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**UPDATE ON DETAINEE TRANSFERS  
FROM GUANTANAMO**

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HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT  
AND INVESTIGATIONS

OF THE

COMMITTEE ON ARMED SERVICES  
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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## **UPDATE ON DETAINEE TRANSFERS FROM GUANTANAMO**

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HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ARMED SERVICES,  
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,  
*Washington, DC, Thursday, February 12, 2015.*

The subcommittee met, pursuant to call, at 3:05 p.m., in Room 2212, Rayburn House Office Building, Hon. Vicky Hartzler (chairwoman of the subcommittee) presiding.

### **OPENING STATEMENT OF HON. VICKY HARTZLER, A REPRESENTATIVE FROM MISSOURI, CHAIRWOMAN, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

Mrs. HARTZLER. Welcome. I am delighted to gavel in this first hearing and briefing of the Oversight and Investigations Subcommittee. Today's event is entitled "Update on Detainee Transfers from Guantanamo."

Before we proceed with the hearing, I would like to emphasize how honored I am to serve as Oversight and Investigations Subcommittee chairwoman in this Congress.

This subcommittee undertakes important work for the Committee on Armed Services. It strives to ensure that the policies and programs of the Department of Defense [DOD] are properly formulated and implemented in the most efficient manner. Previous Congresses have recognized the critical role of standalone oversight and investigations. In fact, it is essential I recognize a former HASC [House Armed Services Committee] chairman and my predecessor, the late Ike Skelton, who insisted on establishing this subcommittee when he became chairman of the Armed Services Committee during the 110th Congress.

I am also pleased to acknowledge that Chairman Joe Heck, who preceded me in this position last year, returns to the subcommittee as a sitting member; and I look forward to his continued involvement and insights.

And I also look forward to working with Ranking Member Speier as well as Chairman Thornberry, Ranking Member Smith, and all members of the subcommittee in the 114th Congress.

So before continuing with my opening remarks for the hearing, I would like to recognize my colleague and ranking member of the subcommittee, Ms. Jackie Speier, for any welcoming remarks that she may wish to offer.

Ms. SPEIER. Thank you, Madam Chairwoman.

And I too am privileged to serve with you as ranking member of this committee. I really think that there is no higher calling for all of us as Members of Congress than to do rigorous investigations

and oversight. And I look forward to working with you, and recognizing that together in a bipartisan fashion we can address very thorny issues that come before us and hopefully come up with constructive solutions.

I yield back.

Mrs. HARTZLER. Thank you.

So as we turn to the subject matter at hand, I would like to state up front that we will not tolerate any disturbances of these proceedings, including verbal disruptions, standing, or holding of signs. I appreciate your cooperation in this matter.

So, this afternoon we have two senior officials appointed by the Obama administration charged with the responsibility to oversee the closure of Guantanamo Bay detention facility. Our witnesses will provide testimony on their roles and the interagency process for transferring detainees from the detention facility to other countries. We will then adjourn to a classified setting, where we will be joined by an official from the Defense Intelligence Agency [DIA], in addition to our two witnesses, who will elaborate further on the interagency transfer process.

In light of the statements we are about to receive from the witnesses and the type of details which are primarily classified, I ask unanimous consent that members hold all questions for the witnesses until the classified briefing.

Hearing no objection, so ordered.

According to information from Joint Task Force Guantanamo, the military organization that operates the detention facility, their responsibility is to detain unprivileged enemy belligerents. The Joint Task Force material explains that the detention of unprivileged enemy belligerents in wartime is, "a matter of security and military necessity, and has long been recognized as legitimate under international law."

The Joint Task Force further notes that detainees provide the United States with important intelligence that helps prevent future attacks. General James Mattis, a retired commander of U.S. Central Command, echoed this in testimony on January 27 to the Senate Armed Services Committee. He called for consistency in our detention policy, and argued for the need to hold belligerents until the end of the fighting so they cannot harm others.

Despite the dedication of the men and women who created and operate GTMO [Guantanamo] today, any real or imagined misstep or procedural lapse from a decade ago has been sensationalized by our terrorist enemies. We must not allow them to succeed in inventing a narrative about GTMO and using this narrative to lead to GTMO's abolition.

Let me be clear, terrorists bombed the USS *Cole* before the detention center at Guantanamo existed. Terrorists hijacked three airplanes and wrought havoc in the United States on September 11, 2001, before GTMO was created.

The Taliban established their brutal regime in Afghanistan before GTMO was built. Indeed, it was because of the death and destruction caused by these terrorists that GTMO came into being. The crazed fanatics who comprise the Islamic State do not exist because of GTMO. Certainly it is not true that if the facility ceased

to exist these brutal murderers would renounce their violent ideology.

It is wrong to suggest that because the Islamic State dresses their victims in orange jumpsuits the United States bears even an incidental responsibility for the Islamic State's barbaric actions. It is also wrong to use this as a justification to shutter GTMO. Indeed, recent events should suggest greater, not lesser, caution in moving detainees out of GTMO.

Yet, based on information provided by the Department of Defense, 33 detainees have been transferred from Guantanamo in the past 11 months, including 15 transfers just this past December alone. What is also shocking is that of the 33 transferred in the past 11 months, 7 of these detainees were among 48 recommended for continued detention by the Obama administration. Five of those seven detainees were the senior-most Taliban leaders sent to Qatar in May 2014.

Recent news reports have suggested that the intelligence community believes one of these individuals may have returned to the fight. In our classified session we are going to receive a briefing on the Taliban Five and learn what the United States Government currently assesses about them.

Two other detainees recommended for continued detention by the administration were transferred to Kuwait and Saudi Arabia in recent months. I expect to learn more about the process that resulted in the transfer of the seven GTMO detainees that the President's own advisers recommended remain behind bars. Because the administration has often ignored recommendations yielded internally from the system it established, it seems hypocritical to malign legislation that seeks to improve and make more sound the transfer, recommendation process.

Furthermore, of those 15 detainees transferred in December, 4 were sent to Afghanistan, where of course a war still rages and U.S. forces are deployed, despite the administration's claim that combat operations have ceased.

Six other detainees were sent to Uruguay, where according to press reports, the Uruguayan defense minister described them as "totally free men who will not be restricted in any way." I look forward to today to learning if there is any basis for these reports, which if true, are deeply disturbing.

The remaining 26 of the 33 detainees transferred over the past 11 months were deemed to be transferrable by the Presidential task force. But the task force noted nonetheless that a decision to approve a detainee for transfer does not equate to a judgment that the government lacked authority to hold the detainee. Even with the stated authority, the detainees were sent out of GTMO.

I am also eager to learn about the transfer arrangements for the detainees that fell into this category. This subcommittee, like the full Committee on Armed Services, will continue to vigorously oversee these and related issues.

I look forward to the opportunity to mark up the legislation sponsored by Representative Walorski and cosponsored by Representative Scott.

I now turn to the ranking member for her opening remarks for today's hearing.

**STATEMENT OF HON. JACKIE SPEIER, A REPRESENTATIVE  
FROM CALIFORNIA, RANKING MEMBER, SUBCOMMITTEE ON  
OVERSIGHT AND INVESTIGATIONS**

Ms. SPEIER. Thank you, Madam Chair.

Thank you for addressing this important topic. I also wish to thank our witnesses for appearing here this afternoon and for sharing with us their insights and their expertise.

Madam Chairwoman, it is long past time for the United States Government to close the detention facility at Guantanamo Bay. Its continuing operation damages national security by justifying abhorrent extremist behavior, by undermining relationships with allies and partners around the globe, and by wasting valuable national resources that could be put to productive use.

Whether we like it or not, the detention facility at Guantanamo Bay is an injurious symbol. Whether a fair representation or not, to many in the world Guantanamo symbolizes a manifestation of lawless abuse. It is an emblem that fuels twisted ideological propaganda, and it is an effective tool in the corruption and recruitment of individuals by organizations that exist to do innocent people grave harm.

Al Qaeda in its various forms has long been considered Guantanamo a useful totem. But we would need to look no further than the recent atrocities that have been brutally committed and luridly disseminated by the so-called Islamic State for proof of Guantanamo's enduring liability.

The Islamic State has purposely utilized imagery that evokes common conceptions of Guantanamo, such as cages and captives garbed in orange jumpsuits, in an effort to make its jihadist message resonate among those susceptible individuals who might be outraged by such references and persuaded to convert their anger into violence.

Even Al Qaeda's own English-language magazine, Inspire, uses those detained at Guantanamo as a rallying cry. Madam Chairwoman, for these reasons we need to treat the closure of the detention facility at Guantanamo as a national security imperative. The breadth and depth of opposition to Guantanamo cannot be overstated.

President Barack Obama and President George W. Bush, Secretary Hagel, Secretary Panetta, Secretary Gates, Generals Dempsey and Petraeus, and Admiral Mullen, all similarly support the cessation of detention operations at Guantanamo. These are seasoned leaders, and we should respect their views, which are based on extensive experience in weighing and balancing competing national security risk.

I also have here a letter, Madam Chair, written to Senators McCain and Reid by 42 retired flag and generals in the U.S. military. And I just want to read one or two sentences from their letter: "It is hard to overstate how damaging the continued existence of the detention facility at Guantanamo has been and continues to be. It is a critical national security issue. Many of us have been told on repeated occasions by our friends in countries around the world that the greatest single action the United States can take to fight terrorism is to close Guantanamo."

I would like to have this submitted for the record.

Mrs. HARTZLER. Hearing no objection, so ordered.

[The information referred to can be found in the Appendix on page 41.]

Ms. SPEIER. Responsibly managed transfers of select individuals from Guantanamo into the custody of foreign countries constitutes the necessary first steps towards closing the detention center there and to embracing a more pragmatic detention policy which strengthens national security and upholds American values.

As it stands, only 122 detainees remain under lock and key at Guantanamo, and 54 of those individuals are currently deemed eligible for transfer to another country because they have been put through a rigorous interagency review process, and it has been determined that the risk of their returning to the fight can be mitigated.

We need to put more confidence in this process. Although one may never be complete in eliminating the risk that a transferred individual will reengage, the risk can be managed. In fact, the reengagement figures associated with the review process are down dramatically. According to the intelligence community, of the 88 transfers that occurred after January 2009, 6.8 percent of the transferred individuals are confirmed to have reengaged, and 1 is suspected of having reengaged.

Contrast those figures with the 19 percent confirmed and 14.3 percent suspected of reengagement among the 532 transfers that took place prior to 2009 that are over 30 percent. To me, the risk of reengagement is outweighed by the risk that Guantanamo's stigma will foment violent activities perpetrated by extremist individuals and organizations.

Congress needs to help the President develop a more rational detention policy that bolsters national security and that is true to our values. The detention facility at Guantanamo is an obstacle that needs to be surmounted. We need to accelerate the process of responsibly transferring the detainees that we can off the island.

Thank you again, Madam Chairwoman. Although the detainee transfer issue is one that has proven divisive and one that will continue to spark vigorous debate, it is an issue on which we must stay informed and in which should facilitate progress.

I look forward to a very frank and purposeful discussion in closed session, and I yield back the balance of my time.

Mrs. HARTZLER. Sure. Thank you.

We are honored to have with us the full committee chairman. So welcome, Chairman Thornberry.

And do you have any opening remarks that you would like to make?

**STATEMENT OF HON. WILLIAM M. "MAC" THORNBERRY, A REPRESENTATIVE FROM TEXAS, CHAIRMAN, COMMITTEE ON ARMED SERVICES**

The CHAIRMAN. Thank you, Madam Chair.

I just say I appreciate you and the ranking member having this hearing. I completely agree with the statement that rigorous oversight is a key component of what Congress and this committee needs to do and I would add fair—rigorous and fair oversight needs

to be a part of what we—a big part. And I think this subcommittee is going to have its plate full.

On the subject of today's hearing, I just say I recognize there are differences of opinion about Guantanamo. I would caution members not to fall too easily for the propaganda of the terrorist organizations. I believe they will look for an excuse to justify their behavior, whether it is Guantanamo, whether it is the Israeli-Palestinian conflict, or anything else that they can get some traction on.

While there are differences on Guantanamo, I hope there are no differences on the point that we do not want to see additional prisoners released who return to the battlefield to threaten Americans here or abroad. And I note I saw a press article just this morning that a gentleman who was released from Guantanamo back in 2007 or so was recently killed in I believe Afghanistan as a key facilitator for ISIS [Islamic State of Iraq and Syria], even in Afghanistan.

So while we have differences that relate to these issues, I hope that we can ensure that there are no further releases that pose dangers to us and our troops.

And with that, I thank you and yield back.

Mrs. HARTZLER. Thank you, Mr. Chairman.

Also joining us today is the ranking member of the full committee, Ranking Member Smith. Do you have any comments you would like to make?

**STATEMENT OF HON. ADAM SMITH, A REPRESENTATIVE FROM WASHINGTON, RANKING MEMBER, COMMITTEE ON ARMED SERVICES**

Mr. SMITH. Thank you, Madam Chair.

Yes, just quickly, I think it is a very important issue, I think it is very appropriate to have the hearing on it. I think, you know, part of the issue with closing Guantanamo is—and I agree with the chairman actually, I think that ISIS and Al Qaeda will come up with whatever excuse they want to come up with.

But the other issue that we have to deal with Guantanamo is not just what ISIS or Al Qaeda thinks of it, but what some of our allies think of it. You know, critical to our ability to round up some terrorists throughout the world has been our close working relationship with a lot of our European allies and others, all of whom continue to be troubled by the presence of Guantanamo. So, you know, will they cooperate with us if they think the possibility of that cooperation will lead to an inmate being sent to Guantanamo? Maybe yes, maybe no, but I think that that is a problem. And is still an eyesore that goes beyond our enemies who, as the chairman correctly points out, will find any number of different reasons to strike out at us.

And I will also agree that we need a vigorous oversight. We need to, you know, make sure, you know, of who is really eligible for release and who isn't, but I think the track record that Ms. Speier, you know, outlined shows that we have learned the lessons from the pre-2009 days, and we are doing a much, much better job of keeping careful track of who can be released and who can't be released, and that has been reflected in the statistics. There is never

a 100 percent guarantee, but the track record has definitely improved.

And lastly, I would say that, you know, in order to close Guantanamo, you don't have to release all of the prisoners. That has never been the position, or my position anyway, in terms of what we should do in terms of closing Guantanamo. It is just that the presence of the prison continues to be an international eyesore, as I mentioned, to our allies much more importantly than to our enemies.

And second, we have the capability in the United States of America to house some of the most dangerous people in the world. We have well over 300 terrorists that are in U.S. Federal prisons. It has always been, you know, just a total straw man, bogus argument that has been set up, we can't bring these people here because they are dangerous. Well regrettably, every society has to figure out a rational way and a safe way to deal with very dangerous people. And if we as a society here in the United States cannot safely hold dangerous people, then we are in a heck of a lot of trouble, whether Guantanamo exists or not. Whatever the population is, and I think the population is down to what—Mr. Lewis, sorry, it's about 122?

Mr. LEWIS. 122.

Mr. SMITH. So, you know, whatever percent of that population, and I again forget the numbers, but I think it is about half of that I think that have been deemed unreleaseable for the time being or that we don't want to release them, there is no reason on Earth that they can't be safely housed here in the U.S., as we already have with hundreds of terrorists. So we can get rid of an international eyesore, adequately protect ourselves, and I think move forward in a positive direction.

And let us not forget that I don't think in the history of the world there has been a more expensive prison than Guantanamo. I am going to get the number off here again, but it is somewhere—well, let's let Jackie give it—Jackie gives me all the numbers, she has got the sheet in front of her. It is like \$3 million per inmate per year to hold them in Guantanamo, as compared with somewhere in the neighborhood of \$75,000 to \$80,000 a year for maximum security here in the U.S. It simply doesn't make policy sense to keep Guantanamo open.

Part of that policy is sensibly figuring out who can be released and who can't be. But the other part of that policy is closing the prison and safely holding those who we need to continue to hold here in the United States.

And with that, I thank the chairwoman for her indulgence, her time and the hearing, and yield back.

Mrs. HARTZLER. Thank you very much, Mr. Smith.

So I would now like to introduce our hearing witnesses, Paul Lewis was appointed in December 2013 by Secretary of Defense Chuck Hagel to be the Department of Defense special envoy for closing the detention facility at Guantanamo Bay, Cuba. Special Envoy Lewis received his undergraduate degree in history from the University of Notre Dame. After graduation from Notre Dame Law School, he served in a variety of positions, including as a judge advocate in the United States Marine Corps.

Before assuming his current responsibilities, Mr. Lewis held other positions in the Department of Defense and in the House of Representatives. And most significantly, prior to assuming his current position he served in general counsel role for this committee. His responsibilities included in particular the activities of this subcommittee.

Mr. Lewis, welcome back to the Armed Services Committee.

Charles Trumbull is the acting special envoy for Guantanamo closure at the Department of State, after having served as the deputy special envoy since 2013. His prior assignments include working in the office of the legal advisor at the Department of State, where he focused on both international humanitarian law and international human rights law. Mr. Trumbull received his undergraduate degree from Dartmouth College and his law degree from Vanderbilt law school.

So welcome Mr. Trumbull.

So, we will now turn to Mr. Lewis for your opening statement.

**STATEMENT OF PAUL M. LEWIS, SPECIAL ENVOY FOR GUANTANAMO DETENTION CLOSURE, U.S. DEPARTMENT OF DEFENSE**

Mr. LEWIS. Thank you, ma'am.

Madam Chairwoman, Chairman Thornberry, Ranking Member Speier, distinguished members of the subcommittee and committee, and former colleagues on your dedicated staff. Thank you for the opportunity to testify today on past and prospective transfers from the detention center at Guantanamo Bay, Cuba. I am pleased to be joined by my colleague from the Department of State, Charlie Trumbull.

I understand the members of the subcommittee will be participating in an oversight visit to the detention facility later this month, and I hope to join you on that visit. When you visit Guantanamo Bay you will see dedicated and professional service members who perform superbly under challenging and difficult conditions.

I would like to briefly summarize my written statement. On January 22, 2009, President Obama signed Executive Order 13492, which ordered the closure of the detention facilities at GTMO. Pursuant to this order, a special task force, the "EOTF task force," was established to comprehensively review information in the possession of the U.S. Government about the detainees and to assess appropriate disposition options.

Since then, pursuant to another Executive order signed by the President in 2011, and consistent with section 1023 of the NDAA [National Defense Authorization Act] for fiscal year 2012, a Periodic Review Board [PRB] has begun to review the status of those detainees not currently eligible for transfer and for whom there are no charges pending and no judgment of conviction has been entered.

As noted, there are 122 detainees remaining at the detention facility. Of these, 54 are eligible for transfer, 10 are being prosecuted or have been sentenced, and 58 are in the process of being reviewed by the PRB.

Secretary of Defense Hagel, as noted, has approved the transfer of 44 detainees during his term as Secretary: 11 in 2013, 28 last

year, and 5 this year. The great majority of these transfers occurred in accordance with the authorities in section 1035 of the fiscal year 2014 NDAA. I urge you to maintain those authorities.

Madam Chairwoman and members of the subcommittee, at the outset I want to make one fundamental point about the detention facility at Guantanamo Bay, which has been mentioned by several of you. The President has determined that closing this facility is a national security imperative. The President and his national security team have concluded that the continued operation of the facility weakens our national security by draining resources, damaging our relationships with key allies, and emboldening violent extremists.

I believe it is no coincidence that the ISIL [Islamic State of Iraq and the Levant] videos displaying barbaric and savage executions of American hostages, and most recently of a Jordanian pilot and a Japanese hostage, each showed the victim clothed in an orange jumpsuit, believed by many to be the symbol of the United States Government's operation of the Guantanamo detention facility. ISIL and other terrorist groups exploit Guantanamo to enhance their propaganda and recruiting.

As noted, 42 military leaders, all retired general officers and flag officers, have addressed this issue. As stated, they said, "It's hard to overstate how damaging the continued existence of the detention facility at Guantanamo has been and continues to be. It is a critical national security issue", as mentioned by the ranking member. And as she emphasized, the letter continued, "Many of us have been told on repeated occasions by our friends in countries around the world that the greatest single action the United States can do to fight terrorism is to close Guantanamo."

This letter was signed by General Charles C. Krulak, a retired Commandant of the United States Marine Corps; Major General Michael Lehnert, the first commanding general of the detention task force at GTMO; General Joseph Hoar, the former head of CENTCOM [U.S. Central Command]; General David M. Maddox, the former head of the United States Army in Europe; and 36 other retired senior military leaders.

Many other senior military leaders acknowledge the need to close the detention facility at GTMO as well. As noted, Admiral Michael Mullen and General Martin Dempsey, the current and former chairman of the Joint Chiefs of Staff, support GTMO closure.

In 2010, General David Petraeus, who was then the commander of CENTCOM, stated, "I've been on the record that for well over a year saying that GTMO should be closed ... And I think that whenever we have perhaps taken expedient measures, they have turned around and bitten us ... Abu Ghraib and other situations like that are non-biodegradables. They don't go away. The enemy continues to beat you with them like a stick."

In addition to the military, senior figures across the political spectrum have made clear that Guantanamo poses profound risks to our national security and should be closed. As indicated to you, former Secretaries of Defense Robert Gates and Leon Panetta, and the current Secretary of Defense Chuck Hagel, all support GTMO closure. And finally, as indicated, President George W. Bush him-

self concluded that Guantanamo detention facility is “a propaganda tool for our enemies and a distraction for our allies.”

As noted, we have had 28 detainees transfer in 2014, 5 of them transferred this year. These detainees were transferred to 11 different countries. These recent transfers included repatriations to Algeria, Kuwait, Saudi Arabia, and Afghanistan. And the recent transfers also included resettlements to Qatar, Slovakia, Georgia, Uruguay, Kazakhstan, Estonia, and Oman. I look forward to discussing the details of each of these transfers and potential additional transfers in the closed briefing.

Overall, 22 nations have taken detainees from GTMO who are not from that country. This broad support in the international community is also demonstrated by the numerous international organizations calling for closure, including the Organization for American States, and most recently the Vatican.

As with our military leaders, foreign leaders regularly cite the Guantanamo detention center as an obstacle to counterterrorism efforts. For example, a high-ranking security official from one of our staunchest allies in counterterrorism told Charlie’s predecessor, Cliff Sloan, “the greatest single action the United States can do to fight terrorism is to close Guantanamo.”

I will talk briefly about the transfer process. My written statement discusses this process, security assurances, which include travel restrictions, monitoring, information sharing, and reintegration and rehabilitation programs, all important factors in mitigating the risks in detail. But in summary, we try to do three things.

We assess the risks and balance the risks. Transfers are not risk free, but neither is continued detention. Second, we evaluate all sorts of information in making these decisions. All sorts of information. And three, we tailor agreements and conditions to mitigate the threat, and we follow up. As indicated, we take the responsibility of reengagement very seriously. Secretary Hagel has testified forcefully before the full committee on this.

Briefly, the ODNI [Office of the Director of National Intelligence] recognizes these figures in three ways: total; pre-January 22, 2009; and post-January 22 of 2009. I will summarize the current public reporting. For the total figures there are 17.3 percent confirmed and 12.4 percent suspected, for a total of 29 percent confirmed or suspected of reengagement.

Prior to January 22, 2009, 19 percent confirmed, 14.3 percent suspected, for a total of 33 percent. And post-January 22, 2009, 6.8 percent confirmed and 1.1 percent suspected, for a total of 7.9 percent confirmed or suspected. In other words, as noted, the rate of reengagement has been much lower for those transferred since 2009.

Of the detainees transferred under this administration, over 90 percent are neither confirmed nor suspected of having reengaged. And I want to emphasize one additional key point about this reengagement data. Of the 107 confirmed of reengaging, the vast majority of them transferred prior to 2009, 48 are either dead or in custody.

Detainees transferred from GTMO by no means receive a free pass to reengage. Their activities are closely watched, and we are

committed to using all lawful tools, if necessary, to mitigate the threat such detainees may pose if they do reengage.

Finally, our plan to close the Guantanamo detention facility has three main elements. First, we will continue the process of responsibly transferring the 54 detainees eligible for transfer. Second, we will continue the prosecution of detainees in military commissions, and if possible, in Federal courts. And third, we will continue to expedite the PRB process.

When we have concluded all these three lines of effort, it is likely that there will be a limited number of detainees who cannot be prosecuted, but as noted, are too dangerous to transfer even with the security assurances. They will remain in our custody, and we will work with Congress on options for those detainees.

In conclusion, President Bush worked toward closing GTMO and many officials in his administration worked hard towards that objective. The President and his national security experts of this administration also believe it should be closed. The senior military leaders of the country and the leaders of the Department of Defense concur. As indicated in the letter by the retired military leaders, many believe closure of this facility is the single most important counterterrorism effort the United States can undertake. And as you have heard, many of our allies agree. We believe the issue is not whether to close the Guantanamo Bay detention facility, the issue is how to do it.

And thank you, and I look forward to your questions at the closed briefing.

[The prepared statement of Mr. Lewis can be found in the Appendix on page 19.]

Mrs. HARTZLER. Thank you.

Now we will hear opening remarks from Mr. Trumbull.

**STATEMENT OF CHARLES TRUMBULL, ACTING SPECIAL ENVOY FOR GUANTANAMO CLOSURE, U.S. DEPARTMENT OF STATE**

Mr. TRUMBULL. Well, thank you, Madam Chairwoman, Ranking Member Speier, and members of this committee.

I appreciate your invitation to appear here today on the important matter of detainee transfers from Guantanamo Bay detention facility.

I am also honored to be here along with my colleague, Department of Defense special envoy Paul Lewis.

The special envoy for Guantanamo closure serves as the State Department's lead negotiator for the transfer of Guantanamo's detainees abroad, and my office has a primary responsibility for managing the diplomatic issues related to the facility.

My office also plays a leading role in the interagency process that determines when and where a detainee is transferred, as well as the periodic review process for those detainees not currently approved for transfer. In addition, we work closely with our embassies around the world to follow up on the progress of detainees who have been transferred to other countries.

It has been an honor to contribute to this administration's goal of closing the detention facility at Guantanamo Bay, a process that started under the Bush administration. As President Obama has

stated, the detention facility at Guantanamo, “Weakens our national security by draining resources, damaging our relationships with key allies and partners, and emboldening violent extremists.”

World leaders consistently call on us to finally close Guantanamo, including Pope Francis just last month. From a foreign affairs perspective, I cannot overstate the fact that Guantanamo is a serious irritant in our relationships with important partners and allies, and interferes with our cooperation on issues ranging from security and counterterrorism to the promotion of human rights.

As the acting special envoy, my and Paul’s primary focus is to transfer the 54 detainees who are currently approved for transfer. Now, “approved for transfer” is an extremely important designation because it reflects the considered unanimous judgment of national security experts from six agencies that an individual detainee can and should be transferred, subject to appropriate security measures. That is, a detainee is approved for transfer only when defense, diplomatic, intelligence, and law enforcement professionals determine that the detainee’s transfer is consistent with U.S. national security and foreign policy interests.

Detainees can be approved for transfer in one of two ways. The vast majority of the 54 individuals currently approved for transfer were approved by the 2009 Executive order task force, which included representatives from the Department of State, the Department of Defense, the Joint Chiefs of Staff, the Department of Justice, the Department of Homeland Security, and the Office of the Director of National Intelligence. This rigorous interagency process collected and considered all reasonably available information concerning the detainees at Guantanamo Bay.

The decision to approve a detainee for transfer required the unanimous consensus of these six departments and agencies, and it reflected the best predictive judgment of senior government officials that any threat posed by the detainee could be sufficiently mitigated through feasible and appropriate security measures in the receiving country.

As the publicly available task force report notes, many of these detainees were at most low-level fighters and are “appropriate candidates for transfer from a threat perspective in light of their limited skills, minor organizational roles, or other factors.”

A detainee can also be approved for transfer by the Periodic Review Board. The PRB is in the process of considering detainees who are not currently approved for transfer, facing charges in the military commission, or are awaiting or serving their military commission sentence.

The PRB panel consists of one voting member from the Departments of Defense, Homeland Security, Justice, and State, as well as the Joint Staff and the Office of the Director of National Intelligence. The PRB’s mandate is to determine whether the continued detention of a detainee is necessary to protect against a continuing significant threat to the national security of the United States. Detainees appearing before the PRB are assigned a personal representative and have the opportunity to be represented by a private counsel at no cost to the government. Detainees can provide an oral and a written statement, submit evidence, call witnesses, and elect to answer questions posed by the board members.

Thus far, the PRB has reviewed the cases of 12 individuals, and has reached a final determination in 9 of those cases. Of the nine detainees whose results have been finalized, six were approved for transfer, and three were designated for continued detention. This track record should make clear that the PRB is not a rubber stamp for either transfer or continued detention.

Now, I just want to talk a little bit about the detainee transfers that Paul has also gone over. We have made significant progress in transferring those detainees who are approved for transfer. As Paul noted, 28 detainees were transferred in 2014, and 5 detainees have been resettled thus far this year. The 54 remaining detainees who are approved for transfer can and should be transferred from Guantanamo, subject to appropriate security measures and humane treatment assurances.

It is important to note that the decision to approve a detainee for transfer is not the end of the process. Prior to any transfer, the intelligence community provides an updated assessment of the individual, as well as an assessment of the receiving country's capabilities. We also work extensively with receiving governments to ensure that measures have been or will be taken to substantially mitigate the threat that the individual will engage or reengage in activity that threatens the United States or United States persons or interests.

Our rigorous approach to transfers, which looks both at the potential threat posed by the individual and the measures that the receiving country has taken or will take, is effective. According to the most recent public report from ODNI, of the detainees transferred under this administration only 6.8 percent are confirmed and only 1.1 percent are suspected of engaging in hostile or uncertain activity.

While we take every instance of reengagement seriously, the important point is that over 90 percent of these individuals are not even suspected, much less confirmed of engaging in hostile activities after their release.

Now one challenge we face in our effort to close Guantanamo is the fact that many of the detainees approved for transfer cannot be returned to their home country due to the security or humane treatment concerns. As former special envoy Sloan wrote in New York Times, these individuals are not the worst of the worst, but rather they are the detainees at Guantanamo with the worst luck. Of the 54 detainees currently approved for transfer, 47, for example, are from Yemen. Members of this committee are certainly aware of the security situation in that country. This administration has not transferred a Guantanamo detainee to Yemen since 2010. And our current focus is resettling those individuals in third countries.

In the past several months we have resettled 12 Yemenis to 5 different countries. It is a testament to our strong standing internationally that numerous countries have been willing to provide homes for those individuals who cannot be returned to their home country and who should not remain at Guantanamo solely because of the security situation in Yemen. These countries should be commended for taking this important humanitarian step and for the

contribution to the President's goal of closing Guantanamo in a secure and responsible manner.

Looking forward, our goals for 2015 are clear. First, we must transfer all of those detainees approved for transfer, the vast majority of whom have been approved for 5 years. Second, we must continue and expedite the PRB process. In both of these efforts, I look forward to working closely with Paul Lewis and with my inter-agency colleagues, as well as members of this committee.

Thank you, Madam Chairwoman.

[The prepared statement of Mr. Trumbull can be found in the Appendix on page 33.]

Mrs. HARTZLER. Thank you.

Pursuant to our unanimous consent agreement, we will now adjourn from open session and reconvene immediately for our classified briefing in room 2216.

[Whereupon, at 3:45 p.m., the subcommittee proceeded in closed session.]

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**A P P E N D I X**

FEBRUARY 12, 2015

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**PREPARED STATEMENTS SUBMITTED FOR THE RECORD**

FEBRUARY 12, 2015

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NOT FOR DISTRIBUTION UNTIL RELEASED BY  
THE HOUSE COMMITTEE ON ARMED SERVICES

STATEMENT OF

PAUL M. LEWIS  
SPECIAL ENVOY FOR GUANTANAMO DETENTION CLOSURE  
U.S. DEPARTMENT OF DEFENSE

BEFORE THE HOUSE COMMITTEE ON ARMED SERVICES  
OVERSIGHT AND INVESTIGATIONS SUBCOMMITTEE  
FEBRUARY 12, 2015

NOT FOR DISTRIBUTION UNTIL RELEASED BY  
THE HOUSE COMMITTEE ON ARMED SERVICES

Madam Chairwoman, Ranking Member Speier, distinguished members of the subcommittee and committee, and former colleagues on your dedicated staff, thank you for the opportunity testify today on past and prospective transfers from the detention center at Guantanamo Bay, Cuba.

I am pleased to be joined by my colleague at the Department of State, Charlie Trumbull, the Acting Special Envoy for Guantanamo Detention Closure and by Patrick Prior, of the Defense Intelligence Agency.

I understand the members of the subcommittee are participating in an oversight visit to the detention facility later this month and I hope to join you on that visit. When you visit Guantanamo Bay you will see dedicated and professional servicemembers who perform superbly under difficult and challenging conditions.

*Overview*

On January 22, 2009, President Obama signed Executive Order 13492, which ordered the closure of the detention facilities at the Guantanamo Bay Naval Base in Cuba. Pursuant to that order, a special task force (the "EOTF task force") was established to comprehensively review information in the possession of the U.S. government about the detainees, and to assess appropriate disposition options. Through that rigorous interagency effort, the review participants decided on a disposition--transfer, prosecution, or continued detention--for all 240 detainees subject to the review.

Since then, pursuant to Executive Order 13567, signed on March 7, 2011, and consistent with section 1023 of the NDAA for FY 2012, a Periodic Review Board (PRB) has begun to review the status of those detainees not currently eligible for transfer, and

against whom there are no charges pending and no judgment of conviction has been entered.

There are **122** detainees remaining at the Guantanamo detention facility. Of these, **54** are eligible for transfer, **10** are being prosecuted or have been sentenced, and **58** are in the process of being reviewed by the PRB.

Secretary of Defense Hagel has approved the transfer of **44** detainees--**11** of whom were transferred in 2013, **28** of whom were transferred last year, and **5** of whom have been transferred this year. The great majority of these transfers occurred in accordance with the authorities in section 1035 of the FY14 NDAA. I urge you to maintain these authorities and refrain from placing any additional statutory restrictions on our ability to transfer GTMO detainees in accordance with our national security priorities.

***Closure Is a National Security Imperative***

Madam Chairman and members of the subcommittee, at the outset I want to make one fundamental point regarding the detention facility at Guantanamo Bay. The President has determined that closing this detention facility is a national security imperative. The President and his national security team all believe that the continued operation of the detention facility at Guantanamo weakens our national security by draining resources, damaging our relationships with key allies, and emboldening violent extremists. It is no coincidence that ISIL videos displaying barbaric and savage executions of American hostages and more recently of a Jordanian pilot and a Japanese hostage, each showed the victim clothed in an orange jumpsuit, believed by many to be

the symbol of the United States Government's operation of the Guantanamo detention facility. ISIL exploits Guantanamo to enhance its propaganda.

42 retired military leaders, all retired general officers or flag officers, wrote the chairman and ranking member of the Senate Armed Services Committee on January 29, 2015 and stated, "[I]t is hard to overstate how damaging the continued existence of the detention facility at Guantanamo has been and continues to be. It is a critical national security issue." The letter continued, "[M]any of us have been told on repeated occasions by our friends in countries around the world that **the greatest single action the United States can take to fight terrorism is to close Guantanamo.**"

This letter was signed by General Charles C. Krulak, a retired Commandant of the Marine Corps, Major General Michael R. Lehnert, the first commanding general of the joint detention task force at Guantanamo ("JTF-GTMO), General Joseph Hoar, the former head of CENTCOM, General David M. Maddox, the former head of the U.S. Army in Europe, and thirty-six other retired senior military leaders.

Many other senior military leaders acknowledge the need to close this detention facility. Admiral Michael Mullen and General Martin Dempsey, the former and current chairman of the Joint Chiefs of Staff, support Guantanamo closure. In 2010, General David Petraeus, then the commander of CENTCOM stated, "I've been on the record on that for well over a year as well, saying that it [Guantanamo] should be closed. . . . And I think that whenever we have, perhaps, taken expedient measures, they have turned around and bitten us in the backside. . . . Abu Ghraib and other situations like that are nonbiodegradables. They don't go away. The enemy continues to beat you with them like a stick."

Senior figures across the political spectrum have made clear that Guantanamo poses profound risks to our national security and should be closed. Former Secretaries of Defense Robert Gates and Leon Panetta, and the current Secretary of Defense, Chuck Hagel, all support Guantanamo closure.

President George W. Bush's chief counter-terrorism advisor, Kenneth Wainstein, also concluded maintaining the detention facility at Guantanamo was not sustainable.

Finally, President George W. Bush himself concluded that the Guantanamo detention facility was "a propaganda tool for our enemies and a distraction for our allies."

I will now address the specific issues addressed by the subcommittee's letter of invitation.

#### ***Recent Transfer Decisions***

28 detainees were transferred in 2014. 5 have been transferred this year. These detainees were transferred to 11 different countries. These recent transfers included repatriations to Algeria, Kuwait, Saudi Arabia, and Afghanistan. The recent transfers also included resettlements to Qatar, Slovakia, Georgia, Uruguay, Kazakhstan, Estonia, and Oman. I look forward to discussing the details of each of these transfers and potential additional transfers, in the closed briefing.

Overall, 22 nations have taken detainees from GTMO who are not from that country. This broad support in the international community is also demonstrated by the numerous international organizations calling for closure, including the Organization for American States and recently, the Vatican. As with our military leaders, foreign leaders regularly cite the Guantanamo detention center as an obstacle to counterterrorism efforts. Cliff Sloan, my former colleague as the Department of State Special Envoy frequently

recalled strong language from our allies similar to the letter from the retired military leaders. Sloan stated as an example, “[A]s a high-ranking security official from one of our staunchest allies on counterterrorism (not from Europe) once told me, **‘The greatest single action the United States can take to fight terrorism is to close Guantánamo.’**”

#### *Transfer Process*

The current process that leads to a transfer decision builds upon the work of the review task force. It is careful and deliberative. Key features of the transfer process include a comprehensive interagency review and rigorous examination of updated information regarding the detainee, the security situation in the potential host country, and the willingness and capability of the potential host country to implement and maintain appropriate compliance with security measures. Those initial reviews are conducted by career professionals, including intelligence analysts, law enforcement agents, and attorneys, drawn from the Department of Justice, Department of Defense, Department of State, Department of Homeland Security, Office of the Director of National Intelligence, and other agencies within the intelligence and national security community.

Next, any transfer decision requires an assessment by the Special Envoys for Guantanamo Detention Closure at both the Department of State and Defense of the security situation in the receiving country, and of the willingness and capability of the country to comply with security assurances requested by the United States. The Special Envoys negotiate specific security assurances addressing the unique circumstances of each detainee transfer.

Additionally, each decision to transfer has been approved by the unanimous agreement of six Principals – the Secretary of State, the Secretary of Homeland Security, the Director of National Intelligence, the Attorney General, the Chairman of the Joint Chiefs, and finally, the Secretary of Defense.

Finally, the Secretary of Defense must determine if the proposed transfer meets the requirements set forth by Congress in the NDAA each year. Under Section 1035 of the fiscal 2014 NDAA, the Secretary may approve the transfer if he determines that the transfer is in the national security interests of the United States and that actions have been or are planned to be taken that will substantially mitigate the risk of the detainee engaging in terrorist or other hostile activity that threatens the United States or U.S. persons or interests. The factors considered in making this determination include:

- The security situation in the foreign country to which the detainee is to be transferred;
- Confirmed past activities by individuals transferred to the foreign country to which the detainee is to be transferred;
- Actions taken by the U.S. or the foreign country to reduce the risk the individual will engage in terrorist or hostile activity;
- Security assurances provided by the foreign government; and
- An assessment of the willingness and capabilities of the foreign government to meet those security assurances,

*Security Assurances*

I cannot discuss the specific security assurances we receive from foreign governments with any degree of specificity in open testimony. However, among the types of security measures put in place are travel restrictions, monitoring, information sharing, and reintegration/rehabilitation programs.

The decision to transfer is made only after detailed, specific conversations with the receiving country about the potential threat a detainee may pose after transfer and the agreement about the measures the receiving country will take in order to sufficiently mitigate that potential threat. As noted, we also review the capability of the receiving country and its security establishment, and its track record in adhering to prior agreements in this regard.

***Monitoring of Completed Transfers***

Once a detainee is transferred from Guantanamo, the intelligence community and others in the government continuously monitor for indications of reengagement and work closely with liaison partners to ensure the fullest understanding of a former detainee's activities. Through this follow-up process, the United States engages our partner nations closely and may request additional measures. Through a rigorous IC coordination process, including the Department of Defense and State, that draws on the assessments of several IC elements, ODNI determines whether to designate a former detainee as suspected of reengaging or confirmed to have reengaged.

***Guarding Against Reengagement***

A key focus of the review process described above is on mitigating the risk a detainee could "return to the fight" or otherwise reengage in acts that threaten the United States or U.S. persons. We take the possibility of reengagement very seriously. Secretary Hagel has testified forcefully before the full Committee on this.

The most recent public data on reengagement of former Guantanamo detainees was released in September 2014 and is current as of July 15, 2014. There is a lag in the

public reporting and I know you may have seen a more recent classified report on this matter. We can address updated classified statistics in a closed setting:

The ODNI categorizes the figures in three ways: 1) Total, 2) Pre-22 January 2009, which refers to former detainees who departed Guantanamo prior to January 22, 2009, and 3) Post-22 January 2009, which refers to former detainees who departed Guantanamo after January 22, 2009, as follows:

- **Total:** 17.3% confirmed of reengaging (107 of 620); 12.4% suspected of reengaging (77 of 620), for a total of 29.7% confirmed or suspected of reengagement.
- **Pre-22 January 2009:** 19% confirmed of reengaging (101 of 532); 14.3% suspected of reengaging (76 of 532), for a total of 33.3% confirmed or suspected of reengagement.
- **Post-22 January 2009:** 6.8% confirmed of reengaging (6 of 88); 1.1% suspected of reengaging (1 of 88) for a total of 7.9% confirmed or suspected of reengagement.

In other words, the rate of reengagement has been much lower for those transferred since 2009.

Of the detainees transferred under this Administration, over 90% are neither confirmed nor suspected of having reengaged. This statistic speaks to the result of the careful scrutiny given to each transfer in the intensive interagency review process, and the negotiation of agreements regarding security measures the receiving government intends to take pursuant to its own domestic laws and independent determinations that will mitigate the threat that the detainees will not pose a continuing threat to the United States and its allies after they have been transferred.

Even as the overwhelming majority of detainees this Administration has transferred are not suspected of reengaging, we nevertheless take any indications of

suspected or confirmed reengagement very seriously, and we work in close coordination with our partners to mitigate reengagement and to take follow-on action when necessary. This is demonstrated by an additional point about the reengagement data: of the 107 confirmed of reengaging (the vast majority of them transferred prior to 2009), 48 are either dead or in custody. Detainees transferred from Guantanamo by no means receive a free pass to reengage, their activities continue to be closely watched, and we are committed to using all lawful tools if necessary to mitigate the threat such detainees may pose if they do reengage.

***Proposed Legislation***

The recent legislation proposed by Representative Walorski and co-sponsored by Representative Austin Scott of the subcommittee would effectively ban most transfers from Guantanamo for two years. It reverts to the previous certification regime under the NDAA for FY 2012 and the NDAA for FY 2013, which resulted only in court-ordered transfers, transfers pursuant to pleas agreements and only a few transfers by the certification/national security waiver process. In addition, it adds a proposal to limit transfers based on JTF-GTMO threat assessments. These assessments are outdated and are limited products derived from a threat-analysis model that was never intended for the purposes for which this legislation now seeks to use it. Determinations of "threat level" made by JTF-GTMO were based on the battlefield or detention situation at the time. These assessments included linkages that may no longer be relevant, capabilities that may no longer exist, and reporting that has since been determined to be unreliable. Using these past and often incomplete determinations would not provide an accurate analysis. Moreover, reliance solely on an assessment of the threat posed by a detainee fails to

account for the terms of the transfer and the capabilities of the country to which the detainee would be sent, both of which can have a significant impact on the likelihood of a detainee reengaging in terrorist activities.

The determinations made by the 2009 Guantanamo Review Task Force process (the EOTF process cited above ), an exhaustive interagency effort that fully examined the impact of transferring individuals from Guantanamo Bay, should be used as the foundational analysis when determining a detainee's current threat. This EOTF process took account of the JTF-GTMO assessments in the course of a more comprehensive review of U.S. intelligence and other information with respect to each detainee. The EOTF determinations, in conjunction with regularly updated information from the intelligence community, provide the most accurate assessment of a specific detainee's current threat level.

We believe that any decisions regarding transfers should be based on all current information and individual assessments of detainees.

Because this legislation, if enacted, would effectively block progress toward the goal of closing the Guantanamo Bay detention facility, the Administration opposes it.

#### *Yemen*

The proposed legislation bars transfer of any detainees to Yemen for two years. 75 Yemenis remain at Guantanamo Bay: 47 are eligible for transfer, 25 are eligible for PRB review, 2 have charges referred and 1 is serving pre-sentence confinement.

A ban on transfers to Yemen is unnecessary because we are not, at the present time, seeking to transfer any of them to Yemen, especially in light of the recent further deterioration in the security situation. Since the President's moratorium on detainee

transfers to Yemen was lifted nearly two years ago in favor of a case-by-case analysis, not a single detainee has been transferred to Yemen. The 12 Yemenis who have been transferred recently were transferred to five countries: Slovakia, Georgia, Kazakhstan, Estonia and Oman. We are currently negotiating with other countries to take additional Yemenis.

*Plan to Close Guantanamo Detention Facility*

Our plan has three main elements.

First, we will continue the process of responsibly transferring the 54 detainees eligible for transfer.

Second, we will continue the prosecution of detainees in the military commissions process, and if possible, in the federal courts. Currently 7 detainees are being actively prosecuted under the military commission process; 5 accused of the 9/11 attacks, 1 charged with the bombing of the *USS Cole*, and 1 charged with actions as a senior al Qaeda commander; and 3 are in the sentencing phase or are serving sentences.

Third, we will continue and expedite the PRB process.

When we have concluded these three lines of effort, it is likely that a limited number of detainees who cannot be prosecuted but who are too dangerous to transfer, even with security assurances, will remain in our custody.

Ultimately, closing the detention center at Guantanamo Bay will require us to consider additional options, including the possibility of transferring some detainees to a secure facility in the United States. The Department of Justice, in consultation with the Secretary of Defense, submitted a report to Congress that concluded that in the event detainees were relocated to the United States, existing statutory safeguards and executive

and congressional authorities provide robust protection of national security. We understand that transfers to the United States are currently barred by statute. As a result, the Government is prohibited from prosecuting any detainees in the United States, even if it represents the best – or only – option for bringing a detainee to justice. The President has consistently opposed these restrictions, which curtail options for reducing the detainee population. We understand the subcommittee has a continuing request for more information. We understand we need to work with Congress on this and I pledge to you we will do so.

***Conclusion***

President Bush worked towards closing Guantanamo, and many officials in his Administration worked hard towards that objective. We are closer to this goal than many people may realize. Of the nearly 800 detainees to have been held at Guantanamo since the facility opened in 2002, the vast majority have already been transferred, including more than 500 detainees transferred by the previous Administration. The President and the national security experts of this Administration believe it should be closed. The senior military leaders of the country and the leaders of the Department of Defense concur. In my time as Special Envoy, I have seen firsthand the extent to which the detention facility is a source of ongoing friction with our allies and partners and continues to undermine our standing in the world. As indicated in the letter by the retired military leaders, many believe closure of this facility is the single most important counterterrorism effort the United States can undertake. We believe the issue is not whether to close the Guantanamo Bay detention facility; the issue is how to do it.

Thank you and I look forward to your questions in the closed briefing.

**Paul M. Lewis**

Paul M. Lewis is the Department of Defense Special Envoy for closing the detention facility at Guantanamo Bay, Cuba. Special Envoy Lewis was appointed to this position by Secretary of Defense Hagel in October 2013. Prior to this appointment, he served as General Counsel and Minority General Counsel for the House Armed Services Committee.

Special Envoy Lewis also served as the Director, Office of Legislative Counsel (OLC), Office of General Counsel, Department of Defense, from 2008-2010. Previously, was also the counsel to the Chairman of the House Ethics Committee.

Special Envoy Lewis received his undergraduate degree in History from the University of Notre Dame in 1980. After his graduation from Notre Dame Law School in 1983, he served as a judge advocate in the United States Marine Corps, an Assistant District Attorney in the Manhattan DA's office and as a trial attorney in the Organized Crime and Racketeering Section of the Department of Justice. He is admitted to the bars of New York, New Jersey and other federal jurisdictions.

Special Envoy Lewis is an adjunct professor at Georgetown University, where he currently teaches "Introduction to Ethics" and "Ethical Issues in American Politics". He also regularly lectures on ethics and congressional investigations at Georgetown Law School and George Washington University Law School.

**Department of State  
Acting Special Envoy for Guantanamo Closure, Charles Trumbull  
Opening Statement  
House Armed Services Committee  
Sub-Committee on Oversight and Investigations  
Hearing on Guantanamo Bay  
12 February 2015**

Thank you, Madam Chairwoman, Ranking Member Speier, and Members of the Committee. I appreciate your invitation to appear before this Committee on the important matter of detainee transfers from the Guantanamo Bay detention facility. I am honored to be here today along with my colleague, Defense Department Special Envoy Paul Lewis.

I am currently the Acting Special Envoy for Guantanamo Closure for the Department of State. I previously served as the deputy to former Special Envoy Cliff Sloan from October 2013 until December 31, 2014. Prior to working on Guantanamo Closure, I spent six years in the Office of the Legal Adviser for the Department of State, and served as the legal adviser at our embassy in Baghdad in 2010.

The Special Envoy for Guantanamo Closure serves as the State Department's lead negotiator for the transfer of Guantanamo detainees abroad, and my office has the primary responsibility for managing the range of diplomatic issues related to the detention facility. My office also plays a leading role in the interagency process that determines when and where a detainee is transferred, as well as the periodic review process for those detainees not approved for transfer. In addition, we work closely with our Embassies around the world to follow up on the post-transfer progress of former detainees.

It has been an honor to contribute to the Administration's goal of closing the detention facility at Guantanamo Bay, a process that started under the Bush Administration. As the President has stated, the detention facility at Guantanamo "weakens our national security by draining resources, damaging our relationships with key allies and partners, and emboldening violent extremists." World leaders consistently call on us to finally close Guantanamo, including Pope Francis just last month. From a foreign affairs

perspective, I cannot overstate the fact that Guantanamo is a serious irritant in our relationships with important partners and allies, and interferes with our cooperation on issues ranging from security and counter-terrorism to promotion of human rights.

### **Approved for Transfer**

As the Acting Special Envoy, my primary focus is to transfer the 54 detainees who are currently approved for transfer. “Approved for transfer” is an extremely important designation because it reflects the considered, unanimous judgment of national security experts from six agencies that an individual detainee can and should be transferred, subject to appropriate security measures. That is, a detainee is approved for transfer only when defense, diplomatic, intelligence, and law-enforcement professionals determine that a detainee’s transfer is consistent with U.S. national security and foreign policy interests. Detainees can be “approved for transfer” in one of two ways.

The majority of the 54 individuals currently approved for transfer were approved by the 2009 Executive Order Task Force, which included representatives from the the Department of State, the Department of Defense, the Joint Chiefs of Staff, the Department of Justice, the Department of Homeland Security, and the Office of the Director of National Intelligence. This rigorous interagency process collected and considered all reasonably available information concerning the detainees at Guantanamo Bay. The decision to approve a detainee for transfer required the unanimous consensus of these six departments and agencies, and reflects the best predictive judgment of senior government officials that any threat posed by the detainee can be sufficiently mitigated through feasible and appropriate security measures in the receiving country. As the publicly available Task Force report notes, many of these detainees were at most low-level fighters and are “appropriate candidates for transfer from a threat perspective, in light of their limited skills, minor organizational roles, or other factors.”

A detainee can also be approved for transfer through the Periodic Review Board (PRB) process. The PRB is in the process of considering detainees who are not currently approved for transfer, facing charges in the military commission, or awaiting or serving their military commission sentence. The PRB panel consists of one voting member from the Departments of Defense, Homeland Security, Justice, and State; the Joint Staff; and the Office of the

Director of National Intelligence. The PRB's mandate is to determine whether the continued detention of a detainee is necessary to protect against a continuing significant threat to the national security of the United States. Detainees appearing before the PRB are assigned a personal representative and have the opportunity to be represented by private counsel, at no expense to the government. Detainees can provide an oral and written statement, submit evidence, call witnesses, and elect to answer questions from Board members.

Thus far, the PRB has reviewed the cases of 12 individuals, and has reached a final determination in 9 of those cases. Of the 9 detainees whose results have been finalized, 6 were approved for transfer and 3 were designated for continued law of war detention. This track record should make clear that the PRB is not a rubber stamp for either transfer or continued detention.

### **Detainee Transfers**

We have made significant progress in transferring those detainees who are approved for transfer. Twenty-eight detainees were transferred in 2014, and five detainees have been resettled so far this year. The 54 remaining detainees who are approved for transfer can, and should, be transferred from Guantanamo, subject to appropriate security and humane treatment measures.

It is important to note that the decision to approve a detainee for transfer is not the end of the process. Prior to any transfer, the Intelligence Community provides an updated assessment of the individual, as well as an assessment of the receiving country's capabilities. We also work extensively with receiving governments to ensure that measures have been or will be taken to substantially mitigate any threat that the individual will engage or reengage in activity that threatens the United States or United States persons or interests.

Our rigorous approach to detainee transfers, which looks both at the potential threat posed by the detainee and the measures that the receiving government has taken or will take, is effective. According to the most recent public report from ODNI, of the detainees transferred under this Administration, only 6.8% are confirmed and 1.1% are suspected of engaging in hostile or insurgent activity. While we take every instance of re-engagement very seriously, the important point is that, according to the most

recent public report, over 90% are not even suspected, much less confirmed, of engaging in hostile activities after their release.

One challenge we face in our effort to close Guantanamo is the fact that many of the detainees approved for transfer cannot be returned to their home country due to security or humane treatment concerns. As former Special Envoy Sloan wrote in the New York Times, these individuals are not the worst of the worst, but rather the detainees at GTMO with the worst luck. Of the 54 detainees currently approved for transfer, for example, 47 are from Yemen. Members of this Committee are aware of the deteriorating security situation in that country. The Administration has not transferred a GTMO detainee to Yemen since 2010, and our focus is on resettling these individuals in third countries. In the past several months, we have resettled 12 Yemenis to 5 different countries. It is a testament to our strong standing internationally that numerous countries have been willing to provide homes for those individuals who cannot be returned to their own country and who should not remain at GTMO solely because of the security situation in Yemen. These countries should be commended for taking this important humanitarian step, and for their contributions to the President's goal of closing GTMO in a secure and responsible manner.

#### **Goals for 2015**

Looking forward, our goals for 2015 are clear. First, we must transfer all of those detainees approved for transfer, the vast majority of whom have been approved for five years. Second, we must continue and expedite the PRB process. In both of these efforts, I look forward to working with Paul Lewis and my interagency colleagues, as well as the members of this Committee.

Thank you, Madam Chairwoman.

**Charles Trumbull**

Charles Trumbull is currently the Acting Special Envoy for Guantanamo Closure at the Department of State after having served as the Deputy Special Envoy since 2013.

Prior to this assignment, he worked in the Office of the Legal Adviser, focusing on both international humanitarian law and international human rights law. Mr. Trumbull also served as the Legal Adviser to the U.S. Embassy in Baghdad in 2010.

Prior to joining the State Department, Mr. Trumbull clerked for Judge Michael on the 4th Circuit Court of Appeals and for Philippe Kirsch at the International Criminal Court. Mr. Trumbull received a B.A. from Dartmouth College and a J.D. from Vanderbilt Law School.



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**DOCUMENTS SUBMITTED FOR THE RECORD**

FEBRUARY 12, 2015

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GENERAL JOSEPH P. HOAR, USMC (RET.)  
GENERAL CHARLES C. KRULAK, USMC (RET.)  
GENERAL MERRILL A. McPEAK, USAF (RET.)  
VICE ADMIRAL RICHARD H. CARMONA, USPHS (RET.)  
LIEUTENANT GENERAL ROBERT G. GARD, JR., USA (RET.)  
LIEUTENANT GENERAL RICHARD L. KELLY, USMC (RET.)  
LIEUTENANT GENERAL CHARLES P. OTSTOTT, USA (RET.)  
LIEUTENANT GENERAL HARRY E. SOYSTER, USA (RET.)  
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BRIGADIER GENERAL RICHARD O'MEARA, USA (RET.)  
BRIGADIER GENERAL STEPHEN N. XENAKIS, USA (RET.)

January 29, 2015

Senator John McCain  
United States Senate  
241 Russell Senate Office Building  
Washington, DC 20510

Senator Jack Reed  
United States Senate  
728 Hart Senate Office Building  
Washington, DC 20510

Dear Senator McCain and Senator Reed,

For over six years we, a group of retired flag and general officers of the United States Armed Forces, have advocated for the responsible closure of the detention facility at Guantanamo Bay. We have always believed that our nation's policies should adhere to the rule of law and that we are more secure when they do. Unfortunately, the abuses that occurred at Guantanamo have made the facility a symbol to the world of a United States that is unconstrained by our Constitutional values. It is past time that we close the prison and deny our enemies its value as a propaganda tool.

We are only too aware that Guantanamo seems to defy an easy solution, and that the debate over its closure often generates more heat than light. We were therefore heartened by Senator McCain's recent response to a question about working with the administration to close Guantanamo: "I am prepared to and I think it can be done." We strongly concur that with the right leadership and a strong plan, it can be done.

There is an opportunity to elevate the conversation surrounding this issue next month during the hearings for the Honorable Ashton Carter to serve as the next Secretary of Defense. We encourage you to seize this moment. In your roles as the Chairman and Ranking Member of the Senate Armed Services Committee you should question Mr. Carter about the Obama Administration's plan to responsibly close the detention facility at Guantanamo. The administration should be expected to share more fully about its specific plans for shuttering Guantanamo, and officials, including Mr. Carter, will be encouraged to do so if Congress presses the issue. We encourage you to ask Mr.

Carter about his commitment to following through on the President's stated priority of promptly and responsibly closing the detention facility.

It is hard to overstate how damaging the continued existence of the detention facility at Guantanamo has been and continues to be. It is a critical national security issue. It complicates our diplomacy with allies, including with regard to counter-terrorism operations. Many of us have been told on repeated occasions by our friends in countries around the world that the greatest single action the United States can take to fight terrorism is to close Guantanamo. Repressive governments use it to deflect criticism of their own policies by charging hypocrisy. Violent extremists use it as a recruiting tool, not to mention that detaining prisoners at Guantanamo is now costing the American taxpayers over \$3.5 million per detainee per year.

Closing Guantanamo is about reestablishing who we are as a nation. We stand ready to assist in any way on this important issue for our country's national security.

Sincerely

General Joseph P. Hoar, USMC (Ret.)  
 General Paul J. Kern, USA (Ret.)  
 General Charles C. Krulak, USMC (Ret.)  
 General David M. Maddox, USA (Ret.)  
 General Merrill A. McPeak, USAF (Ret.)  
 General William G.T. Tuttle, Jr., USA (Ret.)  
 Vice Admiral Richard H. Carmona, USPHS (Ret.)  
 Lieutenant General John Castellaw, USMC (Ret.)  
 Lieutenant General Robert G. Gard, Jr., USA (Ret.)  
 Vice Admiral Lee F. Gunn, USN (Ret.)  
 Lieutenant General Richard L. Kelly, USMC (Ret.)  
 Lieutenant General Claudia J. Kennedy, USA (Ret.)  
 Lieutenant General Charles P. Otstott, USA (Ret.)  
 Lieutenant General Norman R. Seip, USAF (Ret.)  
 Lieutenant General Harry E. Soyster, USA (Ret.)  
 Lieutenant General Keith J. Stalder, USMC (Ret.)  
 Major General John Batiste, USA (Ret.)  
 Major General Christopher Cortez, USMC (Ret.)  
 Major General Paul D. Eaton, USA (Ret.)  
 Major General Eugene Fox, USA (Ret.)  
 Rear Admiral Donald Guter, JAGC, USN (Ret.)  
 Rear Admiral John D. Hutson, JAGC, USN (Ret.)  
 Major General Carl B. Jensen, USMC (Ret.)  
 Major General Michael R. Lehnert, USMC (Ret.)  
 Major General J. Michael Myatt, USMC (Ret.)  
 Major General William L. Nash, USA (Ret.)  
 Major General Thomas J. Romig, USA (Ret.)  
 Major General Walter L. Stewart, Jr., USA (Ret.)  
 Major General Antonio M. Taguba, USA (Ret.)  
 Brigadier General John Adams, USA (Ret.)

Brigadier General David M. Brahms, USMC (Ret.)  
Brigadier General Stephen A. Cheney, USMC (Ret.)  
Brigadier General James P. Cullen, USA (Ret.)  
Brigadier General Evelyn P. Foote, USA (Ret.)  
Brigadier General Alan K. Fry, USA (Ret.)  
Brigadier General Leif H. Hendrickson, USMC (Ret.)  
Brigadier General David R. Irvine, USA (Ret.)  
Brigadier General John H. Johns, USA (Ret.)  
Brigadier General Keith H. Kerr, CSMR (Ret.)  
Brigadier General Richard O'Meara, USA (Ret.)  
Brigadier General Murray G. Sagsveen, USA (Ret.)  
Brigadier General Stephen N. Xenakis, USA (Ret.)