

**CITIZENS' INDICTMENT**  
**OF THE UNITED STATES OF AMERICA AND ITS AGENTS**  
**AND**  
**OF THE CITY OF CHICAGO, CITY OF CHICAGO POLICE DEPARTMENT**  
**AND THEIR AGENTS**  
**FOR VIOLATIONS OF INTERNATIONAL LAW AND DOMESTIC LAW**  
**PROHIBITING TORTURE AND CRUEL, INHUMANE AND DEGRADING**  
**TREATMENT**  
**AND**  
**FOR VIOLATIONS OF OTHER RELEVANT INTERNATIONAL AND**  
**DOMESTIC LAW AND THE UNITED STATES CONSTITUTION**

PREFACE

On January 11, 2002 the United States imprisoned the first of the detainees held in the so-called "global war on terror" at Guantanamo. Since then, the U.S. and its agents have engaged in a consistent pattern of violations of international law and of the United States Constitution. These actions include: denial of the writ of habeas corpus to detainees; the use of torture at Guantanamo, Abu Ghraib and elsewhere; the holding of detainees in secret prisons; the operation of flights of extraordinary rendition; the return of detainees to countries in which the detainees face torture upon return; and other similar violations of international and domestic law. These conditions continue to this day.

From 1971 to 1993, members of the Chicago Police Department engaged in torture of individuals held by that department. This torture was protected and condoned by the Chicago Police Department; the Illinois State's Attorney; the City of Chicago and its agents. To this day, those whom the Chicago police tortured wait for justice to be fulfilled—including payment of reparations for damages suffered during torture and its after effects and the holding accountable of those who engaged in and permitted the torture to occur.

**RELIEF SOUGHT**

This Citizens' Indictment seeks the following relief to redress the use of torture and other significant violations of international and domestic law by the United States and its agents and by the City of Chicago and its agents:

Relief sought from the United States of America:

- Restoration of habeas corpus
- Repeal of the Military Commissions Act of 2006
- Charge and try all detainees or immediately release detainees if not charged and tried
- Clearly and unequivocally forbid torture and all other forms of cruel, inhuman and degrading treatment by the United States and its agents, including but not limited to the military, the Central Intelligence Agency, prison guards, civilian contractors and all other agents.
- Pay reparations to current and former detainees and to their families for violations of their human rights and for violations of international law.
- Shut down the prisons and detention centers at Guantanamo, Abu Ghraib, Bagram and all other U.S. prisons overseas used to hold detainees, including but not limited to secret detention facilities operated by the Central Intelligence Agency.

Relief sought in the matter of torture by the Chicago Police Department:

- Compliance with the July 2006 recommendation of the United Nations Committee Against Torture regarding police torture in Areas 2 and 3 of the Chicago Police Department to include: "promptly, thoroughly and impartially investigate all allegations of acts of torture or cruel, inhuman or degrading treatment or punishment by law-enforcement personnel and bring perpetrators to justice..."
- Full investigation and prosecution of those in positions of authority (including but not limited to the Chicago Police Department, the Cook County State's Attorney's office and the Chicago Mayor's office) who had knowledge of police torture but interfered in or prevented investigations and prosecutions of those responsible from taking place.
- Order, and assist in, the payment of reparations to victims of police torture and their families; including providing for the full health and mental care needed to recover from the trauma of being tortured.
- New trials for the twenty-six Chicago Police torture victims who were convicted of crimes based on coerced confessions and remain incarcerated in the State of Illinois.

- Implementation of legislation that explicitly prohibits the crime of torture as defined by Article I of the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment and maintain no statute of limitations for the crime of torture.

This Citizens' Indictment is therefore issued to the United States of America and its agents; to the City of Chicago Police Department and its agents; and to the City of Chicago and its agents for violations of international law, the U.S. Constitution and U.S. domestic law as set forth below.

### **SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION**

The Constitution of the United States is the "supreme law of the land" and is binding upon all courts and jurisdictions in the United States. Treaties to which the United States is a party are also a central component of this "supreme law of the land" and are equally binding upon the United States and all government jurisdictions within the United States (including but not limited to states, counties and cities).

Article VI, Clause 2 of the Constitution states:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

### **THE WRIT OF HABEAS CORPUS**

Detainees held by the United States at Guantanamo and elsewhere are being denied the right to pursue the "writ of habeas corpus." Essentially, the "writ of habeas corpus" is the right to be brought before a court of law and to be presented with the charges the government is pursuing against an individual. It is an essential right to protect people from the arbitrary and dictatorial abuse of power by the government.

The Writ of Habeas Corpus is an ancient right that predates even the Magna Carta. As enunciated in this foundational document of common law:

"...no free man shall be taken or imprisoned or disseised or exiled or in any way destroyed except by the lawful judgment of their peers or by the law of the land."

Habeas corpus is explicitly protected in the Constitution of the United States, which states in Article I, Section 9:

“The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.”

The U.S. has not been invaded nor does the U.S. government assert that the U.S. has been invaded when it sets forth its arguments for denying the writ of habeas corpus to detainees.

Yet in 2006, Congress passed the Military Commissions Act of 2006. Section 7 of this act explicitly denies habeas corpus to detainees:

“(e)(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

“(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.”

This denial of habeas corpus to detainees in the so-called “global war on terror,” held at Guantanamo, in Afghanistan, in secret prisons and elsewhere, is a flagrant violation of the U.S. Constitution. It denies the detainees the right to challenge their detention by the United States and to raise issues of torture, inhumane treatment, violations of international law and related matters in the courts of the United States.

### **INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

This treaty, to which the United States is a party, sets forth due process protections for those arrested and detained by a government. The United States is in violation of several aspects of this treaty, including failure to advise detainees of the charges against them; denial of the writ of habeas corpus to detainees; and denial of the right to redress wrongs committed against the detainee by the government and its agents.

Article 9 of this treaty states:

“1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of

his liberty except on such grounds and in accordance with such procedure as are established by law.

“2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

“3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

“4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

“5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.”

Each of these above enumerated rights are violated and denied to detainees under the Military Commissions Act of 2006 and other U.S. laws, statutes, rules and regulations.

### **INTERNATIONAL LAW AND TORTURE: The Geneva Conventions; Convention Against Torture; and other International Law**

#### ***Geneva Conventions***

Following the outrages of World War II, the international community came together to strengthen international law. Prohibitions on torture and degrading treatment were strengthened. Common Article 3 of the Geneva Conventions of 1949 specifically states:

“To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

“(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

“(b) taking of hostages;

“(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

“(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.”

### ***International Covenant on Civil and Political Rights***

The International Covenant on Civil and Political Rights states in Article 7 that:

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

### **CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

The United States is a party to this treaty and is thus bound by its terms. The terms of this treaty are especially significant to the manner in which the United States and its agents are acting.

#### ***Definition of Torture – Article 1***

“1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

#### ***Cruel, Inhuman or Degrading Treatment of Punishment Prohibited – Article 16***

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and

13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

### ***Returning Detainees to Countries in Which Torture Occurs – Article 3***

“1. No 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.”

### ***Right to Redress of Grievances Following Torture – Articles 13 and 14***

#### Article 13

“Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”

#### Article 14

“1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.”

The United States and its agents have violated these provisions of international law in numerous ways, including but not necessarily limited to:

- The denial of the writ of habeas corpus to detainees, which precludes detainees access to the courts of the United States under the Military Commissions Act of 2006 and other statutes, policies, procedures, rules and regulations.
- The denial of access to the courts to detainees to seek redress of grievances after being subjected to torture and / or to cruel, inhumane and degrading treatment or punishment.
- The United States transfers detainees to countries in which torture occurs at the hands of the government. Detainees have in fact been tortured after being transferred to certain countries. Cases of torture and / or cruel, inhumane and degrading treatment following transfer to Russia is documented in “The Stamp of Guantanamo: The Story of Seven Men Betrayed by Russia’s Diplomatic Assurances to the United States”

(Human Rights Watch, March 2007). The experience of detainees transferred to Tunisia by the United States is detailed in the report “Ill-Fated Homecomings: A Tunisian Study of Guantanamo Repatriations” (Human Rights Watch, September 2007).

- The United States engages in torture and cruel, inhuman, and degrading treatment of prisoners at Guantanamo and elsewhere, as documented, for example in the report “Report on Torture and Cruel, Inhuman, and Degrading Treatment of Prisoners at Guantanamo Bay, Cuba” (Center for Constitutional Rights, July 2006).
- The United States utilizes secret prisons and flights of extraordinary rendition to transfer, hold and deny detainees their rights guaranteed by international law. For a discussion of flights of rendition and the Central Intelligence Agency’s network of secret prisons see “Ghost Plane: The True Story of the CIA Rendition and Torture Program” by Stephen Grey.

SUBMITTED THIS 11<sup>TH</sup> DAY OF JANUARY, 2008 by Petitioners:

Kathy Kelly

Laurie Hasbrook

Gerald Paoli

Jeff Leys

Erin Cox

Ron Durham

Tony Hintze

Andrew Shantz

Will Tanzman

Cassandra Dixon