

QUESTIONS FOR THE RECORD

For Elisa Massimino

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?**

As the war winds down in Afghanistan, law of war detention will no longer be a viable policy option. Outside of Afghanistan, the Obama administration had relied on the improved capacity and capability of a whole of government approach to capture, detain, and interrogate terrorism suspects to protect Americans and American interests.

First, the Obama Administration has relied on U.S. federal courts to prosecute terrorism crimes. Article III federal courts have successfully adjudicated nearly 500 international terrorism cases since 9/11¹, 67 of which involved foreign terrorism suspects apprehended overseas². According to a report by the Government Accountability Office, 98 detention facilities within the United States already hold 373 individuals convicted of terrorism or terrorism-related offenses.³ The United States has collaborated with our allies to extradite terrorism suspects for prosecution in the United States, including the recent cases of Abu Ghaith, Osama bin Laden's son-in-law, and Spin Ghul, an alleged al Qaeda operative. Article III prosecutions are

¹ Dep't of Justice Nat'l Security Div., *Statistics on Unsealed Terrorism and Terrorism-Related Convictions 9/11/01-12/31/11*, available at: <http://www.humanrightsfirst.org/wp-content/uploads/DOJ-Terrorism-Related-Convictions.pdf>.

² Deborah Pearlstein, *Counterterrorism in Court*, OPINIO JURIS, March 25, 2013, available at: <http://opiniojuris.org/2013/03/25/counterterrorism-in-court/>.

³ 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>.

a marked improvement over indefinite detention and military commissions at Guantanamo, which undermine U.S. global leadership on human rights, pose substantial legal problems, and compromise national security.

Second, the Obama administration has worked closely with foreign governments to facilitate prosecutions of terrorism suspects in their own jurisdictions. Through the Global Counterterrorism Forum—which brings together 29 countries plus the European Union—and bilateral assistance, the United States has helped lay a foundation for the lawful prosecution of thousands of terrorism suspects overseas since 9/11.

Third, the Obama administration has established a high-value interrogation group (HIG) that brings together key assets from the various law enforcement, defense, and intelligence agencies to conduct safe, lawful, and effective interrogations. Elements of the HIG have been deployed at least 14 times⁴, including to interrogate suspects in the Times Square and Boston Marathon bombings, as well as terrorism suspects apprehended overseas.

Lawful interrogations and prosecutions have produced valuable intelligence that has kept Americans safe, including: telephone numbers and email addresses used by al Qaeda and other terrorist groups; information about al Qaeda communications methods and security protocols; information about their recruiting and financing methods; the location of al Qaeda training camps and safe houses; information on al Qaeda weapons programs; the identities of operatives involved in past attacks; and information about future plots to attack U.S. interests.⁵

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

The end of war in Afghanistan will require the United States to determine lawful dispositions of all law of war detainees. Current detainee policy should focus on how to resolve the remaining cases of the 166 Guantanamo detainees. Human Rights First produced a white paper, “Guantanamo: A Comprehensive Exit Strategy” that builds on the comprehensive framework established by the Obama administration in the 2010 Guantanamo Review Task Force.⁶

⁴ Carol Cratty and Pam Benson, *Special Terror Interrogation Group Used 14 Times in Last Two Years*, CNN, March 7, 2012, available at: <http://security.blogs.cnn.com/2012/03/07/special-terror-interrogation-group-used-14-times-in-last-two-years/>.

⁵ David Kris, *Law Enforcement as a Counterterrorism Tool*, JOURNAL OF NATIONAL SECURITY LAW AND POLICY, June 2011, at 85, available at: http://jnslp.com/wp-content/uploads/2011/06/01_David-Kris.pdf.

⁶ Guantanamo: A Comprehensive Exit Strategy, Human Rights First (2013), available at: <http://www.humanrightsfirst.org/uploads/pdfs/close-GTMO-july-2013.pdf>.

Article III Courts

- New laws have been passed and Article III court procedures have been updated over the past several years to try to enhance the legal system's ability to successfully try terrorism suspects.
 - **Are Article III courts better able to handle terrorism cases today than before 9/11? Which changes do you think are most significant?**

Federal courts have successfully adjudicated nearly 500 international terrorism related cases since 9/11⁷, 67⁸ of which involved foreign terrorism suspects captured overseas. As Human Rights First has documented in a report, *In Pursuit of Justice*⁹, written by experienced federal prosecutors, federal courts have the history, experience, and precedent to successfully prosecute terrorism cases, in sharp contrast to military tribunals. Since 9/11, there have been important, if controversial, reforms to the substantive and procedural law governing Article III terrorism prosecutions, including: changes to the Foreign Intelligence Surveillance Act to allow additional collection and use of foreign intelligence information for prosecutions; clarification of the scope of certain terrorism crimes—such as material support for terrorism—to overseas conduct; and refinements to methods for handling classified information in court.

⁷ Dep't of Justice Nat'l Security Div., *Statistics on Unsealed Terrorism and Terrorism-Related Convictions 9/11/01-12/31/11*, available at: <http://www.humanrightsfirst.org/wp-content/uploads/DOJ-Terrorism-Related-Convictions.pdf>.

⁸ Deborah Pearlstein, Counterterrorism in Court, OPINIO JURIS, March 25, 2013, available at: <http://opiniojuris.org/2013/03/25/counterterrorism-in-court/>.

⁹ RICHARD B. ZABEL AND JAMES J. BENJAMIN, IN PURSUIT OF JUSTICE 65 (Human Rights First 2008).