

# **FINAL REPORT**

## **GUANTANAMO REVIEW TASK FORCE**

**January 22, 2010**

**Department of Justice**

**Department of Defense**

**Department of State**

**Department of Homeland Security**

**Office of the Director  
of National Intelligence**

**Joint Chiefs of Staff**

## EXECUTIVE SUMMARY

On January 22, 2009, the President issued Executive Order 13492, calling for a prompt and comprehensive interagency review of the status of all individuals currently detained at the Guantanamo Bay Naval Base and requiring the closure of the detention facilities there. The Executive Order was based on the finding that the appropriate disposition of all individuals detained at Guantanamo would further the national security and foreign policy interests of the United States and the interests of justice.

One year after the issuance of the Executive Order, the review ordered by the President is now complete. After evaluating all of the detainees, the review participants have decided on the proper disposition—transfer, prosecution, or continued detention—of all 240 detainees subject to the review.

Each of these decisions was reached by the unanimous agreement of the agencies responsible for the review: the Department of Justice, Department of Defense, Department of State, Department of Homeland Security, Office of the Director of National Intelligence, and Joint Chiefs of Staff.

### **Review Process**

To implement the President's order, the Attorney General, as the coordinator of the review, established the Guantanamo Review Task Force and a senior-level Review Panel. The Task Force was responsible for assembling and examining relevant information on the Guantanamo detainees and making recommendations on their proper dispositions. The Review Panel, consisting of officials with delegated authority from their respective agencies to decide the disposition of each detainee, reviewed the Task Force's recommendations and made disposition decisions on a rolling basis. Where the Review Panel did not reach consensus, or where higher-level review was appropriate, the agency heads ("Principals") named in the Executive Order determined the proper disposition of the detainee.

Key features of the review process included:

- **Comprehensive Interagency Review.** The Task Force consisted of more than 60 career professionals, including intelligence analysts, law enforcement agents, and attorneys, drawn from the Department of Justice, Department of Defense, Department of State, Department of Homeland Security, Central Intelligence Agency, Federal Bureau of Investigation, and other agencies within the intelligence community.
- **Rigorous Examination of Information.** The Task Force assembled large volumes of information from across the government relevant to determining the proper disposition of each detainee. Task Force members examined this information critically, giving careful consideration to the threat posed by the detainee, the reliability of the underlying information, and the interests of national security.

- **Unanimous Decision-Making by Senior Officials.** Based on the Task Force’s evaluations and recommendations, senior officials representing each agency responsible for the review reached unanimous determinations on the appropriate disposition for all detainees. In the large majority of cases, the Review Panel was able to reach a consensus. Where the Review Panel was not able to reach a unanimous decision—or when additional review was appropriate—the Principals met to determine the proper disposition.

### **Results of the Review**

The decisions reached on the 240 detainees subject to the review are as follows:

- **126 detainees** were approved for transfer. To date, 44 of these detainees have been transferred from Guantanamo to countries outside the United States.
- **44 detainees** over the course of the review were referred for prosecution either in federal court or a military commission, and **36 of these detainees** remain the subject of active cases or investigations. The Attorney General has announced that the government will pursue prosecutions against six of these detainees in federal court and will pursue prosecutions against six others in military commissions.
- **48 detainees** were determined to be too dangerous to transfer but not feasible for prosecution. They will remain in detention pursuant to the government’s authority under the Authorization for Use of Military Force passed by Congress in response to the attacks of September 11, 2001. Detainees may challenge the legality of their detention in federal court and will periodically receive further review within the Executive Branch.
- **30 detainees** from Yemen were designated for “conditional” detention based on the current security environment in that country. They are not approved for repatriation to Yemen at this time, but may be transferred to third countries, or repatriated to Yemen in the future if the current moratorium on transfers to Yemen is lifted and other security conditions are met.

### **Looking Ahead**

With the completion of the review, an essential component of the effort to close the Guantanamo detention facilities has been accomplished. Beyond the review, additional work remains to be done to implement the review decisions and to resolve other issues relating to detainees. The Task Force has ensured that its analyses of the detainees and the information collected in the course of the review are properly preserved to assist in the resolution of these issues going forward.

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## **I. Introduction**

An essential component of the President's order calling for the closure of the detention facilities at the Guantanamo Bay Naval Base was the initiation of a new and rigorous interagency review of all individuals detained there. The purpose of the review was to collect and examine information from across the government to determine which detainees the United States should transfer or release from custody, prosecute, or otherwise lawfully detain.

This review is now complete. After carefully considering each case, the agencies responsible for the review—the Department of Justice, Department of Defense, Department of State, Department of Homeland Security, Office of the Director of National Intelligence, and Joint Chiefs of Staff—have unanimously agreed on the proper disposition of all 240 detainees subject to the review. While there remain other steps outside the scope of the review that must be taken before the detention facilities at Guantanamo can be closed, the completion of the review fulfills a central element of the President's order.

This report describes the process by which the review was conducted over the past year, the decisions resulting from the review, and the progress made toward implementing those decisions.

## **II. Background**

Following the terrorist attacks of September 11, 2001, the United States was faced with the question of what to do with individuals captured in connection with military operations in Afghanistan or in other counterterrorism operations overseas. Starting in January 2002, the military began transferring a number of these individuals to the detention facilities at Guantanamo. By the end of 2002, 632 detainees had been brought to Guantanamo. In 2003, 117 additional detainees were brought to the base, with 10 more detainees added in 2004, 14 detainees in 2006, five detainees in 2007, and one detainee in 2008. Since 2002, a total of 779 individuals have been detained at Guantanamo in connection with the war against al-Qaida, the Taliban, and associated forces.

From 2002 through 2008, most of the individuals detained at Guantanamo were transferred or released from U.S. custody, with the vast majority being repatriated to their home countries and others resettled in third countries willing to receive them. Of the 779 individuals detained at Guantanamo, approximately 530—almost 70 percent—were transferred or released from U.S. custody prior to 2009. The countries to which these detainees were transferred include Afghanistan, Albania, Algeria, Australia, Bahrain, Bangladesh, Belgium, Bosnia, Denmark, Egypt, France, Germany, Iran, Iraq, Jordan, Kazakhstan, Kuwait, Libya, Maldives, Mauritania, Morocco, Pakistan, Qatar, Russia, Saudi Arabia, Somalia (Somaliland), Spain, Sudan, Sweden, Tajikistan, Tunisia, Turkey, Uganda, the United Arab Emirates, the United Kingdom, and Yemen.

By January 20, 2009, the population of detainees at Guantanamo had been reduced to 242. Of the 242 remaining detainees, 59 had been approved for transfer by the prior administration and were awaiting implementation of their transfers.

### **III. The President's Executive Order**

On January 22, 2009, the President issued an Executive Order requiring the closure of the detention facilities at Guantanamo within one year. Noting the length of the detentions and the significant concerns they had raised both within the United States and internationally, the President determined that the "prompt and appropriate disposition of the individuals currently detained at Guantanamo and closure of the facilities in which they are detained would further the national security and foreign policy interests of the United States and the interests of justice."

Accordingly, the President ordered the Executive Branch to conduct a prompt and comprehensive interagency review of the factual and legal bases for the continued detention of all individuals remaining at Guantanamo. The President ordered that the review be coordinated by the Attorney General and conducted with the full cooperation and participation of the Secretary of Defense, Secretary of State, Secretary of Homeland Security, Director of National Intelligence, and Chairman of the Joint Chiefs of Staff.

The first task given to the review participants under the Executive Order was to assemble, to the extent reasonably practicable, all information in the possession of the federal government pertaining to any individual then detained at Guantanamo and relevant to determining his proper disposition.

The Executive Order then set forth the following framework for the review participants to follow in determining the disposition of each detainee:

- First, on a rolling basis and as promptly as possible, determine whether it is possible to transfer or release the detainee consistent with the national security and foreign policy interests of the United States and, if so, whether and how the Secretary of Defense may effect the detainee's transfer or release;
- Second, with respect to any detainee not approved for transfer or release, determine whether the federal government should seek to prosecute the detainee for any offenses he may have committed, including whether it is feasible to prosecute such individual in a court established pursuant to Article III of the United States Constitution (*i.e.*, federal court); and
- Third, with respect to any detainee whose disposition is not achieved through transfer, release, or prosecution, select other lawful means, consistent with the national security and foreign policy interests of the United States and the interests of justice, for the disposition of the detainee.

The Executive Order further directed that the Secretary of Defense, the Secretary of State, and other review participants work to effect promptly the release or transfer of all individuals for whom release or transfer is possible, and that the Secretary of State expeditiously pursue and direct such negotiations and diplomatic efforts with foreign governments as are necessary and appropriate to implement the order.

Finally, the Executive Order required that any individuals who remained in detention at Guantanamo at the time of the closure of the detention facilities be returned to their home country, released, transferred to a third country, or transferred to another United States detention facility in a manner consistent with law and the national security and foreign policy interests of the United States.

#### **IV. Implementing the Executive Order: The Guantanamo Review Task Force**

##### **A. Establishment of the Task Force**

To implement the Executive Order, the Attorney General established the Guantanamo Review Task Force and appointed an Executive Director of the Task Force on February 20, 2009. The Task Force was charged with assembling and reviewing relevant information on the Guantanamo detainees and making recommendations to senior-level officials on the proper disposition of each detainee pursuant to the framework set forth in the Executive Order. To ensure that the expertise and perspectives of each participating agency were brought to bear on the review process, the Task Force was established as an interagency entity. Further, to maximize collaboration and exchange of information among Task Force members, all Task Force staff were located together in a secure facility, on a single floor devoted to Task Force work, and connected electronically through a stand-alone classified network.

##### **B. Task Force Structure**

With the assistance of the participating agencies, the Task Force assembled a staff of over 60 career professionals, drawn from the Department of Justice, Department of Defense, Department of State, Department of Homeland Security, Federal Bureau of Investigation, Central Intelligence Agency, and National Counterterrorism Center. Included in this wide range of representatives were senior military officers, federal prosecutors, FBI agents, intelligence analysts and officers, military prosecutors and investigators, national security lawyers, civil litigators, paralegals, and administrative assistants. During their tenure at the Task Force, these staff members worked full-time on the Task Force review.

The Task Force staff was initially organized into two review teams. The transfer team was responsible for evaluating whether detainees could be transferred or released consistent with the national security and foreign policy interests of the United States.<sup>1</sup>

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<sup>1</sup> The term “release” is used to mean release from confinement without the need for continuing security measures in the receiving country, while the term “transfer” is used to mean release from confinement subject to appropriate security measures.

The team primarily evaluated the degree of threat posed by the detainee to U.S. national security, whether the threat could be mitigated through appropriate security measures, and the potential destination countries where it appeared possible to safely transfer the detainee. The transfer team was composed of representatives from each agency listed in the Executive Order.

The prosecution team was responsible for recommending whether the government should seek to prosecute certain detainees in either federal court or the military commission system. The prosecution team was staffed predominantly by experienced federal prosecutors, investigative agents, and criminal appellate specialists from the Department of Justice,<sup>2</sup> as well as military commission prosecutors and investigative agents from the Department of Defense.

The work of the transfer and prosecution teams often overlapped, and the two teams worked in close coordination over the course of the review. As described below, after an initial review of all the detainees, the transfer and prosecution teams merged to conduct a further review of detainees whose cases had been deferred during the initial review.

The interagency makeup of the review teams was designed to ensure that all relevant agency viewpoints—including military, intelligence, homeland security, diplomatic, and law enforcement—were considered in the review process. Thus, proposed recommendations for transfer or continued detention were drafted, reviewed, and vigorously discussed in group deliberations by representatives of each of the participating agencies. After these extensive discussions on each detainee, any dissenting views of the agency representatives were noted in the recommendations or otherwise made known to the Review Panel.

### **C. Guantanamo Review Panel**

The Task Force's recommendations, which contained detailed classified assessments of each detainee, were submitted on a rolling basis to the interagency Guantanamo Review Panel. The Review Panel was established in February 2009 along with the Task Force and was composed of senior-level officials from each of the agencies identified in the Executive Order.<sup>3</sup> Review Panel members were delegated authority from their respective agency heads ("Principals") to decide the disposition of each detainee. Review Panel members were also responsible for ensuring that their respective agencies made relevant information in their possession available to the Task Force and

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<sup>2</sup> Specifically, federal prosecutors on the Task Force were drawn from United States Attorneys' Offices in the Southern District of New York, Eastern District of New York, Western District of New York, District of Columbia, Eastern District of Virginia, Central District of California, Northern District of California, and District of Maine, and from the Counterterrorism Section of the National Security Division in the Department of Justice.

<sup>3</sup> Senior officials from the Central Intelligence Agency and Federal Bureau of Investigation also regularly attended the Review Panel meetings to further inform the decision-making process.



provided the Task Force with personnel and other resources necessary for the Task Force to complete its review within the one-year time frame mandated by the President.

Beginning in March 2009, the Review Panel met on a weekly basis to consider the recommendations of the Task Force. The Review Panel made disposition decisions only by unanimous agreement of the agencies identified in the Executive Order. Thus, each of the participating agencies had an equal voice in disposition decisions, and no decisions were made by the Review Panel over the objection of any agency. In the large majority of cases, the Review Panel was able to achieve consensus and reach decisions regarding the detainees considered. When Review Panel members did not reach consensus, or when higher-level review was appropriate, the cases were referred to the Principals for a decision. All of the cases referred to the Principals also ultimately garnered the unanimous agreement of the participating agencies.

Once a final decision was made regarding the disposition of a particular detainee, the decision was passed to the appropriate agencies for implementation. If a detainee was approved for transfer to a foreign country as a result of the review, the Department of State and Department of Defense worked together to make appropriate arrangements to effect the transfer in a manner consistent with the national security and foreign policy interests of the United States, including U.S. policies concerning humane treatment. If a decision was made by the Review Panel for prosecution, the case was referred to the Department of Justice for further investigation and review under a joint protocol established by the Department of Justice and Department of Defense to determine whether to pursue prosecution of the case in federal court or a military commission. The Review Panel was regularly updated on the implementation of transfer decisions and prosecution referrals, as well as any issues arising out of the implementation of these decisions requiring further interagency consideration.

#### **D. Task Force Information Collection**

In accordance with the Executive Order, the Task Force's initial responsibility was to collect all government information, to the extent reasonably practicable, relevant to determining the proper disposition of each detainee. The government did not have a preexisting, consolidated repository of such information. Rather, each federal agency stored information concerning Guantanamo detainees in its own systems, consistent with its particular mission and operating protocols.

Accordingly, soon after it was formed, the Task Force initiated an effort to collect detainee information and make it available for review by Task Force members. As a result of this complex effort, the Task Force consolidated a large volume of information from the Department of Defense, Central Intelligence Agency, Federal Bureau of Investigation, Department of Justice, National Security Agency, National Counterterrorism Center, Department of State, and Department of Homeland Security.

The documents assembled by the Task Force include summaries of biographic and capture information; interrogation reports from custodial interviews of the detainees;

records of Department of Defense administrative proceedings involving the detainees, *i.e.*, Combatant Status Review Tribunals and Administrative Review Board proceedings; the results of name traces run for detainees in certain intelligence databases maintained by the Central Intelligence Agency and National Security Agency; the results of name traces run for detainees in law enforcement databases maintained by the Federal Bureau of Investigation; investigative records maintained by the Office of Military Commissions–Prosecution (“OMC”) and Criminal Investigative Task Force within the Department of Defense; records assembled by the Department of Justice for purposes of defending habeas litigation brought by detainees to challenge their detention; recidivism assessments concerning former detainees; finished intelligence products on the detainee population and on general topics of interest to the Task Force’s work; and information concerning potential destination countries for detainees approved for transfer or release. The Task Force also accepted written submissions made on behalf of individual detainees by their counsel or other representatives.

Additionally, the Task Force had access to a variety of external networks containing additional information on the detainees, including documentary and physical evidence recovered through counterterrorism operations, and records concerning the behavior, disciplinary infractions, and physical and mental health of the detainees during detention. Over the course of the review, the Task Force also received briefings from the intelligence community on a number of topics relevant to the review.

The review of all this information was conducted in a classified environment using secure systems.

#### **E. Review Phases**

Following an initial period to stand up the Task Force and collect detainee information, the Task Force began to review detainees on March 5, 2009. The review was conducted in two phases. During the first phase, the Task Force reviewed all 240 detainees subject to the review.<sup>4</sup> In accordance with the framework set forth in the Executive Order, the purpose of the first phase of the review was to identify those detainees who could be transferred or released consistent with the national security and foreign policy interests of the United States, those detainees as to whom prosecution appeared feasible, and those detainees who required further evaluation before a decision could be made on their appropriate disposition.

The purpose of the second phase of the review was to reevaluate those detainees who had been deferred during the first phase. Each detainee reviewed in the second phase was considered for transfer, prosecution, or—in the event that neither of these dispositions was deemed appropriate—continued detention pursuant to the government’s

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<sup>4</sup> Although there were 242 detainees at Guantanamo when the Executive Order was issued, one detainee had already been convicted and sentenced to life in the military commission system in 2008, and another detainee committed suicide in June 2009. Thus, there were 240 detainees whose dispositions were reviewed under the Executive Order.

authority under the Authorization for Use of Military Force (“AUMF”) passed by Congress in response to the attacks of September 11, 2001.

## **V. Detainee Review Guidelines**

In conducting its reviews, the Task Force followed detainee review guidelines (“Guidelines”) developed specifically for the Executive Order review and approved by the Review Panel. The Guidelines set forth standards to apply in considering detainees for transfer, prosecution, or continued detention pursuant to the government’s authority under the AUMF.

### **A. Transfer Guidelines**

The Guidelines addressed three types of evaluations relevant to determining whether a detainee should be recommended for transfer or release.

The first evaluation required by the Guidelines was a threat evaluation. The Guidelines provided that a detainee should be deemed eligible for transfer if any threat he poses could be sufficiently mitigated through feasible and appropriate security measures.<sup>5</sup> The Guidelines set forth a non-exclusive list of factors to be considered in evaluating the threat posed by a detainee. In applying those factors, the Task Force was instructed to consider the totality of available information regarding the detainee, and to give careful consideration to the credibility and reliability of the available information.

The second evaluation required by the Guidelines was an evaluation of potential destination (*i.e.*, receiving) countries. The Guidelines left the Task Force with discretion whether to recommend a detainee for transfer only to specified countries or under specified conditions. As with the threat evaluation, the Guidelines provided a non-exclusive set of factors by which to evaluate potential receiving countries.

The third evaluation required by the Guidelines was a legal evaluation to ensure that any detainee falling outside the government’s lawful detention authority under the AUMF was recommended for transfer or release.

### **B. Prosecution Guidelines**

The Guidelines also required cases to be evaluated by Task Force prosecutors to determine whether a federal court or military commission prosecution should be recommended for any offenses the detainees may have committed.

For the evaluation of whether a detainee should be prosecuted in federal court, the Guidelines set forth standards used by federal prosecutors across the country to determine

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<sup>5</sup> The Guidelines further provided that a detainee should be deemed eligible for release if he does not pose an identifiable threat to the national security of the United States. Other than the 17 Chinese Uighur detainees, who were approved for “transfer or release,” no detainees were approved for “release” during the course of the review.

whether to charge a case, as set forth in the *United States Attorneys' Manual*. Consistent with these standards, the Guidelines provided that a case should be recommended for prosecution if the detainee's conduct constitutes a federal offense and the potentially available admissible evidence will probably be sufficient to obtain and sustain a conviction—unless prosecution should be declined because no substantial federal interest would be served by prosecution. Key factors in making this determination include the nature and seriousness of the offense; the detainee's culpability in connection with the offense; the detainee's willingness to cooperate in the investigation or prosecution of others; and the probable sentence or other consequences if the detainee is convicted.

For the evaluation of whether a detainee should be prosecuted in a military commission, Task Force prosecutors examined the potentially available admissible evidence and consulted closely with OMC to determine the feasibility of prosecution.

Recognizing the unique nature of these cases, the Guidelines provided that other factors were also significant in determining whether to recommend prosecution, including the need to protect classified information, such as intelligence sources and methods.

### **C. Detention Guidelines**

In accordance with the Executive Order, the Guidelines provided that every effort should be made to ensure that all detainees who could be recommended for transfer, release, or prosecution consistent with national security and foreign policy interests and the interests of justice were recommended for such dispositions. Thus, the Guidelines provided that a detainee should be considered eligible for continued detention under the AUMF only if (1) the detainee poses a national security threat that cannot be sufficiently mitigated through feasible and appropriate security measures; (2) prosecution of the detainee by the federal government is not feasible in any forum; and (3) continued detention without criminal charges is lawful.

The Guidelines required the Task Force to consult with the Department of Justice in conducting a legal evaluation for each detainee considered for continued detention. This legal evaluation addressed both the legal basis for holding the detainee under the AUMF and the government's case for defending the detention in any habeas litigation.<sup>6</sup>

As the Supreme Court has held, inherent within the authorization of the AUMF to "use all necessary and appropriate force" is the power to detain any individuals who fall within the scope of the statute.<sup>7</sup> As the Court observed, "by universal agreement and

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<sup>6</sup> The AUMF authorizes the President to "use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future attacks of international terrorism against the United States by such nations, organizations or persons." AUMF § 2(a).

<sup>7</sup> See *Hamdi v. Rumsfeld*, 542 U.S. 507, 519 (2004) (plurality opinion); *id.* at 587 (Thomas, J.) (dissenting).

practice,” the power to wage war necessarily includes the authority to capture and detain combatants in order to prevent them from “returning to the field of battle and taking up arms once again.”<sup>8</sup> The scope of the AUMF’s detention authority extends to those persons who “planned, authorized or committed or aided” the September 11 attacks, “harbored those responsible for those attacks,” or “were part of, or substantially supported, Taliban or al Qaeda forces or associated forces that are engaged in hostilities against the United States or its coalition partners.”<sup>9</sup> Accordingly, only detainees who satisfied this standard could be designated for continued detention.

#### **D. Review of Information**

Consistent with the Guidelines’ requirement that the Task Force undertake a fresh and comprehensive evaluation of detainee information, the Task Force sought to make independent evaluations of the facts. In many instances, the Task Force largely agreed with prior threat assessments of the detainees and sometimes found additional information that further substantiated such assessments. In other instances, the Task Force found prior assessments to be overstated. Some assessments, for example, contained allegations that were not supported by the underlying source document upon which they relied. Other assessments contained conclusions that were stated categorically even though derived from uncorroborated statements or raw intelligence reporting of undetermined or questionable reliability. Conversely, in a few cases, the Task Force discovered reliable information indicating that a detainee posed a greater threat in some respects than prior assessments suggested.

Even after careful examination of the intelligence, however, it was not always possible to draw definitive conclusions regarding a detainee’s past conduct. Many of the detainees were captured in active zones of combat and were not previously the targets of investigation by U.S. law enforcement authorities or the intelligence community. Much of what is known about such detainees comes from their own statements or statements made by other detainees during custodial debriefings. The Task Force sought to ensure that the Review Panel and Principals were apprised in their decision-making of any limitations of the available information.

### **VI. Results of the Review**

#### **A. Overview of Decisions**

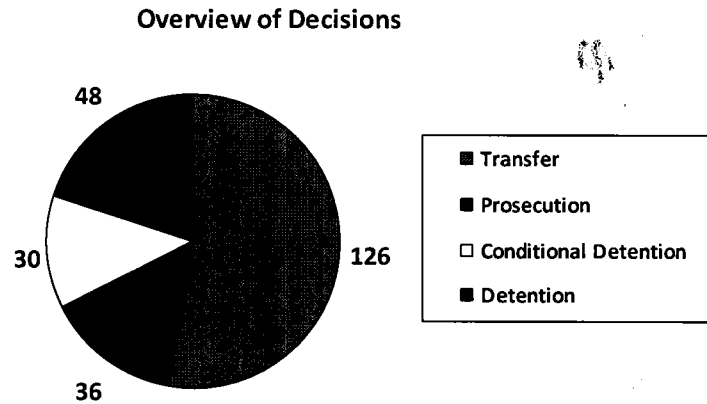
By the one-year mark of January 22, 2010, the review participants reached decisions on the appropriate disposition of all 240 detainees subject to the Executive Order. In sum, 126 detainees were approved for transfer; 36 detainees were referred for

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<sup>8</sup> *Id.* at 518; *see also id.* at 587 (Thomas, J.) (dissenting) (same).

<sup>9</sup> *See* Gov’t Filing, *In re: Guantanamo Bay Detainee Litigation*, Misc. No. 08-442 (D.D.C. March 13, 2009). The United States Court of Appeals for the District of Columbia recently affirmed that Guantanamo detainees who meet this standard are detainable. *See also Al-Bihani v. Obama*, --- F.3d ---, 2010 WL 10411 at \*3 (D.C. Cir. Jan. 5, 2010).

prosecution;<sup>10</sup> 48 detainees were approved for continued detention under the AUMF; and 30 detainees from Yemen were approved for “conditional” detention based on present security conditions in Yemen.



After careful deliberation, all of these decisions were reached by unanimous agreement of senior officials from each agency responsible for the review. Thus, each decision carries the approval of the Department of Justice, Department of Defense, Department of State, Department of Homeland Security, Office of the Director of National Intelligence, and Joint Chiefs of Staff. A more detailed breakdown of the decisions follows.

#### Detainees Approved for Transfer

- 126 detainees were unanimously approved for transfer subject to appropriate security measures.
  - 63 of the 126 detainees either had been cleared for transfer by the prior administration, ordered released by a federal district court, or both.
  - 44 of the 126 detainees have been transferred to date—24 to their home countries, 18 to third countries for resettlement, and two to Italy for prosecution.
  - 82 of the 126 detainees remain at Guantanamo. Of these detainees:
    - 16 may be repatriated to their home countries (other than Yemen) consistent with U.S. policies on humane treatment. The State Department and Department of Defense are working with these countries concerning the security conditions and timing of the

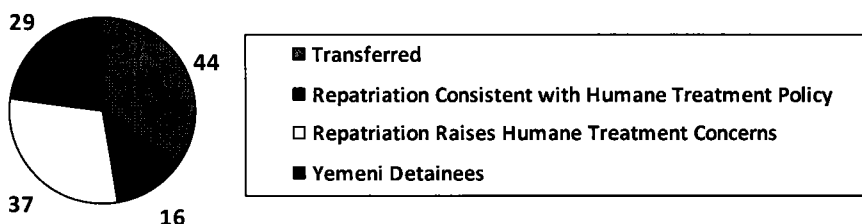
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<sup>10</sup> As explained below, 44 cases were initially referred for prosecution; 36 of those cases remain the subject of active referrals.

transfers. Some of these detainees have obtained injunctions that presently bar their repatriation and cannot be repatriated until these injunctions are lifted; litigation over the injunctions is ongoing.

- 37 cannot be repatriated at this time due to humane treatment or related concerns associated with their home countries (other than Yemen). The State Department is seeking to resettle these detainees in third countries. (A small number of these detainees may be transferred to third countries for prosecution rather than resettlement.)
- 29 are from Yemen. In light of the moratorium on transfers of Guantanamo detainees to Yemen announced by the President on January 5, 2010, these detainees cannot be transferred to Yemen at this time. In the meantime, these detainees are eligible to be transferred to third countries capable of imposing appropriate security measures.

#### Detainees Approved for Transfer

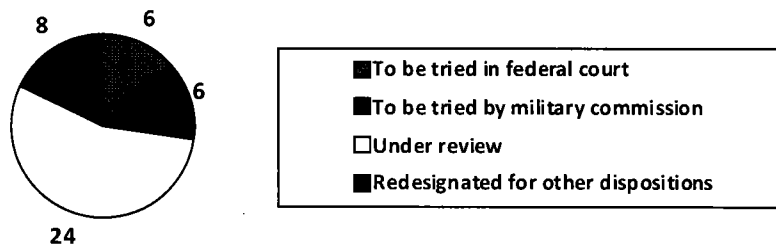


#### Detainees Referred for Prosecution

- Initially, 44 detainees were referred for prosecution. As a result of further evaluation of these cases (detailed below), there are now 36 detainees who remain the subject of active cases or investigations.
  - 1 detainee (Ahmed Ghailani) has been transferred to the Southern District of New York and will be tried for his alleged role in the 1998 bombings of the U.S. embassies in Kenya and Tanzania.
  - 5 detainees will be tried in the Southern District of New York, for their alleged roles in the September 11 attacks, as announced by the Attorney General.
  - 6 detainees will be tried for offenses under the laws of war in a reformed military commission system, as announced by the Attorney General.
  - 24 detainees remain under review pursuant to the joint Department of Justice-Department of Defense protocol. No final determination has yet been made as to whether or in what forum these 24 detainees will be charged.

- 8 other detainees were initially referred for prosecution but subsequently designated for other dispositions.
  - 1 detainee was transferred pursuant to a court order in his habeas case.
  - 7 detainees were referred back to the review participants after prosecution was deemed not feasible upon further evaluation (6 were subsequently approved for continued detention under the AUMF, and 1 was approved for transfer).

**Detainees Referred for Prosecution**



Detainees Approved for Detention

- 48 detainees were unanimously approved for continued detention under the AUMF based on a finding that they pose a national security threat that could not be mitigated sufficiently at this time if they were to be transferred from U.S. custody.
  - The Task Force concluded as to all of these detainees that prosecution is not feasible at this time in either federal court or the military commission system.
  - At the same time, the Task Force concluded that there is a lawful basis for continuing to detain these detainees under the AUMF.

Detainees Approved for Conditional Detention

- 30 detainees from Yemen were unanimously approved for “conditional” detention based on current security conditions in Yemen.
  - After carefully considering the intelligence concerning the security situation in Yemen, and reviewing each detainee on a case-by-case basis, the review participants selected a group of 30 Yemeni detainees who pose a lower threat than the 48 detainees designated for continued detention under the AUMF, but who should not be among the first groups of transfers to Yemen even if the current moratorium on such transfers is lifted.
  - These 30 detainees were approved for “conditional” detention, meaning that they may be transferred if one of the following conditions is satisfied: (1) the



security situation improves in Yemen; (2) an appropriate rehabilitation program becomes available; or (3) an appropriate third-country resettlement option becomes available. Should any of these conditions be satisfied, however, the 29 Yemeni detainees approved for transfer would receive priority for any transfer options over the 30 Yemeni detainees approved for conditional detention.

## **B. Overview of the Guantanamo Detainee Population**

The following section provides an overview of the 240 Guantanamo detainees reviewed under the Executive Order, including their threat characteristics and more general background information, including country of origin, point of capture, and date of arrival at Guantanamo.

*Threat Characteristics.* As reflected in the decisions made in the review, there is a substantial degree of variation among the Guantanamo detainees from a security perspective. Although not all detainees can be neatly characterized, the following groupings provide a rough overview of the recurring threat profiles seen in the population.

- *Leaders, operatives, and facilitators involved in terrorist plots against U.S. targets.* At the high end of the threat spectrum are leaders, planners, operatives, and facilitators within al-Qaida or associated groups who are directly implicated in terrorist plots against U.S. interests. Among the most notorious examples in this group are Khalid Sheikh Mohammed, the alleged mastermind of the September 11 attacks; Ramzi bin al-Shibh, the alleged principal coordinator of the September 11 attacks; Abd al-Rahim al-Nashiri, the alleged mastermind of the attack on the U.S.S. *Cole*; Abu Faraj al-Libi, who allegedly succeeded Khalid Sheikh Mohammed as al-Qaida's chief planner of terrorist operations; Hambali, the alleged leader of an al-Qaida affiliate in Indonesia who directed numerous attacks against Western targets in Southeast Asia; and Ahmed Ghailani, an alleged key participant in the 1998 bombings of the U.S. embassies in Kenya and Tanzania. Roughly 10 percent of the detainees subject to the review appear to have played a direct role in plotting, executing, or facilitating such attacks.
- *Others with significant organizational roles within al-Qaida or associated terrorist organizations.* Other detainees played significant organizational roles within al-Qaida or associated terrorist organizations, even if they may not have been directly involved in terrorist plots against U.S. targets. This group includes, for example, individuals responsible for overseeing or providing logistical support to al-Qaida's training operations in Afghanistan; facilitators who helped move money and personnel for al-Qaida; a cadre of Usama bin Laden's bodyguards, who held a unique position of trust within al-Qaida; and well-trained operatives who were being groomed by al-Qaida leaders for future terrorist operations. Roughly 20 percent of the detainees subject to the review fall within this category.

