

Closing Guantánamo

PRESIDENT OBAMA MUST DO IT RIGHT THIS TIME.



BARACK OBAMA: In a May 23 speech at the National Defense University, he renewed his pledge to close the detention center.

BY LOUIS FISHER

In his remarks at the National Defense University on May 23, President Obama renewed his pledge to close the detention center at Guantánamo Bay, Cuba. The following line provoked applause from the audience: “[T]here is no justification beyond politics for Congress to prevent us from closing a facility that should never have been opened.” That left the impression that the obstructions he faced were entirely external to the administration. However, he and his political advisers committed a number of costly mistakes.

On January 22, 2009, on his second day in office, Obama issued Executive Order 13492 to close the detention facility “as soon as practicable, and no later than 1 year from the date of this order.” Remarkably, no one in the administration seemed to warn him of the political risks. Transferring terrorist suspects to the United States was immensely controversial. The administration needed to first meet with lawmakers, learn about their concerns, fashion a reasonable compromise and locate a secure facility on the mainland to house the detainees. It failed to take any of those steps. If Obama had asked

Congress to help create a legislative framework for the closure, progress was possible. The executive order was the type of unilateral action that backfired on George W. Bush.

House debate on May 14, 2009, on a supplemental appropriations bill highlighted some key issues. The administration had not given Congress a clear plan on how it would close down the detention facility, where the detainees would be moved, the level of security risks and how they would be handled. Some lawmakers thought that governors and state legislators should have the final say on housing detainees in their states.

The bill deleted \$80 million that the administration requested to transfer the detainees to the United States.

Further raising the concerns of lawmakers was a White House decision on April 14, 2009, to resettle eight of 17 Uighurs from the naval base into the United States, most of them in Virginia. The administration believed this action would encourage European and other governments to accept some of the detainees. According to the administration's plan, the Uighurs would simply show up in American communities, free to move around. Supposedly a swift, secretive operation would preempt any political outcry and interference by Congress. That project failed also. Before the detainees could leave the naval base, Representative Frank Wolf (R-Va.) learned about the transfers. He had not been briefed by the White House. His angry outburst forced the administration to shelve the plan. Congressional suspicions further heightened in November 2009, when the administration announced its decision to try Khalid Sheikh Mohammed in a federal courthouse in New York City, an initiative that had to be abandoned in the face of bipartisan disapproval.

In acting on the supplemental appropriations bill, the Senate voted, 90-6, to prohibit funds to transfer detainees to the United States. The lopsided vote should not have surprised the Obama administration. Two years earlier, on July 19, 2007, the Senate took a vote on a sense of the Senate resolution, stating that detainees housed at Guantánamo "should not be released into American society, nor should they be transferred stateside into facilities in American communities and neighborhoods." The resolution passed, 94-3. Three senators did not vote. One was Barack Obama.

As enacted, the supplemental appropriations bill denied funds to transfer detainees in Guantánamo to the United States or other countries unless the administration followed the steps set forth in the statute. In signing the bill, Obama offered no objections to the language on Guantánamo. Other stat-

utes included limitations on releasing detainees from Guantánamo into the United States. Subsequent legislation became increasingly restrictive.



With excellent reasons for closure, it's now time to go from words to action.

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A statute enacted on January 7, 2011, prohibited the use of any funds to transfer or release detainees to the United States. Regarding transfers to other countries, the statute authorized the secretary of defense to certify in writing, with the concurrence of the secretary of state, that the government willing to receive detainees was not a designated state sponsor of terrorism and would maintain effective control over the facility to house detainees. The Obama administration never exercised that waiver authority. Another statute prohibited use of any funds to construct or modify any facility in the United States to house detainees from the naval base.

Early in the administration, Obama appointed Daniel Fried to persuade countries to resettle some of the detainees approved for release. Fried helped in the transfer of 40 detainees but his office was shuttered on January 27, 2013. Ironically, instead of closing Guantánamo, the administration closed Fried's office. The decision to close the office underscored the lack of commitment—or capacity—to convert a presidential goal into an achievement. In his address at the National Defense University, Obama announced he would appoint a new senior envoy at the State Department and Defense Department to work on transfers of detainees to third countries. It

would have been more effective to actually name the envoys. On June 17, the administration picked Clifford Sloan to be envoy at the State Department.

Conditions at Guantánamo deteriorated in April, when detainees began a hunger strike to protest being held indefinitely with no hope of trial or release, even though 86 detainees had already been cleared for release. Of 166 detainees, one hundred participated in the strike. More than 40 detainees are forced with tubes inserted in their noses. Medical associations object that any doctor who participates in forcing a prisoner to eat against his will violates "core ethical values of the medical profession" and that the process constitutes torture.

In his May 23 address, Obama correctly described the detention facility as "a symbol around the world for an America that flouts the rule of law." Our allies, he said, "won't cooperate with us if they think a terrorist will end up at GATO." He estimated that the United States spends \$150 million each year to imprison 166 people, "almost \$1 million per prisoner." In mid-June, the House Armed Services Committee put the cost at \$1.6 million per detainee, compared to \$34,046 for an inmate at a high-security federal prison. The Defense Department wants to spend another \$200 million on the Guantánamo facility.

These are excellent reasons for closure, but this time the administration needs to go from words to action.

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