

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

Chairman Royce, Ranking Member Engel, distinguished Members of the Committee: Good morning. I appreciate you inviting me once again to appear before this Committee to discuss the important matter of closing the U.S. detention facility at Guantanamo Bay, Cuba (GTMO). I look forward to continuing our discussion in a closed session, either later today as we have offered or as soon as practicable, so that we can have a fuller, classified discussion of some of the topics we know are of interest to the Committee.

I. Current Population & Review Process

I will begin with an overview of the current detainee population at Guantanamo and the process by which decisions are made to approve a detainee for transfer or to continue law of war detention. Today, there are 79 individuals detained at Guantanamo. No detainees have been transferred to Guantanamo since 2008. Altogether, a total of 779 detainees have passed through Guantanamo and, of those 700 have departed. The vast majority of detainees transferred out of Guantanamo to other countries—some 532—were transferred by President George W. Bush, prior to the commencement of President Obama’s administration on January 20, 2009. Under President Obama, a total of 159 detainees have been transferred from Guantanamo.

President Bush acted to whittle the detainee population because he understood that “the detention facility had become a propaganda tool for our enemies and a distraction for our allies.”¹ President Obama has continued detainee transfers and, as you know, signed an executive order to close Guantanamo as one of his first official acts as President.² Soon after taking office, President Obama also ordered the first ever comprehensive, interagency review of all the 242 detainees then in custody at Guantanamo.³

In 2009-2010, the Guantanamo Review Task Force (sometimes also called the Executive Order Task Force, or “EOTF”), which was composed of more than 60 national security professionals, including intelligence analysts, law enforcement officials, 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 an appropriate disposition of each detainee. The review task force examined this information

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

² E.O. 13492, January 22, 2009.

³ E.O. 13493, January 22, 2009.

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, 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.⁴

Pursuant to Executive Order 13567, promulgated on March 7, 2011, detainees who were not approved for transfer in 2009-2010, and who have not been charged by military commission or are not 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. 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. Importantly, none of the PRB representatives are political appointees. 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.

Pursuant to the EO, 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. If the PRB determines that there is a significant question regarding whether the detainee's continued detention is warranted in a biannual file review, the Board convenes a full review.

So far, the PRB has conducted initial hearings for 53 detainees, nine file reviews, and four subsequent full reviews. Of the 53 initial PRB hearings, 20 detainees were approved for transfer, 16 were determined to meet the standard for continued detention, and the results of 15 hearings are still pending. Of those 16 who were determined to meet the standard for continued detention, nine file reviews have been held, and five have resulted in subsequent full reviews, of which four have been conducted. Each of the four subsequent full reviews yielded a decision to approve the detainee for transfer. One full review is pending. This track record demonstrates that the PRB is neither a rubberstamp for release nor one for continued detention, and reflects the objective evaluation of the facts and circumstances attendant to each individual case.

Of the 79 detainees who remain at GTMO today, 29 are approved for transfer. Of these, 15 were approved by the 2009-2010 review task force and 14 were approved for transfer through the Periodic Review Board process.

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

The remaining 30 are currently designated for continued detention but will continue to be subject to by the PRBs.

⁴ GUANTANAMO REVIEW TASK FORCE, FINAL REPORT i-ii (2010).

II. Role of the Special Envoy for Guantanamo Closure

My responsibilities as Special Envoy for Guantanamo Closure at the Department of State include all diplomatic issues related to the detention facility, including the negotiation of each transfer from the facility. We work closely in this regard, and in following up on transfers from the detention facility, with our Embassies around the world.

The process for transferring Guantanamo detainees is thorough and rigorous. From the very beginning of this Administration we have and continue to implement stringent processes and procedures to determine whether a detainee should be approved for transfer that include multiple layers of review by career national security professionals. I will summarize how decisions are made on whether a detainee should be transferred or remain in detention, as well as the extensive interagency efforts undertaken to achieve a security framework that is suitable for the specific detainee and compliant with statutory requirements before each transfer. Finally, I hope to dispel any misconceptions regarding the Administration's track-record to date in regard to detainee reengagement.

III. How We Negotiate Transfers

Working with the other departments and agencies involved in Guantanamo transfers, we have continued to negotiate appropriate security and humane treatment assurances for those detainees who are approved for transfer. Since I took office one year ago yesterday, we have transferred 37 detainees to 11 countries. We expect to make substantial progress in transferring many of the remaining approved-for-transfer detainees by the end of the summer, in a manner that protects our national security and is consistent with our long-standing policy on humane treatment.

Decisions regarding whether, when, and where to transfer a detainee are the culmination of a rigorous interagency process. The Department of State leads diplomatic negotiations with foreign governments regarding the transfer of Guantanamo detainees, but we are typically joined in our efforts by senior career officials from the Departments of Defense, Justice, and Homeland Security, as well as those in the Intelligence Community and on the Joint Staff. Generally, transfer negotiations occur in two steps. First, the U.S. government obtains a political commitment that the potential receiving country is willing in principle to resettle or repatriate a detainee or detainees, and to impose various security measures that will substantially mitigate the threat the detainee or detainees may pose after their transfer. In the second step, we engage in technical discussions with the foreign officials responsible for implementing these measures. The higher-level meetings provide us the opportunity to convey our expectations to the potential host nation and to assess our potential partner's political will. The technical discussions offer the opportunity to tailor integration and security measures to specific circumstances under consideration, to share best practices from previous detainee transfers and, perhaps most importantly, to determine, based on an individualized assessment of these specific circumstances, whether the statutory standard in the National Defense Authorization Act governing the foreign transfer of Guantanamo detainees can be met.

Simultaneously, 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. We also provide our foreign partners with updated assessment of the detainees under consideration and

offer them the opportunity to travel to Guantanamo to interview potential transferees. Throughout the process, we work to ensure that we achieve a security framework that is suitable for the specific detainee(s) under consideration for transfer and satisfies or exceeds the statutory requirements for transfers, including that the receiving government has taken or will take steps to substantially mitigate the threat these specific individuals may pose after being transferred.

Once we conclude our diplomatic negotiations that will result in a security framework that we assess will substantially mitigate the threat that a detainee may pose after transfer, the Secretary of Defense 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 on the transfer. Only after the Secretary of Defense 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 detainees.

IV. Challenges

Many of the detainees approved for transfer cannot be returned to their home country due to security or humane treatment concerns. Consequently, it is necessary to resettle detainees in countries of which they are not nationals. Executing such resettlements requires intense diplomacy and careful attention to security and integration measures. Of the 29 detainees currently approved for transfer, 22 are from Yemen. Members of this Committee are aware of the security situation in that country. The Administration has not transferred a Guantanamo detainee to Yemen since 2010, and our focus is on resettling Yemeni nationals in third countries. These individuals should not remain in Guantanamo solely because of their nationality, if the U.S. government has otherwise concluded that they can and should be transferred subject to appropriate security and humane treatment assurances. Since January 1, 2015, we have resettled 39 Yemenis to six 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 in detention solely because of the country of their birth.

V. Reengagement

According to the most recent unclassified intelligence community report pursuant to Section 307 of the 2012 Intelligence Authorization Act, less than 5 percent of those detainees transferred by this Administration—seven (one of whom is dead) out of 144—are *confirmed* of engaging in terrorist or insurgent activity following their release from Guantanamo.⁵ 8.3 percent—that is 12, including one who is dead, of 144—are *suspected* of engaging in terrorist or insurgent activity following their release from Guantanamo. Although we would prefer that no former detainees engage in such activity following their release, the low rate of reengagement for detainees released since January 20, 2009, is testament to the rigorous, interagency approach the Administration has taken to both approving detainees for transfer and to negotiating and vetting detainee transfer frameworks.

⁵ OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE, SUMMARY OF THE REENGAGEMENT OF DETAINEES FORMERLY HELD AT GUANTANAMO BAY, CUBA (March 2016).

VI. Closing the Detention Facility at Guantanamo Bay is a Bipartisan National Security Imperative

Lastly, closing the detention facility at Guantanamo Bay is a national security imperative, and should not be portrayed as partisan issue.

Even before President Obama took office, President Bush concluded that continued operation of Guantanamo damages our national security. He transferred over 500 detainees out of Guantanamo during his two terms in office. President Obama reached the same conclusion for many of the same reasons that led President Bush to begin emptying Guantanamo of detainees.

The continued operation of this facility has significantly impacted our credibility in the international community, and 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 undermines our moral leadership and is an irritant to critical bilateral relationships. President Obama recently stated that, “[w]hen I talk to other world leaders, they bring up the fact that Guantanamo is not resolved.”⁶ 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.”⁷ I am sure this information comes as no surprise to this Committee.

The bipartisan view that Guantanamo harms national security is not limited to Presidents Obama and Bush. Their conclusion that Guantanamo should be closed is shared by 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,”⁸ as well as by Secretary Kerry. Likewise former Secretaries of State Clinton, Rice, Powell, Albright, Christopher, Baker, and Henry Kissinger⁹ 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 retired Generals and Admirals.

VII. 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, and to a more detailed discussion in closed session.

⁶ 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>.

⁷ *Id.*

⁸ Jacqueline Klimas, *Republicans Offer Obama Path to Close Guantanamo Before Leaving Office*, WASH. TIMES, May 14, 2015.

⁹ *Shut Jail, Ex-Diplomats Say: Powell, Kissinger, Albright, Baker and Christopher*, L.A. TIMES, Mar. 28, 2008, at A15.