

**Testimony Of  
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**Before the Committee on Homeland Security  
Subcommittee on Oversight and Management Efficiency**

**Hearing on  
Transferring Guantanamo Bay Detainees to the Homeland:  
Implications for States and Local Communities**

**Thursday, April 28, 2016**

Chairman Perry, Ranking Member Watson-Coleman, and other distinguished members of the Subcommittee, thank you for the opportunity to appear before you today. I am pleased that you are holding this hearing so that we can thoroughly examine the issues related to transferring Guantanamo detainees to the United States for either trial in federal court and incarceration in federal prisons or continued law of war detention in military custody.

A careful review of the record of the federal court system and our military detention facilities both prior to and since 9/11, under both Democratic and Republican administrations, clearly shows that this is a task that the United States can handle safely, securely, and with no threat and little disruption to local communities.

Closing the prison at Guantanamo remains a national security imperative. Guantanamo is a symbol of lawlessness, torture, and abuse and continues to be a potent aspect of anti-American messages distributed by our enemies and adversaries. It is no accident that ISIS forces their captives to wear Guantanamo-like orange jumpsuits.

For these reasons, a long, bi-partisan list of senior government and national security figures do not believe Guantanamo advances U.S. national security interests.

Former President George W. Bush wrote in his 2010 memoir, *Decision Points*, “the detention facility [Guantanamo] has become a propaganda tool for our enemies and a distraction for our allies.”

Then-Republican presidential candidate Senator John McCain repeatedly pledged to close Guantanamo during the 2008 campaign, even producing the specific recommendation that he would “close Guantanamo Bay. And I would move those prisoners to Ft. Leavenworth.”

Former Secretary of State James Baker said in 2008 that “one of the best things” the next president could do to improve American security would be “to close Guantanamo, which is a very serious blot on our reputation.”

Former Chairman of the Joint Chiefs of Staff and Secretary of State Colin Powell said in 2007, “I would close Guantanamo not tomorrow, but this afternoon... I would simply move them to the United States and put them in our federal legal system.” Powell reiterated his support for closing Guantanamo and transferring detainees to the United States earlier this year, saying, “we’ve got prisons that can hold them. They’re not going to cause any problems if they go to Leavenworth or even Rikers Island.”

I join with these and other senior current and former U.S. government officials in supporting President Obama’s decision to find another location to hold those Guantanamo detainees that the United States wants to maintain custody over after transferring those that the U.S. military believes no longer require detention to either their home or to third countries.

### **Transfers of Guantanamo Detainees to the U. S. Have Already Occurred**

It might surprise many on this Committee—and certainly any close observer of the political debate surrounding closing Guantanamo—to learn that it was a Republican president that first ordered the transfer of a Guantanamo detainee into the United States. Yassir Hamdi was transferred from Guantanamo in April 2002, first to the Naval Station at Norfolk, Virginia and then to the Consolidated Naval Brig at the Charleston Naval Base. Hamdi remained in the Brig in Charleston for two and a half years before he was repatriated to Saudi Arabia. During his detention, the U.S. Supreme Court ruled that his detention was legal under the law of war.

According to the Bush administration, Hamdi was captured in Afghanistan in 2001 fighting with the Taliban and was initially sent to the Mazar e Sharif prison where he was accused of participating in the notorious prison uprising that killed American Johnny Span. In February 2002, the Bush administration sent Hamdi to Guantanamo Bay.

Hamdi arrived in South Carolina in the middle of campaign season during a particularly intense election for governor. The incumbent Democratic Governor Jim Hodges was being challenged by then-former Rep. Mark Sanford. There is no evidence in the public record that the presence of a Guantanamo detainee in Charleston ever featured in any way in that gubernatorial election campaign. There is no record of Gov. Hodges ever writing or speaking to the Bush administration or to Congress about any threat posed to the residents of South Carolina by Hamdi from inside the Charleston Naval Brig. Nor is there any public comment by Rep. Sanford on the issue either. Sanford eventually won a close election 53% to 47% for Hodges.

The other instance of a Guantanamo detainee being transferred into the United States was not greeted with equal indifference by the political system. Ahmed Ghailani was indicted in December 1998, along with a number of other co-conspirators, for his role in the bombings of two U.S. embassies in East Africa earlier that year that killed more than 200. He was captured in 2004 in Pakistan and arrived at Guantanamo in 2006. It is unclear where he was held in the intervening period, but he was one of the individuals the Bush administration admitted was held in undisclosed locations by the CIA.

Ghailani was transferred to New York in June 2009. That same month, Congress voted for the first time in the prison's then seven-year history, and after more than 500 detainees had been transferred out of Guantanamo by the Bush administration to locations that included the United States, to impose restrictions on transferring detainees out of Guantanamo. An absolute prohibition on transferring Guantanamo detainees to the United States was narrowly defeated that year in the House of Representatives. But Ghailani would be the only Guantanamo detainee brought to the United States by the Obama administration before that transfer ban was imposed by Congress beginning in 2011.

Despite the political furor surrounding Ghailani's transfer to the United States, he went on trial in New York City in 2010 for his role in the embassy bombings. He was convicted of conspiracy in the attacks and sentenced to life in prison. He was sent to the federal penitentiary at Florence, CO, also known as the Supermax, in June 2011 where he has been for nearly five years. There is no evidence that there was any elevated threat to the residents of New York from 2009 to 2011 because of Ghailani's presence during the trial, nor has there been any evidence that the residents of Colorado have been negatively impacted during his nearly five years at Supermax.

### **Terrorists Held as Military Detainees in the United States**

In addition to Yassir Hamdi, two other accused al Qaeda operatives were held in military detention inside the United States during the Bush administration. The first was Jose Padilla. He was captured in May 2002 at Chicago's O'Hare International Airport upon arriving on a flight from Zurich and held in New York City as a material witness to an ongoing criminal investigation.

More than a month later, then-Attorney General John Ashcroft announced his detention, describing Padilla as "a known terrorist who was exploring a plan to build and explode a radiological dispersion device, or 'dirty bomb,' in the United States." Padilla, who is a U.S. citizen, was declared an enemy combatant and transferred on June 9, 2002 to join Hamdi at the Charleston Naval Brig.

Padilla was eventually transferred to federal prison in Miami in 2006, where he stood trial for terrorism charges unrelated to the dirty bomb plot. In 2008, he was convicted of conspiracy and first sentenced to serve 17 years in prison, later

increased to 21 years. He is currently serving his sentence alongside Ghailani in the Supermax in Colorado.

The second military detainee in the United States was Ali al-Marri. He was arrested in December 2001 in Illinois and charged with credit card fraud. He was in federal prison awaiting trial on those charges when his case dramatically changed in 2003 when he was declared an enemy combatant by the Bush administration, accused of being an al-Qaeda sleeper agent, and transferred to the Charleston Naval Brig. Al-Marri's arrival brought the Charleston detainee population to three.

Al-Marri was charged with new terrorism offenses and returned to federal prison upon President Obama taking office in 2009, when he pled guilty to providing material support for terrorism. He was sentenced to fifteen years in prison, including the seven years he had served since his original arrest in 2001, a sentence he also served at Supermax. Al-Marri was transferred to his native Qatar in 2015 with little attention paid to his case.

As with the previous cases of Hamdi and Ghalani, there is no evidence that the residents of Illinois, New York, South Carolina, Florida, or Colorado were under any elevated threat because of the presence of Padilla or al-Marri in federal or military prisons in their states.

### **Suspected Terrorists Captured Overseas and Brought to the United States**

It has also been a regular feature of the criminal justice system during both the Bush and Obama administrations for suspected terrorists captured overseas to be brought to the United States for trial and incarceration.

Aafia Siddique, a Pakistani national educated in the United States, was detained in Afghanistan in 2008. She was sent to a U.S. military base where, according to the Bush administration, she attempted to murder several U.S. military officers in an attempted escape. Siddique was wounded in her escape attempt, but she survived and was quickly transported to New York in September 2008 for trial. She was convicted of attempted murder in 2010 and sentenced to serve 86 years. Siddique is currently being held at the Federal Medical Center in Carswell, TX, a federal prison for inmates with special health needs.

Suliaman Abu Ghaith, Osama bin Laden's son-in-law and top spokesperson for al Qaeda, was turned over to the United States in 2013 after being detained by Jordanian authorities. Abu Ghaith is the highest-ranking al Qaeda operative to stand trial in the United States, and he was convicted in a New York courtroom in 2014 for conspiracy to murder Americans and providing material support for terrorism. He was sentenced to life in prison and joins many other fellow international terrorists at Supermax in Colorado.

Ahmed Abu Khatallah is accused of being the ringleader of the attack on the U.S. diplomatic compound in Benghazi that killed four Americans. He was captured in a joint FBI-U.S. military operation in Libya in June 2014 and quickly transported offshore to a U.S. navy ship. Onboard that ship, Khatallah was interrogated for several weeks before his transfer to the United States in July 2014.

Even though that attack has prompted intense political debate, the detention of Abu Khatallah in federal prison first in Washington, DC and then in northern Virginia while he awaits trial in federal court has attracted absolutely no attention or controversy. He has been less than ten miles from the United States Capitol in an Alexandria prison cell for nearly two years.

There is no evidence that the residents of New York, Texas, Colorado, Washington, DC, Virginia, or the U. S. Representatives, Senators, their staffs, or the other employees who work at the United States Capitol have been under any elevated threat because of the presence of Aafia Siddique, Sulaiman Abu Ghaith, or Ahmed Abu Khatallah in federal prisons in their vicinity.

### **Other High-Profile Terrorists in U.S. Prisons**

The list of extremely dangerous terrorists currently held at Supermax in Florence reads like a rogues gallery of international terrorism. The man who first tried to bring down the World Trade Center in 1993, Ramzi Yousef, and his co-conspirators, Mahmud Abdouhalima, Mohamed Salameh, and Eyad Ismoli, were captured in 1995 and have been serving multiple life sentences in Supermax since their 1997 conviction in a New York City court.

Ahmed Ghailani's co-conspirators, Wadih el-Hage, Mohamad al-Owhali, Mohammed Odeh, Khalid al-Fawwaz, were arrested in 1998, prosecuted in a New York courtroom in a trial that began in 1999, and convicted in 2001 for their roles in the 1998 embassy bombings. All are at the Supermax. Ahmed Ressam, the al Qaeda terrorist who was planning to attack Los Angeles International Airport on New Year's Eve 1999, but was captured at the U.S. border with Canada, is also held there. He was convicted in federal court in Los Angeles in 2000, where he is serving a 37-year sentence.

So is Zacarias Moussaoui, who was originally believed to be the missing 20th hijacker in the 9/11 attacks. He was arrested by the FBI in Minnesota in 2001 and prosecuted in a federal court in Alexandria, the same location as Abu Khatallah. Moussaoui pled guilty but the sentencing phase of his trial dragged on and he ended up spending more than five years in Virginia before he was sent to Supermax in 2006 to serve a life sentence.

The two perpetrators of attacks on airplanes that have come the closest to success since 9/11 are there too. It is home to Richard Reid, the British citizen who tried to blow up a U.S. bound airliner using explosives hidden in his shoes in 2001. He plead

guilty in federal court in Boston and was sentenced to three life terms in 2002. More recently, Umar Farook Abdulmutallab, the Nigerian who attempted to destroy another U.S. bound plane on Christmas Day in 2009 with a bomb built into his underwear. He plead guilty in federal court in Detroit and was sentenced to four consecutive life sentences.

Just as with the above referenced cases, there is no evidence that the residents of New York, California, Minnesota, Virginia, Massachusetts, Michigan, or Colorado were or are under any elevated threat because of the presence of these terrorists in prisons in their states.

### **Guantanamo Detainees Won't Be Released Into the United States**

Some concerns have been raised that bringing Guantanamo detainees into the United States would lead to their release from custody into the United States by increasing the rights afforded them. However, there is no chance that a Guantanamo detainee would be released into the United States under current law.

First, it is important to recognize that the number of detainees that could possibly be brought to the United States under President Obama's plan is quite small, likely around three dozen. These detainees will have had their cases reviewed in 2009 by the task force established by the Obama administration to examine the case of every detainee at Guantanamo, and are likely to have had at least one Periodic Review Board hearing. In each of those instances, the detainee would have been approved for continued law of war detention, or in addition to that status potential prosecution in federal court or the military commissions. Therefore, the detainees likely to be transferred to the United States under this plan are the ones who present the most compelling cases for continued detention.

Should a Guantanamo detainee be brought to the United States to stand trial, while a conviction is by far the most likely result, it is possible that such a trial could end in acquittal—we don't do show trials in the United States. If a former Guantanamo detainee is acquitted, he could still be held by the military as a law of war detainee. If this, or any other among this last group of Guantanamo detainees, were able to win a habeas corpus case that he should no longer be held as a law of war detainee, that will not result in order for his release from custody. Rather, it would mean the court would order him transferred out of the United States and he would remain in custody until that happens.

Additional questions have been raised regarding the extremely remote possibility that a law of war detainee is ordered to be transferred out of U.S. custody over the objections of the Executive Branch, but no country would be willing to accept him and there is no basis to bring charges in federal court. The Obama administration included as an appendix to its plan to close Guantanamo a formal report to Congress it prepared addressing these very issues. Its conclusion is the same as mine, that no matter what the difference is between the rights afforded to the detainees in the

United States versus those at Guantanamo, no detainee will be released into the United States.

### **Conclusion**

American federal prisons and military detention facilities have held and currently hold some of the most dangerous terrorists the world has ever known. This is a testament to the success of our law enforcement and national security officials in keeping Americans safe, not an indication of an unacceptable level of threat affecting Americans on a daily basis. I am confident that the American criminal justice system and U.S. military detention facilities can safely and securely imprison any Guantanamo detainees that are sent to U.S. soil.