



One Hundred Fourteenth Congress
U.S. House of Representatives
Committee on Foreign Affairs
2170 Rayburn House Office Building
Washington, DC 20515
www.foreignaffairs.house.gov

May 16, 2016

The Honorable John F. Kerry
Secretary of State
U.S. Department of State
2201 C Street NW
Washington, DC 20520

Mr. Secretary:

On March 23, 2016, the Committee conducted a hearing entitled, "The Administration's Plan to Close the Guantanamo Bay Detention Facility: At What Foreign Policy and National Security Cost?" The purpose of this hearing was to examine the Administration's proposal to relocate the prison and detainees to the continental United States, as well as the process of transferring individuals to the custody of foreign governments. Many Committee Members are concerned that in the rush to close this facility, the Administration is making agreements with countries that are ill-equipped to prevent recidivism. Worse yet, it may be attempting to cover up this irresponsible policy.

The testimony of Special Envoys for Guantanamo Closure Paul Lewis and Lee Wolosky before the Committee appears to conflict with documents provided to Congress. During questioning, the Committee asked whether "the Defense Department ever knowingly transferred a detainee to a country that did not exhibit an ability to substantially mitigate the risk [of recidivism] or maintain control of that individual? . . . Has the Defense Department ever sent someone to a country knowing that that person -- that country was unable to keep control of that person?" Mr. Lewis responded "no," and Mr. Wolosky testified that he did not know of such a case. It is hard to understand how these two would be unaware of reports produced by the Defense Department.

As you know, section 1023 of the National Defense Authorization Act for Fiscal Year 2013 (P.L. 112-239) requires the Department of Defense to submit a report to Congress on the recidivism of individuals detained at Guantanamo who are transferred or released to a foreign country. The requirement directs that the report "shall include a discussion of trends, by country and region, where recidivism has occurred; and an assessment of the implementation by foreign countries of the international arrangements relating to the transfer or release of individuals detained at

Guantanamo reached between the United States and each foreign country to which an individual detained at Guantanamo has been transferred or released.”

The classified reports submitted on May 31, 2013, July 15, 2014, and August 6, 2015, are riddled with derogatory assessments of some of the countries to which the Bush and Obama Administrations have transferred detainees. In many cases, these intelligence assessments *preceded* the transfer of individuals to these same countries. Others were transferred after multiple derogatory assessments and public reporting of recidivism. Congressionally-mandated certifications by the Secretary of Defense – also submitted prior to transfers – similarly indicated an inability to maintain custody and control in certain instances. It certainly appears, therefore, that the Administration has indeed transferred individuals to countries that it knew could not meet critical security requirements.

It is immaterial if countries listed in these analyses committed to significantly mitigating recidivism. Information supplied by the Administration makes clear that these governments lack core competency, legal frameworks, and critical resources – something for which promises and bilateral agreements could never compensate. We have seen this in places like Uruguay, where domestic law prohibits the restriction of detainee travel because of their refugee status. As a result, a former detainee was reportedly allowed to travel from Uruguay to Argentina with a government issued identification card – clearly a fundamental deficiency that the government was unable to mitigate.

Other failed efforts to mitigate recidivism have tragically resulted in American casualties. Mr. Lewis informed the Committee during testimony that, “So what I can tell you is, unfortunately, there have been Americans that have died because of Gitmo detainees.” This tragedy was a direct result of releasing detainees to countries that had little ability to control them. It makes no difference whether the Bush or Obama Administrations transferred them. It is never a good policy to release dangerous terrorists to countries known to have little or no ability to prevent recidivism.

It seems highly implausible that the witnesses were unaware of the Defense Department’s transfer record prior to their testimony. Their offices are principally responsible for the negotiation and transfer of detainees to the custody of foreign governments. Presumably the witnesses also review the aforementioned notices and reports bearing the signatures of senior Administration officials, including the Secretary of Defense. That is why it is difficult to view the witnesses’ testimony as anything other than an effort to conceal the truth.

If it was not the Administration’s intent to mislead the Committee, then I ask that you explain how Mr. Lewis and Mr. Wolosky’s testimony is consistent with the documents we have received. Additionally, I request that you provide a list of countries under consideration by this Administration for future transfers. In the interest of full transparency with the American people,

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I ask that you do this in an unclassified manner before any further releases occur – no matter whether they are already approved for transfer. **Please produce this information not later than 5:00 p.m. on May 27, 2016.**

Thank you for your prompt attention to this important matter.

Sincerely,



EDWARD R. ROYCE

Chairman

cc: The Honorable Elliot L. Engel, Ranking Member, House Committee on Foreign Affairs