



May 14, 2009

Inside

- From the President's Desk
- National Right to Counsel Committee Reporter to Keynote Second Annual Michigan Public Defense Task Force Conference
- Constitution Project Files Brief Urging U.S. Supreme Court to Hear Uighur Detention Case
- Former Enemy Combatant Pleads Guilty to Conspiring with al-Qaeda
- Secretary Gates Hints at Establishing Indefinite Detention on United States Soil
- News in Brief

From the President's Desk

Upon assuming office, President Obama made significant strides to correct some of the failed policies used against suspected terrorists being held by the United States. But recent news accounts indicate that his administration may be hedging on some of his campaign pledges to restore the rule of law in America. Congress is contributing to this backsliding.

Two weeks ago, Secretary Gates indicated in Congressional testimony that some of the detainees being held at Guantanamo may not be charged with a crime, nor released – essentially continuing the past administration's policy of indefinite detention after Guantanamo is closed. In response to Secretary Gates' request for funding to house the detainees in the U.S., many members of Congress proposed legislation to prohibit their transfer onto U.S. soil.

As President Obama and many members of Congress have repeatedly charged, Guantanamo Bay and the policies it has come to represent have been detrimental to the security of our nation. The detention facility should be closed and the policies should be ended. Our federal courts and detention facilities have 200-year track records that prove their capacity to handle the most difficult trials and individuals. Our political leaders should allow them to do just that.

Upcoming Events

National Right to Counsel Committee Reporter to Keynote Second Annual Michigan Public Defense Task Force Conference

Norman Lefstein, reporter for our National Right to Counsel Committee's recently released report, [*Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel*](#), will give the keynote address at the upcoming second annual Michigan Public Defense Task Force Conference. This year's gathering, taking place on May 21 in Lansing, Michigan, is focused on reforming Michigan's public defense system, and will cover many of the points raised in *Justice Denied*.

News

Constitution Project Files Brief Urging U.S. Supreme Court to Hear Uighur Detention Case

Last Thursday, the Constitution Project, along with several other non-governmental organizations, filed a [friend of the court brief in the United States Supreme Court](#), urging the Court to accept review of a case in which 17 Chinese Muslims, known as Uighurs, seek release from Guantanamo Bay now that they have been determined not to be enemy combatants. The brief, filed by the Constitution Project, the Brennan Center for Justice, the Rutherford Institute, the National Association of Criminal Defense Lawyers, and the City of New York Bar Association, urges the Court to take the case, *Kiyemba v. Obama*, and reverse the decision of the U.S. Court of Appeals for the District of Columbia Circuit that the courts lack the authority to order the release of the Uighurs.

The Constitution Project also [called on the Obama administration](#) to immediately release the Uighurs into the United States, without waiting for action by the Supreme Court. The U.S. cannot repatriate the Uighurs to China because of state-sponsored persecution and no other country has been willing to accept them.

Former Enemy Combatant Pleads Guilty to Conspiring with al-Qaeda

On May 1, Ali Saleh Kahlah al-Marri, the one-time “enemy combatant” held on U.S. soil without charge for over five years, entered a guilty plea in federal court for conspiring to provide material support to a terrorist organization. He now faces up to 15 years in prison. Mr. Marri was declared an “enemy combatant” in 2003, then held in a South Carolina military brig without charge until February of this year, at which point the Obama administration brought charges against him in federal court. The episode demonstrates that our traditional criminal courts do indeed have the capacity to handle difficult terrorism cases.

The Constitution Project, objecting to al Marri’s prior detention without charge, filed a [brief urging](#) the U.S. Supreme Court to review his case, and after the Court accepted the case, filed an [amicus brief](#) joined by the Cato Institute and the Rutherford Institute, urging the Court to strike down as unconstitutional the indefinite military detention without trial of a legal U.S. resident. After the administration filed the criminal charges against Mr. Marri, the Supreme Court dismissed the case and vacated the opinion of the U.S. Court of Appeals for the Fourth Circuit, which had held that the executive branch did have such broad detention powers.

Secretary Gates Hints at Establishing Indefinite Detention on United States Soil

Two weeks ago today, in testimony before the Senate Appropriations Committee, Secretary of Defense Robert Gates suggested that the Defense Department may be planning to construct a detention facility on U.S. soil as part of a new system of indefinite preventive detention for Guantanamo detainees who are not transferred to other countries, nor provided with criminal trials in federal court. “If the United States were to simply move the detainees onto U.S. soil and continue to detain them without charge or legal process, then the act of closing Guantanamo would have been meaningless,” [responded](#), **Sharon Bradford Franklin** of the Constitution Project. “The United States must close Guantanamo. But more importantly, the government must end the policies in place at Guantanamo.” Her quote was picked up in the [Los Angeles Times article](#) the following day.

News in Brief

- Yesterday, the Senate Judiciary Subcommittee on Administrative Oversight and the Courts held a hearing titled, “What Went Wrong: Torture and the Office of Legal Counsel in the Bush Administration.” During the hearing, Senators Feingold, Leahy, and Whitehouse all recognized the need for an independent nonpartisan commission of inquiry into the treatment of detainees in U.S. custody. The Constitution Project, along with 18 other advocacy organizations, continues to [push](#) for such a commission.
- Senators Lindsey Graham (R-SC) and John McCain (R-AZ) published an [OpEd in the Wall Street Journal](#) last Wednesday advocating for a system of preventative detention to hold some detainees even after Guantanamo is closed. “Prosecutions for terrorism offenses can and should be handled by our traditional court system, as has been the case for over 200 years,” responded Sharon Bradford Franklin in a [CQ Politics article](#). “We should not establish a new system of preventive detention without trial here on U.S. soil.”
- Legislation in Colorado to repeal the death penalty was [defeated by a single vote](#) in the state Senate on May 6, as the legislative session came to a close. In April, the Colorado House of Representatives narrowly passed the legislation, which would have transferred the funds used for capital punishment to the investigation of unsolved cases.

- Last Wednesday, the Department of Justice's Office of the Inspector General released a report indicating that outdated or irrelevant information resulted in 24,000 people having their names erroneously included on the FBI's terrorist watch lists and that individuals with actual ties to terrorism were not included. The report stated that these errors pose risks to our national security. This report is further evidence of the problems noted in the Constitution Project's watch lists [report](#), which was released in 2007. The report calls for accuracy and fair standards for adding individuals to watch lists, while providing a means for the prompt removal of innocent people erroneously placed on the lists.
- Texas State District Judge Greg Brewer ruled on May 1 that death row inmate Charles Hood should get another opportunity to argue his case before the state's Court of Criminal Appeals. Mr. Hood was convicted of murder in 1989, but has long claimed that his conviction was tainted by an improper relationship between the presiding judge and the prosecuting attorney. Last year, the Constitution Project organized a [letter by former judges and prosecutors](#) urging Governor Rick Perry to stay Mr. Hood's approaching execution. After the state's attorney general agreed that a stay was in order, court-ordered depositions forced the judge and prosecutor to admit their improper relationship. The Texas courts then ordered a stay on unrelated grounds, and the case was referred to Judge Brewer.

The Constitution Project's unique mission is to promote and defend constitutional safeguards. We create coalitions of respected leaders from across the political spectrum, advancing their consensus recommendations for policy reforms. Since the Constitution Project's founding in 1997, our advocacy and public education efforts, influential *amicus curiae* briefs, and respected scholarship have helped to create public support for those reforms.