

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
JULY 7, 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 testify again regarding the Administration's Guantanamo detainee transfer process and plan to close the Guantanamo Bay detention facility.

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

Overview

There are **79** detainees remaining at the Guantanamo Bay detention facility. Of these, **29** are currently eligible for transfer, **10** are being prosecuted or have been sentenced, and **40** are in the process of being reviewed by the Periodic Review Board processes.

Secretary of Defense Carter has approved the transfer of **43** detainees – **28** of whom have been transferred this year. Secretary Hagel approved the transfer of **44** detainees, Secretary Panetta **7** and Secretary Gates **65**. During this Administration **159** detainees have been transferred.

Closure Is a National Security Imperative

At the outset I want to reiterate one continuing 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.

As you know, this view is shared by former President George W. Bush, and a long list of former secretaries of state, defense, Joint Staff chairmen, and other former military leaders.

These transfers are in the national security interest of the United States and are conducted in a safe and responsible manner.

Prior Testimony

On March 23, 2016, I testified before this Committee. During that hearing, I was asked whether the Department of Defense had ever knowingly transferred a detainee to a country that did not exhibit an ability to substantially mitigate the risk of recidivism or maintain control of that individual. In response to that question, I stated the Department of Defense had not conducted such a transfer. I stand by my response.

We have addressed the concerns of the Chairman's letter of May 16, 2016 in our recent response, but I would like to take the time to briefly highlight several key points.

The 2016 NDAA requires that, at least 30 days prior to any transfer and in addition to other requirements, the Secretary of Defense certify to Congress that the receiving country has taken or has agreed to take steps to substantially mitigate any risk the individual could attempt to reengage in terrorist activity or otherwise threaten the United States or its allies or interests. The previous requirement, found in §1035 of the 2014 NDAA, likewise required the Secretary of Defense to make a determination that actions that have been taken or are planned to be taken will substantially mitigate the risk

of the individual engaging or reengaging in any terrorist or other hostile activity that threatens the United States, or United States persons or interests.

Prior to the transfer of any detainee to a foreign country, the United States Government receives security assurances from the receiving country regarding the actions that the receiving country has taken or agrees to take to substantially mitigate the risk of reengagement. The Department of State has the primary responsibility for negotiating these security assurances with foreign countries. I and others at the Department of Defense work closely with the Department of State in negotiating these assurances.

After the assurances are negotiated, the Secretary of Defense then engages in a robust review process that considers among other things, the assessments of the intelligence community regarding the threat posed by the individual detainee and the security assurances negotiated with the foreign government,

Importantly, updated intelligence, medical, and compliance information is provided to each country regarding detainees under consideration for transfer. Many countries also take the opportunity to travel to GTMO and interview transfer candidates.

If the receiving country has previously taken a detainee who subsequently reengaged in terrorism, the Secretary also specifically considers that in making his determination, including any substantive adjustments to the receiving government's approach to transfers as a result of the experience gained from the previous transfer(s), to include any additional mitigation or corrective measures that can be put in place to address the specific threat that may be posed by former or prospective transferees. As part of this review process and prior to a final determination, the Secretary consults with

the Director of National Intelligence, the Attorney General, the Secretary of Homeland Security, the Secretary of State, and the Chairman of the Joint Chiefs of Staff on the proposed transfer.

After full consideration of all of this information, including a full and up-to-date assessment from the intelligence community, the Secretary makes a determination whether the transfer is in the national security interest of the United States and that the receiving country has taken or agreed to take appropriate steps to substantially mitigate any risk the individual could attempt to reengage in terrorist activity or otherwise threaten the United States or its allies or interests. Reference has been made by the committee to specific intelligence reports. Again, I want to emphasize that the Secretary of Defense considers an up-to-date assessment based on the totality of information available, and consults with the Secretaries of State, and Homeland Security, the Attorney General, the Director of National Intelligence, and the Chairman of the Joint Chiefs of Staff.

For each approved transfer that I have been involved with, under both Secretary Carter and Secretary Hagel, the Secretary personally determined and certified that the relevant statutory requirements were met, including that the foreign government has taken or agreed to take steps to substantially mitigate the risk of the individual engaging or reengaging in any terrorist or other hostile activity that threatened the United States.

Both Secretary Carter and Secretary Hagel have testified forcefully on this issue. Both emphasized their in-depth and rigorous approach to evaluating transfers and the seriousness with which they approached this responsibility.

Not all detainees can be transferred at this time. That is why I fully support the President's policy to support legislation authorizing detention for those detainees who

currently cannot be repatriated or resettled, in a secure facility in the United States. We continue to seek meaningful engagement from Congress on the Closure Plan we submitted in February.

These transfers have not been conducted in a vacuum. Each transfer is formally notified to Congress and we regularly brief Members and staff on transfers. With the notice of each transfer, we offer to brief congressional leadership and members and staff of all the national security committees. I appreciate the opportunity we have had to regularly brief you and your staff regarding these transfers.

Recent Transfer Decisions in a Foreign Policy Context

Briefly, I think it is important to put recent transfer decisions in a foreign policy context for this committee. Many countries in the international community want us to close the Guantanamo Bay detention facility and many have stepped up to help in this process. Overall, thirty countries since 2009 have accepted for resettlement Guantanamo detainees who are not nationals of their country.

There is broad support in the international community for closure of the detention facility, in addition to the thirty resettlement countries, an additional thirteen have received their own nationals from Guantanamo.

Additionally, there is sustained support for our closure efforts from civil society organizations, both domestically and abroad, and numerous international organizations continue to call on the United States to close Guantanamo, including the Organization of American States. Even the Vatican has expressed its support of our closure efforts.

Conclusion

In summary, each transfer is only approved after careful scrutiny by the intensive interagency review process and the negotiation of security assurances sufficient to substantially mitigate any threat that may be posed by the detainee to the United States and its allies and partners.

Finally, I would like to take a moment to again recognize the military service members conducting detention operations at Guantanamo Bay. These remarkable men and women continue to have our deepest appreciation for their service and the professionalism they display each and every day on behalf of our Nation.

Thank you, and I look forward to your questions.