

What's in the Close Guantanamo Plan

In February 2016, the Department of Defense released its plan for closing the detention facility at Guantanamo Bay.¹ Currently, 40 detainees remain at the prison, which national security experts agree hinders the country's ability to combat terrorism.² Below are the details of the plan:

Transfer Cleared Detainees to Foreign Countries

The administration will reduce the population at Guantanamo by continuing to transfer detainees who have been cleared to their home or third countries. The Department of State, Department of Defense, Department of Homeland Security, the Office of the Director of National Intelligence, and the Joint Chiefs of Staff have assessed that whatever threat these detainees pose can be mitigated. Some were approved for transfer by the Bush Administration and all were approved for transfer either by the Obama Administration's 2009 Guantanamo Review Task Force or the Periodic Review Board process. All transfers are also approved by the Secretary of Defense.

Periodic Review Boards: After the Guantanamo Review Task Force decided on each detainee's designation, President Obama established the Periodic Review Board (PRB) process, designed to "review whether continued detention ... remains necessary to protect against a continuing significant threat to the

security of the United States."³ To date, the PRB has held hearings for 64 detainees, with all of these detainees receiving initial decisions, and 38 cleared for transfer. Of those 38, 36 have been transferred out of Guantanamo. Nineteen remaining detainees are eligible for subsequent PRB hearing consideration (not counting those waiting on decisions). As the plan laid out, the pace of these hearings was accelerated, and all initial hearings were completed by fall 2016. Those detainees who were approved for transfer by the Task Force in 2010 will continue to have their cases reviewed again by the Department of Defense before transfers occur.⁴

Risks of post-transfer engagement or reengagement in terrorist activity: Claims that transferred detainees pose a high likelihood of engaging or re-engaging in terrorist or insurgent activities after their release are largely unfounded. Under the Bush Administration, which released over 500 detainees, the percentage of released detainees who were confirmed as having engaged after their transfer was 21.4 percent. After the Obama Administration put in place more thorough review processes, this percentage has dropped to 4.6 percent.⁵ This process will continue to ensure that any threat is sufficiently mitigated.

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

² <http://www.humanrightsfirst.org/resource/quote-sheet-national-security-leaders-support-closing-guantanamo>

³ <http://www.prs.mil/AboutthePRB.aspx>

⁴ <http://www.c-span.org/video/?324186-1/hearing-guantanamo-detention-facility-outlook>

⁵ <https://www.dni.gov/index.php/newsroom/reports-publications/item/1852-summary-of-the-reengagement-of-detainees-formerly-held-at-guantanamo-bay-gtmo-cuba>

Transfer Detainees for Foreign Prosecution

The plan also notes that some detainees who have not been cleared for release will be evaluated on an individual basis and may be sent to reliable foreign countries for prosecution. Some of the detainees may have outstanding cases pending against them in those countries, or new cases could be brought.

Hold Remaining Detainees in a Prison (or Prisons) inside the U.S.

After foreign transfers are completed, the Obama Administration will bring a small number of detainees – those it has decided to hold indefinitely pending PRB review – to a prison in the United States to be held as law of war detainees either until the end of hostilities or until a PRB determines the risk of release is manageable.

U.S. prisons: The Department of Defense identified 13 potential facilities, including federal, military, and state correctional facilities. The plan does not include a specific recommendation, but the administration has committed to working with Congress to choose the most appropriate facility to house the remaining detainees.

Safety: U.S. prisons can safely hold Guantanamo detainees. Hundreds of prisoners convicted of terrorism-related crimes, including high-ranking al Qaeda members, are already being held in U.S. prisons. James A. Gondles, Jr., Executive Director of the American Correctional Association, wrote that “[w]hether an individual is part of a drug cartel, a criminal street gang or a terrorist organization with political objectives, U.S. corrections systems

and corrections professionals (both military and civilian) have the ability, training and facilities to handle them.”⁶

Savings: Since it opened, the total cost of operating the prison facility at Guantanamo Bay has been over \$5 billion.⁷ The 2015 cost of operating the prison was approximately \$445 million – over \$10 million per detainee with the current population. In addition to the high annual cost, the facility requires repairs and construction that would cost an additional \$225 million. These numbers also do not include costs that remain classified, like those for Camp 7, home to high-value detainees such as the 9/11 defendants. While moving the remaining 30-60 detainees to a facility in the U.S. would have one-time costs, these would be offset by the massive amount of money saved – up to \$180 million annually. Over 10 years, the move would save taxpayers at least \$335 million, and over 20 years, it would save up to \$1.7 billion.⁸

Prosecute Certain Detainees in Military Commissions and Federal Courts

New trials in federal courts: The plan includes holding trials for some Guantanamo detainees in U.S. federal courts. Since 9/11, federal courts have handled hundreds of terrorism-related cases, many of which have been al Qaeda-related.⁹ Drawing on decades of precedent, federal courts are vastly superior, more efficient, and more prepared than the cobbled-together military commissions at Guantanamo. Moreover, federal courts can handle terrorism-related cases safely – none of the U.S. districts that

⁶ <http://www.humanrightsfirst.org/sites/default/files/ACA-Gondles-Miami-Herald-Op-Ed.pdf>

⁷ <http://www.humanrightsfirst.org/sites/default/files/Feinstein-DOD-Guantanamo-Costs-01-Dec-14.pdf>

⁸ http://www.defense.gov/Portals/1/Documents/pubs/GTMO_Closure_Plan_0216.pdf

⁹ <http://www.humanrightsfirst.org/2012/07/13/federal-courts-continue-to-take-lead-in-counterterrorism-prosecutions-fact-sheet>

have tried terrorism suspects in federal courts have been attacked in response.¹⁰

- Continuing military commission trials:** The plan calls for continued military commission trials in the United States, including the case against the alleged 9/11 conspirators. The military commissions have thus far been a failure, and U.S. federal courts have a proven track record for trying terrorism-related cases.¹¹ Therefore, trying the current military commission defendants in federal courts in the United States is vastly preferable to continuing the military commissions at Guantanamo, even if, as the plan describes, military commissions are reformed.
- No releases into the U.S.:** According to a 2014 report by the Department of Justice, “[w]e are not aware of any case law, statute, or constitutional provision that would require the United States to grant any Guantanamo detainee the right to remain permanently in the United States.”¹² The Obama Administration has explained that it “has no intention of releasing any detainees in the United States,”¹³ and the plan explicitly states that “the courts have treated detainees held under the law of war who are brought to the United States as outside the reach of immigration laws.”¹⁴

¹⁰ <http://www.justice.gov/opa/speech/attorney-general-eric-holder-speaks-theamerican-constitution-society-convention>

¹¹ <http://www.humanrightsfirst.org/resource/myth-v-fact-trying-terror-suspects-federal-courts>

¹² <http://www.scribd.com/doc/249658866/Report-Pursuant-to-Section-1039-of-the-National-Defense-Authorization-Act-for-Fiscal-Year-2014#scribd>

¹³ <https://www.whitehouse.gov/sites/default/files/091215-letter-governor-quinn.pdf>

¹⁴

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