



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

The Honorable Mark Kirk
U.S. House of Representatives
Washington, DC 20515

DEC 15 2009

Dear Representative Kirk:

Thank you for your letter of November 20, 2009, regarding the U.S. Government's potential acquisition of the Thomson Correctional Center to house both federal inmates and a limited number of detainees from Guantanamo. As you know, officials from the Departments of Defense, Justice, and Homeland Security visited the facility in Thomson, Illinois, on November 16, 2009, and met with more than 120 local, State, and Federal officials to answer questions and exchange information. Our staff was uniformly impressed with the facility, its state-of-the-art security measures, and the people of Thomson and the surrounding area.

We welcome the opportunity to work with you and your colleagues as this process moves forward. As part of this effort, you and other Members of the Illinois congressional delegation received a detailed briefing on December 2, 2009, from Defense Department and Justice Department officials. During that briefing, questions were posed by Members of both parties and both Houses of Congress that were similar to those in your letter of November 20. For this reason, the Departments of Defense and Justice have prepared written answers to more than 30 questions that I am forwarding to the entire Illinois delegation.

Finally, as Secretary Gates stated in his Senate testimony last week, during his service as Secretary of Defense for both President Bush and President Obama, his assessment has remained the same: Guantanamo bears a taint, and it is a recruiting tool for al Qaeda and for other terrorists and Islamic extremists. This assessment is shared by the nation's top military commanders who prosecuted this war under the previous administration and continue to do so today, including Admiral Michael Mullen, the Chairman of the Joint Chiefs of Staff, and General David Petraeus, the Commander of U.S. Central Command.

Working together, we can close Guantanamo in a responsible manner, and our men and women in uniform can safely and securely house a limited number of detainees within the United States. Thank you again for your consideration.



A handwritten signature in black ink, appearing to read "William B. G." followed by a flourish.

ANSWERS TO QUESTIONS FROM ILLINOIS MEMBERS

Topic A: Military Commissions, Civilian Trials, Prolonged Detention

1. Of detainees set to be transferred to Thomson, how many would be selected for trial by civilian court?

If Thomson is selected, we do not anticipate that any detainees currently at Guantanamo Bay who are transferred to Thomson would be prosecuted in civilian courts. Instead, detainees who will be prosecuted in Federal court would be transferred directly to the jurisdiction where they would be prosecuted. For example, the Attorney General, in consultation with the Secretary of Defense, announced on November 13, 2009, that five detainees accused of conspiring to commit the 9/11 attacks would be prosecuted in Federal court in New York. Those detainees will be transferred directly from Guantanamo Bay to the Southern District of New York, where they will be tried. If additional detainees are designated for prosecution in Federal courts, they also will be transferred directly from Guantanamo Bay to a suitable facility with commensurate security in the jurisdiction where they will be tried.

a. By what legal precedent will you be prosecuting enemy combatants in a civilian court?

Under the Constitution and laws of the United States, Federal courts have jurisdiction over a number of terrorism offenses. The Department of Justice has successfully and safely prosecuted terrorists in Federal courts for many years, including:

- Zacarias Moussaoui, convicted in connection with the 9/11 attacks;
- Ali al-Marri, convicted al Qaeda sleeper agent;
- Ramzi Youssef, convicted mastermind of 1993 World Trade Center bombing; and
- Omar Abdul Rahman, convicted in 1995 of conspiracy to target the United Nations building and other New York landmarks.

b. Without having been read Miranda rights, what are the chances enemy combatants could win release by entering civilian court?

Consistent with longstanding policy regarding criminal prosecutions, the Department of Justice will pursue prosecutions of Guantanamo Bay detainees in Federal court only when admissible evidence or potentially available admissible evidence will probably be sufficient to obtain and sustain a conviction. The Attorney General has made clear that he would not have decided to pursue prosecution of the accused 9/11 co-conspirators in Federal court if he did not believe prosecutors could secure a conviction. We cannot comment further on evidentiary issues that particular cases may present.

c. Where would these trials take place?

The trials of the accused 9/11 co-conspirators will take place in the Southern District of New York. If additional Guantanamo Bay detainees are prosecuted in Federal courts, their trials will take place in the Federal judicial districts with venue over the offenses.

d. Where would such detainees be housed during the trial?

The accused 9/11 co-conspirators will be housed during trial in secure detention facilities in the Southern District of New York. If additional Guantanamo Bay detainees are prosecuted in Federal courts, they will be housed in secure facilities in the Federal judicial districts with venue over the offenses.

e. What steps will be needed to ensure the security of prosecutors, judges, juries and their families?

Subject matter experts with the U.S. Marshals Service (USMS) have extensive experience in risk management, protective investigations, and protective response. The Bureau of Prisons (BOP) and USMS also have extensive experience housing terrorism defendants both during trial and after conviction. They intend to work closely with state and local authorities to protect against any threats to the trials or detention facilities where terrorism defendants are held, or to the surrounding communities. Potential security measures for judges, prosecutors, jurors, and their families, if necessary, will be determined on a case-by-case basis pursuant to a continuous risk analysis conducted by USMS, which has conducted thousands of protective details and investigates over 1,300 potential threats every year.

2. Of detainees set to be transferred to Thomson, how many would be selected for trial by military commission?

The Administration intends to use all instruments of national power to defeat terrorist extremists, including both Federal courts and military commissions. On November 13, 2009, the same day the Attorney General decided, in consultation with the Secretary of Defense, that the alleged 9/11 co-conspirators would be prosecuted in Federal court, he also decided that the cases of five other Guantanamo Bay detainees could be prosecuted by military commissions, including the detainee accused of orchestrating the bombing of the USS COLE. The Attorney General will continue to review additional cases that are referred to the protocol process, in consultation with the Secretary of Defense, and announce further forum decisions on a rolling basis.

a. Where would these commissions take place?

Although a final decision has not yet been made on where reformed military commissions will take place, one option under consideration is to hold military commissions at the detention facility selected for detention. If Thomson is that facility, it has existing space that could be used to try military commission cases as well as significant administrative space and other amenities that could provide support to military commissions.

b. Where would such detainees be housed during the trial?

Detainees prosecuted in reformed military commissions would be held at the same location where they are being tried. If the Thomson facility is selected for such detainees, they would be held securely before, during, and after trial within the facility.

c. What steps will be needed to ensure the security of the prosecutors, judges, and their families?

The Thomson detention facility was constructed in 2001 to maximum security specifications. In addition, after Defense Department upgrades to the perimeter security, the Thomson facility would be as secure as any detention facility in the United States, including the “Supermax” prison in Florence, Colorado. Specific procedures to protect the security of participants in the military commission process would be similar to those already in place at Guantanamo. Military court members would not be identified publicly; counsel, judges, and court staff would be briefed on force protection measures; and any perceived threats would be handled by appropriate Defense Department security personnel. Consistent with the policies currently in place at Guantanamo, personnel would be billeted in undisclosed locations, and all observers would be fully screened before being admitted to the courtroom viewing area. Guards and a quick reaction team would be on-call in case of any disruption within the courtroom.

3. Of detainees set to be transferred to Thomson, how many fall into President Obama’s fifth category—those too dangerous for trial or release?

The President never designated a category of detainees who are “too dangerous for trial” or “so dangerous that they can never be prosecuted.” During his speech at the National Archives on May 21, 2009, the President stated that “there may be a number of people who cannot be prosecuted for past crimes, in some cases because evidence may be tainted, but who nonetheless pose a threat to the security of the United States.” With respect to these cases, the President also stated:

“[W]e must recognize that these detention policies cannot be unbounded. They can’t be based simply on what I or the executive branch decide alone. That’s why my administration has begun to reshape the standards that apply to ensure that they are in line with the rule of law. We must have clear, defensible, and lawful standards for those who fall into this category. We must have fair procedures so that we don’t make mistakes. We must have a thorough process of periodic review, so that any prolonged detention is carefully evaluated and justified.”

For these reasons, any detainees at Guantanamo who continue to be held, and for whom no prosecution is planned, will be held only under authority granted by Congress in 2001 under the Authorization for Use of Military Force, as informed by the law of war. In addition, the Supreme Court ruled in *Boumediene v. Bush*, 128 S. Ct. 2229 (2008), that all detainees currently held at Guantanamo have the right to file petitions for habeas corpus to challenge their detention in Federal court. Detainees will continue to have that right when they are transferred to the United States.

With respect to the number of detainees who will continue to be held, and for whom no prosecution is planned, an interagency review panel has been working since February to review the status of every detainee currently being held at Guantanamo. This panel includes senior officials from the Departments of Justice, Defense, State, and Homeland Security, and the Office of the Director of

National Intelligence and the Office of the Chairman of the Joint Chiefs of Staff. Staffed by a task force of more than 60 career prosecutors, attorneys, and analysts from across the Federal Government, the panel has completed a preliminary examination of all detainees at Guantanamo and plans to make final detainee disposition decisions early next year.

Topic B: Legal Issues—Authorization for Detention on U.S. Soil

1. How many detainees who fall into the status of “too dangerous for trial or release” would be brought to Thomson, Illinois?

As stated above, there is no category of detainees who are “too dangerous for trial or release.” Nevertheless, an interagency review panel is in the final stages of determining the number of detainees who will continue to be held, and for whom no prosecution is planned, under the authority granted by Congress in 2001.

2. Will the Administration agree to pass legislation authorizing the permanent detention without trial of such enemy combatants as the President pledged in his May 21st, speech?

Congress has already enacted legislation authorizing detention in the current conflict. The Authorization for Use of Military Force, which Congress enacted in September 2001, provides:

“[T]he President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States by such nations, organizations or persons.”

The Supreme Court’s plurality opinion in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), concluded that “Congress has clearly and unmistakably authorized detention” of individuals covered by this legislation. Federal courts are actively reviewing the Government’s detention decisions in the context of habeas corpus challenges brought by detainees at Guantanamo.

3. If Congress does not pass such legislation and detainees are brought to Thomson, how will you prevent the detainee’s legal representation from mounting a strong case for release by a court?

As stated above, the Supreme Court in *Hamdi v. Rumsfeld* concluded that the detention of individuals covered by the Authorization for Use of Military Force was authorized by Congress in 2001. In addition, the Supreme Court ruled in *Boumediene v. Bush*, 128 S. Ct. 2229 (2008), that all detainees currently held at Guantanamo have the right to file petitions for habeas corpus to challenge their detention in federal court. Detainees will continue to have that right when they are transferred to the United States.

Topic C: Legal Issues—Political Asylum and Consular Visits

1. Have you received a written opinion by the Justice Department that detainees lack legal grounds to apply for political asylum under federal law?

No. However, Section 552(f) of the Fiscal Year 2010 Department of Homeland Security Appropriations Act, which was signed into law by the President on October 28, 2009, specifically bars immigration benefits for detainees including “classification as a refugee or applicant for asylum.” See Pub. L. No. 111-83, § 552(d) (2009).

2. Have you received written legal opinions from the Justice Department that you will be able to deny a request by a foreign government to provide consular services to detainees?

The Department of Justice has not written a legal opinion on this topic during this administration and is not aware of any opinions written by the previous administration. Consular access has not been provided to detainees at Guantanamo Bay.

3. Should consular access be granted, what steps will be taken to prevent communication or coordination with outside actors?

Although consular access has not been provided to detainees at Guantanamo Bay, foreign government officials have met with some of their citizens at Guantanamo Bay following a determination by the U.S. Government that such access was appropriate and consistent with maintaining security.

Topic D: Protection for Detention Personnel

1. What steps will be taken to avoid the identity release of civilian or military detention personnel at the facility?

If the Thomson facility is selected, detainees transferred from Guantanamo would continue to be guarded by U.S. military personnel, just as they are now at Guantanamo. The Defense Department would operate its portion of the facility independently, and there would be no opportunity for detainees from Guantanamo to interact with Federal prison inmates.

As with all Defense Department facilities, including Guantanamo, the on-site commander is responsible for ensuring the security of the facility and its personnel. The on-site commander would have authority to take steps to avoid the public release of the identities of civilian or military personnel working at the facility. The on-site commander could take additional security measures if necessary, including allowing travel to the facility in civilian clothes, removing indications of military affiliation from automobiles, and “sanitizing” military uniforms when in proximity to detainees.

2. What steps will be taken to provide security for said detention personnel their families, and their communities?

As stated above, the on-site commander will have the tools necessary to ensure the security of the facility and its personnel, just as he currently does at Guantanamo. In addition to the specific

security measures outlined above, Defense Department personnel are trained in the mitigation of force protection concerns when off post. This is an annual training requirement, and the family members of Defense Department personnel are authorized and encouraged to receive this training as well.

Topic E: Medical Treatment and Associated Risks

1. Does the Thomson Correctional Facility currently house the required class three medical facilities for detainees?

Guantanamo does not have a Class 3 medical facility, but a Class 2 medical facility, supplemented with Memoranda of Understanding with physicians and other medical personnel who travel to the site. The same policy would apply if the Thomson facility is selected. The existing facility at Thomson already has a fully functional health unit that includes the following in-house components:

- emergency triage;
- medical records;
- pharmacy;
- radiology;
- physical therapy;
- negative pressure rooms; and
- 16-bed infirmary with two crisis care rooms.

The Defense Department would further upgrade the existing health unit to handle all foreseeable detainee health conditions, just as it has done at Guantanamo for the past seven years.

2. If not, how long will it take to build?

As stated above, the existing facility at Thomson already includes a fully functional health unit. The Defense Department estimates that all upgrades to the existing health unit could be completed in a matter of months, and all upgrades would be completed prior to the arrival of detainees. If for some reason a detainee suffers from a health condition that cannot be treated fully within this upgraded facility, he would not be taken to a civilian medical facility, but would be transferred to a U.S. military base with secure medical facilities.

3. In the interim construction period, will detainees be treated at Mercy Medical Center in Clinton (9 miles), Morrison Community Hospital in Morrison (13 miles), CGH Medical Center in Sterling (21 miles) or another location?

No. As stated above, the Defense Department would not transfer any detainees from Guantanamo until all necessary medical upgrades are complete, and we do not foresee any circumstances in which detainees would be brought to civilian medical facilities.

4. What security measures will be needed to secure the detainee transport to and from the medical facility?

As stated above, the Defense Department would not transfer any detainees from Guantanamo until all necessary medical upgrades are complete, and we do not foresee any circumstances in which detainees would be brought to civilian medical facilities.

5. What security measures will be needed at the medical facility?

As stated above, the Defense Department would not transfer any detainees from Guantanamo until all necessary medical upgrades are complete, and we do not foresee any circumstances in which detainees would be brought to civilian medical facilities.

Topic F: Protesters and Emergency Responder Capacity

1. How many protesters are expected to come to Thomson from around the country and world?

Federal agencies have not attempted to estimate the number of protesters that might come to Thomson from around the country and around the world, and it is unlikely that any such estimate would be credible.

Nevertheless, if the Thomson facility is selected, Federal agencies including the Departments of Justice, Defense, and Homeland Security, would work with State and local agencies to identify and mitigate any threats relating to the population of Federal inmates and detainees at Thomson. The Federal Government's preliminary evaluation process already has included meetings and briefings with:

- Jonathon Monken, Director of Illinois State Police;
- Michael P. Randle, Director of Illinois Department of Corrections;
- Andrew Velasquez, Director of Illinois Emergency Management Agency; and
- Multiple regional, county, and local law enforcement officials.

In addition to potentially modifying existing Memoranda of Agreement (MOAs), local, State, and Federal agencies are evaluating intelligence-sharing capabilities through the Illinois state "fusion center" and the Federal Joint Terrorism Task Force.

2. Does Thomson currently have adequate police and public safety officers to handle crowd control and make arrests, if necessary?

Since the Thomson facility has not been fully utilized for the past eight years, it is likely that an increase in police and public safety officers will be necessary regardless of whether the thousands of new occupants at the facility are Federal inmates or detainees from Guantanamo. Federal officials and their counterparts in Illinois have begun the process of identifying additional personnel, resources, and authorities that may assist in handling the increased presence of both inmates and detainees at Thomson.

On December 2, 2009, Illinois law enforcement organizations, including the State Police, the Association of Chiefs of Police, the Sheriff's Association, and the Law Enforcement Alarm System, sent a letter to the Department of Defense and the Department of Justice endorsing the Thomson

facility as an option for housing federal inmates and a limited number of detainees from Guantanamo. Their letter stated:

“We should also work with the federal government to further explore and detail law enforcement’s recommendations at the local, county and state levels in order to obtain the necessary additional resources, including manpower, equipment and funding. Given that support, we strongly believe that the operation of this facility can be conducted without any increased risk to public safety.”

3. Does Thomson have sufficient jail capacity to house a significant number of law breakers?

As stated above, the Federal Government’s preliminary evaluation process already has included meetings with local, State, and Federal law enforcement officials who are evaluating additional personnel, resources, and authorities that may assist in handling the increased presence of both inmates and detainees at Thomson. This would include the question of jail capacity for law breakers.

Topic G: Military Housing and Education Costs

1. Will these military homes be subject to local property tax?

Yes, if military personnel buy houses on the local economy around Thomson, they would be subject to the same property taxes as civilians in the area.

2. How many children may reasonably be expected to accompany 1,500 service members?

If Thomson is selected, the Defense Department estimates that between 1,000 and 1,500 personnel would move to the region. Approximately two-thirds of these employees would be military service members, while approximately one-third would be contractors and civilian personnel. Current Defense Department planning assumptions are that military service members would not bring family members to the region during the first year of the facility’s operation. As a result, local school districts would have some time to prepare for the increased demand at local schools, including hiring new teachers. In the second year, the Defense Department would evaluate allowing service members to bring family members into the region.

3. Does West Carroll District #314 have the capacity to absorb all new military family students?

By itself, West Carroll District #314 is unlikely to have the capacity to absorb all new military family students. However, it will not be required to do so. The Council on Economic Advisers estimates that service members will settle in several counties within a one-hour drive. These include Carroll County, Whiteside County, Jo Daviess County, Lee County, and Rock Island County in Illinois, as well as Clinton County and Jackson County in Iowa. In addition, as stated above, the arrival of new military family students would not occur during the first year of the

facility's operation, so school districts in these counties would have some time to adjust to the increased demand.

4. Will West Carroll District #314 receive federal Impact Aid payments to subsidize these new education costs? Is so, how much per student?

If the Thomson facility is selected, Federal agencies would work with local, county, and state officials to identify multiple funding sources that may be available to assist with the increased Federal footprint in the region. Under the Impact Aid program, "basic support payments" help local school districts that educate "federally connected" children, including children of members of the uniformed services and children whose parents work on federal property. In general, to be eligible for assistance, a local school district must educate an average of at least 400 such children, or federally connected children must make up at least 3% of a school district's total average daily attendance. "Heavily impacted districts" that enroll certain percentages of federally connected children and meet other specific statutory criteria may receive increased formula payments.