

United States Senate

April 16, 2021

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Avenue
Washington, D.C. 20500

Dear President Biden:

We applaud your pledge to “put universal rights and strengthening democracy at the center of our efforts to meet the challenges of the 21st century.” One critical step toward doing so is finally closing the detention facility at U.S. Naval Station Guantanamo Bay, Cuba. As a symbol of lawlessness and human rights abuses, the detention facility continues to harm U.S. national security by serving as a propaganda tool for America’s enemies and continues to hinder counterterrorism efforts and cooperation with allies.

The detention facility was established in 2002 to detain individuals suspected of involvement in the terrorist attacks on our country on 9/11. For nearly two decades, the offshore prison has damaged America’s reputation, fueled anti-Muslim bigotry, and weakened the United States’ ability to counterterrorism and fight for human rights and the rule of law around the world. In addition to the \$540 million in wasted taxpayer dollars each year to maintain and operate the facility, the prison also comes at the price of justice for the victims of 9/11 and their families, who are still waiting for trials to begin.

We welcome the recent announcement that the White House is leading an interagency review on closing the prison. Only 40 men remain in detention at Guantanamo—all of them aging and many with complex health problems. Six of those men have been approved for transfer by the executive branch, in some cases for over a decade. After years of indefinite detention without charge or trial; a history of torture and cruel, inhuman, and degrading treatment; and multiple attempts at a thoroughly failed and discredited military commission process, it is past time to close Guantanamo’s detention facility and end indefinite detention.

With sufficient political will and swift action, your administration can finish the job that Presidents George W. Bush and Obama began.

Strong and effective leadership from the White House will be necessary. A senior White House official should be accountable for the closure process, including ensuring interagency cooperation and resolving any disputes that may arise. Because indefinite detention at Guantanamo is at its core a human rights problem – one that demands solutions rooted in diplomacy and that uphold U.S. human rights and humanitarian law obligations – the National Security Council’s human rights directorate should play a leading role in both the review you have ordered as well as throughout the closure process.

Also critical is immediately re-establishing the Special Envoy for Guantanamo Closure at the State Department, and rebuilding appropriate closure infrastructure at the Defense Department. Diplomacy is essential to the closure process, which is why President Obama established the

Envoy's office. The State Department must lead in identifying transfer countries and negotiating transfer agreements, but President Trump discarded that capacity when he eliminated the Envoy's position. Once re-appointed, the Envoy should immediately begin the work of repatriating or resettling the six men who are already cleared for transfer, as well as preparing for the transfer of any remaining detainees who will not be charged with crimes.

We also urge you to make use of our federal court system in ways that are consistent with current law but that have been underutilized by previous administrations. For example, detainees' habeas cases provide an opportunity to expedite foreign transfers. If the Justice Department were not to oppose habeas petitions in appropriate cases, those detainees could be transferred more easily pursuant to court orders.

Article III courts can also be utilized more directly at Guantanamo itself. Given the current statutory prohibition on transfers to the United States, we urge you to direct the Justice Department to explore pursuing plea agreements remotely, via video conference, with detainees for whom there are federal charges available and against whom the Department has sufficient untainted evidence to bring such charges. In the event that a detainee is sentenced to a period of incarceration beyond time already served at Guantanamo, your administration could negotiate with foreign governments to allow the remaining time to be completed in the transfer country subject to the terms of the plea agreement.

Finally, in service of both closing the Guantanamo detention facility and upholding the United States' human rights obligations, we urge you to reverse erroneous and troubling legal positions taken by the Trump Administration regarding the application of relevant international and domestic legal protections to Guantanamo, including in particular the position that the Constitution's Due Process Clause does not apply to the men detained there.

After the unprecedented damage of the last four years to America's standing in the world, closing the Guantanamo detention facility is more important than ever for sending a message about what we stand for as a nation. We urge you to act swiftly to ensure that message is loud and clear.

Sincerely,



RICHARD J. DURBIN
United States Senator



PATRICK LEAHY
United States Senator



DIANNE FEINSTEIN
United States Senator



PATTY MURRAY
United States Senator



SHELDON WHITEHOUSE
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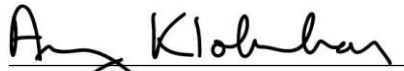
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