

**STATEMENT FOR THE RECORD OF  
MAJOR GENERAL MICHAEL R. LEHNERT, USMC (RET.)  
BEFORE THE  
SENATE JUDICIARY COMMITTEE  
DECEMBER 7, 2021**

**SHUTTER THE DETENTION FACILITY AT GUANTANAMO BAY, CUBA**

Chairman Durbin, Ranking Member Grassley, Members of the Committee, thank you for the opportunity to appear before you.

The goal of terrorists is to change our behavior and make us live in fear. By that metric they have accomplished their mission.

Each of you recall those terrible days after 9/11. Some of you were here. Others among you wore the uniform of your nation's military, as I did. All of us felt an incredible responsibility to the American people we'd sworn to protect. Constituents demanded answers *and* action.

I was a newly promoted Brigadier General assigned to command a force of 8,000 Marines and Sailors at Camp Lejeune, North Carolina when the world changed. As we began to take captives in Afghanistan, the question about what to do with them became imperative. The Bush Administration settled on Guantanamo.

I had previously commanded a force charged with securing 18,000 Cuban and Haitian migrants at Guantanamo. Because of this background, the urgency of the situation, and the Marine Corps' ability to deploy rapidly, I was chosen to lead a Joint Task Force to build secure facilities to hold the first 100 detainees. We received our deployment order on Friday, January 4, 2002. We were given 96 hours to deploy to Cuba and build the first 100 cells. We did it in 87. My mission to set up GITMO and run it until the Army could take over lasted about 100 days.

The speed of Guantanamo's creation and the urgency to gain information had bad consequences. The legal ambiguities that make Guantanamo an attractive choice for some policy makers sets up extraordinary challenges for the soldiers, sailors, airmen and Marines who must execute these policies. We do not shed our oath to the Constitution or responsibility to adhere to U.S. laws and international norms when we deploy. The subsequent decision to subject detainees to so-called "enhanced interrogation techniques," and to avoid application of the Geneva Conventions except when it suited us, cost us international support and aided the cause of our enemies.

Speaking plainly, we are where we are today because of those misguided policy decisions to cast aside our values and the rule of law. I'm not an attorney, but even I know that when you forgo generations of legal thought and precedent, bad things happen.

The vast majority of the 780 men sent to Guantanamo never should have been there. Among the 39 prisoners who remain in Guantanamo, there are some who need to pay the price for their crimes. But what we have now is not justice. There is no justice for the detainees but more importantly the relatives of the victims of 9/11 and of other terror attacks deserve justice and they deserve closure. They aren't getting it.

Who gains by keeping Guantanamo open? Not America. Those who would do us harm are the ones who gain. They point to the existence of Guantanamo as proof that America is not a nation of laws. They use Guantanamo as a recruiting tool. They do not want us to close Guantanamo. Some of you might be thinking. "My constituents don't ever ask me about Guantanamo" and you'd be correct. Most of America

has forgotten about Guantanamo. But hear me when I tell you that our enemies have not. Closing Guantanamo responsibly restores the reputation of America, ensures accountability for those who have committed crimes against us, and provides closure for the families of those they have harmed.

The issue isn't *whether* we must close Guantanamo, but how? Presidents on both sides of the aisle have said it needs to close. More than 50 retired generals and admirals have said it should be closed, as have our country's national security officials. Many of you have as well. You are right. So how do we do it? Here are some suggestions.

First, make someone in the White House clearly responsible for closure and give them a finite period of time to make it happen. I was given 96 hours to open it. 96 days to close it seems reasonable. Whoever gets this thankless job needs to have the authority to direct the necessary elements of our government to make it happen.

Second, there also needs to be a senior official at the State Department in charge of negotiating transfers. More than two thirds of the remaining detainees—27 of them—have not been charged with any crime. These detainees must be transferred either to their country of origin or a willing host nation. Thirteen have already been approved for transfer by our defense and intelligence agencies. Continuing to hold these uncharged detainees costs the U.S. taxpayer \$13 million dollars annually per detainee, ties up troops that could be used elsewhere, and makes a mockery of our system of justice. Let's stop admiring the problem and transfer these detainees out of GITMO without further delay.

For the remaining 12 who have been charged, it is time that we recognize that the commissions have failed. I have little sympathy for these men and a great deal of empathy for their victims. But by any objective standard the military commissions have failed while our federal courts have been remarkably successful holding our enemies responsible and in securing significant sentences for terrorists. The victims of these men deserve justice. They deserve closure. They are not finding it through military commissions even though some very good people have tried to make them work.

At this point, we must bring these cases to a close through negotiated plea agreements if we want to see resolution in our lifetimes. It may require taking the death penalty off the table. If that is the case, so be it. The death penalty serves no useful purpose other than providing martyrs for our enemies. Again, I am not a lawyer but I understand that plea deals could be reached within the commissions themselves or by video in federal court. In those agreements the parties can make arrangements for where convicted defendants will serve out their sentences. This sensible approach will at least bring closure, if not the justice that we could have had if we had taken a different path two decades ago.

Now some are going to worry that detainees who are released might turn around and try to harm us. The question of risk is real and I acknowledge it. My life as a Marine involved managing risk. But in my view the damage caused by continuing to ignore the rule of law and gifting a recruitment tool to our enemies far outweighs the risk that some of these aging and sickly detainees might one day engage in terrorism. It is hard to overstate how damaging the continued existence of Guantanamo has been to our national security and the fundamental values we stand for as a nation. Who we are cannot be separated from what we do. It is past time to close Guantanamo and reaffirm who we are as a nation.