

GUANTANAMO BAY: THE REMAINING DETAINEES

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GUANTANAMO BAY: THE REMAINING DETAINEES

Tuesday, May 24, 2016

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL SECURITY,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 2:52 p.m., in Room 2154, Rayburn House Office Building, Hon. Ron DeSantis [chairman of the subcommittee] presiding.

Present: Representatives DeSantis, Mica, Duncan, Hice, Hurd, Lynch, and Lieu.

Mr. DESANTIS. The Subcommittee on National Security will come to order. Without objection, the chair is authorized to declare a recess at any time.

Since the first detainees arrived in 2002, the United States' detention facility at Guantanamo Bay, Cuba, has housed a total of 779 detainees. There are currently 80 detainees remaining in Guantanamo Bay. The remaining detainee population is generally composed of hardened and unrepentant terrorist. The transfer of any of these detainees from Guantanamo Bay to another country risks harming America's national security, and we cannot be certain that a particular detainee will return to terrorism. We can say that the chance of recidivism with these particular detainees is high.

According to the most recent statistics from the Office of the Director of National Intelligence, 204 out of the 676 released detainees are either confirmed to have reengaged or are suspected of reengaging in terrorist activities. Many of these detainees were thought to no longer represent a threat when they were released, yet they nevertheless returned to terrorism.

The Obama administration has acknowledged that Americans have been killed at the hands of detainees who had previously been released from Gitmo. When President Obama took office, he inherited a largely high-risk population of 240 detainees. One of the President's first actions in office was to issue an executive order calling for the closure of the detention facilities at Guantanamo Bay. The administration failed to secure congressional support for closing Gitmo, so it has attempted to empty out the facility by transferring detainees that they had previously deemed too dangerous to transfer.

Once a detainee is earmarked for transfer, an interagency team works with potential receiving countries to negotiate security and humanitarian assurances regarding the detainee. These agree-

ments, though, are classified. It has not been made clear whether the administration is tracking compliance with these agreements or has just allowed risks to mount. The administration has recently approved transfers of detainees to countries with no track record of receiving detainees and with limited intelligence capabilities, including Ghana and Senegal.

The administration no doubt is ideologically committed to Guantanamo Bay. The President's conclusion that the detention facility should be closed is based in part on his idea that the facility is a recruiting tool for Islamic jihadists, but this represents a misunderstanding of the nature of the terrorist threats we face. Just last week in Mosul, radical Islamic terrorists lowered 25 suspected spies into acid. They were dissolved alive. These are not the type of people that will abandon their jihad against America and our allies simply because we close Guantanamo Bay.

In fact, in the most recent issue of Al-Qaeda's propaganda machine, the jihadi author argued that the President's plan to close Gitmo would have little effect on recruitment efforts. It has been used as a pretext at times to recruit but it is not the underlying cause of terrorist activity.

The only way America can stop radical Islamic terrorism is to defeat radical Islamic terrorism. Appeasing terrorists or worrying about their feelings simply will not work. The administration's effort to close Guantanamo are not aimed at securing the United States' national security interests but instead at ideological victory.

Today, we will hear from a panel of experts who are able to discuss the dangers inherent in transferring the remaining detainees. They will also be able to speak to problems with past transfers and to elaborate on why the administration continues to repeat some of the mistakes of the past. I thank each of them for joining us today.

Mr. DESANTIS. And I also would like to recognize the ranking member of the Subcommittee on National Security, the gentleman from Massachusetts, Mr. Lynch, for his opening statement.

Mr. LYNCH. Thank you, Mr. Chairman. I want to thank you for holding this hearing to examine the national security issues related to the detention facility at the U.S. naval station at Guantanamo Bay, Cuba.

I would also like to thank today's witnesses for helping this subcommittee with its work.

As reported by the Department of Defense, nearly 800 detainees have been held at Guantanamo since 2002, including a peak of 684 detainees in June of 2003. Over the past 13 years, the detainee population has been dramatically reduced by about 85 percent, or 691 inmates with more than 530 detainees transferred by President Bush and 158 transferred by President Obama to the custody of an estimated 60 different countries.

During my last visit to Guantanamo a couple of years ago, we went out to camp 7 where Khalid Sheikh Mohammed and others are imprisoned. The number of detainees stood at about 174, but today, there are only 80. In accordance with the Defense Authorization Act for fiscal year 2016, the Defense Department submitted a plan to Congress to resolve the disposition of these remaining detainees and implement the President's intent to close the facility as a national security imperative. It provides that the administration

will review detainee eligibility for secure transfer to foreign government custody or prosecution by a U.S. military commission.

For detainees who must be subject to continued detention, the plan proposes relocation to an appropriate detention facility within the continental United States. As such, this plan will require explicit congressional approval.

In support of its plan, the Defense Department reports that the cost of operating the detention mission at Guantanamo Bay, Cuba, in fiscal year 2015 was about \$445 million. It also estimates that closure would lower annual operational costs by about \$140 million and \$180 million. I would note that the annual cost of operating Gitmo follows the significant infrastructure investment that we have already made in the facility, very, very nice court and very nice facilities there, including \$12 million for the courtroom known as the Expeditionary Legal Complex. I am not sure we have used that yet, though. I wish I had a court like that in my district to be honest with you.

Now, much of the political and legislative debate over Guantanamo continues to focus on the very broad question of whether closing the facility would serve our national interest. That is the question that we are trying to answer today. The annual defense authorization bill again includes provisions designed to prohibit closure. Now, I—and look, I totally understand that, but I also think that Defense Department and our wider responsibility should have the flexibility to figure out what we are going to do with these folks under the rule of law. And if it is prosecution, we ought to prosecute them.

And we need to reach a determination of that because I think a country that relies on the rule of law and is widely respected for our implementation under the rule of law, this is sort of a backwater. It is an area where the rule of law has not definitely been applied here. We are sort of in limbo so we have got to figure out what to do.

National security demands dictate that we do not simply remain at a political impasse over the closure. Rather, it is imperative that we work on a bipartisan basis to examine the threshold issue of whether each detainee poses a threat not only to national security in the United States but also that of our coalition partners in the global campaign to counter the Islamic State and other terrorist organizations.

In addition, we must assess whether we can securely transfer eligible detainees to foreign custody and mitigate their potential to return as militants to the battlefield of Afghanistan, Syria, and Iraq or conduct terrorist operations worldwide.

As reported by the director of the National Intelligence in March of this year, approximately 17.5 percent of former Gitmo detainees that have been transferred to other countries are confirmed of re-engaging in terrorist or insurgent activities. That is 118 out of 676 former detainees who are directly involved in terrorism or insurgency since the first Guantanamo transfers in 2002. This includes 111 detainees transferred during the Bush administration and seven detainees transferred during the Obama administration. An estimated 12.7 percent of all former Guantanamo detainees, 86 al-

together, are suspected of reengaging in terrorist or insurgent activities.

In order to strengthen the detainee vetting process, the President established an interagency board in 2009 to evaluate detainees on a rolling basis and determine their eligibility for transfer to a third country, prosecution, or continued detention. This is a marked improvement over previous vetting conducted by a single agency, the Department of Defense. However, continued evidence of terrorist reengagement reiterates that we must further enhance our detainee review process to assure that custody is handled in a secure and responsible manner.

Mr. Chairman, I look forward to examining these other issues with our witnesses, and I yield back the balance of my time.

Mr. DESANTIS. I thank the gentleman.

I will hold the record open for 5 legislative days for any members who would like to submit a written statement.

I would also ask unanimous consent to introduce for the record a hot-off-the-presses article about two dozen more Gitmo detainees poised for release.

Without objection, so ordered.

Mr. DESANTIS. I will now recognize our panel of witnesses. I am pleased to welcome Mr. Tom Joscelyn, senior fellow at the Foundation for Defense of Democracies; Commander Kirk Lippold, U.S. Navy retired, former commanding officer of the USS Cole; Mr. Jay Alan Liotta, former deputy assistant secretary for Detainee Affairs at the U.S. Department of Defense; and Mr. Alberto Mora, senior fellow at the Carr Center for Human Rights Policy at the Harvard Kennedy School of Government, and former general counsel of the United States Navy. Mr. Mora will be testifying in his personal capacity.

Welcome to you all.

Pursuant to committee rules, all witnesses will be sworn in before they testify. If you can please rise and raise your right hands.

[Witnesses sworn.]

Mr. DESANTIS. All witnesses answered in the affirmative. Please be seated.

In order to allow time for discussion, please limit your remarks to 5 minutes. Your entire written statement will be made part of the record.

And with that, Mr. Joscelyn, you are recognized for 5 minutes.

WITNESS STATEMENTS

STATEMENT OF THOMAS JOSCELYN

Mr. JOSCELYN. Well, Chairman DeSantis, Ranking Member Lynch, and other members of the committee, thank you for having me here today.

This is the 14th time I've testified before Congress. The only other hearing that was highly contentious that I testified at was dealing with Guantanamo so it is obviously a hot issue.

But I'd like to take a step back and look more in terms of just the facts of who's remaining at Guantanamo within the four walls of the Obama administration's own documents. So this is based on what the Obama administration itself has said about the remain-

ing detainee population. And I am going to do that very quickly through the lens of thinking about Guantanamo as a risk-management problem because for years now U.S. officials have been transferring detainees, and there is an idea—and this goes before the Obama administration—where a number of high-risk detainees during the Bush years were also transferred. And it's not that they were thought to be basically riskless or that they were—pose no recidivism threat. It's that there are subjective judgments that are made about the ability to mitigate the threat the detainees pose.

And this is a very tricky process, and I sympathize with officials in the U.S. Government who are going through this because I don't think that it's easy at all. But when we go through this very quickly, you see that the majority of the detainees who are left have been identified by the Obama administration itself as in that high-risk population.

And so in 2009 President Obama's task force began reviewing the detainee population and looked through 240 detainees. One hundred and fifty-six of them were approved for transfer in one way or another. Now, as the task force made clear, approved for transfer did not mean that they were deemed innocent, nor did it mean that they thought that there was no risk of recidivism. But they thought they could be safely transferred subject to appropriate security measures. In practice I think it's difficult for some nations to put in place those appropriate security measures.

Today, we have 80 detainees left, as both of you, Congressman, have noted. Of those 80, 65 were deemed by President Obama's task force to be too dangerous to transfer. So we've gotten—basically, the administration has transferred all but 15 of the detainees who were originally said that they could transfer. You're down to 65 of the 80 are now—either were slated for continued detention on laws of war, meaning the authorization of the use of military force in 2001, or referred for prosecution. So that's 65 of the 80. And on top of that we have 11 Yemeni detainees who were placed in conditional detention and four who were approved for transfer.

Now, that's the current state of the population, and that means that 80—over 80 percent of the population was deemed by Obama's task force to be in this do-not-transfer sort of—one of two do-not-transfer categories.

Subsequently, the Obama administration set up this Periodic Review Board process. This is looking at only the detainees so far as I can tell who were placed in continued detention or referred for prosecution. And based on publicly available documents on the Periodic Review Board's Web site, 29 decisions—or 29 detainees have had a decision in their case so far. Twenty-two of them have ultimately been approved for transfer. So these are 29 detainees who, under the Obama's task force, were deemed too dangerous to transfer.

Now, the Periodic Review Board has reviewed them, and in 22 cases they've actually been approved for transfer. In some of these cases on the Periodic Review Board, the Periodic Review Board itself determined at one point that these detainees were too dangerous to transfer and then subsequently approved for them to transfer anyway. So, for example, in 2014 a detainee named Faiz Al Kandari was initially denied his transfer and then later in the

year was approved his transfer. And in the initial decision the Periodic Review Board said that they thought he was—had an extremist mindset and basically couldn't be rehabilitated, and they didn't trust Kuwait to take him in. By the end of the year, they said that they thought he was willing to reconsider somewhat and that Kuwait could be trusted to take him in.

All of this underscores a very simple fact as far as I'm concerned. And because there's some risk of reporting in the press, I think it's worth clarifying this here today. You'll see the detainees—you'll see the phrase "cleared for release" in press coverage. Cleared for release, as far as I can tell, that phrase is never used by the Periodic Review Boards, was never used by Obama's task force, was not used in any of these proceedings as far as I can tell. The phrase they used, different versions of it, was approved for transfer, which means that their—in their minds security measures need to be put in place in order to transfer these detainees safely.

Finally, just recently, the Periodic Review Board actually ruled in favor of a detainee named Obaidullah—I'll give you the spelling there—whose ISN number is 762. He was somebody who was referred for prosecution originally by Obama's task force, but then on May 19 a Periodic Review Board ruled that he could be a transfer basically because he and his family said that he could be reintegrated into society.

We are at a point now where I think that detainees who were referred for prosecution by a task force, as you said, Congressman Lynch, they should be tried if they were referred for prosecution. We don't have a system in place right now because the military commission system has been ground to a halt and there's an unwillingness to use the Federal courts to do this to try them. But in my mind there are dangerous detainees who should be tried and can be tried, and that would keep them from going back to the battlefield for sure.

Thank you.

[Prepared statement of Mr. Joscelyn follows:]

Congressional Testimony

**“Guantanamo Bay: The Remaining
Detainees”**

Thomas Joscelyn
Senior Fellow, Foundation for Defense of Democracies
Senior Editor, The Long War Journal

**Hearing before House Committee on Oversight and
Government Reform
Subcommittee on National Security**

Washington, DC
May 24, 2016



Chairman DeSantis, Ranking Member Lynch, and other members of the committee, thank you for inviting me to testify today. I have been writing about Guantanamo and the detainees held there for more than a decade and I visited the detention facility in 2008. I have reviewed most, if not almost all, of the publicly available files created by the U.S. government on the individual detainees, as well as the habeas decisions issued by the courts.¹ This material constitutes thousands of pages of source files, which I have summarized in databases containing dozens of variables on most of the men who have been detained. The Guantanamo detainees are a regular part of my coverage at *The Long War Journal*, which was among the first publications to report that former detainee Ibrahim al Qosi, who is a senior al Qaeda figure, had rejoined the fight.²

The key points in my testimony today are as follows:

1. Guantanamo has always posed risk management problems for the U.S. government. Early on, U.S. officials decided to divide the detainee population into categories based on risk. This process was incredibly difficult as it must take into account numerous factors, including sometimes murky, contradictory or uncorroborated intelligence. This process hasn't been perfect, as some detainees were misidentified as low threats, transferred or released, and then rejoined the jihad in a significant capacity. In addition, in some cases detainees were misidentified as being more senior in jihadist organizations than they really were.
2. Even so, various bodies in the U.S. government have collected significant intelligence on most of the detainees. And the detainees' dossiers have been reviewed multiple times by U.S. officials.
3. In January 2010, President Obama's Guantanamo Review Task Force finished its work on the detainee population. It should be noted that the task force did not recommend any of the 240 detainees it evaluated be outright released.³

¹ The publicly available files include summaries and transcripts created during the Combatant Status Review Tribunals (CSRT) and Administrative Review Board (ARB) hearings at Guantanamo. These documents were declassified years ago. In addition, Joint Task Force Guantanamo (JTF-GTMO) created threat assessments for the individual detainees and more than 700 of these have been leaked online. My testimony today is limited to only those files officially declassified or released by the U.S. government. All of these files are summarized and categorized in databases I maintain.

² See Thomas Joscelyn, "Ex-Guantanamo detainee now an al Qaeda leader in Yemen," *The Long War Journal*, December 9, 2015. (<http://www.longwarjournal.org/archives/2015/12/ex-guantanamo-detainee-now-an-al-qaeda-leader-in-yemen.php>) We also first reported that Abdul Hafiz, who was transferred in 2009, was fighting in Afghanistan. See Bill Roggio and Thomas Joscelyn, "Former Gitmo detainee targeting Afghan charities," *The Long War Journal*, March 24, 2010. (<http://www.longwarjournal.org/archives/2010/03/former-gitmo-detainee-3.php>)

³ Guantanamo Review Task Force ("GRTF"), Final Report, January 22, 2010, p. 7. The task force noted that the guidelines it operated under "further provided that a detainee should be deemed eligible for release if he does not pose an identifiable threat to the national security of the United States." However, "no detainees were approved for 'release' during the course of the [task force's] review." The task force also noted that 17 Chinese Uighur detainees had been approved for "transfer or release," but their cases had a unique pattern, including habeas petitions that were decided in their favor. The report can be found at: <https://www.justice.gov/sites/default/files/ag/legacy/2010/06/02/guantanamo-review-final-report.pdf>

4. Instead, the task force approved for “transfer,” or eventual transfer after “conditional detention,” 156 of the 240 detainees it reviewed -- that is, nearly two-thirds of the detainee population.⁴ The task force made it clear that the term “transfer” was “used to mean release from confinement subject to appropriate security measures.” The term “release” was “used to mean release from confinement without the need for continuing security measures in the receiving country.”⁵ Again, no detainees were approved for outright release. In other words, the task force determined that there was *at least some risk* involved in the detainee transfers.
5. As of May 19, 2016, 80 detainees remain at Guantanamo. Only 15 of them were approved for transfer by President Obama’s task force. The majority of the detainees, 65 in all, were either referred for prosecution or slated for continued detention under the law of war (2001 Authorization for Use of Military Force). Therefore, the detainee population today is mostly comprised of detainees who President Obama’s own task force *deemed too dangerous to transfer*.
6. The Obama administration has established a Periodic Review Board (PRB) process to evaluate the cases of the 65 detainees previously deemed too dangerous to transfer. The PRB has issued 28 decisions thus far. The PRB has approved for transfer – again, subject to “appropriate security measures” – 21 of the 28 detainees. In some cases, detainees were approved for transfer by the PRB just months after the PRB itself ruled that continued detention remained necessary to mitigate the threat posed by the detainee. In the remaining seven instances, the PRB concluded that detention remained necessary.
7. In its most recent assessment, the Office of the Director of National Intelligence said that 204 former detainees were “confirmed” or “suspected” of reengaging in jihadist activities. The overwhelming majority of these recidivists were transferred or released by the Bush administration. But the number of recidivists transferred by the Obama administration has begun to climb as well, and it is likely only a matter of time until more of them are considered recidivists.
8. In sum, the U.S. government has taken on more and more risk in approving detainee transfers. The government seeks to mitigate this risk and some of its practices are likely somewhat effective (such as transferring detainees to countries that are not currently embroiled in jihadist insurgencies). Still, history shows that it is often difficult for the U.S. government to ensure that “appropriate security measures” are enacted by host countries.

⁴ The 156 detainees approved for transfer includes 30 Yemeni detainees who were placed in “conditional detention.” These Yemeni detainees are discussed further below.

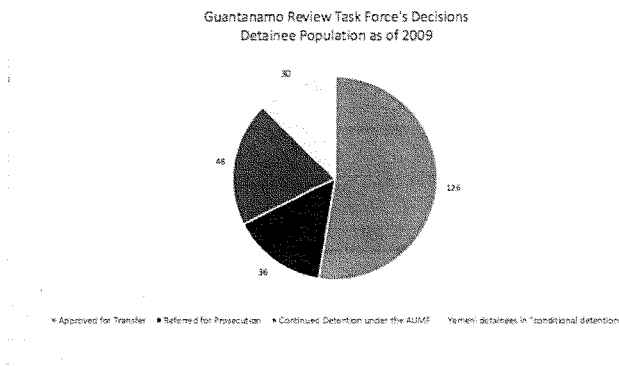
⁵ The distinction between the terms “transfer” and “release” can be found on p. 3 of the GRTF’s Final Report.

Overview of the Guantanamo Detainee Population

President Obama's Guantanamo Review Task Force noted in its final report, which was submitted in January 2010, that it had "reached decisions on the appropriate disposition of all 240 detainees" who were held as of January 2009 and "subject to" President Obama's Executive Order.⁶ Below is a brief overview of the task force's decisions for these 240 detainees. This is intended to be used as a comparison to the current population, which is also summarized below.

The task force approved 126 of the 240 detainees (52.5%) for transfer. Another 30 Yemeni detainees (12.5%) were placed in "conditional detention," meaning they could be transferred if certain conditions were met. Therefore, the task force's plan called for the eventual transfer of nearly two-thirds of the detainee population (65%). These detainees are represented in the green and yellow slices of the pie chart below.

The remaining detainees were either referred for prosecution (36 detainees, or 15% of the population) or slated for continued detention under the 2001 Authorization for Use of Military Force (48 detainees, or 20% of the detainees). Those referred for prosecution in either a court or a military commission are represented in the blue slice of the pie chart below. The detainees slated for continued law of war detention are represented in the red slice.



Although President Obama's interagency task force approved nearly two-thirds of the detainees for transfer, its decisions did *not* mean that these same detainees were

⁶ GRTF, Final Report, p. 9.

considered innocents who posed no threat. It is often reported that these same detainees were “cleared for release,” but that is not accurate. As the task force made clear, “appropriate security measures” needed to be put in place.

“It is important to emphasize that a decision to approve a detainee for transfer does not reflect a decision that the detainee poses no threat or no risk of recidivism,” the task force’s final report reads.⁷ The task force continued:

Rather, the decision reflects the best predictive judgment of senior government officials, based on the available information, that any threat posed by the detainee can be sufficiently mitigated through feasible and appropriate security measures in the receiving country. Indeed, all transfer decisions were made subject to the implementation of appropriate security measures in the receiving country, and extensive discussions are conducted with the receiving country about such security measures before any transfer is implemented.⁸

In other words, many of the detainees approved for transfer were thought to pose at least some risk.

The task force also explained that its transfer decisions did not reflect a conclusion that the detainees were improperly held in the first place. “It is also important to emphasize that a decision to approve a detainee for transfer does not equate to a judgment that the government lacked legal authority to hold the detainee,” the task force’s participants wrote.⁹ The task force continued:

To be sure, in some cases the review participants had concerns about the strength of the evidence against a detainee and the government’s ability to defend his detention in court, and considered those factors, among others, in deciding whether to approve the detainee for transfer. For many of the detainees approved for transfer, however, the review participants found there to be reliable evidence that the detainee had engaged in conduct providing a lawful basis for his detention. The review participants nonetheless considered these detainees appropriate candidates for transfer from a threat perspective, in light of their limited skills, minor organizational roles, or other factors.¹⁰

As mentioned above, 30 Yemeni detainees were placed in “conditional detention.” Their status was more nuanced than much reporting lets on and they were not “cleared for release” as is sometimes reported. The task force found these Yemeni men could be transferred if the “security situation improves in Yemen,” “an appropriate rehabilitation program becomes available,” or “an appropriate third-country resettlement option becomes available.”¹¹ The task force considered the Yemenis placed in “conditional detention” to be a lower risk than the detainees slated for continued detention under the

⁷ GRTF, Final Report, p. 17.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ GRTF, Final Report, pp. 12-13.

2001 AUMF, but they were also thought to be more of a threat than the Yemenis approved for outright transfer. Even if one of the three security conditions was “satisfied,” the task force said, the 29 Yemenis “approved for transfer would receive priority for any transfer options over the 30 Yemeni detainees approved for conditional detention.”¹²

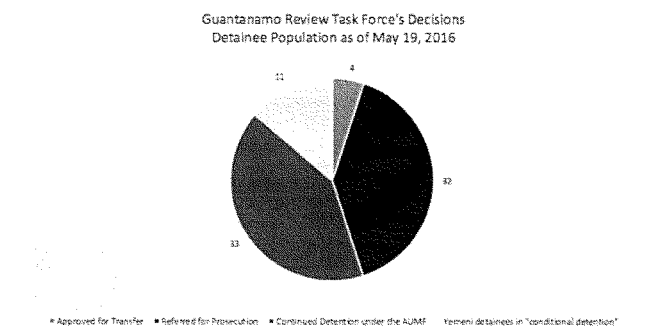
It should also be noted that the Bush administration approved some of these same detainees for transfer. The task force’s final report states that 59 of them “had been approved by the prior administration for transfer or release.”¹³ An additional 11 detainees were “ordered released by a federal court” as a result of habeas litigation.¹⁴ Thus, the task force reported, “a total of 70 detainees subject to the review were either approved for transfer during the prior administration or ordered released by a federal court.”¹⁵

Given that the task force approved 156 detainees for transfer (including the Yemen detainees approved for eventual transfer after “conditional detention”), this means that President Obama’s interagency body approved an additional 86 detainees for transfer.

Overview of the current Guantanamo detainee population

Since the task force finished its final report, the detainee population has been reduced, primarily due to transfers, but also other reasons. Most of the detainees approved for transfer have been transferred.

80 detainees remain at Guantanamo today.



The pie chart above summarizes the detainee population as of May 19, 2016. Comparing it to the previous chart reveals how the situation has evolved.

¹² GRTF, Final Report, p. 13.

¹³ GRTF, Final Report, pp. 15-16.

¹⁴ GRTF, Final Report, p. 16.

¹⁵ Ibid.

Just four (4) of the remaining detainees were approved for transfer by the task force and 11 additional Yemenis were placed in “conditional detention.” This means that only 15 of the remaining 80 detainees (18.75%) were approved for transfer by the task force. The remaining 65 (81.25%) were either slated for prosecution or have been successfully prosecuted (32 detainees), or they were placed in continued detention under the 2001 AUMF (33 detainees).

The evolution of the detainee population is best seen by comparing the two charts. Whereas the green (approved for transfer) and yellow (conditional detention) slices dominated the pie in 2009, the blue and red slices account for most of the pie chart today.

According to the Guantanamo Review Task Force, the 33 detainees remaining at Guantanamo who were placed in continued detention under the laws of war “were determined to be too dangerous to transfer but not feasible for prosecution.”¹⁶ Detainees were placed in detention under the AUMF “only if (1) the detainee poses a national security threat that cannot be sufficiently mitigated through feasible and appropriate security measures; (2) prosecution of the detainee by the federal government is not feasible in any forum; and (3) continued detention without criminal charges is lawful.”¹⁷

The decision to prosecute 32 of the remaining detainees was based on “standards used by federal prosecutors across the country.”¹⁸ The task force reported that cases were referred for prosecution “if the detainee’s conduct constitutes a federal offense and the potentially available admissible evidence will probably be sufficient to obtain and sustain a conviction—unless prosecution should be declined because no substantial federal interest would be served by prosecution.”¹⁹ The task force also listed “[k]ey factors in making this determination,” such as “the nature and seriousness of the offense; the detainee’s culpability in connection with the offense; the detainee’s willingness to cooperate in the investigation or prosecution of others; and the probable sentence or other consequences if the detainee is convicted.”²⁰

In sum, more than four out of every five (65 detainees) of the remaining 80 detainees were considered too dangerous to transfer by President Obama’s task force.

Overview of the Periodic Review Board (PRB) process

President Obama’s March 7, 2011 Executive Order (EO) 13567 established a Periodic Review Board (PRB) process “to review whether continued detention of particular individuals held at Guantanamo remains necessary to protect against a continuing significant threat to the security of the United States.”²¹ The PRB is “a discretionary,

¹⁶ GRTF, Final Report, p. ii.

¹⁷ GRTF, Final Report, p. 8.

¹⁸ GRTF, Final Report, p. 7.

¹⁹ GRTF, Final Report, p. 8.

²⁰ Ibid.

²¹ <http://www.prs.mil/AboutthePRB.aspx>

administrative interagency process” and its “decision-making panel consists of one senior official from the Departments of Defense, Homeland Security, Justice, and State; the Joint Staff, and the Office of the Director of National Intelligence.” There are four stages of review listed on the PRB’s website: “initial review,” “file review,” “full review,” and “subsequent full review.”

Thus far, 28 detainees have had their initial reviews completed. Four (4) of these 28 detainees subsequently had their “full review” completed as well. The decisions are publicly available on the PRB’s website. A review of these unclassified files revealed the following:

- President Obama’s Guantanamo Review Task Force previously determined that 24 of these detainees should remain in continued detention under the 2001 AUMF. That is, these 24 detainees were considered “too dangerous to transfer but not feasible for prosecution.” The remaining four (4) detainees were referred for prosecution. Thus, the task force did not approve any of them for transfer.
- In 21 of the 28 cases, the PRB determined that detention was “no longer necessary” or “does not remain necessary” to mitigate the threat posed by the individual detainee. This means that the PRB has approved 21 detainees for transfer who were previously denied transfer by the task force. Nine (9) of these 21 detainees have since been transferred.
- In approving the transfer of these 21 detainees, the PRB notes that the “standard security assurances” or “appropriate security assurances” must be enacted by the receiving country, as determined by the Guantanamo Detainee Transfer Working Group.²² This language reflects the fact that the detainees are not being approved for outright release, and the PRB recognizes at least some level of risk is involved. The PRB’s decisions often cite reasons why the officials believe this risk can be mitigated (ranging from the detainee’s stated desire to start a new life, to medical conditions, to a family support network). Still, the language of the PRB’s decisions takes into account that the transfers are not, in general, risk free.
- The PRB has approved for transfer all four detainees who have gone through the “full review” process. In each instance, not only was the detainee considered “too dangerous” to transfer by the Guantanamo Review Task Force, but he had also been previously denied transfer by the PRB itself. A brief overview of one of these decisions follows:

²² See, for example:

http://www.prs.mil/Portals/60/Documents/ISN031/131120_U_ISN31_Unclassified%20Summary%20of%20Final%20Determination.pdf

http://www.prs.mil/Portals/60/Documents/ISN713/141003_U_ISN713_FINAL_DETERMINATION_PUBLIC.pdf

http://www.prs.mil/Portals/60/Documents/ISN232/140714_U_ISN232_FINAL_DETERMINATION_PUBLIC.pdf

http://www.prs.mil/Portals/60/Documents/ISN235/150318_U_ISN235_FINAL_DETERMINATION_PUBLIC.pdf

- Abdel Malik Ahmed Abdel Wahab Al Rahabi (Internment Serial Number 37): On March 5, 2014, the PRB determined that “continued law of war detention of [Rahabi] remains necessary to protect against a continuing significant threat to the security of the United States.”²³ The PRB cited Rahabi’s “significant ties to al-Qa’ida, including his past role as a bodyguard for Usama Bin Ladin and a prior relationship with the current amir of al-Qa’ida in the Arabian Peninsula.” In addition, the PRB cited Rahabi’s “experience fighting on the frontlines, possible selection for a hijacking plot, and significant training” as reasons for the PRB’s “concern.” In March 2014, the PRB did not think that the risks posed by Rahabi could be sufficiently mitigated. In December 2014, however, the PRB found the risks he presented could be “adequately mitigated” based on the testimony of Rahabi and his family members.²⁴
- I have previously written about another one of these cases, that of Fayeز al Kandari.²⁵ The differences between the PRB’s decisions in 2014 and 2015 are striking. In July 2014, the PRB concluded that Kandari “almost certainly retains an extremist mindset and had close ties with high-level al Qaeda leaders in the past.”²⁶ The PRB was also skeptical of Kuwait’s ability to handle a detainee such as Kandari, noting “a lack of history regarding the efficacy of the rehabilitation program Kuwait will implement for a detainee with his particular mindset.” The PRB said it “appreciate[d] the efforts of the Kuwaiti government and encourages the officials at the Al Salam Rehabilitation Center to continue to work with the detainee at Guantanamo.” In September 2015, however, the PRB claimed that Kandari had “demonstrated a willingness to examine his religious beliefs and engaged more openly with the Board.” The PRB “noted [Kandari’s] willingness to engage with Kuwaiti officials and rehabilitation center staff members, comply with security requirements, and disassociate with negative influences since his last hearing.” In 2015, the PRB also said that Kandari’s “threat can be adequately mitigated by the Kuwaiti government’s commitment to require and maintain the detainee’s participation in a rehabilitation program and to implement robust security measures to include monitoring and travel restrictions.”²⁷

²³ The PRB’s March 2014 decision can be found at:
http://www.prs.mil/Portals/60/Documents/ISN037/140305_U_ISN37_FINAL_DETERMINATION_PUBLIC.pdf

²⁴ The PRB’s December 2014 decision can be found at:
http://www.prs.mil/Portals/60/Documents/ISN037/141205_U_ISN37_FINAL_DETERMINATION_PUBLIC.pdf

²⁵ <http://www.longwarjournal.org/archives/2016/01/high-risk-guantanamo-detainee-transferred-to-kuwait.php>

²⁶ The PRB’s July 2014 decision can be found at:
http://www.prs.mil/Portals/60/Documents/ISN552/140714_U_ISN552_FINAL_DETERMINATION_PUBLIC.pdf

²⁷ The PRB’s September 2015 decision can be found at:
http://www.prs.mil/Portals/60/Documents/ISN552/ISN552SubsequentFReview/20150908_U_ISN552_FINAL_DETERMINATION_PUBLIC.pdf

- In seven (7) of the 28 cases the PRB ruled that continued detention “remains necessary.” In some of the more recent cases, the PRB has cited the detainees’ ties to senior al Qaeda personnel who have plotted against the West.²⁸

The number of recidivists continues to rise

In March, the Office of the Director of National Intelligence (ODNI) released the most current statistics on recidivism.²⁹ The figures are as of January 15, 2016.

The number of former Guantanamo detainees confirmed or suspected of rejoining the jihad has grown to 204, according to the ODNI. Nearly two-thirds of the jihadists, 128 in total, are at-large. The remaining 76 ex-detainees have been killed, died of natural causes, or were re-captured.

The overwhelming majority of the ex-detainees on the ODNI’s recidivist list, 185 out of 204 (91 percent), were transferred or released during the Bush administration. An additional 19 recidivists (7 confirmed, 12 suspected) were freed from Guantanamo during President Obama’s tenure.

The U.S. government’s list of one-time Guantanamo detainees who have rejoined the fight has grown significantly since 2008, when the first statistics were made public.

In June 2008, the Department of Defense reported that 37 former detainees were confirmed or suspected of returning to the fight. On Jan. 13, 2009, a Pentagon spokesman said that number had climbed to 61. In April 2009, the Pentagon told the press that same metric had risen further to 74.

The estimated number of recidivists more than doubled between April 2009 and October 2010, when the ODNI released an updated analysis saying that 150 former detainees were on the list. Since then, the ODNI’s assessment has climbed further, leading to the latest figure of 204 former detainees confirmed or suspected of rejoining jihadist networks.

²⁸ See, for example:

http://www.prs.mil/Portals/60/Documents/ISN569/160331_U_ISN569_FINAL_DETERMINATION_PUBLIC.pdf

http://www.prs.mil/Portals/60/Documents/ISN1094/160407_U_ISN1094_FINAL_DETERMINATION_PUBLIC.pdf

http://www.prs.mil/Portals/60/Documents/ISN1457/160414_U_ISN1457_FINAL_DETERMINATION_PUBLIC.pdf

²⁹ The summary can be found at:

https://www.odni.gov/files/documents/Newsroom/Reports%20and%20Pubs/Summary_of_the_Reengagement_of_Detainees_Formerly_Held_at_GTMO_Ma%204_2016.pdf

The ODNI tracks former Guantanamo detainees who are involved in both “terrorist” and “insurgent” activities, including those thought to be “planning terrorist operations, conducting a terrorist or insurgent attack against Coalition or host-nation forces or civilians, conducting a suicide bombing, financing terrorist operations, recruiting others for terrorist operations, and arranging for movement of individuals involved in terrorist operations.”

The U.S. intelligence community’s assessment does not include those jihadists who have communicated with other former detainees or “past terrorist associates” about “non-nefarious activities.” The production of anti-American propaganda is not enough to be considered a recidivist either, according to the ODNI.

In order to be considered a “confirmed” recidivist, a “preponderance of information” must identify “a specific former GTMO detainee as directly involved in terrorist or insurgent activities.” The “suspected” category requires “[p]lausible but unverified or single-source reporting” that identifies a “specific former GTMO detainee” as being “directly involved in terrorist or insurgent activities.”

The current estimate includes 118 “confirmed” and 86 “suspected” recidivists, for a total of 204. Therefore, the reengagement rate is approximately 30 percent. However, this rate may be misleading.

It is likely that U.S. intelligence does not track all of the jihadists who were once held at Guantanamo, so even more former detainees could have rejoined terrorist or insurgent groups without the ODNI’s knowledge. There is also a lag time in the ODNI’s reporting. “A February 2010 review of GTMO detainees’ release dates compared to first reporting of confirmed or suspected reengagement shows about 2.5 years between leaving GTMO and the first identified reengagement reports,” the ODNI previously reported. It is possible, too, that some of the “suspected” recidivists aren’t really engaged in jihadist activities.

Former Guantanamo detainees have served jihadist groups in a variety of capacities, ranging from suicide bombers to leadership positions. Both the Taliban and al Qaeda have filled senior roles with alumni from the detention facility in Cuba.

Ibrahim al Qosi, who was held at Guantanamo from 2002 to 2014, reemerged as one of al Qaeda in the Arabian Peninsula’s (AQAP) most prominent figures late last year. Qosi received a favorable plea deal from prosecutors in the military commission system in 2010. Two years later, he was sent to his native country of Sudan. Since December 2015, AQAP has released several messages featuring Qosi.

Another Guantanamo alumnus, Hamed Abderrahaman Ahmed, was arrested by Spanish authorities in February and charged with running a recruiting network for the Islamic State.³⁰ Ahmed was held in Cuba from February 2002 to February 2004, when he was

³⁰ <http://www.longwarjournal.org/archives/2016/02/ex-guantanamo-detainee-allegedly-led-recruiting-cell-for-islamic-state.php>

Thomas Joscelyn

May 24, 2016

transferred to Spain. He was allegedly operating a jihadist network in the city of Ceuta, which borders Morocco on the North African coast, at the time of his arrest.

The Obama administration notes that the number of confirmed or suspected recidivists transferred since early 2009 is much lower than the figure from the Bush years. This is, of course, true. One factor is that many of the Obama administration's transfers have been to countries where the jihadists are not waging insurgencies. This is, on balance, a smart way to transfer otherwise risky detainees. It means that former detainees who may wish to rejoin the jihad will have a more difficult time doing so. We can hope that these detainees choose to follow a different path in the new country where they were placed. However, this may also only serve to delay some detainees' recidivism. Given that President Obama's task force previously determined that none of detainees should be outright released, and most of the remaining detainees were deemed too dangerous to transfer, we should expect the number of recidivists to continue to rise.

Mr. DESANTIS. The gentleman's time is expired.
The chair now recognizes Commander Lippold for 5 minutes.

STATEMENT OF KIRK LIPPOLD

Mr. LIPPOLD. Mr. Chairman, Ranking Member Lynch, my name is Commander Kirk Lippold, and I appreciate the opportunity to testify before the subcommittee.

In my 26 years in the Navy I was a surface warfare officer serving on five different ships, including guided missile cruisers and destroyers to protect U.S. national security interests across the globe.

I've experienced firsthand, particularly in my command of USS Cole when it was attacked by Al Qaeda terrorists, the devastating effects of terrorism. In that attack, the United States had failed to realize we were in an undeclared state of war with Al Qaeda. Unfortunately, it took the 9/11 attacks 11 months later to finally put the Department of Defense on a war footing. That war effort continues today, and rather than abating and slowing, it is picking up in pace and in lethality on an unprecedented scale.

Following my command of USS Cole, I was assigned to the Joint Chiefs of Staff and the director for Strategic Plans and Policy. My office was tasked to develop the policies on how the U.S. military would conduct post-9/11 detainee operations.

Today, the failure to use Guantanamo Bay has made the U.S. less safe and more vulnerable since we no longer have a facility with its unique capabilities to leverage the intelligence advantage that our nation could possess with its use. Keeping Guantanamo Bay open is more important now than ever before in the war effort.

Guantanamo Bay was chosen as the best place for long-term detention for a host of legal operational and logistics reasons, that there was much more viable strategic consideration. It was designed to be an intelligence center for excellence in the war on terror. If the U.S. can get terrorists off the battlefield and into Guantanamo Bay, we can be presented with an unprecedented opportunity to gain a comprehensive understanding of how Al Qaeda recruits, trains, equips, finances, and conducts these operations. Once we understand how they do that, then and only then can we truly target them for defeat.

Today, many people demand that the detention facility be closed, and some of the more socially popular reasons include it's a recruiting tool, it's too costly, it's a human rights embarrassment, the detainees have a right to a trial. All these reasons are specious and fail to hold up to the facts when people take time to understand the true nature of the facility.

Guantanamo Bay must become the crown jewel for the United States in the intelligence effort to defeat transnational terrorist groups. It is not a recruiting tool. Correlation is not causation. Just because Gitmo is cited in terrorist literature and propaganda, it does not prove it is why recruits join terrorist organizations any more than the movie spurred the Benghazi attacks. No accurate cost calculations exist to justify closing Guantanamo Bay.

While everyone focuses on the facility to house them, all the second- and third-order effects on the local communities, not to mention the constitutional issues, have ever been addressed.

The U.S. Navy got out of the prison ship business in the 1700s. Let's not give that sad period in our history new life. Taking a naval warship worth an estimated \$2 billion, sending it on a short disruptive deployment to serve as a logistics platform and prison ship is a waste of a strategic asset when the Nation already has a state-of-the-art facility that can serve the same purpose, Guantanamo Bay.

As stipulated under the Geneva conventions and the law of armed conflict, the U.S. has a right under international law to detain combatants captured on the battlefield until the end of the conflict. Al Qaeda and Taliban started this war, not the United States, and they continue to wage that war on us today.

Also, under the law of armed conflict and the conventions, there is no requirement for a trial or legal proceeding to assess the guilt or innocence of unlawful enemy combatants engaged in armed conflict against the United States. The only requirement is a periodic review, which the U.S. still does, to confirm the circumstances of their capture. Still unclassified predictions estimate that about 30 percent of the detainees released from Guantanamo Bay have returned to the fight in one form or another. Classified estimates put that number even higher.

While it's been almost 15 years since 9/11, the United States is still a nation out war. No detainee that is confirmed to be an unlawful enemy combatant who is engaged in armed conflict against the United States should be released from our custody. They should be held in indefinite detention under the law of armed conflict or if they meet the trial—criteria for a trial by military commission, charge them, try them, convict them for their crimes, and hold them accountable.

In conclusion, the United States Government has a moral responsibility and—to the American people and the world to ensure that not one more American or any citizen from any nation dies at the hands of a terrorist released from Guantanamo Bay. Keeping the detention facility open is in the best interest of the United States and the American people. The threat of ongoing terrorist operations against the United States militates that as a nation we should continue using the facilities that have already been built there and expand their use to ensure that another terrorist attack is not carried out against the United States.

[Prepared statement of Mr. Lippold follows:]

Statement of Commander Kirk S. Lippold, USN (Ret)
Hearing on Guantanamo Bay: The Remaining Detainees
Before the
U.S. House Committee on Oversight and Government Reform
Subcommittee on National Security
May 24, 2016

I. Introduction

Mr. Chairman, Ranking Member Lynch, my name is Commander Kirk S. Lippold and I appreciate the opportunity to testify before the Subcommittee. In my 26-year career in the Navy, I was a surface warfare officer serving on five different ships, including guided missile cruisers and destroyers to protect U.S. national security interests across the globe. Foremost among those missions was to safeguard the sea-lanes of communication, or SLOCs, that facilitate and safeguard national security interests critical to the United States. I have experienced firsthand – particularly in my command of the USS *Cole* when it was attacked by Al Qaeda terrorists – the devastating effects of acts of terrorism when our forward-deployed assets are placed in harm’s way.

The attack on the USS *Cole* was fundamentally different than the attacks on either the World Trade Center in 1993 or the African Embassies in 1998. In both cases, those attacks were against targets that housed or represented U.S. interests in the Middle East. The attack on USS *Cole* was a direct attempt to limit or eradicate the U.S. presence in the Middle East. When a nation or a non-state actor such as al Qaeda attacks a military target that projects power and defends our national interests on the high seas, it is in fact a direct challenge to our ability to defend our national interests across the globe. The attack on USS *Cole* was an act of war.

The attack on USS *Cole* was followed by the 9/11 attacks and put the Department of Defense on a war footing. That war effort continues today and rather than abating and slowing, it is picking up in pace and lethality on an unprecedented scale. The utility that was envisioned for Guantanamo Bay as an intelligence facility has been cast aside for political expediency. The failure to use Guantanamo Bay has made the U.S. less safe and more vulnerable since we no longer have a facility with its unique capabilities to leverage the intelligence advantage that our nation could possess with its use. In fact, the United States has given up a critical strategic advantage in surrendering to the political expediency to close Guantanamo Bay while failing to give due consideration to how we can replace it with a facility under U.S. control that can be guaranteed to remain operational for the duration of the ongoing conflict. For this reason and more, keeping Guantanamo Bay open is more important now than ever before in the war effort.

II. Background

The U.S. Navy has a unique role in the world in cooperation with our allies to ensure the safe transit of vessels throughout the oceans of the world to ensure the economies of the world can adequately function. Unfortunately, over the past three decades, the lack of a coherent national and military strategy that is directly tied to force structure has forced the U.S. Navy to slowly decrease the size of the fleet and the number of operational ships to a point where our nation is no longer capable of conducting sustained operations at sea without the need to refuel many of our ships in various ports of call across the globe.

On October 12, 2000, when USS *Cole* pulled into the port of Aden, Yemen, for a brief stop for fuel while on a solo transit from the Mediterranean to the Middle East, the United States failed to realize we were in an undeclared state of war with al Qaeda, a war that Osama bin Laden had announced in an August 1996 Fatwa. Even before his formal declaration of war, al Qaeda affiliated terrorists conducted the first large-scale successful attack in the United States with the February 26, 1993 attack on the North Tower of the World Trade Center. Five years later, after an even more lethal and capable al Qaeda attacked two U.S. Embassies in Africa – Dar es Salam, Tanzania and Nairobi, Kenya - there was a stubborn and willful refusal to grasp the dangers of the growing threat of terrorism. The attack on USS *Cole* pointed out the failure of the nation to understand that a new form of warfare had been imposed on us that fateful day.

Unfortunately, neither the Clinton nor Bush Administrations responded to the attack on USS *Cole*. Investigations ensued, statements of support for the families and crew were made, and in the end nothing was done. The attack on USS *Cole* was viewed as a political liability by both Administrations since it crossed that awkward line with a Democrat Commander in Chief about to cede power to a Republican Commander in Chief. Once the investigations into the attack were complete, the Clinton Administration washed their hands of the incident and turned their backs. By the same token, when the Bush Administration assumed office, they took the attitude that we are “forward looking not backward acting.” The attack on USS *Cole* was even referred to by Deputy Secretary of Defense Wolfowitz as “stale.” Seventeen U.S. Navy sailors died in vain for their nation.

By doing nothing, the stage was set for the 9/11 attacks eleven months later.

III. Why Guantanamo? The History Behind the Creation of the Detention Facility

Following the attack on USS *Cole*, in July 2001 I was assigned to the Joint Chiefs of Staff in the Directorate for Strategic Plans and Policy (J-5) working on matters pertaining to the United Nations and multilateral affairs. After 9/11, this office was tasked to develop the policies for how the U.S. military would conduct these detainee operations. It was neither our role nor was my office tasked to develop policies for other government agencies or organizations that may have been involved in hunting down and capturing high-level terrorist suspects.

Almost immediately after the 9/11 attacks, the United States responded with a quickly, but carefully orchestrated plan to topple the Taliban from power in Afghanistan, seek out and capture or kill high-ranking member of al Qaeda, and work to ensure the U.S. homeland was safe from further attack. The operational plan for how, when, and where to introduce forces into Afghanistan was a closely guarded secret. During the initial surge toward the war front in and near Afghanistan, one part of that plan was obvious – U.S. forces would be capturing terrorists as part of their operations.

As the Pentagon focused on military operations in the rapidly expanding Global War on Terrorism, four main questions had to be addressed:

1. Who would the United States capture and then maintain in long-term detention?
2. Where would the captured terrorists be held in Afghanistan and then long-term?
3. What authorized interrogation techniques would the U.S. military use on captured, unlawful enemy combatants?
4. What was the process for repatriation of the detainee back to their home country?

Neither the President nor Secretary of Defense wanted a large military footprint in Afghanistan or any of the surrounding and supporting countries; therefore, the scope of who would be detained long-term had to be limited. The result: U.S. military forces would seek out and detain members of al Qaeda and high-level Taliban leaders. The U.S. military would specifically not detain the average foot soldier supporting either al Qaeda or the Taliban. These battlefield detainees would be transferred to either pro-U.S. Afghan or Northern Alliance forces.

The major hubs that could support detention operations of fighters captured on the battlefield and who possessed the logistics required for this part of the operation dictated a small number of locations including Kandahar and Mazar-e Sharif. These facilities had to be secure enough to allow an adequate assessment of who had been captured before their further transfer to a long-term facility or repatriation back to local military forces.

The issue of long-term detention of al Qaeda terrorists and their hosts, the Taliban, was a much more difficult and thornier legal issue that underwent considerable review at the highest levels of the U.S. government. In the end and after considerable review, Guantanamo Bay was chosen as the best place for long-term detention of captured al Qaeda and high-level Taliban unlawful combatants for a host of legal, operational, and logistical reasons.

With these alleged terrorists coming into the custody of the military, the issue of what interrogation techniques could be used had to be resolved. As part of this policy debate within the Department of Defense, I was assigned as the Joint Chiefs of Staff Representative to the Interrogation Techniques Working Group. The group reviewed and considered a detailed list of over 30 techniques, including waterboarding. Based on the Group's final recommendations, the Chairman of the Joint Chiefs of Staff decided that only those techniques listed in Army Field

Manual FM 34-52, Intelligence Interrogation, would be used on the unlawful enemy combatants in the custody of U.S. military forces.

Throughout this process, it was always a consideration that despite the best efforts of battlefield commanders and their staffs to assess who met the criteria for transfer to Guantanamo Bay, there would be a number of detainees that did not meet detention criteria and required repatriation back to their home countries. Policy was issued by the Secretary of Defense in coordination with the Chairman of the Joint Chiefs of Staff to initiate a process whose bottom line was to make as accurate a determination as possible that the individual under consideration for repatriation no longer was of intelligence value to the United States and that they no longer represented a threat to the U.S., our allies or our interests. Once these criteria were met, the process of repatriating an individual was coordinated with the Department of State working with the individual's country of citizenship.

IV. The Intelligence Opportunities and Pitfalls Assessed at Guantanamo Bay

Immediately following the 9/11 attacks, the Joint Chiefs of Staff was tasked by the Secretary of Defense to develop policies to deal with the expected capture of enemy combatants taken on the battlefield once U.S. forces engaged in combat operations in Afghanistan. In theater, the Combatant Commander, General Tommy Franks was adamant that detainees be removed away from the battlefield as quickly as possible citing the security situation, lack of adequate facilities, and lack of adequate personnel to ensure the safety of the detainees or U.S. personnel guarding them. Initial policy considerations included the following:

1. Combatants captured on the battlefield would undergo immediate assessment to determine if they were either high-level (battalion-level and above) Taliban commanders or members of al Qaeda. U.S. forces would detain only those unlawful enemy combatants that met these strict criteria. Other combatants would be turned over to friendly Afghan forces for repatriation operations.
2. Unlawful enemy combatants detained by U.S. military forces and that met the screening criteria would be held in Afghanistan until transfer to Guantanamo Bay could be arranged. On both the battlefield and at the detention facility in Guantanamo Bay, the only interrogation techniques that could be lawfully used on the detainees were those enshrined in the U.S. Army Field Manual for Interrogation Operations.
3. As soon as the facilities could be renovated or constructed at Guantanamo Bay, the detainees who had already been assessed and prioritized according to their intelligence value and the threat they posed by keeping them in the operational theater were transferred to the facility. Through this deliberate and carefully vetted process, only the most valuable and dangerous were transferred to Guantanamo Bay.

V. Guantanamo Bay – Why Was It Picked?

While the need to detain unlawful enemy combatants was a given consideration for the creation of Guantanamo Bay, there was a much more valuable strategic consideration –

intelligence. Guantanamo Bay was designed to be an intelligence center for excellence in the Global War on Terror. During the deliberations regarding where to put a facility to house the limited numbers of al Qaeda and high-level Taliban expected to be sent there, several considerations went into the decision-making process:

1. Only those detainees who were assessed to possess much needed intelligence or were at an organizational level that their capture heightened the threat posed to U.S. forces, were transferred to Guantanamo Bay.

2. The detention facility was far removed from the battlefield, which reduced the chance and opportunity for an attack that would result in the escape of the terrorists.

3. The facility was close to the United States mainland, which would facilitate the integration and processing of critical intelligence activities.

4. The naval base already had existing detention facilities that had been built during Operation Sea Signal when the U.S. military conducted humanitarian operations in the Caribbean in response to an influx of Cuban and Haitian migrants attempting to gain asylum in the United States. These temporary facilities could be reinforced and upgraded to safely incarcerate the terrorist detainees until more permanent and suitable facilities could be constructed to house them under more humane conditions.

5. The naval base had an airfield, maritime piers, housing, and on-base transportation infrastructure that were either immediately available or could be quickly renovated and upgraded to support the influx of personnel to run the facility while also permitting movement of detainees into and out of the facility.

6. The naval base had land available that could be adapted and made ready to build and house detainees in a humane and secure environment. The same area could also support the necessary security, support, and intelligence staff that would man and operate the detention facility.

7. Guantanamo Bay was located on a legally unique piece of land – a naval base that was on Cuban territory, but under U.S. control and supervision. It was initially assessed that since the base was on foreign soil, the normal Constitutional protections, like Miranda warnings, that would be afforded U.S. citizens could not be triggered for the detainees held at this location.

All of these factors contributed to why Guantanamo Bay was chosen as the best facility to detain unlawful enemy combatants captured in the Global War on Terror. While many may disagree about its efficacy, it served a strategic and critical purpose – get the terrorists off the battlefield and detain them in a facility specifically designed to leverage their intelligence value to ensure the United States, our allies, and our interests remained safe. At its height, Guantanamo Bay housed 680 detainees in a safe, secure, and humane environment, while also gaining the critical intelligence necessary to keep the nation safe.

VI. Why Keeping Guantanamo Bay Open Is In The Interest of U.S. National Security

When final consideration of Guantanamo Bay was under deliberation by the Department of Defense, in addition to being a detention facility, one of the foremost policy considerations was intelligence. Clearly, the attacks of 9/11 had once again pointed out the woeful state of the intelligence community as well as the leadership of the nation to appreciate and prepare for the threat posed by transnational terrorist groups like al Qaeda. One way to help cover this shortfall would be to leverage the intelligence gained from the terrorists held at Guantanamo Bay to build a picture of how al Qaeda.

It was intuitive to those working in the Pentagon and the intelligence communities during the initial stages of the Global War on Terror that these captured terrorists would be central to regaining the intelligence advantage we had lost over years of underappreciating the threat and failing to develop human intelligence sources within their organizations. If the U.S. could gain a comprehensive understanding of how al Qaeda manned, trained, equipped, financed, and conducted terrorist operations, that process could be targeted for disruption and defeat. The key to a broader and more dynamic intelligence picture the United States was now scrambling to build contained several critical points:

1. How does al Qaeda recruit members for its ranks and develop the leadership structure to carry out tactical through strategic-level terrorist activities?
2. How and where does al Qaeda train their recruits and what sources and methods do they use to operationally prepare them for and execute terrorist operations?
3. How does al Qaeda equip their fighters for terrorist operations? What transit methods and modes are used and can the material be interdicted or stopped at the source or enroute?
4. What are the sources and methods of financing used by al Qaeda for their operations and how can those sources be identified and targeted?
5. What methods and operational security does al Qaeda use in the process of executing and carrying out terrorist operations?

Today, many people demand that the detention facility in Guantanamo Bay be closed. Some of the more socially popular points are: Guantanamo Bay serves as a recruiting tool for al Qaeda and other terrorist organizations, Guantanamo Bay is too costly and is a poor return on investment, Guantanamo Bay serves no meaningful intelligence purpose this many years after 9/11, Guantanamo Bay is a human-rights embarrassment to the United States, and Guantanamo Bay detainees have a right to a trial or they should be set free. Key reasons for keeping Guantanamo Bay open include:

1. Guantanamo Bay has the facilities and capabilities necessary to be the crown jewel in the intelligence effort to defeat transnational terrorist groups like al Qaeda and ISIS. Several years ago, the Department of Defense spent over \$325 million to build a state-of-the-art headquarters and intelligence fusion center on Guantanamo Bay. It was specifically designed to

take the real-time intelligence gleaned from interrogation of detainees, then integrate and construct a robust and capable intelligence picture of their worldwide tactics, techniques, and procedures. Every intelligence agency in the U.S. government could use the facility to protect and defend the United States against attack. Unfortunately, this facility goes virtually unused because of the political decision to attempt to close the detention facility.

2. Guantanamo Bay is not used as a recruiting tool for terrorist organizations. While Guantanamo Bay is occasionally cited in terrorist propaganda, over the past few years the intelligence community assessed its impact as almost negligible. While many who want Guantanamo Bay closed use the pictures of orange jump suits and pictures of detainees from Guantanamo Bay as proof that it is a recruiting tool, the facts do not support this contention. Correlation is not causation. Numerous interviews and after-action intelligence has shown that just because Guantanamo Bay is featured in recruiting propaganda, it does not prove why recruits join terrorist organizations any more than a movie spurred the attacks in Benghazi, Libya.

3. Guantanamo Bay is of economic value for what it is capable of providing the nation in our fight against terrorists. While President Obama has oft-cited the cost of \$3 million per detainee to house and detain them in Guantanamo Bay, that price is manipulated to achieve a political objective, not a national security imperative to keep the nation safe. To date, no accurate cost calculations exist to justify closing Guantanamo Bay and bring the remaining unlawful enemy combatants to the United States. Some critical cost calculations that must be figured into these estimates include:

(a) What is the cost to find a location then build or refurbish a detention facility that meets or surpasses all current constraints that would be imposed on any correctional facility built in the United States, including requirements such as environmental impact statements, transportation infrastructure creation and improvements, communications capability, electrical and other energy sources?

(b) Guantanamo Bay is physically isolated from threats that would exist if the detention facility were moved to the United States. What has not been addressed in the ongoing debate includes: What is the cost to the surrounding communities that now have a terrorist target painted on their cities and towns? Who will provide the financial support the communities will need to protect their citizens in the event of an escape or worse, an attack to either facilitate an escape or an attack carried out just because the facility exists in that location?

(c) Who pays for the additional cost of manning, training, and equipping the police, medical, fire fighting, and other support sources necessary to monitor and contain the inevitable protests that will occur as a result of the facility being located in that community?

(d) Who is responsible for the cost of training and preparation that would have to be considered as part of coordinating the response to a terrorist attack on the community or the facility? How will training be conducted and who will pay for the expected exercises between the U.S. military forces operating the detention facility and local police, firefighting, and medical

personnel? Who has priority in directing resources in the event of an attack? Will civilians have to come under military control in an emergency?

(e) How are the U.S. military forces running the facility going to be housed? If they live on the outside economy, they could be vulnerable to being operationally monitored and spied on by terrorists who can then target them and/or their families. Additionally, identity protection becomes very problematic for the military personal working at the facility and potentially their families since no process has been addressed to safeguard and ensure their security if they live off the local economy, send their children to local schools, and interface with the local community. These issues alone could cost billions of dollars for construction of a self-contained base with all the necessary support facilities to house and support these military forces.

(f) The impact on the U.S. Constitution has not even been considered in this debate. What are the constitutional issues that will inevitably be raised concerning U.S. military forces deployed within the borders of the United States for the wartime mission of enemy combatant detention operations? Our nation's laws have evolved since World War II and with our nation unwilling to issue a declaration of war against a non-state entity like al Qaeda, the legal basis for this type of detention within the U.S. crosses into untested legal waters that have not been ruled upon by the Supreme Court. Will these forces be totally self-contained or will they have extra-judicial powers over civilians in the local community in the event of an emergency at the detention facility? Can military forces be deployed outside their compound or base in the event of an escape or terrorist attack? Who can order and who will be in charge of the military's operations if they need support and assistance from local authorities on any issue? Can these military forces detain U.S. citizens for their "safety" or on the basis of a "suspicion" of colluding with or supporting terrorists without a declared state of emergency or martial law? Until these legal issues can be addressed and ruled upon by the Supreme Court, moving the remaining detainees to the United States could ultimate result in their being released due to legal technicalities.

In addition to the foregoing, U.S. Navy ships are being deployed as floating prison ships for temporary detainee operations. A recent example of the massive waste of taxpayer money came when the USS *New York* was ordered on a short-notice deployment to sail from her homeport of Mayport, Florida, to sit off the coast of Libya and wait for a classified military operation to be conducted that would result in the capture of Ahmed Abu Khattala, a high-value detainee and the alleged ring-leader of the brutal and sophisticated attacks on the U.S. diplomatic compound in Benghazi, Libya.

Taking a naval warship worth an estimated \$2.0 billion and sending it on a disruptive short-notice deployment to serve as a logistics platform and prison ship is not an efficient or effective use of a strategic asset when the nation has already built and manned a state-of-the-art facility that could serve the same purpose – Guantanamo Bay. Once again, the decision not to use Guantanamo Bay is a political decision not one based on the national interest of the United States and the safety of the American people.

The list of complex and still unaddressed problems associated with closing Guantanamo Bay and transferring the detainees to the United States could go on for pages. At the end of the

day, however, the Administration's purported cost cutting measures and "savings" will not equate to savings for our society and those who will live with the consequences of the decision to close this facility.

VII. Recidivism – An Unacceptable Compromise

At the forefront of the debate on who the United States should maintain in custody at Guantanamo Bay and who should be repatriated back to their country of citizenship are the issues of recidivism and the potential of that individual to return to the battlefield to fight against the United States or our allies.

As stipulated under The Geneva Conventions and the Law of Armed Conflict, the United States has a right under international law to detain combatants captured on the field of battle until the end of the conflict. In the case of unlawful enemy combatants, such as al Qaeda and the Taliban, there was insufficient legal guidance or precedence to provide a definitive answer about what nations can do with these types of non-state combatants. In the case of the 9/11 attackers, these combatants did not comply with The Geneva Conventions that defined a combatant; and therefore, these unlawful enemy combatants acted in a manner that made them not subject to the protections normally afforded a combatant in a state-on-state conflict.

Additionally, under the Law of Armed Conflict, there is not a requirement for a trial or legal proceeding to assess the guilt or innocence of unlawful enemy combatants engaged in armed conflict against the United States. A review of the circumstances of their capture, the equivalent of an Article V tribunal under the Geneva Conventions, is today, a Periodic Review Board for unlawful enemy combatants, is convened to determine if the information regarding the basis for detention is still accurate and valid. In keeping with the spirit of The Geneva Conventions, however, the United States has followed the principle that we are engaged in a legally recognized armed conflict to which the laws of war apply. Using that point as a guide, the United States rightfully contends that we may hold al Qaeda and Taliban unlawful enemy combatants until the end of the conflict.

Al Qaeda and the Taliban started this war, not the United States. We were attacked, not just on 9/11, but also on several other occasions including the attack on USS *Cole*. They continue to wage war on us.

Any unlawful enemy combatants captured by the United States should be screened following the same guidance used when the Global War on Terror started after 9/11. Those who meet the screening criteria should be transferred from wherever they are captured in the world to Guantanamo Bay for long-term detention. Current unclassified projections estimate that about 30% of the detainees released from Guantanamo Bay have returned to the fight in one form or another. Classified estimates put that number even higher. These terrorists have chosen to continue to fight against the United States, our allies, and our interests. When it comes to the repatriation process of releasing confirmed terrorists who engaged in combat against the United States, both the Bush and Obama Administrations have failed the American public in this regard.

At its height, Guantanamo Bay held 680 detainees who were assessed to be unlawful enemy combatants. Clearly, the process worked to screen a large number of individuals who were truly misclassified and deserved repatriation back to their country of citizenship. In some cases, however, the intelligence process failed to detect either the individual's true identity, their actual extent of involvement in terrorist activities, their true level of support or involvement with al Qaeda or the Taliban, or their propensity to return to the fight because of their firm belief in the tenets of radical Islamic terrorism and the use of violence to achieve jihad objectives.

In both Administrations, but especially the Obama Administration, the criteria for release has been lowered and degraded time and again to a point where the detainees that are currently being released will in all likelihood return to the battlefield to fight and kill again. Today, the Department of Defense, who should be in charge of fighting the war against these terrorists, has abrogated their responsibility to oversee and control the detainee process at Guantanamo Bay. The responsibility for detainee releases is now controlled and coordinated through the Department of State's Special Envoy for Guantanamo Closure.

Political pressure to force nations around the world to accept detainees from Guantanamo Bay has become a routine tactic used to empty out the facility in an effort to achieve a political objective not maintain the safety of the American public or those who serve to defend our nation. Once a country agrees to accept a detainee, it is usually not because of their humanitarian nature. The United States pays them off. To date, we have paid millions of dollars to a broad spectrum of nations to accept detainees being transferred to their country.

In addition to these outright payments, additional costs are also being borne by the American people. Never considered when calculating the true value of keeping Guantanamo Bay open and operating are the costs associated with the intelligence and security agreements used to ensure the detainees will be maintained under strict surveillance, which of course, is usually paid for by the United States; the cost of housing and other support services required by the nation for the detainees and usually compensated for by the United States; the decision by our nation while at war to allow detainees to refuse transfer from Guantanamo Bay if they do not like the country they may be potentially be transferred to (case in point, the Chinese Uighurs); and, while the gaining country is under agreement to ensure the detainee does not return to terrorist activities, there is no punishment or accountability if the terrorist escapes and kills again. This final issue should disturb the American public the most: There is no accounting for the cost of American lives and the lives of other innocent people that have died as a result of detainees returning to the battlefield after their release from Guantanamo Bay.

The United States is a nation at war. No detainee who has undergone a review of the circumstances of their capture and confirmed an unlawful enemy combatant engaged in armed conflict against the United States should be released from our custody. They should be held in indefinite detention under the Law of Armed Conflict, or if they meet the criteria for a trial by Military Commission, be charged, tried and convicted for their crimes and held accountable for their actions. In this long war on terrorism, the United States government has a moral responsibility to the American people and the world to ensure that not one more American or any citizen from any nation dies at the hands of an unlawful enemy combatant released from Guantanamo Bay.

VIII. Conclusion

Keeping the detention facility at Guantanamo Bay open is in the best interest of the United States and the American people. The threat of ongoing terrorist operations against the United States militates that as a nation we should continue using the facilities that have already been built there and expand their use to ensure that another terrorist attack is not carried out against the United States. When scrutinized and evaluated on their purported value to keep the nation safe, arguments for closing Guantanamo Bay do not bear up under the light of day and the facts, classified and unclassified, confirm this analysis.

Mr. DESANTIS. The gentleman's time is expired.
The chair now recognizes Mr. Liotta for 5 minutes.

STATEMENT OF JAY ALAN LIOTTA

Mr. LIOTTA. Chairman DeSantis, Ranking Member Lynch, and members of the committee, I would like to thank you for the opportunity to be with you here today.

From February 2004 until January 2015 when I retired after more than 32 years of government service, I served as the ranking career civilian officer overseeing the Office of Detainee Affairs in the Office of the Secretary of Defense. I was there when Secretary Rumsfeld created the office in the aftermath of the Abu Ghraib prison scandal. I am proud to say that over the subsequent 11 years I helped play an instrumental role working with seven different deputy assistant secretaries of defense during both the Bush and Obama administrations to create a sound, credible, and transparent detention policy that now many countries across the globe seek to emulate.

Today, I am retired from government service and do not represent the views of the Department of Defense. My statements here today are solely my own personal views. With this in mind, I would like to focus on the processes used to review the threat those in detention still pose and whether our government should continue to negotiate the transfer of those whose potential threat can be mitigated safely by other countries.

Secretary Rumsfeld made it clear during his tenure that while we would detain those who sought to harm our national interests, we were not, nor should we be, the world's jailer. During his stewardship of the Department and that of every subsequent Secretary of Defense, the Department sought to ensure a process to review the continuing level of threat posed by each detainee.

During the Bush administration, DOD relied on the Administrative Review Board process chaired by the Deputy Secretary of Defense to review all of the available information to—at DOD's hands on each detainee to assess their level of threat. If a detainee was determined to no longer be a threat, he was released. And during the first ARB process, 14 detainees were approved for release with no restrictions against them.

More often, the deputy secretary used the ARB process to approve the transfer of individuals who were believed to continue to represent some level of threat but a level that can be constrained through negotiated security assurances with the receiving country. These assurances included the restriction of movement from within or outside of the country, a continued monitoring of the individual, and where applicable, prosecution under local laws.

During the Bush administration, 214 detainees were transferred with such restrictions during the ARB process. When President Obama assumed office in 2009, he ordered the Justice Department to spearhead an executive review of all information available on each detainee. This review assessed all of the information available to the ARBs, as well as a considerable amount of highly classified intelligence that had not been part of the ARB review.

As a result, the executive task force determined that 126 detainees were approved for transfer subject to appropriate security as-

surances; 44 were referred for review as prosecution candidates; 30 Yemeni detainees were approved for conditional detention, meaning that they could be transferred if the security situation in Yemen improved or an appropriate rehabilitation or third country resettlement option became available; and 48 detainees were approved for continued detention.

Following the task force review, there began an aggressive move to transfer the 126 detainees recommended for transfer. Between 2010 and 2013, I worked successfully with Ambassador Dan Fried from the State Department to transfer 87 detainees to 29 countries and to the U.S. for Federal prosecution.

Although we continue to explore efforts made during the Bush administration to provide a safer security environment in Yemen, the attempt by a terrorist to bring down an airplane bound for Detroit resulted in President Obama's announcement of a moratorium on any transfers to Yemen.

In October 2013 in an effort to accelerate transfers, President Obama instructed the Defense and State Departments to appoint special envoys exclusively dedicated to the mission of transferring detainees. Since both DOD and the State envoys have been in place, 84 detainees have been transferred with security assurances to 20 countries.

By this time, however, it was clear that the information used by the task force in 2009 to assess the potential threat of a detainee eligible for transfer was increasingly stale. So in November 2013 the Defense Department conducted the first Periodic Review Board hearing to determine whether a detainee previously determined as not eligible for transfer was still a significant threat against the United States and its allies.

Like the executive order task force, the PRB consisted of six voting members, one each from the Office of the Secretary of Defense; the Joint Chiefs of Staff; the Department of State, Homeland Security, Justice; and from the Office of the Director of National Intelligence.

Although the PRBs are administrative—a military administrative procedure and not a judicial or a penal process, the detainees can opt to be represented by both military representatives and legal counsel. In addition, the detainee is afforded the opportunity to address the board and directly answer their questions, which makes the process more like a parole board review in the American penal system.

Since the first PRB, there have been 43 hearings for 39 detainees. Of these 43 hearings, 11 detainees were determined to remain in continued detention, 21 had their status changed to transfer, and 11 decisions are still pending. Of those whose status was changed to transfer, nine have since been transferred with security assurances, and the remaining 12 are at Gitmo.

Finally, allow me to address the issue of detainees who have returned to the fight since their release from—their transfer from Gitmo. The intelligence community assessed in its most recent unclassified report that 204 of the 606 former Guantanamo detainees are suspected or confirmed to have returned to the fight. This represents about 30 percent of the detainees transferred. Moreover, the intelligence community notes that transfers to countries with

ongoing conflicts in internal stability, as well as recruitment by insurgent terrorist organizations, poses problems with transfers.

No one wants to see a detainee who is transferred return to the fight. The Congress has sought, through varying degrees of legislation, to try and prevent detainees from reengaging once transferred, but the reality is the only way to prevent a detainee's return to the fight is to never transfer them from Gitmo. But as the PRBs continue to show, that simply is not a feasible option for many of the detainees who indeed no longer wish to pursue terrorist objectives. And as Secretary Rumsfeld once warned, it would turn us into the world's jailer.

Thank you very much for my time.

[Prepared statement of Mr. Liotta follows:]

Testimony before House Committee on Oversight and Government Reform

Presented by J. Alan Liotta

Tuesday, 24 May 2016

Chairman DeSantis, Ranking Member Lynch, and fellow members of the Committee, I would like to thank you for the opportunity to speak with you today. I believe it extremely important to present the facts about the US military detention center at the Department of Defense Naval Base at Guantanamo Bay, Cuba. More importantly, I look forward to dispelling many of the myths and misperceptions that continue to cloud discussions about our military operations at GTMO.

I welcome the opportunity to speak frankly with the members of your committee. From February 2004 until January 2015, when I retired after more than 32 years of government service, I served as the ranking career civilian officer overseeing the Office of Detainee Affairs in the Office of the Secretary of Defense. I was there when Secretary Rumsfeld created the office in the aftermath of the Abu Gharib prison scandal. I am proud to say that over the subsequent eleven years I helped play an instrumental role working with seven different Deputy Assistant Secretaries of Defense during both the Bush and Obama Administrations to create a sound, credible, and transparent detention policy that now many countries across the globe seek to emulate.

During my time at DOD, I was a frequent voice on the Hill. I regularly briefed the Department's committees of jurisdiction—HASC and SASC—as well HPSCI, SSCI, the respective Foreign Affairs committees, and many others. Guantanamo has always been an issue of keen interest on the Hill—often times resulting in legislation—and I have never turned away an opportunity to present the facts to our nation's lawmakers.

With this in mind, today I would like to focus my brief comments to the committee on why DOD continues to review the threat those in detention still pose and whether we should continue to negotiate the transfer of those whose potential threat can be mitigated safely by other countries.

At the outset, however, I would like to emphasize that military detention is not a precursor for putting a detainee on trial. Since the first detainees arrived at GTMO in January 2002, more than 780 individuals, representing more than 40 different countries, have been held at GTMO. None of them were captured by police units working with prosecutors seeking to try the individuals for crimes. ALL were captured as part of military operations, either by American forces acting on their own or in concert with allied forces. Put simply, our forces often were engaged in fierce firefights and had no time to think about, or collect, evidence preserved with appropriate chains of custody to be used in subsequent judicial proceedings. They were there with one mission, to fight and win the war.

The Authorization to Use Military Force (AUMF) passed by the Congress in September 2001, provides the foundation for the Department's authority to capture and detain those we are fighting against. There are two key reasons why:

--First, if our forces are engaged in combat without an ability to capture and detain, they then must either kill their enemy—even when capture is an option—or not target them, even if they pose a direct threat to American or allied forces. To kill when you have the ability to capture is a direct violation of the Laws of War, and thus could subject our military personnel to prosecution for war crimes. And to freely allow the enemy to target and kill American and allied military personnel when our soldiers have the option to neutralize the threat through capture, needlessly risks the deaths of much larger numbers of our military and our allies.

--Second, as in any conflict, if you can capture, or kill, enough of the enemy so that they can no longer fight, you can bring the conflict to a much quicker end. Put simply, detention is the more humane option, both for those fighting and for those innocents who potentially could get caught up in a conflict zone.

So why does DOD continue to Review the Threat of Those Still Detained?

Secretary Rumsfeld made it clear during his tenure that while we would detain those who sought to harm our national interests, we were not, nor should we be, the world's jailor. During his stewardship of the Department, and that of every subsequent Secretary of Defense, we sought to ensure a process to review the continuing level of threat posed by a detainee. During the Bush Administration,

DoD relied on the Administrative Review Board process, chaired by the Deputy Secretary of Defense, to review all of the available information available to DOD on each detainee to assess their level of threat. If a detainee was determined to no longer be a threat, he was released. And during the first ARB process, 14 detainees were approved for released with no restrictions against them.

More often, the Deputy Secretary used the ARB process to approve the transfer of individuals who were believed to continue to represent some level of threat, but one that could be constrained through negotiated security assurances with the receiving country. These assurances included the restriction of movement from within or outside the country, a continued monitoring of the individual, and where applicable, prosecution under local laws. 214 detainees were transferred with such restrictions during the ARB process.

When President Obama assumed office in 2009, he ordered the Justice Department to spearhead an executive review of all information available on each detainee. This review assessed all of the information available to the ARBs, as well as a considerable amount of highly classified intelligence that had not been part of the ARB review. As a result, the Executive Task Force determined that 126 detainees were approved for transfer subject to appropriate security assurances; 44 detainees were referred for prosecution; 30 Yemeni detainees were approved for “conditional” detention, meaning that they may be transferred if the security situation in Yemen improves, or an appropriate rehabilitation or third-country resettlement option becomes available; and 48 detainees were approved for continued detention.

Following the Task Force’s review, there began an aggressive move to transfer the 126 detainees recommended for transfer. Between 2010 and 2013, I worked successfully with Ambassador Dan Fried from the State Department to transfer 87 detainees to 29 countries and the U.S. for federal prosecution*. Although we continued to explore efforts made during the Bush Administration to provide a safer security environment in Yemen, the attempt by a terrorist to bring down airplane bound for Detroit, resulted in President Obama’s announcement of a moratorium on any transfers to Yemen.

* (Afghanistan, Albania, Algeria, Belgium, Bermuda, Bulgaria, Canada, Cabo Verde, Chad, El Salvador, France, Georgia, Germany, Hungary, Iraq, Ireland, Italy, Kuwait, Latvia, Palau, Portugal, Saudi Arabia, Slovakia, Somaliland (Somalia), Spain, Sudan, Switzerland, UK, and Yemen + U.S. for Article III prosecution.)

In October 2013, in an effort to accelerate transfers, President Obama instructed the Defense and State Departments to appoint Special Envoys exclusively dedicated to the mission of transferring detainees. Since both the DOD and State Envoys have been in place, 84 detainees have been transferred with security assurances to 20 countries.*

By this time, however, it was clear that the information used by the Task Force in 2009 to assess the potential threat of a detainee eligible for transfer was increasingly stale. So in November 2013, the Defense Department conducted the first Periodic Review Board hearing to determine whether a detainee previously determined as not eligible for transfer was still a significant threat against the United States and its allies. Like the Executive Order Task Force, the PRB consists of six voting members—one each from DOD, the Joint Chiefs of Staff, the Departments of State, Homeland Security, Justice, and from the office of the Director for National Intelligence.

Although the PRBs are a military administrative procedure—and not a judicial or penal process—the detainees can opt to be represented by both my military representatives and legal counsel. In addition, the detainee is afforded the opportunity to address the board and directly answer their questions, which makes the process more like a Parole Board review in the American penal system. Since the first PRB, there have been 43 hearings for 39 detainees. Of these 43 hearings, 11 detainees were determined to remain in Continued Detention, 21 had their status changed to transfer, and 11 decisions are pending. Of those whose status was changed to transfer, 9 have since been transferred with security assurances and the remaining 12 are still at GTMO.

Having helped construct the PRBs, and having chaired or participated in the first 10 hearings from November 2013 until my retirement, I believe the Boards are a fair and transparent mechanism for detainees to demonstrate that they no longer represent a significant threat to the United States. Board members take considerable time to prepare, conduct meaningful interactions with the detainees

*(Afghanistan, Algeria, Bosnia, Estonia, Georgia, Ghana, Kazakhstan, Kuwait, Mauritania, Montenegro, Morocco, Oman, Qatar, Saudi Arabia, Senegal, Slovakia, Sudan, UAE, UK, and Uruguay).

and their representatives, and have become extremely adept at determining when a detainee has lost the will to carry on his terrorist activities and which ones seek to game the system as a means to get out of GTMO, most likely to rejoin the fight. Interestingly, defense attorneys who represent detainees in the PRB proceedings have almost unanimously welcomed the proceedings and encouraged their detainee clients to participate in a meaningful way. I continue to believe that the PRBs can play a constructive role in aiding the transfer of detainees, so long as they are not rushed or become so rote in execution that Board Members can no longer make meaningful distinctions between detainees and their potential threats.

Finally, allow me to address the issue of detainees who have returned to the fight since their transfer from GTMO. The Intelligence Community assessed in its most recent unclassified report that 204 of the 676 former GTMO detainees are suspected or confirmed to have returned to the fight. That represents about 30% of the detainees transferred. Moreover, the Intelligence Community notes that transfers to countries with ongoing conflicts and internal stability, as well as recruitment by insurgent and terrorist organizations, could pose problems.

No one wants to see a detainee who is transferred return to the fight. The Congress has sought through varying degrees of legislation to try to prevent detainees from re-engaging once transferred, but the reality is the only way to prevent a detainee's return to the fight is to never transfer them from GTMO. But as the PRBs continue to show, that simply is not a feasible option for many of the detainees who indeed no longer wish to pursue terrorist objectives. And as Secretary Rumsfeld once warned, it would turn us into the world's jailor.

Rather, I believe it far more important to continue to negotiate meaningful and robust security assurances with other countries who have the capacity, capability, and willingness to monitor former detainees and mitigate their attempts to re-engage. We've seen this model work successfully in many countries and we should continue to rely on it. We should not rush to just any country that will say "yes" we'll take detainees from GTMO, but rather to continue to critically assess their ability to work with the detainee for their successful reintegration into society so that they do not return to their former support of terrorism. If a country cannot deliver on these measures, then we shouldn't send detainees there (and we haven't in the past). If they can, then we should transfer those eligible detainees who are best suited for success in that country.

Thank you for your time and attention.

Mr. DESANTIS. The gentleman's time is expired.
The chair now recognizes Mr. Mora for 5 minutes.

STATEMENT OF ALBERTO MORA

Mr. MORA. Mr. Chairman, Ranking Member Lynch, and members of the subcommittee, I want to thank you for inviting me here today to participate in this important hearing. I will focus my brief comments on the impact that the closure of Guantanamo would have on the United States national security interests.

In my capacity as Navy general counsel in the years after 9/11, I was deeply involved in the legal and policy issues related to the detention, interrogation, and status review of detainees held at Guantanamo. Based on my experience and judgment, I believe that closing Guantanamo would significantly enhance U.S. national security.

And there are many others who share this view. In addition to Presidents Bush and Obama, five former and current Secretaries of Defense and five chairmen of the Joint Chiefs of Staff have supported closing Guantanamo, as have seven former Secretaries of State across both Republican and Democratic administrations.

Earlier this year, 36 retired generals and admirals, including General Charles Krulak, the former commandant of the Marine Corps; and Major General Michael Lehnert, the commander in charge of setting up the detention facility, wrote to Congress urging that it help close Guantanamo.

These are the five reasons to close Guantanamo: first, because there's no longer any unique legal reason to use the facility. As we know, Guantanamo is no longer outside the jurisdiction of the U.S. Federal courts, and this was a principal reason for its selection in the first place. Thus, there is no longer any significant legal advantage to holding detainees in Guantanamo as opposed to holding them in Federal detention facilities in the United States.

Second, because Guantanamo simply costs too much. Guantanamo costs the U.S. taxpayer \$445 million a year or about \$5.56 million per detainee annually compared to Federal facilities that incarcerate prisoners at a maximum cost of about \$78,000 per prisoner per year. This is waste in its purest form.

Third, because Guantanamo requires and constitutes a wasteful use of scarce military personnel. Currently, there are approximately 1,200 soldiers guarding a mere 80 detainees in Guantanamo. Given that this function could easily be centralized, this represents a highly wasteful use of scarce military personnel.

Fourth, because Guantanamo does not provide any unique security function that is not already being provided by the Federal prison system. Stateside detention facilities are currently holding at least 443 convicted terrorists in facilities located across 21 U.S. States, including a number of high-level Al-Qaeda plotters and even one former Guantanamo detainee. There is no evidence that holding these men within the United States has presented any danger to local communities. This evidence—there is evidence, however, that Guantanamo is therefore not uniquely secure.

And fifth and most important, because the foreign policy national security costs of maintaining Guantanamo as a detention facility are too high and outweigh the benefit that it provides.

Fairly or unfairly, Guantanamo today is regarded by millions around the world as a symbol of American injustice and cruelty. Because of this, Guantanamo has contributed to a loss of American lives overseas. Let me explain how. A recently discovered 2006 U.S. diplomatic cable from our embassy in Kuwait reported on a meeting of senior U.S. military intelligence and diplomatic officials to review our counterterrorism strategy in Iraq, including the causes for terrorist inflows in theory. I should mention that Senator—rather general Stanley McChrystal was present and participated in that meeting.

The cable states, and I quote, “The primary motivator for most terrorist and foreign fighters, as reported by U.S. military intelligence, remains perceived U.S. abuses of and lack of due process for detainees at Abu Ghraib and Guantanamo Bay, making this issue a key driver of terrorist and foreign fighters flows and a key element undermining international confidence in the United States’ ability to conduct an effective war on terrorism that remains true to American values.”

Although that cable was written in 2006, in 2013 the director of National Intelligence stated that “Guantanamo continues to serve as a propaganda tool in service of Al-Qaeda’s false narratives and justifications for waging global jihad against the United States.”

By continuing to serve as a symbol of American injustice, Guantanamo contributes to anti-Americanism, diminishes public support for U.S. policies in allied nations, contributes to and continues to be used by dictators in repressive regimes to justify their own abuse of detention policies.

And concluding, Guantanamo is too expensive, too inefficient, and too wasteful of scarce military resources. It provides no additional security to what is routinely provided every single day by Federal prisons in the United States to terrorists as dangerous as any in Guantanamo and critically, it provides ammunition to America’s enemies to mischaracterize our values, our policies, and our objectives in the war on terror.

Mr. Chairman, Guantanamo is not an asset, it’s a liability. I thank the committee again and look forward to answering your questions.

[Prepared statement of Mr. Mora follows:]

TESTIMONY
OF
ALBERTO J. MORA
BEFORE THE
SUBCOMMITTEE ON NATIONAL SECURITY
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
ON
“GUANTANAMO BAY: THE REMAINING DETAINEES”
MAY 24, 2016

Mr. Chairman, Ranking Member, and Members of the Subcommittee:

I want to thank you for inviting me here today to participate in this important hearing regarding the status of the detention facility at Guantanamo Bay, Cuba. Of the three principal questions the Subcommittee will address today, I will focus my comments mainly on the Subcommittee’s third area of inquiry: the implications that the closure of the detention facility would have on the United States’ national security interests. I will also make a few remarks on the Periodic Review Board (PRB) process.

It is my judgment that the national security interests of the United States would be advanced by permanently closing the Guantanamo detention facility and transferring the detainees there either to a detention facility or facilities in the United States or, if appropriate, to third countries. While one can understand the reasons why Guantanamo was initially chosen as a detention facility for high-level detainees captured in the War on Terror, those reasons no longer apply, circumstances have changed, better alternatives have emerged, and the high costs of Guantanamo are now fully visible and should be regarded as untenable. To keep the Guantanamo detention facility open today would be contrary to our nation’s financial, administrative, military, foreign policy, and national security interests. Other than for reasons of inertia, there is no need to keep the facility open – but there are pressing reasons to close it.

I.

Before turning to the reasons that support this opinion, the Subcommittee may find a description of my background and experience in Guantanamo detention issues to be of assistance in determining what weight to give to it. My background on the subject is both official and academic.

My official involvement in Guantanamo dates back almost continuously from the first day of my service as General Counsel of the Department of the Navy in the administration of President George W. Bush, which was in the summer of 2001, until my last day in office almost five years later. Immediately following my confirmation by the Senate, I participated in an evaluation by the Department of the Navy and Marine Corps' training facilities in the Caribbean, including Guantanamo. After the attacks on 9/11 and following the decision to use Guantanamo as a detention facility (a decision I did not participate in), I was involved in some of the contractual and administrative details regarding the conversion of the naval base into a detention facility. I visited the base three times. On my first visit in early 2002 I witnessed the second planeload of detainees land on the base and used the occasion to inspect the detention facility, which then consisted only Camp X-Ray – Guantanamo at its most rudimentary origin.

More substantive official involvement with detention operations followed. In November of 2002 I became deeply engaged in Guantanamo interrogation operations when the Naval Criminal Investigative Service (NCIS) – which reported to me within the Navy hierarchy – came to me with what would prove to be well-founded concerns about detainee abuse during interrogations. And later, starting in early 2004, I provided legal support to the Secretary of the Navy and my boss, Gordon England, when he was appointed by Defense Secretary Donald Rumsfeld to be his Executive Agent in the formation and management of the Guantanamo Combatant Status Review Tribunals (CSRTs) and Administrative Review Boards (ARBs, the precursors of today's Periodic Review Boards, or PRBs). Both the CSRTs and ARBs exposed me to the backgrounds of some (if not all) of the detainees, to the quality of the representative data or intelligence maintained on them, and to the inter-agency process used to evaluate the status of the detainees for possible release, transfer, or continued detention.

Academically, my involvement in Guantanamo dates from the start of my research activities at Harvard University in 2014. First as an Advanced Leadership Fellow and now as a Senior Fellow at the Kennedy School's Carr Center for Human Rights Policy¹, I have been involved generally in the study of the interrelationship of human rights to national security and more particularly in the assessment of the costs and consequences of certain decisions concerning the legal status and interrogation of prisoners in the War on Terror. During this research, data demonstrating the adverse policy impact of the decision to open Guantanamo and to maintain it as a detention center has surfaced repeatedly.

My experience from both my official and academic involvement with Guantanamo informs this testimony.

¹ This testimony is provided in my personal capacity and does not reflect the views of the Carr Center for Human Rights Policy, the Harvard Kennedy School, Harvard University, or any other person or institution.

II.

Why should Guantanamo be closed?

I believe it should be closed for five reasons, each of which stems from what I regard to be a neutral cost/benefit assessment of the policy ramifications of closing, or not closing, Guantanamo. My position, I should note, is one shared by many who have spent their careers protecting and defending our country. Five former and current Secretaries of Defense² and five Chairmen of the Joint Chiefs of Staff³ have supported closing Guantanamo, as have seven former Secretaries of State⁴ across both Republican and Democratic administrations. Numerous national security experts support closing Guantanamo.⁵ Earlier this year, thirty-six retired generals and admirals, including General Charles Krulak—the former commandant of the Marine Corps—and Major General Michael Lehnert—the commander in charge of setting up the detention facility at Guantanamo after 9/11—wrote to Congress urging that it cooperate with the administration to pave a path to closing Guantanamo.⁶

Without seeking to speak of behalf of any of these leaders, in all probability their calls to close Guantanamo include some or all of the following five mutually supporting reasons. They are, in ascending order of importance:

First, Guantanamo is no longer outside the jurisdiction of U.S. federal Courts and thus there is no significant legal advantage to holding detainees in Guantanamo vis-à-vis federal detention facilities in the United States.

While there were a number of factors that led to the selection of Guantanamo as a detention facility, most historical accounts of that decision cite the belief that it was outside the jurisdiction of U.S. federal courts – and, thus, largely a law-free zone – as one of the primary reasons. This is, of course, no longer the case. Starting with *Hamdi v. Rumsfeld*⁷ the Supreme Court has stepped in four times since 9/11 to assert federal court jurisdiction over the base.

² <https://www.foreignaffairs.com/articles/vietnam/2005-10-01/iraq-learning-lessons-vietnam>, <http://www.nydailynews.com/news/politics/defense-secretary-robert-gates-closing-guantanamo-bay-prison-priority-article-1.355127>, <http://cnsnews.com/news/article/melanie-hunter/sen-cotton-decision-close-gitmo-political-not-based-security-concerns-0>, <https://www.gpo.gov/fdsys/pkg/CHRG-113hrg80754/html/CHRG-113hrg80754.htm>, <http://www.washingtonexaminer.com/ash-carter-closing-guantanamo-bay-would-be-a-good-thing/article/2581311>

³ <http://www.nbcnews.com/news/us-news/colin-powell-says-closing-guantanamo-bay-america-s-best-interest-n525041>, http://www.technicianonline.com/news/article_ef3216a9-95fd-5332-9acf-126207211a86.html, <http://www.newsweek.com/general-peter-pace-casualty-war-102447>, http://abcnews.go.com/ThisWeek/story?id=7664072&page=1#_UebEaKz0-xM, http://www.huffingtonpost.com/2015/01/11/martin-dempsey-guantanamo_n_6451668.html

⁴ <http://articles.latimes.com/2008/mar/28/nation/na-advice28>, <http://news.bbc.co.uk/2/hi/7155142.stm>, <http://www.cbsnews.com/news/hillary-clinton-urged-obama-to-close-guantanamo-bay/>

⁵ <http://www.humanrightsfirst.org/resource/quote-sheet-national-security-leaders-support-closing-guantanamo>

⁶ <http://www.humanrightsfirst.org/resource/retired-generals-and-admirals-letter-senate-and-house-armed-services-committees-closing>

⁷ 542 U.S. 507 (2004).

There is thus no longer a significant legal advantage to holding detainees in Guantanamo as compared to federal detention facilities in the continental United States.⁸ And because the principal factor that led to the selection of Guantanamo no longer applies, the basis for maintaining Guantanamo as a detention facility is correspondingly weakened.

Second, the financial costs and personnel burdens of maintaining detainees at Guantanamo are extravagantly wasteful in comparison with other alternatives.

Guantanamo is incredibly costly from both a financial and personnel perspective — and unnecessarily so. Financially, Guantanamo costs the U.S. taxpayer \$445 million a year, or about \$5.56 million per detainee annually.⁹ The cost to house prisoners in maximum-security prisons, by contrast, is about \$78,000 per prisoner.¹⁰ In the recently-submitted DOD plan for closing Guantanamo it was reported that, even with substantial construction or modification costs, the government could save upwards of \$85 million dollars a year by closing Guantanamo.¹¹

From a personnel perspective, Guantanamo is similarly inefficient. Based on one recent estimate, there are upwards of 1,700 members of the military serving at Guantanamo, which breaks down to about 18 troops for each detainee¹²— an astonishingly high number from a custodial perspective. And even if one were to analyze only the guard force component in isolation from other personnel elements the conclusion of wastefulness and inefficiency is inescapable. By some accounts, the number of guards at Guantanamo total 1,200, a ratio of 15 guards per detainee. By contrast, the average ratio of prisoners per guard in the federal correctional system as reported in a 2012 GAO study is 5.2 prisoners per guard.¹³

Given these wide margins between Guantanamo and other U.S. custodial alternatives, one could significantly underestimate the costs of transferring and maintaining the Guantanamo detainees in the United States and still achieve sizeable economies after making the relocation.

Third, given the availability of U.S.-based civilian alternatives, by closing Guantanamo the military personnel now serving as guards there could be reassigned to higher-priority duties.

The guard force at Guantanamo is performing a valuable and necessary function and those who serve or have served in that capacity have done so honorably and have earned the gratitude of the nation. Still, the demands on our military personnel after 14 years of the War on Terror are daunting and highly trained soldiers must be regarded as scarce resources. Given that civilians could perform many or all of the custodial duties at Guantanamo as effectively as military

⁸ See, e.g., <https://s3.amazonaws.com/s3.documentcloud.org/documents/1160074/5-14-14-kadzic-to-pil-re-fy14-ndaa.pdf>

⁹ http://www.defense.gov/Portals/1/Documents/pubs/GTMO_Closure_Plan_0216.pdf

¹⁰ <http://www.miamiherald.com/news/nation-world/article1953705.html>

¹¹ http://www.defense.gov/Portals/1/Documents/pubs/GTMO_Closure_Plan_0216.pdf

¹² <http://www.miamiherald.com/news/nation-world/world/americas/guantanamo/article61672022.html>

¹³ Government Accountability Office, “Bureau of Prisons: Growing Inmate Crowding Negatively Affects Inmates, Staff, and Infrastructure”, at 79 (GAO-12-743, September 2012).

personnel, the question must be posed whether transferring the detainees to the United States and the custodial responsibility to the Bureau of Prisons may not permit the reassignment of the military personnel to higher-priority military duties, thus enhancing national security.

Fourth, because the federal prison system has demonstrated that it can successfully and safely hold terrorists as dangerous as any of those as Guantanamo, closing Guantanamo and transferring the detainees to the United States would not appreciably add to the current level of risk.

In the public debate about whether or not to close Guantanamo, many Americans appear to be of the view that the 80 remaining Guantanamo detainees pose a security threat that only Guantanamo can contain. But that is not an accurate view. Stateside detention facilities are currently holding at least 443 convicted terrorists across 21 U.S. states, including a number of high-level al Qaeda plotters and even one former Guantanamo detainee.¹⁴ There is no evidence that the presence of these men within the United States has presented any danger to local communities.¹⁵ As the Executive Director of the American Correctional Association James A. Gondles Jr. recently stated: “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.”¹⁶

Thus, two points emerge here. First, if the 80 remaining Guantanamo detainees were added to the 443 terrorists already held in captivity in the United States, that would neither change the type of risk already faced by the United States nor appreciably raise its level. And second, as a detention facility, Guantanamo should no longer be seen as providing unique security.

Fifth, and most importantly, the foreign policy and national security costs of maintaining Guantanamo as a detention facility are too high and outweigh any benefit it provides.

Guantanamo has damaged us with our friends and has constituted a strategic gift to our enemies. It is not an overstatement to say that the Guantanamo has seriously undermined our national security and contributed to a loss of American lives overseas.

Let’s look first at how it has provided aid and comfort to our enemy. That Guantanamo has been used as a recruiting symbol by al Qaeda and ISIS is well documented and is generally accepted. What is less well known and remains the subject of debate is how effective these symbols have proved. My view is that they have been very effective. Last year, a Carr Center researcher discovered a 2006 U.S. diplomatic cable from our embassy in Kuwait that summarized the results of a conference of chiefs of mission and military commanders in the Middle East to develop a regional counterterrorism strategy—the cable states, and I quote: “the primary motivator for most [terrorists and foreign fighters], as reported by U.S. military

¹⁴ http://www.nytimes.com/interactive/2016/04/07/us/terrorists-in-us-prisons.html?_r=0

¹⁵ <https://www.justice.gov/opa/speech/attorney-general-eric-holder-speaks-the-american-constitution-society-convention>

¹⁶ <http://www.humanrightsfirst.org/sites/default/files/Gondles-statement-for-the-record-April-2016.pdf>

intelligence, remains perceived U.S. abuses of and lack of due process for detainees at Abu Ghraib and Guantanamo Bay, making this issue a key driver of [terrorist and foreign fighter] flows and a key element undermining international confidence in the United States' ability to conduct an effective war on terrorism that remains true to American values."¹⁷

The cable goes on to state—again, I'm quoting—“Detainee debriefs and intelligence reporting indicate that U.S. treatment of detainees at Guantanamo Bay, Abu Ghraib, and elsewhere is the single most important motivating factor for [terrorists and foreign fighters] traveling to Iraq. Regional concern over detainee issues undermines our credibility, and our partners' willingness to cooperate, on a host of CT issues.” Given that these symbols were the “primary” motivator for foreign terrorist flows into theater, that they were responsible for some American combat deaths is almost a certainty.

Although that cable was written in 2006, the propaganda effects of Guantanamo retain their potency. In 2013, the Director of National Intelligence stated that Guantanamo continues to serve as a propaganda tool in service of al Qaeda's false narratives and justifications for waging global jihad against the United States,¹⁸ an assertion that we ourselves can verify each time we see an al Qaeda or ISIS prisoner paraded in Guantanamo's signature orange jumpsuit.

Beyond bolstering our enemies, Guantanamo continues to damage us with our alliances. Government officials have testified that Guantanamo continues to undermine counterterrorism cooperation with allies. For example, allies will often refuse to provide access to terrorism suspects or potentially valuable intelligence if they believe doing so could be seen as supporting detention operations at Guantanamo.¹⁹ Detention at Guantanamo has also compromised evidence necessary to the prosecution of prisoners once they have been sent home²⁰ and has exposed U.S. officials to legal risks in foreign courts.²¹ By undermining the prosecution of suspected terrorists, Guantanamo has damaged a critical aspect in the endgame in the War on Terror.

So, too, the presence of Guantanamo corrodes U.S. soft power and moral authority and it compromises our ability to act credibly as a global leader on human rights. Former Secretary of State Colin Powell said just this year in reiterating his support for closing Guantanamo, I quote: “Guantanamo was a heavy load to carry as I went around the world talking about human rights, talking about how you treat prisoners, talking about how you can't have indefinite detention or the use of torture to get things out of people. And I always had pushback at me: 'But look at

¹⁷ https://wikileaks.org/plusd/cables/06KUWAIT913_a.html

¹⁸ <https://www.scribd.com/doc/185248699/DNI-Letter-on-GTMO-11-14-13>

¹⁹ <http://www.humanrightsfirst.org/uploads/pdfs/Kerry-GTMO-NDAA-Nov2013.pdf>, <http://www.reuters.com/article/us-security-usa-guantanamo-idUSTRE51089820090226>,

<https://www.justice.gov/opa/speech/attorney-general-eric-holder-speaks-northwestern-university-school-law>

²⁰ “Court Frees 'Spanish Taliban',” Wikileaks, 06MADRID1914, 28 July 2006.

²¹ Center for Constitutional Rights, “Former Guantánamo Chief Being Investigated for Torture Is a No-Show at French Court Hearing,” 1 March 2016.

what you were doing at Guantanamo.²² That burden continues to be heavy: Guantanamo constitutes a symbol of American injustice to many around the world, contributes to anti-Americanism, diminishes public support for U.S. policies, and continues to be used by dictators and repressive regimes to justify their own abusive detention practices.²³

III.

As I noted, there are important reasons why Guantanamo should be closed. But Guantanamo also raises other issues and the members of this Subcommittee are right to thoroughly scrutinize the process that the administration uses to determine if and under what circumstances a detainee should be transferred. If the process is not fair and thorough, the result could mean the transfer of detainees who should not be released, or the continued detention of individuals who should no longer be held. In this regard, let me say a few words about the PRB process.

I can attest from my own personal experience working on and in Guantanamo that during the Bush administration in many cases there was very little information available to evaluate whether and to what extent Guantanamo detainees had been engaged in criminal or hostile acts such that their detention could be justified. In many cases, information—if it did exist—was dispersed across agencies and departments, with no central repository to collect and properly analyze it. Often continued detention decisions were based on unreliable or inaccurate reporting.

In 2009, the Obama administration established an interagency taskforce to collect all available information on Guantanamo detainees. This taskforce, made up of representatives of the Office of the Director of National Intelligence, the Joint Chiefs of Staff, and Departments of Justice, Defense, State, and Homeland Security, evaluated each detainee individually, determining which should be cleared for transfer, which should be prosecuted, and which the United States should continue to hold.

Those detainees whom the taskforce decided should continue to be held are now eligible for Periodic Review Board, or PRB, reviews, which are conducted by senior officials from the same agencies that comprised the task force. The PRB process was codified into federal law on a bipartisan basis.²⁴ It conducts periodic hearings to determine whether the detainees “represent a continued significant threat to the United States such that their continued detention is warranted” or whether any potential risks associated with their transfer can be mitigated so they can be cleared for transfer.²⁵ The PRB evaluates all government information relevant to

²² <http://www.politico.com/story/2016/02/colin-powell-guantanamo-bay-219739>

²³ <http://webtv.un.org/meetings-events/human-rights-council/watch/usa-review-22nd-session-of-universal-periodic-review/4229106422001>

²⁴ See National Defense Authorization Act for the 2012 Fiscal Year, Section 1023.

²⁵ <http://www.prs.mil/AboutthePRB.aspx>

each detainee, along with diplomatic considerations, security assurances, the detainee's mental and physical health, and any other mitigating circumstances.

As a result of this stringent evaluation processes, the rate of former detainees engaging in terrorist or insurgent activities after their release is reported to have dropped considerably. Of the 118 former detainees that the Office of the Director of National Intelligence has reported are confirmed of engaging in terrorist or insurgent acts, 94 percent were transferred under the prior administration. Of those suspected of engaging in terrorist or insurgent acts (a designation that is based on "unverified or single-source reporting"), 86 percent were transferred by the prior administration.²⁶ The confirmed recidivism rate for former detainees transferred under the current administration remains at less than 5 percent.²⁷

I cannot speak to the question of whether it is wise or appropriate to transfer any one of the particular remaining detainees being held at Guantanamo. I am, however, reasonably confident that the interagency process is vetting any proposed transfer thoroughly, which may help explain the lengthy delay in many cases in the time between initial Guantanamo task force or PRB clearance for transfer and the actual transfer.

Of course, it is important to emphasize that there is no such thing as a zero-risk option in discussing Guantanamo, or any other national security issue, and that it would be imprudent, unwise, and unlawful to simply hold all detainees indefinitely without charge or trial based on suspicion that they may in the future engage in potentially dangerous acts. For these reasons, it is my sense that the PRB process appears to be responsibly assessing the potential recidivism risks associated with detainee transfers and that its transfer recommendations merit support.

IV.

In concluding, I thank the committee again for receiving my testimony today on the importance of moving as rapidly as possible to close the detention facilities at Guantanamo Bay. I look forward to answering any questions you may have.

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²⁶https://www.dni.gov/files/documents/Newsroom/Reports%20and%20Pubs/Summary_of_the_Reengagement_of_Detainees_Formerly_Held_at_GTMO_Ma%204_2016.pdf

²⁷ *Id.*

Mr. DESANTIS. The gentleman's time is expired. The chair now recognizes himself for 5 minutes.

Commander, what role did the facility at Gitmo play in sparking the terrorists to attack the USS Cole?

Mr. LIPPOLD. The facility did not exist back then. It played no role.

Mr. DESANTIS. And the facility also did not exist in the embassy bombings in '98, correct?

Mr. LIPPOLD. It didn't exist for the embassy bombings or the —

Mr. DESANTIS. Or the WTC —

Mr. LIPPOLD. It did not exist —

Mr. DESANTIS.—in '93, and of course it did not exist for the 9/11 2001 attacks, correct?

Mr. LIPPOLD. That's correct, Mr. Chairman.

Mr. DESANTIS. Now, the administration recently released Mashur Abdallah Muqbil Ahmed al Sabri, who is connected to the Cole bombing. Do you think that that release was in the national security interests of our country?

Mr. LIPPOLD. Absolutely not. One of the biggest problems with that release is that he was being held under the law of armed conflict. There was not enough evidence, but he was directly tied to the attack on USS Cole and was nonetheless released because the bar was lowered yet again to allow another detainee to go free.

Mr. DESANTIS. Now, have you spoken to any of the families of those who had family members killed or injured in the Cole bombing about this?

Mr. LIPPOLD. I stay in touch with them constantly, and they were devastated to know that a person who is connected to the attack on USS Cole that killed 17 sailors, including their loved ones and their friends as far as my crew is concerned, was being released by the Obama administration.

Mr. DESANTIS. And —

Mr. LIPPOLD. They felt it was unfair and it blindsided them, despite the President's promise at a meeting on February 6, 2009, where he said he would keep the families informed as to what he was going to do with the facility and the detainees, and he has failed to live up to that promise.

Mr. DESANTIS. So there was no consultation at all?

Mr. LIPPOLD. Zero.

Mr. DESANTIS. Now, do you believe it is likely that he will re-engage in terrorism, al Sabri?

Mr. LIPPOLD. I think there's a good chance. It certainly proves that he can do it. And while he does have family and he was Yemen background but transferred to Saudi Arabia, there is a possibility he will return. We are hoping that the family will keep him stable. But again, it is the influence that goes on. It is no different than the recidivism rate, much, much higher than you see with prisons. It's who you associate with. There are still people in Saudi Arabia who have conformed to the Wahhabi lifestyle who believe in that forum. They believe in jihad, and if he falls into that environment again, I believe he will return to the battlefield.

Mr. DESANTIS. Yes, Mr. Mora, putting detainees into American prisons, wouldn't that run the risk of American prisoners being radicalized?

Mr. MORA. Mr. Chairman, we already have 443 terrorists in American prisons. I think adding a few more is not going to appreciably change the risk.

Mr. DESANTIS. So you don't think it will add to the risk at all?

Mr. MORA. I think only marginally.

Mr. DESANTIS. Well, I think there is a problem with radical Islam in some of these prisons. I don't want to be adding to it.

Let me ask you, Mr. Joscelyn. The estimate from National Intelligence was 30 percent of transferred detainees are either suspected or have been confirmed of reengaging in terrorism. Do you quibble with those numbers?

Mr. JOSCELYN. The reason I would quibble with it a little bit is I don't use the engagement—reengagement percentage. And the reason is because they basically—there's a lot of unknown in the denominator, so it's basically the confirmed and suspected recidivists are the numerator. That assumes that the denominator is everybody who's been transferred, but yet there are people who've been transfer we don't know what they're doing.

Mr. DESANTIS. Exactly. Now, DOD has admitted that Americans have died because of released detainees. Do you know how many Americans have died as a result of detainees being released from Gitmo?

Mr. JOSCELYN. Congressman, I don't know the precise number. I know only anecdotal evidence that actually I testified previously about a former Gitmo detainee named Mullah Zakir who became the Taliban's top military commander. He was transferred by the Bush administration to Afghanistan and promptly released him. We have firm evidence and there's firm reporting that he and his men systematically hunted down U.S. marines in Afghanistan, and he led the opposition to President Obama's surge in Afghanistan. This was a uniquely lethal individual, and it's actually guys like him that I'm most worried about being transferred today.

Mr. DESANTIS. And can you discuss, of the current detainee population, who specifically are very high risk and that would represent a danger to our national security if released?

Mr. JOSCELYN. Well, we have—obviously, you have the 9/11 plotters. There are a few of them and some other guys who were involved in these anti-Western plots. Very quickly, I doubt—I hope that those guys won't be transferred. Those are the clearest cases. My concern is that there's a layer underneath them, guys like I mentioned previously in my testimony who are, as far as our assessments go, pretty committed ideologues and who can do damage themselves.

Mr. DESANTIS. Great. I think that, you know, what we are trying to figure out, we know the administration has acknowledged that Americans have been killed as a result of some of these detainees who have been released. I wish the conflict was over because then we just figure out, but not only is the conflict not over, to me the Islamists are on the march. If you look at what they are doing in the Middle East, if you look at what they are doing in North Africa, if you look at what they are doing in Europe now with different cells, this is a problem that I think is more acute than it was even before 9/11, and I think putting these guys back into circulation I think it is bad for the security but it is also—it is a morale-killer

if you have somebody who was involved with the Cole go back and go back to terrorism. You know, you are just like, geez, what are we doing?

Well, my time is up. I recognize the gentleman from Massachusetts, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Thank you. Just to be clear, of the six that were originally—at the peak there were about 686 detainees, but by the time President Obama took office, it looks like 440 of them had already been released. Is that correct, Mr. Joscelyn?

Mr. JOSCELYN. Seven hundred and seventy-nine detainees as far as I'm aware have been held there at one time or another. By January 2009 the population was down to 240.

Mr. LYNCH. Okay. So, yes. So more than 400 were released by President Bush. Any indication of any of these folks that were released by President Bush killing Americans?

Mr. JOSCELYN. I would say the majority—overwhelming majority of known and suspected recidivists at this point come from the Bush administration transfers and releases. Some of these guys included leaders in Al-Qaeda Arabian Peninsula, which has of course targeted the U.S. I don't think they've actually killed in the U.S., but that doesn't mean the—or Americans, but that doesn't mean the threat to the U.S. isn't there. And of course Mullah Zakir was somebody who was transferred during the Bush years and it did come back to haunt us.

Mr. LYNCH. Okay. Mr. Mora, thank you. And thank you all for your testimony. I really appreciate you coming forward here. Ironically—you know, I have been to Gitmo. I have actually gone into the cells and Khalid Sheikh Mohammed, I have been through that facility. As I said in my opening statement, I wish that some of my prisons in the United States were as nice as what we got going on there at Guantanamo Bay, Cuba, even though people—now, if you are wrongly detained, I don't care how nice the jail is; it is still in jail and you are wrongly imprisoned.

But, you know, I mean some of these cells, they are a lot bigger. I know in Khalid Sheikh Mohammed's case he has got a front room and then he has got a back room with a screen on the back to the outdoors where actually there is actually sun that enters into the back of his cell. He has got a pretty nice arrangement there, got an arrow on the floor that points to his Mecca so he can pray. He has got, you know, videos and all that stuff. And yet you have got this perception out there of American injustice for us the way we are treating these detainees in Guantanamo.

You know, I go to the prisons in my district and they are very harsh compared to what the inmates and detainees are looking at as Guantanamo Bay, Cuba. And then I visit the prisons—I have gone into the prisons in Iraq, and you want to talk about grim. It just defies reality that people think, you know, that this is a recruiting tool for—I know what the perceived injustice is, but the reality of the conditions, the way we are treating our prisoners, our detainees compared to the way a lot of those folks are being treated in places like Yemen, like Iraq, some places in Egypt, you hear a lot of that among former prisoners in prisons in those countries, it defies—I think the perception is very far from reality in terms of,

you know, what we are doing and what we are trying to do as opposed to what people are condemning us for.

Mr. LIOTTA, you mentioned that in your job you helped reassign I think you said detainees to 29 different countries.

Mr. LIOTTA. Correct.

Mr. LYNCH. Yes. Okay. And I notice overall of all these—we have reassigned to detainees to 60 different countries. Are any of the countries that you have been involved with in reassigning detainees to, are any of them reliable, let's say, in terms of taking custody of these detainees, keeping them in secure environments, not letting them get back to the battlefield, are any of the countries that we have reassigned to, have they been reliable partners in terms of, you know, securing these people, not abusing them, but keeping them in prison and keeping these people off the battlefield, any of these countries at all?

Mr. LIOTTA. Yes, sir. And to be clear, all of the transfers that I was involved in involved transfers with security assurances, that the country would display and we could assess their capability and their willingness, which is different than capability, to prevent a detainee from reengaging in the fight. And my job was to go and negotiate with these countries and then come back and talk—or report to the deputy secretary of Defense or the Secretary of Defense and explain to them what those capabilities and those willingnesses were and was the country able to do that. And —

Mr. LYNCH. Would you give any of these countries high marks and would you give any of them low marks, failing grades?

Mr. LIOTTA. It runs the entire spectrum, you're right.

Mr. LYNCH. Do you want to name any of the countries that have done a good job?

Mr. LIOTTA. Well, I think from my personal perspective I think a country that's done a very good job is Saudi Arabia. They have an aggressive program that's designed to de-radicalize not only Guantanamo detainees that are returned to Saudi Arabia, but also their own citizens in domestic jihad that use attacks. They are under assault every day by Al-Qaeda in the Arabian Peninsula, and they have an aggressive effort to try to make sure that they can de-radicalize or if they can't de-radicalize, that they can imprison and keep from the battlefield detainees that would cause harm to them or to us or to our allies.

Mr. LYNCH. Let me just ask you the opposite side of the coin. Anybody that you would not recommend us, you know, relocating or redeploying some of these detainees? Anybody that you—any country have seen through your experience immediately release people and let them go back to the battlefield?

Mr. LIOTTA. I would not make recommendations to the Secretary or the deputy secretary if I felt that there was a possibility that that was going to happen, that a country would not live up to its expectations.

Mr. LYNCH. No, no, I am not saying anybody you reassigned, but from your experience of seeing detainees sent to a foreign country and then having them go to the battlefield, are there any countries that you think are, you know, too permissive in releasing those people who are committed to foreign custody?

Mr. LIOTTA. Ranking Member Lynch, I'd have to think about that. I'm not—can't say off —

Mr. LYNCH. Okay. That is —

Mr. LIOTTA.—the top of my head.

Mr. LYNCH.—fair enough. No. All right. I am over my time. I yield back.

Mr. DESANTIS. The gentleman's time is expired, but I appreciate your point about, you know, going to Gitmo, when I was in the Navy I was there for a time and it is a very professionally run facility. Anybody in this room would rather spend a night there than in like the Fallujah jail or something like this. I mean, it is just night and day.

And the people that are guarding that facility are under an awful lot of pressure because those detainees are very hostile to them, and they know that if they do anything that they are all of a sudden going to be subject to—so it is a very stressful environment for our uniformed personnel who are there.

The chair now recognizes Mr. Duncan for 5 minutes.

Mr. DUNCAN. Well, thank you, Mr. Chairman.

Do want to go first? You can go first if you want to.

Mr. DESANTIS. Okay. The chair now recognizes Mr. Mica for 5 minutes.

Mr. MICA. Sorry. Mr. Mora, you testified that Guantanamo, at least our policy there, constitute cruelty?

Mr. MORA. No, sir. It's perceived as having been a place where cruelty was applied to some of the detainees.

Mr. MICA. Is there cruelty taking place there?

Mr. MORA. Not now, sir.

Mr. MICA. Okay. And you have been there?

Mr. MORA. Yes, sir.

Mr. MICA. I was there and the chairman also mentioned where would you rather spend a night. I saw the treatment of the detainees, and I can assure you that my veterans, my seniors, many of my people who have worked very hard, none of those folks had the—I have many of them in my district who do not have the accommodations, the medical care, the recreational facilities that we are affording those individuals. I saw no cruelty there.

In fact, the press asked me what I thought when I left, and I think it is a quote my kids put on the refrigerator. Their dad said—my response was “it is too good for the bastards.” And I believe that.

Now, you also talked about due process. Okay. Commander Lippold, I guess we lost around 3,000 people of various nationalities in 9/11. Are you aware of due process that was extended to those individuals who were mass murdered, sir?

Mr. LIPPOLD. No, sir.

Mr. MICA. And then troops killed in Afghanistan, I have 2,172. Some of those detainees killed and slaughtered our troops, is that not correct?

Mr. LIPPOLD. That is correct.

Mr. MICA. Okay. And were they extended due process, any of the troops, before they slaughtered them?

Mr. LIPPOLD. Well, a due process proceeding actually does not apply when you're engaged in law of armed conflict, but they were

not engaged in a manner where they deserved Geneva Convention protections.

Mr. MICA. These were not part of any sovereign state. They are enemy combatants without a country not having normal status under the law. Mr. Mora said there is no legal reason for their detention, that we could—he questioned the basis on which we are detaining these people. Do you agree with that?

Mr. LIPPOLD. I do not. We have a right under international law and the Geneva Convention to detain these combatants for the duration of the conflict.

Mr. MICA. And, let's see. You mentioned the 17 soldiers on the USS Cole. They were all given due process before they were slaughtered, too, weren't they?

Mr. LIPPOLD. No.

Mr. MICA. Okay. Well, again, I am very concerned about what has been said here today. And then the number of detainees that have been released, I guess the non-classified is about 30 percent have returned over 200 to re-slaughter Americans, re-slaughter innocent people. Mr. Joscelyn, Mr. Lippold, is that an accurate assessment?

Mr. JOSCELYN. It's accurate, 204 confirmed and suspected recidivists.

Mr. MICA. So even if we let the percentage that Mr. Mora wants to again relocate, we risk the possibility or if they release them—these are the hardest core of the hardest core killers that I guess an independent panel has said these are the baddest of the bad, is that correct?

Mr. JOSCELYN. I don't think there's any dispute over the majority of the detainees that are left, how much of a risk they pose.

Mr. LIPPOLD. And one of my concerns is for both the Bush and Obama administrations is we have released people when we are in a state of war that should have been detained because they posed a risk. And once we detected there was a recidivism rate at all, any transfers out of Guantanamo Bay at that point should have stopped. While Secretary of Defense Rumsfeld may have said we don't want to be the world's jailer, that's putting it in a legal context like it's some criminal action backed by 100,000 military. It's not. We're at war.

Mr. MICA. And there are some places—actually, I think I helped get somebody—maybe it was the Khobar Towers murderers back to Saudi Arabia. I thought it was fitting to get them back there because they behead them, and I thought that that was adequate due process for those that slaughtered one of the high school students who I spoke at his graduation and then I spoke at his funeral. He was slaughtered.

And I stood with another Member of Congress at Khobar Towers, and I will never forget walking through there seeing the images of our soldiers, their bodies had been blasted against the walls, a bloody imprint was there, and then walking down the hallways as I saw the blood trail of people trying to get out of the building, our soldiers who they slaughtered, they didn't have due process.

Sorry, Mr. Mora. I yield back.

Mr. DESANTIS. The gentleman yields back. Seeing nobody on the Democratic side, the chair will now recognize Mr. Duncan for 5 minutes.

Mr. DUNCAN. Well, thank you, Mr. Chairman.

I want to read a 1-minute speech that I gave on the Floor on November 20, 2013, 2-1/2 years ago. Yesterday, the Washington Times reported that the U.S. is now spending millions on life skills and art seminars for prisoners at Guantanamo Bay in Cuba. The paper said a multimillion-dollar Federal contract is teaching Gitmo detainees basic landscaping, calligraphy, and Microsoft PowerPoint, among other seminars, in addition to library services and special food, and Mr. Mica mentioned recreation facilities.

Last July, the Comptroller of the Defense Department reported that the cost of keeping Guantanamo prison open during 2013 would be an astounding \$454 million for just 164 prisoners. This comes out to roughly \$2.7 million per year for each one of these detainees held in the prison camp. This compares to \$72,000 per year per prisoner in Federal high-security prisons, super max prisons, and \$34,000 in an average Federal prison. Because the Federal Government is so wasteful and inefficient, States are housing State prisoners for much less than that.

The taxpayers of this nation should not be forced to spend \$454 million to give the good life to former terrorists. They should be sent to the most unpleasant prison in the U.S., but this and other abuses of U.S. taxpayers will continue until we drastically downsize the Federal Government and greatly decrease its funding.

Now, we have a report that says this: At the beginning of 2015 the prison held 122 detainees; at the end of 2015 it held 107 detainees. Now, we hear we are down to 80. And this report says over the course of 2015 the absolute minimum cost ranged between \$3.7 million and \$4.2 million per year for each detainee.

I just had 43 students and teachers from Washburn High School, a very rural school in east Tennessee, and I told them I was coming to this hearing and how much it was costing per prisoner, and one of the young high school students says can I get in?

I think it is really sad that we are spending this much money per prisoner when we could put them in a super max prison for a tiny fraction of what we are spending. I think it is ridiculous, and I think any true fiscal conservatives should be very, very upset about this. We need to drastically reduce the staff that is down there and come up with some other thing for these prisoners because they don't deserve the good life that we are giving those prisoners at Guantanamo Bay.

I yield back.

Mr. DESANTIS. The gentleman yields back.

The chair now recognizes the gentleman from Texas for 5 minutes.

Mr. HURD. Thank you, Mr. Chairman.

Commander Lippold, I want to thank you for your service. I was in the CIA for a decade. I started in October of 2000. I was on the Yemen account right before what happened with the Cole and spent some time in Arabia Felix on this issue. And thank you for what you have always done.

Mr. LIPPOLD. Thanks.

Mr. HURD. My first question is a simple question to Mr. Joscelyn. It is a related question about battlefield intelligence that we are gaining. You know, we are in active conflicts all over the world, and, you know, how are we, you know, taking prisoners and having folks that you get on the battlefield and collecting battlefield intelligence is critical in protecting our forces. How is that happening now?

Mr. JOSCELYN. As far as I can tell, it is an ad hoc process at best that a lot of battlefield intelligence is not being collected because we do not have a stable detention and interrogation program in place. Every expert I talked to from your corner of the world or previous corner of the world and elsewhere will tell you the value of human intelligence in terms of discerning what's actually going on and what our enemies are thinking, and I am concerned that we are not collecting enough of that intelligence currently.

Mr. HURD. Commander, do you have any opinion, sir?

Mr. LIPPOLD. I would agree absolutely on that point. The problem you have is when you don't use a place like Guantanamo Bay, we are—where we are bringing truly the high level and the most dangerous terrorists that we want to capture. Today, we are taking the morally lazy way and we're using drone strikes. Every drone strike that we use is taking out a potential intelligence asset that perhaps we should go after and capture because they truly are the ones that are going to tell us how the organization operates, how they conduct those operations because it's only operationally when you understand how your enemy works that you can target them, you can disrupt them, and then eventually defeat them. And to not do that and to not leverage that intelligence is a disservice to the American people when we are a nation at war.

Mr. HURD. I appreciate that, Commander.

Mr. Chairman, I yield the balance of my time back to you.

Mr. DESANTIS. The gentleman yields back.

Is there anybody here—if we close Guantanamo tomorrow and remove the detainees, either release them to other countries or in the United States, is there anybody here that things that that would cause a drop in terrorist activity around the world? Mr. Joscelyn?

Mr. JOSCELYN. Absolutely not.

Mr. DESANTIS. Commander?

Mr. LIPPOLD. No, sir.

Mr. DESANTIS. Mr. Liotta?

Mr. LIOTTA. I'm not sure there'd be enough evidence to be able to take a hypothetical question like that, Mr. Chairman, to be able to make a real judgment, so I'd have to defer at this time.

Mr. DESANTIS. Okay. Mr. Mora?

Mr. MORA. Sir, I think it would blunt the jihadist message about American injustice, and I think it would—it may—it can't be guaranteed but I think it would reduce the appeal of the jihadist message to undecided populations in the Middle East and elsewhere.

Also I should say it would comfort our allies in Europe who see Guantanamo as a fundamentally unjust detention facility.

Mr. DESANTIS. So here with—how it would affect recruiting, I mean here is why I have been skeptical that it would make it more difficult for them to recruit. I mean, take the 9/11 hijackers, 15 of

them from Saudi Arabia, in Saudi Arabia, if a woman gets raped, she can end up getting stoned, and they're out there stoning a woman to death and do you think like when they are doing that they are like, oh, man, Guantanamo is just such a human rights violation? I mean, they are living in these areas where they are constantly abusing people's human rights, and so that is why I just don't think it is credible that it would change their ability to recruit, even though I know some people honestly feel that it would.

I am going to recognize Mr. Lynch for 5 minutes.

Mr. LYNCH. Thank you, Mr. Chairman. And let me drill down on that a little bit more. I have to say that there are some people who I respect very, very much in the military that have, you know, decidedly strong opinions on this. One of them is our former national security advisor General Jim Jones, and I have got a quote here from him.

He said America—and this is all—you know, the Petraeus approach of, you know, winning these hearts and minds and General, you know, trying to get the Sunni awakening going, again, with a couple Sunni shakes there about a month ago in Anbar Province. And I think what Jim Jones explained, he said, “America’s greatest attribute in garnering support for our national security initiatives is our leadership and fidelity to our values and the principle of justice.” He went on to say, “it is my firm conviction that maintaining the facility at Guantanamo Bay indefinitely will have a lasting and deleterious impact on our standing in the world.”

Another gentleman who I respect greatly, General Martin Dempsey, he said that Guantanamo “does create a psychological scar on our national values. Whether it should or not, it does.”

And lastly, General Colin Powell, former Secretary of State under President Bush, has also remarked that “Guantanamo has cost us a lot over the years in terms of our standing in the world and the way in which despots have hidden behind what we have done at Guantanamo.” So, you know, those are all men that I respect very much, and they are in the fight and they have been for a long time.

And, Mr. Mora, how is maintaining the detention facility at Guantanamo Bay, Cuba, contrary to our basic values as Americans? Can you speak to that?

Mr. MORA. Mr. Ranking Member, if you look at political and human rights commentary all around the world, it's almost in every European country, every NATO country, Canada, Australia, New Zealand, Guantanamo is identified as an injustice.

I'll point you to one source. The very respected Inter-American Commission of Human Rights last year issued a volume entitled “Closing Guantanamo.” And in the first sentence of the first paragraph the executive summary it talks about the need to close Guantanamo because it's become a global symbol for injustice. Most of that is related to the—not only the fact that there were a number of individuals who were not jihadists who were sent to Guantanamo, although they've been since released and transferred out of the facility, but the military commissions has a large role to play in that.

The fact that—according to the Inter-American Commission of Human Rights and international lawyers in most other countries

of the world, the military commissions lack credibility because they are subject to the discipline of the executive branch. They're not an independent judicial body, for example. But also, there's been interference with attorney-client privilege, and there's been withholding of evidence to defense counsel on some critical matters that might be relevant to the defense of their detainees.

So all of these elements, historical and current, combine to reinforce the notion that rightfully or wrongfully has taken hold in the minds of many that Guantanamo is a symbol of injustice and contrary to human rights principles. I regret that it is so, but that's the fact, and we have to face the facts as they are.

Mr. LYNCH. Very good. I will yield back. Thank you.

Mr. DESANTIS. The gentleman yields back.

I just wonder when you are talking about all this due process, everything, the military commissions aren't even enough. Well, guess what? We have guys in the field, they are fighting a war. They are not detectives. They aren't going to be out there just collecting evidence and fingerprints. That will lead more of our soldiers and marines to get killed for sure. So I don't want to go down that road. These guys should not be treated like they are committing civilian crimes. They should be treated as if they are violating the laws of war. And when they are being captured in accordance with that, that should be the prism by which we see this.

And I fear that going the other direction where you somehow need to give them a quasi-civilian trial with basic constitutional rights almost, at the end of the day in the normal battlefield you are just not going to be able to do that without really diverting the mission. And I don't want to be doing that.

So I appreciate the witnesses here today, and I appreciate your testimony. And I know this will be an issue that will continue to rear its head. And we will certainly be investigating any future detainees who are released and pose a danger to our country.

This hearing is now adjourned.

[Whereupon, at 3:55 p.m., the subcommittee was adjourned.]

