

Department of State
Acting Special Envoy for Guantanamo Closure, Charles Trumbull
Opening Statement
House Armed Services Committee
Sub-Committee on Oversight and Investigations
Hearing on Guantanamo Bay
12 February 2015

Thank you, Madam Chairwoman, Ranking Member Speier, and Members of the Committee. I appreciate your invitation to appear before this Committee on the important matter of detainee transfers from the Guantanamo Bay detention facility. I am honored to be here today along with my colleague, Defense Department Special Envoy Paul Lewis.

I am currently the Acting Special Envoy for Guantanamo Closure for the Department of State. I previously served as the deputy to former Special Envoy Cliff Sloan from October 2013 until December 31, 2014. Prior to working on Guantanamo Closure, I spent six years in the Office of the Legal Adviser for the Department of State, and served as the legal adviser at our embassy in Baghdad in 2010.

The Special Envoy for Guantanamo Closure serves as the State Department's lead negotiator for the transfer of Guantanamo detainees abroad, and my office has the primary responsibility for managing the range of diplomatic issues related to the detention facility. My office also plays a leading role in the interagency process that determines when and where a detainee is transferred, as well as the periodic review process for those detainees not approved for transfer. In addition, we work closely with our Embassies around the world to follow up on the post-transfer progress of former detainees.

It has been an honor to contribute to the Administration's goal of closing the detention facility at Guantanamo Bay, a process that started under the Bush Administration. As the President has stated, the detention facility at Guantanamo "weakens our national security by draining resources, damaging our relationships with key allies and partners, and emboldening violent extremists." World leaders consistently call on us to finally close Guantanamo, including Pope Francis just last month. From a foreign affairs

perspective, I cannot overstate the fact that Guantanamo is a serious irritant in our relationships with important partners and allies, and interferes with our cooperation on issues ranging from security and counter-terrorism to promotion of human rights.

Approved for Transfer

As the Acting Special Envoy, my primary focus is to transfer the 54 detainees who are currently approved for transfer. “Approved for transfer” is an extremely important designation because it reflects the considered, unanimous judgment of national security experts from six agencies that an individual detainee can and should be transferred, subject to appropriate security measures. That is, a detainee is approved for transfer only when defense, diplomatic, intelligence, and law-enforcement professionals determine that a detainee’s transfer is consistent with U.S. national security and foreign policy interests. Detainees can be “approved for transfer” in one of two ways.

The majority of the 54 individuals currently approved for transfer were approved by the 2009 Executive Order Task Force, which included representatives from the the Department of State, the Department of Defense, the Joint Chiefs of Staff, the Department of Justice, the Department of Homeland Security, and the Office of the Director of National Intelligence. This rigorous interagency process collected and considered all reasonably available information concerning the detainees at Guantanamo Bay. The decision to approve a detainee for transfer required the unanimous consensus of these six departments and agencies, and reflects the best predictive judgment of senior government officials that any threat posed by the detainee can be sufficiently mitigated through feasible and appropriate security measures in the receiving country. As the publicly available Task Force report notes, many of these detainees were at most low-level fighters and are “appropriate candidates for transfer from a threat perspective, in light of their limited skills, minor organizational roles, or other factors.”

A detainee can also be approved for transfer through the Periodic Review Board (PRB) process. The PRB is in the process of considering detainees who are not currently approved for transfer, facing charges in the military commission, or awaiting or serving their military commission sentence. The PRB panel consists of one voting member from the Departments of Defense, Homeland Security, Justice, and State; the Joint Staff; and the Office of the

Director of National Intelligence. The PRB's mandate is to determine whether the continued detention of a detainee is necessary to protect against a continuing significant threat to the national security of the United States. Detainees appearing before the PRB are assigned a personal representative and have the opportunity to be represented by private counsel, at no expense to the government. Detainees can provide an oral and written statement, submit evidence, call witnesses, and elect to answer questions from Board members.

Thus far, the PRB has reviewed the cases of 12 individuals, and has reached a final determination in 9 of those cases. Of the 9 detainees whose results have been finalized, 6 were approved for transfer and 3 were designated for continued law of war detention. This track record should make clear that the PRB is not a rubber stamp for either transfer or continued detention.

Detainee Transfers

We have made significant progress in transferring those detainees who are approved for transfer. Twenty-eight detainees were transferred in 2014, and five detainees have been resettled so far this year. The 54 remaining detainees who are approved for transfer can, and should, be transferred from Guantanamo, subject to appropriate security and humane treatment measures.

It is important to note that the decision to approve a detainee for transfer is not the end of the process. Prior to any transfer, the Intelligence Community provides an updated assessment of the individual, as well as an assessment of the receiving country's capabilities. We also work extensively with receiving governments to ensure that measures have been or will be taken to substantially mitigate any threat that the individual will engage or reengage in activity that threatens the United States or United States persons or interests.

Our rigorous approach to detainee transfers, which looks both at the potential threat posed by the detainee and the measures that the receiving government has taken or will take, is effective. According to the most recent public report from ODNI, of the detainees transferred under this Administration, only 6.8% are confirmed and 1.1% are suspected of engaging in hostile or insurgent activity. While we take every instance of re-engagement very seriously, the important point is that, according to the most

recent public report, over 90% are not even suspected, much less confirmed, of engaging in hostile activities after their release.

One challenge we face in our effort to close Guantanamo is the fact that many of the detainees approved for transfer cannot be returned to their home country due to security or humane treatment concerns. As former Special Envoy Sloan wrote in the New York Times, these individuals are not the worst of the worst, but rather the detainees at GTMO with the worst luck. Of the 54 detainees currently approved for transfer, for example, 47 are from Yemen. Members of this Committee are aware of the deteriorating security situation in that country. The Administration has not transferred a GTMO detainee to Yemen since 2010, and our focus is on resettling these individuals in third countries. In the past several months, we have resettled 12 Yemenis to 5 different countries. It is a testament to our strong standing internationally that numerous countries have been willing to provide homes for those individuals who cannot be returned to their own country and who should not remain at GTMO solely because of the security situation in Yemen. These countries should be commended for taking this important humanitarian step, and for their contributions to the President's goal of closing GTMO in a secure and responsible manner.

Goals for 2015

Looking forward, our goals for 2015 are clear. First, we must transfer all of those detainees approved for transfer, the vast majority of whom have been approved for five years. Second, we must continue and expedite the PRB process. In both of these efforts, I look forward to working with Paul Lewis and my interagency colleagues, as well as the members of this Committee.

Thank you, Madam Chairwoman.