter 1954 Convention Relating to the Status of Stateless Persons].

²⁴⁵ 1951 Refugee Convention, *supra* note 237, at art. 26.

²⁴⁶ See the 1954 Convention relating to the Status of Stateless Persons, *supra* note 244, at art. 26; 1951 Refugee Convention, *supra* note 237, at art. 26; G.A. Res. 61/106, Convention on the Rights of Persons with Disabilities, Jan. 24, 2007 [hereinafter CRPD]; UDHR, *supra* note 212, at art. 13.

²⁴⁷ U.S. CONST. amend. V, XIV. See also *Roe v. Wade*, 410 U.S. 113 (1973), *overruled by Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 414 (2021) (discussing that fundamental liberty rights include the right to bodily autonomy and the choice of what to do with one’s own body).

²⁴⁸ 1951 Refugee Convention, *supra* note 237, at art. 27.

²⁴⁹ *Id.* at art. 28.

²⁵⁰ *Id.* at art. 27-28.

²⁵¹ Aleinkoff, T. Alexander, *From “Refugee Law” to the “Law of Coerced Migration,”* 9 AM. U. INT’L L. REV. 25, 25 (1994).

²⁵² *Id.* at 26.

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ Lakhdar Boumediene, *I was Force-Fed at Guantánamo. What Guards are Doing Now is Worse.*, NEW REPUBLIC (Oct. 30, 2017) (quoting Lakhdar Boumediene as saying “I emerged from Guantánamo at 5’9” weighing 125 pounds. When my older daughter first saw me, I was so wasted away she didn’t recognize me. ‘This man,’ she told my wife, ‘is too old to be my father.’”) <https://www.newrepublic.com/article/145549/force-fed-guantanamo-guards-now-worse>.

²⁵⁶ Gunter, *supra* note 4.

²⁵⁷ *Id.*

²⁵⁸ See *infra* notes 5-50 and accompanying text.

²⁵⁹ G.A. Res. 70/175, United Nations Standard Minimum Rules for the Treatment of Prisoners, Dec. 17, 2015 [hereinafter Mandela Rules].

²⁶⁰ *Id.* (“The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principles and practice in the treatment of prisoners and prison management.”).

²⁶¹ *Id.* at Rule 90.

²⁶² *Id.* at Rule 38.

²⁶³ *Id.* at Rule 110.

²⁶⁴ *Id.* at Rule 108.

²⁶⁵ Gunter, *supra* note 4.

²⁶⁶ *Id.*

²⁶⁷ *After 6+ Years at Guantánamo, Mohamed Jawad Returns Home*, DEMOCRACY NOW (Aug. 25, 2009), https://www.democracynow.org/2009/8/25/after_6_years_at_guantanamo_mohammed.

²⁶⁸ See Mandela Rules, *supra* note 259.

²⁶⁹ See *id.*

²⁷⁰ DEBORAH M. WEISSMAN ET AL., THE NORTH CAROLINA CONNECTION TO EXTRAORDINARY RENDITION AND TORTURE 1, 15 (2012); *Effects of Trauma*, MIND, <https://www.mind.org.uk/information-support/types-of-mental-health-problems/trauma/effects-of-trauma/> (last visited Nov. 11, 2022) (“Studies have shown that stress signals can continue long after the trauma is over. This might affect your mind and body, including how you think, feel and behave.”).

²⁷¹ *Effects of Trauma*, *supra* note 270.

²⁷² Abigail Hauslohner, *No Escape from Guantánamo: For the Former Detainees of America’s War on Terror, Life After Guantánamo Is its Own Kind of Prison*, WASH. POST (Jan. 7, 2022), <https://www.washingtonpost.com/nation/interactive/2022/guantanamo-bay-former-detainees/> (“I am sick now, I am mentally sick. Every day, I get angry with my wife. It’s not good. I am stressed. But America doesn’t care what happens to people after they leave Guantánamo.”).

²⁷³ Boumediene, *supra* note 69.

²⁷⁴ *Id.*

²⁷⁵ See Mandela Rules, *supra* note 259.

²⁷⁶ See *id.*

²⁷⁷ *Effects of Trauma*, *supra* note 270.

²⁷⁸ See Mandela Rules, *supra* note 259.

²⁷⁹ See *id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Most Guantánamo Detainees are Innocent: Ex-Bush Official*, CBC (Mar. 19, 2009), <https://www.cbc.ca/news/world/most-guantanamo-detainees-are-innocent-ex-bush-official-1.804550> (“Many detainees locked up in Guantánamo Bay were innocent men swept up by U.S. forces unable to distinguish enemies from noncombatants, a former Bush administration official said Thursday.”).

²⁸³ Geneva Convention Relative to the Treatment of Prisoners of War art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter Convention on POW].

²⁸⁴ Memorandum for Alberto R. Gonzales Counsel to the President, Op. O.L.C. 1 (2002) [hereinafter Memo].

²⁸⁵ Convention on POW, *supra* note 283.

²⁸⁶ Memo, *supra* note 284.

²⁸⁷ See *Names of the Detained in Guantánamo Bay, Cuba*, WASHINGTON POST, https://www.washingtonpost.com/wp-srv/nation/guantanamo_names.html (last visited Oct. 13, 2022).

²⁸⁸ Memo, *supra* note 284 (“Geneva III does not apply to a non-State actor such as the al Qaeda terrorist organization. Al Qaeda is not a State. It is a non-governmental terrorist organization composed of members from many nations, with ongoing operations in dozens of nations.”); *Most Guantánamo Detainees are Innocent: Ex-Bush Official*, *supra* note 282 (“[M]any detainees ‘clearly had no connection to al-Qaeda and the Taliban and were in the wrong place at the wrong time. Pakistanis turned many over for \$5,000 a head.’”).

²⁸⁹ Convention on POW, *supra* note 283.

²⁹⁰ *Id.*

²⁹¹ *The Law of Neutrality*, in 73 INT’L L. STUD., THE COMMANDER’S HANDBOOK ON THE LAW OF NAVAL OPERATIONS (A.R. Thomas & James C. Duncan eds., 1999).

²⁹² Gunter, *supra* note 4 (“The only thing Adayfi did know was that Serbian forces had massacred Bosnian Muslims in the Balkan wars of the 1990s.”).

²⁹³ See Convention on POW, *supra* note 283.

²⁹⁴ Gunter, *supra* note 4.

²⁹⁵ *Id.* (“The deal that took [Adayfi to Serbia], like a lot of things about Guantanamo, remains shrouded in secrecy. ‘The United states does not tell the lawyers anything.’”).

²⁹⁶ Convention on POW, *supra* note 283.

²⁹⁷ *Id.*

²⁹⁸ Gunter, *supra* note 4.

²⁹⁹ *Id.*

³⁰⁰ UDHR, *supra* note 212, at art. 3 (Dec. 10, 1948) (“Everyone has the right to life, liberty and security of person.”).

³⁰¹ See *Id.*

³⁰² See *Id.*

³⁰³ CRPD, *supra* note 246.

³⁰⁴ Grant Hilary Brenner, *The Expected Psychiatric Impact of Detention in Guantánamo Bay, Cuba, and Related Considerations*, 11 J. TRAUMA & DISSOCIATION 469 (2010).

³⁰⁵ *Serbia factsheet*, INTL’ JUST. RES. CENTER, <https://www.irjcenter.org/country-factsheets/country-factsheets-europe/serbia-factsheet/#:~:text=Serbia%20has%20accepted%20the%20inquiry,CED%2C%20CEDAW%2C%20and%20CRPD> (last updated Feb. 2020).

³⁰⁶ Gunter, *supra* note 4 (When Mr. Adayfi refused to be released to Serbia, a U.S. official assured him that the Serbian Government is aware of his circumstances, “[it] was going to treat him like a citizen, . . . help him finish his education, give him financial assistance, and arrange for a passport and ID. They were going to help him start over.”).

³⁰⁷ See CRPD, *supra* note 246.

³⁰⁸ 553 U.S. 723 (2008).

³⁰⁹ *Id.* at 798.

³¹⁰ *Id.*

³¹¹ See Shayana Kadidal, *Cutting Edge Issues in Year 20 of the Guantánamo Habeas Litigation*, JUST SECURITY (Jan. 11, 2022), <https://www.justsecurity.org/79803/cutting-edge-issues-in-year-20-of-the-Guantánamo-habeas-litigation/> (exploring the refusal of the Supreme Court to revisit habeas questions ever since *Boumediene*, and the inconsistent application of this doctrine by appellate courts that foreclose due process challenges either wholly or conditionally upon very questionable legal grounds. Of note among these cases is the appellate court holding in *Kiyemba v. Obama*, which upheld the “absolute” power of the political branches over immigration concerns, including the detention of Uyghurs, given that “the due process clause does not apply to aliens without property or presence in the sovereign territory of the United States.” 555 F.3d 1022 (D.C. Cir. 2009)).

³¹² See Brenna D. Nelinson, *From Boumediene to Garcia: The United States’ (Non)Compliance with the United Nations Convention Against Torture and Its Movement Away from Meaningful Review*, 29 AM. UNIV. INT’L L. REV. 209, 246 (2013) (“The initial drafts of [the United Nations Convention against Torture] suggest that some system of review is due for fugitives under [the Foreign Affairs Reform and Restructuring Act of 1998], and that a signature, no matter how formal, will not suffice . . . Any other reading . . . severely undermines the *Boumediene* logic”).

³¹³ See discussion *supra* Section IV.A for a description of the role of a Periodic Review Board.

³¹⁴ See, e.g. Michael Callahan & Betsy Klein, *US transfers Guantánamo Bay detainee to home country of Morocco*, CNN (July 19, 2021, 3:32 PM) <https://www.cnn.com/2021/07/19/politics/guantanamo-bay-detainee-morocco/index.html> (referencing the statement by the public prosecutor of Morocco announcing further

investigations into a detainee for suspicion of terrorism upon arrival to the country, with the U.S. government adding that any decisions to detain or release said detainee fell within the province of the Moroccan government); *Libyan National Cleared for Guantánamo Release: Reports*, THE NEW ARAB (Sept. 25, 2022), <https://www.newarab.com/news/libyan-national-cleared-Guantánamo-release-reports> (detailing the PRB’s recommendation that the United States transfer former detainee Ismail Ali Faraj Ali Bakush to a country with “a willingness to monitor his activities and restrict his travel”).

³¹⁵ Press Release, Special Procedures, UAE: UN Experts Say Forced Return of Ex-Guantánamo Detainees is Illegal, Risks Lives, U.N. Press Release (Oct. 15, 2020).

³¹⁶ Comisión Interamericana de Derechos Humanos, *18 US ENG – Precautionary Measures Detainees in Guantánamo Bay with respect to the United States*, YOUTUBE (Oct. 28, 2022), <https://www.youtube.com/watch?v=mZj0POJFR7w>.

³¹⁷ *Id.*

³¹⁸ Foreign Affairs Reform and Restructuring Act, H.R. 1757, 105th § 1242(a) (1998).

³¹⁹ *Id.* at § 1241(a).

³²⁰ See *infra* Section VI.A.1.b.

³²¹ Inter-Am. Comm’n H.R., Report No. 29/20, OEA/Ser.L/V/II doc. 39 (2020) [hereinafter Merits Report].

³²² *Ameziane v. Obama / Ameziane v. United States*, CTR. FOR CONST. RTS., <https://ccrjustice.org/home/what-we-do/our-cases/ameziane-v-obama-ameziane-v-united-states> (last visited Nov. 16, 2022).

³²³ Merits Report, *supra* note 321.

³²⁴ *Id.*

³²⁵ Press Release, Org. of Am. States, IACHR Condemns Forced Transfer of Djamel Ameziane from Guantánamo to Algeria (Apr. 22, 2020), https://www.oas.org/en/iachr/media_center/PReleases/2013/103.asp [hereinafter IACHR].

³²⁶ *Id.*

³²⁷ *Id.*

³²⁸ *Ameziane v. Obama*, 58 F.Supp.3d 99, 104 (D.D.C. 2014).

³²⁹ See Jonathan Masters, *Guantánamo Bay: Twenty Years of Counterterrorism and Controversy*, COUNCIL ON FOREIGN REL. (Sept. 9, 2022), <https://www.cfr.org/article/Guantánamo-bay-twenty-years-counterterrorism-and-controversy>.

³³⁰ *Ameziane*, 58 F.Supp.3d 99, 103.

³³¹ IACHR, *supra* note 325, at 29.

³³² *OAS Charter- Signatures and Ratifications*, COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS, https://www.cidh.oas.org/basicos/english/Basic22b.CharterOAS_ratif.htm (last viewed Dec. 12, 2022).

³³³ IACHR, *supra* note 325, at 29.

³³⁴ *Report on Terrorism and Human Rights*, COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS, <https://www.cidh.org/terrorism/eng/part.d.htm> (last visited Dec. 12, 2022).

³³⁵ *Id.*

³³⁶ IACHR, *supra* note 325, at 30.

³³⁷ *Id.*

³³⁸ *Report of the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS, <https://www.cidh.oas.org/countryrep/canada000en/canada.htm> (last visited Dec. 12, 2022). This report rebutted the position of the Canadian government that, since it is not a ratifying party to the Convention, the Commission should limit its examination of Canada’s treatment of asylum seekers solely to the text of the American Declaration. Rather, the IACHR explained, the general norms of interpretation necessitate that the Commission evaluate obligations of State parties under the OAS Charter and the American Declaration as informed—though not directly controlled—by any other international laws applicable to the given issue. See also Inter-Am. Ct. H.R. (ser. A) No. 82 (upholding the practice of the Commission to invoke extraneous treaties in its reports and resolution regardless of whether they are bilateral or multilateral, and of whether they are adopted “within the framework or under the auspices of the inter-American system.”).

³³⁹ *Report: Current Conditions of Confinement at Guantánamo Still in Violation of the Law*, CTR. FOR CONST. RTS., <https://www.ccrjustice.org/home/press-center/press-releases/report-current-conditions-confinement-guant-namo-still-violation> (last updated Mar. 21, 2011).

³⁴⁰ Lana Ulrich, *The Constitutional Debates Over the Military Prison at Guantánamo Bay*, NAT’L CONST. CTR. (Sept. 9, 2016), <https://www.constitutioncenter.org/blog/the-constitutional-debates-over-the-military-prison-at-Guantánamo-bay>.

³⁴¹ See, e.g., Complaint at 25, *Khan v. Biden*, 1:22-CV-01650-RBW (D.D.C. 2022).

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- ³⁴² Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment as modified, UN Doc A/139/51 (1984).
- ³⁴³ U.S. Reservations, Declarations and Understandings, CAT, Cong. Rec. S17486-01 (1990).
- ³⁴⁴ See *infra* Part VI.
- ³⁴⁵ U.N. Convention Against Torture (CAT): Overview and Application to Interrogation Techniques (2004-2010) (internal citation omitted), https://www.everycrsreport.com/reports/RL32438.html#_Toc252262902.
- ³⁴⁶ See, e.g., Complaint at 25, Khan v. Biden, 1:22-CV-01650-RBW (D.D.C. 2022).
- ³⁴⁷ Convention on POW, *supra* note 283, at art. 86.
- ³⁴⁸ See Rome Statute of the International Criminal Court, art. 20, July 17, 1998, 2187 U.N.T.S. 90 (entered into force July 1, 2002), rev. 2010; ICCPR, *supra* note 240, at art. 14(7); American Convention on Human Rights, *supra* note 214, at art. 8(4).
- ³⁴⁹ DoD Instruction 2310.08: Medical Program Support for Detainee Operations, U.S. DEP'T OF DEF. (effective Sept. 5, 2019), https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/231008p.pdf?ver=0ET46MNbU2JGI_IcuUXMxw%3D%3D.
- ³⁵⁰ Mary Kay Mallonee, *Guantánamo Detainee to Be Transferred to Mental Health Facility in Saudi Arabia*, CNN (Feb. 8, 2022), <https://www.cnn.com/2022/02/08/politics/Guantánamo-detainee-saudi-arabia/index.html>.
- ³⁵¹ MICHAEL JOHN GARCIA, CONG. RSCH. SERV., R40754, *Guantánamo Detention Center: Legislative Activity in the 111th Congress* (2011).
- ³⁵² Carol Rosenberg, *Red Cross Expresses Alarm Over Detainee Health at Guantánamo Bay*, N.Y. TIMES, (Apr. 22, 2023), <https://www.nytimes.com/2023/04/21/us/politics/red-cross-gitmo-health.html?smid=nytcore-ios-share&referringSource=articleShare>
- ³⁵³ Letter: various UN Mandates of Special Rapporteurs and Working Groups, Jan. 11, 2023, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=27797>
- ³⁵⁴ Yachot, *supra* note 207; 1954 Convention Relating to the Status of Stateless Persons, *supra* note 244, at art. 1 (A stateless person is someone “who is not considered as a national by any State under the operation of its law.”).
- ³⁵⁵ *Exhaustion of Domestic Remedies*, INT’L JUST. RES. CTR., <https://www.ijrcenter.org/exhaustion-of-domestic-remedies/> (last visited Nov. 18, 2022).
- ³⁵⁶ Almukhtar et. al., *supra* note 205.
- ³⁵⁷ *Guantánamo Bay Detainees Free at Last: from Detention to Bermuda*, GUARDIAN (Jun. 15, 2009, 1:48 PM), <https://www.theguardian.com/world/2009/jun/15/bermuda-guantanamo-ughurs-detainees> [hereinafter *From Detention to Bermuda*]; Luci Beti, *Guantanamo Uighurs Take Steps Towards Integration*, SWISSINFO (Oct. 6, 2010), <https://www.swissinfo.ch/eng/guantanamo-ughurs-take-steps-towards-integration/28483324>.
- ³⁵⁸ *From Detention to Bermuda*, *supra* note 351; Philip Oltermann, *Mother of Guantánamo Detainee ‘Still Waiting’ for US and German Apologies*, GUARDIAN (Feb. 13, 2022), <https://www.theguardian.com/us-news/2022/feb/13/rabiye-kurnaz-mother-guantanamo-torture-victim-murat-still-waiting-us-apology>; *Italy Frees Former Guantánamo Detainee*, FOX NEWS (Nov. 20, 2014), <https://www.foxnews.com/world/italy-frees-former-guantanamo-detainee>.
- ³⁵⁹ Almukhtar et al., *supra* note 205.
- ³⁶⁰ Mohamed Ghobari, *UAE sends 12 Former Guantánamo Detainees to Yemen*, REUTERS (Oct. 28, 2021, 7:34 AM), <https://www.reuters.com/world/uae-sends-12-former-guantanamo-detainees-yemen-lawyer-official-2021-10-28/>.
- ³⁶¹ Gaia Rietveld et al., *Who Wants ‘the Worst of the Worst’? Rationales for and Consequences of Third Country Resettlement of Guantanamo Bay Detainees*, 76 CRIME, L. & SOC. CHANGE 35, 54 (2021).
- ³⁶² Yachot, *supra* note 207.
- ³⁶³ Rietveld et al., *supra* note 361.
- ³⁶⁴ “All I Want is to be Free”: *Situation Report and Recommendation to Protect the Human Rights of Stateless People in U.S. Immigration Detention and Supervision*, UNIV. OF CHI. L. SCH.: GLOB. HUM. RTS. CLINIC (Nov. 2022), https://www.law.uchicago.edu/files/2022-10/Statelessness-All_I_Want_Is_To_Be_Free.pdf.
- ³⁶⁵ Abigail Hauslohner, *No Escape from Guantánamo: For the Former Detainees of America’s War on Terror, Life After Guantánamo Is its Own Kind of Prison*, WASH. POST (Jan. 7, 2022), <https://www.washingtonpost.com/nation/interactive/2022/guantanamo-bay-former-detainees/>.
- ³⁶⁶ *Id.*
- ³⁶⁷ James Ball, *Guantánamo Bay files: Grim Toll on Mental Health of Prisoners*, GUARDIAN (Apr. 25, 2011, 7:00 AM), <https://www.theguardian.com/world/2011/apr/25/guantanamo-files-mental-health-suicides>.
- ³⁶⁸ Carol Rosenberg, *What the C.I.A.’s Torture program Looked Like to the Tortured*, N.Y. TIMES (Dec. 4, 2019), <https://www.nytimes.com/2019/12/04/us/politics/cia-torture-drawings.html>; Matt Apuzzo et al., *How U.S. Torture*

Left a Legacy of Damaged Minds, N.Y. TIMES (Oct. 8, 2015), <https://www.nytimes.com/2016/10/09/world/cia-torture-guantanamo-bay.html?action=click&module=RelatedLinks&pgtype=Article>.

³⁶⁹ Jessica Dacey, *Guantanamo Detainees to Require Special Therapy*, SWISSINFO (Feb. 4, 2010), <https://www.swissinfo.ch/eng/guantanamo-detainees-to-require-special-therapy/8235406>.

³⁷⁰ Almukhtar et al., *supra* note 205.

³⁷¹ *Id.*

³⁷² Patrick Wintour, *Yemen Civil War: the Conflict Explained*, GUARDIAN (Jun. 20, 2019, 7:55 AM), <https://www.theguardian.com/world/2019/jun/20/yemen-civil-war-the-conflict-explained>; *UN Humanitarian Office Puts Yemen War Dead at 233,000, Mostly from 'Indirect Causes'*, UN NEWS (Dec. 1, 2020), <https://www.news.un.org/en/story/2020/12/1078972>.

³⁷³ *Id.*

³⁷⁴ *English text of the Constitution of 1991 as amended by Referendum of 2-20-2001 [6] (1991) Part Two: The Basic Rights and Duties of Citizens (Yemen)*, <https://heinonline.org/HOL/P?h=hein.cow/zzye0001&i=1>.

³⁷⁵ *Id.*

³⁷⁶ *Id.*

³⁷⁷ *Id.*

³⁷⁸ *Id.*

³⁷⁹ *Human Rights Council Complaint Procedure*, UN HUM. RTS. COUNCIL (2022), <https://www.ohchr.org/en/hr-bodies/hrc/complaint-procedure/hrc-complaint-procedure-index>.

³⁸⁰ Gregory Johnson, *The End of Yemen*, BROOKINGS (Mar. 25, 2021), <https://www.brookings.edu/blog/order-from-chaos/2021/03/25/the-end-of-yemen/>.

³⁸¹ Press Release, Special Procedures, UAE: UN Experts Say Forced Return of Ex-Guantánamo Detainees is Illegal, Risks Lives, U.N. Press Release (Oct. 15, 2020).

³⁸² Elise Swain, *Former Guantánamo Detainee Disappeared After Return to Yemen, Family Says*, INTERCEPT (Nov. 19, 2021, 12:30 PM), <https://www.theintercept.com/2021/11/19/guantanamo-detainee-disappeared-yemen/>.

³⁸³ *Id.*

³⁸⁴ Sinéad Baker, *I'm Living in Guantanamo 2.0: A Guantanamo Bay Survivor Says He Can't Get a Job or Make Friends, and Can't Leave His City Without Permission*, BUS. INSIDER INDIA (Nov. 22, 2021, 10:09 PM), <https://www.businessinsider.in/politics/world/news/im-living-in-guantanamo-2-0-a-guantanamo-bay-survivor-says-he-cant-get-a-job-or-make-friends-and-cant-leave-his-city-without-permission/articleshow/87854837.cms>.

³⁸⁵ *Id.*

³⁸⁶ *See Id.*

³⁸⁷ *English text of the Constitution of 1991 as amended by Referendum of 2-20-2001 [6] (1991) Part Two: The Basic Rights and Duties of Citizens (Yemen)*, <https://www.heinonline.org/HOL/P?h=hein.cow/zzye001&i=1>.

³⁸⁸ *Id.*

³⁸⁹ *Id.*

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ *Id.*

³⁹⁵ *Id.*

³⁹⁶ *Id.*

³⁹⁷ *Id.*

³⁹⁸ *Id.*

³⁹⁹ *Id.*

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

⁴⁰² *Id.*

⁴⁰³ *Id.*

⁴⁰⁴ *Id.*

⁴⁰⁵ *Id.*

⁴⁰⁶ *Id.*

⁴⁰⁷ *Id.*

⁴⁰⁸ *Id.*

⁴⁰⁹ *Id.*

⁴¹⁰ *Id.*

⁴¹¹ *Id.*

⁴¹² *Id.*

⁴¹³ CONG. EXEC. COMM’N CHINA, Annual Report 1, 4 (2022).

⁴¹⁴ “*Break Their Lineage, Break Their Roots*” *China’s Crimes Against Humanity Targeting Uyghurs and Other Turkic Muslims*, HUM. RTS. WATCH, (Apr. 19, 2021), <https://www.hrw.org/report/2021/04/19/break-their-lineage-break-their-roots/chinas-crimes-against-humanity-targeting>.

⁴¹⁵ *Id.*; *Current Risks: Chinese Persecution of the Uyghurs*, U.S. HOLOCAUST MUSEUM, <https://www.ushmm.org/genocide-prevention/countries/china/case-study/current-risks/chinese-persecution-of-the-uyghurs> (last visited Nov. 10, 2022).

⁴¹⁶ Bradley Jardine & Robert Evans, *Nets Cast From the Earth to the Sky: China’s Hunt for Pakistan’s Uyghurs*, UYGHUR HUM. RTS. PROJECT OXUS SOC’Y CENT. ASIAN AFFS. (Aug. 18, 2021), <https://www.oxussociety.org/nets-cast-from-the-earth-to-the-sky-chinas-hunt-for-pakistans-uyghurs/>.

⁴¹⁷ CAT, *supra* note 241, at art. 3.

⁴¹⁸ Natalie Hall & Bradley Jardine, “*Your Family Will Suffer*”: *How China is Hacking, Surveilling, and Intimidating Uyghurs in Liberal Democracies*, UYGHUR HUM. RTS. PROJECT (Nov. 10, 2021), <https://www.uhrp.org/report/your-family-will-suffer-how-china-is-hacking-surveilling-and-intimidating-uyghurs-in-liberal-democracies/>.

⁴¹⁹ *Id.*

⁴²⁰ Lin Taylor, *Defying Chinese Surveillance, Young Uyghurs Abroad Speak Up Online*, REUTERS (May 4, 2021, 12:44 PM), <https://www.reuters.com/article/us-china-tech-uyghurs/defying-chinese-surveillance-young-uyghurs-abroad-speak-up-online-idUSKBN2CL1RE>.

⁴²¹ *Resettlement of Guantanamo Bay Detainees: Questions and Answers*, HUM. RTS. WATCH 1, 3 (Feb. 2009), https://www.hrw.org/sites/default/files/related_material/GTMO%20Resettlement%20QA.pdf.

⁴²² *Id.*

⁴²³ Nathan Vanderklippe, *After Guantanamo, Life on Pacific Island was Difficult*, GLOBE & MAIL (Jun. 28, 2015), <https://www.theglobeandmail.com/amp/news/world/after-guantanamo-life-on-pacific-island-was-difficult/article25172787/>.

⁴²⁴ *Id.*

⁴²⁵ *Id.*

⁴²⁶ *Id.* Associated Press, *Chinese Muslims Face Culture Shock In Palau*, June 12, 2009, <https://www.nbcnews.com/id/wbna31331191>.

⁴²⁷ *U.S. Relations With Palau*, U.S. DEP’T STATE (Aug. 24, 2022), <https://www.state.gov/u-s-relations-with-palau/>.

⁴²⁸ *Id.*

⁴²⁹ Compact of Free Association Act of 1985 U.S.-Palau § 126, Pub. L. No. 99-658, 100 Stat. 3672 [hereinafter COFA].

⁴³⁰ *U.S. Relations With Palau*, *supra* note 427.

⁴³¹ Ed Rampell, *George H.W. Bush, Dirty Tricks, and Regime Change in Nuclear-Free Palau*, PEOPLE’S WORLD (Jan. 4, 2019, 12:07 PM), <https://www.peoplesworld.org/article/george-h-w-bush-dirty-tricks-and-regime-change-in-nuclear-free-palau/>.

⁴³² *Why America Keeps Building Corrupt Client States*, ECONOMIST (Aug. 22, 2021), <https://www.economist.com/international/2021/08/22/why-america-keeps-building-corrupt-client-states>.

⁴³³ Eric Talmadge, *In China’s Shadow, Gitmo Uyghurs Languish on Palau*, AP (Mar. 17, 2013), <https://www.apnews.com/article/66fc2b91492b458dad21bd2d41165cb6>.

⁴³⁴ Yael Gauer, *Revealed: Massive Chinese Police Database*, INTERCEPT (Jan. 29, 2021, 3:00 AM), <https://www.theintercept.com/2021/01/29/china-uyghur-muslim-surveillance-police/>.

⁴³⁵ Adayfi, *supra* note 6.

⁴³⁶ Gunter, *supra* note 4.

⁴³⁷ *See generally* Adayfi, *supra* note 6.

⁴³⁸ CONG. EXEC. COMM’N CHINA *supra* note 413, at 91.

⁴³⁹ *Id.* at 128.

⁴⁴⁰ COFA, *supra* note 429, at § 121(b).

⁴⁴¹ UDHR, *supra* note 212, at art. 13.

⁴⁴² *See generally*, N.Y. TIMES WEB ARCHIVE *The Guantánamo Docket* <https://www.nytimes.com/2015/10/31/world/shaker-aamer-released-guantanamo-bay-cuba.html> (last visited Nov. 16, 2022).

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- ⁴⁴³ BBC News, *Government to Compensate ex-Guantánamo Detainee* (Nov. 16, 2010), <https://www.bbc.com/news/uk-11762636>; *Government to Compensate Ex-Guantánamo Bay Detainees*, BBC NEWS (Nov. 16, 2010), <https://www.bbc.com/news/uk-11762636>.
- ⁴⁴⁴ Moazzem Begg: *Ex Guantánamo Detainee Gets Right to U.K. Passport After Eight Years*, June 19, 2022, <https://www.middleeasteye.net/news/uk-moazzam-begg-can-apply-new-passport-after-eight-years>.
- ⁴⁴⁵ UNC School of Law Human Rights Policy Lab, *Assessing Recent Developments: Achieving Accountability for Torture*, 105-120 (2016) at <https://law.unc.edu/wp-content/uploads/2019/10/tortureaccountability.pdf> See *El Masri v. United States*, 479 F.3d 296 (4th Cir. 2007), *cert. denied*, 128 S. Ct. 373 (2007); *Mohamed v. Jeppesen Dataplan*, 614 F.3d 1070 (9th Cir. 2010), *cert. denied*, 131 S. Ct. 2442 (2011)..
- ⁴⁴⁶ *Omar Khadr: Military Commission Trial of Ex-Child Soldier Questions and Answers*, HUM. RTS. WATCH 1, 1-2 https://www.hrw.org/sites/default/files/related_material/Omar%20Khadr%20Q%26A.pdf (last visited Nov. 14, 2022); *Omar Khadr Case*, BRITANNICA, <https://www.britannica.com/event/Omar-Khadr-case/Transfer-to-Canada> (last visited Nov. 12, 2022).
- ⁴⁴⁷ *Canada (Prime Minister) v. Khadr*, 2010 SCC 3, [2010] 1 S.C.R. at 44..
- ⁴⁴⁸ Nigel Brew et al., *Australians in Guantanamo Bay: A Chronology of the Detention of Mamdouh Habib and David Hicks*, PARLIAMENT AUSTL. 1, 8-9 (May 29, 2007), https://www.parlInfo/download/library/prspub/6121059/upload_binary/6121059.pdf;fileType=application%2Fpdf#search=%22Nigel%20Brew%20Guantanamo%22.
- ⁴⁴⁹ Vittoria Benzine, *'Shamefully Cruel': A Curator Speaks Out as Guantánamo Detainees Petition to Keep the U.S. Government From Taking Their Art*, ARTNET NEWS (Oct. 17, 2022), <https://www.news.artnet.com/art-world/guantanamo-bay-art-open-letter-2193003>.
- ⁴⁵⁰ *Id.*
- ⁴⁵¹ *Free the Captive Art From Guantánamo*, GOOGLE SITES <https://www.sites.google.com/view/freethecaptiveartworkfromguant/home> (last visited Dec. 12, 2022).
- ⁴⁵² Benzine, *supra* note 449.
- ⁴⁵³ *Id.*
- ⁴⁵⁴ *Id.*
- ⁴⁵⁵ *Id.*
- ⁴⁵⁶ *Id.*
- ⁴⁵⁷ *Id.*
- ⁴⁵⁸ *Id.*
- ⁴⁵⁹ *Id.*
- ⁴⁶⁰ *Id.*
- ⁴⁶¹ International Covenant on Civil and Political Rights, GEN. ASSEMB. RES. 2200A (XXI) (Dec. 16, 1966).
- ⁴⁶² Geneva Convention Relative to the Treatment of Prisoners of War, art. 119, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135 [hereinafter Geneva Convention].
- ⁴⁶³ *Id.*
- ⁴⁶⁴ Benzine, *supra* note 449.
- ⁴⁶⁵ Geneva Convention, *supra* note 462, at art. 119.
- ⁴⁶⁶ *Looted Art*, U.S. HOLOCAUST MEM'L MUSEUM, <https://www.ushmm.org/collections/bibliography/looted-art>.
- ⁴⁶⁷ *Id.*
- ⁴⁶⁸ Benzine, *supra* note 449.
- ⁴⁶⁹ Alexandra Termayne-Pengelly, *Guantánamo Bay Inmates Created Art in Detention But the U.S. Military Says It's Not Theirs to Keep*, OBSERVER (Oct. 20, 2022, 12:01 PM), <https://www.observer.com/2022/10/guantanamo-bay-inmates-created-art-in-detention-but-the-u-s-military-says-its-not-theirs-to-keep/>.
- ⁴⁷⁰ *Id.*
- ⁴⁷¹ *Id.*
- ⁴⁷² UDHR, *supra* note 212, at art. 27.
- ⁴⁷³ ICCPR, *supra* note 240, at art. 15.
- ⁴⁷⁴ *Id.*
- ⁴⁷⁵ *Id.* at art. 19(2).
- ⁴⁷⁶ *Id.*
- ⁴⁷⁷ *Id.*
- ⁴⁷⁸ Army Reg. 190-8 §§ 3-11(h), 3-14(d).
- ⁴⁷⁹ *Id.*
- ⁴⁸⁰ See Federal Bureau of Prisons Art and Hobbycraft Policy § 544.34.

⁴⁸¹ *Handbook on the Management of Violent Extremist Prisoners and the Prevention of Radicalization to Violence in Prisons*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, 1, 91 (2016), https://www.unodc.org/pdf/criminal_justice/Handbook_on_VEPs.pdf.

⁴⁸² *Id.*

⁴⁸³ Kara Weisenstein, *The Military is Burning Art from Guantánamo That the World Should See*, VICE (Nov. 27, 2017, 4:58 PM), <https://www.usmm.org/collections/bibliography/looted-art>.

⁴⁸⁴ *Id.*

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.*

⁴⁸⁷ *Id.*

⁴⁸⁸ *Id.*

⁴⁸⁹ *See id.*

⁴⁹⁰ *See id.*

⁴⁹¹ *Id.* (Alka Pradhan told Vice).

⁴⁹² *Id.*

⁴⁹³ *Id.* (Djamel Ameziane, a Guantánamo detainee, told Vice through his attorney, Aliya Hana Hussain).

⁴⁹⁴ *Id.*

⁴⁹⁵ Adayfi, *supra* note 6.

⁴⁹⁶ Carol Rosenberg, *Pentagon Lifts Trump-Era Ban on Release of Guantánamo Prisoners' Art*, N.Y. TIMES, Feb. 7, 2023, <https://www.nytimes.com/2023/02/07/us/politics/guantanamo-art.html>.

⁴⁹⁷ Mansoor Adayfi, *For All of Us Detained in Guantánamo, Making Art Was a Lifeline: Why Won't Joe Biden Let Us Keep our Work?* THE GUARDIAN, Mar. 11, 2023

<https://www.theguardian.com/commentisfree/2023/mar/11/guantanamo-detained-art-joe-biden-work-state>

⁴⁹⁸ Adayfi, *supra* note 6.

<https://law.unc.edu/wp-content/uploads/2023/06/guantanamotworights.pdf>

<https://law.unc.edu/wp-content/uploads/2023/06/appendixgtmo2.pdf>