

Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights and Human Rights
“Closing Guantanamo: The National Security, Fiscal, and Human Rights Implications”
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Congressman Mike Pompeo (KS-04)

Chairman Durbin, Ranking Member Cruz, Members of the Subcommittee, I am honored to testify before this Subcommittee.

The implications of closing the detention facility at Guantanamo Bay continue to be debated in both Chambers of Congress and throughout the country. As with any complicated matter, I believe policy makers should understand, and hopefully agree on, key facts before deciding on a course of action. I hope my testimony will contribute to a better understanding of the facts.

By way of background, after graduating from the United States Military Academy at West Point, I had the great honor of serving in the United States Army as a Cavalry officer for five years.

After my military service, I graduated from Harvard Law School—having served as an editor of its law review. I then worked as an attorney at the law firm of Williams and Connolly here in Washington before running two industrial companies in Kansas.

Today, I serve as a member of the House Permanent Select Committee on Intelligence.

The debate about the detention facility at Guantanamo Bay is not simply a question of treatment of enemy combatants. The continuation of GTMO is a critical component of America’s counterterrorism strategy

and how we set about the government's primary moral obligation—keeping Americans secure from enemy threats.

I. Today's Reality at the U.S. Facility at Guantanamo Bay, Cuba

To better understand the true nature of the detention facilities at Guantanamo Bay, I made it a personal priority to tour the facility, so I could observe the treatment of the detainees, first-hand. I did so in May of this year. The facts on the ground contradicted a number of myths:

A. The professionalism of our troops is beyond reproach.

Every American should be proud of the integrity shown by the U.S. military personnel caring for these detainees. Their work is difficult, but they bring the highest honor and care to every task.

B. The detainees are treated with respect and dignity.

Let me be clear: There are no human rights violations occurring at GTMO. There is no doubt that the detainees are held in conditions that meet or surpass the standards provided for under the Geneva Conventions. I have observed first-hand that the U.S. military personnel running the facilities make every effort to ensure that all detainees are treated well. In fact, given the safe and secure environment that GTMO provides, most detainees maintain significantly more freedom of movement and activity than they would in a maximum security U.S. prison. They have access to gym equipment, educational material, entertainment, and top-rate medical and dental care—health care that matches the level of care received by the U.S. military personnel who guard them.

I would be remiss here if I did not address the current so-called “hunger strike” at GTMO. This political stunt, orchestrated or encouraged at least in part by counsel for the detainees, should not be rewarded. Claims that the efforts by our guards to force-feed those GTMO detainees currently refusing nutrition are inhumane and should cease are simply wrong. Great care is taken by U.S. personnel to ensure proper nutrition for all detainees; the methods used by military personnel to feed those detainees who wish not to feed themselves meet court-approved standards and are carefully monitored by medical personnel and those in command.

And it is right that we do this—we feed these detainees because it is our moral duty to make sure those under the care of the United States continue to live healthy lives, without unnecessary pain and agony. It is equally important to our men and women in uniform who have volunteered to defend this country that they not have to endure unnecessary loss of life on their watch.

Finally, feeding these detainees is moral and necessary for another reason: Many detainees are likely pressured by other detainees to participate in the hunger strike, and thus do so largely against their will. I commend our military personnel who strive each day to ensure these detainees do not suffer from hunger or malnourishment.

Having now addressed the conditions on the ground today at GTMO, let me turn to the national security, human rights, and legal issues surrounding the detention facility.

II. Detention at GTMO is Wholly Constitutional

Many continue to question the constitutionality of the detention facility at GTMO and the continued detention of those housed there. Back to first principles—we remain at war with al Qaeda and associated extremist groups who daily seek to kill Americans and attack American interests and allies around the world. Our troops remain in the battlefield and our nation remains at risk. As long as these groups fight us, we remain at war. And as the Supreme Court made clear in *Hamdi v. Rumsfeld*, and as courts have confirmed many times since, the capture and detention of enemy combatants is a necessary incident to the conduct of war.

The men held at GTMO are our enemies, they have been given access to Article III courts to review the legality of their confinement, and many will soon face military tribunals for their acts. There is nothing unconstitutional about continuing detention at GTMO. As long as the United States remains at war with enemies who continue the battle they raged on September 11, 2001, the constitutionality of detaining those we capture in this fight cannot be seriously questioned

III. The Detention Center at Guantanamo Bay is Critical To American National Security and Must Be Kept Open

The detention center is critical to American national security. Every identified alternative presents real risks to those of us in America, civilians all around the world, and to our service members abroad.

A. Current Detainees Still May Provide Valuable Intelligence

Although current detainees have been off the battlefield for some time, they may well continue to provide valuable intelligence to U.S. intelligence collectors.

B. We Remain at War With Al Qaeda and Its Supporters And GTMO Is Important to Defeating Our Enemy

We are still engaged in a counterterrorism battle all around the globe. Our need of a secure location in which to detain captured enemy combatants remains. The intelligence collection that can occur at these locations is enormous and central to our efforts to use enemy combatants to identify, capture and defeat the enemy.

I just returned from a trip to Afghanistan and I can guarantee you that there are still scores and scores of radical and committed terrorists who want to do great harm to our troops, our country, and the American people.

This battle will be fought in one of two places: overseas where every American has the training and weapons necessary to accomplish their mission and return safely to their family; or on the streets of New York or Wichita, Kansas.

That's why it's so important to ensure that the number one priority is intelligence collection from the terrorists we do find. To do so, we must have a method of capturing them, a place to hold them, and a means of questioning them. A fulsome use of the safe and modern facilities at Guantanamo is the best mechanism available to achieve this priority.

C. Release or Transfer of All Detainees to Other Countries Will Result in Dead Americans and Risks Harm to the Detainees

We could release GTMO detainees to 3rd-party countries. If we did so, we can be confident that many will return to the battlefield and continue their war against Americans. Of the GTMO detainees released to date, over ¼ have returned to the battlefield. This presents an

unacceptable risk to the homeland and to our servicemen and women in the field.

Just this past week, Al Qaeda conducted an attack on multiple detention facilities in Iraq, resulting in the escape of many top terrorist leaders. This is just one example of the danger this approach takes. Many countries are simply incapable of ensuring the continued detention of these individuals. In addition, transfer to third parties presents a human rights risk—namely, torture—to detainees who are currently under our control.

D. Returning Detainees to the United States Presents an Unacceptable Risk and Americans Know It

The other option is that we can bring them to the United States, where the potential for endless litigation and rights expanded well beyond those afforded to enemy combatants, subjects Americans to the real possibility that terrorists might be released onto American streets.

This is a risk we can avoid if we have the courage to see the benefit of keeping GTMO open. I believe we owe it to the American people to avoid bringing terrorists into the country. We did not take the fight to the terrorists to bring the terrorists back to the United States.

IV. Dangers of Administration Policy & Rhetoric

Lastly, I want to comment on the way this Administration has conducted itself on this matter. The President decided to close GTMO before having a full understanding of the facts.

After over four years in office, the President continues to insist we pursue a political goal and then, later, figure out a way to meet that goal. The President knows full well that many detainees—including the 9/11

Five—are not transferable and not returnable to the U.S. Yet he continues to mislead the American people about the dangers and realities of closing this critical facility.

Members of Congress know this too. Just last night, the House of Representatives crushed an amendment to the Defense Appropriations bill that would have allowed the President to begin the closure of GTMO by a bipartisan vote of 247 to 175.

The President seems to be more concerned with mollifying the grievances of al Qaeda than defending against the real dangers these enemy combatants pose to the American people. By insisting on a catch-and-release counter-terrorism strategy, the President has communicated to our enemies that we lack the resolve to see this conflict to its end.

It is thus small wonder that terrorists have become emboldened. U.S. targets have been attacked more frequently in the last year than in the four years before 9/11.

V. Conclusion

So I close on this: The War on Terror is real. Guantanamo Bay serves the national interest of the United States. It is constitutional. It is no more a recruiting tool for terrorists than is their hatred for our way of life. Guantanamo Bay keeps Americans safe.