

**TRANSFERRING GUANTANAMO BAY DETAINEES  
TO THE HOMELAND: IMPLICATIONS FOR  
STATES AND LOCAL COMMUNITIES**

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**HEARING**

BEFORE THE

**SUBCOMMITTEE ON  
OVERSIGHT AND  
MANAGEMENT EFFICIENCY**

OF THE

**COMMITTEE ON HOMELAND SECURITY  
HOUSE OF REPRESENTATIVES**

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

APRIL 28, 2016

**Serial No. 114-66**

Printed for the use of the Committee on Homeland Security



Available via the World Wide Web: <http://www.gpo.gov/fdsys/>

U.S. GOVERNMENT PUBLISHING OFFICE

22-759 PDF

WASHINGTON : 2017

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## **TRANSFERRING GUANTANAMO BAY DETAINEES TO THE HOMELAND: IMPLICATIONS FOR STATES AND LOCAL COMMUNITIES**

Thursday, April 28, 2016

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
SUBCOMMITTEE ON OVERSIGHT AND  
MANAGEMENT EFFICIENCY,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:05 p.m., in Room 311, Cannon House Office Building, Hon. Scott Perry [Chairman of the subcommittee] presiding.

Present: Representatives Perry, Duncan, Clawson, Carter, Loudermilk, Richmond, and Thompson (ex officio).

Also present: Representatives Katko and Jenkins.

Mr. PERRY. The Committee on Homeland Security's Subcommittee on Oversight and Management Efficiency will come to order. The purpose of this hearing is to receive testimony on State and local perspectives regarding the impact of transferring Guantanamo Bay detainees to the homeland.

The Chair now recognizes himself for an opening statement.

In January 2009, President Obama signed Executive Order 13492, which ordered the closure of the detention facilities at Guantanamo Bay Naval Base in Cuba. Over 7 years later, in February 2016, the administration submitted its plan to close the detention facility. Although the plan is devoid of specifics, the administration has made clear that it intends to identify a location within the United States to detain an unspecified number of Guantanamo prisoners.

In a hearing before the House Foreign Affairs Committee last month, a senior Defense Department official touted the plan as representing the collective best judgment of the administration's top military and civilian leaders and as the result of close collaboration across numerous Federal agencies.

I just must break from the script and comment on that a little bit: The collective best judgment of the administration's top military and civilian leaders—and with all due respect, military leaders that serve in the administration are bound to agree with the Commander-in-Chief. Right? The old saying is: "Ours is to do and die; ours is not to question why." So their credibility in this regard, unfortunately, has to be questioned on those bases, if nothing else. Of course, the civilian leaders looking to curry favor with the administration are in the same position.

We want to look at the solid unbiased facts, not the opinions or the collective best judgment.

Moving on, it is time to set the record straight. The administration has failed to seek the very necessary input from State and local law enforcement on its plan. The reason is simple: Law enforcement professionals strongly oppose any plan that could endanger the citizens they are sworn to protect. Last month, the Major County Sheriffs' Association, which represents sheriffs' offices from our Nation's largest counties, wrote the President to express their opposition to the plan. I ask that this letter be included in the record.

Without objection, it is so ordered.  
[The information follows:]

LETTER FROM THE MAJOR COUNTY SHERIFFS' ASSOCIATION

MARCH 30, 2016.

President BARACK OBAMA,  
1600 Pennsylvania Ave NW, Washington, DC 20500.

DEAR PRESIDENT OBAMA: The Major County Sheriffs' Association (MCSA) is an association of elected sheriffs representing our nation's largest counties with populations of 500,000 people or more serving over 100 million Americans. As constitutionally-elected law enforcement officials tasked with ensuring public safety, the MCSA remains adamantly opposed to your continued effort to close the U.S. detention facility on the Guantánamo Bay Naval Base.

More so now than ever before, our nation is facing increasingly sophisticated threats from abroad and from within. Given the evolution of the threat environment, state and local law enforcement—in conjunction with our federal partners—are at the forefront of keeping our homeland secure. It goes without question that any effort to transfer Gitmo detainees to U.S. soil has immense national security implications.

Your latest proposal to Congress to close Gitmo and transfer detainees failed to acknowledge the "Summary of the Reengagement of Detainees Formerly Held at Guantánamo Bay, Cuba" issued by the Office of the Director of National Intelligence (ODNI). In the September 2015 summary, it was reported that thirty percent of former Guantánamo prisoners are confirmed or suspected of reengaging in terrorism. Additionally, just a few months ago, Spanish and Moroccan authorities arrested four suspected ISIS affiliates—including one described as a former Gitmo detainee.

As stewards of the rule of law, we respectfully remind you that you recently signed two separate pieces of legislation into law that explicitly bar the use of funds to transfer, release or assist in the transfer or release of Gitmo detainees to or within the continental United States. Detainees, deemed too dangerous to release, should not be brought to the homeland where they will pose a threat to the local communities we serve.

With an increased threat environment, law enforcement has continually been tasked to do more with less. Cost implications coupled with a heightened security environment is simply unsustainable. In an era of deep budget cuts and lack of federal funding, state and local law enforcement does not have the necessary funds, and most recently the necessary lifesaving equipment, to adequately address the national security implications associated with Gitmo detainees being housed in U.S. facilities. Some have lauded the closure of Gitmo as a cost-saving measure, but that is most assuredly short-sighted—both from a national security and taxpayer perspective.

As the only elected law enforcement officials in America, we are committed to the protection of our communities and believe the closing of Guantánamo Bay poses an unnecessary threat to the safety of the citizens we are sworn to protect.

Very Respectfully,

SANDRA HUTCHENS,  
*President, Major County Sheriffs' Association,  
Sheriff-Coroner, Orange County (CA).*

MICHAEL J. BOUCHARD,  
*Vice President—Government Affairs, Major County Sheriffs' Association,  
Sheriff, Oakland County (MI).*

Mr. PERRY. The letter states that detainees deemed too dangerous to release should not be brought to the homeland where they will pose a threat to the local communities we serve. Why would the administration ignore the advice of our State and local law enforcement professionals? Just because their advice doesn't fit the administration's political narrative doesn't mean their voice shouldn't be heard.

The fact is State and local law enforcement have numerous concerns with the implications of bringing the world's most dangerous terrorists to our homeland. Law-enforcement officials have serious questions which the administration's plan either failed to consider or simply did not answer. For example, what if the base requires evacuation? What if detainees require transportation to medical facilities? What additional resources are needed for such transfers? I will add, what about court facilities? I happened to visit Guantanamo Bay, where the taxpayers paid dearly for a very specific court facility that handled these very dangerous people in a Classified setting. Where is that going to happen? Who is going to be paying for that yet again?

The administration has argued that taxpayers could save tens of millions of dollars by transferring these terrorists to the homeland. I would say, which taxpayers? Right now, all of us pay for Guantanamo Bay, but if you move them, State by State, facility by facility, it will be the taxpayers in those local locations that will bear the entire burden. Did they calculate the cost to States and local communities? Cash-strapped States and localities will face additional costs due to the heightened threat environment brought about by this decision, and taxpayers will foot the bill. This site likely would become a magnet for protest, as well further straining the resources of the locals.

We also have legal questions such as whether these terrorists could be eligible for certain forms of relief from removal, release from immigration detention, or constitutional rights. The Department of Justice believes that existing statutory safeguards are sufficient, and courts historically have ruled that detainees held under the laws of war who are brought to the United States are outside the reach of immigration laws. But make no mistake: Their lawyers will test every avenue and slow justice even further.

Another major concern is that the facility would become a terrorist target itself. Consider the propaganda value for ISIS if it successfully sprang a hardened GTMO terrorist on American soil. Anyone who thinks that this is impossible is suffering from, as the 9/11 Commission puts it, "a failure of imagination." With about 30 percent of released detainees having been confirmed or suspected of rejoining the fight, GTMO detainees clearly remain dangerous and want to kill Americans.

The facility also could become an attractive target for lone wolves, and other radical Islamic extremists may be inspired to perform jihad in the homeland. The American people do not want GTMO terrorists detained in their communities, their neighborhoods, or down the street from their children's school.

Fortunately, Congress passed legislation that prohibits transferring GTMO detainees to the homeland, and the President signed it. However, it is still moving forward with its legacy—the Presi-

dent, that is, and the administration—is still moving forward with his legacy-driven agenda, which includes closing Guantanamo Bay. And it is different—it is very different—from the National security agenda that I think he should be focused on. Despite the will of the American people, he is moving forward with this agenda. States and localities must prepare for the possibility that this administration will seek to detain these terrorists in our community despite the will of the American people.

Finally, I thank Governor Haley for appearing before the subcommittee today, leaving her great State and coming to Washington, DC. As I stated earlier, receiving input from States and local communities regarding these transfers is critical. That Governor Haley made the trip to Washington today underscores that importance.

Thank you again for being here today, Governor. I look forward to your testimony.

[The statement of Chairman Perry follows:]

STATEMENT OF CHAIRMAN SCOTT PERRY

APRIL 28, 2016

In January 2009, President Obama signed Executive Order 13492, which ordered the closure of the detention facilities at the Guantanamo Bay Naval Base in Cuba. Over 7 years later—in February 2016—the administration submitted its plan to close the detention facility. Although the plan is devoid of specifics, the administration has made clear that it intends to identify a location within the United States to detain an unspecified number of Gitmo prisoners. In a hearing before the House Foreign Affairs Committee last month, a senior Defense Department official touted that the plan, “represents the collective best judgment of the administration’s top military and civilian leaders” and is the result of close collaboration across numerous Federal agencies.

But it’s time to set the record straight: The administration has failed to seek very necessary input from State and local law enforcement on its plan. The reason is simple: Law enforcement professionals strongly oppose any plan that could endanger the citizens they’re sworn to protect. Last month, the Major County Sheriff’s Association, which represents sheriff’s offices from our Nation’s largest counties, wrote the President to express their opposition to the plan. I ask that this letter be included in the record. Without objection, so ordered. The letter states that, “detainees, deemed too dangerous to release, should not be brought to the homeland where they will pose a threat to the local communities we serve.”

Why would the administration ignore the advice of our State and local law enforcement professionals? Just because their advice doesn’t fit the administration’s political narrative doesn’t mean their voice shouldn’t be heard. The fact is, State and local law enforcement have numerous concerns with the implications of bringing the world’s most dangerous terrorists to our homeland. Law enforcement officials have serious questions, which the administration’s plan either failed to consider or simply didn’t answer. For example, what if the base requires evacuation; what if detainees require transportation to medical facilities; and what additional resources are needed for such transfers?

The administration has argued that taxpayers could save tens of millions of dollars by transferring these terrorists to the homeland. But did they calculate the costs to States and local communities? Cash-strapped States and localities will face additional costs due to the heightened threat environment brought about by this decision—and taxpayers will foot the bill. The site likely would become a magnet for protests as well, further straining the resources of the locals.

We also have legal questions—such as whether these terrorists could be eligible for certain forms of relief from removal, release from immigration detention, or Constitutional rights. The Department of Justice believes that existing statutory safeguards are sufficient and courts historically have ruled that detainees held under the laws of war who are brought to the United States are outside the reach of immigration laws. But make no mistake their lawyers will test every avenue, and slow justice even further.

Another major concern is that the facility would become a terrorist target in itself. Consider the propaganda value for ISIS if it successfully sprang a hardened Gitmo terrorist on American soil. Anyone who thinks this is impossible is suffering from, as the 9/11 Commission put it, “a failure of imagination.” With about 30 percent of released detainees having been confirmed or suspected of rejoining the fight, Gitmo detainees clearly remain dangerous and want to kill Americans. The facility also could become an attractive target for lone wolves, and other radical Islamist extremists may be inspired to perform jihad in the homeland.

The American people do not want Gitmo terrorists detained in their communities, their neighborhoods, or down the street from their children’s school. Fortunately, Congress passed legislation that prohibits transferring Gitmo detainees to the homeland—and the President signed it. However, he’s still moving forward with his legacy-driven agenda which includes closing Guantanamo—despite the will of the American people. States and localities must prepare for the possibility that this administration will seek to detain these terrorists in our communities.

Finally, I thank Governor Haley for appearing before the subcommittee today. As I stated earlier, receiving input from States and local communities regarding these transfers is critical; that Governor Haley made the trip to Washington today underscores that importance. Thank you again for being here today, Governor; I look forward to your testimony.

Mr. PERRY. The Chair now recognizes the Ranking Minority Member of the full committee, the gentleman from Mississippi, Mr. Thompson, for his statement.

Mr. THOMPSON of Mississippi. Thank you, Chairman Perry for holding today’s hearing.

Mr. Chairman, I would like to request unanimous consent to introduce statements into the record from retired Major General Michael Lehnert, who commanded the joint task force that stood up the detention facilities at Guantanamo Bay, and James Gondles, executive director of the American Correctional Association.

Mr. PERRY. Without objection, so ordered.  
[The information follows:]

STATEMENT OF MAJOR GENERAL MICHAEL R. LEHNERT, USMC (RET.)

APRIL 28, 2016

Chairman Perry, Ranking Member Watson Coleman, Members of the committee, thank you for the opportunity to share my views with you.

The goal of terrorism is to change behavior and to make us live in fear. On 9/11 America changed.

In September 2001 I was a new brigadier general at Camp Lejeune, North Carolina commanding an 8,000 man force of Marines and Sailors. America made the decision to go to war in Afghanistan, and some of my troops were deployed early into the fight. And as we began to take captives, the question of what to do with them became more imperative. Many in the administration believed that these individuals represented an intelligence treasure trove.

The decision to send me and my command to Guantanamo employed a strange logic. Guantanamo has been used for decades by administrations from both parties as an extra-legal zone to buy time during crises. It had been the site for several Cuban and Haitian migrant camps and in fact I’d commanded the Guantanamo camps in 1995 during the Clinton era when we had 18,000 Cubans and Haitians there on the ground. Though the U.S. Army is doctrinally responsible for prisoner of war camps, the Marines’ ability to deploy rapidly coupled with my past experience probably drove the initial decision. That there is a vast difference between an economic migrant and a prisoner of war seemed lost on the policy makers in Washington.

So in early January 2002 I received a deployment order to form a Joint Task Force, get to Cuba and build the first 100 cells in 96 hours and be prepared to receive prisoners of war (that’s what we called them then). That we created a detention facility in 87 hours said a great deal about the young troops I led but it also drove a series of unfortunate early decisions. Many of those administration decisions involved the application of both U.S. and International law. I’m not a lawyer but it is very clear that when we decided to forgo generations of legal precedent and start all over, bad things happen.

As enemy prisoners of war began to arrive, even their titles began to change. They were not enemy combatants. I was told that I was to “be guided by but not required to follow the Geneva Conventions.” When I asked my lawyers what that meant, I was told “pretty much whatever they want it to mean.” Though we were told that these were “worst of the worst” many detainees appeared to have been sent based upon their need for medical or psychiatric attention. Some had poor excuses for being caught in a war zone and many were there because we were paying bounties for terrorists. We did not understand the Afghan tribal system. For a tribal leader what better way to enrich yourself while resolving old grudges than to finger a neighbor who was your enemy regardless of his support for either al-Qaeda or the Taliban?

It took time to recognize our early storing process was flawed. Almost all who arrived said they were simply “studying in a madrassa.” Some were students. Others were truly enemy combatants. Our failure to apply Article V hearings at the point of capture as required by the Geneva Conventions was beginning to result in detainees being sent who shouldn’t have been sent.

I’d been sent down for 60 days with instructions to turn the command over to the Army once they were able to get down to GTMO. I was there nearly 100 days when I was finally relieved. By this time, it was becoming more apparent that GTMO was housing a number of prisoners who were either noncombatants or simply low-level fighters.

Perhaps the best proof that we sent the wrong people to Guantanamo is that of the 780 who have ever been in Guantanamo, 647 were released back to their country of origin or resettled without action.

So why should we close Guantanamo?

First and foremost because Guantanamo’s continued existence hurts us in our prosecution of the fight against terrorists. It feeds into the narrative that the United States is not a Nation of laws nor one that respects human rights. Military commissions create a façade of justice. There are currently only 3 detainees at Guantanamo who were convicted by military commissions though they have been in operation for over 8 years. Four previous convictions by commissions were overturned by the U.S. Supreme Court. U.S. Federal Courts have been much more successful in getting convictions of terrorists, and those convictions have held up under appeal. Our reliance upon military commissions, the absence of precedent, and their inability to resolve these cases make a mockery of our claim that we are a Nation of laws.

Secondly, Guantanamo’s extra-legal status is inconsistent with our values as Americans. When I was first commissioned and every subsequent promotion thereafter I took the oath of office to support and defend the Constitution of the United States. Unlike the enlisted oath, officers don’t swear allegiance to the President or to their chain of command. The authors of the officers’ oath knew exactly what they were doing. They recognized that the Constitution is the seminal document that governs who we are as a people and that commissioned officers must have the wisdom to align their actions to the Constitution. To have a place on earth where the Constitution does not apply is simply un-American. It also begs the question that if it means nothing in Guantanamo, does our Constitution and the requirement to live by it stop at the water’s edge? When we fail to live by that remarkable document it diminishes us as a people.

Thirdly, Guantanamo and all locations where so-called enhanced interrogation techniques were practiced are a blight on our honor and put our citizens at greater risk. It’s no accident that many captives executed by terrorists were filmed being killed wearing orange jump suits. We are feeding the terrorist narrative not creating our own. Torture and its euphemism “enhanced interrogation techniques” don’t make us safer. They don’t deliver useful intelligence, and these practices are beneath us. When Senator McCain stood on the floor of the Senate on December 9, 2014, and delivered his opposition to torture, it was his finest hour in a lifetime of service. Despite significant pushback from many in his own party, he is the 1 elected member of our Government with absolute credibility on this topic. Torture is wrong. It is also ineffective. Guantanamo is a symbol of a flawed, ill-considered, and shameful policy. It must be closed.

Guantanamo was a mistake. History will reflect that. It was created in the early days as a consequence of fear, anger, and political expediency. It ignored centuries of rule of law and international agreements. It does not make us safer, and it sullies who we are as a Nation. That in over a decade we have failed to acknowledge the mistake and change course is unforgivable and ignorant.

We can win the fight against terrorism and religious extremism, but only if we adhere to our American values. If we kill every terrorist on the planet but in the process abandon the Constitution and our values, then in their deaths they will

have succeeded, and we will no longer be Americans and this country will no longer be the bastion of democracy, freedom, and liberty.

Terrorists want to make us live in fear. They want to change who we are as a people. By both standards as long as Guantanamo continues, they are winning, and we are playing into their hands.

Thank you for the opportunity to share my views with you.

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STATEMENT OF JAMES A. GONDLES, JR., EXECUTIVE DIRECTOR, AMERICAN  
CORRECTIONAL ASSOCIATION

APRIL 28, 2016

U.S. PRISONS CAN SAFELY HOLD GUANTANAMO BAY DETAINEES

Chairman Perry and Ranking Member Watson Coleman, thank you for allowing me to share my views with you. The Obama administration recently released a comprehensive plan for closing the prison at Guantanamo Bay. The plan necessarily requires the Government to move some prisoners to the United States for continued detention. To listen to some of rhetoric, one might think that the U.S. prison system is woefully unprepared to handle dangerous terrorists. This is categorically untrue.

U.S. corrections systems, both military and civilian, already hold extremely dangerous people, including terrorists, and have done so for years. Mass murderers, professional assassins, serial killers: They all reside unthreateningly in American penitentiaries run by professionals who generally have been in the business a lot longer than Gitmo has existed.

Take “Blind Sheik” Omar Abdel Rahman. A close associate of Osama bin Laden and spiritual leader to terrorists responsible for attacks in several countries, he was involved in the 1993 World Trade Center bombings. Convicted by a jury in a Federal trial in 1995, he’s serving a life sentence in a Federal prison in North Carolina. Even though al-Qaeda still calls for his release and has made him part of hostage demands, there have been no jailbreak attempts or attacks on nearby communities since he was locked up more than 20 years ago.

The son-in-law of Osama bin Laden, Sulaiman Abu Ghaith, and Zacarias Moussaoui, the 20th 9/11 hijacker are also currently held in the United States. There is Ahmed Abu Khattala, who participated in the 2012 attack on the Benghazi embassy. There are the 8 men involved in the 1998 bombings in Kenya and Tanzania. Finally, we safely hold Dandeny Munoz Mosquera, once the chief assassin of Colombia’s Medellin Cartel.

All of these men are dangerous criminals, and U.S. corrections facilities keep them safely away from the public, out of sight and out of mind. Hundreds of convicted terrorists have gone to prison in the United States since 9/11. None has escaped. None has created security threats for the communities near the prisons. Few, if any, Americans even realize when a dangerous criminal arrives at a prison in their city, county, or State because politicians aren’t drawing attention to this occurrence, telling them they ought to be afraid.

Under President Obama’s plan, the Government will send many of the Guantanamo detainees home or to a third country. A small number of detainees would be transferred to the United States, and no matter how dangerous they are, U.S. correction system professionals, military and civilian, have the ability, training, and capacity to take them on. To imply otherwise is insulting to the men and women of the Federal Bureau of Prisons, U.S. military detention officers, and civilian corrections professionals charged with keeping communities safe and guarding the Nation’s most dangerous individuals.

The Guantanamo prison has been a source of debate since its inception. But there should be no debate about the U.S. corrections systems’ ability to hold Guantanamo detainees should they be transferred State-side.

The American Correctional Association takes no position on closing the detention facility at Guantanamo Bay. But those that are opposed to closing it shouldn’t try to win people to their side by stoking irrational fears. It’s important for the American people to know that when it comes to housing Guantanamo detainees, we’re not afraid—and they shouldn’t be, either.

Mr. THOMPSON of Mississippi. Thank you, and welcome, Governor, to this subcommittee hearing. Following the terrorist attacks of September 11, 2001, the United States faced the question of what to do with so-called unlawful combatants captured in military operations in Afghanistan or other counterterrorism operations.

The answer at the time that military leaders seized upon was a U.S. military prison located within the Guantanamo Bay Naval Base in Cuba. The first 20 detainees arrived at Guantanamo Bay prison on January 11, 2002.

Since that time, Guantanamo Bay has served as a prison camp to detain dangerous individuals, to interrogate those individuals on suspected acts of terrorism, and to prosecute those individuals for war crimes. At its peak, there were roughly 680 individuals held at Guantanamo Bay. During the Bush administration, more than 500 were released to their home countries or transferred to a third country. This month, the Department of Defense announced that they would transfer 9 detainees to Saudi Arabia. The total number of individuals currently at Guantanamo Bay is 80. I want to make it clear that Guantanamo Bay has served its purpose and must be closed. Closing the Guantanamo Bay detention facility is a National security imperative. Its continued operation weakens our National security by furthering the recruitment propaganda of violent extremists, hindering relations with key allies and partners, and draining Department of Defense resources.

In 2009, President Obama signed an Executive Order expressing these concerns and ordering the closing of the detention facilities. As part of the closure, it may be necessary for those detainees who cannot be transferred to a third-party country to be in prison in the United States in facilities deemed capable of doing so.

Today, I expect to hear concerns of the National security implications for transferring suspected terrorists to the United States. Some of the witnesses may even say that bringing detainees to the United States brings terrorism to our own backyards. Based on years of research and analysis by the Departments of Defense, State, and Homeland Security, these concerns simply are not supported. There is no evidence that suggests housing Guantanamo detainees would bring additional attacks, attention, or danger to the United States. In fact, America has a long track record of incarcerating dangerous terrorists. Some of the most dangerous terrorists in the world that we have known are incarcerated in U.S. maximum-security prisons, such as the Supermax facility in Colorado. In fact, the man who tried to bring down the World Trade Center in 1993 and his co-conspirators have been serving multiple life sentences in Supermax since 1997. No one terrorist or any criminal has ever escaped from the Supermax prison. The only person charged in the 2012 terrorist attack on the U.S. compound in Benghazi is currently being held in Alexandria, Virginia, approximately 15 miles from where we are sitting now. In fiscal year 2015, the cost to operate Guantanamo Bay was approximately \$445 million. In addition to these annual costs, maintaining the facility in the future would require an additional \$200 million. Closing the facility is expected to save between \$140 million and \$180 million annually. The plan President Obama delivered to Congress represents the best and most secure way to close the prison at Guantanamo Bay.

Today I encourage everyone to focus on the facts and not baseless fear. I look forward to your testimony and the testimony of all the witnesses and fact-based answers to my questions today.

With that, Mr. Chairman, I yield back the balance of my time.

[The statement of Ranking Member Thompson follows:]

STATEMENT OF RANKING MEMBER BENNIE G. THOMPSON

APRIL 28, 2016

Following the terrorist attacks of September 11, 2001, the United States faced the question of what to do with so-called “unlawful combatants” captured in military operations in Afghanistan or other counterterrorism operations. The answer, at the time, that military leaders seized upon was a U.S. military prison located within the Guantanamo Bay Naval Base in Cuba.

The first 20 detainees arrived at the Guantanamo Bay prison on January 11, 2002. Since that time, Guantanamo Bay has served as a prison camp to detain dangerous individuals, to interrogate those individuals on suspected acts of terrorism, and to prosecute those individuals for war crimes.

At its peak, there were nearly 800 individuals held at Guantanamo Bay. During the Bush administration, more than 500 were released to their home countries or transferred to a third country. This month, the Department of Defense announced that with the transfer of 9 detainees to Saudi Arabia, the total number of individuals currently at Guantanamo Bay is 80.

I want to make it clear that Guantanamo Bay has served its purpose and must be closed. Closing the Guantanamo Bay detention facility is a National security imperative. Its continued operation weakens our National security by furthering the recruiting propaganda of violent extremists, hindering relations with key allies and partners, and draining Department of Defense resources.

In 2009, President Obama signed an Executive Order expressing these concerns and ordering the closure of the detention facilities. As part of the closure, it may be necessary for those detainees who cannot be transferred to a third-party country to be imprisoned in the United States in facilities deemed to be able to safely, securely, and humanely house detainees for the purpose of military commissions and continued law of war detention.

Today, I expect to hear concerns of the National security implications for transferring suspected terrorists to the United States. Some of the witnesses may even say that bringing detainees to the United States brings terrorism to our own backyards.

Based on years of research and analysis by the Departments of Defense, State, and Homeland Security, these concerns simply are not supported. There is no evidence that suggests housing Guantanamo detainees will bring additional attacks, attention, or danger to the United States.

In fact, America has a long track record of incarcerating dangerous terrorists. Some of the most dangerous terrorists the world has ever known are incarcerated in U.S. maximum-security prisons, such as the Supermax facility in Colorado.

In fact, the man who tried to bring down the World Trade Center in 1993 and his co-conspirators have been serving multiple life sentences in Supermax since 1997. No one—terrorist or any criminal—has ever escaped from the Supermax prison. The only person charged in the 2012 terrorist attack on the U.S. compound in Benghazi is currently being held in Alexandria, Virginia, approximately 15 miles from where we are sitting now.

Some who oppose the transferring of detainees to U.S. soil are fear-mongering that it would damage State tourism. The facts do not support this argument.

Tourism has gone up—considerably—in both Virginia and Colorado, even as both have terrorists in their Federal prisons. In fact, Virginia’s tourism revenues topped \$22.4 billion in 2014, a 4.1 percent increase over 2013, while Colorado posted a record 71.3 million visitors and \$18.6 billion in revenue.

In fiscal year 2015, the cost to operate Guantanamo Bay was approximately \$445 million. In addition to these annual costs, maintaining the facility in the future would require an additional \$200 million.

Closing the facility is expected to save between \$140 and \$180 million annually. The plan President Obama delivered to Congress represents the best and most secure way to close the prison at Guantanamo Bay.

Today, I encourage everyone to focus on the facts and not base-less fear. I look forward to your testimony and fact-based answers to my questions today.

Mr. PERRY. The Chair thanks the gentleman.

Other Members of the subcommittee are reminded that opening statements may be submitted for the record. We are pleased to have two panels of distinguished witnesses before us today.

The Chair will now recognize the gentleman from South Carolina, Mr. Duncan, to introduce the first witness.

Mr. DUNCAN. Thank you, Mr. Chairman.

Thanks for holding this incredibly important hearing today. It is a great day in Washington, just like it is a great day in South Carolina, because I am honored and proud to introduce my good friend Governor Nikki Haley. First elected Governor in 2010 as the 116th Governor of the great State of South Carolina, she is the first female and first minority Governor in State history and is currently the youngest Governor serving in the Nation.

Prior to becoming Governor, we served together in the South Carolina General Assembly for 6 years. She has been an ardent leader in South Carolina, bringing numerous jobs to the State and constantly furthering South Carolina's economic development. I appreciate her hard work as Governor and her leadership in bringing our State through some very difficult times, especially in the last 12 months. She is also an alumna from my alma mater, Clemson University. We are very—both very, very proud of that.

She has been a vocal opponent from the very beginning of the President's plan to move the Guantanamo Bay terrorists to the United States, specifically to the Naval Consolidated Brig in Charleston, South Carolina. I am excited to have her testify before our subcommittee, providing a Governor's perspective on this important issue.

So, welcome, Governor Haley.

Thank you, Mr. Chairman. I yield back.

Mr. PERRY. The Chair thanks the gentleman.

One point of administrative concern. The Chair asks unanimous consent that the gentleman from New York, Mr. Katko, be allowed to sit on the dais and participate in this hearing.

Without objection, so ordered.

The Chair thanks the gentleman.

Thank you, Governor, for being here today.

The witness' full written statement will appear in the record. The Chair now recognizes Governor Haley for her testimony.

**STATEMENT OF HONORABLE NIKKI R. HALEY, GOVERNOR,  
STATE OF SOUTH CAROLINA**

Governor HALEY. Thank you very much.

We invite all of you to South Carolina, where it is 80 degrees and sunny. So we hope that you will come and take the time to visit soon.

Chairman Perry, Ranking Member Thompson, and Members of the subcommittee, thank you for the opportunity to be here to speak on this issue of National importance.

I especially want to thank Congressman Duncan and other Members of the South Carolina delegation for their support on this issue.

In August of last year, my office was contacted out of the blue by the Department of Defense to inform us that they were traveling to Charleston, South Carolina, to assess the U.S. Naval Consolidated Brig for the possibility of housing Guantanamo Bay detainees. Imagine my surprise. Not only was it against Federal law to transfer Guantanamo detainees into the United States, but why

would anyone want to put terrorists in Charleston? Charleston, the city we call the Holy City, the city named the No. 1 vacation spot in the country for 4 years in a row. In South Carolina, the State that was named the friendliest State in the country, the most patriotic State in the Union. It makes zero sense.

On February 23, 2016, President Obama announced his plan to close Guantanamo Bay detention facility currently used to house some of the deadliest terrorists in history, including the principal architect of the September 11 attacks, Khalid Sheikh Mohammed. This plan contained little new information. It did not even name a State-side facility for law-of-war detention but, instead, referenced the Department of Defense's 2015 survey of 13 potential but unidentified facilities. In the opening paragraph of the plan, President Obama presents the 3 reasons for why it is a National-security imperative that the United States end its mission in Guantanamo Bay.

Regardless of any merit that may support these assertions, they do not support the conclusion that the terrorists should be transferred to Charleston, South Carolina, or any other location in the United States. I know that other witnesses today will discuss specific costs and security concerns. So my testimony today will focus on 3 specific reasons provided by the President's plan.

First, the President claims that Guantanamo Bay serves as propaganda and a recruitment tool for terrorists. Well, of course, it does. But so do statements by public leaders, the United States' stance against terrorism, and American values as a whole. So too certainly would a similar facility located in Charleston, South Carolina; Leavenworth, Kansas; or Florence, Colorado.

Terrorists have chosen to wage war on the United States based on ideological hatred towards the American way of life and the fundamental freedoms for which we pride ourselves. The September 11th attacks occurred before there was ever a Guantanamo Bay facility, as did the first World Trade Center bombing, the USS Cole bombing, and numerous other attacks or attempted attacks on United States interests around the world.

Moving detention operations from a secure facility outside of the continental United States and into Charleston will not stop the propaganda. This line of thinking is giving the terrorists too much credit and too much validity. Terrorists do not need a jail to hate us. They hate us on their own.

Second, the President contends that the presence of the facility at Guantanamo Bay is somehow a major impediment to our relationships with foreign nations. As a Governor, my principal engagement outside of the United States is admittedly on the economic development front, attracting foreign investment to my State. That being said, assuming the President's assertions are true, the question that comes to my mind is: What about detention activities at Guantanamo Bay is damaging to our relationships with foreign leaders and nations? Whether the terrorists are detained on an American military base in Cuba or somewhere in the United States, they will be held under the same legal authority by the same country in the same manner for the same duration for the same reasons. Why does the ZIP Code matter?

As to the impact on foreign relations in South Carolina, I can tell you I am tremendously concerned. In the Charleston area alone, we have international manufacturing giants Boeing, Mercedes-Benz, and now Volvo. We have one of the most important deepwater ports on the Atlantic Coast. South Carolina is home to the largest BMW-producing plant in the world. We have 5 international tire companies. We also have GE, Google, Bosch, DuPont, I could go on and on. How am I to tell these companies that they will be sharing an address with the most heinous and dangerous terrorists on Earth, that the city that they chose to call home is now going to be one of the most high-profile terrorist targets in the world. The truth is: I can't, and I won't.

Finally, the President wants to talk about cost. Let me first say, if there is one thing we can all agree the Federal Government is absolutely responsible for, it is defending the people of the United States of America. While the Department of Defense is not immune from fiscal waste, running a military prison to detain terrorists during an on-going armed conflict should not be high on the list of cost-saving measures. I come from a State where we balance our budget. I promise we can help you find \$85 million somewhere else to cut. But more than that, cost simply doesn't matter to me. You could pay the State of South Carolina to host these terrorists, and we wouldn't take them for any amount of money. There is no price worth the fear this reckless idea would strike in the hearts of the people of my State. There is no price worth the inevitable economic downturn it would cause. There is no price worth watching terrorists across the globe celebrate victory and rightly claim that they can dictate the military posture of what should be the most powerful nation in the world.

I would like to close with this: As the Members of the subcommittee know better than most, National security decisions should be made with one and only one consideration in mind: What is in the best interest of the safety and security of the citizens of the United States? While serious policy issues with no easy answers underline the long-term detention and final disposition of terrorists captured during armed conflict, the location of a United States-controlled military prison should not be determined based on loose perception, estimates, and 8-year-old campaign pledges. Last summer, the people of Charleston stared hate directly in the eye. We know true hate, and we know what fear it can bring. We don't need to see it again, nor do we wish it on any other State. Keep the terrorists where they are, where they belong. Do not bring them to my home. I, again, thank you for the opportunity to speak here today, and I look forward to your questions.

[The prepared statement of Governor Haley follows:]

PREPARED STATEMENT OF HON. NIKKI R. HALEY

APRIL 28, 2016

INTRODUCTION

Chairman Perry, Ranking Member Watson Coleman, and Members of the subcommittee, thank you for the opportunity to be here to speak on this issue of National importance.

In August of last year, my office was contacted by a representative of the Department of Defense to inform us they were traveling to Charleston, South Carolina to

assess the U.S. Naval Consolidated Brig for the possibility of housing Guantanamo Bay detainees. Imagine my surprise: Not only was it against Federal law to transfer Guantanamo detainees into the United States—and has been since 2010—but why would anyone want to put terrorists in Charleston?

We came to learn that the Obama administration was not only surveying the Charleston brig, but also other facilities across the United States—military and civilian, Federal and State.

On February 23, 2016, President Obama announced his plan to close the Guantanamo Bay detention facility, currently used to house some of the deadliest terrorists in history, including the principle architect of the September 11, 2001 attacks—Khalid Sheikh Mohammed. This “plan” contained little-to-no new information, but instead discussed detainee disposition options previously outlined in other forums. Nor did it name a State-side facility for law-of-war detention, but instead referenced the Defense Department’s 2015 survey of 13 potential facilities with no list included.

In the opening paragraph of the plan, President Obama presents three reasons for why it is a “National security imperative” that the United States end its detention mission at Guantanamo Bay. According to the President, the continued operation of this detention facility:

1. Serves as recruiting propaganda for violent extremists;
2. Hinders relations with key allies and partners; and
3. Drains Department of Defense resources.

Regardless of any merit that may support these assertions, they do not support the conclusion that terrorists should be transferred to Charleston, South Carolina (or any other location within the United States). Notwithstanding the legal ambiguity associated with the transfer of long-term law-of-war detainees into the United States, my testimony today will focus on the 3 specific reasons provided by the President’s plan.

#### FIRST, RECRUITING PROPAGANDA OF VIOLENT EXTREMISTS

Guantanamo Bay no doubt serves as propaganda for terrorists, but so do statements by public leaders, the United States’ stance against terrorism, and American values generally. Terrorists have chosen to wage war on the United States based on an ideological hatred towards the American way of life, and the fundamental freedoms on which we pride ourselves. The September 11 attacks occurred before there ever was a Guantanamo detention facility, as did the first World Trade Center bombing, the U.S.S. Cole bombing, and numerous other attacks or attempted attacks on United States’ interests around the world. Moving detention operations from a secure facility outside of the continental United States and into Charleston, South Carolina will not stop the propaganda. This line of thinking is giving these terrorists too much credit and validity. Terrorists do not need a jail to hate us. They hate us all on their own.

But, what could be accomplished by moving the facility to Charleston? Well, taking the propaganda assertion as fact, Charleston will then be used in an attempt to inspire potential terrorists to join the fight. And with the increased accounts of home-grown terrorism and terrorist sympathizers around the country, we do not want to put a bulls-eye on what has been named the No. 1 vacation destination in the country for 4 years in a row simply to fulfill a misguided campaign promise.

#### SECOND, INTERFERENCE IN FOREIGN RELATIONS

As a Governor, my principal engagement outside of the United States is on the economic development front, attracting foreign investment into my State. That being said, assuming the President’s assertions are true, the question that comes to my mind is what about detention activities at Guantanamo Bay is damaging to our relationships with foreign leaders and nations?

Whether the terrorists are detained on an American military base in Cuba or somewhere in the United States, they will be held under the same legal authority, by the same country, in the same manner, for the same duration, and for the same reasons. Why does the zip code matter from a foreign relations standpoint?

Completely unrelated to physical location, maybe foreign relations concerns are due to pure negative perception because the President has been lamenting the prison facility’s existence ever since he was running for office. And if this perception does matter abroad, I would hope the leader of the most powerful and influential country in the world could brush aside the aesthetic complaints of a well-run, Geneva-Convention-compliant facility when dealing in matters of National and international importance.

## THIRD, DEPARTMENT OF DEFENSE RESOURCES

If there is one thing we can all agree the Federal Government is absolutely responsible for, it is defending the National security interests of the United States. And while the Department of Defense is not immune from fiscal waste, running a military prison to detain terrorists during an on-going armed conflict should not be high on the list of things that need to be cut.

In President Obama's plan, he states that moving the detainees to the United States could save between \$65 million and \$85 million annually. He estimates that one-time costs associated with hardening a United States structure will be between \$290 million and \$475 million, but over the course of 3 to 5 years the lower operating costs of the United States facility could fully offset these transition costs and generate at least \$335 million in net savings over 10 years. Whether or not one agrees that it is worth saving \$85 million annually to put terrorists in our backyard—and let me be clear that I do not—the estimated time frame and cost to harden a United States facility should give budget writers and policy makers great pause. South Carolina is well aware of the Federal Government's ability, or lack thereof, to maintain project time lines and cost projections, even in cases where the project is designed to address foreign relations and international agreements. One need look no further than the MOX facility at the Savannah River Site in Aiken, South Carolina, currently billions of dollars over budget and years past original completion projection dates.

## IN CONCLUSION

As the Members of this committee know better than most, National security decisions should be made with one, and only one, consideration in mind: What is in the best interests of the National security of the United States of America? While serious policy issues with no easy answers underline the long-term detention and final disposition of terrorists captured during armed conflict, the location of a United States-controlled military prison should not be determined based on loose-perception, estimates, and campaign pledges.

I again thank you for the opportunity to speak here today.

I look forward to your questions.

Mr. PERRY. Thank you, Governor Haley.

The Chair now recognizes himself for 5 minutes of questions.

We have already spent a fair amount of time today discussing the security implications of bringing Guantanamo detainees to the homeland and particularly to your State. In that vein, can you please just describe for the committee Members some of the South Carolina-specific concerns that you and law enforcement agencies under your purview would have?

Governor HALEY. You know, the first thing as a Governor I will tell you is, what does it do to the reputation of the State where you take these detainees? So here in South Carolina, where we have worked massively on bringing Made in America jobs to South Carolina, what company is going to invest in a State where they keep these heinous terrorists? They are not going to. The reason is companies look at where they are going to bring their suppliers, where they are going to bring their customers. They don't want that reputation on them as they go forward.

Now you look at the tourism aspect of it: Who is going to come vacation in a State that is now known to house these terrorists? It completely taints what we have been proud to say is the No. 1 tourist destination for 4 years in a row. But it would do this to any other State.

All of these implications are very important, and we know we are already having to stand up all of our armed bases, all of our security, because the targets right now are on servicemen and -women. You are just putting another target, but now you are going to put it on Charleston, South Carolina. It is wrong. To go and have

States now have to deal with one more issue when we are dealing with so many is wrong. Our focus now is, how do we keep our servicemen and -women safe? Because, right now, if I sit down and talk to my FBI affiliates as well as my chief of SLED, that is who we are trying to protect, because the targets are our military—any military people in uniform, any security in uniform.

Then if you go and you put it in a place like South Carolina, we are not only going to have protests, but we will also have threats that we don't have right now. Why would you move something there and cause stress on this country when, right now, this country is going through so many home-grown issues on its own to turn around and add one more to it?

Mr. PERRY. Following up on that a little bit, just to set the context. Of course, the detention facility in Guantanamo Bay is sequestered—there is not going to be any protests. Right? I mean, nobody is flying to Guantanamo Bay for recreating or whatever and then would be, you know, protesters at some point. Of course, you are not going to go there unannounced and exercise some terrorist activity. That is just not going to happen in Guantanamo Bay. So it is shielded from that by the virtue of its geography and the kind of place that it is.

Also, I just want to say, since you mentioned the military and, of course, you have a high concentration of military servicemembers in the State and in the area, thank you for your—you served with your husband as well. We appreciate—the country appreciates your sacrifices in that regard.

Can you talk at all about the costs to local law enforcement, whether it is regarding protests, whether it is regarding being prepared for any eventuality, and to not have that “failure of imagination” where either one of these individuals would get out, or someone would use the facility as a target or try and get somebody out? Can you address that at all?

Governor HALEY. You know, we can talk about costs, but you can't put a cost on fear. You can't put a cost on what it will do to a State. We looked at hate in the eye last year. We had to deal with that. Our State is still recovering from that. It is unbelievable what it will do to the people of a State when they know hate is anywhere near them. There is no cost you can put on that. What I can tell you is we have had to stand up our armed bases. We have already had to add additional security to our military, to our officials, in everything and anything we do because every State in the country now has to be more careful. But, really, cost to me is such a frivolous conversation in this whole piece of what it will do, because when you have been a State that knows what this is like, you never want to go back to that. No State should ever have to know what that fear feels like.

Mr. PERRY. Have the local law enforcement agencies in collaboration with Federal enforcement agencies done any cost estimates that you know of? Like you said, it is very difficult to quantify. But at some point, it is going to require additional—whether it is additional training, whether it is additional manpower, additional equipment, briefings, protocols. I mean, have you even begun? Based on the phone call that you said you got, have you even start-

ed down that road, and have local law enforcement officials aware of this expressed any concern to you?

Governor HALEY. We have talked to our directors, whether it be that of SLED, whether it be of DPS, whether it be of our military bases and adjutant general. Those are conversations we will have. I am prepared to spend whatever it takes to protect my people. But what I will tell you, again, is this is something that, on every level, whether it be law enforcement, whether it be military, whether it be tourism, whether it be economic development, every call that I have gotten has been: Please don't let this happen to South Carolina.

Mr. PERRY. Thank you, Governor. My time has expired.

The Chair now recognizes the Ranking Member, Mr. Thompson, for his 5 minutes of questions.

Governor HALEY. Good morning.

Mr. THOMPSON of Mississippi. Thank you very much. Again, Governor, thank you for appearing before the subcommittee this morning.

I will get to my question. Have you had any dealings with the proposed facility that they are talking about potentially transferring the prisoners to?

Governor HALEY. The Department of Defense has had no interactions with us whatsoever outside of suddenly getting a call saying that they were going to be going to the Charleston Navy Brig. That is all that we have gotten. They have not had any communication with us or told us what to expect or anything else to that effect.

Mr. THOMPSON of Mississippi. To your knowledge, are you, as Governor, spending any money from the taxpayers' standpoint in the maintenance and operation of that naval facility?

Governor HALEY. Right now, not any additional money is being spent on that facility outside of we are trying to plan on economic development issues within that area. But that has all stopped now that they have decided to come in. It would be extremely helpful if the Department of Defense would engage with us and let us know what they are doing.

Mr. THOMPSON of Mississippi. Yeah, I agree. A phone call would not be enough. But if they demonstrated that they would pick up the cost of whatever is involved, is that a concern of yours, or are there some other concerns?

Governor HALEY. They could tell me that they would pay South Carolina to house these terrorists, and I would not take them. The State of South Carolina does not want them. There is no amount of money that they can pay, whether it be cost or supplement, that would justify those detainees coming to South Carolina.

Mr. THOMPSON of Mississippi. I appreciate your opinion.

You reference what happened in Charleston relative to the unfortunate circumstances at Mother Emanuel.

Governor HALEY. Yes.

Mr. THOMPSON of Mississippi. Some of us also participated in funeral services and other things, and it was not a good day. That is the other ugly head of terrorism called domestic terrorism.

Governor HALEY. That is right.

Mr. THOMPSON of Mississippi. I compliment you and the local law enforcement for how you addressed it.

Governor HALEY. Thank you.

Mr. THOMPSON of Mississippi. Can you just for the record tell me who has custody of the young man charged with killing the people at Mother Emanuel?

Governor HALEY. He is in South Carolina.

Mr. THOMPSON of Mississippi. Is he in a Federal facility or State or a county facility?

Governor HALEY. I believe he is in a State facility.

Mr. THOMPSON of Mississippi. Do you know where? Is he in Charleston? Is he in Sumter or where?

Governor HALEY. He is in Charleston.

Mr. THOMPSON of Mississippi. So the fellow who did that heinous crime is in Charleston right now?

Governor HALEY. Yes.

Mr. THOMPSON of Mississippi. Has that posed any kind of security issues, to your knowledge, for the people of Charleston?

Governor HALEY. We won't let it pose any security issues. Right now, what I can tell you is it is a constant reminder. It is a constant reminder of what happened, what we have to deal with, as we have to know that he is there. No one wants him there. Right now, they are in the process of going forward with the death penalty.

Mr. THOMPSON of Mississippi. There is no issue on my part to pursue the death penalty at all.

Governor HALEY. Right.

Mr. THOMPSON of Mississippi. But the fact is sometimes we have difficult jobs to do that include dealing with bad people. As Governor, you and local officials are dealing with this bad person. Whatever is required to make sure that that bad person is kept in a facility where he can't harm anyone. To the extent that he is prosecuted to the fullest extent of the law, your oath of office and other things would allow you to expend whatever resources to guarantee the safety of the people in South Carolina. That is the point I am trying to get at.

Governor HALEY. Yes, sir. I appreciate your point, Mr. Thompson, and, you know, our goal is that we will deal with him as we need to deal with him. That was a home-grown issue that we will, you know, absolutely deal with.

We just don't want 80 more coming to Charleston. Dealing with one has shaken the State enough. I can't imagine what we would have to do if we had to deal with 80 of them.

Mr. THOMPSON of Mississippi. Thank you very much.

I yield back.

Governor HALEY. Thank you.

Mr. PERRY. The Chairman thanks the gentleman.

The Chair now recognizes the gentleman Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman.

Governor Haley, I apologize that the Ranking Member had to bring discussion about a deranged murderer into a discussion about Guantanamo Bay terrorists that are backed by global organizations known as al-Qaeda, ISIS, ISIL, whichever term we want to use, Boko Haram, Abu Sayyaf, and the list goes on and on of organiza-

tions that are global terrorist organizations that have a completely different mindset than individuals that are deranged and commit heinous crimes in this country.

For the record, Mr. Chairman, the Governor sent a letter to Secretary of Defense Ash Carter along with Governor Brownback on August 25, and there was also an executive order July 16, 2015, by Governor Haley after the Chattanooga terrorist attack. I would like to submit that for the record, please.

Mr. PERRY. Without objection, so ordered.

[The information follows:]

LETTER SUBMITTED BY HONORABLE JEFF DUNCAN

*August 25, 2015.*

The Honorable ASHTON B. CARTER,  
*Secretary, U.S. Department of Defense, Washington, DC 20301.*

DEAR SECRETARY CARTER: We recently received notice that the Department of Defense is surveying the U.S. Naval Consolidated Brig in Charleston, South Carolina and the U.S. Disciplinary Barracks at fort Leavenworth, Kansas to assess the possibility of housing Guantanamo Bay detainees. Simply put, we do not want them in our states.

Those who are held at Guantanamo Bay are among the deadliest terrorists in history, including the principle architect of the September 11, 2001 attacks—Khalid Sheikh Mohammed. In response to a previous attempt by this Administration to transfer these detainees to the United States in 2009, Congress unambiguously prohibited such transfers, and has extended that prohibition every year since. Any detainee transfer from Guantanamo Bay to the United States would be a violation of federal law, a law we hope this Administration will respect and faithfully execute.

South Carolina and Kansas are sovereign states with excellent military installations, and we are proud of the men and women in uniform, and their families, who sacrifice for us every single day and call our states home. We will not be part of any illegal and ill-advised action by this Administration, especially when that action relates to importing terrorists into our states. Please know that we will take any action within our power to make sure no Guantanamo Bay detainees are transferred to South Carolina or Kansas.

Sincerely,

NIKKI R. HALEY,  
*Governor, South Carolina.*

SAM BROWNBAC,  
*Governor, Kansas.*

ATTACHMENT.—EXECUTIVE ORDER NO. 2015–18

STATE OF SOUTH CAROLINA

EXECUTIVE DEPARTMENT

OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NO. 2015–18

WHEREAS, on July 16, 2015, five United States service members were killed and numerous others wounded in a domestic terrorist attack at a military recruitment and a Naval Station in Chattanooga Tennessee; and

WHEREAS, this kind of targeted, domestic attack on United States military personnel has become increasingly common in recent years and presents the threat of violence to service men and women and military facilities in South Carolina; and

WHEREAS, precautionary measures are needed to protect those service men and women who have volunteered to protect us; and

WHEREAS, immediately following the attack in Chattanooga, I ordered a full review of all South Carolina National Guard facilities and installations and ordered active shooter exercises, coordination, and training with law enforcement; and

WHEREAS, these reviews completed by the South Carolina National Guard indicate a need to further enhance security at National Guard facilities and provide more opportunities for Guardsmen to defend themselves against a threat of violence or terrorism; and

WHEREAS, as commander-in-chief of the State in accordance with Article IV, Section 13 of the State Constitution, I may take such measures as necessary in order to prevent violence to persons or property of citizens and maintain peace, tranquility, and good order, and pursuant to Section 1-3-410 of the South Carolina Code of Laws, it appears to my satisfaction that there exists a threat of violence to National Guard members and facilities in the State of South Carolina; and

WHEREAS, I may appoint such personnel that I deem necessary to assist in the detection and prevention of crime in this State, including at all store-front recruitment centers and other facilities of the South Carolina National Guard, pursuant to Section 23-1-60.

NOW, THEREFORE, pursuant to the power conferred upon me by the Constitution and Statutes of the State of South Carolina, I hereby order the Adjutant General of the State of South Carolina as follows:

1. To install security enhancements at all store-front recruitment centers and other facilities of the South Carolina National Guard as he deems necessary.
2. To identify and designate appropriate and qualified members of the National Guard, State Guard, or any civilian employees thereof to undergo specific force protection training coordinated through the South Carolina Law Enforcement Division.
3. To assign and arm those individuals who successfully complete force protection training with specific duties and responsibilities, including, but not limited to, the detection and prevention of crime at all store-front recruitment centers and other facilities of the South Carolina National Guard in this State at such times as he deems necessary.
4. To coordinate with State and local civilian law enforcement agencies for additional protection as they deem necessary.
5. To periodically issue and terminate orders to State Active Duty pursuant to Title 1, Chapter 3 for such members of the National Guard or State Guard as he deems necessary until such time as a permanent plan for force protection is implemented.

FURTHER, pursuant to Section 23-1-60, I hereby appoint those appropriate and qualified members of the National Guard, State Guard, or any civilian employees thereof who have successfully completed the force protection training coordinated through the South Carolina Law Enforcement Division to carry out the duties and responsibilities assigned by the Adjutant General of the State of South Carolina as he deems necessary to safeguard all store-front recruitment centers and other facilities of the South Carolina National Guard in this State. Such appointments do not confer general law enforcement duties or responsibilities for any other purpose.

FURTHER, I hereby direct the Chief of the South Carolina Law Enforcement Division to expedite applications for concealed weapons permits from any member of the South Carolina National Guard, in accordance with state law.

FURTHER, I hereby direct all state and local law enforcement agencies in the State of South Carolina to cooperate with the South Carolina National Guard in furtherance of this Order in accordance with state and local laws.

This order shall take effect immediately.

GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 17TH DAY OF AUGUST, 2015.

*Nikki R. Haley, Governor.*

ATTEST:

*Mark Hammond, Secretary of State.*

Mr. DUNCAN. Thank you.

Governor Haley, my understanding is there is a school in fairly close proximity to the Charleston Naval Brig, elementary school or middle school. Is that correct?

Governor HALEY. Yes. I actually spoke with the Representative from that area, and he called me yesterday and said: "Good luck tomorrow." He said: "Everybody in my area is terrified of what could happen."

Mr. DUNCAN. So we are talking about South Carolinian mothers and fathers that are considering sending their children to a school in close proximity to some of the most wanted and dangerous terrorists in the world. So thanks for pointing that out.

The letter that you and Governor Brownback sent to Ash Carter, did you all get a response on that?

Governor HALEY. I am not aware that we got a response.

Mr. DUNCAN. No response from that—

Governor HALEY. I will follow up and just confirm that, but I am not aware of a response. They have been very—they have handled this very much on their own and have not included us in the process. I have had conversations with Governor Brownback, and I have made it very clear, and I want it to be made very clear, any Governor in the country that has to deal with this, I will fight for them to make sure this doesn't happen in their State either. This is not just about South Carolina. This is about every State in the country.

Mr. DUNCAN. So, just to be clear, it doesn't sound like the administration is having any dialogue with Governors across the country that are considered—their States are considered for the Guantanamo Bay terrorists.

Governor HALEY. No, sir. What we know is that already we have had to sit there and wonder what is going to happen. But, again, the fear that it has put in every State up for—who we think is up for consideration, the fear that every State has is, what is going to happen, when is it going to happen, when is the turnaround time, what are we—and we don't have any answers for them.

Mr. DUNCAN. Well, it is interesting because the administration talks about stakeholder involvement, public input. In fact, they just denied offshore areas off the coast of South Carolina, Georgia, North Carolina, and Virginia in the next 5-year drilling plan for energy development so that our States can play a part in energy renaissance and energy security. They touted the fact that they talked to stakeholders. When 78 percent of South Carolinians that were polled wanted to see our areas opened up, the stakeholders they talked to were a very, very small group of environmentalists.

But here we have got the administration wanting to fulfill a campaign promise and bring terrorists—these aren't just criminals; These are terrorists backed by the organizations I mentioned earlier—to States, to the U.S. soil, illegally in violation of the NDAA, by the way, which is a bilateral NDAA that goes back multiple Congresses that have said the same thing, in violation of that, bring these terrorists to U.S. soil, to South Carolina, Kansas, or maybe another State, without any correspondence with the Governor? The Governor represents 4.8 million people in South Carolina. The general assembly—124 in the house, 46 in the senate—represent a combined total of 4.8 million people in South Carolina. The congressional delegation, 7 of us, represents 4.8 million people in South Carolina who overwhelmingly support your decision to stop or try to stop the administration bringing terrorists to Charleston, South Carolina.

So he will listen to a small group of environmentalists about energy issues, but he won't listen to the Governor, the general assembly, and the Congressional delegation with regard to bringing terrorists to U.S. soil? That is alarming to me.

So let me ask you this: Has there been any sort of threat assessment with regard to the Naval Brig transferring the terrorists? I believe, right now, terrorists on an island, isolated from the main-

land, very difficult to get to, very difficult for the terrorist organizations that are supporting these terrorists to free them, attack the island or whatnot; they are guarded by United States Marines, by the way. Has there been a threat assessment about that brig in Charleston and whether that is a possible target and how that would be handled that you are aware of?

Governor HALEY. So, again, we have not been given any information by the Department of Defense. What I can tell you is I look at this very much like I look at my correctional facilities. You never know what is going to happen. So if one has a medical emergency, you all of a sudden have to figure out: Okay. Where are they going to go? Which hospital is going to be there? How are we going to secure them from one point to the other? How are we going to handle everything they have to do in the process? If anything happens, and there is some sort of breakout or if they shut down the prisons or if they take over the prisons, which can happen, those are all things that we have to deal with now.

But we are dealing with those in South Carolina. Never have we thought about or can we comprehend dealing with terrorists that have done the crimes that they have done.

Mr. DUNCAN. Well, thank you for your valuable leadership on this. I would be interested to see what other Congressmen would say and what their Governors would say if their State was targeted for these terrorists. Thank you for your leadership and for being here today.

Mr. Chairman, I yield back.

Mr. PERRY. The Chair thanks the—

Governor HALEY. If I could add one point: I would dare to say any Governor, Republican or Democrat, would not want these detainees in their State.

Mr. PERRY. The Chair thanks the gentleman from South Carolina.

The Chair now recognizes the gentleman from Louisiana, Mr. Richmond.

Mr. RICHMOND. Let me just start off by saying that I know that Mr. Duncan apologized on behalf of the Ranking Member. You know, I don't think the Ranking Member needs anybody to apologize for him, but if you want to apologize, that is fine. But I am sure he can speak for himself.

The issue of bringing up Mother Emanuel and the fact that a terrorist is a terrorist is an issue that we have been raising on this side for a very long time. It doesn't matter the nationality of the perpetrator. It doesn't matter their motivation. Terrorism is terrorism no matter the perpetrator or the victim. So when we look at those 9 people that were killed, we call it domestic terrorism. The fact that you can hold a domestic terrorist means you have the ability to safely house a very dangerous person who others would want to do harm to. So you would agree that you at least have the ability to do it.

Governor HALEY. I will never question our military and our officers. We are totally capable, and I don't doubt them for a second that they are not able to do their job and able to do their job well.

I am talking about the environment you bring upon a State when you create that kind of fear. You send a chill factor into a State

that you can't put a cost on, that you can't put a reason on, that you can't give an explanation for.

I know we have the best military in the world. My military will do whatever they have to do to protect the people of South Carolina. My officers will do whatever they have to do to protect the people of South Carolina. That is not the issue. That will never be the issue.

The issue is, why do you want to bring these detainees that have done these types of terrorist acts onto American soil when you don't have to? You don't have to. I am an elected official. I had campaign promises. I know what that is about. You want to fulfill every one. It is in your heart. It is in your soul that you want to fulfill it.

I believe that President Obama had his intentions back in 2008 when he was going against Mrs. Clinton that he had a reason for saying that. These are different times. We are seeing different types of terrorism. We are seeing a different level of terrorism. It is time to rethink this and understand that those people that are doing those types of acts that we send to Guantanamo, we are sending them there for a reason. We are keeping them there for a reason.

Mr. RICHMOND. Well, let me ask you a question. In 2002, suspected terrorist Yasser Hamdi was transferred to a Naval Brig in Norfolk, Virginia, and then to a Naval Brig in Charleston, South Carolina, the same location being looked at today for some of the transfers. Did his presence cause concern? Did you even know he was there? I don't think you were Governor then, but, you know, did it create an uproar when we transferred him there?

Governor HALEY. I know that he was there, but the concern is you are not talking about 1. Not only that, this is a different day and time than it was back then. You are now looking at a time where we have seen tremendous amounts of terrorist attacks. You are looking at a time where you are now wanting to bring a different level of terrorist to South Carolina. So I don't think you can compare that one detainee that we happened to have at that time compared to the others. It is totally different.

Mr. RICHMOND. Just because of the size of the number?

Governor HALEY. Because if you go and you bring these detainees here, now the way that the element comes to the area, it will encourage more people to want to go and be in South Carolina, whether to protest, whether to join forces, whether to create home-grown terrorism. All of those things that Governors are now trying to protect from as it is, you are creating a whole new magnet for that when you do something like this. That is the concern. We now—I get SLED reports, my State Law Enforcement Division. The SLED reports we get are now watching all of the home-grown terrorists that we think we may be getting that are being trained overseas and then are coming back wanting to do something. If you go and you put these detainees in South Carolina, you have just created a magnet.

So that propaganda that you claim is in Guantanamo Bay, you are going to just move that propaganda to Charleston, South Carolina.

Mr. RICHMOND. Well, let me just say, and I am from New Orleans, tourist area very similar to Charleston. Both created, founded, because of the slave trade. So I understand tourism being a base. But I guess my ultimate question is this, is just a classic example of, I guess, all the American territories and States saying: Not in my backyard. Let's leave them in Cuba because we don't have a responsibility over there, and we don't care about how—you know, the ramifications over there. So if everybody says "not in my backyard," which is basically the argument that I hear, is: We just don't want the chaos associated with housing these bad guys.

Governor HALEY. So that would imply that all the Governors are wrong?

Mr. RICHMOND. I am just asking if that is the argument, "not in my backyard."

Governor HALEY. I think all the Governors know what this means when it is in their backyard.

So this is not me saying: Oh, put it in North Carolina or put it in Kansas, or put it—I don't want it going into any State in the country. This is not a "my backyard." This is the United States of America. This is an area that we are trying to keep safe. To bring terrorists from a place where they cannot harm anyone to an area that has populations within their States that they can harm. God forbid if one error happened, one, none of us wants that on us. None of us. We can't afford that.

For what? Why are we having this conversation? What is the urgency to move these detainees? I have yet to hear what the logical reasoning is. The propaganda is not true, because they hate us because the terrorists will always hate America. They hate our freedoms. They hate what we stand for. They hate that we are against terrorism.

So, for the tax money, the District of Columbia has never been that stickler on cutting tax dollars. I think we could help you save some money so that you can keep Guantanamo Bay open.

When you talk about the other things that this will do, there are—I just don't get it. Neither do any of the Governors across this country understand what the urgency is to move terrorists that are in a place where we know they can't touch Americans. Why do we want to put them on American soil?

Because now we not only know if they come to American soil, what sort of rights are they now going to have? We have watched the Supreme Court totally start to go down that slippery slope. We have dealt with the habeas corpus issues. We have dealt with all of that. So now what rights are we going to say that they are going to have because they are now on U.S. soil? No one has yet to be able to answer that question. Every Governor in the country wants to know what rights these terrorists are going to have and what we are going to have to deal with on that front. We deserve answers as Governors. We deserve answers to what you are trying to do to our States. The fact that no one in the Federal Government will give us those answers is an unfair assumption and an unfair thought to not allow the people of this country to speak up, because no one wants Guantanamo Bay in the United States.

Mr. RICHMOND. Mr. Chairman, I see my time has expired.

Mr. PERRY. The Chair thanks the gentleman.

The Chair now recognizes the gentleman from Georgia, Mr. Carter.

Mr. CARTER. Thank you, Mr. Chairman.

Governor, thank you for being here.

Governor HALEY. Good morning.

Mr. CARTER. Let me begin by saying I want to associate myself with your earlier testimony about this being an ill-conceived plan and that I just think it is absolutely ludicrous to think that moving these prisoners to American soil could somehow improve our National security. I just don't get it. I don't understand it at all.

I can tell you I think this is just, again, an ill-conceived plan to try to keep a campaign promise, which makes it even worse.

Governor, my question is this: I have the honor and the privilege of representing coastal Georgia, Savannah. You mentioned in your opening testimony that Charleston was the second-most favorable vacation spot behind Savannah, and that Georgia was the second-friendliest State. I wanted to make sure we got that clear.

But, nevertheless, tourism is extremely important in Charleston, extremely important in Savannah. I know it is impossible to put an economic cost, to put a number on that, but can you imagine, can you just elaborate on the impact that that might have on tourism, the driving force in our economy, in Savannah, in Charleston, and in New Orleans?

Governor HALEY. Well, first of all, send greetings to my sister State and to Governor Deal as well. I will tell you that the cost associated—who is going to take their family? Who is going to take their kids? Because if you go to where the Naval Brig is, that is where a lot of the tourist issues are. You know, if you want to go down to the market, if you want to go to look at the houses, if you want to go to all those areas, you just, as a mom, you don't take your children anywhere near where you think there could be a threat. It is the perceived idea that they don't know.

So, No. 1, tourism and conventions and all of those things would stop going to that State, and that is a big part of it. Second, you would stop having the element of TV shows. We now have Top Chef that is coming to South Carolina. Those types of questions are things that they ask because they don't want to be in a State that has any negativity to it.

Then you look at the fact that even with the economic development projects that we have done in South Carolina, I don't even know how I would begin to talk to a CEO about something like that. I don't know how I could do that, because what people don't realize is it is not just getting a plant and having them manufacture or do work. They want a place where they can bring, host their suppliers and their customers and their executives to that area. What are you going to do to Charleston when you do that?

Mr. CARTER. Sure. Last time I checked, it was my impression that the role of the Federal Government was to assist you and to help the States and to help the local governments and increase—

Governor HALEY. Protect the citizens.

Mr. CARTER. Absolutely. On that point, let me say this: You know, I have always said that the No. 1 responsibility of the Federal Government is to protect our people and our homeland. For the life of me I can't understand how this is going to do anything

except the exact opposite. But on the point of the Federal Government and their role, it seems to me like this is going to obviously—I am a former mayor and a former State legislator—and it is obvious that this is going to push more cost and more responsibility down to the States and down to the local communities. How are you going to deal with that?

Governor HALEY. It is one more thing that we will have to deal with. So not only is it going to be security and it is going to be military, it is going to be planning of medical services. It is going to be planning for should something go wrong. It is going to have to create routes and things that we to have in place. Governors have so much pressure now just in dealing with all the issues, whether it is tracking the terrorism in our State, whether it is tracking corrections and prisoners and making sure they stay in their place. This is a whole other level of threat that we would have to start doing. So trying to track the costs of this, I don't know what it is. But, again, even if it was zero, even if they agreed to pay us, cost is not an issue on this. This goes far beyond cost.

Mr. CARTER. Absolutely. I couldn't agree more. You know, to the point about—and you brought it up a number times during this testimony about protesters and about the propaganda portion of it. Obviously—and today, you know, we are an immediate newscast. I mean, this is being Tweeted right now; I can assure you. So the propaganda is a concern. It has got to be a concern of all of us. Certainly, I know it has got to be a concern of yours as a Governor.

Governor HALEY. I don't disagree with President Obama about the propaganda of Guantanamo. I think wherever you move the location, you are creating that same propaganda. It doesn't change anything.

Mr. CARTER. Not at all. Well, again, let me thank you for addressing this and for making the point succinctly that you have that it doesn't matter what State this is. It doesn't matter what city this is. We don't need this on our homeland. The No. 1 responsibility of the Federal Government is to protect our homeland, not to bring these people over here. Don't we understand that? That is what the people are saying. No. We don't want them over here.

Governor HALEY. I will stand side-by-side with any Governor that has to deal with this.

Mr. CARTER. Thank you, Governor. Thank you for your testimony.

Mr. PERRY. The Chair thanks the gentleman.

The Chair now recognizes the gentleman from Georgia, Mr. Loudermilk.

Mr. LOUDERMILK. Thank you, Mr. Chairman.

Thank you, Governor, for being here. Just as a side note, all of my family is from Walhalla, South Carolina. So there you go.

Governor HALEY. We will take good care of them.

Mr. LOUDERMILK. All right. Could you answer in your opinion, why are we currently keeping the detainees at Guantanamo Bay instead of originally just bringing them to the United States?

Governor HALEY. I mean, I think if you look at what the thought process was, anyone that was involved in a terrorist act or anyone that could possibly—that was in more, that could possibly do some-

thing of a terrorist attack, we put them there for a reason, and that was to keep the people of the United States safe.

Mr. LOUDERMILK. Because they are threats to the——

Governor HALEY. Because they are absolutely to the American people.

Mr. LOUDERMILK. So the idea was to keep them off of U.S. soil in the case of escape or any other action. In fact, speaking of escapes, they do happen. In 2010, we had 2,500 escapes in the United States. In 2011, 3,100. In 2012, 2,500. In 2014, over 2,000. So escape is something that we must be concerned about.

Governor HALEY. It is something that we deal with in South Carolina and every Governor deals with across this country.

Mr. LOUDERMILK. The Ranking Member brought up the case of the shooting in South Carolina. That was an American citizen who was under your legal jurisdiction. Correct?

Governor HALEY. That is correct.

Mr. LOUDERMILK. So we would be adding more perpetrators into your State that aren't necessarily under your jurisdictional boundary.

Governor HALEY. That is exactly right.

Mr. LOUDERMILK. Increasing the threats of which we already have threats in this Nation.

There is another aspect of this: Is Charleston or South Carolina ever susceptible to natural disasters?

Governor HALEY. Yes, of course.

Mr. LOUDERMILK. Such as hurricanes?

Governor HALEY. Yes.

Mr. LOUDERMILK. Has the administration addressed at all an evacuation plan or the security risk should you have to evacuate a detention facility in the case of a hurricane?

Governor HALEY. Well, we would have to do that. If that happened, we would have to certainly figure out how we were going to do that. That, again, creates not only more security, but where do you go? What do you do with a terrorist like that?

Mr. LOUDERMILK. Yeah. Of course, that would have an impact on you—not only the cost to the State but taking resources away that should be there helping citizens of South Carolina to escape the disaster.

Governor HALEY. The problem is, what answer do I give to the people of South Carolina? Because those are the questions they are going to have. No answer I can give them is ever going to be good enough.

Mr. LOUDERMILK. There is one other area that this brings a threat that I haven't heard many talk about. That is the threat of additional terrorist attacks because you are housing known terrorists. If you recall the Garland, Texas, terrorist attack, that was because there was an art competition that they felt was offensive to Muslims. So there was an attack in Garland, Texas. Would you anticipate that ISIS, al-Qaeda, Hamas, Hezbollah, we can go down the list of those that threaten the United States and our security, our safety, our people, would that not increase the risk of soft-target attacks in South Carolina because you were housing known terrorists?

Governor HALEY. I think that was—I was respectfully trying to tell the Ranking Member and Mr. Richmond exactly why that is a concern, is because if it is there, we already—I am already dealing with FBI and SLED on issues that we know we may have in South Carolina and watching people who may want to do things in relation to all of those terrorist groups. If we housed anything in a State, that is going to be more of a reason for them to want to go to that area to do something in that area to help get that person out or to make a statement.

Mr. LOUDERMILK. Do you know if anyone has—any detainee has ever escaped from Guantanamo Bay?

Governor HALEY. Not that I am aware of.

Mr. LOUDERMILK. Do you know if any detainee—or there has ever been an attempted terrorist attack against the U.S. military facility at Guantanamo Bay?

Governor HALEY. Not that I am aware of.

Mr. LOUDERMILK. What would your assessment be if there was an escape in Guantanamo Bay? Would that person be a direct threat to citizens of the United States other than our U.S. military there?

Governor HALEY. It is the whole reason they are there, so that they are not. It is to protect the rights, the freedoms, and the lives of United States citizens.

Mr. LOUDERMILK. So Guantanamo Bay is working.

Governor HALEY. It is working, and it has been working. Why we are having this conversation, it just baffles me.

Mr. LOUDERMILK. There are certain things that this Government and this administration does that baffles a whole lot of people of the United States. But being baffled and being threatened, your life, your liberty, your security, and your family is a totally different aspect. That is what I cannot understand why we want to change something that is working and put your State at risk.

I see I am out of time, and thank you, Mr. Chairman.

Thank you, Governor.

Governor HALEY. Thank you.

Mr. PERRY. The Chair thanks the gentleman.

The Chair now recognizes the gentleman from New York, Mr. Katko.

Mr. KATKO. Thank you Governor. It is a pleasure to have you here today. I too have family—I am from Syracuse, New York, not New York City, Syracuse, upstate New York, and I too have family in Charleston. So—

Governor HALEY. Oh, great.

Mr. KATKO. Been there many times to Wild Dunes and also to Kiawah, and it is just an outstanding place.

Governor HALEY. Beautiful. Beautiful areas. Thank you. Visit often.

Mr. KATKO. But I want to talk to you about a couple of things. I want to kind of get a feel from you, if I may, as to what degree has the administration consulted with you or worked with you while evaluating the suitability of Charleston for a site for their—possibly—a site for these detainees. So, in 2015, they did a survey. Did they work closely with you, or did they work with you at all on that?

Governor HALEY. Everything that they have done they have done on their own. The only thing they did was call us and let us know they would be visiting Charleston, which was the first we heard of, to go look at the Naval Brig.

Mr. KATKO. Are you telling me here that they made no effort to try and get input from you about this possible transfer of detainees?

Governor HALEY. No. So what that has done to not only me but every other Governor that is possibly looking at this, it has left us without any information to share with our constituents or any way to defend ourselves against the possibility of these detainees coming to our State.

Mr. KATKO. Just so I am clear, so they never spoke to you at all about the potential economic costs of bringing them to Charleston?

Governor HALEY. They did not.

Mr. KATKO. Did they talk to you at all the possible security concerns that may emanate from bringing these detainees to Charleston?

Governor HALEY. They did not.

Mr. KATKO. Did they talk to you at all or consult you at all, give you any heads-up or any input at all regarding the potential for Charleston becoming a target if the detainees are put there?

Governor HALEY. They have not given us any information to provide any comfort whatsoever.

Mr. KATKO. Well, that seems particularly outrageous, given the fact that there is a wealth of information about—I am on the Homeland Security Committee as a whole, and I have done a lot of work with respect to ISIS. One thing is for sure, like you said earlier, there is a totally different threat dynamic now than it was even 10 years ago in this country. ISIS and affiliated groups are radicalizing Americans over the internet to do violence at home without ever leaving. When they can use something like this to foment that violence, they most likely will. I am shocked that they wouldn't even at least talk to you or share any input with you about that.

Governor HALEY. No. We would welcome them talking to us because we would understand at least where we are in this situation and why they would consider the Naval Brig or even if we are still up for consideration. We have got no input whatsoever.

Mr. KATKO. That seems particularly outrageous to me. Now just switching gears briefly, isn't it true that this is a medium security facility, the Naval Brig?

Governor HALEY. Yes.

Mr. KATKO. Okay. So it is not even a max facility?

Governor HALEY. We would obviously have to do some things to it, and I guess, maybe, the Department of Defense has figured out how to do that, but they have not shared that.

Mr. KATKO. So I was a Federal prosecutor for 20 years, an organized crime prosecutor, prosecuting cartel-level drug traffickers. I can tell you, there is a slew of individuals that I prosecuted that are in maximum facilities for much less egregious crimes than what these individuals have committed against the United States.

It is shocking to me that we have different grades in the Federal system: Medium, max, super max. To think about bringing prob-

ably perhaps the most dangerous individuals in the world to a medium-security facility, and then spend the extra money to upgrade that facility is perplexing, to say the least.

Governor HALEY. I agree.

Mr. KATKO. Now, have you ever considered—have you consulted with anyone about possibly taking legal action to stop this from happening, given the fact that it is illegal currently under the law for the United States to expend any money to transfer individuals from Guantanamo Bay to the United States?

Governor HALEY. Well, Governor Brownback and I both sent letters, because at the time, the word was that it was Kansas and South Carolina were the two States that were being strongly considered. So we sent a letter to Secretary Carter to let him know that we absolutely didn't want to have this happen. But, again, we have not heard of anything.

Should we hear something, I will absolutely fight. I will absolutely sue. I will absolutely do whatever we need to do to protect our State. Like I said, Republican or Democrat, I will stand with any Governor that has to go through this, because I know the fear that it can put in the minds of the people of their State, but I also know the security concerns that that Governor would have.

Mr. KATKO. Last, it is true, is it not, that the vast majority, if not all of these detainees, are most likely facing a military tribunal, if any at all?

Governor HALEY. I think so, yes.

Mr. KATKO. Isn't it true that Guantanamo Bay is a military facility?

Governor HALEY. Yes, it is.

Mr. KATKO. So what are we doing?

Governor HALEY. I don't know. If you ever find out or talk to the Department of Defense—please do—we would love that information.

Mr. KATKO. I am not sure we will get an answer, but thank you very much, and I appreciate your time.

Mr. DUNCAN. Would the gentleman yield the remaining time?

Mr. KATKO. I will.

Mr. DUNCAN. In response to the Governor's question about a legal case, I filed a bill that gives the House of Representatives standing in court. If the President does violate the NDAA law and brings Guantanamo Bay terrorists to U.S. soil, the bill that I filed, H. Res. 617 would give Paul Ryan and the House of Representatives standing to stop this through legal means. I would ask the gentleman to sign on.

Thank you for your time. I yield back.

Mr. PERRY. The Chair thanks the gentleman.

The Chair also thanks Governor Haley for her valuable testimony, and the Members for their questions.

First panel, Governor, you are excused.

Governor HALEY. Thank you.

Mr. PERRY. The Clerk will prepare the witnesses' table for the second panel. Thank you.

[Recess.]

Mr. PERRY. All right. Everybody, thank you very much. We will reconvene.

The Chair asks unanimous consent that the gentlelady from Kansas, Ms. Jenkins, be allowed to sit on the dais and participate in this hearing.

Without objection, so ordered.

The Chair will now introduce our witnesses for the second panel. We will be a little out of order for administrative purposes here. We will start with Sheriff Michael Bouchard—is that correct?

Sheriff BOUCHARD. Yes, sir.

Mr. PERRY [continuing]. The sheriff of Oakland County, Michigan, where he leads one of the Nation's largest sheriff's offices, overseeing 1,300 employees, and managing an annual budget of over \$140 million. Sheriff Bouchard is testifying on behalf of the Major County Sheriffs' Association. The Association is a professional law enforcement association of elected sheriffs representing counties or parishes with a population of 500,000 or more. Its membership represents over 100 million Americans.

Mr. Ken Gude is a senior fellow at the Center for American Progress. He has served in numerous roles at the Center since its founding in 2003. Previously, Mr. Gude was a policy analyst at the Center for National Security Studies.

At this point, the Chair yields to the gentlelady from Kansas, Ms. Jenkins, to introduce our second witness on this panel.

Ms. JENKINS. Thank you, Mr. Chairman, for allowing me this great opportunity to introduce Mr. Thompson, the Leavenworth County attorney in the Second Congressional District in the great State of Kansas.

Mr. Thompson is a Kansan in every sense of the word. He is a Leavenworth native, and his family dates back 150 years in Leavenworth. He graduated from the University of Kansas, and went on to graduate from Washburn University School of Law, both phenomenal universities in the Second District. His knowledge of the impact that a detainee transfer may have on Leavenworth and the entire region stems from his time as the top law enforcement official in Leavenworth County, and it will provide much-needed context and insight into this process.

I thank him for taking his time to come to Washington and sit before this subcommittee to answer questions. I have full faith in his ability. He will help Congress and the President, I think, better understand the implications and the repercussions of such a transfer.

Thank you, Mr. Chairman. I yield back.

Mr. PERRY. The Chair thanks the gentlelady from Kansas, Ms. Jenkins.

Thank you, all, for being here today.

Mr. PERRY. The Chair recognizes Sheriff Bouchard for an opening statement.

**STATEMENT OF MICHAEL J. BOUCHARD, SHERIFF OF OAKLAND COUNTY, MICHIGAN OAKLAND COUNTY SHERIFF'S OFFICE, TESTIFYING ON BEHALF OF THE MAJOR COUNTY SHERIFFS' ASSOCIATION**

Sheriff BOUCHARD. Thank you, Mr. Chairman, Ranking Member Thompson, and distinguished Members of the subcommittee.

I am, as mentioned, Michael Bouchard. I am sheriff of Oakland County. I have been in law enforcement for almost 30 years and run one of the largest sheriff's offices in America. As vice president in charge of government affairs for Major County Sheriffs' Association, I am here to testify on their behalf.

Far too often, local law enforcement is not consulted ahead of policy decisions that have direct consequence and implications for our communities. Despite years of conversation about closing GTMO, transferring detainees, at no single point has the administration requested our perspective on this topic.

As constitutionally-elected officials, MCSA is adamantly opposed to any effort to close GTMO and transfer detainees to U.S. soil. The nature of violence in America and around the world has evolved in the expansion of encryption, social media for mass propaganda, inspiration for lone-wolf attacks, and selective recruitment has exponentially grown.

Securing a homeland cannot be an afterthought. Law enforcement regularly and proactively plans and practices for the unthinkable. After the attacks in Mumbai, I contacted all of the chiefs in my AOR and called on us to train together on a regular basis for just such a scenario.

A detainee housed in the backyard of an ISIS sympathizer would be a powerful inspiration for a lone-wolf attacker and for the recruitment. We know ISIS has gone so far as to suggest targets, even in my county where they published a suggested kill list with home addresses. Clearly, a community that houses prisoners from GTMO could easily be added to such a list. Prison radicalization and recruitment is on-going and a big concern. The same context that is applied to Federal prisoners must be applied to GTMO detainees, no matter if they are housed in a military facility or not.

Going back as far as 2003, BOP Director Harley Lappin testified before the Senate that we know inmates are particularly vulnerable to recruitment by terrorists.

The September 2015 former detainee summary report issued by the ODNI reported that 30 percent of former GTMO prisoners are confirmed or suspected of being back in terrorism. Additionally, just a few months ago, Spanish and Moroccan authorities arrested 4 suspected ISIS affiliates, including 1 described GTMO detainee.

With higher recidivism and the proclivity for extreme violence, releasing or transferring any additional detainees is simply counterintuitive. Even in the increased threat environment, law enforcement has continually been asked to do more with less. Local law enforcement does not have the necessary funds and, most recently, the life-saving equipment to properly address National security implications associated with transferring detainees to the United States.

Grant programs, such as UASI, work to address those gaps with local agency capabilities; however, over the years, we have seen a steady decline in those funding. Most recently, President Obama's fiscal year 2017 budget cut UASI by 45 percent.

The LESO military surplus program and Federal grant programs are great examples of Federal partnership with local communities. However, through executive action, not legislation, this administra-

tion recalled 1033 military surplus equipment and placed burdensome rules on others.

On the very same day San Bernardino terrorists attacked our Nation, in one of the worst attacks since 9/11, my office received an order that returned an armored personnel carrier to the Federal Government to be destroyed. The police in San Bernardino said “the terrorists came prepared today.” On that day, America became less prepared because of that Executive Order.

GTMO-housed detainees in U.S. facilities would present an extraordinary burden on the local community. Sheriff McMahon, a friend of mine in San Bernardino, has already incurred a \$350,000 overtime bill from that one event and a \$19 million expenditure.

When emergencies arise, Federal officials in military are not the first responders. It is the locals. Local must practice, prepare, train, and equip to deal with any situation, and bringing people here will necessitate that expenditure. That means significant investment, planning, training, and equipment, and all of these unreimbursed costs have been ignored in the so-called saving effort.

Protests against, around, or at those facilities outside of the wire would be a local responsibility and cost, as would an escape. We have always sought to be a positive source of ideas and collaboration, and we applaud the subcommittee’s interest in hearing our thoughts.

Mr. Chairman, I thank you for the time, and I would be happy to answer questions.

[The prepared statement of Sheriff Bouchard follows:]

PREPARED STATEMENT OF MICHAEL J. BOUCHARD

APRIL 28, 2016

Chairman Perry, Ranking Member Watson Coleman, distinguished Members of the subcommittee, thank you for the invitation to discuss local law enforcement’s perspective regarding the implications of transferring Guantanamo detainees to the homeland. Today’s hearing is timely and much-needed; far too often local law enforcement is not consulted ahead of policy decisions that have direct and potentially dire and dangerous implications for our local communities.

I am currently serving my fourth 4-year term as sheriff and have been in law enforcement for almost 30 years. I run one of the largest sheriff’s offices in the country where I oversee 1,300 employees and manage an annual budget of over \$141 million. We provide police, jail, and court services for over 1.2 million people and nearly 1,000 square miles. In addition to serving the people of Oakland County, I am also the vice president of government affairs for the Major County Sheriffs’ Association of America (MCSA). I am here testifying on their behalf. The MCSA is an association of elected Sheriffs representing our Nation’s largest counties with populations of 500,000 people or more. Collectively, we serve over 100 million Americans.

As constitutionally-elected law enforcement officials, the MCSA is adamantly opposed to any effort to close the U.S. detention facility on the Guantanamo Bay Naval Base and transfer detainees to U.S. soil. More so now than ever before, our Nation is facing increasingly sophisticated threats from abroad and from within. Given the evolution of the threat environment, State and local law enforcement—in conjunction with our Federal partners—are at the forefront of keeping our homeland secure. It goes without question that any effort to transfer Gitmo detainees to U.S. soil has immense National security implications.

The current threat environment from ISIS and other international terror groups cannot be underestimated. The nature of violence in America and around the world has evolved as has the expansion of encryption, use of social media for mass propaganda, inspiration for lone-wolf attacks and selective recruitment. It is no secret that social media has played a primary role in the unprecedented uptick of ISIS sympathizers and disciples. Through the George Washington University Program on Extremism, over 300 American and/or U.S.-based ISIS sympathizers have been

identified on-line as actively spreading propaganda.<sup>1</sup> Since March 2014, 85 individuals across 24 States have been charged in the United States with offenses related to ISIS and it has been reported that since the fall of 2015, roughly 250 Americans have traveled or attempted to travel to join ISIS.<sup>2</sup>

Law enforcement is the first group to respond to areas in times of emergency, with the great responsibility to act quickly and effectively in times of terror and uncertainty. Securing the homeland cannot be an afterthought—law enforcement regularly and proactively prepares for the unthinkable and as the threat picture and nature of violence has evolved, so too has local law enforcement. After the attacks in Mumbai, I contacted all the chiefs in my area of responsibility and called on us to train together on a regular basis. Further, we needed to train on the same tactics so we could respond and meld together immediately should a similar scenario develop here. Local police now are directly responsible for responding to the changing threat matrix.

Law enforcement officials' ability to lawfully access digital evidence has been severely hamstrung by technological advancements and non-technological barriers to access. We in the law enforcement community find ourselves in a new age where criminals and terrorists enthusiastically operate beyond the confines of the law through encrypted networks, applications and mobile devices. The encrypted applications used for preplanning and coordination among the Paris attackers may have prevented the advance detection of the attacks, but the cell phone of one of the terrorists recovered outside the Bataclan theater helped investigators apprehend the ringleader of the attack, Abdelhamid Abaaoud. When law enforcement officials identified Abaaoud's cousin in the phone's call list and her location, Abaaoud was finally located.<sup>3</sup> It was later confirmed that Abaaoud died in the detonation of a suicide bomb during the raid.

Unnecessarily increasing the threat outlook by transferring dangerous detainees puts our local communities at risk. A detainee housed in the backyard of an ISIS sympathizer would be powerful inspiration for a lone-wolf attack and/or further recruitment—an unwarranted and avoidable inspiration. We know that ISIS even goes so far as to suggest targets. In my county, ISIS published a list of military members as a suggested kill list. Clearly, a community that houses prisoners from Guantanamo Bay could be easily added to such a list. Additionally, internal prison recruitment poses a significant and complex challenge.

As the uptick of indicted ISIS-related offenses increases, additional attention must be given to radical recruitment efforts in prison. The same context that is applied to Federal prisoners can also be applied to Guantanamo detainees, no matter if they are housed in a military facility. In 2011, the House Homeland Security Committee under the leadership of Congressman King (R-NY) examined post-9/11 U.S. prison radicalization cases in which converted Muslims were radicalized to Islamism in American prisons and upon release, attempted to launch terror attacks in the homeland.

Kevin James, a radicalized former Nation of Islam adherent, formed Jam'iyyat Ul-Islam Is-Saheeh (JIS) while at Folsom State prison and recruited fellow prisoner, Levar Washington who proclaimed to be inspired to convert to Islam after the success of 9/11.<sup>4</sup> While in prison, James developed a target list for parolee Levar which included LAX, a military recruiting station and a Jewish children's camp—James was later convicted of seditious conspiracy to levy war against the United States. Another case example involves Jose Padilla. Padilla converted to radical Islam in a Florida jail, moved to the Middle East where he joined al-Qaeda, spent time at a military training camp and was sent back to the United States in 2002 to carry out a radioactive dirty bomb attack.<sup>5</sup>

Prison radicalization and recruitment is an on-going concern. Former director of the Bureau of Prisons, Harley Lappin, testified back in 2003 before the Senate Judiciary Subcommittee on Terrorism, Technology, and Homeland Security where he stated, "We know that inmates are particularly vulnerable to recruitment by terrorists and that we must guard against the spread of terrorism and extremist ideologies. In addition, our institutions work closely with the Local Joint Terrorism

<sup>1</sup> <https://cchs.gwu.edu/sites/cchs.gwu.edu/files/downloads/ISIS%20in%20America%20%20Full%20Report.pdf>.

<sup>2</sup> <https://cchs.gwu.edu/sites/cchs.gwu.edu/files/downloads/ISIS%20in%20America%20%20Full%20Report.pdf>.

<sup>3</sup> <http://www.nytimes.com/2016/03/20/world/europe/a-view-of-isis-evolution-in-new-details-of-paris-attacks.html>.

<sup>4</sup> <https://homeland.house.gov/press/background-information-prominent-post-911-us-prison-radicalization-cases/>.

<sup>5</sup> <http://www.chicagotribune.com/news/chi-jose-padilla-prison-sentence-20140909-story.html>.

Task Forces (JTTF) to share information and intelligence about these inmates.”<sup>6</sup> Many of our MCSA members devote both personnel and resources to these JTTFs without Federal reimbursement.

Influential radicalized inmates pose a series of complex challenges to law enforcement officials—they can encourage other prisoners, upon release, to go to specific locations in an effort to further their extremist ideologies and can urge inmates to incite violence within the facility posing a substantial risk to prison security. Should those influential radicalized inmates or Gitmo detainees be released, additional scrutiny would need to be applied given the rate of recidivism.

In the September 2015 “Summary of the Reengagement of Detainees Formerly Held at Guantanamo Bay, Cuba” issued by the Office of the Director of National Intelligence (ODNI) it was reported that 30 percent of former Guantanamo prisoners are confirmed or suspected of reengaging in terrorism.<sup>7</sup> Additionally, just a few months ago, Spanish and Moroccan authorities arrested 4 suspected ISIS affiliates—including 1 described as a former Gitmo detainee.<sup>8</sup> With a high recidivism and penchant for extreme violence, releasing or transferring any additional detainees is simply counterintuitive.

With an increased threat environment, law enforcement has continually been tasked to do more with less. Cost implications coupled with a heightened security environment is simply unsustainable. In an era of deep budget cuts and lack of Federal funding, State and local law enforcement does not have the necessary funds, and most recently the necessary life-saving equipment, to adequately address the National security implications associated with Gitmo detainees being housed within U.S. facilities.

Grant programs such as the State Homeland Security Grant Program (SHSP) and the Urban Areas Security Initiative (UASI) work to address gaps in local agencies’ capabilities for responding to terrorist threats. Other programs such as the Edward Byrne Memorial Justice Assistance Grant Program (JAG) have a broader focus of providing critical funding to support a range of different program areas. Over the past few fiscal years, law enforcement has seen a steady decline in Federal grant funding and most recently, President Obama’s fiscal year 2017 budget request cut UASI funds by 45 percent. The amount of monies we receive for these new and evolving threats is a trickle at best.

The Law Enforcement Support Office (LESO) military surplus and Federal grant programs are examples of a good partnership between the Federal Government and local government entities. It is fiscally responsible and assists in equipping our Nation’s law enforcement with equipment that saves lives. In areas of our Nation that are fiscally stressed, it is potentially the only way their law enforcement officers would ever receive that type of support. The transfer of equipment from Federal inventory saves taxpayers a significant amount of money, simply because Federal surplus items have already been purchased once. In fact, many of the same items that they receive through Federal assistance programs have been used by law enforcement agencies for decades.

Through executive action and not legislation, the administration has recalled certain 1033 controlled military surplus equipment. While the ultimate goals of law enforcement remain the same: To protect the public; to solve, deter, and respond to criminal acts; and to enforce the law in a responsible and Constitutional manner, the administration has sought to inappropriately legislate through perception at the cost of public safety. On the very same day as the San Bernardino terror attack—our Nation’s worst attack since 9/11—my office received an order to return our armored personnel carrier back to the Federal Government. The recall of certain types of controlled equipment will undoubtedly leave America’s law enforcement less prepared and at a disadvantage to protect local communities against terror attacks and dangerous situations.

Guantanamo detainees housed in U.S. facilities would require an exorbitant amount of resources from State and local law enforcement agencies. Resources ranging from manpower associated with hospital watch, medical and/or court transfers, to a coordinated escapee and riot response plans. Local law enforcement would also be tasked with preparing and responding to any protestors or sympathizers outside of the facility gates and into our local communities. When an emergency arises, Federal officials and the military are not the first to respond—local law enforcement are and as such, need to be adequately prepared to properly address the situation at hand. That means both a significant investment in planning, training, and equip-

<sup>6</sup> [https://www.judiciary.senate.gov/imo/media/doc/lappin\\_testimony\\_10\\_14\\_03.pdf](https://www.judiciary.senate.gov/imo/media/doc/lappin_testimony_10_14_03.pdf).

<sup>7</sup> [https://www.dni.gov/files/documents/September\\_2013\\_GTMO\\_Reengagement\\_UNCLASS\\_Release\\_FINAL.pdf](https://www.dni.gov/files/documents/September_2013_GTMO_Reengagement_UNCLASS_Release_FINAL.pdf).

<sup>8</sup> <http://www.haaretz.com/middle-east-news/1.705003>.

ment by the affected local jurisdictions. Some have lauded the closure of Gitmo as a cost-saving measure, but that is most assuredly short-sighted—both from a National security and taxpayer perspective. Additionally, with the recent efforts to transfer detainees to other countries the argument that so few are left it only makes sense to close the base is neither subtle nor supported.

As stewards of the rule of law, the MCSA respectfully reminded the President that he signed 2 separate pieces of legislation into law that explicitly bar the use of funds to transfer, release, or assist in the transfer or release of Gitmo detainees to or within the continental United States.<sup>9</sup> In compliance with current law and in full understanding of the inherent National security risk, MCSA believes Gitmo detainees should, under no circumstance, be brought to the homeland where they will pose a threat to the communities we serve.

For many years politicians and pundits have discussed the closure of Gitmo and at no single point has the administration requested local law enforcement's perspective or opinion on the matter. MCSA has always sought be a positive source of ideas and collaboration and we applaud the committee's interest in our unique perspective as the chief elected law enforcement officials in America. Speaking on behalf of our robust membership, we are committed to the protection of our communities and believe the closing of Guantanamo Bay poses an unnecessary threat to the safety of the citizens we are sworn to protect.

Mr. PERRY. The Chair thanks the gentleman.

The Chair recognizes Mr. Gude for an opening statement. Correction—no, we will go ahead with that. It is on the script here. We will go with that.

**STATEMENT OF KEN GUDE, SENIOR FELLOW, NATIONAL SECURITY, CENTER FOR AMERICAN PROGRESS**

Mr. GUDE. Thank you, Mr. Chairman.

I know that you are an Iraq War veteran and a general officer of Reserves, and I want to thank you for your service.

Mr. Richmond and Mr. Duncan, I appreciate you being here for this hearing today.

I think it is an incredibly important hearing that we spend time talking about the facts associated with the implications of bringing Guantanamo detainees into the United States.

First, I want to say that I do agree with President Obama that closing Guantanamo would advance the National security interests to the United States. That is not just an opinion that President Obama came up with in his campaign; it was a broadly shared view from senior Government officials, National security officials of both parties in 2007, 2008, and 2009.

George W. Bush, in his memoir, wrote about the necessity of closing Guantanamo. Then-presidential candidate John McCain, his plan to close Guantanamo would have moved all of the detainees to Fort Leavenworth in 2009. A host of other very high-ranking former officials agree with the necessity for closing Guantanamo. Colin Powell reiterated just this year how necessary it was.

So I want to go off script a bit, as you, Mr. Chairman, did in your remarks, and express my sincere disappointment that you would so casually impugn the integrity of our military officers and the men and women serving in the Pentagon, that they would be presenting their—what is not their full judgment to this administration, that it is in the National security interests of the United States to close Guantanamo.

I think you owe them an apology. I don't think that you, when you were serving, would be clouding your judgment based on the

<sup>9</sup>[http://www.mcsheriffs.com/pdf/news/mcsa\\_gitmo\\_closure\\_letter\\_to\\_potus.pdf](http://www.mcsheriffs.com/pdf/news/mcsa_gitmo_closure_letter_to_potus.pdf).

political imperatives that you felt from your superiors. I feel like that kind of a comment is indicative of why it is so difficult for us to have a reasoned debate and a reasoned analysis of this issue. It is a critical National security issue.

Now, looking at assessing whether or not Guantanamo detainees or international terrorists inside the United States prisons or inside secure military facilities would present a risk to the United States, we don't have to speculate. We have the wisdom of experience. I think it would surprise everyone here in this room, everyone watching on TV, everyone following this debate, to learn that it was a Republican President who first brought a Guantanamo detainee to the United States.

Yasser Hamdi, in 2002, was transferred first to Virginia, and then to Charleston, the very subject of the first panel. It is unclear to me why that was not the same kind of incredible security risk that Governor Haley and the Members of this subcommittee seemed to indicate it was in the first panel when Yasser Hamdi was held in Charleston for 2 years.

Not only was Yasser Hamdi held in Charleston, but Jose Padilla. This is a man that was accused of trying to detonate a radiological dirty bomb in the United States, as well as Ali al-Marri. They are the 3 detainees that were held in Charleston for almost the entirety of the Bush administration. There was no uproar about it at the time. There were no protestations from Governor Sanford to the Bush administration, or to Congress, that those detainees in Charleston represented the kind of security risk that we heard this morning.

The notion that in 2002 still in the shadow of the horrific attacks of 2001 that brought down the World Trade Center and attacked the Pentagon, that we faced somehow a lesser threat than we do now, I find very hard to believe. The detainees in Charleston are not the only ones. We have at least 11 States and the District of Columbia since 9/11 which have housed very high-ranking senior and extremely dangerous international terrorists at maximum-security prisons, or in secure prison facilities.

It was alluded to in the Ranking Member's opening statement that just 15 miles from here, right now the accused ring leader of the Benghazi attack is sitting in an Alexandria prison awaiting trial. He has been there for almost 2 years. There has been no protest. There has been no political controversy surrounding that particular aspect of the Benghazi attack, yet the notion that bringing Guantanamo detainees into the United States in a very similar situation presents an unacceptable risk is hard for me to understand and hard for me to fathom.

I would just close with one last comment about the implications for State and local officials. Certainly, there is emergency response planning that these officials have to deal with on a day-to-day basis for almost every eventuality. The notion that Pentagon officials, Defense Department officials, and the city of Charleston and State of South Carolina have not prepared for the possibility that the Charleston Naval Base will have to be evacuated because of a hurricane strikes me as hard to believe.

Simply because there could be Guantanamo detainees there now, as there were Guantanamo detainees there for a number of years

before, doesn't change the fact that they have all done these kind of plans.

With that, I will conclude my opening statement, and I look forward to your questions. Thank you.

[The prepared statement of Mr. Gude follows:]

PREPARED STATEMENT OF KEN GUDE

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 UNITED STATES 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 2½ 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 2 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 7-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 5 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 5 years at Supermax.

#### TERRORISTS HELD AS MILITARY DETAINEES IN THE UNITED STATES

In addition to Yassir Hamdi, 2 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 on-going 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 3.

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 15 years in prison, including the 7 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 Ghailani, 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 4 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. On-board 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 10 miles from the United States Capitol in an Alexandria prison cell for nearly 2 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, Suliaman 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 Youssef, 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, Wadhi 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 5 years in Virginia before he was sent to Supermax in 2006 to serve a life sentence.

The 2 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 pled guilty in Federal court in Boston and was sentenced to 3 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 pled guilty in Federal court in Detroit and was sentenced to 4 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 3 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 1 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.

Mr. PERRY. The Chair thanks the gentleman.  
The Chair now recognizes Mr. Thompson for his statement.

**STATEMENT OF TODD THOMPSON, COUNTY ATTORNEY, LEAVENWORTH COUNTY ATTORNEY'S OFFICE, LEAVENWORTH COUNTY, KANSAS**

Mr. THOMPSON. Chairman Perry, esteemed subcommittee, I would like to first thank our veterans as well as those that have worked in Guantanamo Bay.

Also, I would like to thank our law enforcement officers and particularly Representative Jenkins for giving me this opportunity to speak today.

Today, I speak on behalf of Leavenworth, and I thank you for that opportunity. I speak to the President's desire to close Guantanamo Bay detention facility, and the impact it would have on communities, particularly Leavenworth.

Today, I want to focus on issues of concern: First, the lack of communication by the Department of Defense and the Obama administration; second, I would like to talk about the security implications for the Kansas City Metro area and to the detainees if they were transferred there; and third, I would like to talk about the implications to the mission of Fort Leavenworth.

As county attorney, I am the chief law enforcement officer, and I am tasked with prosecuting criminal offenses and protecting the safety and welfare of the community. It is always important to me to have as much information as possible in making any decision regarding the community's safety.

The Department of Defense has done a site survey for Fort Leavenworth, but it has failed to share any of the information with any of the local officials. Without this information, my community has no way to prepare for the economic burden or the potential threats it may receive from housing any detainees from Guantanamo Bay.

Fresh memories of the attacks of San Bernardino, Paris, and Brussels demand that communities remain on guard for terrorist threats. If the detainees were placed in Leavenworth, it would make our community a high-priority target.

In 1997, Mohammed Salameh, a convicted perpetrator of the 1993 World Trade Center bombing, was housed in a Leavenworth penitentiary. The prison became a terrorist target and received several letter bombs. Our own law enforcement, as well as National law enforcement, had to expend significant resources to respond to this threat. To build a new facility in Fort Leavenworth, it would cost \$91 million and take 3 years, and that is comparison from the previous facility that was built 10 years ago.

Paul Lewis, the Department of Defense special envoy for the closure of Guantanamo Bay, has said that any facility for housing the detainees would require adequate medical facilities. Fort Leavenworth does not have these such facilities. The closest facilities are at the University of Kansas Medical Center, which is roughly 45 minutes away.

Beyond the economic concerns, there would be significant safety concerns if the detainees needed to be transferred there for their care. Further, the current facilities have roadways that are less than a chip shot away from the Fort's border. There is a railroad that carries hazardous materials only a few hundred yards away. If that railroad had to shut down, that would cost our community \$1 million of revenue a day.

There is an airport within the vicinity of the facility shared by my community. That would be rendered useless if a no-fly zone were required, such as the one that Guantanamo Bay has now. The Missouri River is adjacent to Fort Leavenworth, and can allow access to the Fort. If it becomes necessary to fortify the Fort's borders, land belonging to the families that surround that area who have owned it before Kansas was even a State would have to lose that land to eminent domain.

Leavenworth County is currently home to over 75,000 residents. Because Fort Leavenworth is there, there are approximately 20,000 veterans residing in and around the Leavenworth community area, and many of those have served in Afghanistan and in Iraq. Some

of them suffer from PTSD as well as serious physical injuries from their tours of service.

Gold Star families live in that community, have loved ones buried near, yards away from the disciplinary barracks. Beyond the economic concerns, what does putting the detainees in Fort Leavenworth say to the veterans and those families? How would this affect these people psychologically?

Finally, Fort Leavenworth has the Command and General Staff College. It is the premier college for the National/international officers. Generals Bradley and Powell, and President Eisenhower were among the attendees. Our officers as well as international officers bring their families to our community, which is a significant economic benefit to the area.

President Obama wants Guantanamo Bay closed, in part, because of the impact of our relationships with our allies. The placement of detainees in Fort Leavenworth may cause these families, or even the international officers themselves, to not attend the college. The impact of losing the relationships with these international officers could have a long-term effect on our foreign relations.

Putting it frankly, and from a friend of mine, placing the detainees in Fort Leavenworth would be similar to building a prison in Harvard Yard.

Mr. Chairman, I look forward to answering questions from you and the committee.

[The prepared statement of Mr. Thompson follows:]

PREPARED STATEMENT OF TODD THOMPSON

APRIL 28, 2016

Chairman Perry and Members of the committee: On behalf of the citizens of Leavenworth County, thank you for the opportunity to present to this committee testimony regarding President Obama's continued desire to close the detention center at the Guantanamo Bay Naval Station. Executive Order 13492, issued January 22, 2009 ordered the closure of the detention center at the Guantanamo Bay Naval Station in Cuba. As with the most recent plan promulgated by the Department of Defense in December 2015, it's quite apparent we lack a clear-cut course of action and are ill-prepared and ill-equipped to safely and effectively execute a plan that has been kept hidden to the individuals and communities responsible for executing the operation.

As the elected county attorney for Leavenworth County, I am the chief law enforcement officer. I am responsible for prosecuting criminal offenses committed in violation of State law. This is an important task that the community both expects and deserves. This becomes somewhat of a balancing act, as there are limited resources available to my office that I must carefully allocate to discharge this duty.

The key issues of concern include a lack of communication from the Department of Defense or the President's administration, the drastic change to the core mission of Ft. Leavenworth, and the security implications for the Kansas City Metropolitan Area as a result of the transfer of detainees to the Disciplinary Barracks at Ft. Leavenworth.

LACK OF COMMUNICATION

One issue that has arisen in the Leavenworth community has been the lack of communication with our State, local, and military officials. The most important asset that I can have for any part of my job is the availability of pertinent information upon which to base my decision. At this late date, we have no clear-cut idea what the expectations of our community will be if the Guantanamo Bay detainees were placed here. We are unaware how many detainees President Obama's will request to be brought to the United States. As we are led to believe, there are 80 detainees currently held at Guantanamo Bay. That is including 44 detainees that are

not recommended for transfer because they are too dangerous, even for their home countries.

These detainees are not a homogeneous group. We know they are high-value detainees, serious detainees never to be released, and detainees from places like Yemen who do not have a home to return to at the moment, among others. This lack of communication causes serious issues regarding how we as a community are to thwart any pending threats and how much of our limited resources we would need to expend in dealing with those threats.

The Department of Defense conducted a site survey recently, but failed to speak with local officials regarding their objectives or methodology. I believe that military commanders must know those objectives and I believe that they were made aware. However, city and county officials were left out of the conversation and thus, we were not provided the information needed to best serve our community or successfully execute this mission.

This lack of communication will come into play when a citizen or citizens bring a suit against one or more governmental entities. In that case, I will be called upon to collect and disseminate information in a timely manner to the correct official. Without knowing who, when, why, and how these detainees may be transferred, I will not be able to accomplish that task and discharge my sworn duty as the county attorney. Even if this entire plan for transfer is out of the realm of possibility from a legal and legislative standpoint, I ask that the citizens of Leavenworth be kept informed and that we are become included in the communications between the Department of Defense and the Ft. Leavenworth commanders so that I may serve the people to the best of my ability and so that the citizens may make an informed and reasonable decision about their lives in Leavenworth County.

#### CHANGE IN CORE MISSION AT FT. LEAVENWORTH

Ft. Leavenworth is the site of the newly-created Army University, which includes the historic and prestigious Command and General Staff College. The mission at Ft. Leavenworth is to educate and train military commanders in current and future tactics and leadership.

Not only is the Command and General Staff College open to American Army officers, but it is also used by many allied nations' commanders. They send their best and brightest commanders to learn our Army's tactics and gain insight into how the best Army in the world conducts itself in wartime. This collaboration serves another purpose: It also strengthens our relationships with those participating nations. Many of the nations that send their commanders to Ft. Leavenworth are Muslim nations. By collaborating with our Army, we strengthen our relationship with them and enable us to project our values and decency to that part of the world.

In the event of a transfer of detainees to Ft. Leavenworth, many of these same allies have already announced that they would cease sending their commanders to learn and train at Ft. Leavenworth. One may ask, who will these countries turn to for training? The answer may very well be Russia.

The reason they come to Ft. Leavenworth to learn with our commanders is that our Army is of the size and capability necessary to portray any type of scenario. Our CGSC instructors have seen all types of battles and training techniques and they are able to relate their experiences to any commander from any size military force. The only other nation currently able to do that may be Russia. It is a large and capable military that has many experienced commanders. With that, it also has the desire to supplant the U.S. Army's place in the world and may try to do so by forming educational relationships with our former partners' commanders.

#### SECURITY ISSUES

In today's society, law enforcement and communities must take into consideration a terroristic threat, whether real or perceived. As the 9/11 Commission stated, "[t]he most important failure was one of the imagination." Incidents ranging from the 2015 San Bernardino attack to the 2015 attack in Paris or 2016 attack in Brussels cause communities to be frightened of a similar attack occurring in their community. President Obama, among others, has said that the rationale for the closure of the Guantanamo Bay detention facilities is due to the symbolism the facility represents. This would give good cause to a like-minded individual or person(s) seeking attention to try a similar attack. An example of this has already occurred in Leavenworth in 1997. In 1993, terrorists bombed the World Trade Center towers in New York City and 1 of the 4 people responsible for the attack, Muhammed Salameh, was housed at the United States Penitentiary, only 5 miles south of the Disciplinary Barracks at Ft. Leavenworth. In 1997 the Penitentiary received several letter bombs that were designed to injure and kill people housing terrorists. Local and Federal

resources were able to prevent any harm from occurring. The placement of these detainees from Guantanamo Bay has the real potential to bring harm to any community wherein they may be placed. Not simply because there will be more of them in one facility together, but because these detainees are exponentially more dangerous.

While Ft. Leavenworth is fully confident in its ability to contain the detainees now housed at Guantanamo Bay Naval Base at their facilities, they do have serious factors that need considered. At the present moment there is not a specific facility for the detainees. Ten years ago, Ft. Leavenworth erected a new facility that took 3 years and \$90 million to build. The understanding we currently have is that we do not have time to build another structure, therefore we would have to use an existing facility and move the prisoners currently housed there to another location. Our facility is approximately 300 feet from County Road 155 and 250 feet from Coffin Road. At this distance, it would be extremely hard to stop a vehicle IED, or car bomb from being set off, as well as someone getting close enough to assist in an escape.

A railroad runs near the prison and through our community that often carries hazardous materials. A terrorist attack on the railroad would directly threaten our civilian population as well as citizens to our east in the State of Missouri. The railroad runs directly next to Sherman Army Airfield, which is used by civilians and the military on a frequent basis. It would most likely have to be shuttered and those pilots, crew, and passengers would have to find another point of entry into Leavenworth and the Fort.

Ft. Leavenworth and Leavenworth County are also adjacent to the Missouri River. A threat could easily use the river to gain access to the Ft. Leavenworth Disciplinary Barracks as well as to target the civilian population of our community.

Ft. Leavenworth would also need to strengthen the border around the perimeter for extra protection. This would include creating a buffer zone much wider than the current 2-lane road outside the prison perimeter. If the road was to be expanded and land needed for a larger buffer zone, many families would lose their farms and livelihoods to eminent domain. The resources that would be needed is dependent on an unknown assessment at this time.

The other concern for the Ft. Leavenworth prison is the lack of adequate health care for the detainees, which is one of the key issues Paul Lewis of the Department of Defense says, is necessary for a transfer of detainees to the United States. Ft. Leavenworth does not have a proper facility to meet the medical or dental needs of any detainee. If detainees would need these services it would be necessary for them to be taken off the Base and to a local facility. The closest capable hospitals are University of Kansas Medical Center in Kansas City, KS and Truman Medical Center in Kansas City, MO. This would necessitate increased protection and transportation to a non-secure area for the detainee for an unspecified amount of time depending on the extent of their health care needs. The alternative would be the expense of building a new facility, with all the needed staff and equipment, to satisfy this potential issue. There is also the question of would the Mayor of Kansas City, MO or Kansas City, KS even allow this to occur in their cities?

Once again, thank you Chairman Perry and Members of the committee. I am honored to present testimony to you regarding the impact a transfer of detainees from the Detention Center at Guantanamo Bay Naval Station to the Disciplinary Barracks at Ft. Leavenworth will have on our city, county, region and the Fort itself. I welcome your questions and look forward to providing insightful answers. Thank you.

Mr. PERRY. The Chair thanks Mr. Thompson.

The Chair now recognizes himself for 5 minutes of questioning.

Sheriff Bouchard, can you just reiterate—I started writing it down, but I missed the unreimbursed cost regarding San Bernardino. I think you mentioned that. Can you recount that figure for us in the subcommittee?

Sheriff BOUCHARD. Yes. He had told us it was \$350,000 right off the bat in unreimbursed overtime, and \$19 million have been expended by the locals on the totality of the situation.

Mr. PERRY. Three-hundred fifty-thousand dollars overtime and \$19 million in unexpected cost to the local government. As I recall, you said unreimbursed cost, right?

Sheriff BOUCHARD. Yes, sir.

Mr. PERRY. So the Federal Government hasn't come back in, after the fact, and taken care of that bill. It is the local community that bears the burden of the cost associated with the terrorist attack that some in the room have said that all agencies are prepared to handle and deal with at any time.

We understand that law enforcement does every single thing it can, but we understand that we are all human and you can't—they only have to be right one time, right? So everybody—I guess what we are saying, is that every community has to be prepared for \$350,000 in overtime minimum and potentially up to \$19 million in costs due to some terrorist-related attack, whether there is a prison housing detainees in your community or not, right?

Sheriff BOUCHARD. Yes, sir.

Mr. PERRY. Okay. Thank you.

Mr. Gude, first of all, I don't owe anybody an apology.

I would ask you, have you ever taken the oath of office to wear the Nation's uniform?

Mr. GUDE. No.

Mr. PERRY. Then how would you have any idea of the requirements hoisted upon individuals that take that oath and things that are said? I will tell you that I have taken the oath, and every single officer that has taken the oath, every single officer, Mr. Gude, understands what I was saying. What I said was, ours is not to question why. We serve at the pleasure of the Commander-in-Chief, period. Period. We offer our opinions.

However, once the Commander-in-Chief gives the order, our job is to salute and move out. If you knew that, if you ever took the oath, if you ever wore the uniform, if you ever served, you would know that.

Mr. GUDE. So you are saying that they are giving a bad—

Mr. PERRY. Mr. Gude, I think I answered your statement, okay. Like I said, moving on.

How often have you read the National Security Strategy or the National Military Strategy?

Microphone, please.

Mr. GUDE. Apologies. I have frequently read the National Security Strategy.

Mr. PERRY. Frequently. What is frequently?

Mr. GUDE. Many times. It is part of my job.

Mr. PERRY. It is part of your job. Many times. Because it is an evolving document that changes administration by administration, do you update yourself? You know that the strategy isn't always updated to concur with current events and evolving events, right?

Mr. GUDE. I believe the National Security Strategy has been updated 2 times in this administration.

Mr. PERRY. Right. You have read both, right?

Mr. GUDE. Yes.

Mr. PERRY. The National Military Strategy as well?

Mr. GUDE. The QDDR. Is that what you are referring to?

Mr. PERRY. Yes.

Mr. GUDE. Yes.

Mr. PERRY. Okay. What background do you have? What professional background do you have other than working at this center for 13 years now? What professional background, training, et

cetera, do you have in law enforcement, in the military, in National strategic studies, what have you? What background do you have other than working at this location?

Mr. GUDE. I have been in a professional National security policy space for more than 15 years. I have not served in the military.

Mr. PERRY. What does that mean as a professional? What does that mean? You work there, but what training do you have?

Mr. GUDE. I have been following these issues, and I am deeply involved in them.

Mr. PERRY. Many Americans have as well, but they don't come before Congress and testify with their opinions based on they have been following these issues for—many Americans are very concerned. But I am asking, do you have any law enforcement training?

Mr. GUDE. No.

Mr. PERRY. Military training?

Mr. GUDE. No.

Mr. PERRY. Diplomatic training?

Mr. GUDE. I don't know what that is, but no.

Mr. PERRY. Okay. Well, there is diplomatic corps and they receive training. I mean, I am just asking—

Mr. GUDE. I have not served in the Government, if that is what you are asking me.

Mr. PERRY. Right. So you are elucidating your opinions on these subjects. But I will remind you, and I am looking at your own testimony here, that you say, "For these reasons, a long bipartisan list of senior Government and National security figures do not believe Guantanamo advances U.S. National security interests."

Well, I can tell you that there is a whole lot of people that serve in this place that have worn the uniform, who have training, whether law enforcement, whether it is National security, whether in the diplomatic corps that disagree.

So with all due respect, while I appreciate your opinion—and many of us do, and we asked you here for your alternative opinion—it is your opinion. Quite honestly, I am not sure it is an informed opinion, but it is an opinion, and we appreciate that.

Let me ask you this: I spoke with some folks recently in a hearing on a similar subject, Special Envoy for Guantanamo Closure and the Defense Special Envoy for Guantanamo Detention Closure, both of those individuals cited numerous things like you do about it is a magnet for recruiting, Guantanamo is, and that it hurts our National security, it costs us a lot of money to have it there.

I ask, what empirical data do you have to support that? What empirical data do you have to support the claim that moving these individuals to South Carolina, to Kansas, or anywhere in Continental United States will have any difference, will make any difference? These individuals could provide me no empirical data or studies on cost or otherwise. Can you provide any at this time?

Mr. GUDE. One of the most famous cases in—during the Bush administration, there was an interrogator, a military interrogator from Iraq who reported that at the time, the No. 1 recruitment tool that al-Qaeda in Iraq was using to draw individuals into their ranks was the existence of Guantanamo Bay, and it was clear, and it was persuasive, and it persuaded not people just like me but peo-

ple like Colin Powell, people like Jim Baker, people like the President of the United States, George W. Bush, John McCain.

Now, you can impugn my credentials all you want, but I think you will have a harder time impugning their credentials.

Mr. PERRY. I am in the business of questioning everything, including my party, because it is National security. National security, sir, comes before everything. With all due respect, I am not necessarily interested so much in the opinions of a terrorist and not only a terrorist, but only one terrorist. Oh, by the way, I don't understand and nor have you told me how it makes a difference whether it is in Guantanamo or South Carolina. What is the difference? Can you tell me that? Is there a difference?

Mr. GUDE. Guantanamo is a symbol of the torture and abuse that occurred during the Bush administration at that prison and at other prisons. It is not simply associated with—propaganda against Guantanamo is not simply associated with the fact that there are military detainees there. There is absolutely nothing wrong with that. There was no propaganda associated with the Charleston Naval Brig when Yasser Hamdi was there.

Mr. PERRY. So when we move all these prisoners to South Carolina, and then—the propaganda moves to South Carolina, I guess that would then justify and validate the Governor's concerns about—

Mr. GUDE. I don't know that there is any evidence that the propaganda was—

Mr. PERRY. Do you have any evidence to the contrary?

Mr. GUDE. Yes. There was no propaganda associated with the Charleston Naval Brig.

Mr. PERRY. Were all the detainees in Charleston, South Carolina?

Mr. GUDE. There were 3 detainees.

Mr. PERRY. Three, but I am talking about all. All of them, all in one location, all the focus of international terrorism and Islamists such as they are in Guantanamo.

Mr. GUDE. I understand this is your opinion that that would follow, but I am talking about the evidence.

Mr. PERRY. It is not my opinion. I am asking if you have any evidence?

Mr. GUDE. I have no—there is no evidence.

Mr. PERRY. Thank you.

Mr. GUDE. There is no evidence.

Mr. PERRY. Thank you.

At this point, I yield to the gentleman, Mr. Richmond.

Mr. RICHMOND. Based on history—because you can only use history to predict the future—based on history, when South Carolina contained and held 3, was any propaganda targeted at South Carolina, Charleston?

Mr. GUDE. No.

Mr. RICHMOND. Thank you.

Now, Sheriff, you mentioned in your testimony—and I am just trying to relate all this together—that the lack of military equipment, the 1033 program causes some concern for housing detainees?

Sheriff BOUCHARD. It causes concern relative to the preparedness level and the understanding of the threat and the situations we deal with on a daily basis. That causes us great concern, because we believe a lot of the decisions made by the administration, be it 1033 or otherwise, is focused on perception, not reality.

Mr. RICHMOND. So you think it was perception that some of our police forces were being militarized and that they were using armored vehicles running through urban neighborhoods?

Sheriff BOUCHARD. I am saying that the perception that has been fostered that an armored vehicle makes us militarized, in essence, is wrong. That an armored vehicle that pulls up at a bank or a grocery store every day to protect money, when that bank or grocery store is being held up, and a police vehicle shows up with the same armored vehicle, somehow it is scary or militarized, is false. It is there for the same reason: To protect people.

Mr. RICHMOND. I understand, but we have tanks going through urban neighborhoods.

Sheriff BOUCHARD. We have no tanks, sir. There are no tanks in police inventory in America. There is only armored vehicles with no weaponized—that is one of the false perceptions. There is no tank in police custody in America. Armored personnel carriers, big safe boxes without weapons, sir.

Mr. RICHMOND. Well, we are just going to agree to disagree on that. As my sheriffs and police advocate for things, I think that one of the things, especially in the petrochemical industry, that is one of the things that my sheriffs ask for. But I am just trying to figure out how we made that connection.

You also say that there is a high recidivism rate with Guantanamo prisoners. What is the recidivism rate? I mean, who was released, and how often do they recommit a crime?

Sheriff BOUCHARD. There has been a number of studies. The most recent one that I read, there was a 30 percent recidivism of Guantanamo detainees returning to the battlefield.

Mr. GUDE. Can I jump in on that one?

Mr. RICHMOND. Sure.

But what is the recidivism rate at the largest prison under your jurisdiction?

Sheriff BOUCHARD. It depends on the crime. But there is a fundamental difference, and I would like to answer that point because there tends to be—

Mr. RICHMOND. No, but let me ask the question, because I was a State rep, I was on the Judiciary Committee, and everybody knows the general recidivism rate of their prisons. So what is your general recidivism rate?

Sheriff BOUCHARD. Well, first of all, sheriffs don't run the State prisons, so I can't quote you the recidivism rate. But my point that I wish to answer—

Mr. RICHMOND. You run a local one. Wouldn't you run a local one, a local jail?

Sheriff BOUCHARD. I do run, in fact, a jail. It depends on the crime, but typically it runs from 30 to 60, maybe 70 percent, depending on the crime.

Mr. RICHMOND. Okay. Mr. Gude, you wanted to interject something?

Mr. GUDE. Yes, these figures, I think, must be properly assessed by breaking them down between the detainees that were released from Guantanamo during the Bush administration, and the detainees that were released from Guantanamo under the Obama administration.

That is because the Obama administration implemented a substantial process for determining whether or not it was appropriate to release the detainees, any individual detainee. Now, in order to be released, that needs the unanimous decision of 6 senior National security officials, and then it also further requires the Secretary of Defense to certify that the security arrangements associated with the individual's transfer help keep Americans safe.

What we have learned is that this process has worked. Ninety-four percent of the detainees who have been either confirmed or suspected of rejoining the fight were released during the Bush administration. A tiny number of the detainees that have been accused of or confirmed of rejoining this fight were released under the Obama administration.

Mr. RICHMOND. Mr. Thompson, let me—look, this is a very difficult subject. I understand being an elected official, and I think all of the witnesses on the Republican side are elected, and with elected office, there comes a different responsibility. But let me ask you a question: Would you just be in favor of closing the Bureau of Prisons facility we have at Leavenworth now?

Mr. THOMPSON. No, I would not be in favor of closing the facility. That removes revenue from our economy. But I can say in talking to officials and retired officials from Fort Leavenworth, the detainees coming from Guantanamo Bay would cause a very serious concern. Those are much different than detainees we already house at Fort Leavenworth.

Mr. RICHMOND. Right, because it is more—well, I guess, middle or minimum security?

Mr. THOMPSON. Correct.

Mr. RICHMOND. So you are okay with the economic development and the jobs that are created by housing minimum-security prisons, but you just don't want to go to maximum or a few detainees or several detainees from Guantanamo?

Mr. THOMPSON. I am Leavenworth. I mean, we know—

Mr. RICHMOND. I mean in Leavenworth.

Mr. THOMPSON. I mean, we are known for prisons. We are known for being able to hold and house prisoners.

Mr. RICHMOND. Exactly.

Mr. THOMPSON. But these prisoners are much different than any of the others that we see or have seen. They are 80 of the worst that we know of. There is a specific reason why they are at Guantanamo Bay, and we would not want them in Fort Leavenworth or Leavenworth for the effects it would have on our community and on our citizens. Not even the economic concern—well, including the economic concerns, but primarily, the psychological concerns it would have to all our veterans, our Gold Star family members, and anyone else out there.

If I could also address Mr. Gude, who is talking about the symbolism of Guantanamo Bay and the reason for its closure. That symbolism was something that President Obama has used to argue

that it should be closed, but that is not going to dissipate with it being closed. That is going to stay with it. We don't forget about 9/11 even though there are structures that are now built over where the Twin Towers have fallen. We are going to continue to have to have that burden, and we are going to have to worry about that threat.

I would also reiterate that Mr. Gude's own statements, or written statements in January 2016 said that symbolism is fading.

Mr. PERRY. The Chair thanks the gentleman.

The Chair now recognizes Mr. Duncan from South Carolina.

Mr. DUNCAN. Thank you, Mr. Chairman.

Mr. Gude, what year was the 9/11 attacks on New York?

Mr. GUDE. That was 2001.

Mr. DUNCAN. You were talking about Charleston Naval Brig holding detainees terrorists. What year was that?

Mr. GUDE. Two-thousand two through 2009.

Mr. DUNCAN. Okay. Thank you.

What year was the Department of Homeland Security stood up?

Mr. GUDE. Two-thousand two.

Mr. DUNCAN. Two-thousand three.

Mr. GUDE. Two-thousand three.

Mr. DUNCAN. What year was this committee formed?

Mr. GUDE. Two-thousand four.

Mr. DUNCAN. Okay. So what I am showing is this has been a fluid process. We were attacked. We had to begin prosecuting a war against those that attacked us. When we captured enemy combatants on the battlefield, we had to figure out what to do with them, correct?

Mr. GUDE. Yes.

Mr. DUNCAN. The homeland had to figure out how we are going to respond to terrorism attacks on our soil. We combined 22 agencies. We created a brand new committee within the halls of Congress to continually talk about security of the homeland; hence, we have got this hearing talking about security of the homeland.

For your information, the recidivism rate or the number of detainees that return to the battlefield is about 30 percent. It doesn't matter whether they were released by the Bush administration or the Obama administration.

How many terrorists shot up the Chattanooga recruitment station?

Mr. GUDE. I believe it was 1.

Mr. DUNCAN. One. One. It only takes 1 to kill a large number of Americans somewhere in the world, whether that is U.S. soil or somewhere else. Whether they are released by Bush or released by Obama, it only takes 1 to commit heinous acts of terror against Americans.

So we know that the DOD study said about 30 percent of those released, regardless of who released them, have returned to the battlefield. I would argue that American lives have been lost because of them returning to the battlefield. So your argument that Bush released more and more returned to the battlefield just doesn't hold water, because it only takes 1 of the terrorists to do that.

Mr. Thompson—

Mr. THOMPSON. Yes, sir.

Mr. DUNCAN [continuing]. You heard Governor Haley talk about DOD doing a site assessment at Charleston Naval Brig. We know that in August, they did a site assessment there at Fort Leavenworth. What kind of communication have they had with you?

Mr. THOMPSON. Representative Duncan, they have had no conversation with myself, and they have had no or little conversation with any of our cities, local or law enforcement, or officials.

Mr. DUNCAN. Nor State officials based on the Governor's testimony, because she and Governor Brownback had sent a letter asking, right?

Mr. THOMPSON. Correct. There has been no communication. We have no idea. There are 80 detainees that potentially could be coming. We don't know which of those 80 are coming. There is 26 set for release, but cannot be released because they don't have a home country. There are 44 that cannot be released at all, and then there are the 10 or 7 that are being prosecuted and 3 are being convicted. Are we getting the 7? Are we getting the 3? Are we getting the 44? Are we getting the 26? We don't know.

How can we even feasibly understand what type of threat any one of those people could bring to our community? What we would have to do is strengthen our border around Fort Leavenworth, increase our law enforcement costs, increase our safety? We have no idea because we are not being talked to. That is one of the things I would want and I would want for our community, or any community that would look at having these detainees.

Mr. DUNCAN. Exactly.

Have any of you gentlemen visited the prison at Guantanamo Bay?

Mr. GUDE. No.

Mr. THOMPSON. No.

Sheriff BOUCHARD. No.

Mr. DUNCAN. Mr. Thompson, I have. You heard the Chairman say he just recently did. I think you have been down there more than once.

In 2001, 2002, when we started catching enemy combatants, they took them to Guantanamo Bay. You see a lot of pictures. TIME magazine loves to show a picture of these outdoor facilities of people cooking and detainees being in a fenced-in area. But since 2002, we have built some pretty substantial prisons, facilities there. There is a medium security. There is a low-security area. I don't think there are any prisoners in the low-security area anymore. There is medium security, and there is a maximum security.

Medium security is probably like the prison in your county, community rooms, cell blocks off of those. They have the ability to cook their own food, do their own laundry, participate in crafts. They are still incarcerated, but it is much like what you see in counties and State facilities.

Then there is a maximum-security facility. These prisoners, these terrorists held in the maximum security, Khalid Sheikh Mohammed, has no contact with any other prisoner. He has his own room, a cell. He is monitored 24/7, 365 by the security team that can watch his every movement while he is in that cell.

They are Muslim. They have to have the ability to pray. There are compound areas outside of their cell where they can go out and get some fresh air connected to their cell, not a community area for exercise. So they can go there. They don't have any contact with any other prisoner. There are some special circumstances holding Muslim terrorists that want to harm America, and a special prison facility has been built on Guantanamo Bay just for that purpose.

In addition, there is a courtroom facility built in Guantanamo Bay at taxpayer expense for trying convicted terrorists, or captured terrorists, rather, at Guantanamo Bay. So they have access, secure access to their legal counsel so that they can't escape the courtroom. All this is in place.

If they came to the Naval Brig in Charleston, or to Fort Leavenworth, I do believe that it is going to cost the taxpayer additional resources to create or recreate what we already have at Guantanamo Bay to house these very special prisoners.

Are you set up the same way Guantanamo Bay is, based on my description of those cell blocks?

Mr. THOMPSON. We are not set up for that. Like I said, at this time, we would have to build a new facility. That new facility would take at least 3 years, and I am using a comparison from what Fort Leavenworth had told me it would have took to build their most recent facility, and that was 10 years ago. So those funds of \$91 million might be up to \$100 million, \$120 million.

Mr. DUNCAN. Mr. Thompson, is DOD coming up with these plans right now, because they are not having any conversations—

Mr. THOMPSON. No.

Mr. DUNCAN [continuing]. With you about what your needs are?

So are they doing this unilaterally, figuring out, well, we are going to go to Fort Leavenworth, and we are going to build a brand-new prison, and this is what it is going to look like, these are facilities it is going to have. Wouldn't they talk to you because you have got to run the doggone place?

Mr. THOMPSON. Well, you know, I have no clearance to be able to talk to the Fort or the military officials on official duty, so I have no idea what they are discussing. I can tell you that I have looked at the map of Fort Leavenworth, and I have been told where the idea would be. There is a Boy Scout and Girl Scout camp in this center. There is no water. There is no electricity to connect to that area, much less having to build it.

There are not the facility or capabilities to be able to house them at this time. I am also told that the Guantanamo Bay detainees are generally, especially if they are maximum, have to have almost specialized security for one-in, one-out watching over them.

Mr. DUNCAN. So if we have got to build all these new facilities, why are we looking at existing facilities? Why don't we go down to Louisiana and go out into the high ground in the Bayou and build a brand new facility? Why not go to Fort A.P. Hill right down the road here, thousands upon thousands of undeveloped acres, and drop a prison facility there? Why aren't we talking about Fort Leavenworth or Charleston if we are talking about this?

Mr. THOMPSON. Well, I would say that—

Mr. DUNCAN. It is interesting when you bring that closer to home, I do believe.

Mr. THOMPSON. Well, I would say that if they were—I mean, Guantanamo Bay, they are away from harming any other citizens, and that is one of the most serious concerns that we have about bringing them to the United States soil.

Mr. DUNCAN. Absolutely.

Mr. THOMPSON. To bring them into a community such as Governor Haley's Charleston, or bringing them to something like Fort Leavenworth where there are communities of veterans as well as just citizens like myself living there, that is going to cause them undue threat concern, economic impacts, social impacts, psychological impact, all these things just by moving them here.

Mr. DUNCAN. Absolutely. Thank you.

Mr. PERRY. The gentleman's time has long expired.

The gentleman now recognizes the Ranking Member.

Mr. RICHMOND. Mr. Chairman, I would just like to add that there is no high ground in the Bayou. It is all——

Mr. PERRY. That is a good point.

Mr. DUNCAN. I have been to some high ground in the Bayou, so anyway, thank you for that.

Mr. PERRY. All right. The Chair thanks the witnesses for their very valuable testimony, for being here today, and the Members for their questions.

The Members may have some additional questions for the witnesses, and we ask you to respond to these in writing. Pursuant to the committee rule 7(e), the hearing record will remain open for 10 days.

Without objection, the subcommittee stands adjourned.

[Whereupon, at 12:01 p.m., the subcommittee was adjourned.]



## APPENDIX

### QUESTIONS FROM CHAIRMAN SCOTT PERRY FOR MICHAEL J. BOUCHARD

*Question 1.* Please describe the typical role that State and local law enforcement plays in responding to an incident at a military installation. Would you expect the role to be the same in responding to an installation that houses the Guantanamo detainees?

Answer. Law enforcement is the first group to respond to areas in times of emergency, with the great responsibility to act quickly and effectively in times of terror and uncertainty. Securing the homeland cannot be an afterthought—law enforcement regularly and proactively prepares for the unthinkable and as the threat picture and nature of violence has evolved, so too has local law enforcement. Enemy combatants and foreign fighters bring a whole extra list of concerns. They are more often directly connected with terrorist networks and hold a higher value individually and symbolically. Any protest outside the gate—for or against, any attack on the facility or escape from the facility would fall on the local agencies. Local communities where these facilities are located might become a symbolic target. Local agencies would necessarily have to equip, train, and prepare for these issues. All, without any consideration or compensation from the Federal Government. Additionally, I think it is important to note that while jails and prisons do hold a great number of very dangerous criminals, a terrorist is not and should not be considered to have the same security concerns.

*Question 2a.* It is likely that any facility holding Guantanamo detainees would become a terrorist target. Furthermore, State and local law enforcement would be responsible for securing the area “outside the fence” of the installation where these detainees were located.

What concerns do State and local law enforcement have related to terrorist’s ability to “go dark” in order to plan attacks?

*Question 2b.* How can these concerns be ameliorated?

Answer. Law enforcement officials’ ability to lawfully access digital evidence has been severely hamstrung by technological advancements and non-technological barriers to access. We in the law enforcement community find ourselves in a new age where criminals and terrorists enthusiastically operate beyond the confines of the law through encrypted networks, applications, and mobile devices. The encrypted applications used for preplanning and coordination among the Paris attackers may have prevented the advance detection of the attacks, but the cell phone of one of the terrorists recovered outside the Bataclan theater helped investigators apprehend the ringleader of the attack, Abdelhamid Abaaoud. When law enforcement officials identified Abaaoud’s cousin in the phone’s call list and her location, Abaaoud was finally located.<sup>1</sup> It was later confirmed that Abaaoud died in the detonation of a suicide bomb during the raid.

Various proposals have been offered to find a “solution” to the going dark debate. MCSA endorsed the *Compliance with Court Orders Act of 2016* as introduced by Senators Burr and Feinstein as well as Chairman McCaul and Senator Warner’s *Digital Security Commission Act of 2016*. As the *Compliance with Court Orders Act* clearly states, no person or entity is above the law. Whether law enforcement is investigating child exploitation, drug trafficking, rape or homicide cases, officers need access to critical, time-sensitive information in order to do their jobs.

MCSA believes the *Digital Security Commission Act of 2016* is a positive step towards thoroughly examining all aspects of the going dark debate and while MCSA is supportive of the commission concept, we remain concerned about several provisions related to stakeholder representation and vote threshold. Nevertheless, the time has come for all segments—tech, privacy, and law enforcement—to elevate the

<sup>1</sup> <http://www.nytimes.com/2016/03/20/world/europe/a-view-of-isiss-evolution-in-new-details-of-paris-attacks.html>.

conversation and work together in the interest of public safety and privacy. Advancing the *Compliance with Court Orders Act of 2016* and/or the *Digital Security Commission Act of 2016* would be step in the right direction towards ameliorating LE's concerns.

*Question 3.* Please provide some examples of past coordination between State and local law enforcement and the administration. Why do you believe the administration neglected to coordinate with State and local law enforcement during the development of this plan?

Answer. I have assigned personnel to Joint Terrorism Task Forces and to key counter terrorism facilities in Washington, DC at great expense to my local taxpayers. We do so because coordination and information sharing was a critical recommendation of the 9/11 Commission. We all want to protect our homeland. Many of our MCSA members devote both personnel and resources to these JTTFs without Federal reimbursement.

Far too often local law enforcement is not consulted ahead of policy decisions that have direct and potentially dire implications for our communities. At no single point has the administration requested local law enforcement's perspective or opinion on the transfer of Gitmo detainees to U.S. soil. One could presume the administration's constant exclusion of LE is based upon the reality that LE's perspective does not fit their narrative. MCSA has always sought be a positive source of ideas and collaboration and finds it unacceptable that we do not have a seat at the table.

*Question 4.* In its fiscal year 2017 budget request, the administration made significant cuts to grant funding, especially those utilized by State and local law enforcement. Please describe the importance of Federal grants to State and local law enforcement agencies. How would the proposed cut in grants affect State and local law enforcement's ability to deal with any additional responsibilities brought on by the presence of Guantanamo detainees in the homeland?

Answer. With an increased threat environment, law enforcement has continually been tasked to do more with less. Cost implications coupled with a heightened security environment is simply unsustainable. In an era of deep budget cuts and lack of Federal funding, State and local law enforcement does not have the necessary funds, and most recently the necessary life-saving equipment, to adequately address the National security implications associated with Gitmo detainees being housed within U.S. facilities.

Grant programs such as the State Homeland Security Grant Program (SHSP) and the Urban Areas Security Initiative (UASI) work to address gaps in local agencies capabilities for responding to terrorist threats. Other programs such as the Edward Byrne Memorial Justice Assistance Grant Program (JAG) have a broader focus of providing critical funding to support a range of different program areas. Over the past few fiscal years, law enforcement has seen a steady decline in Federal grant funding and most recently, President Obama's fiscal year 2017 budget request cut UASI funds by 45 percent. The amount of monies we receive for these new and evolving threats is a trickle at best.

The Law Enforcement Support Office (LESO) military surplus and Federal grant programs are examples of a good partnership between the Federal Government and local government entities. It is fiscally responsible and assists in equipping our Nation's law enforcement with equipment that saves lives. In areas of our Nation that are fiscally stressed, it is potentially the only way their law enforcement officers would ever receive that type of support. The transfer of equipment from Federal inventory saves taxpayers a significant amount of money, simply because Federal surplus items have already been purchased once. In fact, many of the same items that they receive through Federal assistance programs have been used by law enforcement agencies for decades.

Through Executive Action and not legislation, the administration has recalled certain 1033-controlled military surplus equipment. While the ultimate goals of law enforcement remain the same: To protect the public; to solve, deter, and respond to criminal acts; and to enforce the law in a responsible and Constitutional manner, the administration has sought to inappropriately legislate through perception at the cost of public safety. On the very same day as the San Bernardino terror attack—our Nation's worst attack since 9/11—my office received an order to return our armored personnel carrier back to the Federal Government. The recall of certain types of controlled equipment will undoubtedly leave America's law enforcement less prepared and at a disadvantage to protect local communities against terror attacks and dangerous situations.

Guantanamo detainees housed in U.S. facilities would require an exorbitant amount of resources from State and local law enforcement agencies. Resources ranging from manpower associated with hospital watch, medical and/or court transfers, to a coordinated escapee and riot response plans. Local law enforcement would also

be tasked with preparing and responding to any protestors or sympathizers outside of the facility gates and into our local communities. When an emergency arises, Federal officials and the military are not the first to respond—local law enforcement are and as such, need to be adequately prepared to properly address the situation at hand. That means both a significant investment in planning, training, and equipment by the affected local jurisdictions. Some have lauded the closure of Gitmo as a cost-saving measure, but that is most assuredly short-sighted—both from a National security and taxpayer perspective. Additionally, with the recent efforts to transfer detainees to other countries the argument that so few are left it only makes sense to close the base is neither subtle nor supported.

