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Special Envoy for Guantanamo Closure Lee S. Wolosky
Opening Statement
House Foreign Affairs Committee
Hearing on Guantanamo Bay
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I. Introduction

Chairman Royce, Ranking Member Engel, distinguished Members of the Committee: Good morning. I appreciate you inviting me to appear before this Committee to discuss the important matter of closing the detention facility at Guantanamo Bay, Cuba (GTMO). I am honored to be joined today by my colleague, Paul Lewis, Special Envoy for Guantanamo Detention Closure at the Department of Defense.

As Special Envoy for Guantanamo Closure at the Department of State, I am responsible for all diplomatic issues related to the Administration's policy of closing the detention facility, including negotiating the security and humane treatment assurances for each transfer. My office also plays a leading role in the interagency process to determine whether, when, and where a detainee is transferred, and represents the Department in the periodic review process—known as the Periodic Review Board—for certain detainees who are not currently approved for transfer. In addition, we work closely with our Embassies around the world to follow up on the post-transfer status of former detainees.

Today, I will describe the rigorous processes that determine whether a detainee should be approved for transfer and the extensive interagency efforts to comply with statutory requirements before each transfer. Finally, I will attempt to clear up some common confusion surrounding so-called detainee reengagement.

II. Closing the detention facility at Guantanamo Bay is a Bipartisan National Security Imperative

Closing the detention facility at Guantanamo Bay is a national security imperative. President Obama has emphasized this point repeatedly—at major addresses at West Point and the National Defense University; in numerous State of the Union addresses; repeatedly in statements made while signing National Defense Authorization Acts; at various press conferences; and, most recently, in announcing the delivery of the Defense Department's GTMO closure plan.

The President concluded that the continued operation of GTMO damages our national security before he took office—and he did so for many of the same reasons that led President George W. Bush to the same conclusion. According to President Bush, by his second term, “the detention facility had become a propaganda tool for our enemies and a distraction for our allies.”¹ It remains so today.

¹ GEORGE W. BUSH, DECISION POINTS 180 (2010).

World leaders and organizations from the Pope to the Organization for American States consistently call on the United States to close GTMO. Its continued operation is an irritant to our moral leadership and to critical bilateral relationships. President Obama publicly lamented recently that, “[w]hen I talk to other world leaders, they bring up the fact that Guantanamo is not resolved.”² He went on to note that, “[a]s President, I have spent countless hours dealing with this Our closest allies have raised it with me continually. They often raise specific cases of detainees repeatedly.”³ I am sure this information comes as no surprise to this Committee.

The bipartisan view that GTMO’s continued operation harms national security is not limited to Presidents Obama and Bush. Their conclusion that GTMO must be closed is shared by no less an expert in national security than Senator John McCain who has remarked that he is “in favor of closing Guantanamo because of the image that Guantanamo has in the world, whether it’s deserved or not,”⁴ as well as my boss and your former colleague, Secretary Kerry. Likewise former Secretaries of State Clinton, Rice, Powell, Albright, Christopher, Baker, and Henry Kissinger⁵ have all advocated for closing Guantanamo. Secretaries of Defense Carter, Panetta, and Gates have similarly all advocated for closing the detention facility, as have three former Chairmen of the Joint Chiefs of Staff, and 42 former Generals and Admirals.

III. Current Population & Review Process

Today, there are 91 individuals detained at GTMO, down from a peak population of 680. Altogether, a total of 779 detainees have passed through Guantanamo and, of those 688 have departed. No detainees have been transferred to Guantanamo since 2008, and the vast majority of detainees transferred out of GTMO to other countries—some 532—were transferred *before* President Obama took office on January 20, 2009.

As you know, one of President Obama’s first acts was to order the closure of Guantanamo. What is less well known is that the President also ordered the first ever comprehensive, interagency review of all the 240 detainees then in custody at GTMO.

In 2009-2010, more than 60 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, the Office of the Director of National Intelligence, the Central Intelligence Agency, the Federal Bureau of Investigation, and other agencies within the U.S. government assembled all reasonably available information from across the government relevant to determining the proper disposition of each detainee. The review task force examined this information critically, giving careful consideration to the threat posed by the detainee, the reliability of the underlying information, and the interests of national security. Then, based on the review task force’s recommendations, the Departments of Defense,

² President Barack Obama, Remarks by the President on Plan to Close the Prison at Guantanamo Bay (Feb. 23, 2016), *available at* <https://www.whitehouse.gov/the-press-office/2016/02/23/remarks-president-plan-close-prison-guantanamo-bay>.

³ *Id.*

⁴ Jacqueline Klimas, *Republicans Offer Obama Path to Close Guantanamo Before Leaving Office*, WASH. TIMES, May 14, 2015.

⁵ *Shut Jail, Ex-Diplomats Say: Powell, Kissinger, Albright, Baker and Christopher*, L.A. TIMES, Mar. 28, 2008, at A15.

State, Justice and Homeland Security; the Office of the Director of National Intelligence, and the Joint Chiefs of Staff unanimously determined the appropriate disposition for each detainee: transfer, referral for prosecution, or continued law-of-war detention.⁶

Pursuant to Executive Order 13567, detainees who were not approved for transfer in 2009-2010, and who are not charged by military commission or serving a sentence, are subject to additional review by the Periodic Review Board (PRB). The PRB's mandate is to determine whether a detainee's continued detention is necessary to protect against a continuing significant threat to the security of the United States. Like the earlier review task force, the PRB is composed of senior representatives from the Department of Defense, the Joint Chiefs of Staff, the Department of Justice, the Department of Homeland Security, the Office of the Director of National Intelligence, and the Department of State. 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. Only when the PRB arrives at a consensus determination that the continued detention of a detainee is no longer necessary to protect against a continuing significant threat to U.S. security is a detainee approved for transfer.

Detainees who are designated for continued detention by the PRB receive a file review every six months and another full review and hearing every three years. The PRB will convene a full review and hearing following a file review if there is a significant question raised in a file review about whether continued detention remains warranted.

So far, the PRB has conducted hearings for 29 detainees, seven file reviews, and three subsequent full reviews. Of the 29 reviews, 16 detainees were approved for transfer, 12 were disapproved, and one review is still pending. Of those 12, seven have received file reviews, only three of which have resulted in subsequent full reviews. Each of the subsequent reviews yielded a decision to approve the detainee for transfer. This track record demonstrates that the PRB is neither a rubberstamp for release nor one for continued detention.

Of the 91 detainees who remain at GTMO today, 36 are approved for transfer. Of these, 24 were approved by the 2009-2010 review task force and 12 were subsequently approved for transfer through the Periodic Review Board process.

Ten of the other 55 detainees are in some phase of the military commissions criminal justice process—either awaiting a trial or appeal, or serving a sentence.

The remaining 45 are currently designated for continued detention but are eligible for review by the PRBs.

IV. How We Negotiate Transfers

We have made significant progress in transferring those detainees who are approved for transfer. Since I took office in July 2015, we have transferred 25 detainees to 10 countries. The

⁶ GUANTANAMO REVIEW TASK FORCE, FINAL REPORT i-ii (2010).

remaining 36 detainees who are currently approved for transfer can, and should, be transferred from Guantanamo as soon as possible and in a manner that protects our national security and is consistent with our long-standing policy on humane treatment.

The decision whether, when, and where to transfer a detainee is the culmination of a rigorous interagency process similar to the initial decision to approve a detainee for transfer. The Department of State leads negotiations with foreign governments about the possible transfer of one or more Guantanamo detainees but we are joined in our efforts by colleagues from the Departments of Defense, Justice, and Homeland Security, as well as those in the intelligence community and on the Joint Staff. Often these negotiations occur in two steps: first, the U.S. government seeks a high-level political commitment that the potential receiving country is willing to resettle or repatriate the detainee or detainees and to impose various security measures intended to substantially mitigate the threat the detainee or detainees may pose after their transfer; second, we engage in working-level meetings with the entities responsible for implementing these measures. While the higher level meetings offer the U.S. government the opportunity to convey our expectations and assesses our potential partner's political will, the working-level meetings offer the opportunity, among other things, to share best practices from previous detainee transfers, and tailor integration and security measures to specific circumstances under consideration.

At the same time, U.S. agencies update the assessment of the potential transferee, drawing upon all reasonably available information on a detainee in possession of the United States. It also develops an assessment of the potential receiving country's capabilities. During this process, we provide our foreign partners with the IC's updated assessment of the detainees under discussion and offer them the opportunity to travel to Guantanamo to interview potential transferees. Throughout all of this, we are working to ensure that we achieve a security framework that, applied to specific individuals under consideration for transfer, satisfies or exceeds the statutory requirements for transfers, including that the receiving government has taken or will take steps to substantially mitigate the threat posed by those individuals.

Once we arrive at a satisfactory security framework, the Secretary of Defense seeks concurrence in the transfer from the Secretaries of State, and Homeland Security, the Attorney General, the Director of National Intelligence, and the Chairman of the Joint Chiefs of Staff. Only after he receives the views of those Principals—and only if he is satisfied that the requirements of the National Defense Authorization Act are satisfied—does the Secretary of Defense sign and transmit a certification to Congress conveying his intent to transfer GTMO detainees.

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 my predecessor Special Envoy Cliff Sloan wrote in *The New York Times*, these individuals may not be the worst of the worst, but rather the detainees at GTMO with the worst luck. Of the 36 detainees currently approved for transfer, 29 are from Yemen. Members of this Committee are aware of the dire 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. Since January 1, 2015, we have resettled 29 Yemenis to five countries on three continents. 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 their nationality. 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.

V. Reengagement

According to the most recent intelligence community report pursuant to Section 307 of the 2012 Intelligence Authorization Act, fewer than five percent of those detainees transferred by this Administration—just seven (one of whom is dead) out of 144—are confirmed of engaging in terrorist or insurgent activity following their release from GTMO.⁷ Although we would prefer that no former detainees engage in terrorist or hostile activity following their release, the low rate of reengagement for detainees released since January 20, 2009, is testament to the rigorous, evidence-based, interagency approach this Administration has taken to both approving detainees for transfer and to negotiating and vetting GTMO-detainee transfer frameworks.

VI. Conclusion

Thank you again, ladies and gentlemen of the Committee. I greatly appreciate the opportunity to speak to you about this important issue. I look forward to your questions.

⁷ OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, SUMMARY OF THE REENGAGEMENT OF DETAINEES FORMERLY HELD AT GUANTANAMO BAY, CUBA (March 2016).