

**Testimony of Ambassador Daniel Fried**  
**Special Envoy for the Closure of the Guantanamo Detainee**  
**Facility**  
**House Armed Services Committee**  
**Sub-Committee on Oversight and Investigations**  
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Chairman Wittman and Ranking Member Cooper, thank you for the opportunity to testify here today. I welcome this opportunity to offer background to an important and complex issue.

On May 15, 2009, I assumed my current responsibilities as Special Envoy for Closure of the Guantanamo Detainee Facility, after four years as Assistant Secretary of State for European and Eurasian Affairs. I am a career foreign service officer of 34 years and in my current assignment serve as the Department of State's lead for the diplomatic aspects of detainee transfers related to President Obama's January 22, 2009 Executive Order 13492 on the review and disposition of individuals detained at Guantanamo and the closure of the detention facility.

The Department of State has had responsibility for engaging America's allies and partners across the world on this issue. Working closely with our interagency colleagues, particularly with the Department of Defense and the intelligence community, we have been involved in negotiations for the transfer of 67 detainees to foreign countries during this Administration. This includes the transfer of 40 detainees to third countries (i.e., countries of which they are not nationals). We are also closely involved in follow up with those countries on the post-transfer progress of former detainees, particularly detainees resettled in third countries.

Working closely with the Department of Defense, my office has brought many foreign government delegations to Guantanamo. These officials have seen what some of you and I have seen: the facilities that house detainees at Guantanamo are modern and humane, and the men and

women who run them are serious, capable professionals. Despite the high quality of the facilities and the skill of the personnel there, my years of working on this issue, indirectly in the last Administration and directly in this one, lead me to believe that the closure of the Guantanamo detention facility is in our national interest. The facility's existence continues to do more to harm than improve our security; indeed, for many years, the facility has constituted a net liability for our nation in the world. It continues to be one of the primary concerns raised with the United States by countries around the world. Many of our closest allies are so committed to supporting the President's policy of seeking to close the Guantanamo detention facility that they have moved past rhetorical support to assistance through action, including by accepting detainees into their own country.

Transferring detainees from Guantanamo and expressing the objective of closing it are not new tasks. In 2006, President Bush publicly expressed his desire to close the facility, and the previous Administration transferred 537 detainees from Guantanamo. Most of those transferred were repatriated to their country of origin, and in large numbers: the previous Administration repatriated 198 detainees to Afghanistan, 121 to Saudi Arabia, 50 to Pakistan and 14 to Yemen. There were also smaller numbers of detainees repatriated to other countries, including European countries, where they had citizenship. The previous Administration also resettled eight detainees in a third country, Albania, which agreed to accept detainees who, mainly due to humane treatment concerns, could not be repatriated. Albania was the only country during the previous Administration that agreed to accept detainees that were not its own nationals. Hundreds of these transfers pre-dated the Supreme Court's landmark *Boumediene* decision of 2008, meaning, in short, that there were no court orders then compelling release of these detainees. The transfers thus were initiated by the Executive. These transfer efforts were publicly known but generated neither much credit for the prior Administration nor much controversy.

By January 20, 2009, there were 242 detainees at Guantanamo. This included a large number of detainees who had been approved for transfer

during the prior Administration. It is important to note this because of a common misperception that detainees transferred earlier were necessarily the “easy cases,” and that all those who remained were therefore more dangerous. In fact, a number of detainees at Guantanamo in January 2009 were still being held not because of the threat that they might pose, but because they could not be returned to their country of origin due to concerns about their humane treatment, and no other country had yet been found to accept them. The 242 detainees at Guantanamo also included 20 detainees who had been ordered released by federal courts, including the 17 Uighurs (an ethnic minority from western China) initially ordered released into the United States in October 2008.

This in short was the situation that the United States faced at the beginning of 2009: we had transferred well over 500 detainees to foreign countries; there remained a significant number of Guantanamo detainees who had been approved for transfer or ordered released; and our allies and partners were calling for action to close Guantanamo. On January 22, 2009, President Obama signed Executive Order 13492 which directed a comprehensive review of all remaining Guantanamo detainees and the closure of the detention facility. That order called for a determination as to the appropriate disposition of each detainee: prosecution, transfer, or other lawful means. There were no assumptions as to whom or how many would fall into each of those categories. Rather, the overarching goal was to have a comprehensive, clean-slate, professional interagency assessment of each detainee, and, among other tasks, to move forward on transfers, using the momentum of the President’s commitment to close Guantanamo, to countries that could mitigate any future threats as evaluated in those assessments.

The Guantanamo Review Task Force and higher-level Review Panel established in accordance with the January 22, 2009 Executive Order, reviewed 240 of the Guantanamo detainees (two of the 242 at Guantanamo were not reviewed under the Executive Order: one had already been convicted and sentenced in the military commission system in 2008 and the other committed suicide in 2009 before his case was reviewed). The

Guantanamo Review Task Force submitted its final report on January 20, 2010. I served as a voting member on the Review Panel and my office supported the work of the Task Force. The other agencies represented as voting members of the Review Panel included the Department of Defense (the Office of the Secretary of Defense and the Joint Chiefs of Staff had independent votes), the Department of Homeland Security, the Office of the Director of National Intelligence, and the Department of Justice (which chaired the Review Panel). The review process was designed to prevent the stove-piping of information and the review was undertaken by experienced career professionals with a broad range of skills. The Task Force and Review Panel achieved a serious, comprehensive, and professional understanding of each detainee at Guantanamo. I encourage every member of this Committee who has not yet read the Task Force's Final Report to do so: it is one of the best-written, clearest examples of government prose available on any subject. All decisions required unanimity among all the agencies represented on the Task Force, either at the level of the Review Panel or at more senior levels.

As a result of this process, of the 240 detainees under the Executive Order:

- 36 were referred for prosecution, either in Article III federal courts or military commissions;
- 30 from Yemen were designated for "conditional detention" because of the deteriorating security environment in that country (meaning they were not approved for repatriation to Yemen, but could be repatriated in the future if security conditions in Yemen improved and the current moratorium on transfers to Yemen were lifted);
- 48 were determined to be too dangerous to transfer but not feasible for prosecution, and thus were designated for longer-term detention under the Authorization for Use of Military Force passed by Congress after the 9/11 attacks; and
- 126 were approved for transfer.

*As provided in the Task Force final report (page 16), “There were considerable variations among the detainees approved for transfer. For a small handful of these detainees, there was scant evidence of any involvement with terrorist groups or hostilities against Coalition forces in Afghanistan. However, for most of the detainees approved for transfer, there were varying degrees of evidence indicating that they were low-level foreign fighters affiliated with al-Qaida or other groups operating in Afghanistan.... It is important to emphasize that a decision to approve a detainee for transfer does not reflect a decision that the detainee poses no threat or no risk of recidivism.”*

My office was focused on the 126 detainees approved for transfer. This category was made up of two groups of detainees: first, detainees who could, at least in theory, be repatriated to their country of origin. This included 35 Yemenis approved for transfer before security conditions in Yemen further deteriorated, by far the largest national group of detainees remaining at Guantanamo, and also included detainees of other nationalities (Afghans, Algerians, Kuwaitis, Saudis, and others). In working with receiving governments for repatriations of this first group, my office built on the experience of the previous Administration. For example, Algeria had demonstrated a solid record of secure and humane treatment of repatriated detainees. This Administration has repatriated a total of four detainees to Algeria and its record of secure and humane treatment continues. In some cases, such as Yemen, the challenge was greater. This Administration repatriated eight detainees to Yemen, including two detainees ordered released by federal courts. But, as a result of growing concerns about the security situation in Yemen, in January 2010 the President suspended all further transfers to Yemen (other than court-ordered releases), and this suspension remains in effect. (As this Committee is aware through our advance notification process, one of those detainees was ordered released by a federal court and was repatriated to Yemen last summer.)

The second group of detainees approved for transfer included 57 detainees who could not be returned to their countries of origin due to

treatment concerns and who therefore required resettlement in third countries. As a matter of longstanding policy, including both in this Administration and the prior one, the United States does not send any detainee to a country where it is more likely than not that he will be tortured. This is consistent with the U.S. implementation of its obligations under Article 3 of the Convention Against Torture. We take this obligation seriously and do not split definitional hairs. Because of the difficulty in finding countries that are willing to accept detainees who are not their nationals and also capable of mitigating whatever risk the detainee may pose, the bulk of my office's work focused on these third-country resettlements.

One early step was our conclusion with the European Union of an "umbrella" joint statement – issued June 15, 2009 – which welcomed the closure of the Guantanamo Bay detention facility and encouraged individual EU countries to accept detainees. Following this joint statement, a number of European and other countries expressed interest in accepting detainees for resettlement. The United States was and remains grateful for their support in this challenging effort.

As my office followed up on these expressions of interest, we drew on the previous Administration's experience with repatriations, including its repatriations to European countries. This Administration's resettlement efforts have tended to be a labor-intensive process, as each resettlement was individually tailored to the country and detainee concerned.

Working closely with the other members of the Review Panel, we sought to (1) create solid channels of information sharing with a potential receiving government about a prospective detainee for resettlement; (2) develop security assurances appropriate to the detainee; and (3) encourage measures to facilitate the former detainee's successful reintegration into society. We encouraged governments considering resettlement of detainees to send delegations to Guantanamo Bay to interview the detainee and to meet with the professional staff there, and many did so. We provided interested governments with as much information as possible on a given

detainee, subject to foreign disclosure requirements, derived from the detainee assessment considered by the Review Panel as part of its decision-making process. That information regarding the detainee was provided to foreign governments through longstanding foreign disclosure procedures established for information of this nature. And we discussed with the receiving government the reintegration program planned for each detainee.

While the State Department had responsibility for these discussions, we consulted closely and regularly with our interagency colleagues on all aspects of potential resettlements. We found that receiving governments also approached each detainee resettlement with care and appropriate caution. Needless to say, receiving governments took their own security as seriously as we take ours. Often it would take many months to conclude arrangements for a single transfer for resettlement. The time and care invested was worth it.

As a result, we have thus far transferred 67 of those 126 detainees approved for transfer, including 12 Uighurs who had initially been ordered released into the United States, and 11 other detainees ordered released by the courts. These 67 transfers include 40 detainees transferred to 17 third countries.

Our work does not end with the detainee's transfer. On the contrary, using diplomatic, intelligence, and other channels, we follow up on a regular basis with receiving governments to determine how the resettlement is going, both to learn lessons and to determine where there are issues that need addressing. So far, our experience has been generally positive, though a number of issues, more related to integration than security, have developed. We were and remain alert to the potential for reengagement. The interagency Guantanamo Detainee Transfer Working Group, which replaced the Review Panel, consults regularly and in real time when appropriate, on issues that arise.

Of the 126 detainees cleared for transfer, 59 still remain at Guantanamo. Twenty-seven of these are Yemenis, and we are not planning

to repatriate any of these Yemeni detainees, absent a court order, until the security situation in Yemen improves. The remaining are candidates either for repatriation or resettlement. The Guantanamo Detainee Transfer Working Group continues to assess each potential transfer on a case-by-case basis, and is fully informed about diplomatic prospects and possibilities.

My office also has the responsibility to help inform the Congress about our progress with respect to detainee transfers and issues that have arisen. My interagency colleagues and I have sought to do so in a number of briefings and appreciate the opportunity to do the same in this hearing. In that regard, some of the Guantanamo-related reporting requirements the Congress has imposed – such as the 15-day advance notification to Congress of all transfers to foreign countries – have facilitated this flow of information. On the other hand, new “certification” requirements on the transfer of detainees to foreign countries interferes with Executive branch authority and hinders our ability to act swiftly and with flexibility during our negotiations with foreign countries. As I have stated, flexibility is vital to developing an arrangement that best addresses U.S. national security. Requiring the Executive branch to certify to additional conditions hinders the conduct of these delicate negotiations and has the potential to undermine our efforts to transfer detainees altogether. Our friends and allies were not merely looking to assume our problems when accepting detainees from Guantanamo. They were joining our efforts to close the facility. They took on the burden of accepting detainees out of a sense of shared and committed partnership to a common goal.

The Guantanamo Bay Detention Facility has raised controversy and concern since it opened. Closing it remains in the national interest. Doing so, in the best of circumstances, raises complex and difficult legal, diplomatic, and security questions and choices. It is worthwhile discussing these and seeking sound solutions. For too long, the debate about Guantanamo has been polarized and, frankly, prone to extreme positions. As President Obama said in 2009 speech at the National Archives, “We seek to do what’s right over the long term.... [W]e can leave behind a legacy

that endures and protects the American people and enjoys a broad legitimacy at home and abroad.”

I hope these remarks have helped demystify the careful work that goes into transferring Guantanamo detainees abroad, and I look forward to your questions.