Obama Administration Efforts to Close the Guantanamo Bay Detention Facility

As the President has made clear since his first day in office, closing the Guantanamo Bay detention facility is fundamentally consistent with the national security and foreign policy interests of the United States as well as with our values as Americans. Its continued operation undermines our standing in the world and weakens our national security by emboldening violent extremists, damaging our relations with key allies and partners, and draining our nation's resources. Consistent with the United States' commitment to the rule of law and universal human rights, this Administration has spared no effort to safely and responsibly close the detention facility at Guantanamo and to bring this chapter of our history to an end.

Of the nearly 800 detainees at one time held at Guantanamo Bay, more than 90 percent have been transferred, including more than 500 detainees transferred by the prior Administration and 196 detainees transferred by this Administration. As of January 19, 2017, 41 detainees remain at Guantanamo Bay.

In its efforts to safely and responsibly close the Guantanamo Bay detention facility, this Administration has pursued four lines of effort simultaneously: (1) identifying and effectuating transfer opportunities for detainees designated for transfer; (2) continuing to periodically review those detainees who are not currently designated for transfer or who are not currently facing military commission charges to ensure detention is only continued when necessary; (3) continuing with ongoing military commissions prosecutions and, for those detainees who remain designated for continued law of war detention, identifying individualized dispositions where available, including transfer to third countries – including for foreign prosecution; and (4) urging Congress to lift the ban on transfers to the United States to allow for the safe relocation of the limited number of detainees who are not currently approved for transfer or for whom another disposition has not yet been identified to an appropriate site in the United States, while continuing to identify other appropriate and lawful dispositions. In addition, all detainees at Guantanamo continue to be able to pursue of the writ of *habeas corpus*.

(1) Securely Transferring Detainees Designated for Transfer by the President's National Security Team

This Administration has developed and successfully implemented a transfer process to ensure that detainees continue to be held only when necessary and appropriate, that detainees are transferred from Guantanamo only after a rigorous interagency review process evaluates the specific circumstances of the transfer and determines that any potential threat posed by the detainee is mitigated, including through tailored security assurances, and that such transfers are consistent with our humane treatment policy. This Administration conducted 196 such transfers, each of which occurred only after the United States Government engaged in detailed, specific conversations with the receiving country about the potential threat a detainee may pose after transfer, and the measures the receiving country will take in order to sufficiently mitigate that threat and to ensure humane treatment. Reflecting the strong international support for Guantanamo closure efforts, the Administration successfully repatriated 52 detainees to 13 countries, resettled 144 detainees who could not be repatriated in 30 different countries,

including two detainees transferred for prosecution in a third country. In addition, one detainee was successfully prosecuted in an Article III court in the United States and is currently serving a life sentence following a conviction for conspiracy to destroy government buildings and property.

As of January 19, 2017, of the 41 detainees who remain at Guantanamo, 5 have been determined to be eligible for transfer by relevant national security departments and agencies (Departments of Defense, State, Justice, and Homeland Security, the Office of the Chairman Joint Chiefs of Staff, and the Office of the Director of National Intelligence) through the interagency 2009 Executive Order (E.O.) 13492 Task Force or the ongoing E.O. 13567 Periodic Review Board process. The remainder are either subject to ongoing military commission proceedings, serving a sentence handed down by the military commissions, or have been determined by the President's national security team to pose a risk at this time such that they should continue to be held under the laws of war. A decision to designate a detainee for transfer reflects the best judgment of U.S. Government experts, including counterterrorism, intelligence, diplomatic, and law enforcement professionals, that, to the extent a detainee poses a continuing threat to the United States, the threat could be sufficiently mitigated—and the national interest would be served—if the detainee were transferred to another country subject to appropriate security measures.

Under the framework developed by this Administration, the United States has worked extensively with receiving governments to ensure that appropriate security measures are in place to mitigate the risk that the transferred individual will engage or reengage in any terrorist or other hostile activity that threatens the United States or U.S. persons or interests. In particular, the Administration has sought assurances from receiving governments that they will take certain security measures that, in the United States Government's experience, have proven to be effective in mitigating the threat that may be posed by former detainees. The specific measures put in place vary depending on a range of factors, including the specific threat a detainee may pose, the geographic location of the receiving country, the receiving country's domestic laws, the receiving country's capabilities and resources, and, where applicable, the receiving country's international legal obligations. Importantly, the Administration only transferred a detainee after the Secretary of Defense determined that the transfer was in the national security interest of the United States, the threat posed by the detainee will be substantially mitigated, and the transfer is consistent with our humane treatment policy, as required by law. In each case, the specific security assurances negotiated take into account the individual facts and circumstances of the transfer, including the detainee's specific threat profile at the time of transfer, as well as the capabilities and domestic legal authorities of the receiving government.

The rigorous interagency review process put in place by this Administration has resulted in a measured, responsible, and thoughtful approach to transfers that places the safety of Americans paramount. For detainees transferred since 2009, less than six percent of former detainees have been confirmed by the Intelligence Community of engaging or reengaging in terrorist activity, and less than seven percent of former detainees are suspected of reengaging in such activity. Any potential incidence of reengagement is taken very seriously and relevant agencies have worked in close coordination through military, intelligence, law enforcement, and diplomatic channels to mitigate any threat posed by such activities, including taking follow-on action when necessary.

(2) Continued Review of Detainees by the Periodic Review Board

Consistent with our values and our international obligations, it is imperative to ensure that law of war detention continues only when necessary and lawful. The Periodic Review Board (PRB) is an interagency body with career professional representatives from the Department of Defense, the Department of Homeland Security, the Department of Justice, the Department of State, the Office of the Chairman of the Joint Chiefs of Staff, and the Office of the Director of National Intelligence. The process outlined in E.O. 13567 charges the PRB with examining whether, given current intelligence and other information, the continued detention of the detainee remains necessary to protect against a continuing significant threat to the security of the United States.

In 2016, the Administration concluded the initial 64 PRB reviews, with 38 detainees approved for transfer by the PRB. There are 26 detainees not currently approved for transfer or charged or convicted by military commission. Under the process established by Executive Order 13567, these detainees will continue to receive PRB file reviews every six months and a full review every three years or when the PRB determines it is warranted based on the file reviews. Notwithstanding the PRB's continuing review, each of these detainees continues to be considered for an individualized disposition, as discussed below.

(3) Continuing Military Commissions and Pursing Disposition Options for Remaining Detainees

The most effective option for dealing with individuals detained outside military theaters continues to be our strong, proven federal courts. Our federal district courts have an established track record of safely and securely conducting high-profile national security trials. Indeed, the record of Article III courts in terrorism cases – providing fair, thorough, and speedy disposition of these cases – is outstanding. Recent history proves that our courts system is capable of dispensing justice even to some of the most hardened terrorists in the highest-profile cases.

Despite significant, ongoing setbacks and the complexity of addressing novel issues in the military commissions setting, military commissions convened to address offenses recognized by the international laws of war continue to be an option for individuals who remain detained at Guantanamo. Currently, ten detainees have ongoing military commission proceedings. One has been sentenced pursuant to a military commission proceeding, which is the subject of continuing judicial review, and two are awaiting sentencing. We can expect lengthy appeals once the active cases go to trial and reach verdicts. All of this is expected to cost at least $91 million per year and litigation is expected to continue for several years.

Of the 26 detainees who currently are not designated for transfer and are not in some stage of the military commissions process, 16 were initially referred by the Guantanamo Review Task Force for prosecution (either before a military commission or in an Article III court).

Further, detainees not otherwise designated for transfer or subject to prosecution or conviction by military commissions or Article III courts have continued to be considered on a case-by-case basis for transfer to a foreign country, including for foreign prosecution. Any such transfer would be undertaken consistent with applicable domestic and international law and our humane

treatment policy and would be carried out only where it was assessed that the conditions under which the detainee would be transferred would substantially mitigate the risk to the United States or U.S. persons or interests.

(4) Relocation of a Limited Detainee Population to the United States

For the limited number of detainees who are not designated for transfer and for whom another disposition has not yet been identified, the Administration has sought to work with Congress to relocate them from the Guantanamo Bay detention facility to a secure detention facility in the United States, while continuing to identify other appropriate and lawful dispositions. Based on past reviews and a 2015 survey of potential detention locations in the United States, the Department of Defense has determined that, with modifications, a variety of Department of Defense, Bureau of Prisons, and state prison facilities could safely, securely, and humanely house a limited number of Guantanamo detainees for the purpose of military commissions and continued law of war detention, as necessary and subject to continued periodic review.

Transferring the small number of remaining detainees to a U.S. facility and closing the detention facility at Guantanamo would result in substantial cost savings, enabling the Department of Defense to put these resources towards meeting the challenges the United States faces around the world. The Fiscal Year 2015 cost to operate the Guantanamo Bay detention mission was approximately $445 million. In addition to annual operating costs, maintaining the facility would require approximately $200 million in needed military construction, and $25 million for related furnishing. Based on site surveys and an in-depth review of every major cost center associated with detention operations, the Department of Defense assessed that this plan, compared to keeping Guantanamo open, would lower recurring costs by up to $85 million a year. Over 10 years, it would generate savings of more than $300 million. Over 20 years, the savings would be up to $1.7 billion and would allow us to ensure our security, uphold our highest values around the world, and save American taxpayers a lot of money at the same time.

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As the President has said, spending hundreds of millions of dollars to keep 41 men in an isolated detention facility in Cuba, year after year, is not consistent with our values or our interests as a Nation. It undermines our standing in the world and it is viewed as a stain on our longstanding record of upholding the highest standards, of adhering to the rule of law. It is long past time to close this chapter in our history.