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BLUEPRINT

How to Close Guantanamo

BLUEPRINT FOR U.S. GOVERNMENT POLICY

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On human rights, the United States must be a beacon. Activists fighting for freedom around the globe continue to look to us for inspiration and count on us for support. Upholding human rights is not only a moral obligation; it's a vital national interest. America is strongest when our policies and actions match our values.

Human Rights First is an independent advocacy and action organization that challenges America to live up to its ideals. We believe American leadership is essential in the struggle for human rights so we press the U.S. government and private companies to respect human rights and the rule of law. When they don't, we step in to demand reform, accountability and justice. Around the world, we work where we can best harness American influence to secure core freedoms.

We know that it is not enough to expose and protest injustice, so we create the political environment and policy solutions necessary to ensure consistent respect for human rights. Whether we are protecting refugees, combating torture, or defending persecuted minorities, we focus not on making a point, but on making a difference. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership.

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“... [T]his needs to be the year Congress lifts the remaining restrictions on detainee transfers and we close the prison at Guantanamo Bay—because we counter terrorism not just through intelligence and military action, but by remaining true to our Constitutional ideals, and setting an example for the rest of the world.”

President Obama
State of the Union Speech
January 28, 2014

Introduction

As President Obama said in a 2013 speech at the National Defense University, Guantanamo “has become a symbol around the world for an America that flouts the rule of law.”¹ The detention facility was designed to operate as a legal black hole where detainees were prevented from challenging their detention, stripped of their protections under the Geneva Conventions, and subjected to torture and other abuses. As more than three dozen of the nation’s most respected retired generals and admirals said earlier this year, “Keeping the prison at Guantanamo open undermines American laws and values, and harms—not enhances—our national security.”²

Guantanamo’s continued operation bolsters terrorist recruitment³ and undermines counterterrorism cooperation with our allies, while costing American taxpayers more than \$10 million per year per detainee.⁴ General

Michael Lehnert, the first commander of the task force that opened the facility, wrote in 2013 that keeping Guantanamo open “has helped our enemies because it validates every negative perception of the United States.”⁵ The ability of the United States to credibly push other governments to respect human rights is seriously compromised when we have failed to correct the post-9/11 abuses that have cast a shadow on America’s foreign policy of the last decade. And that shadow will continue to loom large until Guantanamo is closed.

In one of his first official acts, President Obama in 2009 signed an executive order directing that the prison at Guantanamo Bay be closed within a year.⁶ At the time, the move garnered support from both Democrats and Republicans. Senators Lindsey Graham and John McCain released a joint statement declaring, “We support President Obama’s decision to close the prison at Guantanamo, reaffirm America’s adherence to the Geneva Conventions, and begin a process that will, we hope, lead to the resolution of all cases of Guantanamo detainees.”⁷ In 2013, former Bush

¹ President Barack Obama, Address at National Defense University (May 23, 2013), *available at*: <http://www.whitehouse.gov/the-press-office/2013/05/23/remarks-president-national-defense-university>.

² Letter from Retired Military Leaders Group to Members of the United States House of Representatives and Senate (May 19, 2014) [*hereinafter* RML Letter to Congress], *available at*: <http://www.humanrightsfirst.org/resource/retired-admirals-and-generals-urge-senate-lift-guantanamo-transfer-restrictions>.

³ Letter from James R. Clapper, Director of National Intelligence, to Dianne Feinstein and Saxby Chambliss, United States Senators (November 12, 2013), *available at*: <http://www.scribd.com/doc/185248699/DNI-Letter-on-GTMO-11-14-13>

⁴ United States Department of Defense: GTMO Facility Costs, *available at*:

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

⁵ Jane Sutton, *U.S. general who opened Guantanamo prison says shut it down*, Reuters, December 12, 2013, *available at*: <http://www.reuters.com/article/2013/12/12/us-usa-guantanamo-idUSBRE9BB0QM20131212>.

⁶ Executive Order 13492: Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Close of Detention Facilities (Jan. 22, 2009) *available at*: <http://www.gpo.gov/fdsys/pkg/FR-2009-01-27/pdf/E9-1893.pdf>.

⁷ Joint Statement from U.S. Senators Lindsey Graham and John McCain on Guantanamo Executive Order (January 22, 2009), *available at*: http://lgraham.senate.gov/public/index.cfm?FuseAction=PressRoom.PressReleases&ContentRecord_id=ffcf4a8c-802a-23ad-463b-f5a8b3e5d916.

Administration Legal Adviser John Bellinger noted that “President Bush also wanted to close Guantanamo,” and he called on “Congressional Republicans [to] work with President Obama on a reasonable wind-down plan for Guantanamo.”⁸

Despite the President’s clear directive and the early bipartisan consensus around it, Guantanamo remains open. Currently, there are 41 detainees imprisoned there. Five of these men have been cleared for release, 26 have been designated for indefinite detention pursuant to the laws of war, and seven are in pre-trial hearings in military commissions.

Congress has impeded the President’s plans to close the facility by putting restrictions in place that make it difficult to transfer some detainees. Nevertheless, President Obama can still deliver on his promise to close Guantanamo. The interagency task force established by his administration has recommended that the majority of the remaining detainees be transferred, with the balance to face criminal charges or be held in law of war detention until the end of hostilities. The administration’s efforts to date have reduced the detainee population at from 242 to 41, and President Obama has refrained from bringing any new detainees to the prison.

The administration has appointed special envoys at the State and Defense Departments to lead efforts to close Guantanamo and has ended the self-imposed moratorium on transfers to Yemen, returning to the practice of carefully

assessing each transfer on a case-by-case basis. The administration has also started Periodic Review Board (PRB) hearings to review the designation of detainees slated for indefinite detention, worked with Congress to achieve key changes to the detainee transfer restrictions, and stepped up efforts to explain to the public and members of Congress the costs of keeping Guantanamo open.

With less than a month left until he leaves office, however, President Obama must accelerate his administration’s efforts to close Guantanamo. He must veto any legislation that would restrict his ability to transfer detainees—including to the United States—and increase dramatically the pace of transfers of prisoners out of the facility if he is to fulfill his pledge to close it. While the transfer of 118 detainees since November 2014 is welcome, five detainees cleared for release remain at Guantanamo. Several countries have expressed a willingness to accept detainees, and there is no legal barrier prohibiting their transfer.

Despite some controversy around the transfer of Taliban prisoners in exchange for the release of an American soldier, there is now a window of opportunity to advance a comprehensive exit strategy. The financial and national security costs of Guantanamo, coupled with recent reactions to the hunger strikes and forced feedings, have renewed bipartisan interest in its closure. Courts have also begun to indicate that detainees being held under law of war detention, pursuant to the 2001 Authorization for Use of Military Force, will need to be released after the majority of U.S. troops are withdrawn

⁸ John Bellinger, *The Return of the Detainees to Algeria*, *Lawfare* (July 28, 2013), available at: <http://www.lawfareblog.com/2013/07/the-return-of-the-detainees-to-algeria/>.

from Afghanistan,⁹ suggesting that the administration should work with Congress now to determine the lawful disposition of detainees, or the courts could force those dispositions later.

This blueprint outlines a comprehensive plan for the administration to close Guantanamo before the president leaves office.

Summary

President Obama should provide sustained leadership to increase the momentum to transfer prisoners out of Guantanamo and close the facility.

SUSTAINED LEADERSHIP

- Communicate to Congress and the American people the administration's comprehensive plan for closing Guantanamo before leaving office.
- Publicly defend transfers of detainees out of Guantanamo as consistent with, and reflective of, national security interests.
- Highlight the important changes the administration has made in the policy and practice of evaluating detainees for potential transfer.

- Correct misconceptions about the ability of U.S. prisons to safely hold Guantanamo detainees.
- Direct the president's top counterterrorism advisor to establish clear benchmarks for, and periodic reviews of, the relevant agencies' Guantanamo closure efforts to ensure the facility is closed by the end of the president's second term.

SOLIDIFY A LEGAL AND POLICY FRAMEWORK

- Veto any legislation that imposes transfer restrictions on Guantanamo detainees—including restrictions on transfers to the United States and to other countries.
- Increase efforts to develop rehabilitation and reintegration programs to allow for transfers of Yemeni detainees.
- Complete all Periodic Review Board hearings for eligible detainees as soon as possible.
- Direct the Department of Justice not to oppose habeas petitions for detainees who are either too sick or too old to pose a security threat.
- End the military commissions and prosecute detainees who have committed crimes in civilian courts.

COMPLETE TRANSFERS

- Direct the secretary of defense to transfer detainees to the fullest extent possible, consistent with applicable law.
- Transfer eligible detainees to a civilian court in the United States or to an appropriate foreign jurisdiction.

⁹ Josh Gerstein, Judge: 'Apparent' duty to release Guantánamo prisoners at Afghanistan War's end, Politico, August 4, 2014, available at: <http://www.politico.com/blogs/under-the-radar/2014/08/judge-apparent-duty-to-release-guantanamo-prisoners-193384.html?hp=r2>.

- Transfer detainees serving military commission sentences to an appropriate high security federal prison or to their home countries to serve the remainder of their sentences.
- Transfer the detainees being held in law of war detention to an appropriate high security federal prison until the end of hostilities.

RISK MANAGEMENT

- Manage the risk posed by repatriation and resettlement by facilitating rehabilitation and monitoring, and developing security programs in countries receiving detainees, to ensure that transfers are consistent with U.S. national security interests and international legal obligations.
- Regularly communicate to Congress and the American people the compelling national security and rule of law reasons for closing Guantanamo.

How to Close Guantanamo

LEADERSHIP FROM THE ADMINISTRATION

Recommendations

The single most important element to any viable closure plan is sustained leadership from the president himself. President Obama should take the following steps, which will help resolve the complex legal, policy, and political issues necessary to close Guantanamo by the end of his second term.

President Obama should immediately:

- **Communicate his plan for closing Guantanamo to Congress and the American people.** President Obama should publicly detail his plan to lawfully dispose of each remaining detainee at Guantanamo and, in doing so, build on and update the 2010 Guantanamo Review Task Force assessment. Timely and open communication with Congress and the American people will facilitate legitimate congressional oversight.
- **Publicly defend transfers of detainees out of Guantanamo as consistent with national security interests.** President Obama should publicly defend the transfer of detainees out of Guantanamo and his administration's policy of not sending any new prisoners to Guantanamo, as not only consistent with, but also necessary for, our national security interests. As noted by Admiral Mike Mullen, who served as Chairman of the Joint Chiefs of Staff in both the Bush and Obama Administrations, "Guantanamo ... has been a recruiting symbol for those extremists and jihadists who would fight us."¹⁰ Its continued existence also undermines counterterrorism cooperation with allies, who refuse to share intelligence or provide access to terrorism suspects if doing so could be seen as aiding ongoing or future military detention or trial at Guantanamo. American diplomats have privately reported that they receive

¹⁰ Admiral Mike Mullen, Chairman of the Joint Chiefs of Staff, Interview Transcript, *This Week with George Stephanopoulos*, ABC (May 24, 2009), available at: <http://abcnews.go.com/ThisWeek/story?id=7664072&page=1>.

considerable pushback, particularly from our European allies, over Guantanamo. Congress should understand that its categorical ban on transfers of Guantanamo detainees to the United States has real, detrimental consequences for U.S. national security.

- **Highlight the important changes he has made in the policy and practice of evaluating detainees for potential transfer.** President Obama has implemented significant changes to the detainee transfer process, requiring thorough interagency assessments prior to transfer, which have reduced the recidivism rate for Guantanamo detainees to 4.9 percent—compared with the Bush Administration’s 20.9 percent. Despite this, risks associated with transfers have often been misconstrued by members of the media and Congress,¹¹ partly due to the director of national intelligence’s (DNI) “recidivism” rates, which independent observers have criticized as being inaccurate and exaggerated.¹² As National Security Advisor Susan Rice wrote to Secretary of Defense Chuck Hagel in May 2014, there can never be zero risk when transferring detainees from Guantanamo; the recidivism risk must be balanced against the national security risk of keeping

the facility open.¹³ The president should emphasize to Congress and the American people the importance of achieving this balance and moving away from a zero-risk standard. The DNI should also revise its recidivism criteria to cover only activities that are directly connected to a terrorist plot or attack, discontinue including cases of “suspected recidivism,” and make public the full criteria used to place individuals on the recidivism list.

- **Correct misconceptions about the ability of U.S. prisons to hold Guantanamo detainees.** Congress’ categorical ban on transfers of Guantanamo detainees to the United States poses a significant impediment to closing the facility. While these restrictions were ostensibly implemented due to national security concerns, a recent report by the attorney general, in consultation with the secretary of defense addresses these concerns, concluding that “existing statutory safeguards and executive and congressional authorities provide robust protection of national security.”¹⁴ Furthermore, the Government Accountability Office has documented that high security prison facilities in the United

¹¹ Peter Bergen & Bailey Cahall, How big a terror risk are former Guantanamo prisoners?, CNN June 8, 2014, available at: <http://www.cnn.com/2014/06/05/opinion/bergen-guantanamo-risk-of-recidivist-terrorists/>.

¹² See for example Mark Denbeaux et al., National Security Deserves Better: “Odd” Recidivism Numbers Undermine the Guantánamo Policy Debate, 43 Seton Hall L. Rev. 643 (2013).

¹³ Nedra Pickler, *President Obama’s Goal Of Closing Guantanamo Bay Prison Stalled At The Pentagon*, September 30, 2014, available at: http://www.huffingtonpost.com/2014/09/30/guantanamo-bay-prison-closure_n_5905018.html.

¹⁴ Office of the Assistant Attorney General, Department of Justice, Report Pursuant to Section 1039 of the National Defense Authorization Act for Fiscal Year 2014, May 14, 2014, available at: <http://sblog.s3.amazonaws.com/wp-content/uploads/2014/05/Report-on-GTMO-transfers-to-US-5-14-14.pdf>.

States have the capacity to hold Guantanamo detainees,¹⁵ and the American Correctional Association has voiced support for housing Guantanamo detainees within the United States.¹⁶ The administration should regularly convey this information to the public, to rectify misplaced national security concerns regarding the transfer of detainees to the United States.

- **Direct his top counterterrorism advisor—who has responsibility for implementing the president’s plan to close Guantanamo—to establish clear benchmarks for, and periodic reviews of, the relevant agencies’ Guantanamo closure actions to ensure the facility is closed by the end of the president’s second term.** The White House should work closely with the Department of Defense, State Department, Department of Justice, the Office of the Director of National Intelligence, and other relevant agencies and departments that have responsibilities that pertain to closing Guantanamo to ensure that the president’s goal is met.

FINALIZE A FRAMEWORK TO PERMIT TRANSFER OF ALL DETAINEES

Recommendations

Once President Obama lays the groundwork to implement his plan to close Guantanamo, he

should take decisive action to see that plan through. President Obama should:

- **Veto any legislation that imposes transfer restrictions on Guantanamo detainees—including restrictions on transfers to the United States and to other specific countries.** The president should vigorously urge Congress to overturn the remaining restrictions on transferring detainees out of Guantanamo to their home countries, third countries, or the United States. There are several options for facilities that could house Guantanamo detainees, including the Naval Consolidated Brig in Charleston, South Carolina.¹⁷ Since the administration lifted its ban on transfers to Yemen—recognizing that transfer decisions should be made on an individual basis, by reference to concrete, reliable, and specific information—Congress has legislated this ban, along with a ban on transfers to Libya, Somalia, and Syria. Thirty-seven of the nation’s most respected retired generals and admirals have advised that a transfer moratorium is unwarranted and serves no useful purpose.¹⁸ The president should veto any legislation that imposes this or any other burdensome transfer restrictions that impede his authority to effectuate lawful dispositions of detainees held at Guantanamo.

¹⁵ U.S. Gov’t Accountability Office, GAO-13-31, Guantanamo Bay Detainees: Facilities and Factors for Consideration If Detainees Were Brought to the United States (2012), available at: <http://www.gao.gov/assets/660/650032.pdf>

¹⁶ James A. Gondles, Jr., *We Can Handle Them*, Miami Herald, Dec. 17, 2009.

¹⁷ Schuyler Kropf, *Navy Brig in Hanahan resurfaces as Gitmo alternative*, The Post and Courier, May 25, 2013, available at: <http://www.postandcourier.com/article/20130525/PC16/130529477>.

¹⁸ RML Letter to Congress *supra* note 2.

- **Increase efforts to develop rehabilitation programs to allow for transfers of Yemeni detainees to third countries.** The administration should continue to support the development of rehabilitation and reintegration programs, in collaboration with the international community, which could allow transfers of cleared Yemeni detainees to third countries.
- **Complete Periodic Review Board hearings for detainees who have not yet been cleared for transfer or charged with a crime.** Executive Order (EO) 13567, codified in the Fiscal Year 2012 National Defense Authorization Act, established interagency Periodic Review Boards (PRBs) to determine whether law of war detainees should be transferred because they no longer pose a significant threat to the security of the United States.¹⁹ While the Department of Defense has commenced PRB hearings, it has not outlined a clear timeline for their completion, contrary to the requirements of EO 13567, which mandated that initial PRB hearings be completed by March 2012.²⁰ In 2013, Senator John McCain noted the need to give Guantanamo detainees “more periodic review of their cases,” in order to ensure

closure of the facility.²¹ To this end, the administration should commit to completing all PRB determinations as soon as possible. To achieve this, the president should:

- Direct the secretary of defense to order that all PRB determinations—including for detainees previously slated for prosecution whom the administration no longer intends to prosecute—be made as soon as possible.
 - Ensure that the necessary resources are available to complete thorough PRB hearings for all eligible detainees as soon as possible.
 - Ensure that the Periodic Review Secretariat, along with its partner agencies and departments, are adequately staffed to complete the PRB hearings in a timely and effective manner.
- **Direct the Department of Justice not to oppose habeas petitions for detainees who are either too sick or too old to pose a security threat.** In October 2013, after the United States withdrew its opposition to the habeas petition for Guantanamo detainee Ibrahim Osman Ibrahim Idris, a judge recognized that Idris’ physical and mental illnesses rendered him incapable of rejoining any fight against the United States and ordered the U.S. government to release him. Two months later, Idris was transferred out of Guantanamo. The president should

¹⁹ See Executive Order 13567: Periodic Review of Individuals Detained at Guantánamo Bay Naval Station Pursuant to the Authorization for Use of Military Force (Mar. 7 2011); National Defense Authorization Act for the 2012 Fiscal Year, § 1023, Pub. L. No. 112–81 (2011).

²⁰ Exec. Order No. 13567, 3 C.F.R. Order 13567, (2011), available at: <http://www.whitehouse.gov/the-press-office/2011/03/07/executive-order-periodic-review-individuals-detained-guant-namo-bay-nava>.

²¹ Reuters, John McCain: Guantanamo Bay Closure Has Increasing Public Support, June 9, 2013, available at: http://www.huffingtonpost.com/2013/06/09/john-mccain-guantanamo_n_3412111.html.

direct the Department of Justice to refrain from opposing the habeas petitions in similar situations, when detainees do not pose a threat to the United States due to their mental or physical health. This could form the basis of a model that allows the U.S. government to fast-track transfers out of Guantanamo.

■ **End the military commissions and prosecute in civilian courts those detainees who have committed crimes.**

The military commissions at Guantanamo continue to operate poorly, resulting in protracted trials that are beset with delays and problematic legal and ethical issues.²² Of the eight individuals convicted in military commissions, three of these have already had their convictions overturned completely and one partially, because the crimes for which they were convicted were not internationally recognized war crimes when committed. Conversely, hundreds of individuals (many involved in the conflict with al Qaeda) have been convicted of terrorism-related crimes in federal court—including Osama bin Laden’s son-in-law, Suleiman Abu Ghaith, who was sentenced to life in prison in September 2014. While Abu Ghaith was convicted just over a year after his capture, the military commission trial for the alleged 9/11 conspirators is mired in pre-trial hearings more than a decade after the 9/11 attacks. By vetoing any legislation that continues to restrict transfers of Guantanamo detainees to the

United States, the president can reopen the doors to trials in civilian courts for these individuals. As General Joseph Hoar, Former Commander-in-Chief of U.S. Central Command has stated, “efforts to bring terrorists to justice in federal civil courts are not issues that should be subject to political posturing ... It is imperative that we close the U.S. detention facility at Guantanamo Bay as quickly as possible and bring accused terrorists to justice in civilian courts, the only venue with a proven track record of successfully handing these cases.”²³ The president should end all ongoing military commission cases and transfer those detainees to the United States for civilian trials. He should also direct the secretary of defense to refrain from bringing any further military commission cases. The United States should charge any other individuals now at Guantanamo, who the government believes to have committed crimes, in U.S. federal courts.

TRANSFER ALL DETAINEES FROM GUANTANAMO

Recommendations

Once the impediments to transferring detainees out of Guantanamo have been removed, President Obama should take all necessary

²² Fact Sheet: Key Facts on Military Commissions, Human Rights First, *available at*: <http://www.humanrightsfirst.org/sites/default/files/KeyFactsMilitaryCommvFedCourts.pdf>.

²³ Retired Military Leaders To Urge Administration Officials and Members Of Congress to Press Ahead with Closing Guantanamo, Pursue Federal Trials For Terrorism Suspects (September 14, 2010), *available at*: <http://www.humanrightsfirst.org/2010/09/14/retired-military-leaders-to-urge-administration-officials-memebers-of-congress-campaign-committees-to-press-ahead-with-closing-guantanamo-pursue-federal-trials-for-terrorism-suspects>.

steps to transfer those detainees as soon as possible.

President Obama should:

■ **Direct the Secretary of Defense to transfer detainees to the fullest extent possible, consistent with applicable law.**

Under current law, the secretary may transfer a detainee following a determination that the transfer is in the national security interest of the United States and that any risks can be mitigated. This legal regime provides substantial additional flexibility, compared to prior law, that should allow transfer of most—if not all—detainees from Guantanamo. For example, as part of the swap for Sgt. Bowe Bergdahl, the administration determined that five Taliban detainees who had not at the time been cleared for transfer by a PRB or the Guantanamo Detainee Review Taskforce could be transferred consistent with the legislative requirements. In most cases, security assurances from the receiving country or changes in its domestic political or security situation will permit such a determination. The administration must increase its efforts to negotiate the security assurances that may be necessary to effectuate transfers.

■ **Transfer cleared detainees at an accelerated rate.** Five detainees have been cleared by all relevant defense and intelligence agencies for transfer to their home or third countries. To transfer all or most of these detainees by the end of his second term, President Obama should:

- **Continue transferring Yemeni detainees.** One of the nine detainees cleared for transfer is from Yemen.

These detainees should be resettled in third countries, or transferred when security conditions improve or an appropriate rehabilitation program has been established.

- **Repatriate the four cleared non-Yemeni detainees.** Algeria and Tunisia have requested the return of cleared Guantanamo detainees to their home countries. Cleared detainees from Morocco and the United Arab Emirates also continue to be held at Guantanamo. The administration should repatriate these detainees where their home countries are willing to accept them unless, in accordance with U.S. *non-refoulement* obligations, there are substantial grounds for believing that detainees would be in danger of being subjected to torture or other forms of mistreatment if returned home. In these cases, the administration should resettle these detainees in third countries, or in the United States if necessary.
- **Transfer eligible detainees to a civilian court in the United States or to an appropriate foreign jurisdiction, where such transfers can be made consistent with applicable law.** The president should transfer all existing military commission cases to the United States for civilian trials. Any other detainees who the government believes have committed crimes should also be charged and prosecuted in U.S. federal court or transferred to an appropriate foreign jurisdiction. The United States should insist that any country to which it transfers detainees for purposes of

prosecution adheres to minimum, internationally-recognized due process trial guarantees.

- **Transfer detainees serving military commission sentences.** Transfer any detainees who have been convicted of crimes in military commissions to an appropriate high-security federal prison in the United States or to their home countries to serve the remainder of their sentences. The president should also direct the secretary of defense and the secretary of state to secure the release of detainees who have completed their sentences. These detainees can be subjected to appropriate immigration proceedings, including deportation.

- **Determine lawful dispositions for detainees who have not been charged with a crime nor approved for transfer.** There remain 26 detainees at Guantanamo who are being held in law of war detention. If these detainees are not charged with a crime, they will need to be released “without delay after the cessation of active hostilities,”²⁴ such as the end of combat operations in Afghanistan or some other appropriate marker of the end of hostilities. The president should take the following steps to facilitate the transfer of detainees being held in law of war detention:

- Once the PRB process is complete, it will likely be determined that continued detention is no longer warranted for a number of these detainees because the

acts that initially gave rise to their detention occurred ten or more years ago and the detainees no longer pose a significant threat to the national security of the United States. The president should direct the secretary of state, in coordination with the secretary of defense, to begin negotiating and securing transfer agreements for these detainees as soon as these PRB determinations are made.

- Determine whether there are extant credible criminal charges to try detainees in foreign jurisdictions and transfer these detainees for purposes of prosecution, while ensuring adherence to minimum, internationally-recognized due process trial guarantees.
- Transfer some number of Guantanamo detainees to the United States for prosecution of civilian crimes or continued detention until the end of hostilities.
- Repatriate or resettle any remaining detainees at the end of combat operations in Afghanistan or some other reasonable marker of the end of hostilities.

RISK MANAGEMENT

Recommendations

Once all detainees have been transferred out of Guantanamo, President Obama should officially close the detention facility and continue to implement measures to mitigate any post-transfer risks. The president should:

- **Manage the risk posed by repatriation and resettlement by facilitating**

²⁴ Article 118, Geneva Convention (III) Relative to the Treatment of Prisoners of War, cited in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004).

rehabilitation and monitoring, and by developing security programs to ensure that transfers are consistent with U.S. national security interests and obligations under international human rights and humanitarian law. It is essential that the United States continue to assess the risks posed by detainees who have been resettled and repatriated and continue to invest in reintegration programs and law enforcement training even after the Guantanamo detention facility is closed. As a result of President Obama's efforts, there have been very few post-transfer security problems, and it is vital that these efforts continue.

- **Continue to provide robust leadership on Guantanamo.** The president should continue to effectively communicate to Congress and the American people the importance of closing Guantanamo to protecting our national security and our values. President Obama should also continue to correct any misconceptions associated with detainee transfers that are necessary to close the facility.

Conclusion

The Obama Administration has made significant progress towards closing Guantanamo but additional major steps must be taken to accomplish this goal in the president's second term. The national security imperative to close Guantanamo has only grown since the president first took office, and whatever legal basis for the detentions that existed initially will change as the armed conflict in Afghanistan comes to an end. President Obama must provide sustained leadership in order to make the progress needed to close Guantanamo and to ensure that he does not bequeath this stain on U.S. moral authority to his successor. On his second day in office, the president promised to close Guantanamo, and he has reiterated that promise several times since. Whether he succeeds will be a significant test for his legacy.

There is a path forward. Human Rights First offers a strategy to close Guantanamo by the end of President Obama's second term that builds on the successes to date, ensures national security, adheres to American ideals, and restores U.S. global leadership on the rule of law.



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