

Guantanamo Detainee Transfers

How are Guantanamo detainees approved for transfer out of the prison, and what does that process involve? This brief outlines how the current mechanisms work and how they differ from those used by the previous administration. It examines the types of detainees who are approved for transfer, including those who were previously erroneously assessed to pose more of a threat than they actually do, as well as those whom the government has assessed to be entirely different individuals (cases of mistaken identity). This brief also details what happens to detainees after they are transferred from Guantanamo, showing that since the current review and transfer mechanisms were instituted, the numbers of detainees participating in terrorist or insurgent activities after release have dropped dramatically.

The Obama Administration Detainee Review and Transfer Processes

The Guantanamo Review Task Force

In 2009, President Obama established the Guantanamo Review Task Force, which examined the cases of all 240 detainees then held at the prison. The Task Force was made up of representatives of the Office of the Director of National Intelligence, Joint Chiefs of Staff, and Departments of Justice, Defense, State, and Homeland Security. More than 60 intelligence analysts, law enforcement agents, attorneys, and other staff evaluated each detainee.¹ Their recommendations were then reviewed by a panel of senior members of each agency, which decided whether detainees should be approved for transfer, referred for prosecution in either federal court or military commission, or held in indefinite detention. For Yemeni detainees, there also existed a category of “conditional” detention, which meant those detainees were approved for transfer to third countries or could be repatriated if the administration’s moratorium on transfers to Yemen was lifted and security in that country improved.

Prior to the Guantanamo Task Force reviews, the Bush Administration’s review and transfer process relied on assessments by Joint Task Force Guantanamo (JTF-GTMO), the military task force responsible for operating the remote prison. As discussed below, these assessments often relied on unreliable information and labelled each detainee as a “low,” “medium,” or “high” threat.² President Obama’s Task Force reviews were designed to take a more thorough and holistic approach, evaluating each detainee based on the “degree of threat posed ... to U.S. national security, whether the threat could be mitigated through appropriate security measures, and the potential destination countries where it appeared possible to safely transfer the detainee.”³

Of the 240 detainees evaluated, 126 detainees were cleared for transfer. Many of these detainees had already been approved for transfer by the Bush Administration.⁴

In addition to being cleared for transfer over six years ago by the Task Force, detainees must be reevaluated and unanimously reapproved prior to transfer by the same six departments and agencies that comprised the Task Force. According to Brian McKeon, Defense Department Principle Deputy

¹ <http://docs.house.gov/meetings/FA/FA00/20160323/104731/HHRG-114-FA00-Wstate-WoloskyL-20160323.pdf>

² <http://www.humanrightsfirst.org/resource/flawed-guantanamo-assessment-files>

³ <http://www.justice.gov/sites/default/files/ag/legacy/2010/06/02/guantanamo-review-final-report.pdf>

⁴ <http://www.closeguantanamo.org/Articles/55-EXCLUSIVE-Guantanamo-Scandal-The-40-Prisoners-Still-Held-But-Cleared-for-Release-At-Least-Five-Years-Ago>

Undersecretary, “If somebody’s already been cleared by the 2009 task force and we find a place to which we can transfer them, and a package is brought to the secretary to make the determination, we have an updated assessment on the individual. We’re not relying solely on the 2009 task force work.”⁵ The final step before transferring a detainee requires the Secretary of Defense to personally certify that (among other things) transferring the detainee is in the national security interest of the United States.⁶

The Periodic Review Board

The Periodic Review Board (PRB) process—created by President Obama in 2011 and codified into federal law on a bi-partisan basis in the Fiscal Year 2012 National Defense Authorization Act—re-assesses detainees who were not cleared by the Task Force “to determine whether certain individuals detained at [Guantanamo] represent a continuing significant threat to the security of the United States such that their continued detention is warranted.”⁷ The board is made up of senior officials from the Departments of Defense, Homeland Security, Justice, and State; the Joint Staff, and the Office of Director of National Security. The PRB has access to all government information relevant to the detainee being reviewed, and considers this information alongside diplomatic considerations, security assurances, the detainee’s mental and physical health, and any other mitigating information.

The PRB has held 89 hearings, for 64 detainees (21 detainees have had two hearings and four have had three hearings), and initial decisions have been handed down for all 64 detainees. Fifteen detainees have received two decisions, while three have received three decisions from the board. Of the detainees who have received decisions, 38 have been cleared for transfer by the PRB, and 26 detainees have been recommended for continued indefinite detention. Thirty-six of the detainees cleared for transfer by the PRBs have been released from Guantanamo to their home or third countries.

There remain 22 detainees eligible for subsequent PRB hearing consideration (not counting those waiting on decisions).

The Detainees

Because of the extreme level of secrecy with regards to information about Guantanamo detainees, it is impossible to know how many were and continue to be held because of inaccurate information. But the U.S. government has admitted that its assessments of some Guantanamo detainees were wrong and that those individuals are less dangerous than initially thought.

Mistaken Identities

In December 2015, the U.S. government admitted that Guantanamo detainee Mustafa al-Aziz al-Shamiri (who arrived at Guantanamo in June 2002) was a low-level fighter, not the al Qaeda courier and trainer the government previously claimed he was. Al-Shamiri’s 2008 JTF-GTMO assessment claims he was affiliated with the Yemeni al Qaeda cell responsible for the USS *Cole* bombing, received advanced training, and was a senior trainer at al Qaeda’s al-Faruq training camp, as well as an al Qaeda “guesthouse logistician.”⁸ When the Obama Administration reviewed al-Shamiri’s case, it found that “these activities were carried out by other known extremists with names or aliases similar [to al-Shamiri’s].”⁹ He has since been cleared for transfer, but has not yet been released.¹⁰

⁵ <http://www.c-span.org/video/?324186-1/hearing-guantanamo-detention-facility-outlook>

⁶ <http://www.humanrightsfirst.org/sites/default/files/GTMO-Provisions-in-FY2016-NDAA.pdf>

⁷ <http://www.prs.mil/AboutthePRB.aspx>

⁸ <http://projects.nytimes.com/guantanamo/detainees/434-mustafa-abdul-qawi-abdul-aziz-al-shamiri>

⁹ http://www.prs.mil/Portals/60/Documents/ISN434/20150925_U_ISN434_GOVERNMENTS_UNCLASSIFIED_SUMMARY_PUBLIC.pdf

¹⁰ http://www.prs.mil/Portals/60/Documents/ISN434/160112_U_ISN1434_FINAL_DETERMINATION.pdf

Detainee Ayyub Murshid Ali Salih was brought to Guantanamo in October 2002, and in his 2008 assessment, JTF-GTMO determined that he was likely part of a cell plotting attacks on U.S. troops in Pakistan and possibly against the United States.¹¹ After his PRB hearing in 2016, the review board held that “the detainee’s degree of involvement and significance in extremist activities has been reassessed to be that of a low-level fighter.”¹² The board determined that Salih was not involved in the attack plots, but was rather one of a large pool of Yemenis being considered by al Qaeda as “potentially available to support future operations.”¹³ He was cleared for transfer and is awaiting release.

Emad Hassan was assessed by JTF-GTMO as likely part of a Pakistani al Qaeda cell “preparing to conduct a terror campaign using improvised explosive device (IED) attacks against US and Coalition forces in Afghanistan.”¹⁴ These claims are based on reporting from other detainees and information that the house where Hassan was staying was used by al Qaeda members for housing and training. According to Hassan, before the 9/11 attacks, he travelled to Pakistan to attend university, and was arrested in a raid on the house where he was living with other students. When asked by his American interrogator if he had any connection to al Qaeda, Hassan answered that he did, thinking the interrogator meant Al-Qa’idah, a village nearby his home in Yemen.¹⁵ This detail is not contained in his JTF-GTMO assessment. Hassan was cleared for transfer by an Obama Administration review in 2009, and was released to Oman in 2015, after spending 13 years at Guantanamo.¹⁶

These are just a few examples. One Bush Administration official has admitted that many of the detainees that were brought to Guantanamo were not adequately vetted and often had not been involved with al Qaeda or the Taliban at all or were low-level fighters.¹⁷ Only a handful of the remaining detainees were captured by U.S. forces,¹⁸ and most were handed over by foreign militaries, militias, or civilians, often in exchange for exorbitant bounties.¹⁹ These and other instances of mistaken identity, low-level fighters incorrectly assessed as more dangerous, and insufficient review undermine the claim that only “the worst of the worst” are still being held at Guantanamo.

Cleared Detainees from Yemen, Low-Level Fighters, and Those with Health Risks

As noted above, many of the detainees held at Guantanamo were not “the worst of the worst,” as is often claimed, but were in fact low-level fighters in the Taliban, al Qaeda, or related groups. As the Periodic Review Board determinations have shown, even some of those detainees initially assessed to be higher up in these groups’ hierarchies were actually foot soldiers at most.²⁰ Many of the remaining cleared detainees continue to be held at Guantanamo not because they are still an active threat to the United States, but because they are from Yemen and cannot be returned there.

While all released detainees must be assessed by all relevant national security agencies to no longer pose an unmanageable threat to the United States or its interests, some detainees are much less likely to pose any threat because they are dealing with debilitating mental or physical health issues.

Detainee Ibrahim Idris, who was brought to Guantanamo in January 2002, suffered from mental and physical illnesses including schizophrenia and diabetes, was released in 2013. Some of his mental

¹¹ <http://projects.nytimes.com/guantanamo/detainees/836-ayoub-murshid-ali-saleh>

¹² http://www.prs.mil/Portals/60/Documents/ISN836/160323_U_ISN836_FINAL_DETERMINATION_PUBLIC.pdf

¹³ http://www.prs.mil/Portals/60/Documents/ISN836/160216_U_ISN836_HEARING_TRANSCRIPT_PUBLIC_SESSION_PUBREL.pdf

¹⁴ <http://projects.nytimes.com/guantanamo/detainees/680-emad-abdalla-hassan>

¹⁵ <http://www.newsweek.com/2015/09/18/emad-hassan-guantanamo-bay-hunger-strike-al-qaeda-370475.html>

¹⁶ <http://www.defense.gov/News/News-Releases/News-Release-View/Article/605565/detainee-transfer-announced>

¹⁷ <http://www.truth-out.org/files/wilkerson-sworn-declaration.pdf>

¹⁸ <http://www.theguardian.com/us-news/2015/aug/25/guantanamo-detainees-captured-pakistan-afghanistan>

¹⁹ http://www.nbcnews.com/id/8049868/ns/world_news/

²⁰ <http://www.washingtonpost.com/wp-dyn/content/article/2010/05/28/AR2010052803873.html>

health issues had been evident as early as “within weeks of his arrival.”²¹ Tariq Ba Odah, who has been at Guantanamo since 2002, is another detainee whose health has drastically diminished at the prison. Ba Odah has been on a hunger strike since 2007, and now weighs 75 pounds.²² Though Ba Odah was approved for transfer by the 2009 Task Force, and was transferred to Saudi Arabia in April 2016. There are a number of other current detainees with debilitating health problems, requiring costly medical attention.²³

Flawed and Unreliable Detainee Assessment Files

Critics of releasing cleared detainees often rely on the detainee assessments by Joint Task Force Guantanamo (JTF-GTMO), the military task force responsible for operating the remote prison. These assessments, which were released by Wikileaks in 2011 and date from February 2002 to January 2009, include evaluations of who the detainees are, what (if any) involvement they had with militant groups, what intelligence they possess, their physical and mental health, and, as noted above, an evaluation of whether they posed a “low,” “medium,” or “high” level threat. The documents and the conclusions about the detainees that they contain have repeatedly been found—by national security and intelligence agencies and in federal court—to be outdated, incorrect, and unreliable.

In federal court *habeas corpus* hearings for detainee cases, where the government’s intelligence reports are presumed to be true (unless the detainee can present “clear evidence to the contrary), district court judges have found that the JTF-GTMO assessments were wrong in over half the cases (31 of 60). Part of the reason for this is that these reviews relied largely on information from other detainees, some of whom were tortured or had a strong motivation to implicate other detainees.²⁴ The Obama Administration review mechanisms described above provide a much more thorough, holistic, and accurate analysis of the detainees.

Post-Transfer

The vast majority of individuals released from Guantanamo to either their home or third countries have not engaged in terrorist or insurgent activity. Some are reintegrated into their communities and attempt to resume their lives. Some, like many of those returned to Saudi Arabia, have gone through rehabilitation programs that assess their level of commitment to violent extremism and provide them with tools to ease their transitions back into society. Others, taken in by third countries, have built lives in new homes, sometimes bringing their families to live with them.

While it is true that some detainees have turned or returned to terrorism and/or insurgency after their release, since the Obama Administration instituted more rigorous review and transfer mechanisms, the percentage of former detainees participating in terrorist/insurgent activities has dropped significantly. According to the Office of the Director of National Intelligence, over 20 percent of the detainees released by the Bush Administration have been confirmed to have participated in terrorist or insurgent activities against “Coalition or host-nation forces or civilians” post-release, while less than five percent of those released by the Obama Administration have.²⁵

Moreover, none of the detainees released by the Obama Administration have been responsible for the deaths of any Americans. White House Press Secretary Josh Earnest confirmed this in March 2016, telling reporters, “I can tell you that none of the individuals who have gone through that [Obama

²¹ <http://www.sandiegouniontribune.com/news/2013/oct/03/us-wont-fight-release-of-ill-guantanamo-prisoner/>

²² <http://www.aljazeera.com/news/2015/08/release-hunger-striking-guantanamo-detainee-150815131417771.html>

²³ <http://america.aljazeera.com/articles/2013/12/13/medical-issues-confrontingguantanamoimates.html>

²⁴ <http://www.humanrightsfirst.org/resource/flawed-guantanamo-assessment-files>

²⁵ <https://www.dni.gov/index.php/newsroom/reports-publications/item/1852-summary-of-the-reengagement-of-detainees-formerly-held-at-guantanamo-bay-gtmo-cuba>

Administration review] process have been assessed to carry out acts of violence against American citizens.”²⁶

Conclusion

Those who oppose closing the Guantanamo detention facility say that all releases from the prison are dangerous and ill-advised. But the Obama Administration overhauled the detainee review and transfer mechanisms that evaluate whether individual detainees can be cleared and safely transferred, and these new processes have shown positive results. Demonizing all remaining Guantanamo detainees as “the worst of the worst” is not only inaccurate, it is irresponsible. National security experts and leaders support closing the prison and have testified that Guantanamo is an incredible waste of resources and harms U.S. national security.²⁷ Releasing detainees who no longer pose an unmanageable threat to the United States and its interests can and should continue to be done safely.

²⁶ <https://www.whitehouse.gov/the-press-office/2016/03/28/press-briefing-press-secretary-josh-earnest-3282016>

²⁷ <http://www.humanrightsfirst.org/resource/quote-sheet-national-security-leaders-support-closing-guantanamo>