

Attorney Access to GTMO Detainees

All detainees at U.S. Naval Station Guantanamo Bay, Cuba (GTMO) are afforded or may engage legal representation in the following circumstances:

- (1) To exercise their right to test the Government's detention authority through a Petition for Writ of Habeas Corpus in federal court;
- (2) To defend against charges under the Military Commissions Act (MCA); and / or
- (3) If eligible for evaluation by the Periodic Review Board (PRB), to assist with preparation and advocacy during the PRB process.

Attorneys representing detainees in habeas or military commissions matters are—at minimum—permitted in-person meetings and the exchange of private and confidential mail with their clients.

FEDERAL HABEAS CORPUS PROCEEDINGS

- If a detainee who is not presently represented by habeas counsel wishes to file a petition, the detainee notifies Joint Task Force Guantanamo (JTF), who through the Department of Defense Office of General Counsel (DoD OGC), will notify the Department of Justice (DOJ). All detainees have been informed of their right to file a habeas petition.
 - DOJ will ensure notification of the habeas court and the habeas court will typically appoint federal public defenders as counsel for the detainee.
 - The JTF will also facilitate the detainee's submission of a letter to the habeas court through the U.S. Postal Service notifying the court of the detainee's desire for representation.
- An attorney representing a detainee in habeas proceedings who is interested in meeting with the detainee must obtain a security clearance from the Department of Justice, enter an appearance before the habeas court and sign the Memorandum of Understanding (MOU) attendant to the appropriate protective order governing counsel access to classified information.
- Once counsel has obtained the consent of the detainee to represent him, entered an appearance, and signed the MOU associated with the protective order in the case, counsel may regularly communicate with and meet with their client.
- Counsel may contact DoD OGC to initiate the scheduling of a call or meeting with their client.

- Habeas attorneys may use a “Privilege team” as set forth in the Habeas Protective Order to courier confidential legal mail between a secure facility in Northern Virginia and the detainee at GTMO. For additional information, see Department of Defense, Office of General Counsel, [July 27, 2023] Memorandum, “Important Information Regarding Habeas Visits, Telephone Calls and Mail.”
- Habeas attorneys are afforded a confidential meeting space at GTMO to conduct privileged meetings with their detainee clients.
- Non-High Value Detainees may conduct unclassified phone calls with counsel, monitored by a Privilege team to prevent disclosure of classified information, or unmonitored secure phone calls at the SECRET level.

MILITARY COMMISSIONS

- Under the MCA, a detainee alleged to have committed an offense triable by military commission, known as an “accused,” is assigned military defense counsel as soon as practicable after charges are sworn.
 - All attorneys for the accused have security clearances and are assigned by the Chief Defense Counsel (CDC) of the Military Commission Defense Organization.
 - The accused may also be assigned assistant defense counsel (civilian or military).
 - To the maximum extent practicable, in capital cases the accused will be assigned a civilian or military attorney learned in applicable law relating to capital cases.
 - Pro bono civilian attorneys who meet the criteria set forth in Chapter 9 of the Regulation for Trial by Military Commission (2016 Edition) may also represent a detainee at no cost to the Government.
 - For additional information on the assignment of defense counsel, see The Military Commissions Act, 10 U.S.C. § 9481; Rules for Military Commission 505, 506, Manual for Military Commissions (2019 Edition); and Regulation for Trial by Military Commission (2016 Edition), each available at www.mc.mil/LEGALRESOURCES/MilitaryCommissionsDocuments.aspx.
- Once defense counsel have been assigned to a case, defense counsel will contact the Litigation Support Section (LSS) of the Joint Task Force Staff Judge Advocate’s Office to verify that the attorney is a counsel of record in the detainee’s military commission and to schedule meetings related to military commissions.

- Detainees who may be called as a witness before a military commission may also be assigned defense counsel who agree in writing to be bound by the terms of the protective orders and written communications orders in the case to which their client detainee's testimony is relevant.
- If approved by the CDC, counsel for a detainee whose charges have been withdrawn or dismissed or are not otherwise governed by commission-issued protective orders and written communications orders, may continue to access their detainee client pursuant to the terms of the Joint Task Force Commander's order of August 1, 2015 "Detainee Legal and Non-Legal Mail Handling Guidance" or its successor order, unless and until a superseding order is issued by the commission or other competent authority.
- Military commission counsel may also serve as habeas counsel after following the procedures outlined in the habeas section and, for Military attorneys, after receiving the authorization of their Service Judge Advocate General.

PERIODIC REVIEW BOARD

- Detainees in the PRB process are assigned a Personal Representative (PR) by the Periodic Review Secretariat (PRS) to assist them with preparing for a PRB hearing and drafting written submissions for a file review.
- A PR is a DoD military officer (other than a judge advocate, chaplain, or public affairs officer), at the grade of O-3 or higher, who shall be detailed to the PRS and possess a security clearance sufficient to review the material before the PRB.
 - The PR is assigned to assist the detainee in the PRB proceedings by advocating on behalf of the detainee before the PRB and shall be responsible for challenging the Government's information and introducing information on behalf of the detainee.
- Detainees in the PRB Process may also engage private counsel (PC) at no cost to the Government.
 - The PC must hold a current, valid United States security clearance at the SECRET level for detainees other than high value detainees and a TS//SCI with Special Access Program read-on for high value detainees.
 - The PR must be present in any meeting between the PC and the detainee.

- If a detainee elects to engage a named civilian attorney at no cost to the government, the detainee informs his PR, who contacts the named attorney to determine if the attorney is a “prospective PC.”
 - A “prospective PC” could be any attorney with a current or past attorney-client relationship with any detainee through habeas corpus or military commissions litigation.
 - If an attorney is not considered a prospective PC, the attorney may still be able to serve as a PC if the attorney elects to serve as a PC for the subject detainee at no cost to the government and otherwise meets all of the requirements as established by the PRS.
 - Only one PC may be authorized to assist the detainee in the PRB process.
- To gain access to the detainee, a PC must sign and submit a non-disclosure agreement and the PRS Memorandum of Understanding through the detainee’s PR.
- A PC wishing to meet with a detainee for purposes of the PRB process must contact the PR to schedule an attorney/client visit and meeting. A PC, who represents the same detainee in habeas proceedings, need not include the PR in meetings scheduled solely for habeas purposes.
- The PRB provides a privileged, legal mail process akin to the habeas process. The PR will provide the relevant procedures to the PC.
- For more information on PC in the PRB process, see Section 5.f of Policy Memorandum, “Implementing Guidelines for Periodic Review of Detainees Held at Guantanamo Bay per Executive Order 13567,” February 15, 2019, available here: <https://www.prs.mil/Portals/60/Documents/Governance/POLICY%20MEMORANDUM%20IMPLEMENTING%20GUIDELINES%20FOR%20PERIODIC%20REVIEW%20OF%20DETAINees%20HELD%20AT%20GUANTANAMO%20BAY%20.pdf>.