

KEEP GITMO GOING

*The case for retaining the vital detention
and interrogation facility at
Guantánamo Bay*

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On January 22, 2009, President Barack Obama issued an Executive Order (EO) mandating the closure of the Guantánamo Bay Detention Facility (Guantánamo) within one year.¹ About two-thirds of the nearly 800 detainees held at Guantánamo have either been repatriated to their home country or released to a third-party country; none have been released outright.² The EO presumes that closure of the facility will “further the national security and foreign policy interests of the United States and the interests of justice.”³ There is ample evidence to contradict such a presumption.

The inmates currently housed at Guantánamo are not mere criminals – they are hardened Islamist terrorists who believe they have a religious duty to kill Americans and destroy the United States, and will sacrifice even their own lives to accomplish this objective. Of the nearly 500 detainees who have been moved from Guantánamo, at least 61 have returned to terrorism according to official Department of Defense reports.⁴ Some sources within the Pentagon have indicated that the number of former Guantánamo detainees that have returned to terrorism may be much higher, at 100 or more.⁵

This direct threat to American national security was made apparent when the U.S. embassy in Yemen was attacked on September 17, 2008. Eleven people were killed, including Susan Elbaneh, an eighteen-year-old Muslim American teenager from upstate New York. The purported leader of al-Qaeda in Yemen, the group responsible for the attack, is Said Ali al-Shihri, a former Guantánamo detainee.⁶

The most lethal attack by a former Guantánamo detainee took place last March 23 when Abdullah Saleh Al-Ajmi, released in 2005, carried out a suicide attack in Mosul, detonating a 10,000 pound truck bomb that killed 13 soldiers from the 2nd Iraqi army division and injured 42 others. An Al Qaeda website praising the attack called him the “Lion of Guantánamo.”⁷

Additionally, the Taliban’s top operational officer in southern Afghanistan as of March 2009, Abdullah Ghulam Rasoul, is a former Guantánamo detainee who returned to the Taliban after being transferred from Guantánamo to Afghan authorities, which in turn released him.⁸ Other released detainees have been documented participating in terrorist activities with al Qaeda and the Taliban in Afghanistan, Turkey, Morocco, Russia, and Iraq.⁹

The United States has released many detainees to Saudi Arabia for placement in the Saudi “rehabilitation” program. The effectiveness of the program is debatable, at best. At least eleven Saudis who were released from Guantánamo and went through the Saudi rehabilitation program appeared on a list of 85 wanted terrorism suspects in February 2009 who have since fled the country.¹⁰ Included on the list was Mohammed al-Awfi, a former Guantánamo detainee, who became an al-Qaeda commander in Yemen.¹¹ Documents obtained at a former house of Osama bin Laden show that al-Awfi was associated with al-Qaeda and that he fought against U.S. forces in Kandahar, Afghanistan.¹²

Some of the most dangerous terrorists are among the roughly 250 detainees still held at Guantánamo, including Khaled Sheikh Mohammad (KSM), the self-confessed mastermind of the 9/11 attacks and the kidnapping-murder of journalist Daniel Pearl.¹³ Others include:

- Ramzi Bin al-Shibh, a key facilitator for the 9/11 attacks and lead operative in a plot to crash hijacked aircraft into the United Kingdom’s Heathrow Airport;
- Abu Faraj al-Libi, KSM’s operational successor and number three leader of al-Qaeda after bin Laden and al-Zawahiri;
- Abdal al-Rahim al-Nashiri, the mastermind behind the 2000 bombing of the USS Cole; and
- Abu Zubaydah, a facilitator of attempted Millennium terrorist attacks on targets in the United States and Jordan.¹⁴

In light of the nature of the current Guantánamo detainees and the demonstrated unreliability of foreign custody over similarly dangerous individuals, the best way to keep America safe is to keep the detention/interrogation facility at Guantánamo open and operational. The other alternatives increase the risk to the American public. As the Afghanistan and Saudi Arabia episodes make clear, the transfer of these detainees into foreign custody creates the risk that they will return to terrorism and plan or carry out attacks either abroad against American interests or here inside the United States.

Transferring detainees to facilities inside the United States would also pose a direct threat to the safety of the American public. Any facility holding al-Qaeda detainees would immediately become a terrorist target. Reports have indicated that the Pentagon is investigating three specific facilities in which to house these detainees: Fort Leavenworth in Kansas, the Navy Brig in North Charleston, South Carolina, and Camp Pendleton in California.¹⁵ It would appear, however, that Fort Leavenworth may be a non-starter – then-Governor of Kansas, Kathleen Sebelius, along with the State Legislature, recently objected strongly to any transfer of Guantánamo detainees to Fort Leavenworth.¹⁶

Even if a location were found within the United States in which to house detainees, significant issues would remain to be addressed. According to Charles Stimson, former Deputy Assistant Defense Secretary for Detainee Affairs, “You can’t commingle them [Guantánamo detainees] with military detainees, so you’d

have to set up a separate wing or clear out the facility...[a]nd you would have to address secondary and tertiary [security] concerns within the town, the county and the state” to protect from the increased risk of terrorist attack.¹⁷ Indeed, the Guantánamo Bay Detention Facility was chosen because it served as the safest location at which to house the detainees. The facility is secure from enemy attack and provides the least risk to American citizens in that it keeps the detainees and those who would try to free them far away from major populated areas.

In order even to begin addressing the very real public safety concerns associated with housing Guantánamo detainees in a facility on American soil, the U.S. government would have to undertake the construction of one or more uniquely designed prison facilities, or substantially upgrade existing facilities. This reality was reflected in the U.S. Department of Defense recent request for \$50 million to begin the construction necessary to house transferred Guantánamo detainees inside the United States.¹⁸ Given the current economic crisis in which the United States finds itself, spending tens of millions of dollars to construct facilities that match the standards of a facility already in existence is highly irresponsible.

Moreover, the Pentagon – acting on orders from President Obama – conducted an investigation into conditions at Guantánamo and concluded that the facility is in full compliance with the Geneva Conventions.¹⁹ According to the Associated Press, Attorney General Eric Holder, commenting on his own subsequent visit to Guantánamo, described the facility as “well-run” and “professional.”²⁰ In light of such assessments, the use of a substantial amount of taxpayer dollars to close the Guantánamo prison facility must be further called into question, particularly when such closure would take place at the expense of public safety and national security.

The closure of Guantánamo also presents a set of formidable *legal* issues surrounding the transfer of detainees into the United States. As it stands, the transfer of Guantánamo detainees into the U.S. – including seventeen terrorism-trained Uighurs (Chinese Muslims) recently cleared for release – would violate federal law. In 2005, Congress amended Section 1182 of Title 8, United States Code, to provide that an alien is “inadmissible” to the United States if s/he has “engaged in a terrorist activity”; “is a member of a terrorist organization”; or “has received military-type training...from or on behalf of any organization that, at the time the training was received, was a terrorist organization.”²¹ Because the Uighur detainees in question are affiliated with the East Turkestan Islamic

Movement, an al-Qaeda offshoot formally designated by the United States as a terrorist organization, their transfer into the U.S. would violate several provisions of the foregoing statute – as would the transfer of other Guantánamo detainees for similar reasons.²²

While the very act of transferring these detainees into the United States would force the federal government to violate U.S. law, trying Guantánamo detainees in the U.S. civilian court system would present legal difficulties that would either imperil the American effort against global terrorism, or risk the release of extremely dangerous and committed terrorists. Because these detainees were captured during the course of battlefield hostilities, the government’s case against them necessarily includes evidence that is classified, circumstantial, or otherwise acquired in ways that might make it inadmissible in an American civilian court. The U.S. government would therefore be forced to make an impossible decision: either disclose the evidence in full, which would in turn involve disclosure of military and intelligence sources and methods, or decline to disclose such evidence, and risk the release of the detainees as a result. Either way, it is clear that the civilian system would be ill-equipped to adjudicate the cases of the Guantánamo detainees in a way that would not risk public safety or national security.

Moreover, if Guantánamo is closed, where will the United States hold *future* detainees, including perhaps extremely high-value targets such as al Qaeda leaders Osama bin Laden or Ayman al-Zawahiri? Will they be brought into the United States?

Against the backdrop of these significant concerns, there is a movement afoot in Congress opposing the transfer of Guantánamo detainees into facilities within the United States. Members of the House and Senate have expressed their vocal opposition to the closure of Guantánamo, including House Minority Leader Boehner (R-OH) and Senate Minority Leader McConnell (R-KY). Republican leadership in the House have introduced the “Keep Terrorists Out of America Act”, HR 2294, prohibiting the detainees from being transferred to the United States unless a long list of criteria are satisfied.²³ There are additional pieces of legislation prohibiting the transfer of detainees into specific states, such as Georgia, North Carolina and Oklahoma.²⁴ This movement is gaining momentum, with more than twenty pieces of legislation introduced so far in both the House and Senate.²⁵

There are significant issues of national security that must be addressed before Guantánamo is closed and detainees transferred into the United States. Until these risks are adequately addressed and security assured, no detainee should be removed from Guantánamo. While proponents of closure may perceive a public relations benefit to closing this facility, the preservation of public safety and national security must remain paramount in determining U.S. policy on this critical matter.

About the Authors

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The Coalition for Terror-Free Communities

Against the backdrop of President Obama's insistence on proceeding with closing the Guantanamo Bay Detention Facility despite rising opposition from American citizens and their elected representatives, the Center for Security Policy has announced the launch of the Coalition for Terror-Free Communities at terrorfreecommunities.org. This group aims to raise public awareness of and demonstrate opposition to the President's misguided plan to close the detention facility at Guantanamo Bay and transfer the terrorist detainees to facilities within the United States.

For additional information on the Coalition for Terror-Free Communities, email info@terrorfreecommunities.org.

NOTES

¹ Executive Order -- Review And Disposition Of Individuals Detained At The Guantánamo Bay Naval Base And Closure Of Detention Facilities. Jan. 22, 2009. Available online at:

http://www.whitehouse.gov/the_press_office/ClosureOfGuantanamoDetentionFacilities/

² Id at Section 2(a).

³ Id at Section 2(b).

⁴ Morgan, David. Pentagon: 61 ex-Guantanamo inmates return to terrorism. *Reuters*, Jan. 13, 2009. Available online at: <http://www.reuters.com/article/topNews/idUSTRE50C5JX20090113?sp=true>

⁵ Scarborough, Rowan. Number of Ex-Gitmo Prisoners Rejoining Terror Higher Than Reported. *Human Events*, Mar. 12, 2009. Available online at: <http://www.humanevents.com/article.php?id=31039>

⁶ Worth, Robert F. Freed by the U.S., Saudi Becomes a Qaeda Chief. *New York Times*, Jan. 23, 2009. Available online at: <http://www.nytimes.com/2009/01/23/world/middleeast/23yemen.html>

⁷ Chandrasekaran, Rajiv. From Captive to Suicide Bomber. *Washington Post*, Feb. 22, 2009. Available online at: <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/21/AR2009022101234.html>

⁸ Associated Press, via Fox News. Officials: Taliban's New Top Operations Officer Is Former Guantanamo Bay Detainee. *Fox News*, Mar. 10 2009. Available online at: <http://www.foxnews.com/story/0,2933,508506,00.html>

⁹ U.S. Department of Defense, Ex-Guantanamo Detainees who have returned to the fight. Available online at: <http://www.defenselink.mil/news/d20080613Returntothefightfactsheet.pdf> (accessed Feb. 25 2009)

¹⁰ Worth, Robert F. 11 former Guantanamo inmates now on Saudi list of terrorism suspects. *International Herald Tribune*, Feb. 4, 2009. Available online at: <http://www.ihf.com/articles/2009/02/04/mideast/saudi.1-422462.php>

¹¹ Kuwait: Security stepped up at Saudi embassy amid attack fears. March 3, 2009. Available online at: <http://www.adnkronos.com/AKI/English/Security/?id=3.0.3066916913>

¹² The Guantanamo Docket, New York Times reprint of "Combatant Status Review Board summary of evidence for Combatant Status Review Tribunal – AL HARBI, Mohamed Atiq Awayd". Available online at:

<http://projects.nytimes.com/guantanamo/detainees/333-muhammad-al-awfi/documents/5/pages/367#1>

¹³ Gilmore, Gerry J. Defense Officials Address Detainee Concerns. *American Forces Press Service*, Jan. 23, 2009. Available online at: <http://www.defenselink.mil/news/newsarticle.aspx?id=52796>

¹⁴ U.S. Department of Defense, Detainee Biographies, and Available online at: <http://www.defenselink.mil/pdf/detaineebiographies1.pdf> (accessed Feb. 23, 2009).

¹⁵ Keen, Judy. Kansas Slams Door on Idea of Gitmo Transfers. *USA Today*, March 1, 2009. Available online at: http://www.usatoday.com/news/nation/2009-03-01-leavenworth_N.htm

¹⁶ id.

¹⁷ Ephron, Dan. "The Gitmo Dilemma". *Newsweek*, Nov. 7, 2008. Available online at: <http://www.newsweek.com/id/168022>

¹⁸ See Fleming, Sue. Gates grilled over fate of Guantanamo inmates. *Boston Globe*, April 30, 2009. Available online at http://www.boston.com/news/nation/washington/articles/2009/04/30/gates_grilled_over_fate_of_guantanamo_inmates/

¹⁹ See Finn, Peter and Del Quentin Weber. Review Finds Detainees' Treatment Legal, *Washington Post*, February 21, 2009. Available on-line at <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/20/AR2009022002191.html>

²⁰ See Associated Press. AG: It'll be hard to close Guantanamo. *Denver Post*, February 26, 2009. Available on-line at http://www.denverpost.com/ci_11786843?source=rss

²¹ See McCarthy, Andrew C. “Holder Should Heed Justice Jackson’s Words”. *National Review Online*, May 8, 2009. Available online at:

<http://article.nationalreview.com/?q=MjIxOGJlYTdjOTc0YThiNzM5OTYyODc3ZWYxMjA3MmE=&w=MA==>

²² Id.

²³ <http://www.govtrack.us/congress/bill.xpd?bill=h111-2294>

²⁴ See HR 817, HR 829, HR 701.

²⁵ In addition to the the legislation already mentioned, see HR 148, HR 951, HR 633, HR 794, HR 1073, HR 565, HR 1238, HR 1069, HR 1186, S 291, S 370.