

Checkpoint to Nowhere: When the American Dream Ends at Guantanamo's Gates

Jacqueline Perez Bravo^{1*}

I. Introduction

Since 2019, proposals surrounding the utilization of the notorious Guantanamo Bay Detention Center as a holding center for migrant detainees residing in the U.S. have been repeatedly echoed by President Donald J. Trump.² Previously seen as an action that would never come into fruition, the Trump Administration shocked the nation and international community in January 2025 as it announced its full-fledged intentions to relocate migrants currently detained in U.S. detention centers to Guantanamo Bay.

Issued on January 29, 2025 and titled, "Expanding Migrant Operations Center at Naval Station Guantanamo Bay to Full Capacity," this memorandum directs the implementation of all appropriate actions to expand the Migrant Operations Center at Guantanamo Bay to full capacity to accommodate unauthorized migrants.³ Despite the memorandum's alleged aim of protecting the nation from a "migrant-fueled invasion," this action raises significant questions regarding the legality of this move and potential implications on the rights of

^{1*} B.A.(Cornell)'2027. I am very grateful to the Cornell Anti-Detention Club for their help in furthering my knowledge on migrant detention centers and to the Undergraduate International Law Review at Cornell's editors for their very helpful comments and suggestions. All views contained in the article are mine, and any errors are my own.

² Ed Pilkington and Martin Pengelly, "Trump proposed sending migrants to Guantánamo, claims book by anonymous author," *The Guardian*, November 19, 2019, <https://www.theguardian.com/us-news/2019/nov/13/trump-proposed-sending-undocumented-migrants-to-guantanamo-anonymous-book-claims>.

³ "Expanding Migrant Operations Center at Naval Station Guantanamo Bay to Full Capacity," The White House, published January 29, 2025, <https://www.whitehouse.gov/presidential-actions/2025/01/expanding-migrant-operations-center-at-naval-station-guantanamo-bay-to-full-capacity/>.

affected detainees.⁴

An unprecedented action, Guantanamo Bay has never been utilized to detain migrants previously housed in U.S. detention facilities. An unneeded amount of cruelty has been applied to the treatment of migrants, who despite the Trump administration's claims, are subjected to the protection of particular rights bestowed upon them by international law and through the U.S. Constitution. The U.S. operates over 200 detention facilities across the nation - the largest immigration system in the world.⁵ There is no shortage of detention facilities that merit detention in Guantanamo Bay. This article seeks to explore the constitutional and international law violations presented by the Trump Administration's Guantanamo Bay memorandum. First, the history and past documented human rights violations will be explored. Next, the legal climate of Guantanamo Bay and an overview of the constitutional and international rights violations presented by this memorandum to migrants will be examined. Finally, the current and future effects of this memorandum on migrant detainees and their rights will be discussed.

II. The History of Guantanamo Bay

In 1898, Spain ceded control of Cuba to the United States after losing the Spanish-American War of 1898.⁶ In 1902, the U.S. returned control of the island to the Cuban people, however, this came with various stipulations. Through the Platt Amendment, the U.S. possessed the ability to intervene in the Caribbean nation as needed and could buy or lease lands from the Cuban government for the

⁴ The White House, "Expanding Migrant Operations Center at Naval Station Guantanamo Bay to Full Capacity."

⁵ "Immigration Detention and Enforcement," National Immigrant Justice Center, accessed April 8, 2025, <https://immigrantjustice.org/issues/immigration-detention-enforcement#:~:text=Men%2C%20women%2C%20and%20children%20apprehended,make%20up%20ICE's%20detention%20system.>

⁶ Congressional Research Service, "Naval Station Guantanamo Bay: History and Legal Issues Regarding Its Lease Agreement, (Washington DC: Library of Congress, 2022), [https://www.congress.gov/crs-product/R44137.](https://www.congress.gov/crs-product/R44137)

future erection of coaling and naval stations.⁷ For much of the early and mid-twentieth century, Guantanamo Bay or “Guantanamo Bay,” as it is popularly referred to, served as a coaling station for American Navy vessels.

In 1991, Guantanamo Bay gained a new identity as a refugee holding center for thousands of Haitian refugees fleeing a military dictatorship.⁸ Fleeing Haiti in makeshift boats, these refugees were often intercepted by the U.S. Coast Guard and brought to Guantanamo Bay, residing in deplorable conditions as they awaited asylum proceedings.⁹ The majority of Haitians who were brought to Guantanamo Bay were ultimately returned to Haiti, despite the dangerous political climate. Largely categorized as “economic migrants” rather than refugees, the United States was able to return individuals to Haiti, a practice referred to as refoulement. This action was justified by asserting that interception beyond U.S. territorial waters exempted the government from obligations under the 1961 UN Convention Relating to the Status of Refugees.¹⁰

In 1994, Guantanamo Bay once again functioned as a migrant processing and detention center following a large wave of Cuban migration. Fearing an immigration crisis, the Clinton Administration began intercepting and sending thousands of Cubans to Guantanamo Bay instead of following its traditional policy of automatically granting Cubans asylum.¹¹ Similar to Haitians, Cubans also faced deplorable living conditions at Guantanamo Bay. However, unlike Haitians, most Cubans were ultimately admitted into the U.S.

⁷ Congressional Research Service, “Naval Station Guantanamo Bay: History and Legal Issues Regarding Its Lease Agreement, (Washington DC: Library of Congress, 2022), <https://www.congress.gov/crs-product/R441374>.

⁸ “Haitians and GTMO,” Guantanamo Public Memory Project, accessed April 5, 2025, <https://GuantanamoBaymemory.org/timeline/haitians-and-gtmo/>.

⁹ Guantanamo Public Memory Project, “Haitians and Guantanamo Bay.”

¹⁰ *Pushing Back Protection: How Offshoring and Externalization Imperil the Right to Asylum*, (Washington D.C., 2021) 3, https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2021-11/Offshoring%20Asylum%20Report_Chapter4%20%281%29.pdf.

¹¹ *How Offshoring and Externalization Imperil the Right to Asylum*, 5.

Guantanamo Bay gained yet another role as a detention center for non-citizens accused of engaging in terrorism against the U.S. following the September 11, 2001 terrorist attacks.¹² A large percentage of these individuals were never charged, tried, or sentenced, simply being held on the basis of being “enemy combatants” and possessing few legal rights as detainees.¹³ Since its opening, Guantanamo Bay has held an estimated 780 prisoners.¹⁴ Individuals are typically released or transferred from Guantanamo Bay to their home nation through repatriation and resettlement deals negotiated by the U.S. government and receiving nation.¹⁵ As of January 2025, Guantanamo Bay’s prisoner population consists of only 15 men.¹⁶

III. A Legal Black Hole: Past Human Rights Violations at Guantanamo Bay

Since the detainment of suspected terrorists began following the September 11 terrorist attacks, the U.S. government has actively maintained that prisoners held at Guantanamo Bay possess few legal rights. In 2002, the administration of George W. Bush determined that Taliban and Al-Qaeda prisoners held at Guantanamo Bay to be ineligible for prisoner of war (POW) status and consequently, not eligible to certain protections provided by the Geneva Convention.¹⁷ Adopted by the United States in 1951, the Geneva Convention governs the treatment of POWs in captivity and in courts of law alike. POWs are defined as combatants who have fallen into captivity and who meet the standards

¹²Congressional Research Service, “Naval Station Guantanamo Bay: History and Legal Issues Regarding Its Lease Agreement, (Washington DC: Library of Congress, 2022), <https://www.congress.gov/crs-product/R44137/>.

¹³ Guantanamo Public Memory Project, “Haitians and Guantanamo Bay.”

¹⁴ “The Guantanamo Docket,” *New York Times*, updated April 21, 2025. <https://www.nytimes.com/interactive/2021/us/guantanamo-bay-detainees.html>.

¹⁵*New York Times*, “The Guantanamo Docket.”

¹⁶ Phil Stewart, “US dramatically shrinks Guantanamo prisoner population to 15 men,” *Reuters*, January 6, 2025, <https://www.reuters.com/world/us/us-sends-11-guantanamo-bay-detainees-oman-leaving-just-15-2025-01-06/>.

¹⁷Omar Akbar, “Losing Geneva in Guantanamo Bay,” *Iowa Law Review* 89, no. 1 (October 2003): 202, <https://heinonline.org/HOL/P?h=hein.journals/ilr89&i=207>.

of the Geneva Convention and are protected by international law. Specific articles of the Geneva Convention, such as Article 17 and 21, prohibit certain disciplinary behavior against prisoners and outline standards for confinement standards.¹⁸ For example, Article 17 forbids the torture or coercion of POWs who refuse to answer during interrogations. Under the Geneva Convention, several categories of individuals can be classified as being POWs, including individuals who do not directly engage in combat.¹⁹ Prisoners detained at Guantanamo Bay have historically never been recognized as POWs with the U.S. government deciding to classify them as “enemy combatants.”

Attempts by past presidential administrations to label detainees held at Guantanamo Bay as “enemy combatants” has contributed to Guantanamo Bay’s reputation as a legal black hole for individual legal protections.²⁰ An enemy combatant is an individual who belongs to an armed individual but who does not meet the conditions needed to be classified to be given combatant status or Prisoner of War (POW) status.²¹ They are neither seen as civilians nor official combatants can be detained indefinitely without a trial.²² Given that the current migrants detained at Guantanamo are civilians, not combatants, and do not belong to an armed group, the line between what rights and protections a Guantanamo Bay migrant detainee is entitled to or is not entitled to can be quite murky and blurry. While detaining migrants at Guantanamo Bay has occurred under previous presidential administrations, it has occurred under different conditions involving migrants who had never previously set foot in the U.S. The transfer of migrants previously held in U.S. immigration detention centers to Guantanamo Bay

¹⁸Akbar, "Losing Geneva in Guantanamo Bay," 200.

¹⁹“Prisoners of War,” International Committee of the Red Cross, accessed April 6, 2025, https://casebook.icrc.org/a_to_z/glossary/prisoners-war.

²⁰Akbar, "Losing Geneva in Guantanamo Bay," 207.

²¹ “Unlawful Combatants,” International Committee of the Red Cross, accessed April 6, 2025, https://casebook.icrc.org/a_to_z/glossary/unlawful-combatants.

²² International Committee of the Red Cross, “Unlawful Combatants.”

represents an unprecedented action, not only for the Trump Administration but in U.S. history more broadly. This unique situation has created significant legal uncertainty as courts, attorneys, and administration officials attempt to determine what legal protections apply to migrants held at Guantanamo Bays.

Since 2003, the Supreme Court has actively attempted to address the legal black hole that exists within Guantanamo Bay, bestowing limited rights to detainees through varying cases: *Rasul v. Bush* (2004), *Hamdan v. Rumsfeld* (2006), and *Boumediene v. Bush* (2008). *Rasul v. Bush* (2004) found that due to the control exercised by the U.S. over the naval base, that detainees possess a right to habeas corpus and can challenge the constitutionality of their case.²³ Under habeas corpus, detainees have the right to take action against the state and question the conditions surrounding their confinement and time in custody.

Hamdan v. Rumsfeld (2006) and *Boumediene v. Bush* (2008) have both reaffirmed this right to habeas corpus, preventing the U.S. government from trying detainees in front of military commissions instead of courts, as well as denying the U.S. government the ability to claim that detainees cannot challenge their detainment due to a lack of jurisdiction. *Boumediene v. Bush* (2008) went even further, assuring that Guantanamo Bay detainees are entitled to the protection of the Fifth Amendment right concerning the deprivation of liberty without due process of law.²⁴ The application of these legal principles, however, is spotty and inconsistent with violations of rights being a common theme within Guantanamo Bay. Despite these legal protections, detainees at Guantanamo Bay have been previously subjected to horrific conditions and human rights abuses. On the international stage, Guantanamo Bay has become known as a cesspit for human rights violations. Reports of the methods of torture used during interrogations

²³“*Rasul v. Bush*,” Center for Constitutional Rights, accessed April 6, 2025, <https://ccrjustice.org/home/what-we-do/our-cases/rasul-v-bush>.

²⁴ “*Boumediene v. Bush*,” Oyez, accessed April 5, 2025, <https://www.oyez.org/cases/2007/06-1195>.

include “...stripping, forcible shaving, and “using detainees [sic] individual phobias (such as fear of dogs) to induce stress.”²⁵ The use of waterboarding, a technique which simulates drowning, has been frequently utilized by U.S. officials during interrogations.²⁶

Historically, migrants at Guantanamo Bay, like “enemy combatants,” have also experienced harsh treatment and abuses. Interviews given by Cuban asylum-seekers include reports of disgusting conditions, verbal xenophobic remarks, and physical retribution by guards against those who complain about conditions. Duran Arape, one of the Venezuelan migrants sent to Guantanamo Bay in February 2025, reports being heavily mistreated by U.S. soldiers serving as guards through a series of beatings.²⁷ At one point, the beatings had become so severe that he attempted to commit suicide.²⁸ Migrants reported being pinned down by guards in riot gear for simply demanding access to a phone and an attorney.²⁹ Despite these consistent allegations by numerous detainees, the Trump Administration vehemently denies any mistreatment perpetuated on behalf of its officials.³⁰

IV. Dissection of the Trump Administration’s Memorandum

Tellingly titled, “Expanding Migrant Operations Center at Naval Station Guantanamo Bay to Full Capacity” this memorandum was issued by President

²⁵Samantha Pearlman, “Human Rights Violations at Guantánamo Bay: How the United States Has Avoided Enforcement of International Norms,” *Seattle University Law Review* 38, no. 1109 (2015): 1124, <https://digitalcommons.law.seattleu.edu/sulr/vol38/iss3/8/>.

²⁶Pearlman, “Human Rights Violations at Guantánamo Bay: How the United States Has Avoided Enforcement of International Norms,” 1113.

²⁷Sergio Martinez - Beltran, “Venezuelan Men Allege Mistreatment While in Guantanamo Bay,” *NPR*, February 25, 2025, <https://www.npr.org/2025/02/25/nx-s1-5306433/guantanamo-detainee-speaks-venezuela-trump-immigration-abuse>.

²⁸Martinez - Beltran, “Venezuelan Men Allege Mistreatment While in Guantanamo Bay.”

²⁹Martinez - Beltran, “Venezuelan Men Allege Mistreatment While in Guantanamo Bay.”

³⁰Pearlman, “Human Rights Violations at Guantánamo Bay: How the United States Has Avoided Enforcement of International Norms,” 1119.

Trump only days into his administration on January 29, 2025.³¹ It directs the Secretary of Defense and the Secretary of Homeland Security to “take all appropriate actions to expand the Migrant Operations Center at Naval Station Guantanamo Bay to full capacity.”³² This memorandum then goes on to express its aims to “halt the border invasion, dismantle criminal cartels, and restore national sovereignty.”³³

The targets of this memorandum include “high-priority criminal aliens unlawfully present in the United States” who the Trump Administration perceives as presenting a high-risk to the national security of the nation.³⁴ Almost immediately after coming into effect, the first group of detainees arrived in Guantanamo Bay on February 4, 2025.³⁵ Consisting of ten Venezuelan nationals, the Department of Homeland Security reaffirmed the “high-risk” nature of these men, alleging that all of the individuals maintained membership within the Venezuelan criminal organization, “Tren de Aragua,” which the Trump Administration has designated a terrorist group.³⁶

³¹The White House, “Expanding Migrant Operations Center at Naval Station Guantanamo Bay to Full Capacity.”

³²The White House, “Expanding Migrant Operations Center at Naval Station Guantanamo Bay to Full Capacity.”

³³The White House, “Expanding Migrant Operations Center at Naval Station Guantanamo Bay to Full Capacity.”

³⁴The White House, “Expanding Migrant Operations Center at Naval Station Guantanamo Bay to Full Capacity.”

³⁵ “POTUS Memo “Expanding Migrant Operations Center at Naval Station Guantánamo Bay to Full Capacity” directs DOD and DHS to prepare for detention of migrants,” Immigration Policy Tracking Project, accessed April 8, 2025, <https://immpolicytracking.org/policies/eo-expanding-migrant-operations-center-at-naval-station-guantanamo-bay-to-full-capacity-directs-departments-of-defense-and-homeland-security-to-begin-preparing-guantanamo-bay-for-detention-of-migrants/>.

³⁶ C. Todd Lopez, “First Flight of Illegal Aliens Arrives at Guantanamo,” *U.S. Department of Defense*, February 5, 2025, <https://www.defense.gov/News/News-Stories/Article/Article/4055497/first-flight-of-illegal-aliens-arrives-at-guantanamo/>.

Over the course of two months, the Trump Administration has sent an estimated 400 migrants to Guantanamo Bay.³⁷ Despite being labeled as high-risk threats and the “worst of the worst” by the Trump Administration, a lawsuit by the ACLU against the detention of the 177 migrants who were then detained at Guantanamo Bay in February 2025, found that an estimated 30% were of low-risk and possessed no previous criminal record.³⁸

V. Legal Violations Presented by the Guantanamo Bay Memorandum

a. International Legal Violations

Undoubtedly, the Guantanamo Bay memorandum issued by the Trump Administration facilitates abusive and punitive behavior by U.S. soldiers against migrant detainees. The memorandum violates a series of legal international standards and principles including the Convention Against Torture (CAT) and the *International Covenant on Civil and Political Rights* (ICCPR).

The CAT was ratified by the U.S in 1994, becoming an enforceable law.³⁹ Split into various articles, Article 1 of the CAT defines torture as being severe pain or suffering that “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.”⁴⁰ The U.S. has violated this article through the

³⁷ Carol Rosenberg, “U.S. Has Spent \$40 Million to Jail About 400 Migrants at Guantanamo,” *New York Times*, March 31, 2025, <https://www.nytimes.com/2025/03/31/us/politics/migrants-guantanamo-costs.html>.

³⁸ Sergio Martinez-Beltran and Steven Inskeep, “More than 170 migrants held at Guantánamo flown back to Venezuela,” *NPR*, February 21, 2025, <https://www.npr.org/2025/02/21/nx-s1-5304450/more-than-170-migrants-held-at-guantanamo-flown-back-to-venezuela>.

³⁹ Pearlman, “Human Rights Violations at Guantánamo Bay: How the United States Has Avoided Enforcement of International Norms,” 1119.

⁴⁰ “International Covenant on Civil and Political Rights,” opened for signature December 16, 1966, Treaty Series, <https://www.ohchr.org/sites/default/files/ccpr.pdf>.

perpetuation of physical punishment by soldiers acting as guards upon the migrant detainees. As reported by several of the Venezuelan men previously held at Guantanamo Bay, migrants were regularly beaten, pinned, and strip-searched by guards.⁴¹ This physical retaliation by guards served as punishment for acts committed by the migrant detainees, such as kicking the cell door in retaliation for being denied access to a phone and verbally complaining of the lack of access to phones.⁴² This physical punishment and degrading treatment further inflicts mental suffering and pain upon the victims subjected to this behavior. One of the Venezuelan migrant reports being beaten so badly and treated so poorly by guards, that he ultimately attempted to commit suicide but was not successful in doing so.

43

However, under the United States' interpretation of torture, the mental pain endured by Venezuelan migrants would likely not constitute torture. Upon ratification of the CAT, the U.S. limited the definition of mental torture set by the CAT, setting strict guidelines for determining whether or not severe mental pain constitutes torture.⁴⁴ Under American guidelines, the suffering experienced by the migrants would not be classified as being torture.

Additionally, the ICCPR, provides certain protections to the migrant detainees at Guantanamo, some of which have been violated through the actions committed by Guantanamo Bay guards. Article 7 of the ICCPR provides that, "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."⁴⁵ Subjecting migrants to beatings as a method of punishment and

⁴¹ Edwidge Danticat, "The Fate of Migrants Detained at Guantánamo," *The New Yorker*, March 9, 2025, <https://www.newyorker.com/culture/photo-booth/the-fate-of-migrants-detained-at-guantanamo>.

⁴² Danticat, "The Fate of Migrants Detained at Guantánamo."

⁴³ Martínez - Beltrán, "Venezuelan Men Allege Mistreatment While in Guantanamo Bay."

⁴⁴ Pearlman, "Human Rights Violations at Guantánamo Bay: How the United States Has Avoided Enforcement of International Norms," 1119.

⁴⁵ "International Covenant on Civil and Political Rights," opened for signature December 16, 1966, Treaty Series, <https://www.ohchr.org/sites/default/files/ccpr.pdf>.

control is inherently cruel. Additionally, stripping migrants of their clothing and subjecting them to xenophobic verbal abuse can be both classified as degrading treatment, adding another violation committed against migrants.

Similarly, Article 10 of the ICCPR mandates states ensure that “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”⁴⁶ The migrants detained at Guantanamo Bay, have not been treated with respect for their humanity, in and outside of Guantanamo Bay. As established numerous times, detainees face violence and derogatory treatment perpetuated by the Guantanamo Bay Guards. Their detention at Guantanamo Bay is an excessively cruel decision taken by the Trump Administration. There is no basis rooted in U.S. immigration law that requires or mandates that migrants be transferred from a U.S. detention center to a location outside of the U.S. while conducting removal proceedings.⁴⁷ The choice to hold migrants at Guantanamo Bay is a purely political one made by the Trump Administration with little regard for the humanity of these individuals. Guantanamo Bay has an infamous reputation and history as a harsh environment in which mistreatment and derogation are regular occurrences.⁴⁸ Given that an estimated 30% of the migrants sent to Guantanamo Bay were ultimately found to have no criminal record despite being labeled as “the worst of the worst” by the Trump Administration, the deliberate decision to transfer individuals to Guantanamo Bay is excessive and a disregard of their humanity.⁴⁹

⁴⁶ “International Covenant on Civil and Political Rights,” opened for signature December 16, 1966, Treaty Series, <https://www.ohchr.org/sites/default/files/ccpr.pdf>.

⁴⁷ U.S. Senators to President Donald J. Trump, February 24, 2025, Senate Judiciary Committee, <https://www.judiciary.senate.gov/imo/media/doc/2025-02-24%20-%20Letter%20to%20WH%20re%20Guantanamo.pdf>.

⁴⁸ Danticat, “The Fate of Migrants Detained at Guantánamo.”

⁴⁹ Pearlman, “Human Rights Violations at Guantánamo Bay: How the United States Has Avoided Enforcement of International Norms,” 1119.

b. Violation of Constitutional Rights

The Trump Administration has actively refused to provide details about the identities, immigration statuses, and legal circumstances surrounding the Guantanamo Bay detainees. Characterized as brash, obscure, and carried out with little regard for the legal system, President Trump's Guantanamo Bay memorandum is a violation of the Constitutional rights held by U.S. detained migrants transferred to Guantanamo Bay and is in direct defiance of requirements set forth by past immigration-related cases.

Before analyzing any Constitutional right a migrant may possess, the question of whether or not the Constitution even extends to migrants in the first place arises. Previous Supreme Court cases have attempted to answer this legal question, determining that some portions of the Constitution apply to non-citizens. *Shaughnessy v. United States ex rel. Mezei* (1953) found that any non-citizen, regardless of whether they entered the U.S. lawfully or not, are recognized as *persons* and have the “constitutional right to traditional standards of fairness” enshrined within the Fifth and Fourteenth Amendment.⁵⁰ Regardless of the detainees' initial legal status upon arrival to the U.S., many of the individuals transferred to Guantanamo Bay did not enter the U.S. unlawfully. In *Espinoza Escalona v. Noem*, a lawsuit launched in March 2025 by the American Civil Liberties Union, the facts affirm that many of the men detained at Guantanamo Bay initially arrived in the U.S. seeking asylum. Through an application of *Shaughnessy v. United States ex rel. Mezei* (1953), migrants within U.S. detention facilities fall under the protection of the Fifth Amendment. Given that all migrants were detained in the U.S. at the time

⁵⁰ “*Shaughnessy v. United States ex rel. Mezei*,” Legal Information Institute (LII), accessed March 14, 2025, https://www.law.cornell.edu/wex/shaughnessy_v._united_states_ex_rel._mezei.

the decision to transfer them to Guantanamo Bay occurred, the Fifth Amendment is applicable.

The Fifth Amendment requires that all proceedings that deny an individual “life, liberty or property” be done with the implementation of due process.⁵¹ Throughout their entanglement with the legal system, migrants maintain the right to procedural due process and the right to retain counsel even in removal proceedings. Similarly, *Reno v. Flores* (1993) recognizes that non-citizens with ties to the U.S. are entitled to procedural due process of law.⁵² Many of these migrants possess these deep ties, having U.S. citizen spouses and children.

While some detainees have final removal orders, requiring them to be deported from the country, that is not clear for all detainees whose status remains murky. The Department of Defense has refused to provide information regarding the legal status of other Guantanamo Bay detainees, some of whom are likely still in immigration proceedings and have not received a final order of removal. The transfer of detained migrants violates due process under the Fifth Amendment, given the illegitimate and abrupt manner in which detainees are taken to Guantanamo Bay.

Additionally, moving detainees who have not yet received a final order can have an adverse affect on their immigration case given they no longer have access to contact an attorney or legal counsel while at Guantanamo Bay. In *Lyon v ICE* (2016), a judge in the Northern District of California found that confinement conditions that deprive noncitizens in immigration detention of legal counsel, such as inadequate access to a telephone, may inhibit detainees from adequately

⁵¹ “Fifth Amendment,” Legal Information Institute (LII), accessed March 14, 2025, https://www.law.cornell.edu/constitution/fifth_amendment.

⁵² “Zachary Manfredi and Joseph Meyers, “Isolated and Unreachable: Contesting Unconstitutional Restrictions on Communication in Immigration Detention,” *NYU Law Review* 95, no. 1 (2020): 147-147, <https://www.nyulawreview.org/wp-content/uploads/2020/04/NYULAWREVIEW-95-1-ManfrediMeyers.pdf>.

preparing for their removal hearings.⁵³ This inability to fully prepare for removal hearings deprives detainees of the guarantee of a full and fair hearing provided under the Fifth Amendment.⁵⁴

Upon their arrival at Guantanamo, migrants have been held incommunicado and completely cut off from accessing legal counsel and family members. Immigrant aid organizations within the U.S. have sued the Trump Administration on February 12th, 2025 in *Las Americas Immigrant Advocacy Center et al. v. Noem* to gain access to detained migrants.⁵⁵ The Fifth Amendment asserts the right of migrants not to be held without access to counsel, a violation currently being committed by the Trump Administration.

Moreover, the inability of legal aid organizations to access and provide services to Guantanamo Bay migrant detainees can present a violation to rights of these organizations guaranteed under the First Amendment. The First Amendment provides organizations with the freedom of expression, including the right to politically associate and express themselves.⁵⁶ Openly rejecting and defying the Trump Administration through advocating for immigrants' rights and providing legal services to migrants are activities that represent forms of political association and expression.

VI. Effects of Presidential Memorandum

a. Erosion of migrant rights, U.S. falling on human rights scale.

An unprecedented act, the transfer of migrants to Guantanamo Bay presents a significant erosion of rights and protections that have historically been provided to individuals seeking asylum within the U.S. According to the following

⁵³ "Lyon v. ICE (Telephone Access for Immigration Detainees)," ACLU Northern California, published April 23, 2019, <https://www.aclunc.org/our-work/legal-docket/lyon-v-ice-telephone-access-immigration-detainees>.

⁵⁴ ACLU Northern California "Lyon v. ICE (Telephone Access for Immigration Detainees)."

⁵⁵The White House, "Expanding Migrant Operations Center at Naval Station Guantanamo Bay to Full Capacity."

⁵⁶ U.S. Constitution, amend. 1.

two lawsuits launched by the ACLU and other prominent immigrant aid organizations, *Las Americas Immigrant Advocacy Center et al. v. Noem* and *Espinoza Escalona v. Noem*, many of the migrants detained at Guantanamo Bay originally entered the country seeking asylum from dangerous conditions in their home countries before being placed in removal proceedings. Despite being held at Guantanamo Bay, a prison notorious for holding accused terrorists, it is extremely important to acknowledge that migrants should not be equated to prisoners or criminality.

Seeking asylum is not a crime. Not all who seek asylum receive it and unfortunate individuals are placed in removal proceedings. However, this does not automatically classify detained migrants as criminals. As such, the Trump Administration's portrayal and treatment of the detainees as criminals have led to a significant erosion of migrant rights. Under the Constitution, migrants are entitled to rights and protections even during removal proceedings. The Trump Administration's decision to abruptly send migrants to Guantanamo Bay by disregarding due process and other protections held by migrants sets a dangerous precedent that may encourage future administrations to carry out similar actions.

b. Aggrandizement of executive power over immigration enforcement

On January 20th, 2025, President Trump's first day in office, he signed an executive order titled "Protecting the American People Against Invasion" in which he called upon all relevant agencies under the administrative state to carry out all necessary actions to fight a migratory "invasion."⁵⁷ He has sought to deport migrants under the The Alien Enemies of 1798 which enables the president to deport individuals of an enemy nationality during times of war, despite the U.S.

⁵⁷ "Protecting The American People Against Invasion," The White House, published January 20, 2025, <https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-american-people-against-invasion/>.

not being in a state of conflict.⁵⁸ Historically, this piece of legislation has been utilized to justify draconian moments in U.S. immigration history, such as the internment of Japanese-American citizens during World War II.⁵⁹

There is no legal basis within U.S. immigration law that requires or encourages the transfer of noncitizens detained within the U.S. to an outside location for the purpose of removal proceedings. Once a final order of removal is executed and the individual is transferred outside of the country, there is no need to keep them in immigration custody. Attempts to retain migrants after transporting them outside of the U.S. goes beyond the duties and responsibilities allocated under U.S. immigration law.

VII. Conclusion: Looking Forward to the Future

The Trump Administration's decision to detain migrants at Guantanamo Bay marks an unprecedented period in U.S. immigration enforcement, one characterized by the erosion of constitutional protections for non-citizens and the expansion of the executive power. Migrants, many of whom possessed a clean criminal record prior to their detainment, are now housed in a facility notorious for housing terrorism suspects and for its long train of human rights abuses. While at Guantanamo Bay, these migrants have been stripped of due process, and denied access to legal counsel. This policy decision represents not only a violation of international law but also a dangerous overreach of presidential authority in immigration matters.

The future of Guantanamo Bay as a detention center under this administration, and potentially beyond, will likely hinge on the outcomes of key

⁵⁸ Katherine Yon Ebright and Elizabeth Goitein, "Trump's Doubly Flawed "Invasion" Theory," *The Brennan Center for Justice*, February 19, 2025, <https://www.brennancenter.org/our-work/analysis-opinion/trumps-doubly-flawed-invasion-theory>.

⁵⁹ Katherine Yon Ebright, "The Aliens Enemies Act, Explained," *The Brennan Center for Justice*, October 9, 2024, <https://www.brennancenter.org/our-work/research-reports/alien-enemies-act-explained>.

lawsuits and the resilience of legal advocacy networks. Cases like *Las Americas Immigrant Advocacy Center v. Noem* and *Espinoza Escalona v. Noem* are critical touchpoints in testing the limits of constitutional protections for noncitizens and reaffirming due process rights. Additionally, landmark decisions such as *Boumediene v. Bush* and *Reno v. Flores* provide strong legal precedent to challenge this expansion of detention authority.

For lawyers and advocates, the most viable legal pathways include:

- Invoking international treaties like the Convention Against Torture and ICCPR,
- Challenging the denial of habeas corpus under the Suspension Clause,
- Asserting Fifth Amendment due process violations for detained migrants,
- Defending the First Amendment rights of legal aid organizations to access and represent detainees as a form of political expression.

If left unchallenged, the Guantanamo memorandum risks setting a precedent that allows future administrations to sidestep constitutional constraints under the guise of national security. As such, this moment calls for an urgent, coordinated legal and political response to reaffirm that in America, even amid migration crises, liberty and justice cannot be selectively applied.