



December 10, 2021

Dear Senate Judiciary Committee:

The National Institute of Military Justice urges the Judiciary Committee to facilitate transfer of the few remaining military commission prosecutions to Article III courts. Doing so will ensure that the interests of justice are served and our country's reputation for adherence to the rule of law restored.

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None of the current military commission defendants will be tried in the near future. The oldest of the pending cases was brought in 2007. The commissions have since yielded only eight convictions, six of which were produced by plea agreements. Half of those convictions have already been overturned in whole or in part on appeal, with two appeals still pending. Assuming the handful of remaining cases go to trial in the next five years – a generous assumption given the history – it is far from clear that they will be affirmed on appeal.

While the military commissions have largely languished, the U.S. government has secured convictions in *over five hundred* terrorism cases in the Article III courts. Those convicted in federal court include a High-Value Detainee previously held at Guantanamo; other high-ranking members of Al Qaeda and the Taliban; and the perpetrators of the terrorist attacks against the United States Embassy in Benghazi. These convictions have yielded final judgments, closure for victims, and sentences that have put many of the defendants behind bars for life. In contrast, of the eight men convicted by military commission, all but two have already been released.

Legal uncertainty and poor policy judgments have stymied the military commissions and stained America's reputation, as well as eroded confidence in military justice. The U.S Court of Appeals for the D.C. Circuit has disqualified commission judges and thrown out years of proceedings for ethical violations.



The U.S. interrogation policies practiced in the Global War on Terror forced military commission prosecutors to justify and conceal torture and cruel, inhuman, and degrading treatment. Today, the military commissions remain uncertain regarding the application of the most basic rules of international law as well as the Constitution; the commissions are also corrosive to the moral compass of those who honorably serve in commission roles.

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Whatever the merits of military commissions' original establishment, neither this Committee nor the public can ignore their failure over numerous presidential administrations to achieve justice. The Americans who lost loved ones on September 11, 2001 are, after 20 years, especially entitled to closure. It is time to turn out the lights on the military commissions and transfer their few remaining cases to Article III courts.

Sincerely,

Board of Directors

National Institute of Military Justice