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

UNITED STATES HOUSE OF REPRESENTATIVES, COMMITTEE ON HOMELAND SECURITY,  
SUBCOMMITTEE ON OVERSIGHT AND MANAGEMENT EFFICIENCY

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**Statement of Subcommittee Chairman Scott Perry (R-PA)  
Oversight and Management Efficiency Subcommittee**

*Transferring Guantanamo Bay Detainees to the Homeland:  
Implications for States and Local Communities  
April 28, 2016*

Remarks as Prepared

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

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

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

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

We also have legal questions - such as whether these terrorists could be eligible for certain forms of relief from removal, release from immigration detention, or constitutional rights. The Department of Justice believes that existing statutory safeguards are sufficient and courts historically have ruled that detainees

held under the laws of war who are brought to the US are outside the reach of immigration laws. But make no mistake...their lawyers will test every avenue, and slow justice even further.

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

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

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

###

**Prepared Testimony on  
“Transferring Guantanamo Bay Detainees to the Homeland: Implications for States and  
Local Communities”**

**Governor Nikki R. Haley, South Carolina  
House Committee on Homeland Security  
Subcommittee on Oversight and Management Efficiency  
April 28, 2016**

**Introduction**

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

In August of last year, my office was contacted by a representative of the Department of Defense to inform us they were traveling to Charleston, South Carolina to assess the U.S. Naval Consolidated Brig for the possibility of housing Guantanamo Bay detainees. Imagine my surprise: not only was it against federal law to transfer Guantanamo detainees into the United States – and has been since 2010 – but why would anyone want to put terrorists in Charleston?

We came to learn that the Obama Administration was not only surveying the Charleston brig, but also other facilities across the United States – military and civilian, federal and state.

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

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

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

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

**First, Recruiting Propaganda of Violent Extremists:**

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

But, what could be accomplished by moving the facility to Charleston? Well, taking the propaganda assertion as fact, Charleston will then be used in an attempt to inspire potential terrorists to join the fight. And with the increased accounts of homegrown terrorism and terrorist sympathizers around the country, we do not want to put a bulls-eye on what has been named the number-one vacation destination in the country for four years in a row simply to fulfill a misguided campaign promise.

### **Second, Interference in Foreign Relations:**

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

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

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

### **Third, Department of Defense Resources:**

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

In President Obama's plan, he states that moving the detainees to the United States could save between \$65 million and \$85 million annually. He estimates that one-time costs associated

with hardening a United States' structure will be between \$290 million and \$475 million, but over the course of three to five years the lower operating costs of the United States' facility could fully offset these transition costs and generate at least \$335 million in net savings over 10 years. Whether or not one agrees that it is worth saving \$85 million annually to put terrorists in our backyard – and let me be clear that I do not – the estimated timeframe and cost to harden a United States' facility should give budget writers and policy makers great pause. South Carolina is well aware of the federal government's ability, or lack thereof, to maintain project timelines and cost projections, even in cases where the project is designed to address foreign relations and international agreements. One need look no further than the MOX facility at the Savannah River Site in Aiken, South Carolina, currently billions of dollars over budget and years past original completion projection dates.

### **In Conclusion...**

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

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

I look forward to your questions.



**Statement of Michael J. Bouchard, Sheriff of Oakland County  
on behalf of the Major County Sheriffs' Association**

**Before the House Committee on Homeland Security Subcommittee  
on Oversight and Management Efficiency**

**“Transferring Guantanamo Bay Detainees to the Homeland:  
Implications for States and Local Communities”**

**April 28, 2016  
Washington, DC**

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

I am currently serving my fourth 4 year term as Sheriff and have been in law enforcement for almost 30 years. I run one of the largest Sheriff's Offices in the country where I oversee 1,300 employees and manage an annual budget of over \$141 million dollars. We provide police, jail and court services for over 1.2 million people and nearly 1000 square miles. In addition to serving the people of Oakland County, I am also the Vice President of Government Affairs for the Major County Sheriffs' Association of America (MCSA). I am here testifying on their behalf. The MCSA is an association of elected Sheriffs representing our nation's largest counties with populations of 500,000 people or more. Collectively, we serve over 100 million Americans.

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

The current threat environment from ISIS and other international terror groups cannot be underestimated. The nature of violence in America and around the world has evolved as has the expansion of encryption, use of social media for mass propaganda, inspiration for lone wolf attacks and selective recruitment. It is no secret that social media has played a primary role in the unprecedented uptick of ISIS sympathizers and disciples. Through the George Washington University Program on Extremism, over 300 American and/or U.S. based ISIS sympathizers have been identified online as actively spreading propaganda<sup>i</sup>. Since March 2014, 85 individuals across 24 states have been charged in the U.S. with offenses related to ISIS and it has been reported that since the fall of 2015, roughly 250 Americans have traveled or attempted to travel to join ISIS<sup>ii</sup>.

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

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

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

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

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

Prison radicalization and recruitment is an ongoing concern. Former Director of the Bureau of Prisons, Harley Lappin, testified back in 2003 before the Senate Judiciary Subcommittee on Terrorism, Technology, and Homeland Security where he stated, “We know that inmates are particularly vulnerable to recruitment by terrorists and that we must guard against the spread of terrorism and extremist ideologies...In addition, our institutions work closely with the Local Joint Terrorism Task Forces (JTTF) to share information and intelligence about these inmates<sup>vi</sup>.” Many of our MCSA members devote both personnel and resources to these JTTFs without federal reimbursement.

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

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

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

Grant programs such as the State Homeland Security Grant Program (SHSP) and the Urban Areas Security Initiative (UASI) work to address gaps in local agencies capabilities for responding to terrorist threats. Other programs such as the Edward Byrne Memorial Justice Assistance Grant Program (JAG) have a broader focus of providing critical funding to support a range of different program areas. Over the past few fiscal years, law enforcement has seen a steady decline in federal grant funding and most recently, President Obama's FY17 budget request cut UASI funds by 45 percent. The amount of monies we receive for these new and evolving threats is a trickle at best.

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

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

Guantanamo detainees housed in U.S. facilities would require an exorbitant amount of resources from state and local law enforcement agencies. Resources ranging from man power associated with hospital watch, medical and/or court transfers, to a coordinated escapee and riot response plans. Local law enforcement would also be tasked with preparing and responding to any protestors or sympathizers outside of the facility gates and into our local communities. When an emergency arises, federal officials and the military are not the first to respond - local law enforcement are and as such, need to be adequately prepared to properly address the situation at hand. That means both a significant investment in planning, training and equipment by the affected local jurisdictions. Some have lauded the closure of Gitmo as a cost saving measure, but that is most assuredly shortsighted - both from a national security and taxpayer perspective. Additionally, with the recent efforts to transfer detainees to other countries the argument that so few are left it only makes sense to close the base is neither subtle nor supported.

As stewards of the rule of law, the MCSA respectfully reminded the President that he signed two separate pieces of legislation into law that explicitly bar the use of funds to transfer, release or assist in the transfer or release of Gitmo detainees to or within the continental United States<sup>ix</sup>. In compliance with current law and in full understanding of the inherent national security risk,

MCSA believes Gitmo detainees should, under no circumstance, be brought to the homeland where they will pose a threat to the communities we serve.

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

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

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

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

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

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

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

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

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

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

Todd Thompson  
County Attorney, Leavenworth, Kansas

April 28, 2016

House Committee on Homeland Security's Subcommittee on Oversight and Management  
Efficiency  
Transferring Guantanamo Bay Detainees to the Homeland: Implications for States and Local  
Communities

Chairman Perry and Members of the Committee:

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

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

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

**Lack of Communication:**

One issue that has arisen in the Leavenworth community has been the lack of communication with our State, local, and military officials. The most important asset that I can have for any part of my job is the availability of pertinent information upon which to base my decision. At this late date, we have no clear-cut idea what the expectations of our community will be if the Guantanamo Bay detainees were placed here. We are unaware how many detainees President Obama's will request to be brought to the United States. As we are led to believe, there are 80 detainees currently held at Guantanamo Bay. That is including 44 detainees that are not recommended for transfer because they are too dangerous, even for their home countries.

These detainees are not a homogeneous group. We know they are high-value detainees, serious detainees never to be released, and detainees from places like Yemen who do not have a home to return to at the moment, among others. This lack of communication causes serious issues

regarding how we as a community are to thwart any pending threats and how much of our limited resources we would need to expend in dealing with those threats.

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

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

#### **Change in Core Mission at Ft. Leavenworth:**

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

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

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

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

## **Security Issues:**

In today's society, law enforcement and communities must take into consideration a terroristic threat, whether real or perceived. As the 9/11 Commission stated, "[t]he most important failure was one of the imagination." Incidents ranging from the 2015 San Bernardino attack to the 2015 attack in Paris or 2016 attack in Brussels cause communities to be frightened of a similar attack occurring in their community. President Obama, among others, has said that the rationale for the closure of the Guantanamo Bay detainment facilities is due to the symbolism the facility represents. This would give good cause to a like-minded individual or person(s) seeking attention to try a similar attack. An example of this has already occurred in Leavenworth in 1997. In 1993, terrorists bombed the World Trade Center towers in New York City and one of the four people responsible for the attack, Muhammed Salameh, was housed at the United States Penitentiary, only 5 miles south of the Disciplinary Barracks at Ft. Leavenworth. In 1997 the Penitentiary received several letter bombs that were designed to injure and kill people housing terrorists. Local and federal resources were able to prevent any harm from occurring. The placement of these detainees from Guantanamo Bay has the real potential to bring harm to any community wherein they may be placed. Not simply because there will be more of them in one facility together, but because these detainees are exponentially more dangerous.

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

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

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

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

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

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

**Testimony Of  
Ken Gude  
Senior Fellow  
Center for American Progress**

**Before the Committee on Homeland Security  
Subcommittee on Oversight and Management Efficiency**

**Hearing on  
Transferring Guantanamo Bay Detainees to the Homeland:  
Implications for States and Local Communities**

**Thursday, April 28, 2016**

Chairman Perry, Ranking Member Watson-Coleman, and other distinguished members of the Subcommittee, thank you for the opportunity to appear before you today. I am pleased that you are holding this hearing so that we can thoroughly examine the issues related to transferring Guantanamo detainees to the United States for either trial in federal court and incarceration in federal prisons or continued law of war detention in military custody.

A careful review of the record of the federal court system and our military detention facilities both prior to and since 9/11, under both Democratic and Republican administrations, clearly shows that this is a task that the United States can handle safely, securely, and with no threat and little disruption to local communities.

Closing the prison at Guantanamo remains a national security imperative. Guantanamo is a symbol of lawlessness, torture, and abuse and continues to be a potent aspect of anti-American messages distributed by our enemies and adversaries. It is no accident that ISIS forces their captives to wear Guantanamo-like orange jumpsuits.

For these reasons, a long, bi-partisan list of senior government and national security figures do not believe Guantanamo advances U.S. national security interests.

Former President George W. Bush wrote in his 2010 memoir, *Decision Points*, “the detention facility [Guantanamo] has become a propaganda tool for our enemies and a distraction for our allies.”

Then-Republican presidential candidate Senator John McCain repeatedly pledged to close Guantanamo during the 2008 campaign, even producing the specific recommendation that he would “close Guantanamo Bay. And I would move those prisoners to Ft. Leavenworth.”

Former Secretary of State James Baker said in 2008 that “one of the best things” the next president could do to improve American security would be “to close Guantanamo, which is a very serious blot on our reputation.”

Former Chairman of the Joint Chiefs of Staff and Secretary of State Colin Powell said in 2007, “I would close Guantanamo not tomorrow, but this afternoon... I would simply move them to the United States and put them in our federal legal system.” Powell reiterated his support for closing Guantanamo and transferring detainees to the United States earlier this year, saying, “we’ve got prisons that can hold them. They’re not going to cause any problems if they go to Leavenworth or even Rikers Island.”

I join with these and other senior current and former U.S. government officials in supporting President Obama’s decision to find another location to hold those Guantanamo detainees that the United States wants to maintain custody over after transferring those that the U.S. military believes no longer require detention to either their home or to third countries.

### **Transfers of Guantanamo Detainees to the U. S. Have Already Occurred**

It might surprise many on this Committee—and certainly any close observer of the political debate surrounding closing Guantanamo—to learn that it was a Republican president that first ordered the transfer of a Guantanamo detainee into the United States. Yassir Hamdi was transferred from Guantanamo in April 2002, first to the Naval Station at Norfolk, Virginia and then to the Consolidated Naval Brig at the Charleston Naval Base. Hamdi remained in the Brig in Charleston for two and a half years before he was repatriated to Saudi Arabia. During his detention, the U.S. Supreme Court ruled that his detention was legal under the law of war.

According to the Bush administration, Hamdi was captured in Afghanistan in 2001 fighting with the Taliban and was initially sent to the Mazar e Sharif prison where he was accused of participating in the notorious prison uprising that killed American Johnny Span. In February 2002, the Bush administration sent Hamdi to Guantanamo Bay.

Hamdi arrived in South Carolina in the middle of campaign season during a particularly intense election for governor. The incumbent Democratic Governor Jim Hodges was being challenged by then-former Rep. Mark Sanford. There is no evidence in the public record that the presence of a Guantanamo detainee in Charleston ever featured in any way in that gubernatorial election campaign. There is no record of Gov. Hodges ever writing or speaking to the Bush administration or to Congress about any threat posed to the residents of South Carolina by Hamdi from inside the Charleston Naval Brig. Nor is there any public comment by Rep. Sanford on the issue either. Sanford eventually won a close election 53% to 47% for Hodges.

The other instance of a Guantanamo detainee being transferred into the United States was not greeted with equal indifference by the political system. Ahmed Ghailani was indicted in December 1998, along with a number of other co-conspirators, for his role in the bombings of two U.S. embassies in East Africa earlier that year that killed more than 200. He was captured in 2004 in Pakistan and arrived at Guantanamo in 2006. It is unclear where he was held in the intervening period, but he was one of the individuals the Bush administration admitted was held in undisclosed locations by the CIA.

Ghailani was transferred to New York in June 2009. That same month, Congress voted for the first time in the prison's then seven-year history, and after more than 500 detainees had been transferred out of Guantanamo by the Bush administration to locations that included the United States, to impose restrictions on transferring detainees out of Guantanamo. An absolute prohibition on transferring Guantanamo detainees to the United States was narrowly defeated that year in the House of Representatives. But Ghailani would be the only Guantanamo detainee brought to the United States by the Obama administration before that transfer ban was imposed by Congress beginning in 2011.

Despite the political furor surrounding Ghailani's transfer to the United States, he went on trial in New York City in 2010 for his role in the embassy bombings. He was convicted of conspiracy in the attacks and sentenced to life in prison. He was sent to the federal penitentiary at Florence, CO, also known as the Supermax, in June 2011 where he has been for nearly five years. There is no evidence that there was any elevated threat to the residents of New York from 2009 to 2011 because of Ghailani's presence during the trial, nor has there been any evidence that the residents of Colorado have been negatively impacted during his nearly five years at Supermax.

### **Terrorists Held as Military Detainees in the United States**

In addition to Yassir Hamdi, two other accused al Qaeda operatives were held in military detention inside the United States during the Bush administration. The first was Jose Padilla. He was captured in May 2002 at Chicago's O'Hare International Airport upon arriving on a flight from Zurich and held in New York City as a material witness to an ongoing criminal investigation.

More than a month later, then-Attorney General John Ashcroft announced his detention, describing Padilla as "a known terrorist who was exploring a plan to build and explode a radiological dispersion device, or 'dirty bomb,' in the United States." Padilla, who is a U.S. citizen, was declared an enemy combatant and transferred on June 9, 2002 to join Hamdi at the Charleston Naval Brig.

Padilla was eventually transferred to federal prison in Miami in 2006, where he stood trial for terrorism charges unrelated to the dirty bomb plot. In 2008, he was convicted of conspiracy and first sentenced to serve 17 years in prison, later

increased to 21 years. He is currently serving his sentence alongside Ghailani in the Supermax in Colorado.

The second military detainee in the United States was Ali al-Marri. He was arrested in December 2001 in Illinois and charged with credit card fraud. He was in federal prison awaiting trial on those charges when his case dramatically changed in 2003 when he was declared an enemy combatant by the Bush administration, accused of being an al-Qaeda sleeper agent, and transferred to the Charleston Naval Brig. Al-Marri's arrival brought the Charleston detainee population to three.

Al-Marri was charged with new terrorism offenses and returned to federal prison upon President Obama taking office in 2009, when he pled guilty to providing material support for terrorism. He was sentenced to fifteen years in prison, including the seven years he had served since his original arrest in 2001, a sentence he also served at Supermax. Al-Marri was transferred to his native Qatar in 2015 with little attention paid to his case.

As with the previous cases of Hamdi and Ghalani, there is no evidence that the residents of Illinois, New York, South Carolina, Florida, or Colorado were under any elevated threat because of the presence of Padilla or al-Marri in federal or military prisons in their states.

### **Suspected Terrorists Captured Overseas and Brought to the United States**

It has also been a regular feature of the criminal justice system during both the Bush and Obama administrations for suspected terrorists captured overseas to be brought to the United States for trial and incarceration.

Aafia Siddique, a Pakistani national educated in the United States, was detained in Afghanistan in 2008. She was sent to a U.S. military base where, according to the Bush administration, she attempted to murder several U.S. military officers in an attempted escape. Siddique was wounded in her escape attempt, but she survived and was quickly transported to New York in September 2008 for trial. She was convicted of attempted murder in 2010 and sentenced to serve 86 years. Siddique is currently being held at the Federal Medical Center in Carswell, TX, a federal prison for inmates with special health needs.

Suliaman Abu Ghaith, Osama bin Laden's son-in-law and top spokesperson for al Qaeda, was turned over to the United States in 2013 after being detained by Jordanian authorities. Abu Ghaith is the highest-ranking al Qaeda operative to stand trial in the United States, and he was convicted in a New York courtroom in 2014 for conspiracy to murder Americans and providing material support for terrorism. He was sentenced to life in prison and joins many other fellow international terrorists at Supermax in Colorado.

Ahmed Abu Khatallah is accused of being the ringleader of the attack on the U.S. diplomatic compound in Benghazi that killed four Americans. He was captured in a joint FBI-U.S. military operation in Libya in June 2014 and quickly transported offshore to a U.S. navy ship. Onboard that ship, Khatallah was interrogated for several weeks before his transfer to the United States in July 2014.

Even though that attack has prompted intense political debate, the detention of Abu Khatallah in federal prison first in Washington, DC and then in northern Virginia while he awaits trial in federal court has attracted absolutely no attention or controversy. He has been less than ten miles from the United States Capitol in an Alexandria prison cell for nearly two years.

There is no evidence that the residents of New York, Texas, Colorado, Washington, DC, Virginia, or the U. S. Representatives, Senators, their staffs, or the other employees who work at the United States Capitol have been under any elevated threat because of the presence of Aafia Siddique, Sulaiman Abu Ghaith, or Ahmed Abu Khatallah in federal prisons in their vicinity.

### **Other High-Profile Terrorists in U.S. Prisons**

The list of extremely dangerous terrorists currently held at Supermax in Florence reads like a rogues gallery of international terrorism. The man who first tried to bring down the World Trade Center in 1993, Ramzi Yousef, and his co-conspirators, Mahmud Abdouhalima, Mohamed Salameh, and Eyad Ismoli, were captured in 1995 and have been serving multiple life sentences in Supermax since their 1997 conviction in a New York City court.

Ahmed Ghailani's co-conspirators, Wadih el-Hage, Mohamad al-Owhali, Mohammed Odeh, Khalid al-Fawwaz, were arrested in 1998, prosecuted in a New York courtroom in a trial that began in 1999, and convicted in 2001 for their roles in the 1998 embassy bombings. All are at the Supermax. Ahmed Ressay, the al Qaeda terrorist who was planning to attack Los Angeles International Airport on New Year's Eve 1999, but was captured at the U.S. border with Canada, is also held there. He was convicted in federal court in Los Angeles in 2000, where he is serving a 37-year sentence.

So is Zacarias Moussaoui, who was originally believed to be the missing 20th hijacker in the 9/11 attacks. He was arrested by the FBI in Minnesota in 2001 and prosecuted in a federal court in Alexandria, the same location as Abu Khatallah. Moussaoui pled guilty but the sentencing phase of his trial dragged on and he ended up spending more than five years in Virginia before he was sent to Supermax in 2006 to serve a life sentence.

The two perpetrators of attacks on airplanes that have come the closest to success since 9/11 are there too. It is home to Richard Reid, the British citizen who tried to blow up a U.S. bound airliner using explosives hidden in his shoes in 2001. He plead

guilty in federal court in Boston and was sentenced to three life terms in 2002. More recently, Umar Farook Abdulmutallab, the Nigerian who attempted to destroy another U.S. bound plane on Christmas Day in 2009 with a bomb built into his underwear. He plead guilty in federal court in Detroit and was sentenced to four consecutive life sentences.

Just as with the above referenced cases, there is no evidence that the residents of New York, California, Minnesota, Virginia, Massachusetts, Michigan, or Colorado were or are under any elevated threat because of the presence of these terrorists in prisons in their states.

### **Guantanamo Detainees Won't Be Released Into the United States**

Some concerns have been raised that bringing Guantanamo detainees into the United States would lead to their release from custody into the United States by increasing the rights afforded them. However, there is no chance that a Guantanamo detainee would be released into the United States under current law.

First, it is important to recognize that the number of detainees that could possibly be brought to the United States under President Obama's plan is quite small, likely around three dozen. These detainees will have had their cases reviewed in 2009 by the task force established by the Obama administration to examine the case of every detainee at Guantanamo, and are likely to have had at least one Periodic Review Board hearing. In each of those instances, the detainee would have been approved for continued law of war detention, or in addition to that status potential prosecution in federal court or the military commissions. Therefore, the detainees likely to be transferred to the United States under this plan are the ones who present the most compelling cases for continued detention.

Should a Guantanamo detainee be brought to the United States to stand trial, while a conviction is by far the most likely result, it is possible that such a trial could end in acquittal—we don't do show trials in the United States. If a former Guantanamo detainee is acquitted, he could still be held by the military as a law of war detainee. If this, or any other among this last group of Guantanamo detainees, were able to win a habeas corpus case that he should no longer be held as a law of war detainee, that will not result in order for his release from custody. Rather, it would mean the court would order him transferred out of the United States and he would remain in custody until that happens.

Additional questions have been raised regarding the extremely remote possibility that a law of war detainee is ordered to be transferred out of U.S. custody over the objections of the Executive Branch, but no country would be willing to accept him and there is no basis to bring charges in federal court. The Obama administration included as an appendix to its plan to close Guantanamo a formal report to Congress it prepared addressing these very issues. Its conclusion is the same as mine, that no matter what the difference is between the rights afforded to the detainees in the

United States versus those at Guantanamo, no detainee will be released into the United States.

### **Conclusion**

American federal prisons and military detention facilities have held and currently hold some of the most dangerous terrorists the world has ever known. This is a testament to the success of our law enforcement and national security officials in keeping Americans safe, not an indication of an unacceptable level of threat affecting Americans on a daily basis. I am confident that the American criminal justice system and U.S. military detention facilities can safely and securely imprison any Guantanamo detainees that are sent to U.S. soil.