

**DECLARATION OF HUMAN RIGHTS WATCH, THE AMERICAN CIVIL LIBERTIES UNION,  
HUMAN RIGHTS FIRST, THE CENTER FOR VICTIMS OF TORTURE,  
PHYSICIANS FOR HUMAN RIGHTS, APPEAL FOR JUSTICE, WIN WITHOUT WAR,  
THE BILL OF RIGHTS DEFENSE COMMITTEE/DEFENDING DISSENT FOUNDATION,  
THE NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, AND  
THE ALLARD K. LOWENSTEIN INTERNATIONAL HUMAN RIGHTS CLINIC AT YALE LAW  
SCHOOL**

**Background**

1. **Human Rights Watch** is a nongovernmental organization that reports on violations of international human rights and humanitarian law by state and non-state actors in more than 90 countries around the world, including the United States.

2. **The American Civil Liberties Union** is a nationwide, nonprofit, nonpartisan organization dedicated to protecting human rights and civil liberties in the United States. Headquartered in New York City, the ACLU is the largest civil liberties organization in the country with offices in all 50 states, Puerto Rico and Washington, D.C. and over 500,000 members. Founded in 1920, largely in response to the curtailment of liberties that accompanied the United States' entry into World War I, including the persecution of political dissidents and the denial of due process rights for non-citizens, the ACLU has advocated in the intervening decades to hold the U.S. government accountable to the rights protected under U.S. Constitution as well as other civil and human rights laws and treaties.

3. **Human Rights First** is an independent advocacy and action organization that challenges America to live up to its ideals. We believe American leadership is essential in the global struggle for human rights, so we press the U.S. government and private companies to respect human rights and the rule of law. When they fail, we step in to demand reform, accountability and justice. Around the world, we work where we can best harness American influence to secure core freedoms.

4. **The Center for Victims of Torture** ("CVT") is an international nonprofit dedicated to healing the wounds of torture and ending the practice of torture worldwide. CVT provides healing services to survivors of torture and war atrocities at its clinics in the United States, the Middle East, and Africa, engages in training and capacity building initiatives in support of torture survivor rehabilitation programs worldwide, and advocates for human rights and an end to torture.

5. **Physicians for Human Rights** is a nongovernmental advocacy organization that uses science and medicine to document and call attention to mass atrocities and severe human

rights violations. PHR investigates and documents acts of torture around the world, medically examines torture victims, and reports on the devastating consequences of torture on individuals, institutions, and society. For the past decade, PHR has investigated the systematic torture and ill-treatment of national security detainees held by the United States.

6. **Appeal for Justice** is a non-profit human rights and civil liberties law practice founded by David Remes. Mr. Remes established the practice in 2008 when he left his partnership at a prominent Washington, D.C. law firm after 25 years to devote himself full time to fighting government overreach in the war against terrorism.

7. **Win Without War** is a coalition of national organizations with diverse constituencies representing more than 11 million Americans who seek a more progressive national security and foreign policy for America. We seek a fundamentally new approach to meet the national security challenges of the United States that is consistent with our nation's highest values.

8. **The Bill of Rights Defense Committee/Defending Dissent Foundation** is a national civil liberties organization that protects the right to political expression and works to ensure government accountability and transparency to strengthen participatory democracy and to fulfill the promise of the Bill of Rights.

9. **The National Association of Criminal Defense Lawyers** ("NACDL") is a nonprofit voluntary professional association of lawyers who practice criminal law before virtually every state and federal bar in the country. NACDL is dedicated to promoting a rational and humane criminal justice system. NACDL was founded in 1958 to promote criminal law research, to advance and disseminate knowledge in the area of criminal practice, and to encourage integrity, independence, and expertise among criminal defense counsel. NACDL has more than 9,000 members who include private criminal defense attorneys, public defenders, and law professors, and up to 40,000 with affiliates. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers.

10. **The Allard K. Lowenstein International Human Rights Law Clinic at Yale Law School**, established in 1989, undertakes a wide variety of work on behalf of human rights organizations and individual victims of human rights abuse. Since 2001, the Clinic has joined efforts to oppose human rights violations arising from U.S. counterterrorism operations. The Clinic has investigated abuses, supported litigation on behalf of detainees and torture survivors, and filed numerous amicus briefs before domestic courts and international tribunals.

### **Access of the Special Rapporteur on Torture to the Detention Facilities at Guantanamo Bay**

11. We write this declaration in support of the motion filed by Mr. al Baluchi, and joined by his co-defendants, to grant United Nations Special Rapporteur on Torture Juan E.

Méndez access to the detention facilities and detainees at the US Naval Base at Guantanamo Bay, Cuba. Over the course of several years, Special Rapporteur Mendez has repeatedly sought adequate access to the detention facilities at Guantanamo, but the US Department of Defense has denied all such requests. The US has only offered him a highly restricted form of access to the facility that explicitly excludes the possibility of conducting private, unmonitored interviews or any meetings with detainees.<sup>1</sup> Such restrictions impede the kind of inspection and review that Special Rapporteur Méndez would need to conduct to fulfill his responsibility as a UN independent expert.

12. Special Rapporteur Mendez's mandate—as approved by United Nations Commission on Human Rights Resolution 1985/33—includes conducting fact-finding missions to countries and investigations of individuals reported to be at risk of torture. It also involves monitoring compliance with obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which the United States ratified in 1994. The mandate covers all countries, irrespective of whether a state has ratified the Convention against Torture. Accordingly, the Special Rapporteur frequently seeks and has obtained access to detention facilities in multiple countries around the world,<sup>2</sup> such as Mexico,<sup>3</sup> Ghana,<sup>4</sup> and Indonesia.<sup>5</sup> To fulfill his mandate, Special Rapporteur Méndez needs to be able to move freely about the detention facilities and conduct private, unmonitored interviews with the detainees.

13. Public reports of torture and ill-treatment at Guantanamo Bay began to emerge soon after the US began housing detainees there in January 2002. To this day, there are reports that the US engages in practices at Guantanamo Bay that can amount to torture or ill-treatment. This includes prolonged solitary confinement of detainees, and conducting force feedings on detainees who are competent to refuse food and are engaged in hunger strikes.

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<sup>1</sup>“Statement of the United Nations Special Rapporteur on torture at the Expert Meeting on the situation of detainees held at the U.S. Naval Base at Guantanamo Bay,” Inter-American Commission on Human Rights, October 3, 2013, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=13859&LangID=E> (accessed April 13, 2016).

<sup>2</sup> United Nations Human Rights Council, “Report of the Working Group on Arbitrary Detention,” 2009, A/HRC/10/21, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G09/110/43/PDF/G0911043.pdf?OpenElement>, para 48.

<sup>3</sup> Office of the United Nations High Commissioner for Human Rights, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Mission to Ghana,” March 5, 2014, A/HRC/25/60/Add.1.

<sup>4</sup> Office of the United Nations High Commissioner for Human Rights, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Mission to Mexico,” December 29, 2014, A/HRC/28/68/Add.3.

<sup>5</sup> Office of the United Nations High Commissioner for Human Rights, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Mission to Indonesia,” March 10, 2008, A/HRC/7/3/Add.7.

14. Human Rights Watch and the ACLU, along with several other human and civil rights organizations, have also been requesting full access to the Guantanamo Bay detention facility for more than a decade. We renewed our requests in 2009 after President Barack Obama took office and on subsequent occasions, but the US Department of Defense has invited us only to attend a VIP tour to observe a model Guantanamo detention camp. It has yet to grant us any meaningful access to the facilities and detainees.

15. The US government has pointed to a Defense Department review conducted in 2009 that found the conditions of confinement at Guantanamo to be in “conformity with Common Article 3 of the Geneva Conventions” and that they “also meet the directive requirements of Common Article 3 of the Geneva Conventions.”<sup>6</sup> That review also recommended, however, that the U.S. Defense Department “consider inviting non-governmental organizations and appropriate international organizations to send representatives to visit Guantánamo” because “[t]he involvement of other international and non-governmental organizations [in addition to the International Committee of the Red Cross]...may be beneficial in making the operations at Guantánamo more transparent, and in offering their services for the humane care and treatment of detainees.”<sup>7</sup> An internal review from over seven years ago is no substitute for regular independent monitoring and access; the US unwillingness to grant access to the UN and other impartial organizations that publicize their findings raises questions about the reasons behind this lack of transparency. Until the US provides impartial observers with adequate access to the detention facilities and detainees, it will not be possible to assess US claims that it is meeting its obligations under international law.

16. The US imposition of major restrictions on the Special Rapporteur’s access not only raises concerns about US compliance with the Convention against Torture, but also risks undermining the Special Rapporteur’s ability to do his work more generally. For the Special Rapporteur to conduct credible and independent inspections, it is critical that he insist upon unfettered access to detainees and their conditions of confinement. To agree to substandard access to facilities in the United States while demanding more complete access elsewhere would hamper his ability to carry out his mission. Instead of continuing to restrict the Special Rapporteur’s access to Guantanamo, the United States should seize the opportunity to demonstrate its commitment to transparency and to its international obligations, by granting meaningful access to the Special Rapporteur. Doing so would also provide the US with important information to assist it in ensuring detention conditions comply with international standards. If the conditions fall short of such standards, the US should be ready to accept and address criticisms; in doing so, it will encourage other countries to do the same.

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<sup>6</sup> US Department of Defense, “Review of Department Compliance with President's Executive Order on Detainee Conditions of Confinement,” 2009, [http://www.defense.gov/Portals/1/Documents/pubs/REVIEW\\_OF\\_DEPARTMENT\\_COMPLIANCE\\_WITH\\_PRESIDENTS\\_EXECUTIVE\\_ORDER\\_ON\\_DETAINEE\\_CONDITIONS\\_OF\\_CONFINEMENTa.pdf](http://www.defense.gov/Portals/1/Documents/pubs/REVIEW_OF_DEPARTMENT_COMPLIANCE_WITH_PRESIDENTS_EXECUTIVE_ORDER_ON_DETAINEE_CONDITIONS_OF_CONFINEMENTa.pdf) (accessed April 14, 2016).

<sup>7</sup> *Id.*

Signed this 6<sup>th</sup> day of May, 2016

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