Through evidence,
change is possible.

Physicians for Human Rights

256 West 38th Street
9th Floor
New York, NY
10018

+1.646.564.3720
phr.org

August 6, 2018

American Psychological Association
Attn: Board of Directors and Council of Representatives
750 First St. NE, Washington, DC 20002

Dear Members of the Board of Directors and Council of Representatives:

We write to express our deep concern over proposed changes to the American Psychological Association's (APA) policy on the role of psychologists in national security detention settings, New Business Item (NBI) 35B.[1] This resolution, scheduled for a Council vote at the August 2018 meeting and closely monitored by the human rights community, would undermine APA's hard-won position against torture and ill-treatment. We therefore urge you to reject NBI 35B and instead continue on the path of supporting ethical practice and human rights protections for national security detainees.

Current APA policy prohibits psychologists from working at sites determined by relevant United Nations authorities to violate international law, such as Guantánamo Bay detention center, unless specific safeguards are in place.[2] Namely, the psychologist must work directly for the detainee or for an independent third party working to protect human rights. With broad membership support, this policy was developed to protect detainees and to prevent complicity in violating their human rights by requiring psychologists to be ethically independent of the detaining authority.

NBI 35B would eliminate these fundamental safeguards, allowing psychologists under the command of the detaining authority to resume clinical roles with prisoners who have been victims of serious human rights abuses. The resolution represents a wholesale reversal of APA's current policy on national security detention, just three years after it was overwhelmingly approved—along with a ban on participation in national security interrogation—by a 157-1 Council vote. Such a move would send a disturbing message of retreat from human rights protection, especially given APA's past controversies and inadequate policies, and the gravity and enormous consequences of psychologist participation in secret detention, interrogation, and torture.

Guantánamo remains a symbol of U.S. torture and has been described as a "psychological scar on our national values."[3] For years, the United States systematically tortured and abused individuals in CIA and military custody with the assistance of psychologists and other health professionals. Many of the men subjected to these abuses are still being held at the prison. Of the 40 remaining detainees, 30 have never been charged with any crime and five have been

---

[1] NBI 35B/August 2017, Resolution to Amend the 2015 Resolution to Amend the 2006 and 2013 Council Resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings, to Further Implement the 2008 Petition Resolution, and to Safeguard Against Acts of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment in All Settings (hereafter "NBI 35B").
[2] Resolution to Amend the 2006 and 2013 Council Resolutions to Clarify the Roles of Psychologists Related to Interrogation and Detainee Welfare in National Security Settings, to Further Implement the 2008 Petition Resolution, and to Safeguard Against Acts of Torture and Cruel, Inhuman, or Degrading Treatment or Punishment in All Settings.
[3] Eric Bradner, CNN, "Dempsey: Gitmo a 'psychological scar'," Jan. 11, 2015, https://www.cnn.com/2015/01/11/politics/martin-dempsey-gitmo-a-psychological-scar/index.html.

cleared for transfer. U.N. authorities recognize the indefinite detention—and in some cases, almost complete isolation—as a clear breach of international law, and they have repeatedly called for the prison's closure.[4] The U.S. government has instead consistently refused full access to Guantánamo by the U.N. Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment in accordance with the standard terms of his mandate. Independent health professionals have been denied access as well.

U.N. experts and other impartial observers have repeatedly raised serious concerns about detention conditions, the health status of detainees, inadequate medical and mental health care, and "draconian" secrecy surrounding accounts of torture.[5] Serious problems with the medical system at Guantánamo have been raised repeatedly, indicating that medical treatment at Guantánamo fails to meet appropriate standards of care.[6] Credible reports include:

- Clinicians are insufficiently independent of the chain of command, as evidenced by the subordination of medical concerns to military, administrative, and litigation-related considerations.[7]
- Clinicians diagnose personality disorders over post-traumatic stress disorder (PTSD), attributing detainee distress to pre-existing conditions rather than trauma related to "enhanced interrogations" and other prolonged, psychologically harmful forms of detention and manipulation.[8]
- Clinicians are directly or indirectly instructed not to inquire into the causes of PTSD and other psychiatric illnesses linked to severe mental and physical harm, and to avoid documenting histories that include torture and ill-treatment.[9]

---

[4] U.N. Office of the High Commissioner, "'US must stop policy of impunity for the crime of torture'- UN rights expert," Dec. 13, 2017, https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22532&LangID=E.

[5] U.N. Committee Against Torture, *List of issues prior to submission of the sixth periodic report of the United States of America*, CAT/C/USA/QPR/6, Jan. 26, 2017, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/019/66/PDF/G1701966.pdf?OpenElement

[6] See, e.g., Carol Rosenberg, U.S. deliberately withheld medical care at Guantánamo, federal lawsuit claims, Miami Herald, Sep. 26, 2017, https://www.miamiherald.com/news/nation-world/world/americas/Guantánamo/article175479396.html; Inter-American Commission on Human Rights, Resolution 24/2015, Precautionary Measure No. 422-14, Matter of Mustafa Adam Al-Hawsawi regarding the United States of America, Jul. 7, 2015, https://www.oas.org/en/iachr/decisions/pdf/2015/PM422-14-EN.pdf; and David Smith, "Guantánamo hunger striker accuses US officials of letting him 'waste away'," Guardian, Oct. 13, 2017, https://www.theguardian.com/us-news/2017/oct/13/Guantánamo-bay-khalid-qasim-hunger-strike

[7] See, e.g., Institute on Medicine as a Profession (IMAP), *Ethics abandoned: medical professionalism and detainee abuse in the war on terror* (2013), http://imapny.org/wp-content/themes/imapny/File%20Library/Documents/IMAP-EthicsTextFinal2.pdf, and Sheri Fink, Where Even Nightmares Are Classified: Psychiatric Care at Guantánamo, N.Y. Times, Nov. 12, 2016, https://www.nytimes.com/2016/11/13/world/Guantánamo-bay-doctors-abuse.html

[8] As documented in the available literature, there appears to be a near-total absence of PTSD diagnosed by military psychologists at Guantánamo, raising concerns about hiding PTSD under broad classifications (e.g., "anxiety disorder"). See, e.g., Carrie H. Kennedy, Rosemary C. Malone, and Michael J. Franks, "Provision of Mental Health Services at the Detention Hospital in Guantánamo Bay," Psychological Services, 6, No. 1 (2008), http://humanrights.ucdavis.edu/projects/the-Guantánamo-testimonials-project/testimonies/testimonies-of-military-psychologists-index/kennedy_malone_franks.pdf. See also Declaration of Sondra Crosby, Al-Nashiri v. Obama, October 24, 2015, https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/USA/INT_CAT_ICS_USA_24558_O.pdf; Vincent Iacopino and Stephen N. Xenakis, Neglect of Medical Evidence of Torture in Guantánamo Bay: A Case Series, PLoS Medicine, 8, no. 4 (2011), https://doi.org/10.1371/journal.pmed.1001027; Fink, *supra* note 6; and IMAP, *supra* note 6.

[9] Ibid. See also Transcript of testimony in US v. al-Nashiri, April 27, 2014, p. 4236,

- Clinicians are engaged in practices that violate medical ethics and inflict psychological trauma, such as force-feeding.[10]
- Clinicians work in disruptive conditions that severely constrain the opportunity to build trust or create a therapeutic alliance, which is essential for this form of treatment to bring about positive outcomes.[11]

The conditions provided in NBI 35B — namely that psychologists can ask questions and get access to records, are inadequate in light of a reported policy or practice of not asking questions regarding histories of torture and trauma. As independent torture expert Dr. Sondra Crosby has stated in an affidavit regarding CIA torture victim Abd al-Rahim al-Nashiri, whom she has diagnosed with complex PTSD and who is currently detained at Guantánamo:

> *18. His deterioration is exacerbated by the lack of appropriate mental health treatment at Guantánamo. Based on my assessment and vast experience caring for survivors of torture, the physical and mental health care afforded to him is woefully inadequate to his medical needs. A significant factor in my opinion is that medical professionals, including mental health care providers, have apparently been directly or indirectly instructed not to inquire into the causes of Mr. Al-Nashiri's mental distress, and as a consequence, he remains misdiagnosed and untreated. Any discussion of his experience of torture, which is the primary cause of his most chronic physical and mental ailments, appears to be off limits. I base this opinion on my review of medical records and the public testimony of "Dr. 97," who was Mr. Al-Nashiri's attending mental healthcare provider until recently. Dr. 97 changed his diagnosis of Mr. Al-Nashiri from PTSD to Narcissistic Personality Disorder shortly in advance of a hearing that involved the adequacy of Mr. Al-Nashiri's medical care. This is professionally irresponsible and is representative of the quality of mental health care that Mr. Al-Nashiri receives.*
>
> *19. Lack of adequate mental health treatment is exacerbating Mr. Al-Nashiri's suffering and instability, and he continues to suffer from ongoing PTSD symptoms including somatic complaints, nightmares, hyperviligence, flashbacks, numbing, and a host of other symptoms.* [12]

Guantánamo detainees have consistently indicated a deep distrust of government psychologists, and this distrust cannot be decoupled from a well-documented history of mental health professional involvement in torture and ill-treatment. At Guantánamo, this includes past systematic involvement of psychologists as part of Behavioral Science Consultation Teams (BSCTs) in the development and use of abusive interrogation techniques, advising on detention conditions to foster dependence on interrogators, and the misuse of medical records and the breach of confidentiality for purposes of interrogation.[13] Today, this tragic legacy of torture and collusion is likely to obstruct the formation of productive therapeutic relationships by even the

---

http://www.mc.mil/Portals/0/pdfs/alNashiri2/Al%20Nashiri%20II%20(TRANS27April2014-AM2).pdf.

[10] Ahmed Rabbani, "I'm stuck in Guantánamo. The world has forgotten me," *Los Angeles Times*, Jul. 26, 2018, http://www.latimes.com/opinion/op-ed/la-oe-rabbani-Guantánamo-prison-torture-20180726-story.html.

[11] Post-Conference Summary, "Medical Care and Medical Ethics at Guantánamo," December 2, 2013, http://detaineetaskforce.org/wp-content/uploads/2013/12/12-2-Conference-Summary-FINAL.pdf; Fink, *supra* note 6; and IMAP, *supra* note 6.

[12] Crosby, *supra* note 7.

[13] Organization for Security and Co-operation in Europe, *Report on the Human Rights Situation of Detainees at Guantánamo* (2015), https://www.osce.org/odihr/198721.

best-intentioned psychologists, who cannot be expected to overcome these issues of distrust, particularly given the secrecy, sequestration, and lack of independent or professional oversight that characterize these settings.

Ongoing situational command pressures also make it difficult for Guantánamo health professionals to exercise their duty to recuse themselves from practices that violate the ethics of their profession, and the same will be true for clinical psychologists. After the refusal of a Navy Nurse to participate in the force-feeding of detainees, which violates American Medical Association policy on the treatment of hunger strikers, the clinician faced the threat of court martial, dishonorable discharge, and the loss of his pension and benefits for two years following his recusal.[14] In 2015, the Defense Health Board—an advisory board to the Department of Defense (DoD)—recommended that the DoD adopt a recusal policy.[15] To date, the DoD has not acted on this recommendation or on concerns around the independence of medical records from interrogation.[16] The punitive treatment of the Navy Nurse, the apparent frequency with which such ethical concerns are lodged, and the failure of the DoD to act on the recommendations of its own experts all illustrate the substantial ethically-adverse pressures placed on clinicians under the command of the detaining authority.

The move to reverse APA policy is particularly disturbing, as it occurs at a time of broad U.S. and international public concern over the possible renewed use of torture, the expansion of Guantánamo, and the detention of refugees, asylum seekers, and immigrants under the rubric of national security. We therefore urge you to reject NBI 35B and maintain the ban on non-independent psychologists at Guantánamo and other site that violate international law.

We appreciate the Council's efforts to clarify the ethical obligations of psychologists and we would be pleased to meet with you to discuss these concerns.

Sincerely,

Donna McKay
Executive Director

---

[14] Physicians for Human Rights, "U.S. Department of Defense Considers New Retaliation Against Guantánamo Navy Nurse," July 23, 2015, http://physiciansforhumanrights.org/press/press-releases/us-department-of-defense-considers-new-retaliation-against-Guantánamo-navy-nurse.html.

[15] Defense Health Board, *Ethical Guidelines and Practices for U.S. Military Medical Professionals* (2015), https://www.health.mil/Reference-Center/Reports/2015/03/03/Ethical-Guidelines-and-Practices-for-US-Military-Medical-Professionals; Letter from George J. Annas, Sondra Crosby, and Gerald E. Thomson to Dr. Jonathan Woodson, Assistant Secretary of Defense (Health Affairs), June 12, 2015, http://constitutionproject.org/wp-content/uploads/2015/06/6-12-Annas-Crosby-Thomson-letter-to-SECDEF-Carter.pdf; Letter from George J. Annas et al. to Ashton Carter, Secretary of Defense, October 7, 2015 https://constitutionproject.org/wp-content/uploads/2015/10/10-7-Letter-to-Sec.-Carter.pdf.

[16] Inspector General, U.S. Department of Defense, Compendium of Open Office of Inspector General Recommendations to the Defense Department (2018), https://media.defense.gov/2018/Aug/01/2001949161/-1/-1/1/2018_COMPENDIUM.PDF.