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The Guantanamo Effect and Some Troubling Implication of Limiting Habeas Rights Domestically

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THE GUANTÁNAMO EFFECT AND SOME TROUBLING IMPLICATIONS OF LIMITING HABEAS RIGHTS DOMESTICALLY

*Jonathan Hafetz**

The U.S. Naval Base at Guantánamo Bay, Cuba, represents a microcosm of the Bush administration's post-9/11 detention and interrogation policy, the embodiment of a prison beyond the law. The administration established the prison at Guantánamo based upon two overarching constructs: first, that detainees are "enemy combatants" or "unlawful combatants" who have no substantive rights under domestic or international law; and second, that detainees have no right to judicial review because they are foreign nationals imprisoned outside the sovereign territory of the United States. As a December 2001 memo (leaked to the press in 2004) suggests, the administration brought prisoners to Guantánamo precisely to avoid habeas corpus review, which it recognized would enable courts to question and possibly invalidate the detentions.¹

The administration has defended its creation of a law-free prison at Guantánamo by stressing the differences between the mainland United States and a military base on an outlying island that it occupies pursuant to a lease with Cuba. At the same time, however, the administration has interpreted recent legislation—the Military Commissions Act of 2006 (MCA)²—to elide any such differences where the domestic detention of alleged alien "enemy combatants" is concerned. In my remarks today, I will provide a brief account of Guantánamo's continually evolving relationship with domestic detention policy. I will suggest how the administration has engaged in logical convolutions to make what it considers a rights-free zone at Guantánamo the model for the preventive detention of aliens inside the United States. I will begin by tracing how the administration has attempted to justify detention practices in Guantánamo by isolating them from domestic law and how the

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¹ Memorandum for William J. Haynes II, Gen. Counsel, Dep't of Def., from Patrick F. Philbin & John C. Yoo, *in* THE TORTURE PAPERS (Karen J. Greenberg & Joshua L. Dratel eds., 2005).

² Pub. L. No. 109-366, § 7 120 Stat. 2600, 2636 (2006).

federal courts have responded. I will then explain how the administration is now seeking to import Guantánamo's template for indefinite executive detention into the domestic United States through the MCA and to eclipse the very differences it has previously invoked in justifying its actions at Guantánamo. Thus, rather than ending the failed experiment at Guantánamo, the administration is seeking to extend and institutionalize it.

From the beginning, the administration has defined Guantánamo in relationship to the United States. Until 2004, the administration argued that Guantánamo detainees could not invoke the protections of the federal habeas corpus statute³ because they were foreign nationals detained outside the sovereign territory of the United States.⁴ In *Rasul v. Bush*,⁵ the Supreme Court rejected this argument.⁶ As long as the prisoners' ultimate custodians could be reached by service of process, the Court explained, the prisoners had the right to invoke the habeas jurisdiction of a federal district court.⁷ Noting the United States' complete and exclusive power and control over Guantánamo, the Court also observed that the extension of habeas rights to detainees there was consistent with the historical purpose and scope of the common law writ.⁸ In his concurring opinion, Justice Anthony M. Kennedy similarly emphasized the particular nature of Guantánamo, explaining that it "is in every practical respect a United States territory."⁹

Rasul thus narrowed the gap between Guantánamo and the mainland United States by rejecting the administration's argument that the naval base was outside the territorial jurisdiction of any federal district court and extending habeas corpus rights to prisoners confined there. Though physically outside the United States, Guantánamo was not beyond its laws, or at least not beyond the reach of the writ of habeas corpus.

The administration, however, moved quickly to reestablish

³ 28 U.S.C. § 2241, *et seq.*

⁴ The administration also argued that the Guantánamo detainees lacked any constitutional rights for the same reason.

⁵ 542 U.S. 466 (2004).

⁶ Under the terms of the 1903 lease agreement with Cuba, the United States exercises "complete jurisdiction and control" over the naval base at Guantánamo, while Cuba retains "ultimate sovereignty" over the territory. Under a 1934 treaty, the lease agreement remains in effect absent an agreement by both sides to alter or abrogate the lease, as long as the United States does not abandon the naval station. The treaty thus effectively gives the United States control of Guantánamo in perpetuity. *Rasul*, 542 U.S. at 471.

⁷ *Id.* at 478–79.

⁸ *Id.* at 481.

⁹ *Id.* at 487 (Kennedy, J., concurring).

Guantánamo's separate status. Nine days after *Rasul*, the administration created a summary military process—the Combatant Status Review Tribunal (CSRT)¹⁰—to block consideration of pending and future habeas petitions in district court. It sought to justify the creation of the CSRT under *Hamdi v. Rumsfeld*,¹¹ where the plurality had suggested in dicta that an “appropriately authorized and properly constituted military tribunal” could, in certain limited circumstances, initially determine a citizen–detainee’s status following his capture on a battlefield.¹² The CSRT, however, suffered from both glaring procedural inadequacies and substantive overbreadth, and was extended far beyond the narrow parameters of the traditional battlefield capture of an enemy soldier presented in *Hamdi*. Procedurally, the CSRT denied detainees basic safeguards, such as an opportunity to see the evidence against them, the assistance of counsel, and a chance to present evidence in their defense. The CSRT also relied on information gained by coercion, including torture.¹³ Substantively, the CSRT defined “enemy combatant” in terms so broad that it encompassed not only individuals who directly participated in armed conflict against the United States in Afghanistan (the limited definition upheld in *Hamdi*), but also individuals who never took part in hostilities or directly or intentionally supported terrorist activities.¹⁴ And, in fact, Defense

¹⁰ Order Establishing Combatant Status Review Tribunal, available at <http://www.defenselink.mil/news/Jul2004/d20040707review.pdf>.

¹¹ 542 U.S. 507 (2004) (plurality opinion).

¹² *Id.* at 538. The *Hamdi* plurality made clear, however, that absent such a process, a habeas court must determine the merits of a petitioner’s claim in the first instance. *Id.* *Hamdi*, therefore, never sanctioned the *ex post* use of such military status tribunals at Guantánamo, where they were hastily and cynically thrown together more than two years after the prisoners’ capture and conducted thousands of miles from any battlefield in order to deny detainees any meaningful review. Nor did the plurality sanction the use of a military tribunal for a person who, on the government’s allegations, was not captured in a theater of war and did not fall within the traditional, law-of-war-bound definition of an “enemy combatant” upheld in *Hamdi*. See *id.* at 516 (defining “enemy combatant”).

¹³ See *In re Guantanamo Detainee Cases*, 355 F. Supp. 2d 443, 472–75 (D.D.C. 2005); *Boumediene v. Bush*, 476 F.3d 981, 1006 (D.C. Cir.) (Rogers, J., dissenting), cert. granted 127 S. Ct. 3067 (2007). While the Detainee Treatment Act of 2005, Pub. L. No. 109–48, 119 Stat. 2680 (2005) (“DTA”), requires the CSRT to assess whether evidence was obtained by coercion, it applies only to CSRTs conducted after the Act’s passage, and thus not to the CSRTs that were conducted for nearly all of the detainees at Guantánamo. In addition, the DTA does not prohibit the use of coerced statements but merely requires the CSRT to determine those statements’ “probative value.” *Id.* § 1005(b).

¹⁴ *In re Guantanamo Detainee Cases*, 355 F. Supp. 2d at 475 (noting the administration’s position that it could designate as an “enemy combatant” a little old lady in Switzerland who unwittingly donates money to a charity which she believes is providing humanitarian assistance but which is secretly supporting terrorist activities).

Department data indicates that fewer than half of the Guantánamo detainees are accused of committing a hostile act while more than half of the Guantánamo detainees are being held based merely upon alleged “association” with some group, whether al Qaeda, Taliban, or another organization.¹⁵

The CSRT sought to underscore the differences between Guantánamo and the United States. It applied only to detainees at Guantánamo even though three individuals in the United States were detained as “enemy combatants” when the CSRT was established: Yaser Hamdi (whose case was on remand after the Supreme Court decision);¹⁶ Jose Padilla (a U.S. citizen arrested at Chicago’s O’Hare International Airport and detained at the Naval Consolidated Brig in Charleston, South Carolina); and Ali Saleh Kahlah al-Marri (a lawful resident alien from Qatar arrested at home in Peoria, Illinois, and also detained at the Brig in Charleston, South Carolina).¹⁷ The government did not attempt to convene a CSRT for these individuals, including for Mr. Hamdi who had been captured amid combat in a war zone in Afghanistan. Instead, it acknowledged their right to district court habeas review of the lawfulness of their executive detention as “enemy combatants,” unimpeded by military tribunal.¹⁸

In addition, the government maintained that Guantánamo detainees had no constitutional rights, notwithstanding *Rasul’s* indications that they possessed rights at least under the Due Process

¹⁵ See Mark Denbeaux & Joshua Denbeaux, *Report on Guantánamo Detainees: A Profile of 517 Detainees Through Analysis of Department of Defense Data*, available at <http://law.shu.edu/aaafinal.pdf>.

¹⁶ Mr. Hamdi was captured in Afghanistan. He was initially taken to Guantánamo, but after the United States realized he was an American citizen, Mr. Hamdi was transferred to the United States and imprisoned in naval brig, first in Norfolk, Virginia, and then in Charleston, South Carolina. *Hamdi*, 542 U.S. at 510 (plurality opinion).

¹⁷ I am lead counsel for Mr. al-Marri and represent him in his habeas corpus case and in a separate lawsuit challenging his mistreatment and conditions of detention.

¹⁸ Before the district court habeas hearing commenced, the government released Mr. Hamdi in exchange for his renouncing his U.S. citizenship, returning to Saudi Arabia where he had lived most of his life, and agreeing to certain limitations on his future travel. See Jerry Markon, *Hamdi Returned to Saudi Arabia*, WASH. POST, Oct. 12, 2004, at A2. The government continued to detain Mr. Padilla as an “enemy combatant” until finally charging him with federal crimes only two business days before its opposition to Mr. Padilla’s petition for certiorari was due in the Supreme Court, which was on the verge of deciding whether to hear Mr. Padilla’s habeas corpus challenge to his three-and-one-half-year-long military detention. See *Padilla v. Hanft*, 432 F.3d 582 (4th Cir. 2005). The government continues to detain Mr. al-Marri as an “enemy combatant.” See *Al-Marri v. Wright*, 487 F.3d 160 (4th Cir. 2007), *rehearing en banc granted* (Aug. 22, 2007).

Clause of the Fifth Amendment.¹⁹ Thus, the government contended, *Rasul* had merely established the detainees' right to file petitions in district court under the habeas statute; and, since the detainees had no substantive rights to enforce, their habeas petitions should be summarily dismissed.²⁰ The government, in short, sought to gut *Rasul* of any practical force and reduce habeas jurisdiction to an empty vessel whose only function would be to reinforce Guantánamo's separate status as a territory outside the United States and the protections of its Constitution and laws.

Two district courts divided over whether the Constitution applied to Guantánamo detainees. In *In re Guantánamo Detainee Cases*, District Judge Joyce Hens Green held that the Guantánamo detainees had rights under the Due Process Clause²¹ and that the CSRT violated those rights by denying them access to counsel, relying on secret evidence, allowing for the use of evidence gained by torture, and employing an overbroad definition of "enemy combatant."²² In *Khalid v. Bush*,²³ however, District Judge Richard Leon ruled that the Guantánamo detainees had no cognizable rights and dismissed their habeas petitions.²⁴ While the appeals of those cases were pending, Congress enacted two laws limiting the rights of Guantánamo detainees. The Detainee Treatment Act of 2005 (DTA)²⁵ purported to eliminate jurisdiction over habeas corpus petitions filed by or on behalf of Guantánamo detainees and to vest exclusive jurisdiction in the U.S. Court of Appeals for the District of Columbia Circuit to review final CSRT decisions under an alternative procedure. The DTA, as written, narrowly limited the scope of the D.C. Circuit's review to the CSRT record and prevented detainees from submitting additional evidence, even if that evidence

¹⁹ See 542 U.S. at 483–84 n.15. "Petitioners' allegations—that although they have engaged neither in combat nor in acts of terrorism against the United States, they have been held in Executive detention for more than two years in territory subject to the long-term, exclusive jurisdiction and control of the United States, without access to counsel and without being charged with any wrongdoing—unquestionably describe 'custody in violation of the Constitution or laws or treaties of the United States.' 28 U.S.C. § 2241(c)(3); cf. *United States v. Verdugo-Urquidez*, 494 U.S. 259, 277–778 (1990) (Kennedy J., concurring), and cases cited therein." See also *id.* at 487 (Kennedy, J., concurring) (emphasizing that Guantánamo was in all practical respects the same as U.S. territory).

²⁰ Alternatively, the government claimed, the CSRT satisfied any rights the Guantánamo detainees may have had.

²¹ 355 F. Supp. 2d at 454.

²² *Id.* at 468–78.

²³ 355 F. Supp. 2d 311 (D.D.C. 2005).

²⁴ *Id.* at 323.

²⁵ Pub. L. No. 109–48, 119 Stat. 2680 (2005).

would disprove allegations of terrorism or other belligerent activity.²⁶ In addition, the DTA eliminated any federal court jurisdiction to consider claims other than those seeking review of CSRT determinations, thus barring challenges to a detainee's prolonged isolation or other conditions of confinement, abuse or threatened abuse by U.S. officials, or rendition to another country to face torture or continued imprisonment without due process.²⁷

Four months after the Supreme Court ruled in 2006 in *Hamdan v. Rumsfeld*²⁸ that the DTA did not repeal jurisdiction over pending habeas cases,²⁹ Congress enacted the MCA, once again seeking to curtail habeas rights.³⁰ Unlike the DTA, however, the MCA's court-stripping provisions were not limited to detainees at Guantánamo but applied to a broader class of "alien[s] detained by the United States" who fell within the terms of the statute.³¹

In February 2007, the D.C. Circuit issued its opinion in *Boumediene v. Bush*,³² the consolidated appeal of the district court decisions *In re Guantanamo Detainee Cases* and *Khalid v. Bush*. The D.C. Circuit upheld the MCA's repeal of habeas jurisdiction over the Guantánamo detainee cases.³³ It sought to resuscitate the bright-line rule rejected by the Supreme Court in *Rasul*, accentuating the differences between Guantánamo and the United States and ruling that detainees at Guantánamo had no constitutional rights *because* they were foreign nationals captured and detained outside the sovereign territory of the United States.³⁴ Indeed, the

²⁶ *Id.* § 1005(e)(2); *see also* Boumediene, 476 F.3d at 1006-07 (Rogers, J., dissenting) (describing limits of the D.C. Circuit's review under the DTA); *Id.* at 476 F.3d at 1005 (Rogers, J., dissenting) ("Far from merely adjusting the mechanism for vindicating the habeas right, the DTA imposes a series of hurdles while saddling each Guantánamo detainee with an assortment of handicaps that make the obstacles insurmountable.").

²⁷ DTA § 1005(e)(1).

²⁸ 126 S. Ct. 2749 (2004).

²⁹ *Id.* at 2762-69.

³⁰ MCA § 7, 120 Stat. 2636. The MCA also contained numerous other provisions affecting detainees, providing statutory authorization for military commissions that the Supreme Court held in *Hamdan* was lacking, *id.* § 3, 110 Stat. 2602-2603, and purporting to limit the enforceability of the Geneva Conventions, *id.* § 5, 120 Stat. 2631.

³¹ *Id.* § 5, 120 Stat. 2636.

³² 476 F.3d 981 (D.C. Cir. 2007).

³³ *Id.* at 994.

³⁴ *Id.* at 991-92. District Judge James Robertson had previously reached the same conclusion in upholding the MCA's repeal of habeas corpus jurisdiction over the claims of Salim Hamdan, the detainee who before had successfully challenged the President's military commissions in the Supreme Court. *See Hamdan v. Rumsfeld*, 464 F. Supp. 2d 9, 18-19 (D.D.C. 2006) (finding that Guantánamo detainees could not invoke the protection the Suspension Clause because they were foreign nationals cap-

D.C. Circuit's opinion in *Boumediene* means that Congress need not have afforded *any* judicial review to Guantánamo detainees in repealing habeas jurisdiction under the DTA and MCA, and remains free in the future to leave their detention and treatment entirely to the discretion of the political branches.

The Supreme Court initially denied review in *Boumediene*.³⁵ However, three Justices dissented from the denial of certiorari,³⁶ and two Justices issued a separate statement explaining that the detainees first needed to exhaust available remedies by seeking review in the D.C. Circuit under the DTA of their final CSRT decisions.³⁷ Then, on June 29, 2007, the Supreme Court reversed course, granting the petitioners' motion to reconsider the Court's prior denial of the petitions for certiorari and agreeing to hear the case.³⁸

At the same time that the administration is emphasizing the distinctions between Guantánamo and the United States in *Boumediene*, it is trying to blur those distinctions in arguing that the MCA validly eliminates habeas corpus for foreign nationals seized and detained inside the United States. This interpretive move threatens to extend a detention model purportedly designed for an extraterritorial rights-free zone to the United States and eviscerates previously well-established constitutional protections guaranteed to resident aliens.

The MCA purports to repeal habeas jurisdiction over the petition 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."³⁹ Congress intended this language to reach foreign nationals detained at Guantánamo and other off-shore prisons such as Bagram Air Base in Afghanistan who had undergone or were slated to undergo an executive branch review determination of their "enemy combatant" status, such as a CSRT or other execu-

tured and detained outside the sovereign territory of the United States). Judge Robertson had also stated that if the MCA were applied to a foreign national with constitutional rights, it would violate the Suspension Clause. *Id.* at 16 ("If and to the extent that the MCA operates to make the writ unavailable to a person who is constitutionally entitled to it, it must be unconstitutional.").

³⁵ 127 S. Ct. 1478 (2007).

³⁶ *Id.* at 1479 (Breyer, J., joined by Souter & Ginsburg, JJ., dissenting).

³⁷ *Id.* at 1478 (Stevens and Kennedy, JJ., respecting the denial of certiorari).

³⁸ *Boumediene v. Bush*, 127 S. Ct. 3067 (2007). As in the D.C. Circuit, the two cases—*Boumediene v. Bush* and *Al Odah v. United States*—have been consolidated in the Supreme Court. *Id.*

³⁹ MCA, § 7, 120 Stat. 2631.

tive branch tribunal. The administration, however, has interpreted this provision to eliminate jurisdiction over the habeas petitions of foreign nationals arrested and detained inside the United States if they are designated “enemy combatants” by the executive branch or are merely “awaiting such determination.”

The administration, accordingly, has urged the U.S. Court of Appeals for the Fourth Circuit to dismiss the petitioner’s appeal in *Al-Marri v. Wright*, the case involving the only individual presently detained in the United States as an “enemy combatant.”⁴⁰ The administration had not previously contested the federal courts’ habeas jurisdiction in *Al-Marri*, nor had it ever convened a CSRT for Mr. al-Marri even though the CSRT had been in place for Guantánamo detainees for more than two years. Yet, the administration now claims that the federal courts lack habeas jurisdiction to hear Mr. al-Marri’s challenge to the President’s legal authority to detain him as an “enemy combatant.” Thus, the administration claims for the first time, lawful resident aliens, including immigrants who have lived in this country for generations, have no more right to habeas corpus than aliens captured and held outside the country. Instead, the only procedure resident aliens can possibly invoke to challenge their indefinite executive detention as “enemy combatants” is DTA review of a CSRT decision—a procedure specifically designed for Guantánamo detainees, individuals who, the administration has consistently asserted, and who members of Congress who voted for habeas-stripping legislation believe, have no constitutional rights. Moreover, access to that limited review procedure is not a right but remains within the complete and sole discretion of the Executive who determines when, if ever, to convene a CSRT, and thus when, if ever, to afford detainees access to an Article III court.⁴¹

Mr. al-Marri and numerous amici have argued that the MCA does not apply to aliens living in the United States and would violate the Constitution if interpreted otherwise.⁴² In particular, the

⁴⁰ See *Al-Marri v. Wright*, No. 06-7437 (4th Cir.).

⁴¹ The administration has stated that if Mr. al-Marri’s appeal is dismissed, the Defense Department would convene a CSRT for Mr. al-Marri, and that Mr. al-Marri could “avail” himself of review in the D.C. Circuit under the DTA if the CSRT finding were adverse. See Respondent–Appellee’s Motion to Dismiss for Lack of Jurisdiction and Proposed Briefing Schedule, at 5, *Al-Marri v. Wright*, No. 06-7437 (4th Cir.). However, no statute or regulation requires that Mr. al-Marri be given a CSRT (or when), leaving his access to an Article III court within the complete and unfettered control of the executive branch, something the Constitution prohibits absent a valid suspension of the writ.

⁴² The briefs of the parties and amici curiae filed in the Fourth Circuit are availa-

MCA, if construed to repeal habeas jurisdiction over Mr. al-Marri's claim, would deny a lawful resident alien any right to challenge his indefinite executive detention in an Article III court and would eliminate habeas corpus without providing the adequate and effective substitute that the Suspension Clause requires.⁴³ In addition, the MCA would violate the Equal Protection Clause by denying lawful resident aliens the same fundamental right to habeas review afforded citizens designated as "enemy combatants."⁴⁴

On June 11, 2007, the Fourth Circuit ruled that the MCA did not repeal habeas jurisdiction over the case of a lawful resident alien such as Mr. al-Marri and that the federal courts retained jurisdiction to hear Mr. al-Marri's appeal.⁴⁵ The court also observed that interpreting the MCA to repeal habeas jurisdiction over Mr. al-Marri's case would raise "serious" constitutional questions.⁴⁶ The court further ruled on the merits that the President lacked legal authority to detain Mr. al-Marri as an "enemy combatant," concluding that his military detention must cease.⁴⁷ The government moved for rehearing *en banc*, and the full Fourth Circuit agreed to rehear Mr. al-Marri's appeal. The case is still pending.

Adoption of the administration's expansive interpretation of the MCA's court-stripping provisions would give the President unprecedented domestic detention authority. It would deny habeas corpus to non-citizens living lawfully in this country, despite their longstanding and clearly established constitutional right to invoke the protections of the writ.⁴⁸ It would also import to the domestic United States Guantánamo's template of indefinite detention based upon the CSRT's sweeping definition of an "enemy combatant" and fundamentally flawed procedures. As a result, immigrants could be imprisoned indefinitely, for months, perhaps even years, based upon innuendo, suspicion, or mistake, without habeas corpus or any other meaningful judicial determination of the legality of their detention.

Ironically, then, even as Guantánamo becomes an increasingly powerful symbol of America's misguided post-9/11 detention pol-

ble at http://www.brennancenter.org/stack_detail.asp?key=102&subkey=39178&init_key=34493.

⁴³ Swain v. Pressley, 430 U.S. 372 (1977).

⁴⁴ See, e.g., Plyer v. Doe, 457 U.S. 202, 210 (1982); Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886).

⁴⁵ Al-Marri v. Wright, 487 F.3d 160, 166–73 (4th Cir. 2007).

⁴⁶ *Id.* at 167–68.

⁴⁷ *Id.* at 174–95.

⁴⁸ See, e.g., INS v. St. Cyr, 533 U.S. 289 (2001).

icy—one that recently prompted Secretary of Defense Robert Gates to call for the prison's closure⁴⁹—the administration is seeking to transport Guantánamo's system of unreviewable executive detention to the mainland United States. It would not only be unwise policy to extend and expand a detention regime that has caused America such reputational harm and that cries out for reform. It would also flout longstanding precedents that guarantee non-citizens in the United States the full protections of the Constitution, including habeas corpus, due process, and equal treatment under law.

At bottom, the administration's arguments are unprincipled and misleading. The administration has established and defended its detention policies at Guantánamo by stressing that they were designed to apply extraterritorially. Now it is trying to institutionalize that same system in the United States. If the Guantánamo prison were to close, as some have proposed, the Guantánamo system might nevertheless live on within the United States, threatening to eliminate fundamental constitutional protections such as habeas corpus, even for resident aliens whose right to those protections has been long-established. Rather than the United States extending fundamental protections to Guantánamo (as *Rasul* had promised and, as I have argued elsewhere, as the Supreme Court's decision in that case and the Constitution require),⁵⁰ the Guantánamo paradigm, with its deliberate elimination of basic protections, such as habeas corpus, and due process would be brought to the domestic United States. Were that to occur, it would rank as yet another one of Guantánamo's troubling, if unintended, legacies.

⁴⁹ Thom Shanker & David Sanger, *New to Pentagon, Gates Argued for Closing Guantánamo Prison*, N.Y. TIMES, Mar. 23, 2007, at A1.

⁵⁰ See, e.g., Jonathan Hafetz, *Habeas Corpus, Judicial Review, and Limits on Secrecy in Detentions at Guantánamo*, 5 CARDOZO PUB. L. POL'Y & ETHICS J. 127 (2006).