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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

December 4, 2024

The Honorable Lloyd J. Austin III
Secretary of Defense
Department of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Secretary Austin:

I write to again urge you to ensure that the victims of 9/11 and their thousands of family members and loved ones finally receive a measure of justice and closure. Far too many family members have died waiting for the military commission trial at Guantánamo to start—let alone deliver justice. After more than two decades of delays and false promises, this unconscionable retraumatizing of these families¹ must end while there is still time.

I have chaired two hearings on Guantánamo Bay over the past 11 years and have followed the military commissions closely for more than two decades. In all these years, the prospects of a meaningful trial and a verdict in the 9/11 case that could be upheld on appeal has only grown more elusive. In the Senate Judiciary Committee's December 2021 hearing, 9/11 family member Colleen Kelly bravely testified about her family's loss of her brother Bill Kelly, Jr. in the North Tower. She recounted that a number of other 9/11 family members she had known had died waiting for the military commission trial of the defendants to start. She pleaded with Congress to ensure that the remaining family members see some measure of accountability before their own deaths.²

As the news broke that prosecutors in the 9/11 case had secured guilty pleas from three of the defendants on July 31, Colleen's mother JoAnne was in hospice care. Colleen was able to reassure her that the family had done right by Bill. Colleen did not have the heart to tell her that you reversed the guilty pleas two days later. JoAnne Kelly passed away on August 6th with the ongoing lack of finality only compounding the Kelly family's immeasurable loss.

A week later, Ted Olson, former Bush Administration Solicitor General whose wife Barbara Olson was killed on Flight 77, wrote about the relief he felt when the prosecution announced that they had secured guilty pleas from three of the 9/11 defendants—ensuring that they would spend

¹ Carol Rosenberg, Twists and Turns in Sept. 11 Plea Process Are Agonizing, Families Say, N.Y.T., Nov. 22, 2024, <https://www.nytimes.com/2024/11/22/us/politics/sept-11-plea-process-families.html>.

² Closing Guantanamo: Ending Twenty Years of Injustice: Hearing Before the Committee on the Judiciary, 117 Cong. (2021) (Statement of Colleen Kelly), <https://www.judiciary.senate.gov/imo/media/doc/Kelly%20Testimony4.pdf>.

the rest of their lives in obscurity in prison.³ He urged you to reconsider your attempt to withdraw those agreements, emphasizing that because of the flawed military commission system, “there has been no justice, no resolution and no finality for 9/11 victims or their loved ones in the 23 years since the attacks...Our government cannot justify continuing this flawed commission prosecution...Only then can we begin to close this painful chapter in our nation’s history.” Like JoAnne Kelly and so many other 9/11 family members, Ted Olson died earlier this month without such closure.

I hope you will carefully consider what the lack of plea agreements will entail for the remaining living family members. Years of litigation and appeals are certain.⁴ If the defendants themselves die in the interim, they will do so innocent in the eyes of the law. Family members are unlikely to obtain more information than would currently be guaranteed to them under the terms of the plea deals. And the likelihood that any death sentences would be upheld on appeal is exceedingly low.

So, I ask you, why would we continue to put families through this ordeal? You have the power and the responsibility to deliver a measure of justice and judicial finality for the victims and their families through final guilty pleas. I hope you choose to do so.

Sincerely,



Richard J. Durbin
United States Senator

³ Theodore B. Olson, Opinion: I lost my wife on 9/11. But I believe the plea deals should go forward, Wash. Post, Aug. 14, 2024, <https://www.washingtonpost.com/opinions/2024/08/14/9-11-plea-deals-theodore-olson-austin/>.

⁴ Scott Roehm and Ian Moss, How Much (or How Little) Does the Biden Administration Want Justice in the 9/11 Case?, Just Sec., Nov. 18, 2024, <https://www.justsecurity.org/104893/guantanamo-plea-deal-appeal/>.