

CLOSING GUANTÁNAMO: THE NATIONAL SECURITY, FISCAL, AND HUMAN RIGHTS IMPLICATIONS

Hearing Before the Senate Judiciary Subcommittee on the Constitution, Civil Rights, and Human Rights

Wednesday, July 24, 2013

Statement of Representative Adam Smith (D-WA) Ranking Member, House Armed Services Committee

Mr. Chairman, Ranking Member Cruz, Representative Pompeo, and distinguished members of the Subcommittee, thank you for the opportunity to testify before the subcommittee about my plan to close the detention facility at Guantanamo Bay, Cuba.

I strongly support closing the detention facility located at Guantanamo Bay as soon as possible. Until the facility is closed, it will continue to be seen by the world as our attempt to avoid the rule of law. It undermines our moral standing in the international community. It also damages our efforts, both abroad and in the United States, to defend our values and protect human rights. In addition, it undermines our national security because our allies are less likely to share valuable intelligence with us and hesitate to send their detainees to the United States without a guarantee they won't be sent to Guantanamo Bay. Finally, it continues to serve as a rally cry and recruiting tool for our enemies.

The facility is also becoming increasingly expensive and the annual operating costs continue to grow. The Department of Defense is spending \$454.1 million on total costs for Guantanamo Bay detention operations in 2013, which is about \$2.7 million per detainee, compared to the average figure of \$34,046 required to hold a prisoner in a maximum security federal prison in the United States. The facilities at Guantanamo Bay were designed to be temporary and are rapidly deteriorating, requiring new temporary construction. As inmates age, significant medical upgrades are needed. This construction and medical upgrades will cost hundreds of millions of dollars and take years to complete.

Since June 2009, Congress has repeatedly made it impossible to close Guantanamo Bay by imposing a ban against using appropriated funds to transfer Guantanamo detainees to the United States. Congress has also placed severe restrictions on transferring detainees who have been cleared for transfer to a host country or returned home. Finally, Congress has banned the use of funds to construct or modify any facility in the United States to house detainees from Guantanamo Bay.

I have continuously opposed these actions by Congress that block the closure of the detention facility located at Guantanamo Bay. Our civilian law enforcement and justice systems have a proven track record of success in investigating and prosecuting suspected terrorists. Since September 2001, almost 500 individuals have been convicted in federal court of crimes related to

international terrorism and over 300 individuals are currently incarcerated in federal prisons within the United States for similar charges.

On June 14, 2013, along with Representative James Moran of Virginia and Gerald Nadler of New York, I offered an amendment to H.R. 1960, the FY2014 National Defense Authorization Act, that provided a comprehensive plan to close the Guantanamo Bay detention facility. This amendment, the Guantanamo Bay Detention Facility Closure Act of 2013, would 1) expedite and add to requirements for a comprehensive closure plans from the President and the Department of Defense; 2) enhance the authority of a senior Department of Defense official to implement the presidential plans for closure; 3) remove existing limitations on transfers; 4) strike current requests for construction at GTMO; 5) require notice and a comprehensive report to Congress prior to any actual transfers, and 6) end funding for the GTMO detention facility on December 31, 2014.

Unfortunately, the amendment failed by a vote of 174-249. While I was disappointed with the outcome of this vote, I will continue to work with my colleagues in the House, Senate, and the White House to close this facility. Detaining individuals at Guantanamo Bay was never a good idea. It is an even worse idea now. We should start the process to close the detention facility at Guantanamo Bay now.

Before I summarize my amendment, let me address several misconceptions about Guantanamo Bay.

First, security. It is often said by some that if Guantanamo inmates are brought to the United States, there will be regular security incidents. This is nonsense. As stated above, the federal Bureau of Prisons and our military have a proven track record for holding dangerous criminals and terrorists. We have already tried and convicted one Guantanamo detainee in the United States, Ahmed Ghalaini, without incident. I am aware of the letter by Mayor Bloomberg of New York City addressing security concerns and costs about terrorist trials in New York City. I agree that trying terrorists and providing adequate security is expensive, but it will be expensive wherever we try them. Anything is cheaper than the hundreds of millions of dollars we have already spent on the military commissions process. In addition, it is my understanding Mayor Bloomberg was primarily addressing the Khalid Sheikh Mohammed trial, which as we now know, will be tried in a military commission at Guantanamo. Finally, the numbers cited by the Mayor have not been vetted and were only estimates unattributed to any verifiable source.

Further, we house terrorists in the United States now without incident. We know al Qaeda wants to attack us, additional detainees in the United States won't change the equation.

Second, it is argued that detainees in the United States might receive additional constitutional rights. This is another false argument. As the subcommittee knows, the federal judiciary already supervises detainees at Guantanamo, through habeas corpus review. The Supreme Court has

already said our Constitution applies to Guantanamo Bay and no greater rights apply to detainees than to any other person.

In addition, regardless of whether a detainee is tried in federal civilian court or by military commission, the verdict is reviewed by the U.S. Court of Appeals for the District of Columbia, an Article III court. Each verdict may also be reviewed by the Supreme Court.

Third, it is argued that we obtain better intelligence by military interrogations at Guantanamo. This is another myth. We have successfully obtained robust intelligence from a long list of subjects captured and interrogated in the United States. The reality is, that wherever a suspect is interrogated, the most effective intelligence is obtained by the FBI, the intelligence community, and the military working together.

Finally, Guantanamo Bay does not have only the “worst of the worst.” While there are many detainees at Guantanamo Bay who are dangerous and should not currently be released, over 86 have been approved for transfer by a process that involves both the intelligence community and our military. These detainees have been individually assessed to be low level risks if transferred or released. This assessment has been done by our experts: military, intelligence and terrorism experts. There is always a risk in releasing a detainee, but as former Secretary of Defense Donald Rumsfeld stated, we can’t detainee everyone in a war. We know our military in the field in Iraq and Afghanistan routinely released many low-level prisoners after initial capture. I defer this issue to our military, which has always advocated releasing low-level threats.

Much more can be said about the issue of recidivism, but that is a separate issue from whether Guantanamo should be closed. I want to close Guantanamo Bay, but I am not advocating for the release of any detainee that remains a security threat to the United States.

Here is a summary of how the amendment would close the Guantanamo Bay Detention Facility by December 31, 2014:

1) Expedites requirements for comprehensive plans from the President and the Department of Defense on how to close GTMO (within 60 days of enactment) that are in the underlying bill (the NDAA): foreign transfers, prosecution, expedited periodic review of the status of detainees, and a plan for detention in the United States for any remaining detainees. The reports include:

- A report of the security situation in Yemen and the capacity of the Yemeni government to detain, prosecute, or rehabilitate, detainees transferred from GTMO (Section 1039 of H.R. 1960).
- A report on possible constitutional rights GTMO detainees might receive if transferred to the United States (Section 1040 of H.R. 1960).
- A report on former GTMO detainees who may have become leaders of foreign terrorist groups (Section 1040A of H.R. 1960).

- Expedites completion of a comprehensive Presidential Plan on GTMO closing pursuant to Section 2901 of H.R. 1960. This plan will include:
 - For possible foreign transfers: identification of eligible detainees, selection of possible foreign locations, and an assessment of the security and humanitarian conditions in each country.
 - Identification of locations for possible transfers to the United States of GTMO detainees. Includes an assessment of purchase and transfer costs, construction, modification and repair costs, personnel costs, security costs, prosecution costs, and identification of any other potential costs.
 - Requires additional reports:
 - Assessment of security costs for federal trials and Military Commissions in the United States for GTMO detainees.
 - Attorney General assessment of disposition options for GTMO detainees currently selected for prosecution.
- Completion of all pending Periodic Reviews of the status of detainees.
- A report providing a summary of enduring security threats in the detention facility at Parwan, Afghanistan (Section 1035 of H.R. 1960).

2) Enhances the authority of a senior official in the Pentagon (pursuant to Section 1037 of H.R. 1960), who will be appointed by the President and given the authority to implement the above plans. This official must work with the intelligence community, the Department of Defense, the Joint Chiefs of Staff, the Department of State and other interested Departments.

- Pursuant to the above plans, this official will coordinate the negotiation of transfer agreements with foreign countries if it is determined that transfer is in the national security interest of the United States and the detainee is no longer a significant threat to the United States.
- Pursuant to the above plans, this official will coordinate Administration efforts to expedite the prosecution of all eligible detainees in federal court or in military commissions. These trials will occur in the United States or at GTMO. The ongoing military commission's trials will continue at GTMO. If they are not concluded by the end of 2014, they will continue at a secure location in the United States.
- The official will coordinate a plan to transfer any remaining detainees to secure facilities (either military bases or enhanced Bureau of Prison facilities) in the United States until the termination of hostilities. They will not be in our civilian communities: they will be on secure facilities on military bases or federal prisons. These detainees will include the few detainees determined to be too dangerous to release or for whom there is not admissible evidence to prosecute. The legal basis for this continued detention is provided by the laws of war, which allow a nation in an armed conflict to keep the enemy off the battlefield. The status of these

detainees will be reviewed on a regular basis and they will have access to attorneys. The conditions of their detention will be transparent. Every effort will be made to prosecute these detainees or transfer them to an appropriate foreign country. However, no detainee who is considered a significant threat to the United States will be released until the current conflict ends.

3) All current limitations on the transfer of GTMO detainees in HR 1960 or existing statutes are removed. Sections 1032-34 of H.R. 1960 are removed. These sections ban the use of funds for the construction or modification of facilities in the United States for GTMO detainees, require certifications by the Secretary of Defense for transfer to foreign countries, and a ban on the transfer of GTMO detainees to the United States. Parallel restrictions in appropriations statutes and the current Continuing Resolution are also removed.

4) Strikes the request for \$247 million for military construction at GTMO in Section 2901 of H.R. 1960.

5) Requires 30 day notice to Congress and a comprehensive report prior to any transfer of a Guantanamo Bay detainee to a foreign country or to the United States for prosecution or continued law of war detention. The report includes an assessment by the Secretary of Defense and the intelligence community of security concerns about the individual. No transfer notice will be sent to Congress unless it is the consensus opinion of the military and intelligence communities that transfer of the detainee is appropriate.

6) Eliminates funding for the Guantanamo Bay detention facility by December 31, 2014.

Thank you again for the opportunity to appear before you today and I look forward to your questions.