

WebMemo



Published by The Heritage Foundation

No. 2745
January 5, 2010

Yemen Terrorist Transfers: Policies That Make Sense

Charles Stimson

There are approximately 95 Yemeni terrorists currently at Guantanamo Bay. Setting politics aside, the terror attack on Christmas Day by a Yemeni-inspired, al-Qaeda-trained Nigerian requires the Obama Administration to take a sober look at its Yemeni terrorist transfer policies from Guantanamo. Simply stating, as the Administration has until today, that it will continue transfers (including to Yemen) on a “case-by-case” basis is irrational and dangerous. This situation requires a more intelligent, broad-based, national-security-first approach to the transfer issue, especially transfers to Yemen.

Making Good Use of the Strategic Pause. Administration officials have acknowledged that closing Guantanamo is difficult and will not take place until at least 2011. They correctly assert that they have the legal right to hold detainees under the law of war, without charges, for the duration of hostilities. They have this right regardless of whether detainees are held in Guantanamo or the United States.

Dozens of Guantanamo graduates are known to have taken up combatant activity, and indeed at least two have assumed leadership roles in al-Qaeda in the Arabian Peninsula. Those two may have directed, influenced, or inspired Umar Farouk Abdulmutallab to carry out his terrorist attack on Christmas Day.

Now that the Administration has announced that it will not be transferring any Guantanamo-based Yemeni detainees to Yemen for the time being (essentially declaring the need for a strategic pause),

it should use this time period wisely by engaging in the following five initiatives:

1. De-link transfers from Guantanamo from closing detention operations at Guantanamo. Many people lump these two issues together, as if transfers are a condition precedent to closing Guantanamo. They are not. The Administration has properly asserted the legal right to detain the enemy, without charge, for the duration of hostilities. Since Guantanamo will not be closing until at least 2011, there is time to plan for its proper closure (assuming that still happens) while still detaining Yemeni detainees.
2. Conduct a comprehensive review of all detainees released from Guantanamo and the confirmed recidivism rates of those graduates, and share the information in classified briefings with appropriate Members of Congress. Include not only the numbers of those who returned to combatant activity but also specify their actions, including where and how they did it and with whom. Also include the number of those whom we suspect have returned to the fight.
3. Conduct an honest and comprehensive review of all diplomatic and other agreements entered into

This paper, in its entirety, can be found at:
www.heritage.org/Research/HomelandSecurity/wm2745.cfm

Produced by the Center for Legal and Judicial Studies

Published by The Heritage Foundation
214 Massachusetts Avenue, NE
Washington, DC 20002-4999
(202) 546-4400 • heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

between the U.S. and countries that have received Guantanamo detainees. Assess the degree to which those countries have actually honored all of their promises to the U.S. Compare the recidivism rates against those countries that have not completely fulfilled their obligations to us. Share all of this information, in classified hearings, with committees of jurisdiction in Congress.

4. Strictly monitor for at least a year the six Guantanamo Yemenis just transferred to Yemen. According to news reports, the Yemeni government has agreed to detain them indefinitely. If true, that is a good start; however, given the Yemeni government's track record in this area, there is cause for concern that it will not honor this promise. Make it clear to the Yemeni government that if any of the six "escape" from custody, then it will not be receiving any more of their countrymen held at Guantanamo.
5. Demand the extradition of Fahd al-Quso and Jamal al-Badawi from Yemen to the U.S. for trial. Both of these Yemeni al-Qaeda members were

intimately involved in the October 2000 bombing of the American destroyer USS *Cole*, which killed 17 American sailors. Al-Badawi was sentenced to death by a Yemeni court in 2004; he then "escaped" from jail in 2006. He is now back in the terrorist game in Yemen along with al-Quso. The Yemeni government has refused U.S. extradition requests. That must change now.

U.S. Security Front and Center. This comprehensive approach puts U.S. national security front and center, and it fits nicely with U.S. ongoing counterterrorism initiatives underway in Yemen. It requires the Obama Administration to be honest with itself, Congress, and the American people about past and present transfer policies. And finally, it forces the government of Yemen to engage in a meaningful gesture of good faith by extraditing two confessed terrorist murderers.

—Charles Stimson is Senior Legal Fellow in the Center for Legal and Judicial Studies at The Heritage Foundation and former Deputy Assistant Secretary of Defense for Detainee Affairs (2006–2007).