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House of Representatives

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January 15, 2010

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave NW Rm 5111
Washington DC 20530

Dear Attorney General Holder:

I saw the reports today that you are considering trying Guantanamo Bay detainee Riduan Isamuddin, also known as Hambali, at the federal courthouse in Washington, D.C. Such a plan is unacceptable and I will vehemently oppose it in Congress as the ranking member on the House Commerce-Justice-Science Appropriations Subcommittee, which funds the Federal Bureau of Investigation (FBI) and U.S. Marshals Service.

I have been receiving classified briefings on terrorist threats to the U.S., including briefings as recently as this week, and my concerns about civilian trials for Guantanamo detainees have only been heightened. If the American people knew these threats, they would never tolerate the transfer of these detainees to major urban population centers for trial. Such a plan also will place an overwhelming burden on federal and local law enforcement to protect the public. You may recall that I raised these same concerns in my enclosed April 23, 2009, letter to you to which you have still not responded.

I am also concerned about the staggering costs of holding such a trial inside the U.S. My staff has been briefed on the costs of the trial of the 9/11 conspirators in New York City and have been told that your administration expects that trial alone to cost more than $250 million a year. Given that the Moussaoui trial in Alexandra lasted more than four years, we can logically assume that the New York trial will take just as long, if not longer – costing taxpayers more than $1 billion. Similar assumptions could be made for security costs for any trial held in Washington, D.C. could be made.

A better solution would be to try these cases at the secure, state-of-the-art courthouse that has been constructed at Guantanamo Bay for this very purpose. To ensure a fair and transparent trial, the administration could allow the International Red Cross, Amnesty International, and other human rights groups to observe the trials at Guantanamo. Alternatively, if the administration is determined to try these cases inside the U.S., they should only be held at remote, secure facilities far away from population centers. Washington D.C., New York City, Alexandria, Virginia, are far too populated to ensure adequate security for the civilians in those cities.

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Finally, I believe that this administration's primary rationale behind the urgent need to transfer detainees to the U.S. is based on a fundamentally faulty assumption. As you will recall, there was no detainee detention facility at Guantanamo Bay when terrorists were recruited to attack the World Trade Center 1993, nor when the U.S. Air Force's Khobar Towers housing comples in Saudi Arabia was attacked in 1995, nor when the U.S. embassies in Kenya and Tanzania were attacked in 1998, nor when the USS Cole was attacked in 2000 in Yemen, nor when the World Trade Center and Pentagon were bombed on September 11, 2001.

Guantanamo Bay is not even the primary recruitment tool used by al Qaeda today. Last month, Thomas Joscelyn wrote in the *Weekly Standard:*

> "During a press conference last week, White House press secretary Robert Gibbs said that al Qaeda's senior leaders have referred to Guantánamo some 32 times in their recruitment videos since 2001. Gibbs implied that this is a lot. It isn't. Al Qaeda refers to the wars in Iraq and Afghanistan, as well as the existence of Israel, as reasons to wage jihad far more frequently in its propaganda.
>
> "Gibbs pointed to the fact that senior al Qaeda leaders referred to Guantánamo four times in 2009 alone. Gibbs did not specify which messages he had in mind, but Zawahiri's August 5 tape, entitled 'The Facts of Jihad and the Lies of the Hypocrites,' is a typical example of al Qaeda's Gitmo-related propaganda. According to a 26-page translation published online by the NEFA Foundation, Zawahiri mentioned Guantánamo five times. By way of comparison, words related to 'Iraq' and 'Afghanistan' appear more than 70 times each. The words 'Israel' and 'Israelis' appear 39 times. The word 'Zionist' appears another four times--in the context of an imagined American-Zionist conspiracy against the Muslim world. (According to Ayman al-Zawahiri, by the way, Obama is himself a participant in this conspiracy.) And the words 'Jew,' 'Jewish,' and 'Jewishness' appear another 12 times.
>
> "Guantánamo has simply never been a major part of al Qaeda's recruitment strategy. But even if it were and we closed it, the terror masters would simply find the next pretext for justifying their acts. After all, if we are to close Guantánamo because al Qaeda objects to it, then why not abandon America's entire foreign policy agenda?'"

I urge you to reevaluate your rationale for rushing to close Guantanamo Bay – both with regard to the Hambali and Khalid Sheik Mohammed trials, as well as your reckless plan to release dangerous detainees to unstable countries like Yemen, Afghanistan, Somaliland, and Algeria.

Thirty constituents from my congressional district died at the Pentagon on September 11, 2001. I have visited the site of the attack on the U.S. Embassy in Lebanon and laid a wreath

there. I went to Ground Zero in New York City when the dust was still in the air. These experiences are very real reminders of the dreadful consequences of terrorist attacks for American families. Every member of this Congress and the administration has a moral obligation to do everything within our power to reduce the risk of terrorism to Americans, not to bolster it.

Sincerely,

Frank R. Wolf
Member of Congress

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April 23, 2009

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The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave NW Rm 5111
Washington DC 20530

Dear Attorney General Holder:

My letter of March 13 indicated my concerns about bringing enemy combatants from the detention facility at Naval Station Guantanamo Bay, Cuba, to the United States. I understand that the president has given you the task of determining the release, transfer or prosecution of these detainees. I noted your recent comments on how this is the most challenging aspect of your job as attorney general and I respect the difficulty of your position.

But as I have learned more about these detainees and received additional information from terrorism experts, I remain extremely concerned that transferring these combatants to locations near large civilian populations would place an overwhelming burden on the court system and endanger public safety.

The detainees currently held at Guantanamo Bay are some of the most dangerous individuals in the world who have openly dedicated their lives to killing Americans. Kahlid Sheik Mohammed was the architect of the 9/11 attacks and took pleasure in beheading *Wall Street Journal* reporter Daniel Pearl. Ramzi Binalshibh was identified as one of the planners of 9/11 and was supposed to be one of the hijackers until he was denied entry into the United States. Walid bin Attash is believed to be the mastermind behind the bombing of the U.S.S. Cole in Yemen in 2000. These individuals are responsible for planning the deaths of thousands of Americans.

Guantanamo Bay also houses combatants who were detained after actively trying to kill U.S. troops in Iraq and Afghanistan. From news reports I have read, it appears consideration is being given to allow these detainees rights that go beyond protections offered U.S. military personnel by the Uniform Code of Military Justice. Giving such rights to the men listed above greatly concerns me.

Earlier trials of terrorists in the U.S. demonstrated the necessity for extraordinary security resources that would be needed if some of those at Guantanamo are transferred here. *Newsday* and the *Buffalo News* reported that during the 1995 trial in New York of Omar Abdel Rahman, the mastermind of the 1993 World Trade Center bombing, terrorist confederates of El Sayyid Nosair,

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another World Trade Center bombing planner, were plotting to break him out of Attica State Prison in New York. In the same case, court tapes show that conspirators provided each other assurance that, in the event that some were captured, the others would work to free them. In addition, during the 2000 trial of Mahmud Salim, one of the terrorists accused of the 1998 bombing of the U.S. Embassy in Kenya, he stabbed New York prison guard Louis Pepe in the eye during an escape attempt. Al Qaeda saw the rights given to its members to meet with counsel as an opportunity to carry out a violent escape attempt. Mr. Salim was one of the original followers of Osama bin Laden and the highest ranking al Qaeda member held in the U.S. at the time.

In addition to trying to escape from prison, al Qaeda members have communicated with confederates while in prison. It is my understanding that El Sayyid Nosair was involved in plotting the 1993 World Trade Center bombing while in custody in Attica State Prison. In addition, Osama bin Laden has publicly credited Sheik Abdel Rahman with issuing the "fatwa" that approved the 9/11 attacks while he was in federal prison, despite the high security confinement conditions imposed on him. It also emerged later that, with the assistance of his lawyer, Rahman was continuing to send instructional messages to the Islamic Group, his Egyptian terrorist organization.

In 2004, *NBC News* reported that, despite their incarceration in maximum security conditions, convicted World Trade Center bombers were communicating by mail with terrorists in Madrid, Spain. There would certainly be strong reasons to believe that detainees currently held at Guantanamo Bay -- who are known to have rioted and grossly abused prison guards – would use their access to counsel and investigators in order to convey messages to their allies.

It took federal prosecutors eight years in the 1990s to try 29 defendants charged with terrorism-related crimes as a result of attacks on U.S. property and interests abroad. The detention facility at Guantanamo Bay currently holds almost 10 times that number. If it took eight years to prosecute 29 individuals, how long will it take to transfer and prosecute over 200?

How is the Justice Department responding to the fact that prosecutors, judges, and juries in recent terrorism trials, and their families, have required government protection measures, sometimes for many years, at great cost in manpower and to our security budget? Has the Justice Department estimated the cost of providing enhanced personal security for trials yet to come?

I am also concerned about the extra costs that will be incurred in preparing prisons and courthouses for possible trials. I understand that the courthouses in which prior terrorism cases were litigated and the prisons where defendants were held had to be "hardened" to accommodate terrorism prosecutions and the attendant threats they entail for participants and the public. Can you provide me with what the cost was for these upgrades? Has the Justice Department considered what the cost will be for upgrading facilities for detainees who may be transferred to the civilian court system.

I am also concerned about the precedent that the standards set in *Boumediene v. Bush,* the Supreme Court case regarding al Qaeda operative Lakhdar Boumediene, which granted habeas corpus rights to Guantanamo detainees, would set for future cases. In his dissent in this case, Justice Antonin Scalia raised the issue that if enemy combatants currently housed at Guantanamo Bay are given habeas corpus rights, the same rights would have to be given to any combatant detained where the U.S. military conducts operations. Recently, Justice Scalia's admonition has proved prescient as a federal judge in Washington ruled that *Boumediene's* grant of habeas corpus rights now extends to Afghanistan.

The process in deciding where the detainees will ultimately be housed and under what means they will be tried should be transparent so the American people know who is making these important decisions. I believe that the Justice Department should meet with those who lost loved ones in the 9/11 attacks as well as the families of service members who have died in Iraq and Afghanistan and ask for their perspective on the fate of these detainees, especially those who played a lead role in carrying out the attacks.

If you are convinced these combatants must be transferred to the United States, I believe an isolated part of the country away from population centers would be a better choice. As your department continues to consider plans for these combatants, I ask that you please address these issues as well as the questions I asked in my earlier letter. I also have these additional questions:

1. The trial of Zacharias Moussaoui in Alexandria, Virginia, lasted over four years due primarily to the judge's belief that the due process standards applicable in civilian trials required more disclosure than the Justice Department believed was required and safe to provide. I understand any appeal to the 4th Circuit Court could take up to an additional year per trial. Considering that a federal appeals court in New York just recently decided an appeal in the embassy bombing case -- more than a decade after the attack and eight years after the trial -- how long does your department envision civilian legal proceedings for Guantanamo detainees taking?
2. Khalid Sheikh Mohammed, Mohammed al Qatani and Ramzi Binalshibh have been linked directly to the September 11, 2001, attacks and appear far more culpable than Zacharias Moussaoui. Will the Justice Department seek the death penalty for detainees such as them? If so, does the Justice Department think seeking the death penalty would lengthen each trial, and, if so, for how long?
3. Will the defense attorneys for these combatants be given access to classified evidence that would inevitably lead to legal challenge and possible consideration by the Supreme Court, adding more time to trials?
4. If terror suspects are brought into the civilian system for trial and they insist on representing themselves, would the Justice Department allow them access to all discovery, including classified national defense information?

5. Will defense attorneys be allowed discovery on all such evidence and be allowed to challenge its admission in court? Would this require allowing defense attorneys to enter combat zones to view evidence?
6. Will U.S. service members who collected evidence on the battlefield be forced to leave their duties in theater and return to the United States to give testimony in open court?
7. Will military personnel be required to have training on how to legally obtain evidence and preserve the chain of command needed to make such evidence admissible in court?
8. Will every combatant be given full legal rights and will these rights also be given to combatants detained in the future?
9. The system of military tribunals for these combatants was designed to avoid the difficulties inherent in civilian trials. If the military is trusted to run a system of justice good enough for members of our armed forces, why is it deemed insufficiently fair for these detainees who have openly stated they are "terrorists to the bone?"
10. If these combatants are transferred to the U.S. Court for the Eastern District of Virginia, how will the trials of other defendants in that court be affected?
11. If regular defense attorneys are not allowed to meet with clients at the jail facility in Alexandria due to increased security associated with these combatants, is the Justice Department concerned that those cases could be delayed to the point where those defendants have grounds for appeal?
12. The Moussaoui trial took a heavy toll on the prosecution team and I would be concerned that extended trials for numerous combatants could overwhelm the legal staffs. Do you have a plan for addressing how prosecution teams will work?
13. Are you concerned about the safety of the legal staff and the jurors who are assigned to these cases and have steps been taken to ensure their safety and the safety of their families?
14. Has the Justice Department considered establishing a separate court similar to the FISA court where judges would be assigned these cases on a rotating basis?
15. Has the Justice Department considered consulting with military experts, U.S. Marshals and other law enforcement officials before determining the safest place to house these detainees?
16. Have you consulted with the families of the victims of 9/11 as well as the families of the service members killed in Iraq and Afghanistan as to how these detainees should be prosecuted? If not, will you direct your staff to do so?
17. Will the Justice Department provide the Appropriations Committee with the costs for the security measures necessitated by the terrorism cases of the 1990s and the Moussaoui case?
18. The Congress has received your FY 2009 supplemental request, seeking $47 million for some ongoing DOJ activities. But the majority of the funding, $36.4 million, is for activities related to the closure of the Guantanamo detention facility. Can you tell the Appropriations Committee what exactly the department is doing related to Guantanamo, and what you are proposing to do in the future with the requested supplemental funding?
19. I understand that you have created three task forces to implement the executive orders regarding Guantanamo Bay. How many individual detainee cases must be reviewed and disposed of?

20. Can you provide a list of possible outcomes from these task forces, such as transferring detainees to their home countries or detaining them indefinitely without trial?
21. For any detainees released to third countries, what assurances are you seeking from those governments in order to minimize the risks of recidivism?
22. You have stated that the issues related to closing Guantanamo Bay represent your biggest challenge. If the task forces conclude that the risks associated with civilian trials in the United States are too dangerous and costly, will you recommend to the president that the closure of the detention facility be delayed?
23. Beyond the supplemental request, what other post-Guantanamo requirements will there be?

I realize that your department has numerous issues to address before Guantanamo Bay is closed, and all the combatants housed there moved. As the Justice Department continues to consider the disposition of these combatants, I think it is important for Congress to play an active role. As my previous letter stated, I take Congress's oversight role seriously and believe that Congress must be consulted before any of these combatants are moved to the continental U.S.

Thank you for your service.

Sincerely,

Frank R. Wolf
Member of Congress

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