

## QUESTIONS FOR THE RECORD

**For Major General Paul Eaton**

**From Senator Amy Klobuchar**

### ***"CLOSING GUANTANAMO: THE NATIONAL SECURITY, FISCAL, AND HUMAN RIGHTS IMPLICATIONS"***

**July 24, 2013**

#### **Detainee Policy**

- Closing Guantanamo is important and would end a troubling period in our country's history. But we also need to look to the future. We are almost certain to face continued threats from transnational terrorists who will try to attack the United States at home and overseas. We will end up capturing, detaining, and interrogating some of them. We need to ensure we have a clear policy for how to handle them.
- **Do you believe the United States currently has a clear policy for handling foreign terror detainees?**

Yes.

For those non-US citizens who commit criminal acts in the United States, whether categorized as acts of terror or not, the United States Federal Court system, specifically under Article III, has jurisdiction. Our judicial system has proven itself effective and efficient in handling hundreds of cases of foreigner perpetrated acts of criminality/terror. Our judges have managed to maintain the dignity of the courts, the proper handling of classified information and proper case disposition. Our prosecutors have achieved a very high conviction rate and those convicted of crimes are incarcerated in our federal prison system, where none have escaped.

For those non-US citizens who commit criminal/terror acts against the United States outside US borders, we have systems in play under US law and covered by many bi-lateral treaties, to kill or capture the perpetrator. Should the perpetrator be captured, we have mechanisms to bring him/her back to the United States for detention and trial in the same manner conducted for criminal/terror acts committed inside our borders.

The Guantanamo Detention Facility is an unnecessary and expensive alternative to the above discussion. Its existence is in fact a deterrent to the extradition of criminals/terrorists for trial and detention, and a remarkably effective recruitment tool for non-state terrorist organizations.

- **What key elements would you focus on in crafting detainee policy for foreign terror suspects?**

The most important element is to get the military out of what is really a civilian law enforcement problem. Non-state criminal/terror actors, or, un-privileged belligerents (unlawful combatant, illegal combatant), should be tried in the US judicial system. Those who directly engage in armed conflict in violation of the laws of war should be detained and tried according to the US Constitution and our very mature Article III Federal Courts. Articles 4 and 5 of GCIII are very clear in distinguishing between privileged and un-privileged combatants.

A second element is to better illustrate to the American people and to our allies the propriety of our judicial system to handle cases that should remain in our domestic courts and to dispel the notion that overseas detention and the use of the US military to adjudicate criminal/terror acts is counter-productive to US national interests.