

RELEASE IN PART
B1,1.4(D)

201300279

THE SECRETARY OF STATE
WASHINGTON

CONFIDENTIAL
DECL: 01/09/2023

January 15, 2013

MEMORANDUM FOR THE PRESIDENT

REVIEW AUTHORITY: Archie Bolster, Senior
Reviewer

FROM: Hillary Rodham Clinton *HRC*

SUBJECT: Revitalizing the Guantanamo Closure Policy

(SBU) I remain a strong advocate of your policy to close the Guantanamo Bay detention facility (GTMO) responsibly and to ensure U.S. detention policy and practice for terrorism suspects are consistent with U.S. values and do not strengthen our enemies. Your January 22, 2009 Executive Orders set a new course on GTMO, interrogation, and other detention policies and have strengthened our security and international standing, including through improved counterterrorism cooperation. Unfortunately, congressionally imposed barriers to implementing our GTMO closure policy are undermining some of the support these orders helped us earn from the public and our allies. If we do not make advances in closing GTMO, that support will erode further. The FY 2013 National Defense Authorization Act (NDAA) renews and adds to these challenges. However, consistent with your signing statement, I believe the following measures would revitalize a viable GTMO policy and set us on a path to closure.

(C) Designate a Senior White House Official for GTMO: I recommend you both appoint a senior White House official to lead all GTMO efforts and also direct agencies to pursue certification of existing transfer designations and any new transfer designations resulting from the periodic review process. A renewed GTMO closure policy requires detainee transfers. The GTMO detainee transfer restrictions in the FY 2011 and FY 2012 NDAA's required the Secretary of Defense, with my concurrence, to "certify" numerous conditions prior to any transfer, which effectively prevented any transfers except those few excepted from certification (i.e., only transfers pursuant to a U.S. court order or to effectuate a military commission pre-trial agreement). Following 71 transfers in this Administration, the GTMO population now stands at 166 detainees. State has facilitated only four transfers in the past two years, each pursuant to the narrow certification exceptions, despite dozens approved for transfer. Working through a

CONFIDENTIAL

Classified by Secretary of State Hillary Rodham Clinton
E.O. 13526, Reasons: 1.4 (b) and (d)

CONFIDENTIAL

- 2 -

“transfer working group.” which is not NSS-led, the Department of Defense and other agencies have been wary of attempting certification without clear and specific guidance – there have been zero transfer certifications to date. The FY 2013 NDAA renews certification requirements and removes the pre-trial agreement exception. Only one transfer certification is now being considered. Without a change in approach, this impasse will continue. Additionally, 46 detainees are designated for continued detention; the periodic review process you ordered in March 2011 is vital to a credible policy that includes continued detention. We need a White House lead.

(C) **Engage Congress Now:** I recommend that, in a coordinated legislative strategy, you direct efforts to prevent Congress from reenacting the current restrictions in FY 2014. We should engage supporters of your policy but also some proponents of GTMO, on the grounds that tying the Executive’s hands on detention policy has negative national security implications beyond GTMO. We will face resistance but need to lay the groundwork now, making the following case: (1) this Administration’s transfer efforts are responsible and advance our national interests; (2) the federal courts provide a more stable venue for conspiracy and material support for terrorism charges under prevailing D.C. Circuit precedent (because these are not war crimes under international law, they are not charges available in military commissions for detainees at GTMO); (3) a recent Government Accountability Office report, requested by Senator Feinstein, bolsters the cost efficiency and feasibility of housing some GTMO detainees in U.S.-based facilities; and (4) federal courts are time-tested and credible to our allies. (If the law permits, I recommend that you consider transfers to the United States for pre-trial detention, trial, and sentences.)

(C) **Yemeni Detainees:** Any path towards GTMO closure must include a plan for Yemeni detainees, who account for over half the GTMO population. John Brennan has focused the interagency on this problem. The State Department supports helping Yemen develop a rehabilitation program and other measures to address both future transfers from GTMO and Yemen’s own domestic extremists. This is a serious challenge given Yemen’s minimal resources and weak central authority. among other problems.

1.4(D)
B1

(C) We must signal to our old and emerging allies alike that we remain serious about turning the page on GTMO and the practices of the prior decade. The revitalization of transfers, efforts to prosecute some detainees in federal courts,

CONFIDENTIAL

CONFIDENTIAL

- 3 -

a longer-term approach to the return of Yemeni detainees, and credible periodic reviews would send that signal and renew a credible detention policy.

CONFIDENTIAL