

NOT FOR DISTRIBUTION UNTIL RELEASED BY
THE HOUSE COMMITTEE ON FOREIGN AFFAIRS

STATEMENT OF

PAUL M. LEWIS

SPECIAL ENVOY FOR GUANTANAMO DETENTION CLOSURE
U.S. DEPARTMENT OF DEFENSE

BEFORE THE HOUSE COMMITTEE ON FOREIGN AFFAIRS
MARCH 23, 2016

NOT FOR DISTRIBUTION UNTIL RELEASED BY
THE HOUSE COMMITTEE ON FOREIGN AFFAIRS

Chairman Royce, Ranking Member Engel, distinguished members of the committee, thank you for the opportunity to testify today regarding the Administration's plan to close the Guantanamo Bay detention facility.

I am pleased to be joining my colleague Lee Wolosky, the Department of State Special Envoy for Guantanamo Detention Closure.

Mr. Chairman, I particularly appreciate your continued and sustained interest in this extremely important issue. I appreciate the opportunity we have had to regularly brief you and your staff.

Overview

On January 22, 2009, President Obama signed Executive Order 13492, which ordered the closure of the detention facilities at the Guantanamo Bay Naval Base in Cuba. Pursuant to that order, a special task force was established to comprehensively review information in the possession of the U.S. Government about the detainees, and to assess appropriate disposition options. Through that rigorous interagency effort, the review participants determined appropriate dispositions for all 240 detainees subject to the review, including designation for transfer, referral for prosecution, or continued law of war detention.

Since then, pursuant to Executive Order 13567, signed on March 7, 2011, and consistent with section 1023 of the National Defense Authorization Act (NDAA) for FY 2012, the Periodic Review Board (PRB) has been reviewing the status of those detainees not currently eligible for transfer and not subject to military commissions.

There are **91** detainees remaining at the Guantanamo Bay detention facility. Of these, **36** are currently eligible for transfer, **10** are being prosecuted or have been sentenced, and **45** are in the process of being reviewed by the PRB.

We are making much progress. Secretary of Defense Carter has approved the transfer of **31** detainees – **16** of whom have been transferred this year. Secretary Hagel transferred **44**, Secretary Panetta **4**, and Secretary Gates **68**. During this Administration **147** detainees have been transferred. I note that most of the detainees transferred from Guantanamo were transferred by the Bush Administration, which transferred more than **500** detainees. To date, more than 85% of the detainees once held at Guantanamo have been transferred.

Closure Is a National Security Imperative

At the outset I want to make one fundamental point regarding the detention facility at Guantanamo Bay. The President and his national security team have determined that closing this detention facility is a national security imperative. The President and the leadership of his national security team believe that the continued operation of the detention facility at Guantanamo weakens our national security by damaging our relationships with key allies and partners, draining resources, and providing violent extremists with a propaganda tool.

In January of last year, **42** retired military leaders - all retired general officers or flag officers - wrote the leadership of the Senate Armed Services Committee and forcefully argued for the closure of the Guantanamo detention facility, stating “[T]he issue of what to do with Guantanamo is not a political issue. There is near unanimous agreement from our nation’s top military, intelligence, and law enforcement leaders that

Guantanamo should be closed.” This letter was signed by General Charles C. Krulak, a retired Commandant of the Marine Corps, Major General Michael R. Lehnert, the first commander of the joint detention task force at Guantanamo, General Joseph Hoar, the former commander of U.S. Central Command, General David M. Maddox, the former commander of the U.S. Army in Europe, and many other retired senior military leaders.

In addition, former chairmen of the Joint Chiefs of Staff, Admiral Michael Mullen and General Martin Dempsey, support Guantanamo closure. It is the opinion of many others in our military.

Senior civilian figures across the political spectrum have also made clear that Guantanamo poses profound risks to our national security and should be closed. This conclusion, shared by two Presidents, four former Secretaries of Defense, and eight former Secretaries of State demonstrates bipartisan support for Guantanamo closure at the highest level of our national security leadership. Five former Secretaries of State—Henry Kissinger, James Baker, Warren Christopher, Madeleine Albright and Colin Powell—stated in March 2007 that if the next President moved quickly to close the Guantanamo detention facility it would improve our reputation around the world immediately. Former Secretary Powell forcefully reiterated his support for Guantanamo detention closure as recently as last month.

Finally, in his memoirs, President George W. Bush concluded that the Guantanamo detention facility was “a propaganda tool for our enemies and a distraction for our allies.” As President Obama noted, by 2008 it was “widely recognized that this facility needed to close. This was not just my opinion...there was bipartisan support to close it,” including Senator John McCain, the Republican nominee for President.

Recent Transfer Decisions

As the Special Envoy for Guantanamo Detention Closure, my primary focus is on the transfer process. Sixteen detainees have been transferred to date in 2016. These transfers reduced the Guantanamo detention facility's population to fewer than 100 for the first time since 2002. 2016 transfers include resettlements to Ghana, Oman, Bosnia, and Montenegro and repatriations to Kuwait and Saudi Arabia.

Overall, 27 nations since 2009 have accepted Guantanamo detainees who are not from each respective country. The list is impressive: Albania (3 detainees), Belgium (1), Bermuda (4), Bosnia (1), Bulgaria (1), Capo Verde (1), El Salvador (2), Estonia (1), France (2), Georgia (6), Germany (2), Ghana (2), Hungary (1), Ireland (2), Italy (2), Kazakhstan (5), Latvia (1), Montenegro (1), Oman (20), Palau (6), Portugal (2), Qatar (5), Slovakia (8), Spain (3), Switzerland (3), Uruguay (6), and the United Arab Emirates (5). And Special Envoy Wolosky and I can tell you, we anticipate more countries in the near future.

Thirteen countries or territories have accepted repatriations of their own citizens since 2009: Afghanistan (9), Algeria (9), Canada (1), Chad (1), Iraq (1), Kuwait (4), Morocco (1), Mauritania (1), Saudi Arabia (8), Somaliland (2), Sudan (3), United Kingdom (2), and Yemen (8). This list is also impressive and demonstrates the broad support in the international community for closure.

This broad support in the international community is also demonstrated by the numerous international organizations calling for closure, including the Organization of American States and the Roman Catholic Church.

As with our military leaders, foreign leaders regularly cite the Guantanamo detention center as an obstacle to counterterrorism efforts. Let me give you several examples that highlight this important point.

Cliff Sloan, the former Department of State Special Envoy, frequently recalled strong language from our allies similar to the letter from the retired military leaders. Sloan stated as an example: “[A]s a high-ranking security official from one of our staunchest allies on counterterrorism (not from Europe) once told me, ‘The greatest single action the United States can take to fight terrorism is to close Guantánamo.’”

When we assess the foreign policy and national security costs of this facility, the data highlighted above, stands out to me. Twenty-seven countries are asking us, if they can safely and responsibly take Guantanamo detainees, “Why can’t the United States?”

President Obama highlighted this continuing issue in his statement on closing the facility on February 23, 2016. The President directly addressed the high cost of Guantanamo to our foreign policy aims, indicating that foreign leaders continuously bring up the topic of Guantanamo closure and specific detainees repeatedly during his leadership meetings with them.

Leaders of the Bush Administration reached the same conclusion. President Bush himself, as indicated above, referenced the “distraction” with our allies that Guantanamo cost us during his Presidency.

John Bellinger, the former Legal Advisor to the National Security Council and the Department of State during the previous Administration, stated at a Brookings Institution event in January 2010: “[O]n balance, Guantanamo does the American people more harm than good.” He emphasized that this detention facility “undermines vital

counterterrorism cooperation from our Western allies, who view the prison as inconsistent with their own and U.S. values. It has proved impossible to shake these unfair perceptions.” Mr. Bellinger summarizes this issue well.

Professor Matt Waxman, the first Deputy Assistant Secretary of Defense for Detainee Affairs, who also served as the Acting Director of the State Department’s policy planning staff during the Bush Administration, highlighted the costs to our foreign policy in a Washington Post article in 2007. Waxman agreed that the benefits of Guantanamo “came at a serious cost.” He stated, “...on balance, the prison...has become a drag on America’s...global counterterrorism efforts.” Specifically, Waxman argued, “the continued controversy over Guantanamo Bay has hampered cooperation with our friends on such critical counterterrorism tasks as information sharing, joint military operations and law enforcement. I know: As a State Department official, I often spent valuable time and diplomatic capital fruitlessly defending our detention practices rather than fostering counterterrorism teamwork. Guantanamo Bay leaves us playing defense and hinders our ability to play effective offense.”

Transfer Process

The current process that leads to a transfer decision builds upon the work of the 2009 review task force cited in the overview. It is careful and deliberative. Key features of the transfer process include a comprehensive interagency review and rigorous examination of updated information regarding the detainee, the security situation in the potential host country, and the willingness and capability of the potential host country to implement and ensure compliance with security measures. Those initial reviews are conducted by career professionals, including intelligence analysts, law enforcement

agents, and attorneys-- drawn from the Department of Justice, Department of Defense, Department of State, Department of Homeland Security, and Office of the Director of National Intelligence.

Transfer decisions involve an in-depth assessment, often including travel to the potential recipient country by Special Envoys at the Departments of State and Defense, that considers the security situation in the receiving country, and the willingness and capability of the country to comply with security assurances requested by the United States. The Special Envoys negotiate specific security assurances addressing the unique circumstances of each detainee transfer.

Additionally, in making each certification to transfer, the Secretary of Defense consults with the Secretary of State, the Secretary of Homeland Security, the Director of National Intelligence, the Attorney General, and the Chairman of the Joint Chiefs of Staff.

Finally, the Secretary of Defense must clarify that the proposed transfer meets the requirements set forth by Congress in the National Defense Authorization Act. Under Section 1034 of the NDAA for FY 2016, the Secretary may approve the transfer if he certifies that the transfer is in the national security interests of the United States and that actions have been or are planned to be taken that will substantially mitigate the risk of the detainee engaging in terrorist or other hostile activity that threatens the United States or U.S. persons or interests. The factors considered in making this determination include:

- The security situation in the foreign country to which the detainee is to be transferred;
- Confirmed past activities by individuals transferred to the foreign country to which the detainee is to be transferred;

- Actions taken by the United States or the foreign country to reduce the risk the individual will engage in terrorist or hostile activity;
- Security assurances provided by the foreign government

Security Assurances

I cannot discuss the specific security assurances we receive from foreign governments with any degree of specificity in open testimony. However, among the types of security measures that we generally seek are travel restrictions, information sharing, and other measures to satisfy the United States' national security interests and to aid the detainee in reentering society, such as reintegration/rehabilitation programs.

The decision to transfer is made only after detailed, specific conversations with the receiving country about the potential threat a detainee may pose after transfer and the commitment regarding the measures the receiving country will take in order to substantially mitigate that potential threat.

Monitoring of Completed Transfers

Once a detainee is transferred from Guantanamo, the intelligence community and others in the government monitor for indications of reengagement and work closely with liaison partners to ensure the fullest understanding of a former detainee's activities. Through this follow-up process, the United States engages closely our partner nations and may request additional measures. Through a rigorous IC coordination process, that draws on the assessments of eight IC agencies, including the Defense Intelligence Agency and State's Bureau of Intelligence and Research, we determine whether to designate a former detainee as reengaged.

Reengagement

A primary concern regarding a potential transfer is whether a detainee will “return to the fight” or otherwise reengage in acts that threaten the United States or U.S. persons or interests. We take the possibility of reengagement very seriously. Secretary Carter has emphasized that safety is his first priority when considering a transfer.

The most recent public data on reengagement of former Guantanamo detainees was released earlier this month and is current as of January 15, 2016.

The Office of the Director of National Intelligence (ODNI) categorizes the figures in three ways: 1) Total, 2) Pre-22 January 2009, which refers to former detainees who departed Guantanamo prior to 22 January 2009, and 3) Post-22 January 2009, which refers to former detainees who departed Guantanamo after January 22, 2009.

- **Total: 17.5%** confirmed of reengaging (118 of 676); **12.7%** suspected of reengaging (86 of 676)
- **Pre-22 January 2009: 20.9%** confirmed of reengaging (111 of 532); **13.9%** suspected of reengaging (74 of 532)
- **Post-22 January 2009: 4.9%** confirmed of reengaging (7 of 144); **8.3%** suspected of reengaging (12 of 144)

In other words, the rate of reengagement has been much lower for those transferred since 2009.

According to publicly available information released by ODNI, over 85% of detainees transferred since 2009 are neither confirmed nor suspected of having reengaged. This statistic speaks to the result of the careful scrutiny given to each transfer by the intensive interagency review process, and the negotiation of security assurances sufficient to prevent detainees from posing a continuing threat to the United States and its allies and partners after they have been transferred.

We take any indications of suspected or confirmed reengagement very seriously, and we work in close coordination with our partners to mitigate reengagement and to take follow-on action when necessary. This is demonstrated by an additional point about the reengagement data: of the 118 former Guantanamo detainees confirmed of reengaging (the vast majority of whom were transferred prior to 2009), 55 are now either dead or in foreign custody.

Plan to Close Guantanamo Detention Facility

I will now turn to the Administration's Plan for Guantanamo Detention Closure, which was submitted to Congress on February 23, 2016. This plan represents the collective best judgment of the Administration's top military and civilian leaders.

I want to note the outstanding job that DOD personnel from the offices of Detainee Policy, Comptroller and Acquisition and Technology and Logistics who did in helping to put together this plan.

As President Obama stated in announcing the plan, it has four main elements.

First, we will continue the process of responsibly transferring the 36 detainees currently eligible for transfer.

Second, we will accelerate the PRB process to ensure that each detainee receives an initial review.

Third, we will continue to look for individual dispositions for detainees, including the prosecution of detainees in the military commissions process, and if possible, in the federal courts or in foreign courts. Currently, **7** detainees are being actively prosecuted under the military commission process, **5** are accused of the 9/11 attacks, **1** is charged with the bombing of the *USS Cole*, and **1** is charged with actions as a senior al Qaeda

commander. In addition, 3 are in the sentencing phase or are serving sentences pursuant to their convictions.

Fourth, we are working with the Congress to identify a secure domestic detention location for the limited number of detainees who remain designated for continued detention and who are not candidates for U.S. prosecution or detention or transfer to a foreign country

The Department of Defense looked at past reviews and surveyed potential detention locations in the United States. The Department determined that there exist facilities in the United States that could safely, securely, and humanely house Guantanamo detainees.

Key factors included time needed for modifications, disruption to existing missions (moving current prisoners), distance to medical facilities and transportation sites, troop support and housing, and force-protection and security requirements. The Department concluded that a single detention center was the most efficient plan for continued military commissions and continued law of war detention.

Transfer to the United States of a small number of Guantanamo detainees will require modifications to meet standards for secure and humane treatment of detainees under international law.

The plan focuses on working with the Congress to identify a domestic location for the small number of detainees who remain designated for continued detention and who are not candidates for U.S. prosecution or detention or transfer to a foreign country. Under the Administration's closure plan, these detainees would be relocated to a secure detention facility in the United States.

The taxpayers are paying too high a financial price to keep the Guantanamo Bay detention facility open. As Representative Adam Smith, the Ranking Member of the House Armed Services Committee regularly comments, “it is wildly expensive.” The plan submitted to the Congress last month highlights this issue. The Department of Defense estimates that recurring costs at Guantanamo would be between \$65 million and \$85 million higher annually than at a detention facility located in the United States. Transition costs to a domestic detention facility would be offset within three to five years due to the lower operating costs of a U.S. facility. Moving Guantanamo detainees to the United States could generate at least \$335 million in net savings over 10 years and up to \$1.7 billion in net savings over 20 years.

Many of the former retired flag and general officers who wrote to the Senate Armed Services Committee last year, also wrote a letter to the leaders of that Committee and to the House Armed Services Committee on March 1 of this year, urging consideration of the Administration’s closure plan as a foundation to “find a path to finally shutter the detention facility.”

The Department of Justice, in consultation with the Secretary of Defense, submitted a report to Congress in 2015 that concluded that if detainees were relocated to the United States, existing statutory safeguards and executive and congressional authorities provide robust protection of national security. The current transfer provisions, however, restrict the Government’s ability to prosecute detainees in the United States, even if it represents the best – or only – option for bringing a detainee to justice. The President has consistently opposed these restrictions, which curtail options for reducing the detainee population. We look forward to working with Congress on lifting these

restrictions. Submission of the Administration's plan continues this process of cooperation.

Legal Authorities and Legislative Relief

To carry out the plan to close the detention facility at Guantanamo, the Administration will work with Congress to modify the transfer restrictions in sections 1031 and 1032 of the National Defense Authorization Act of 2016.

Moreover, in its Report Pursuant to Section 1039 of the National Defense Authorization Act for Fiscal Year 2014, the Department of Justice addressed the issues of whether a Guantanamo detainee relocated to the United States could be eligible for certain forms of relief from removal, or release from immigration detention, or could have related constitutional rights. The Department of Justice concluded that existing statutory safeguards and executive and congressional authorities provide robust protection of national security. The report stated that historically, the courts have treated detainees held under the laws of war who are brought to the United States as outside the reach of the immigration laws; and that Congress separately has authority to provide by statute that the immigration laws generally, as well as particular forms of relief, are inapplicable to any Guantanamo detainees held in the United States pursuant to the 2001 Authorization for the Use of Military Force.

Conclusion

Finally, I would like to take a moment to recognize the military service members conducting detention operations at Guantanamo Bay. Too often in the course of considering the future of the detention facility, we lose sight of the remarkable men and women who serve honorably under extraordinarily difficult conditions. They have our

deepest appreciation for their service and the professionalism they display each and every day on behalf of our Nation.

President Bush worked towards closing Guantanamo, and many officials in his Administration worked hard towards that objective. We are closer to this goal than many people may realize. Of the nearly 800 detainees to have been held at Guantanamo since the facility opened in 2002, the vast majority have already been transferred, including more than 500 detainees transferred by the previous Administration. The President and the national security experts of this Administration believe it should be closed. The senior military leaders of the country and the leaders of the Department of Defense concur. As indicated in the letter by the retired military leaders, many believe closure of this facility is the single most important counterterrorism effort the United States can undertake. We believe the issue is not whether to close the Guantanamo Bay detention facility; the issue is how to do it.

Thank you, and I look forward to your questions.