

United States Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
Senator Dick Durbin, Chairman

**“Closing Guantanamo: The National Security, Fiscal and Human Rights Implications”
Wednesday, July 24, 2013**

It has been more than 11 years since the Bush Administration established the detention center at Guantanamo Bay. In that time, I have spoken on the Senate floor more than 65 times about the need to close this prison.

I never imagined that in the year 2013 not only would Guantanamo still be open, but some would be arguing that we should keep it open indefinitely.

The reality is that every day that it remains open, Guantanamo prison weakens our alliances, inspires our enemies, and calls into question our commitment to human rights.

Time and again, our most senior national security and military leaders have called for the closure of Guantanamo. And listen to retired Air Force Major Matthew Alexander, who led the interrogation team that tracked down Al-Zarqawi, the leader of Al-Qaeda in Iraq. Here is what he said:

I listened time and time again to foreign fighters, and Sunni Iraqis, state that the number one reason they had decided to pick up arms and join Al Qaeda was the abuses at Abu Ghraib and the authorized torture and abuse at Guantanamo Bay. ... It's no exaggeration to say that at least half of our losses and casualties in that country have come at the hands of foreigners who joined the fray because of our program of detainee abuse.

In addition to the national security cost, every day that Guantanamo remains open, we are wasting taxpayer dollars. According to updated information that I received from the Defense Department just yesterday, Guantanamo Bay detention costs for Fiscal Year 2012 are \$448 million and for Fiscal Year 2013 the estimated costs are \$454 million.

In other words, we are spending \$2.7 million per year for each detainee held at Guantanamo Bay! Compare that with the estimated \$78,000 that it costs to hold a detainee in a federal supermaximum security prison.

This would be fiscally irresponsible during normal economic times, but it is even worse when the Defense Department is struggling to deal with the impact of sequestration, including furloughs and cut backs in training for our troops.

Every day, the soldiers and sailors serving at Guantanamo Bay are doing a magnificent job under difficult circumstances. But they are being asked to carry out an unsustainable policy of indefinite detention because we have failed to close Guantanamo prison.

Every day at Guantanamo Bay, dozens of detainees are being force-fed, a practice that the American Medical Association and International Red Cross condemn and that a federal judge recently found to be “painful, humiliating, and degrading.”

As President Obama asked, in his May 23rd national security speech: “Is this who we are? Is that something our Founders foresaw? Is that the America we want to leave our children? Our sense of justice is stronger than that.”

It is worth taking a moment to recall the history of Guantanamo Bay.

After 9/11, the Bush Administration decided to set aside the Geneva Conventions, which have served us well in past conflicts, and set up an offshore prison in Guantanamo in order to evade the requirements of our Constitution.

John Yoo wrote in a December 28, 2001, Office of Legal Counsel memo to Jim Haynes that Guantanamo was the “legal equivalent of outer space” – a perfect place to escape the law. But others, even within the Bush Administration, disagreed.

General Colin Powell, who was then the Secretary of State, objected. He said disregarding our treaty obligations, quote, “will reverse over a century of U.S. policy and practice ... and undermine the protections of the law of war for our own troops ... It will undermine public support among critical allies, making military cooperation more difficult to sustain.”

Then, Defense Secretary Donald Rumsfeld approved the use of abusive interrogation techniques at Guantanamo.

These techniques became the “bedrock” for interrogation policy in Iraq, according to a Defense Department investigation.

The horrible images that emerged from Abu Ghraib have seared into our memories some of these techniques, including forced nudity, threatening detainees with dogs, and placing detainees in painful stress positions.

Guantanamo became an international embarrassment, and the Supreme Court repeatedly struck down the Administration’s detention policies. As Justice Sandra Day O’Connor famously wrote for the majority in the *Hamdi* case, “A state of war is not a blank check for the President.”

By 2006, even President Bush said that he wanted to close Guantanamo. And in 2008, the Presidential candidates of both parties supported closing the prison.

Within 48 hours of his inauguration, President Obama issued Executive Orders prohibiting torture and setting up a review process for all of the Guantanamo detainees.

I’ll be the first to acknowledge that the Administration could be doing more to close Guantanamo. Last week, Senator Feinstein and I met with senior White House officials to discuss what they are doing under existing law to transfer detainees out of Guantanamo.

But let's be clear. The President's authority has been limited by Congress. We have enacted restrictions on detainee transfers –including a ban on transfers to the United States – that make it nearly impossible to actually close the facility.

It's time to lift these restrictions and move forward with shutting down Guantanamo prison. We can transfer most of the detainees to foreign countries. And we can bring the others to the United States, where they can be tried in federal court or held under the law of war until the end of hostilities.

Look at the track record. Since 9/11, nearly 500 terrorists have been tried and convicted in federal courts and are now being safely held in federal prisons. And no one has ever escaped from a federal supermax prison or a military prison.

In contrast, only six individuals have been convicted by military commissions and two of these convictions have been overturned by the courts. And today, nearly twelve years after the 9/11 attacks, the architects of the 9/11 attacks are still awaiting trial at Guantanamo.

During his confirmation hearing, I discussed this with Jim Comey, who was Deputy Attorney General in the Bush Administration and has been nominated to be FBI Director. Mr. Comey told me, "We have about a 20-year track record in handling particularly Al Qaeda cases in federal courts ... the federal courts and federal prosecutors are effective at accomplishing two goals in every one of these situations: getting information and incapacitating the terrorists."

Some may argue that we cannot close Guantanamo because of the risk that some detainees may join engage in terrorist activities. But studies show that the recidivism rates in U.S. prisons are more than 40 percent, far higher than the rate for Guantanamo.

And the often-quoted recidivism estimate includes hundreds of detainees who were transferred during the Bush Administration, before a strict process was put in place to screen detainees for transfer, work with host countries to mitigate any risks and implement appropriate security measures.

No one is suggesting that closing Guantanamo is risk free or that no detainees will ever engage in terrorist activities if they are transferred. But if a former detainee does return to terrorism, he will likely meet the fate of Saeed al-Shehri, the number 2 official in Al Qaeda in the Arabian Peninsula, who was recently killed in drone strike.

The bottom line is that our national security and military leaders have concluded that the risk of keeping Guantanamo open far outweighs the risk of closing it because the facility continues to harm our alliances and serve as a recruitment tool for terrorists.

It's time to end this sad chapter of our history. 11 years is far too long. We need to close Guantanamo.