



# **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.

