

National Security Deserves Better: “Odd” Recidivism Numbers Undermine the Guantánamo Policy Debate

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“Someone on the ‘Suspected’ list could very possibly NOT be engaged in activities that are counter to our national security interests.”¹

I. INTRODUCTION

The government has consistently used the detention and alleged recidivism of Guantánamo Bay (GTMO) detainees for political purposes since the opening of the detention facility in 2002. Donald Rumsfeld, Secretary of Defense at the time, framed the government’s narrative of GTMO as a holding place for the world’s “worst of the worst.”² Despite Secretary Rumsfeld’s simultaneous acknowledgement that GTMO was filled with low-level detainees who had little intelligence value,³ the government has continued to use

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¹ Email from Todd Bresseale, Pub. Affairs Officer, Office of the Assistant Sec’y of Def., to Jason Leopold (Mar. 5, 2012, 4:47 PM) (on file with author).

² Richard Cheney, Vice President of the U.S., Remarks at the Gerald Ford Journalism Awards (June, 1, 2009), *available at* <http://press.org/news-multimedia/videos/cspan/286727-1> (Cheney calls detainees the “worst of the worst” at 41:17–41:19). *See, e.g.*, MARK DENBEAUX, RUMSFELD KNEW: DOD’S “WORST OF THE WORST” AND RECIDIVISM CLAIMS REFUTED BY RECENTLY DECLASSIFIED MEMO (2011), *available at* <http://law.shu.edu/ProgramsCenters/PublicIntGovServ/policyresearch/upload/guantanamo-report-Rumsfeld-Knew.pdf>; Mark Denbeaux et al., *The Guantánamo Detainees During Detention: Data from Department of Defense Records*, 41 SETON HALL L. REV. 1269 (2011).

³ Memorandum from Donald Rumsfeld, U.S. Sec’y of Def., to Chairman, Joint Chiefs of Staff and Commander, U.S. Central Command (Apr. 21, 2003)

GTMO as a political talking point to garner public support for the War on Terror and conceal its detainment of mostly innocent and harmless detainees.

The Seton Hall Law Center for Policy and Research (“the Center”), through its review of government documents, has shown the inconsistencies in the government’s data on detainees and continued rhetorical abuse of the rates of recidivism. Although the Center attempts to take government documents at face value, the government has been wildly inconsistent with its claims of recidivism. Indeed, the government’s own public statements make clear that it is only superficially concerned with GTMO detainees during and after their detainment. As the government’s definition of “recidivism” becomes increasingly elaborate, the number of recidivists necessarily increases, and further distorts the public’s perception of GTMO. As a perfect illustration of this point, although the number of unidentified recidivists continues to rise, the list of those confirmed and suspected recidivists who have been named has remained stagnant.⁴

The government’s inconsistent claims of recidivism show that the government is either incapable of accurately identifying recidivists or not interested in being accurate. The fact that only two new recidivists have been identified in the past three years⁵ reflects the recycling of past incidents of recidivism to create a façade that recidivism is an ongoing, significant problem. The government, by focusing only on the stories of detainee reengagement, makes no effort to characterize the true nature of former detainees. Just as Secretary Rumsfeld knowingly fabricated the false notion that GTMO was home to the worst of the worst, the government continues to paint that same picture despite overwhelming evidence to the contrary.

The government’s outright disregard of the success stories of past detainees further exacerbates the ill effects of the government’s inaccurate reporting of recidivism. For the first time, the Center has identified past detainees who have emerged from GTMO and become successful businessmen, students, translators, and diplomats, working to improve the world around them.⁶ These success stories, when compared to the government’s claims of recidivism, paint a more balanced perspective with respect to the nature of the people

(declassified in part July 9, 2010).

⁴ See *infra* apps. A.1–A.8, D.

⁵ See app. A.5.

⁶ See *infra* Section III.

who were actually detained.

Had the government actually believed that GTMO was home to dangerous criminals, the process of releasing detainees would reflect those concerns. Its actions, however, reveal exactly the opposite. For years, the release of detainees was linked directly to the detainees' nationality, rather than to any risk-based assessment.⁷ This reaffirms two common trends: first, GTMO recidivism has been mischaracterized from the very beginning; and second, the government was never seriously concerned with the risk of recidivism.

The government took a step in the right direction in March 2012, however, when the Director of National Intelligence (DNI) released a new Summary of the Reengagement of Detainees Formerly Held at Guantánamo Bay, Cuba.⁸ In this new summary, the DNI begins to disaggregate its previously reported recidivism numbers. By dividing the reengagement numbers by date (before and after January 22, 2009), the DNI elucidates differences between the Bush and Obama Administrations.⁹ Further, the new DNI summary details the number of detainees characterized as "confirmed" or "suspected" recidivists and divides those categories into former detainees who have died, are in custody, or are not in custody.¹⁰ This new summary informs us that fifty-five confirmed recidivists are not currently in custody, while forty-four suspected recidivists are not in custody.¹¹ Though this summary is a step in the right direction towards greater

⁷ See *infra* Section VI.C.

⁸ App. A.8. Since the completion of this report, the DNI has released two additional summaries of detainee reengagement, in September 2012 and March 2013. There is very little difference between these two summaries and the March 2012 summary, with the definitions of "terrorist," "insurgent activities," "confirmed," and "suspected" remaining the same. In the September 2012 summary, the number of total detainees transferred increased to 602 from 599 and the number of suspected of reengaging post-January 22, 2009 fell from 2 to 1. In the March 2013 summary, the number of total detainees transferred increased to 603 and the number of suspected of reengaging post-January 22, 2009 returned to 2. See JAMES R. CLAPPER, DIR. NAT'L INTELLIGENCE, SUMMARY OF THE REENGAGEMENT OF DETAINEES FORMERLY HELD AT GUANTANAMO BAY, CUBA (September 2012), available at <http://www.dni.gov/files/documents/Newsroom/Reports%20and%20Pubs/Reports%20and%20Pubs%202012/Summary%20of%20the%20Reengagement%20of%20Detainees%20Formerly%20Held%20at%20GTMO.pdf>; JAMES R. CLAPPER, DIR. NAT'L INTELLIGENCE, SUMMARY OF THE REENGAGEMENT OF DETAINEES FORMERLY HELD AT GUANTANAMO BAY, CUBA (March 2013), available at <http://www.dni.gov/files/documents/March%202013%20GTMO%20Reengagement%20Release.pdf>.

⁹ See *infra* Section VI.C.3.

¹⁰ See app. A.8.

¹¹ *Id.* at 1.

transparency, it leaves much to be desired, including the release of the names of recidivists, the countries to which they were released, why they were released, and the acts of recidivism they are alleged to have committed.

The Department of Defense (DoD) has also taken a step in the right direction by publicly announcing its opposition to the prevailing practice of conflating “confirmed” and “suspected” recidivists into a single “recidivist” category, since a former detainee “suspected” of reengagement may in fact be perfectly peaceable.¹² Based on the government’s own intelligence, a public affairs officer admitted that combining the “confirmed” and “suspected” recidivism rates to reach a sum total of 27% is not appropriate because someone on the “suspected” list could “very possibly NOT be engaged in activities that are counter to our national security interests.”¹³

The issue of the post-release conduct of GTMO detainees is a matter of policy and political significance. If the released GTMO detainees transitioned into peaceful private lives, it would say a great deal about our judgment of who is dangerous and who is not. Furthermore, it would strongly suggest that GTMO never housed the worst of the worst. Perhaps most importantly, placing political considerations ahead of honest review of the facts sabotages any attempt to create effective policy.

II. METHODOLOGY AND OPEN SOURCE DATABASE

The Center’s standard practice is to utilize data gathered from public government documents under the assumption that they are accurate. Because the government has not produced any documents related to non-recidivist former detainees, however, and because the government itself relies upon press reports for information about former detainees, this Report broadens the scope of available sources by examining various “open-source” resources as well as relying on public government reports. The Center designed a database to

¹² See Email from Todd Bresseale, *supra* note 1.

¹³ *Id.* (“[T]his document makes a distinction between ‘Confirmed’ v. ‘Suspected.’ This is particularly relevant because there was confusion in some early media reports conflating the two, coming up with this odd 27-28% number. To be sure, ‘Confirmed’ is more consistent with our actual intelligence data and ‘Suspected’ is a much lower bar, triggering an additional review that is really more akin to a sort of ‘early watch’ system. Someone on the ‘Suspected’ list could very possibly NOT be engaged in activities that are counter to our national security interests.”).

compile, organize, and analyze the data regarding each of the individuals detained in GTMO.

For the foundation of this database, the Center utilized *The New York Times*' "Guantánamo Docket" database of all 779 individuals known to have been detained at GTMO since 2002.¹⁴ The Center's database collected each detainee's name, Internment Serial Number (ISN), citizenship, custody status, place of birth, date of birth, date transferred from GTMO, and country to which the detainee was transferred from the "Guantánamo Docket." The Center also used the government's list of GTMO detainees.¹⁵ It then added the public government information regarding twenty-nine named recidivists from the government's "Return to the Fight Fact Sheet," including whether, in the government's view, the detainee was a suspected or confirmed recidivist.¹⁶ Finally, it supplemented the database by using open source information gathered from the Internet. In doing so, the database collected comments from various sources, coded them as positive, negative, or neutral, and made a determination on the quality of the source.

In order to gather anecdotes about released GTMO detainees, the Center conducted an Internet search of public sources. Research fellows utilized the Center's detainee database, which contains the names of all detainees ever held in GTMO. The search of Internet sources yielded public information for 208 of the 600 released detainees. This Report is not a comprehensive list of all public anecdotes about released detainees. For some detainees, there is an abundance of information regarding their lives after GTMO, not all of which has been included. Because there is public information on approximately one-third of all released detainees, the sample size is significant. Of course, however, the missing two-thirds may raise questions about its representativeness.

¹⁴ Andrei Scheinkman et al., *The Guantanamo Docket*, N.Y. TIMES, <http://projects.nytimes.com/guantanamo> (last visited Mar. 19, 2013). Note that throughout this Report, the Center relied upon the spellings of names of detainees as they exists in the N.Y. Times database, rather than the spellings in the sources, to maintain uniformity.

¹⁵ U.S. DEP'T OF DEF., LIST OF INDIVIDUALS DETAINED BY THE DEPARTMENT OF DEFENSE AT GUANTANAMO BAY, CUBA FROM JANUARY 2002 THROUGH MAY 15, 2006 (2006) [hereinafter LIST OF INDIVIDUALS DETAINED], available at <http://www.defense.gov/news/may2006/d20060515%20list.pdf>.

¹⁶ See app. A.5.

III. POSITIVE POST-RELEASE DETAINEE STORIES

As detainees have been released from GTMO, many have made public statements. For various reasons, news outlets have reported on approximately one-third of all detainees released from GTMO.¹⁷ Many released detainees have been able to put their experiences in GTMO behind them and go on to live productive lives. Some have gone on to careers and studies which include: author, spokesman for Amnesty International, student, construction worker, researcher, call center worker, real estate agent, landlord, lawyer, utilities company controller, electrician, golf groundskeeper, radio commentator, translator, and singer/rapper. Despite this reality, government-released information, including the recent House Armed Services Committee Report released by the House Majority, has focused solely on detainees that have reengaged in terrorist activities post-release.¹⁸ This leaves the public with an incomplete picture, as a full inquiry into released GTMO detainees requires attention to the many success stories. No government report has addressed the success of these former GTMO detainees.

Many of the released detainees have been able to successfully transition from “enemy combatant” to productive member of society. Former detainee Khalid Sulaymanjaydh Javdh al Hubayshi (ISN 155), for example, has described his life in Jiddah, Saudi Arabia as “comfortably routine. On most days, he wakes before dawn, drinks an espresso made by his wife and takes a 90-minute bus ride to his job as a controller at a utilities company.”¹⁹ He credits his successful post-release life to the Saudi Arabian government’s assistance in helping him marry and get his job back.²⁰

One need only pause for a moment to realize how extraordinary these accomplishments are. In a time where even the most qualified applicants have difficulties finding work in many parts of the world, these individuals have succeeded in the face of such a negative past. For some former GTMO detainees, this status—“Former

¹⁷ This figure is based on research and analysis of the Center’s aforementioned detainee database.

¹⁸ See STAFF OF H. COMM. ON ARMED SERVICES, 112TH CONG., LEAVING GUANTANAMO: POLICIES, PRESSURES, AND DETAINEES RETURNING TO THE FIGHT 4 (Comm. Print 2012) [hereinafter LEAVING GUANTANAMO], available at http://armedservices.house.gov/index.cfm/files/serve?File_id=dd0b4c6e-528e-4138-9755-86bae92e1cdb.

¹⁹ Faiza Saleh Ambah, *Out of Guantanamo and Bitter Toward Bin Laden*, WASH. POST, Mar. 24, 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/23/AR2008032301594.html>.

²⁰ *Id.*

Guantánamo Detainee”—is likely a disqualification in the eyes of many employers. For example, three different employers terminated Munir Bin Naseer (ISN 85) upon discovering that he had previously been in GTMO.²¹ Rather than accept the futility of his position and return to the war, Naseer persevered and found a position as a call center worker in Karachi for a Chicago mortgage broker.²²

As released detainees return to and around the war zones, some have chosen to work for peace and security, rather than against it. Taj Mohammed (ISN 902), who was already fluent in four languages prior to his detention, learned both Spanish and English during his time at GTMO.²³ Mohammed now works with American soldiers in Afghanistan as a translator.²⁴ When questioned about his lack of support for the Taliban, Mohammed responded “The PRT guy [American Provincial Reconstruction Team] makes the building, the school, everything.”²⁵ He continued, “The Taliban doesn’t make anything for us. Stupid guy, the Taliban.”²⁶ Another released detainee, Abdul Salam Zaeef (ISN 306), is a former Afghan ambassador to Pakistan and has been a key figure in peace talks with the Taliban calling for a unity government.²⁷

Unlike Mohammed, most released detainees did not leave GTMO with a newly gained, marketable skill. Therefore, upon their release, some chose to pursue further training and education. Feroz Ali Abbassi (ISN 24) earned a Bachelor of Arts degree with honors in Social Policy from the London School of Economics.²⁸ Hafice Leqeat

²¹ Tom Lasseter, *Guantanamo Inmate Database: Munir Naseer*, MCCLATCHY NEWSPAPERS (2008), <http://detainees.mcclatchydc.com/detainees/12>.

²² *Id.*

²³ Karen Russo, *Exclusive: Former Gitmo Detainee Now Working for U.S.*, ABC NEWS (Feb. 22, 2010), <http://abcnews.go.com/International/Afghanistan/guantanamo-detainee-taj-mohammed-gitmo-now-works-americans-afghanistan/story?id=9908017#.T0HFtvGPXkp>.

²⁴ *Id.*

²⁵ *Id.* (bracketed language inserted by reporter).

²⁶ *Id.*

²⁷ See generally Olaf Ihlau, *Back from Guantanamo: Ex-Taliban Official Calls for Unity Government in Afghanistan*, SPIEGEL ONLINE INT. (Apr. 12, 2007), <http://www.spiegel.de/international/world/0,1518,476403,00.html>; Jason Straziuso, *Taliban and Afghan Officials Break Bread*, THE AGE, Oct. 7, 2008, available at <http://news.theage.com.au/world/taliban-and-afghan-officials-break-bread-20081007-4v9j.html>.

²⁸ Asim Qureshi, *Cageprisoners Annual Report 2010*, CAGEPRISONERS (Sept. 2, 2010), <http://www.cageprisoners.com/our-work/reports/item/515-cageprisoners-annual-report-2010>. See also Carol Rosenberg, *Newly Released Documents Reveal Fate of Original Guantanamo Detainees*, COLLEGE TIMES, Jan. 17, 2008, available at <http://www.collegetimes.com/music/newly-released-documents-reveal-fate-of->

Manzu (ISN 139) chose to attend law school as a result of his time in GTMO.²⁹ Others, like Ali Mohsen Salih (ISN 221), have studied trades. Upon his release from GTMO, Salih studied to become an electrician, although he has noted that it has been extremely difficult for him to find a job as a former GTMO detainee.³⁰

Others have chosen more creative outlets. Martin John Mubanga (ISN 10007) has acknowledged that time in GTMO “made me what I am—even if I’m not quite sure yet who that person is.”³¹ Mubanga has channeled his experiences into music and hopes to release his Guantánamo-inspired rap compositions.³² Murat Kurnaz (ISN 61) has written a book on his experiences in GTMO, entitled *Five Years of My Life: An Innocent Man in Guantanamo*, and works as a city researcher in Bremen, Germany.³³ David Hicks (ISN 2) has also written a book on his time in GTMO, entitled *Guantanamo: My Journey*.³⁴ Most notably, Shafiq Rasul, Asif Iqbal, and Ruhel Ahmed (ISNs 86, 87, and 110, respectively), commonly known as the “Tipton Three,” have released a documentary entitled *The Road to Guantánamo*.³⁵

Many released detainees have stated a desire to forget their experiences in GTMO and move on with their lives.³⁶ Khaleel Mamut

original-guantanamo-detainees-1.490710#.T0HVq_GPXko.

²⁹ Tom Lasseter, *Guantanamo Inmate Database: Hafiz Liaqat Manzoor*, MCCLATCHY NEWSPAPERS (2008), http://detainees.mcclatchydc.com/mi_services/gitmo/detainees/16.

³⁰ Michelle Shephard, *Where Extremists Come to Play*, THE STAR, Sept. 19, 2009, <http://www.thestar.com/News/World/article/698066>. Ali Mohsen Salih is also known as Mohsen al-Askari. Andy Worthington, *Saleh Al Zuba (ISN 503)*, CAGEPRISONERS (Nov. 2, 2011), <http://www.cageprisoners.com/cases/guantanamo-bay/item/2590-saleh-al-zuba-isn-503>.

³¹ David Rose, *How I Entered the Hellish World of Guantanamo Bay*, THE OBSERVER, Feb. 5, 2005, available at <http://www.guardian.co.uk/uk/2005/feb/06/world-guantanamo>.

³² *Id.*

³³ Matthew Schofield, *Guantanamo Inmate Database: Murat Kurnaz*, MCCLATCHY NEWSPAPERS (2008), <http://detainees.mcclatchydc.com/detainees/10>; MURAT KURNAZ, *FIVE YEARS OF MY LIFE: AN INNOCENT MAN IN GUANTANAMO* (2009).

³⁴ *David Hicks' First Interview Details US Torture Allegations*, INDEP. AUSTRALIA, Feb. 25, 2011, available at <http://www.independentaustralia.net/2011/international/david-hicks-first-interview-details-us-torture-allegations/>.

³⁵ Matthew Schofield, *Guantanamo Inmate Database: Ruhel Ahmed*, MCCLATCHY NEWSPAPERS (2008), http://detainees.mcclatchydc.com/mi_services/gitmo/detainees/65; David Rose, *Using Terror to Fight Terror*, THE OBSERVER (Feb. 25, 2006), <http://www.guardian.co.uk/film/2006/feb/26/features.review>.

³⁶ See, e.g., Schofield, *supra* note 35; Jumah al Dossari, *I'm Home, but Still Haunted by Guantanamo*, WASH. POST, Aug. 17, 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/08/15/>

(ISN 278), Abdulla Abdulqadure (ISN 285), Salahidin Abdulahat (ISN 295), and Ablikim Turahun (ISN 320)—released detainees who now work as groundskeepers at a golf course in Bermuda—have insisted that they are not bitter about their time spent in GTMO and no longer want to think about the past.³⁷

The story for the detainees released in Kuwait has been very positive. Only Abdallah Saleh Ali al Ajmi (ISN 220) does not fall into this category.³⁸ According to Khaled al Odah, founder of the Kuwaiti Family Committee, the remaining nine released Kuwaiti detainees are married and he believes all have children.³⁹ These released detainees are: Omar Rajab Amin (ISN 65), Nasser Najiri Amtiri (ISN 205), Saad Madi Saad al Azmi (ISN 571), Mohammed Finaytal al Dehani (ISN 229), Abdullah Kamel Abudullah Kamal (ISN 228), Khalid Abdullah Mishal al Mutairi (ISN 213), Fouad Mahmoud al Rabiah (ISN 551), Abdulaziz Sayer Owain al Shammari (ISN 217), and Adel Zamel Abd al Mahsen al Zamel (ISN 568).⁴⁰

Alif Khan (ISN 673) most poignantly states the difficulties faced by released detainees choosing not to reengage upon their return. After refusing an offer to join the Taliban upon his release from GTMO, Khan stated, “[t]hey said if they got the opportunity, they would kill me.”⁴¹ As a result, Khan has been unable to rebuild his life in Afghanistan and has been forced to relocate away from his home and his family.⁴² In the face of these types of threats and hardships, it is impressive that so many detainees have been able to resist engagement or reengagement.

It is remarkable to see how many former GTMO detainees have

AR2008081502985.html.

³⁷ See generally James Whittaker, “Praise be to Allah, we are in Bermuda now”—Former Guantanamo Bay Prisoners Swap Jumpsuits for Bermuda Shorts, TELEGRAPH, Oct. 21, 2009, available at <http://www.telegraph.co.uk/expat/expatnews/6397033/Praise-be-to-Allah-we-are-in-Bermuda-now.html>; *Guantanamo’s Uighurs in Bermuda: Interviews and New Photos*, ANDY WORTHINGTON (June 15, 2009), <http://www.andyworthington.co.uk/2009/06/15/guantanamos-uighurs-in-bermuda-interviews-and-new-photos/>.

³⁸ See *infra* Part VI.A.

³⁹ E-mail from Jenifer Fenton, Freelance Journalist, to Mark Denbeaux (Feb. 11, 2012, 9:41 AM EST) (on file with author). Khaled al Odah is the father of Fouzi Khalid Adbullah al Awda (aka Fawzi al Odah) (ISN 232). According to Ms. Fenton, Fawzi al Odah remains held in GTMO as does one other Kuwaiti, Fayiz Al Kandari (aka Fayiz Mohammed Ahmed al Kandari).

⁴⁰ *Id.*

⁴¹ See Tom Lasseter, *Guantanamo Inmate Database: Alif Khan*, MCCLATCHY NEWSPAPERS (2008), <http://detainees.mcclatchydc.com/detainees/36>.

⁴² *Id.*

not allowed their pasts to dictate their futures. Unfortunately, these stories have been conspicuously absent from government-released information. Although far less exciting than reports of reengagement by released detainees, these positive stories are no less revealing. A picture of detainee reengagement will never be complete until the recidivists are contrasted with the success stories.

IV. DEFINING RECIDIVISM

A. *The Changing Government Definition of Recidivism*

The changing definition of detainee recidivism is just one way in which the government masks the true picture of post-release detainees. In a DoD news release from July 2007, “recidivism” included those that “have returned to militant activities, participated in anti-U.S. propaganda or other activities through intelligence gathering and media reports.”⁴³ In this release, the government noted that it was aware of a number of recidivists despite “not generally track[ing] ex-GTMO detainees after repatriation or resettlement.”⁴⁴ The most recent government definition of recidivism from the March 2012 DNI Summary is more elaborate:

Definition of “Terrorist” or “Insurgent” Activities. Activities such as the following indicate involvement in *terrorist or insurgent activities*: planning terrorist operations, conducting a terrorist or insurgent attack *against Coalition or host-nation forces* or civilians, conducting a suicide bombing, financing terrorist operations, recruiting others for terrorist operations, arranging for movement of individuals involved in terrorist operations. It does not include *mere communications* with individuals or organizations—including other former GTMO detainees—on issues not related to terrorist operations, such as reminiscing over shared experiences at GTMO, communicating with past terrorist associates about non-nefarious activities, writing anti-U.S. books or articles, or making *anti-U.S. propaganda* statements.⁴⁵

To be a “confirmed” case of recidivism requires “[a] preponderance of information which identifies a specific former GTMO detainee as directly involved in terrorist or insurgent

⁴³ See *infra* app. A.2.

⁴⁴ See *infra* app. A.2.

⁴⁵ See app. A.8, at 2 (emphasis added to highlight changes from previous definitions). The 2012 definition closely resembles the definition from 2010. See *infra* app. A.6.

activities.”⁴⁶ To be considered a “suspected” recidivist requires “[p]lausible but unverified or single-source reporting indicating a specific former GTMO detainee is directly involved in terrorist or insurgent activities.”⁴⁷

The newer definitions expand the scope of recidivism to include “insurgent” activities. The 2010 and 2012 definitions also include for the first time language involving insurgent activities that have been alleged to have been conducted against “Coalition or host-nation forces.” This appears to refer to the situation in Afghanistan, though it is unclear whether the elements following this in the definition (suicide bombings, financing terrorist operations, etc.) are also in reference to Afghanistan. If so, this would contradict previous reports of recidivism, which included actions carried out in other countries, such as Russia, and which were not attacks against the United States, the Coalition, or Afghan forces. The evolution of the standard by which recidivism is defined is discussed below in Part IV.B.

The 2012 summary also asserts, consistent with the government’s April 2009 statement, that the definition of recidivism does not consider “mere communications” or “writing anti-U.S. books or articles, or making anti-U.S. propaganda statements” to be recidivist acts.⁴⁸ This contradicts past reports on recidivism, which expressly included anti-U.S. propaganda in the definition.⁴⁹ In fact, the 2007 report cited as examples of anti-American behavior the “Tipton

⁴⁶ See app. A.8. On its face, this would seem to be no different from “direct participation in hostilities” in non-international armed conflict. See generally NILS MELZER, INT’L REVIEW OF THE RED CROSS, INTERPRETIVE GUIDANCE ON THE NOTION OF DIRECT PARTICIPATION IN HOSTILITIES UNDER INTERNATIONAL HUMANITARIAN LAW (2009), available at <http://www.icrc.org/eng/assets/files/other/irrc-872-reports-documents.pdf>. Harold Koh, Legal Adviser to the Secretary of State, has stated, however, that the United States is in compliance with the International Committee of the Red Cross (ICRC) interpretive guidance, which excludes mere “recruiters, trainers, financiers and propagandists” who have no direct nexus to hostilities, as would planning or commanding. Harold Koh, Legal Adviser, Dep’t of State, The Obama Administration and International Law, Keynote Address at the Annual Meeting of the American Soc’y of Int’l Law (Mar. 25, 2010) (“[O]ur general approach of looking at ‘functional’ membership in an armed group has been endorsed not only by the federal courts, but also is consistent with the approach taken in the targeting context by the ICRC in its recent study on Direct Participation in Hostilities (DPH).”). Koh’s statements seem to be in conflict with the DNI definition of “confirmed” recidivist, as the DNI defines “directly involved” to include recruiters, trainers, and financiers.

⁴⁷ App. A.8.

⁴⁸ App. A.8, at 2.

⁴⁹ See *infra* app. A.

Three” and their discussions of their experiences in GTMO for Michael Winterbottom’s commercial film, *The Road to Guantánamo*.⁵⁰ Because of the government’s failure to identify individuals, however, it remains unclear whether the government has retroactively accounted for the change in definition and subtracted those who did not engage in terrorist attacks, but participated only in propaganda.

In stark contrast to previous DNI summaries, the 2012 summary attempts to break down the recidivism numbers in table form.⁵¹ Specifically, the table lists the reengagement numbers before and after January 22, 2009 (to coincide with an Executive Order issued by President Obama).⁵² This date also coincides with President Obama entering into office, providing a clearer view of reengagement numbers during the Bush and Obama Administrations. Thus, since President Obama took office, of the 67 total releases, three detainees are confirmed recidivists (4.5%) while 2 are suspected (3%).⁵³ Under President Bush’s tenure, 532 detainees were released, 92 of which are confirmed recidivists (17.3%), while 70 are suspected (13.2%).⁵⁴ In addition, the table shows that the DNI considers deceased former detainees when compiling the recidivist numbers.⁵⁵ In total, of the 599 detainees released from GTMO, 95 are listed as confirmed recidivists (15.9%), while 72 are suspected recidivists (12%).⁵⁶

Finally, and notably, the 2010 and 2012 DNI summaries differed from previous summaries⁵⁷ because they offered an assessment of the likelihood that detainees will “engage in terrorism” and “communicate with persons in terrorist organizations.”⁵⁸ The DNI concluded that if additional detainees are transferred without specific conditions met, “some will reengage.”⁵⁹ The DNI also noted that transfers to countries with instability and ongoing conflicts pose “a particular problem.”⁶⁰ Further, the DNI acknowledged that former GTMO detainees “routinely communicate with each other” but the

⁵⁰ See *infra* app. A.1.

⁵¹ See app. A.8, at 1.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ The December 2010 summary contains similar language, though there are a number of differences in the wording of the March 2012 summary. Compare app. A.7, with app. A.8.

⁵⁸ See app. A.8, at 2.

⁵⁹ *Id.* (emphasis added).

⁶⁰ *Id.*

reasons “span from the mundane . . . to the nefarious.”⁶¹ In assessing whether or not a detainee has reengaged, the DNI explains that “the motives, intentions, and purposes of each communication are taken into account.”⁶²

B. Expansive by Definition

The language used by the government and other officials in recent years described alleged recidivists as “returning to the battlefield.”⁶³ Alternatively, the issue had been framed as recidivists “return[ing] to militant activities.”⁶⁴ Beginning with the June 2008 report, the DoD started using the more general phrase “reengaging in terrorism” for recidivism.⁶⁵ In contrast, the 2010 summary considers activities against Coalition or host-nation forces to be acts of recidivism.⁶⁶ This language of “reengagement,” “terrorism,” “insurgent,” and “host-nation” retreats from the obvious earlier implication that a detainee had to have engaged in acts against the United States or Coalition forces for the DoD to consider him a recidivist. This category change may have increased the number of those qualifying recidivists. The shift also indicates that the government has moved away from limiting “return to the fight” in terms of Afghanistan and Iraq. For instance, when Pentagon spokesman Geoff Morrell discussed with reporters detainees “returning to the fight” he stated, “[t]his is [sic] acts of terrorism. It could be Iraq, Afghanistan, it could be acts of terrorism around the world.”⁶⁷ Whatever the legitimacy of this classification system in the abstract, it does not address the public’s concern that detainees released from GTMO might return to the battlefield against U.S. soldiers.

According to the current definition, a detainee has “reengaged” if he is directly involved in any terrorist or insurgent activities against host nation or Coalition forces.⁶⁸ It is unclear how “host nation”

⁶¹ *Id.*

⁶² *Id.*

⁶³ See *Boumediene v. Bush*, 553 U.S. 723, 828 (2008) (Scalia, J., dissenting) (“At least 30 of those prisoners hitherto released from Guantanamo Bay have *returned to the battlefield.*”) (emphasis added).

⁶⁴ See *infra* app. A.2.

⁶⁵ See app. A.4.

⁶⁶ See *infra* app. A.6.

⁶⁷ See David Morgan, *Pentagon: 61 Ex-Guantanamo Inmates Return to Terrorism*, Jan. 13, 2009, available at <http://www.reuters.com/article/topNews/idUSTRE50C5JX20090113>.

⁶⁸ App. A.8, *supra* note 4, at 2.

should be interpreted. If it means Afghanistan, then it is redundant, since Afghanistan is listed as a member of the Coalition. If it means the place of release or transfer, then it is extraordinarily expansive.

For example, applying this definition to the five Russian recidivists highlights several critical flaws. First, by allowing actions by foreign citizens against their own governments to fall under the insurgent activities against a host country definition, the government is greatly expanding the concept of recidivism. The Russian recidivists were Russian citizens that the United States returned to the Russian government, who then refused to detain or prosecute them for actions related to the reason for their holding in GTMO.⁶⁹ The former detainees then committed acts against the Russian government (in connection with the Chechnya conflict).⁷⁰ It is difficult to comprehend why this scenario concerns the U.S. government enough to qualify it as recidivism in the context of the Coalition's fight against al Qaeda. Though there is a supposed link between Chechen rebels and al Qaeda,⁷¹ the in-fighting between Russia and Chechnya is arguably unrelated to U.S. and Coalition fears of recidivism. Further, Russia has only supplied minimal support for the Coalition,⁷² so it cannot be argued that the actions of the Russian recidivists are directed at the Coalition or United States.

Including acts against host-nations allows recidivism to encompass much more conduct than a U.S. or Coalition-specific definition and supports a conclusion that the government's actual goal is to report increasingly higher recidivism numbers. Earlier reports were always framed as acts against the United States.⁷³ This is confirmed by the fact that the scope of conduct the DoD included in

⁶⁹ See app. A.4.

⁷⁰ See *id.*

⁷¹ Thomas de Waal, *Greetings from Grozny—Fighting for Chechnya: Is Islam a Factor?*, PBS WIDEANGLE (July 25, 2002), <http://www.pbs.org/wnet/wideangle/episodes/greetings-from-grozny/fighting-for-chechnya-is-islam-a-factor/3078/>; see also, *U.S. Supports Work of OSCE Assistance Group to Chechnya*, RELIEFWEB (June 7, 2002), <http://reliefweb.int/report/russian-federation/us-supports-work-osce-assistance-group-chechnya> (providing a transcript of the Ambassador's statement, Org. for Sec. & Cooperation in Eur. [OSCE], Ambassador Stephan Minikes, *Statement on Chechnya*, June 6, 2002).

⁷² See DEP'T OF DEF., FACT SHEET: INTERNATIONAL CONTRIBUTIONS TO THE WAR AGAINST TERROR (June 2002) [hereinafter DOD FACT SHEET], available at <http://www.defense.gov/news/Jun2002/d20020607contributions.pdf>.

⁷³ See *infra* apps. A.1 (returned to terrorism focused on harming U.S. or allied interests."), A.2 ("each returned to combat against the U.S. and its allies . . ."); app. A.4 ("reengaged in local, tactical-level, anti-coalition activity" and "no indication he was a member of any terrorist organization or posed a risk to U.S. or Allied interests").

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“returning to the fight” once extended to those former detainees who had merely “spoken critically of the Government’s detention policy.”⁷⁴

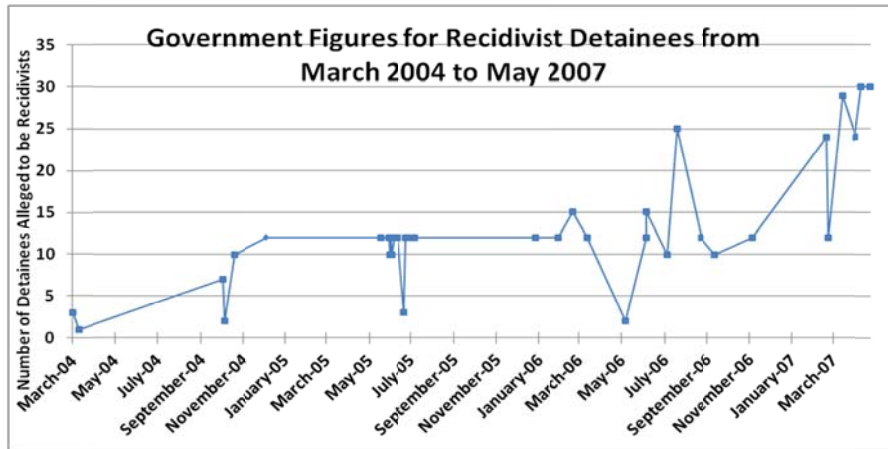
This expansive notion of recidivism serves only to confuse policy debates and inflame political rhetoric. Given the history of inflated and politically-driven reporting of recidivism, as discussed below, it is fair to ask whether the most recent definition is also politically motivated.

V. CLAIMS OF RECIDIVISM

As detainees have been released from GTMO, government officials have made upwards of fifty public statements regarding the behavior of these released detainees. Senior administration officials and members of Congress, including members of the Senate Armed Services Committee, made many of these statements orally. In addition, the Department of Defense and the Director of National Intelligence have produced a series of written reports about released-detainee recidivism. This multitude of information has provided the public with a confusing and conflicting picture. In early consecutive reports, the number of recidivists varied from two to ten, then to twelve, back down to six, and then back to two, only to rise again.⁷⁵ Taken together, it is clear that these statements were presented for political advantage.

⁷⁴ MARK DENBEAUX ET AL., CTR. FOR POLICY & RESEARCH, JUSTICE SCALIA, THE DEPARTMENT OF DEFENSE, AND THE PERPETUATION OF AN URBAN LEGEND: THE TRUTH ABOUT THE ALLEGED RECIDIVISM OF RELEASED GUANTÁNAMO DETAINEES 6 (2008), available at http://law.shu.edu/publications/guantanamoReports/urban_legend_final_63008.pdf.

⁷⁵ See *infra* app. B.



The government first released a formal statement regarding alleged recidivists in 2006 and received little attention.⁷⁶ It made its next written report in July 2007—a formal statement that admitted that the DoD had not bothered to keep track of released detainees up until that point.⁷⁷ Another statement followed the breathtaking July 2007 statement. It indicated that the evidence that government relied upon was almost exclusively open source intelligence—the media.⁷⁸ Instead of keeping track of the “worst of the worst,” the government sat back and left this role to the media.

With respect to its previous numbers of claimed recidivist detainees, the DoD has alleged variously: one, several, some, a couple, a few, five, seven, ten, twelve to twenty-four, twenty-five, twenty-nine, and thirty—not in that order.⁷⁹ More recently, the DoD has claimed that sixty-one former detainees have “return[ed] to the fight.”⁸⁰ In April 2009, the DoD claimed seventy-four had reengaged.⁸¹ As interpreted by the House Armed Services Committee

⁷⁶ See *infra* app. A.1.

⁷⁷ See *infra* app. A.2 (although the U.S. government does not generally track ex-GTMO detainees after repatriation or resettlement, the Center is aware of dozens of cases where they have returned to militant activities, participated in anti-U.S. propaganda, or other activities through intelligence gathering and media reports).

⁷⁸ See app. A.4 (all information regarding individual released detainees is listed under the heading “Open-Source Reporting Identifies Detainees Reengaging in Terrorism”).

⁷⁹ See *infra* app. B.

⁸⁰ See Morgan, *supra* note 67 (“Pentagon spokesman Geoff Morrell said 18 former detainees are confirmed as ‘returning to the fight.’”).

⁸¹ See app. A.5 (“Of the more than 530 Guantanamo detainees transferred from Department of Defense custody at Guantanamo Bay, 27 were confirmed and 47 were suspected of reengaging in terrorist activity.”).

(HASC), the December 2010 summary stated that 150 detainees have reengaged in terrorist or insurgent activities.⁸² A more recent statement claimed that 161 of the 599 released detainees have reengaged, amounting to 27%.⁸³ The HASC then published a report reiterating this claim.⁸⁴ A DoD spokesman, however, recently characterized this as an “odd” conflation of two distinct categories, and indicated that the most recent trustworthy rate is 15.9%.⁸⁵ Furthermore, a timeline of publicly cited numbers reveals sudden, unexplained spikes and decreases, as well as a large and persistent discrepancy between the number cited by public officials and actual names of those detainees “confirmed” as having committed post-release terrorist acts.⁸⁶

A. *The Government Can Only Name Fifteen “Confirmed” Recidivists, but Not All Were Detained At GTMO and Not All Engaged in Post-Detention Attacks Against the United States or Coalition Forces*

The various DoD statements regarding the number of recidivist detainees consistently fail to identify the overwhelming majority of alleged recidivists, and these statements have proven particularly unreliable in the past. For example, in the July 12, 2007 DoD press release, the recidivist figure reported by the DoD in April 2007 of thirty was reduced to five.⁸⁷ Specifically, in that report, the DoD identified seven prisoners by name, but two of those seven were never in GTMO.⁸⁸

⁸² LEAVING GUANTANAMO, *supra* note 18 at 10 (“It was reported as 25 percent (150 detainees) [had reengaged] as of October 2010.”)

⁸³ *See* app. A.7.

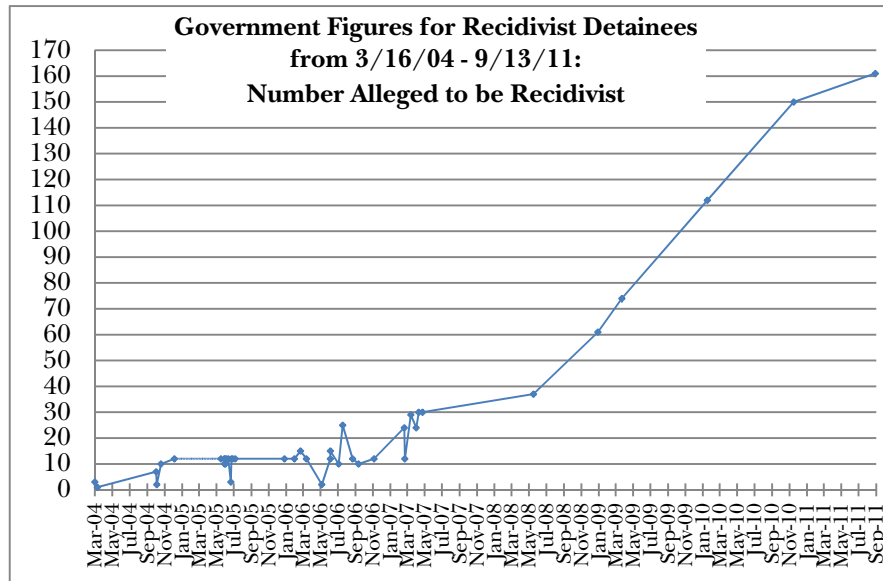
⁸⁴ LEAVING GUANTANAMO, *supra* note 18.

⁸⁵ Todd Bresseale, *supra* note 1; app. A.8, at 1.

⁸⁶ *See infra* app. B.

⁸⁷ *See* MARK DENBEAUX ET AL., CTR. FOR POLICY & RESEARCH, RELEASED GUANTANAMO DETAINEES AND THE DEPARTMENT OF DEFENSE: PROPAGANDA BY THE NUMBERS? 4 (2009) [hereinafter PROPAGANDA BY THE NUMBERS], available at http://law.shu.edu/publications/guantanamoReports/propaganda_numbers_11509.pdf.

⁸⁸ *Id.*



The April 2009 “Fact Sheet” from the DoD reviewed “specific cases” which were identified in the May 2008 DoD report. This list is notable for several reasons, all of which raise concerns regarding the consistency, strength, and accuracy of the DoD’s recidivism claims. The April 2009 DoD report, using data from May 2008, asserted that twenty-seven former GTMO detainees had been confirmed as “reengaging in terrorist activities” and an additional forty-seven were “suspected” of reengaging in terrorist activity.⁸⁹ Of the seventy-four alleged recidivists, however, the DoD provided names for only twenty-nine detainees. Of those twenty-nine names, only fifteen were “confirmed” as recidivists, at least according to the government.⁹⁰ Of the fifteen “confirmed,” one does not appear on the list of detainees in GTMO.⁹¹ Further, two were Russian nationals whose post-detention activities occurred in Russia with no ostensible connection the United States.⁹² After the May 2008 data, the government has not identified by name or ISN any additional alleged recidivists until the HASC Report released by the House Majority.⁹³

⁸⁹ See app. A.5.

⁹⁰ See *id.*

⁹¹ Compare *id.*, with LIST OF INDIVIDUALS DETAINED, *supra* note 15.

⁹² See app. A.4. The nationalities of named “confirmed” detainees who can be verified as former GTMO detainees are: Afghanistan, Saudi Arabia (3); Morocco, Russia (2); Kuwait (1), Turkey (1), Bahrain (1), Pakistan (1). LIST OF INDIVIDUALS DETAINED, *supra* note 15.

⁹³ LEAVING GUANTANAMO, *supra* note 18. See also apps. A.4–A.8.

B. A Pattern of Errors

The U.S. government has been releasing names of former GTMO detainees deemed to be recidivists since 2006. While a total of thirty-one detainees have been identified as recidivists, only two additional names (Medhi Mohammad Ghezali (ISN 166) and Othman Ahmed Othman al Omairah (ISN 184)) have been identified since 2009.⁹⁴ The remaining lists of detainees (released in 2006, 2007, May 2008, June 2008, and 2009) are highly repetitive. While each time the government presents its information as new, it has failed or refused to identify most of the claimed recidivists, thus frustrating any efforts at independent verification of the claims.

Five detainees have been on each of the government's lists from 2006 to 2009. Mohammed Ismail, Mohammed Yusif Yaqub (aka Mullah Shazada), Shai Jahn Ghafoor (aka Maulavi Abdul Ghaffar), and Mohammed Nayim Farouq all appear on the 2006, 2007, May 2008, June 2008, and 2009 recidivists lists.⁹⁵ Abdullah Mahsud appears on the 2007, June 2008, and 2009 lists under that name, and on the July 2006, May 2008, and 2009 lists as Said Mohammed Alim Shah.⁹⁶

While the 2007 list identified seven alleged recidivists, only two men (Noor and Odijev) had not appeared on previous lists.⁹⁷ At the same time, two others previously identified were omitted. Similarly, the May 2008 list included a dozen names, yet only five had not appeared on earlier lists, and one of the 2007 additions was omitted.⁹⁸ In June 2008 the government released a list of thirteen alleged recidivists.⁹⁹ None of these thirteen men were newly identified recidivists. In fact, seven of them were included on the first list released in 2006.¹⁰⁰

A subsequent list of alleged recidivists was released in April 2009, which identified twenty-nine former detainees who had reengaged in terrorism.¹⁰¹ This was the most significant step forward since fifteen were newly identified and had not appeared on earlier lists. Nevertheless, it remains true that the vast majority of claimed

⁹⁴ LEAVING GUANTANAMO, *supra* note 18.

⁹⁵ See *infra* apps. A.1–A.5 (but note in A3 that Mullah Shazada is listed by an alias Mohamed Yusif Yaqub).

⁹⁶ See *infra* apps. A.1–A.5.

⁹⁷ See *infra* app. A.2.

⁹⁸ See *infra* app. A.3.

⁹⁹ See app. A.4.

¹⁰⁰ See *infra* app. A.1.

¹⁰¹ See app. A.5.

recidivists have not been named and therefore their statuses cannot be verified. The government claims there are high numbers of GTMO detainees who have reengaged in terrorism, yet it continues to release inconsistent lists of recidivists using old data and stale information.

The use of stale data is troubling for a number of reasons. First, the reliance on stale recidivism data to assert that recidivism is an ongoing problem mischaracterizes the perceived threat. Including past recidivists on a list of current recidivists conflates two distinctly different problems—one a past problem of recidivism, the other a current recidivism problem. In this regard, rather than assessing the total number of recidivists, the appropriate inquiry should focus on how many *new* recidivists there are. After all, policy reflects perceived *future* threat.¹⁰² If the government discovered the bulk of recidivists years ago, then the threat of recidivism looks relatively minor. If the government discovers new recidivists but does not announce them, then the threat is that much greater.

The DNI has hinted at this point on several occasions by noting the fact that the overall recidivism rate (whether suspected or confirmed) includes those who are dead or captured.¹⁰³ These hints have apparently been insufficient to affect policymakers' views of the risk involved in releasing GTMO detainees, as demonstrated by the HASC report's aggregation of all confirmed and suspected recidivists into a single recidivism rate.¹⁰⁴ The DNI's failure to parse in full the recidivist data leads to the overestimation of risk. This problem could be solved by an indication of the estimated future risk, though no government agency has attempted to do this to date.

Second, the use of stale data reaffirms the notion that the government is superficially concerned about the post-release behavior of detainees. The cumulative effect of recycling old data distorts the public's perception of how bad the recidivism rate actually is. The exaggeration of the recidivism problem, accomplished through the use of stale data, is consistent with the government's exploitation of information for political gain. In short, claiming a high rate of recidivism is a continuation of the government's assertion that GTMO housed the "worst of the worst."

¹⁰² App. A.8 (DNI is tasked with providing an unclassified summary of: "an assessment of the likelihood that [current or formerly held] detainees *will engage* in terrorism or communicate with persons in terrorist organizations.") (emphasis added).

¹⁰³ See, e.g., app. A.7; see also app. A.8.

¹⁰⁴ See LEAVING GUANTANAMO, *supra* note 18.

Also troubling are the internal inconsistencies of the lists provided. Each of the DoD's four lists of names differs widely from the others in ways that cannot be explained by the passage of time. In terms of "confirmed" names, the number of names has remained within the range of seven to fifteen, while the alleged total, mostly comprised of unnamed individuals, has grown disproportionately.¹⁰⁵ Often, individual names are spelled inconsistently. Only five of the detainees appear on all five lists,¹⁰⁶ and of those five, two (Mohammed Nayim Farouq and Ruslan Odijev (aka Ruslan Anatolovich Odijev)) are among the three detainees downgraded to "suspected" status in the April 2009 report.¹⁰⁷ Thus, only three of the seven originally "confirmed" recidivists are consistently "confirmed." These status changes call into question the accuracy of every previous list, since they directly contradict them all.

Three of the cases discussed in the April 2009 DoD report reflect a major reversal from its previous report. Specifically, the statuses of at least three former detainees were changed from "confirmed reengagement" to "suspected reengagement." This is significant because "unverified or single-source . . . reporting" is sufficient to classify a person as "suspected" of "reengaging in terrorist activities."¹⁰⁸

Ruslan Anatolovich Odijev (aka "Ruslan Odizhev"): Ruslan Odijev, a Russian, was reportedly killed in a June 2007 battle with Russia's federal Security Service. Russian authorities stated that Odijev participated in several terrorist acts, including an attack in October 2005 in the Caucasus region. His status as "returned to the fight" has been changed, without explanation, to "suspected reengagement."¹⁰⁹

Shai Jahn Abdul Ghaffor (aka "Maulvi Abdul Ghaffar"): Ghaffar was reportedly "killed in a raid by Afghan security forces" in September 2004. The DoD reports that Ghaffar became the Taliban's regional commander in the Uruzgan and Helmand provinces and carried out attacks against U.S. and Afghan forces. As of the April 2009 DoD report, however, Ghaffar's status has been changed from "returned to the fight" to "suspected."¹¹⁰ In addition, as previously

¹⁰⁵ Compare *infra* apps. A.1–A.8, with *infra* app. B.

¹⁰⁶ See app. C.

¹⁰⁷ App. A.5.

¹⁰⁸ See app. A.4; app. A.5.

¹⁰⁹ Compare app. A.2, with app. A.5.

¹¹⁰ Compare app. A.2, with app. A.5.

reported by the Center, his name does not appear on the list of detainees in GTMO. While there are two detainees with similar names, both were still imprisoned when Ghaffar was allegedly killed.¹¹¹

Mohammed Nayim Farouq: According to the Department of Defense, Farouq, who was released from GTMO before the Combatant Status Review Tribunals (CSRT) were convened, “has since become re-involved in anti-coalition militant activity,” but has neither been recaptured nor killed.¹¹²

These former detainees were changed from “confirmed” to “suspected” without comment. It is unclear why, considering that a July 2007 news release from the DoD listed each of the above three detainees as examples of those who “returned to combat against the U.S. and its allies after being released from [GTMO].”¹¹³ Presumably, these individuals are included in the total of seventy-four reported in the April 2009 DoD report and in the December 2010 summary. Given this fact, the flux between these two categories of recidivism and the public concern of the overall number asserted by the DoD creates a serious question as to the consistency of reporting on recidivism.

Indeed, this change in status can only reflect one of two possibilities: (1) either these detainees were always merely “suspected” recidivists previously reported as “confirmed,” or (2) the DoD has found cause to doubt its own previous evidence upon which the “confirmed” status was based. An additional detainee, Abdul Rahman Noor, appeared in the first list in July 2007:

Abdul Rahman Noor: The DoD previously claimed that Noor participated in fighting against U.S. forces near Kandahar. The DoD described Noor as participating in a video interview with al-Jazeera television, wherein he was identified as the “deputy defense minister of the Taliban.”¹¹⁴

As of the April 7, 2009 report, Noor is no longer listed as a recidivist—neither confirmed nor suspected.¹¹⁵ This may indicate that the DoD agrees with earlier assertions that Mr. Noor was not

¹¹¹ LIST OF INDIVIDUALS DETAINED, *supra* note 15.

¹¹² See app. A.5. Those that are dead or captured are noted as such under “Activity”; because Farouq’s activity indicates neither, it can be presumed that the government believes he is not dead or captured.

¹¹³ See *infra* app. A.2.

¹¹⁴ See app. A.4.

¹¹⁵ See app. A.5.

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“ever officially detained at Guantánamo.”¹¹⁶ In any event, this additional DoD shift further raised serious questions regarding the consistency and accuracy of the DoD allegations, and has not been explained in the most recent summary.

In addition, the DoD maintained another inconsistency described in earlier reports:

Mohammed Yusif Yaqub (aka Mullah Shazada): According to the Department of Defense, Mullah Shazada “was killed on 7 May 2004 fighting against U.S. forces.”¹¹⁷ The name Mullah Shazada, however, does not appear on the official list of detainees.¹¹⁸

It is not at all clear that Shazada is actually a former GTMO detainee.¹¹⁹ After Shazada’s death, the government announced that he had been previously detained in GTMO under the name “Mohamed Yusif Yaqub.”¹²⁰

In the July 2007 DoD news release, the five Uighurs—ethnic Chinese who practice Islam—relocated to Albania were listed as examples of former detainees engaging in recidivist activity.¹²¹ No press release from the DoD since has retracted that earlier assertion. However, first-hand accounts dispute this allegation. Hidajet Cera, director of the refugee camp to which the Uighers were sent, described the former detainees as “the best guys in the place” who “have never given us one minute’s problem.”¹²² The five Uighers no longer live in the refugee camp, and local news reports indicate that each one is living relatively normal lives, such as working as a pizza-maker.¹²³ Further, the U.S. has admitted in open court that none of the Uighurs detained in GTMO are threats to national security, and

¹¹⁶ See MARK DENBEAUX ET AL., CTR. FOR POLICY & RESEARCH, THE MEANING OF “BATTLEFIELD”: AN ANALYSIS OF THE GOVERNMENT’S REPRESENTATIONS OF “BATTLEFIELD” CAPTURE AND “RECIDIVISM” OF THE GUANTÁNAMO DETAINEES 12 (2007), available at http://law.shu.edu/publications/guantanamoReports/meaning_of_battlefield_final_121007.pdf.

¹¹⁷ See app. A.5.

¹¹⁸ LIST OF INDIVIDUALS DETAINED, *supra* note 15.

¹¹⁹ See PROPAGANDA BY THE NUMBERS, *supra* note 87, at 5.

¹²⁰ See app. A.5.

¹²¹ See *infra* app. A.2.

¹²² Jonathan Finer, *After Guantanamo, An Empty Freedom*, WASH. POST, Oct. 17, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/10/16/AR2007101602078.html>.

¹²³ Nate Tabak, *Former Guantánamo Detainee Now Making Pizza in Albania*, PRI’S THE WORLD (Feb. 7, 2013), <http://www.theworld.org/2013/02/uighur-guantanamo-detainee-albania/>.

all but three have been released.¹²⁴

One of the Uighur men, however, did write an opinion piece, published in *The New York Times*, in which he urged American lawmakers to protect habeas corpus.¹²⁵ This may be the basis of listing the Uighurs as recidivists since the DoD has sometimes designated political opposition as “anti-coalition militant activity.”¹²⁶

Additionally, in November 2010 a former detainee, Jaber Jubran al-Faifi (ISN 188), reportedly tipped off Yemeni officials to a bomb plot involving devices planted in printer cartridges and sent via air cargo.¹²⁷ Al-Faifi was incarcerated at GTMO until 2007, when he was repatriated to Saudi Arabia. He reportedly rejoined al Qaeda and made his way to Yemen, before turning himself in November and reporting the bombing plot.

Under the definition of recidivism in the 2012 DNI summary, al-Faifi was likely counted as reengaging in terrorist activities after he was said to have rejoined al Qaeda. The summary does not make clear whether blowing the whistle on a terrorist bombing plot would remove al-Faifi from the ranks of recidivists. Because the summary does not list names of suspected or confirmed recidivists, al-Faifi's status in this count is unknown.

Hajji Sahib Rohullah Wakil (ISN 798), an Afghani released from GTMO in April 2008, was classified as a recidivist by the government on its 2009 list of recidivist detainees.¹²⁸ Wakil's alleged recidivist act, however, is a mere loose association with al Qaeda as a result of his political activities, not terroristic acts. Wakil is a tribal leader in Afghanistan, who works closely with the Afghani government to advocate for the needs of his home province, Kunar province.¹²⁹ He works with the country's president, Karzai, who has nothing but praise for Wakil.¹³⁰

¹²⁴ Charlie Savage, *Two Guantánamo Detainees Freed, the First in 15 Months*, N.Y. TIMES, Apr. 19, 2012, available at <http://www.nytimes.com/2012/04/20/world/americas/2-guantanamo-bay-detainees-freed-in-el-salvador.html>.

¹²⁵ Abu Bakker Qassim, *The View From Guantánamo*, N.Y. TIMES, Sept. 17, 2006, available at <http://www.nytimes.com/2006/09/17/opinion/17qassim.html>.

¹²⁶ See *infra* app. A.2.

¹²⁷ See, e.g., *Yemen Tip-Off Came from Ex-Gitmo Detainee, Officials Say*, NBC NEWS (Nov. 1, 2010), http://www.nbcnews.com/id/39947157/ns/us_news-security/#.USPpVaV9BWw.

¹²⁸ See app. A.5.

¹²⁹ Nancy A. Youssef, *Where's Pentagon "terrorism suspect"? Talking to Karzai*, MCCLATCHY NEWSPAPERS (July 7, 2009), <http://www.mcclatchydc.com/2009/07/07/71434/wheres-pentagon-terrorism-suspect.html>.

¹³⁰ *Id.*

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Similarly, the government has identified Mehdi Mohammad Ghezali (ISN 166) as a recidivist and Pakistani officials arrested him because of his alleged ties to al Qaeda, claiming that a local police chief had referred to him as “a very dangerous man.”¹³¹ In late 2009, however, it was reported that Ghezali’s arrest was a misunderstanding, and he had been part of a group making a pilgrimage to celebrate Ramadan, and was arrested with a fellow Swedish couple and their two-year-old son.¹³²

Without speculating as to what conclusions might be drawn from these types of inconsistencies, they are typical of the DoD releases. None is free from error.

VI. GOVERNMENT METHODS OF DETAINEE RELEASE HAVE CONTRIBUTED TO RECIDIVISM

A. *The Worst Error*

In gaining a fuller picture of the post-release behavior of former GTMO detainees, it is not necessary to diminish the role of those who do in fact reengage in criminal and militant activity hostile to U.S. interests. The dangerous nature of some detainees is a reason for fully informed policy debate. Indeed, lacking such debate, the government’s policy decisions have led to the release of some individuals for whom reengagement seems inevitable. Some of the more compelling cases are included below.

Unsurprisingly, many alleged recidivists are Afghans taking direct part in the civil war in Afghanistan. Abdullah Mehsud (ISN 92) returned to Afghanistan on March 14, 2004.¹³³ It is unclear why the U.S. released Mehsud, a known Taliban fighter,¹³⁴ who “quickly took up arms again, leading local and foreign militants in Pakistan’s

¹³¹ LEAVING GUANTANAMO, *supra* note 18, at 35.

¹³² David Jonasson, *Swedish Former Guantanamo Prisoner Arrested in Pakistan*, STOCKHOLM NEWS (Sept. 10, 2009), <http://www.stockholmnews.com/more.aspx?NID=3945#>; David Landes, *Lawyers Explain Pakistan Trip by ‘Guantanamo Swede,’* THE LOCAL (Sweden) (Nov. 23, 2009), <http://www.thelocal.se/23416/20091123/#.URXuT6V9BWw>.

¹³³ Andrei Scheinkman et al., *The Guantanamo Docket: Abdullah Mehsud*, N.Y. TIMES, <http://projects.nytimes.com/guantanamo/detainees/92-abdullah-mehsud> (last visited Mar. 19, 2013).

¹³⁴ *If the US Administration had Behaved Intelligently, Ex-Guantánamo Inmate who Blew Himself Up Would Never have been Released*, ANDY WORTHINGTON (July 24, 2007), <http://www.andyworthington.co.uk/2007/07/24/if-the-us-administration-had-behaved-intelligently-ex-guantanamo-inmate-who-blew-himself-up-would-never-have-been-released/>.

South Waziristan[.]”¹³⁵ According to the government, Mehsud blew himself up with a hand grenade¹³⁶ to avoid capture in July 2007.¹³⁷

Mohamed Yusif Yaqub, aka Mullah Shazada (ISN 367),¹³⁸ was supposedly released to Afghanistan in May 2003.¹³⁹ The government lists him as a confirmed recidivist and Taliban commander in Afghanistan who organized a jailbreak in Kandahar and was killed in May 2004 fighting U.S. forces.¹⁴⁰ Yaqub reportedly used a fake name in GTMO and claimed to be an innocent rug merchant.¹⁴¹ After his release, he seized control of Taliban operations in south Afghanistan, recruiting fighters by telling tales of mistreatment in GTMO.¹⁴²

The government released Abdullah Gulam Rasoul (ISN 8) to Afghanistan in December 2007. Rasoul is listed as a suspected recidivist and Taliban military commander for Afghanistan who organized an assault on U.S. military aircraft in Afghanistan.¹⁴³ Another source reports that Rasoul, under the name Mullah Abdullah Zakir, is a top operations officer for the Taliban in southern Afghanistan.¹⁴⁴

Several other alleged recidivists are Saudis who were subject to Saudi Arabia’s rehabilitation program but thereafter purportedly traveled to Yemen to join al Qaeda in the Arabian Peninsula (“AQAP”). For example, Othman Ahmed Othman al Omairah (ISN 184), a citizen of Yemen, was repatriated to Saudi Arabia on June 24, 2006, and was put through the Saudi rehabilitation program.¹⁴⁵ He

¹³⁵ Abdul Sattar, *Pakistani Militant Leader Is Killed*, WASH. POST, July 24, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/24/AR2007072400521.html>.

¹³⁶ The government document does not say how he killed himself, but this source specifies he killed himself with a hand grenade. *Id.*

¹³⁷ See app. A.5.

¹³⁸ See *infra* app. A.1.

¹³⁹ It is still unclear whether Mohammed Yusif Yaqub also went by Mullah Shazada.

¹⁴⁰ See app. A.5.

¹⁴¹ *WikiLeaks and the Guantánamo Prisoners Released from 2002 to 2004 (Part Five of Ten)*, ANDY WORTHINGTON (July 25, 2011), <http://www.andyworthington.co.uk/2011/07/25/wikileaks-and-the-guantanamo-prisoners-released-from-2002-to-2004-part-five-of-ten/>. Wikileaks’ information was not used for this report, nor is the information taken from Worthington’s article based on Wikileaks’ information.

¹⁴² *Id.*

¹⁴³ See app. A.5.

¹⁴⁴ Pamela Hess, *Abdullah Ghulam Rasoul, Former Gitmo Detainee, Now A Taliban Leader*, HUFFINGTON POST (Mar. 10, 2009), http://www.huffingtonpost.com/2009/03/10/abdullah-ghulam-rasoul-fo_n_173690.html.

¹⁴⁵ Andy Worthington, *Othman Al Ghamdi (ISN 184)*, CAGEPRISONERS (Oct. 31, 2011), <http://www.cageprisoners.com/cases/guantanamo-bay/item/2526-othman->

soon disappeared, and in February 2009 he was included as one of eleven former GTMO prisoners on the Saudi most wanted militant list.¹⁴⁶ In May 2010, an al Qaeda video featured al Omairah, describing him as an “operational commander.”¹⁴⁷

Mazin Salih Musaid al Awfi (ISN 154) and Said Ali al Shihri (ISN 372) are alleged leadership figures in AQAP.¹⁴⁸ According to one source, Yemeni authorities arrested al Awfi in 2009 after he appeared in a video with al Shihri.¹⁴⁹ Al Shihri has yet to be captured and is believed to be the deputy leader of AQAP.¹⁵⁰ He may have been involved in the attack on the U.S. Embassy in Yemen in September 2008.¹⁵¹

Among those recidivists not named on the government’s various lists but discovered by the Center from public sources are Saudis Yusef Mohammed Mubarak al Shihri (ISN 114), Fahd Salih Sulayman al Jutavyli (ISN 177), and Ibrahim Sulayman Arbaysh (ISN 192).

Yusef al Shihri, brother-in-law of Said al Shihri (ISN 372), was reportedly killed by Saudi forces crossing from Yemen to Saudi Arabia, while disguised as a woman and wearing a suicide bomb belt.¹⁵² The Saudi Interior Ministry reported that DNA tests had confirmed that al Jutayli, released in 2007, was one of the several militants killed on September 14, 2009,¹⁵³ when a bomb under construction accidentally detonated.¹⁵⁴ Arbaysh was placed in a reintegration program, but traveled to Yemen and is now reportedly a

al-ghamdi-isn-184.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* See also Thomas Joscelyn, *Former Gitmo Detainee Featured as Commander in al Qaeda Tape*, LONG WAR J. (May 28, 2010), http://www.longwarjournal.org/archives/2010/05/former_gitmo_detaine_4.php.

¹⁴⁸ See app. A.5.

¹⁴⁹ *Yemen Arrests al Qaeda Member Once Held at Gitmo*, CNN WORLD (Feb. 18, 2009), http://articles.cnn.com/2009-02-18/world/al.qaeda.arrest_1_qaeda-saudi-arabia-facility-at-guantanamo-bay.

¹⁵⁰ Thomas Joscelyn, *Saudi Gitmo Recidivists*, LONG WAR J. (June 21, 2010), http://www.longwarjournal.org/archives/2010/06/saudi_gitmo_recidivi.php.

¹⁵¹ Russell Goldman, *Does Rehab for Terrorists Work?*, ABC NEWS (Jan. 1, 2010), <http://abcnews.go.com/International/guantanamo-release-saudi-rehab-ali-al-shihri-now/story?id=9458164#.T0reHleuafg>.

¹⁵² CTC SENTINEL (Jan. 2010 Special Issue), at 2, *available at* <http://www.ctc.usma.edu/wp-content/uploads/2010/08/CTCSentinel-YemenSI-2009.pdf>.

¹⁵³ *Ministry: 3 Saudi Militants Killed in Blast Abroad*, SEATTLE TIMES (Jan. 18, 2010), http://seattletimes.com/html/nationworld/2010825549_apmlsaudimilitants.html.

¹⁵⁴ *Biography of Abu Yaqin al-Qassimi (Fahd bin Saleh al-Jutaili)*, AL-MALAHM MEDIA (June 22, 2011, 8:33 PM), <http://aljahad.com/vb/showthread.php?t=8421>.

senior ideologue and theologian for AQAP.¹⁵⁵

In addition to the Saudi recidivists, other Arab states have seen recidivists. For example, Abdallah Saleh Ali al Ajmi (ISN 220), was a Kuwaiti released in November 2005. After his repatriation, al Ajmi married and had a child, but within three years conducted a suicide bombing in Mosul, Iraq that resulted in the deaths of numerous Iraqis.¹⁵⁶

Two of five Russians listed by the government as either confirmed or suspected recidivists, Ravil Shafeyavich Gumarov (ISN 203) and Timur Ravilch Ishmurat (ISN 674), were alleged to have been involved in the bombing of a natural gas pipeline within one year of their release.¹⁵⁷ Another, Ruslan Anatolovich Odijev (ISN 211), was reportedly killed while resisting arrest.¹⁵⁸

The reengagement of these individuals and others, and the death and damage that resulted, may have been greatly reduced if the government had conducted proper risk assessment and made release contingent upon such assessment. Instead, as described below, most releases appear to have been based upon diplomatic and political expediency.

B. Wishful Thinking: False Hope of Continued Detention or Prosecution

The HASC Report,¹⁵⁹ while failing to contribute to our knowledge of the recidivism rates or provide new information regarding former GTMO detainees, does point out the failures and the confusion regarding the transfer of detainees out of GTMO. The report outlines the chaotic situation that existed as the U.S. government attempted to rid itself of some detainees and relieve the diplomatic pressure from abroad, and shows how various department

¹⁵⁵ Thomas Joscelyn, *Former Guantanamo Detainee Now al Qaeda in Arabian Peninsula's Mufti*, LONG WAR J. (Dec. 3, 2009), http://www.longwarjournal.org/archives/2009/12/former_guantanamo_de_1.php.

¹⁵⁶ *Identification of Ex-Guantánamo Suicide Bomber Unleashes Pentagon Propaganda*, ANDY WORTHINGTON (May 11, 2008), <http://www.andyworthington.co.uk/2008/05/11/identification-of-ex-guantanamo-suicide-bomber-unleashes-pentagon-propaganda/>; see app. A.5.

¹⁵⁷ Peter Finn, *Russian Homeland No Haven for Ex-Detainees, Activists Say*, WASH. POST, Sept. 2, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/09/02/AR2006090200452.html>.

¹⁵⁸ C.J. Shivers, *Former Guantanamo Detainee is Killed in Shoot-Out in Russia*, N.Y. TIMES, June 27, 2007, available at <http://www.nytimes.com/2007/06/27/world/europe/27iht-27russ.6369738.html>.

¹⁵⁹ See LEAVING GUANTANAMO, *supra* note 18.

and sometimes individuals within those departments were working toward different goals in the transfer of detainees out of GTMO.

While the DoD was focused on minimizing the risk of making the “disastrous mistake” of releasing a detainee with “the potential for killing Americans . . . or who had significant intelligence value yet to be exploited,”¹⁶⁰ Secretary of Defense Donald Rumsfeld was pushing to transfer detainees to other countries for further detention and/or prosecution.¹⁶¹

There was a process agreed upon between the State and Defense Departments on how to proceed with detainee transfers.¹⁶² Since some detainees were released with orders from Secretary Rumsfeld, however, each country that received detainees did so under different restrictions and terms, and sometimes over the objections of the CIA, the Pentagon, and the Department of Justice.¹⁶³

After seven detainees were released to Russia, the Defense Intelligence Agency placed five on the confirmed reengagement list.¹⁶⁴ The HASC Report states that “the finalized transfer agreement included three principal clauses: the detainees would be prosecuted in Russian courts; they would remain incarcerated until the end of America’s involvement in Afghanistan; and that American officials could have access to them at any time.”¹⁶⁵ The officials interviewed by the committee reported that Russia was to prioritize prosecution and not mere legal detention¹⁶⁶—neither happened until after a 2005 attack on a natural gas pipeline.

The HASC Report also ties the release of many detainees without proper screening to the pressure placed on the U.S. from both abroad and domestic sources. It is also stressed that the U.S. released detainees to certain countries in order to improve relations with those countries, specifically Russia, Saudi Arabia, and the U.K.¹⁶⁷

The Majority Report stresses pressure from abroad and from within the U.S. as the major reason behind the transfer of the majority of detainees from GTMO. The report, however, glosses over the fact that Secretary Rumsfeld’s goal of transferring detainees in 2003 was to shift detainees out of GTMO to be held or tried by other

¹⁶⁰ *See id.* at 21.

¹⁶¹ *Id.* at 30.

¹⁶² *Id.* at 25–26.

¹⁶³ *Id.* at 26–40.

¹⁶⁴ *Id.* at 35.

¹⁶⁵ *See* LEAVING GUANTANAMO, *supra* note 18, at 44.

¹⁶⁶ *See Id.* at 44.

¹⁶⁷ *See Id.* at 33.

countries, even though knowledgeable officials in his own department believed that detention of some detainees in GTMO was never warranted.¹⁶⁸ While the Secretary of Defense, however, trusted the legal systems of the receiving countries enough to transfer detainees without proper evaluation, the DoD does not trust the legal system of the very same countries enough to exclude detainees they have acquitted from its recidivism lists.

C. Releases Based on Diplomacy or Security?

Because GTMO detainee releases prior to 2006 were made on the basis of nationality rather than factors more appropriate to the estimation of risk, the recidivism rate of this group represents an ideal base-line roughly equivalent to randomized releases. Therefore, a change in release determinations based upon legitimate risk assessments will likely lower the overall recidivism rate. Additionally, risk assessment processes may be used to reduce the incidence of recidivism by providing the law enforcement and intelligence communities with information that aids in the handling of released detainees.

A threshold question to consider is what is meant by a recidivism rate. As is evident from the government's own "[d]efinition of 'Terrorist' or 'Insurgent' Activities," not all reengagement in anti-American activity stands on equal footing.¹⁶⁹ While this definition excludes many lesser forms of reengagement from consideration, it does not draw a distinction between highly damaging activities, such as direct involvement in terrorist attacks on U.S. personnel and interests, and less damaging activities, such as recruitment or propaganda for groups targeting third-party nations. For the purposes of this analysis, "risk" will be defined in line with the

¹⁶⁸ See *Id.* at 28.

¹⁶⁹ See *infra* app. A.6.

For the purposes of this assessment, activities such as the following indicate involvement in terrorist or insurgent activities: planning terrorist operations, conducting a terrorist or insurgent attack against Coalition or host-nation forces or civilians, conducting a suicide bombing, financing terrorist operations, recruiting others for terrorist operations, arranging for movement of individuals involved in terrorist operations, etc. It does not include mere communications with individuals or organizations—including other former GTMO detainees—on issues not related to terrorist operations, such as reminiscing over shared experiences at GTMO, communicating with past terrorist associates about non-nefarious activities, writing anti-U.S. books or articles, or making anti-U.S. propaganda statements.

Id.

government's usage: the likelihood of engagement in a defined set of activities. Risk assessments made along both axes, likelihood and magnitude, will naturally be more useful in improving outcomes and reducing costs in post-detention management.

1. Releases Disregarded Recidivism Risk Until At Least
2007

In August 2008, the Center for Policy & Research published its *Profile of Released Guantánamo Detainees: The Government's Story Then and Now*, a report analyzing which GTMO detainees were to be released between early 2002 and late 2006.¹⁷⁰ That report found that, although the U.S. government kept track of several criteria that it claimed bear on detainee "dangerousness" in one form or another, the actual pattern of releases was based solely upon the nationality of the detainee.¹⁷¹

It is impossible to know the reason for this pattern of releases from the data that is publicly available.¹⁷² It is possible the government believed nationality was the most reasonable measure of future dangerousness, despite its collection of other data. It is more reasonable to assume, however, that this pattern was due in large part to diplomatic pressure and expediency. For example, detainees from traditional U.S. allies were released on average one year earlier than nationals of post-Soviet nations, who were in turn released ten months earlier than Arab nationals were.¹⁷³ This trend reflects the general levels of influence that each of these groups wields over the U.S., as well as the levels of cooperation in the decade after 9/11.

As another example, Pakistani and Afghani detainees were released much earlier than other nationalities. In the case of Afghanistan, the number of detainees actually released rather than sent home for continued incarceration indicates that this was largely due to mistaken identity—an effect of the fog of war.¹⁷⁴ In the case of Pakistan, however, the high rate of continued incarceration¹⁷⁵

¹⁷⁰ See generally MARK DENBEAUX ET AL., CTR. FOR POLICY & RESEARCH, PROFILE OF RELEASED GUANTÁNAMO DETAINEES: THE GOVERNMENT'S STORY THEN AND NOW (2008) [hereinafter THEN AND NOW], available at http://law.shu.edu/publications/guantanamoReports/detainees_then_and_now_final.pdf.

¹⁷¹ *Id.* at 30.

¹⁷² Data published on wikileaks.org is not included in this analysis, due to the Justice Department's interpretation of a court-issued protective order by which the author is bound.

¹⁷³ See THEN AND NOW, *supra* note 170, at 27.

¹⁷⁴ *Id.* at 20.

¹⁷⁵ *Id.* at 21.

indicates that the early releases were likely one of the many bargaining devices used to secure Pakistan's continued cooperation in the War on Terror.

The cases of Yemeni and Saudi Arabian detainees provide further examples. The early release of Saudi detainees relative to other Arabic-speaking nations¹⁷⁶ is likely a result of Saudi Arabian oil wealth and the country's key role in the War on Terror.¹⁷⁷ Yemen, by contrast, is a poor, weak nation beset by its own Islamist radicals (now AQAP). Thus, it is not surprising that Yemeni detainees have been the group least likely to be released.¹⁷⁸

It is therefore apparent that diplomatic expedience was the primary factor in determining which detainees would be released in the period between GTMO's opening and the publication of the release data in late 2006.

2. The Government Has at Hand Criteria that More Accurately Estimate Risk of Recidivism than Nationality

There are factors other than nationality known to the government that could have more accurately estimated the risk of recidivism. Indeed, significant differences exist between detainees that are very likely beneficial to estimating this risk with relatively high rates of accuracy, including at a minimum the information obtained during the CSRT process.

With the exception of 201 detainees released prior to the CSRT process, data is available for all detainees regarding their suspected affiliations with terrorist/insurgent groups, how they are connected to that organization, and the number of hostile acts committed individually against the United States prior to detention. This data was originally published by the DoD in the Unclassified Summaries of the Classified Evidence ("R1"), used to support the detention of each detainee during the CSRT process.

In addition, the Combating Terrorism Center (CTC) at West Point published a report in July 2007 that drew even finer distinctions between the types of acts alleged on the R1.¹⁷⁹ The CTC found that

¹⁷⁶ *Id.* at 22.

¹⁷⁷ *See, e.g.*, AHMED RASHID, TALIBAN 129–34 (2010); AHMED RASHID, DESCENT INTO CHAOS 111, 161, 186, 233 (2008); SEAN M. MALONEY, ENDURING THE FREEDOM: A ROGUE HISTORIAN IN AFGHANISTAN 21 (2005).

¹⁷⁸ *See* THEN AND NOW, *supra* note 170, at 23.

¹⁷⁹ JOSEPH FELTER & JARRET BRACHMAN, COMBATING TERRORISM CTR., AN ASSESSMENT OF 516 COMBATANT STATUS REVIEW TRIBUNAL (CSRT) UNCLASSIFIED SUMMARIES 34 (July 25, 2007), *available at* <http://www.pegc.us/archive/Organizations>

the information on the R1 could be classified into twelve factors in three categories (high, medium, and low risk). Their factors include such information as training camp attendance, combat weapons training, commitment to violent jihad, small arms training, and operationally relevant travel. While the CTC's analysis of this information is somewhat suspect,¹⁸⁰ such fine granulation is useful in assessing risk in terms of both likelihood and magnitude.

It should be emphasized that the above examples make use only of the publicly available, unclassified data. Further detainee risk-assessment information has reportedly been leaked to the public by the anti-secrecy website Wikileaks. Vast amounts of other data are available to those who will be making the determinations regarding which detainees are released.¹⁸¹ This information has been collected and made available to policymakers since early 2009.¹⁸²

3. Increased Use of Risk Assessment Leads to Lower Recidivism Rates

Increased use of risk assessment in determining which detainees will be released can lead to reduced recidivism in a variety of ways. First, and most directly, by culling out the detainees who pose the greatest risk of recidivism, the overall incidence of recidivism will decline. Under such a scenario, the review process will determine in each case if the risk of recidivism is too high to warrant release. Therefore, those most likely to reengage in terrorism or insurgency against the United States or its allies will not be given the opportunity to do so. This will lead to a lower incidence of such reengagement overall.

This expected decline in recidivism has been born out so far, according to the official information released about alleged recidivists.¹⁸³ The latest DNI summary of recidivism among released GTMO detainees claims that 15.9% of the 599 released detainees are

/CTC_csrt_rpt_20070725.pdf.

¹⁸⁰ MARK DENBEAUX ET AL., THE EMPTY BATTLEFIELD AND THE THIRTEENTH CRITERION: AN ANALYSIS OF THE DATA AND METHODOLOGY IN THE DEPARTMENT OF DEFENSE'S RESPONSE TO CONGRESSIONAL REQUEST FOR JUSTIFICATION OF THE GUANTÁNAMO DETENTIONS, *available at* http://www.pegc.us/archive/Seton_Hall/SH06_reply_to_DoD_20071108.pdf; Mark P. Denbeaux, Testimony before the Senate Judiciary Committee on C-SPAN: The Empty Battlefield and the Thirteen Criterion (Nov. 8, 2007).

¹⁸¹ GUANTANAMO REVIEW TASK FORCE, FINAL REPORT ii, 5–6 (2010), *available at* <http://www.justice.gov/ag/guantanamo-review-final-report.pdf>.

¹⁸² *Id.*

¹⁸³ *See* app. A.8.

“confirmed” to have reengaged in terrorist or insurgent activities, and another 12% are suspected of doing so.¹⁸⁴ The DNI summary, however, makes clear that this rate is largely historical. Executive Order 13492, requiring a “comprehensive interagency review” including “full assessment of intelligence and threat information,” was promulgated on January 22, 2009.¹⁸⁵ Those detainees released prior to January 22, 2009 have had a reportedly high recidivism rate with 17.3% confirmed and 13.2% suspected, while the recidivism rate plummeted by more than three quarters for those released after this date to 4.5% confirmed and 3% suspected.¹⁸⁶

Additionally, the Center’s own study of detainee recidivism shows that 20% of detainees released prior to 2007 warrant a negative assessment compared to only 12.6% of detainees released later.¹⁸⁷ While this measure is crude, and does not take into account the expected lag between release and reengagement, it comports with the findings of the DNI.¹⁸⁸

Second, and less directly, by particularizing the nature of the risk in each individual case, the risk assessment process can be used to inform the handling of the detainee in the post-detention period. The law enforcement and intelligence community can better allocate resources tracking released detainees. If this information is shared with our foreign partners, then rehabilitation and reintegration programs can be better targeted to the individual detainee in order to further reduce the risk of that detainee rejoining the fight. Lastly, the information produced in the risk assessment process may be used to create or improve other means of reducing the individual or group

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* The 2009 summary also notes that the average delay between release and recidivism is 2.5 years. This delay may account in part to this low rate, but given that more than 2.5 years have passed since January 22, 2009, this effect cannot be the whole story. Even if this rate doubles over time, the more than 2:1 disparity between pre- and post-January 22, 2009 recidivism is stark. *See* app. A.5.

¹⁸⁷ This percentage most likely overestimates recidivism among those released using risk-based procedures since the interagency review process was only put in place by Executive Order 13492 on January 22, 2009, and the Periodic Review Boards (which only release detainees who do not pose a “significant threat to the security of the United States”) were not put in place until 2011. Review and Disposition of Individuals Detained At the Guantanamo Bay Naval Base and Closure of Detention Facilities, Exec. Order No. 13492, 74 Fed. Reg. 16,4897 (Jan. 22, 2009); Periodic Review of Individuals Detained at Guantanamo Bay Naval Station Pursuant to the Authorization for Use of Military Force, Exec. Order No. 13563, 76 Fed. Reg. 14,3821 (Jan. 18, 2011).

¹⁸⁸ A more complete analysis accounting for these problems will be produced at a later time.

risk of recidivism.

Third, proper risk assessment procedures that estimate the likelihood of engagement in high- and low-damage activities independent of one another will allow further granulation of the targeting noted above. In doing so, it will lower the risk of highly damaging activities, reducing the risk to U.S. interests in the broader sense.

Recidivism rates of detainees released between 2002 and 2006 represent a statistical worst-case scenario. Because risk assessment was not applied in any cognizable form, the effect on recidivism rates was similar to the release of random detainees. With no distinction drawn between high-risk and low-risk detainees, the recidivism rate for this early group will be higher than any subsequent group applying a risk assessment.

Recidivism rates for those released based on some form of risk assessment will be reduced by limiting the number of high-risk releases, as is clear from the stark disparity in recidivism between Bush-era and Obama-era releases. In addition, the risk assessment process can aid in prevention by providing information to law enforcement agencies, the intelligence community, and foreign partners who are involved in handling former detainees.

VII. MISSION CREEP: RECIDIVISM BY ENGAGEMENT IN OTHER CONFLICTS

Under any of the various characterizations of recidivism, from “return to the battlefield” to the DNI’s current definition of “reengagement,” only those actions that are hostile to U.S. interests should concern U.S. policymakers. This is evident in the DNI definition, which restricts reengagement to acts against “coalition or host-nation forces or civilians.”¹⁸⁹ Other activity is outside the scope of the War on Terror. Unfortunately, this grouping is vague and prone to expansion, as explained above. Additionally, many of the alleged recidivists reflect this expansive tendency.

¹⁸⁹ See app. A.8.

Fig. 1: Countries Where Recidivist Detainees Were Released – Government-Alleged

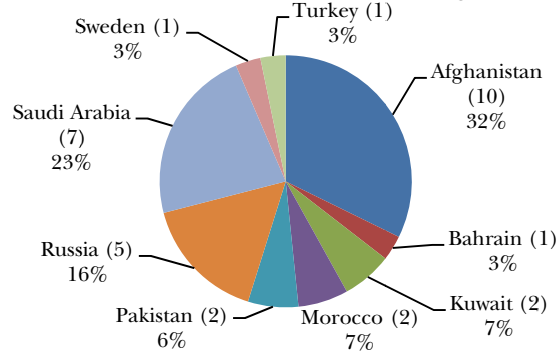


Fig. 2: Countries Where Recidivist Detainees Were Released – Found by CPR

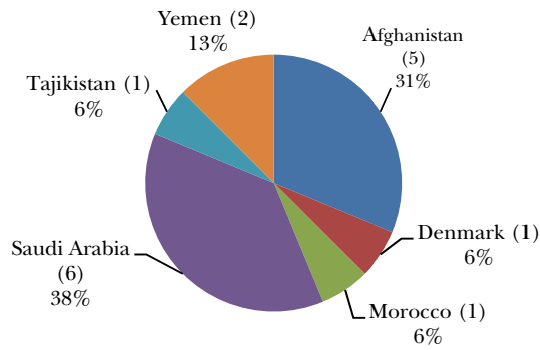
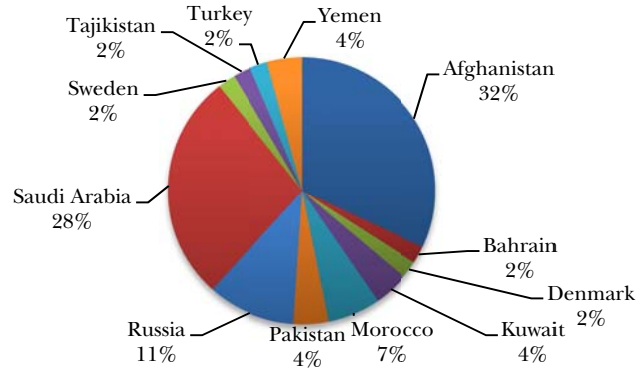


Fig. 3: Countries Where Recidivists Detainees Were Released – Combined

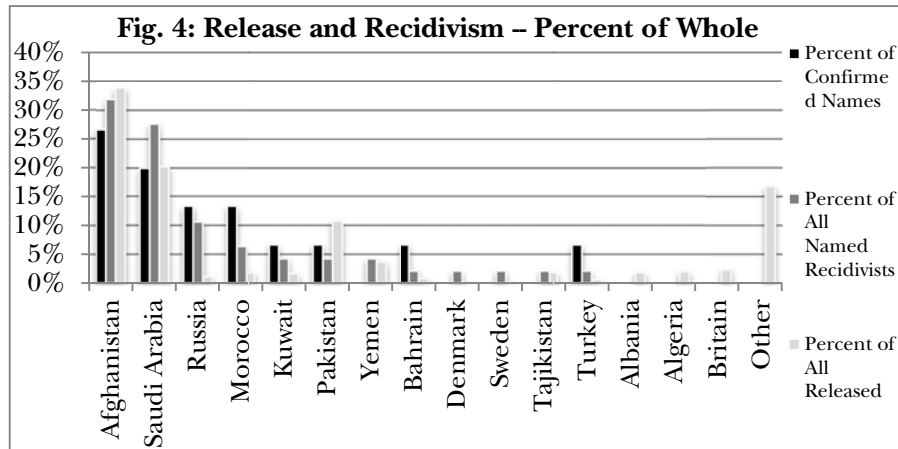


Figures 1 and 2 show the percentage of alleged recidivists who were transferred or released to various countries, as provided by the government and independently discovered by the Center, respectively. All of the detainees in each chart were citizens of the countries to which they were sent with one exception: a Yemeni citizen listed among the government's thirty-one was sent to Saudi Arabia following his release from GTMO. Additionally, two Afghans had dual citizenship: one Afghani was also British, and another Afghani was Bangladeshi. Because of the small sample size of the government's list, the combined list of those alleged by the government and those found by the Center will be used unless stated otherwise (See Figure 3).¹⁹⁰

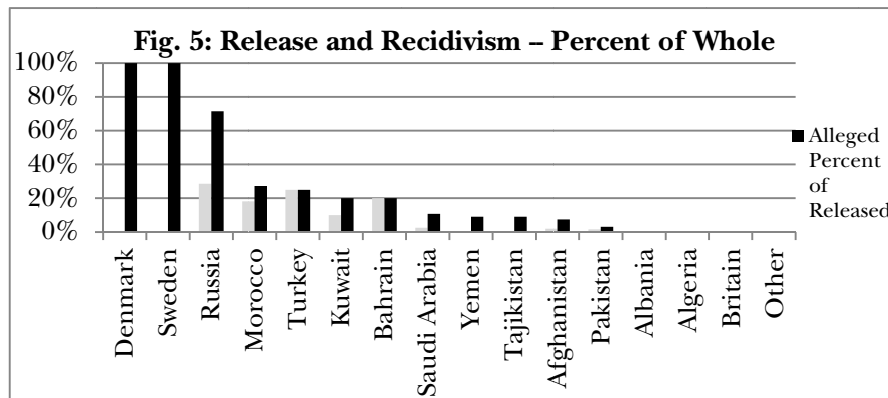
The majority of alleged recidivists have been sent to either Afghanistan (32%) or Saudi Arabia (28%) following their release from GTMO. Detainees sent to Russia, however, are statistically the most likely to be recidivists. Five of the seven detainees (71%) sent to Russia appear to have reengaged in hostile acts.

As is clear in Figure 4, not all countries to which detainees were sent contributed equally to the group of alleged recidivists. Afghanistan is a clear contributor with over 30% of alleged recidivists (See Figure 3). But this actually overstates its role in recidivism. In fact, with only fifteen alleged recidivists among its 202 returned detainees, Afghanistan's recidivism rate is a mere 7% (See Figure 5). Indeed, under the DoD's understanding of recidivism in which only "confirmed" recidivists should be counted, this rate drops to less than 2% (4 of 202). This is surprising, given that these individuals are returned directly to the state in which the war is being conducted. Following this logic, looking at Pakistan and Afghanistan together results in a "battlefield" recidivism rate of only 1.88% (5 of 266).

¹⁹⁰ To facilitate comparison this Section will use HASC's more inclusive understanding of recidivism, combining suspected and confirmed recidivism. See LEAVING GUANTANAMO, *supra* note 18.



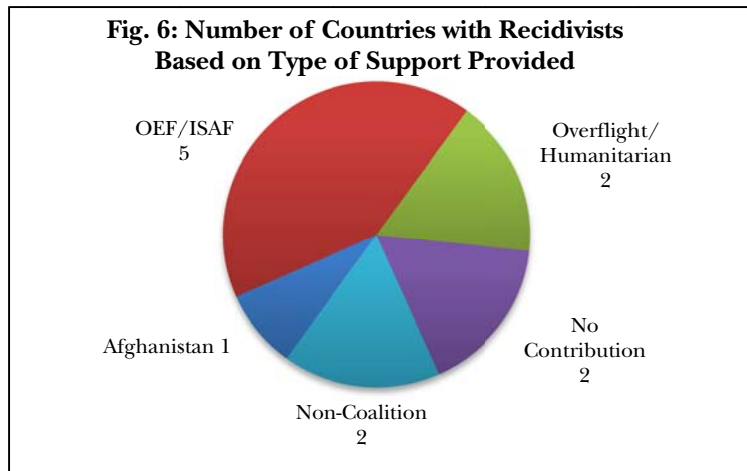
Equally surprising are Saudi Arabia and Russia. Saudi Arabia stands out as another major contributor, comprising 28% of the alleged recidivists. Russia, while not contributing very large numbers, is the third largest, and has the highest rate of alleged recidivism (71%) of the three.¹⁹¹ Neither Saudi Arabia nor Russia, however, is a recognizable part of the “battlefield.” In fact, all of the Russian recidivists committed their acts of recidivism in Russia against Russians or the Russian state.¹⁹² Many Americans may question how such examples of clearly domestic terrorism fit into the strategic interests of the United States.



¹⁹¹ Denmark and Sweden have higher recidivism rates, each at 100%. *See infra* Figure 5. However, only one detainee has been released to each.

¹⁹² *See app. A.4.*

Nor is it clear that the alleged recidivism is in general reengagement with the United States or its Coalition partners. Of the twelve countries from which government-alleged recidivists originate, two (Saudi Arabia and Tajikistan) are not listed as either members of the Coalition (according to CENTCOM) or ISAF.¹⁹³ Another two (Yemen and Morocco) have provided no cognizable support to the U.S.-led Coalition at war in Afghanistan.¹⁹⁴



Of the remaining eight countries from which alleged recidivists originate, two (Russia and Kuwait) provide only minimal support.¹⁹⁵ According to CENTCOM, Russia provided humanitarian support early in the war.¹⁹⁶ For example, it built a pontoon bridge in 2002 to aid in the delivery of supplies from Tajikistan.¹⁹⁷ It also established a

¹⁹³ *Coalition Countries*, U.S. CENT. COMMAND, <http://www.centcom.mil/en/countries/coalition> (last visited Mar. 19, 2013); *Troop Numbers and Contributions*, AFGHANISTAN INT'L SECURITY ASSISTANCE FORCE, <http://www.isaf.nato.int/troop-numbers-and-contributions/index.php> (last visited Mar. 19, 2013).

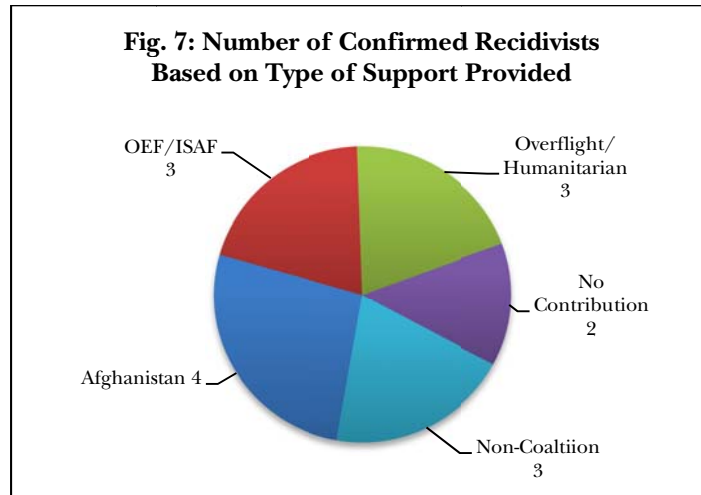
¹⁹⁴ Yemen may be included in this Coalition if it is interpreted to mean the broader, worldwide war on al Qaeda, since it is generally believed that the United States has repeatedly conducted drone strikes in Yemen with its government's approval. The same logic, however, would include Somalia in the Coalition, since the United States has reportedly conducted several drone strikes in Somalia against al Qaeda-affiliated targets.

¹⁹⁵ DOD FACT SHEET, *supra* note 72.

¹⁹⁶ *Id.*; *Support to the Global War on Terror (Operation Enduring Freedom)*, U.S. CENT. COMMAND [hereinafter *Support to the Global War on Terror*], <http://www.centcom.mil/russia/> (last visited Mar. 19 2013).

¹⁹⁷ *Support to the Global War on Terror*, *supra* note 196.

hospital later in 2002, but has since provided no further support.¹⁹⁸ Kuwait, meanwhile, has provided only basing and port facilities, and even this is at best only indirectly linked to the war in Afghanistan.¹⁹⁹



This leaves only five states aside from Afghanistan itself from which recidivists originated: Bahrain, Denmark, Pakistan, Turkey, and Sweden.²⁰⁰ Interestingly, of these, only Turkey has contributed ISAF Troops since 2007,²⁰¹ and none of these states has contributed troops to the OEF (non-NATO) mission in Afghanistan since at least 2003.²⁰²

Even though a plurality of the states from which recidivists hail were contributing members of the U.S.-led Coalition in Afghanistan, these states contributed only a remarkably small number of the total number of confirmed recidivists. The largest group of recidivists comes from Afghanistan itself, with a total of four recidivists. The next largest group contains those from states that provided little or no contribution to the Coalition. Another three are citizens of the

¹⁹⁸ *Russia*, U.S. CENT. COMMAND, <http://www.centcom.mil/russia/> (last visited Mar. 19, 2013).

¹⁹⁹ *Kuwait*, U.S. CENT. COMMAND, <http://www.centcom.mil/kuwait/> (last visited Mar. 19, 2013) (noting Kuwaiti basing and port facilities support actions taken to combat instability in the Arabian Peninsula).

²⁰⁰ See *supra* Figure 3.

²⁰¹ *ISAF Placemat Archives*, AFGHANISTAN INT'L SECURITY ASSISTANCE FORCE, <http://www.isaf.nato.int/isaf-placemat-archives.html> (last visited Mar. 19, 2013).

²⁰² *Operation Enduring Freedom—Order of Battle*, GLOBALSECURITY.ORG, http://www.globalsecurity.org/military/ops/enduring-freedom_orbat-01.htm (last visited Mar. 19, 2013).

non-coalition member Saudi Arabia. Only three of the confirmed recidivists come from troop-contributing Coalition partners other than Afghanistan. Even including suspected recidivists and those discovered by the Center, only six alleged recidivists come from troop-contributing Coalition partners other than Afghanistan.

The United States clearly should take care to avoid unnecessary burdens to all of its neighbors in the international community. This includes returning to them detainees known to pose a significant risk of engaging in hostilities, the distribution of nationalities of those alleged to have “returned to the fight” or “reengaged” in hostilities in the Global War on Terror. This, therefore, raises the question: How far afield does this war range?

Many Americans believe that, while the situation in Afghanistan and Pakistan warrants inclusion within the United States’ war on al Qaeda and the Taliban, situations such as those found in Turkey, Russia, and Saudi Arabia are more appropriately handled by those states’ own law enforcement agencies. The U.S. government has not yet articulated its reasons for implicitly including such a broad array of nations within the ambit of its definition of the Coalition, nor has it explained its inclusion of acts of domestic terrorism or criminality with no apparent connection to Afghanistan or the United States within the definition of “reengagement” in the war. Such a failure leaves policymakers with poorly defined parameters in which to determine how to best guide the nation through this quandary.

VIII. CONCLUSION

It is unclear what value a government report focusing solely on negative behavior of released-detainees has beyond propaganda. If the government wished to engage in an analysis of post-release behavior of detainees, in order to determine future policy, it would require an examination of both recidivists and non-recidivists. As this is not the path the government has taken, it is clear that the identification and reports on recidivisms exist to support the decisions of the government both in GTMO and in the War on Terror. Until the government (1) identifies and examines the recidivists and their characteristics, and (2) acknowledges that there are many detainees who live peaceful, private, non-recidivist lives, the policies applied to the release of current detainees will remain insufficient.

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APPENDIX A

The DoD has released eight public statements of recidivism numbers including four lists of allegedly recidivist detainees. Those eight documents are either reproduced or linked to in this Appendix as follows:

A.1—July 10, 2006

A.2—July 7, 2007

A.3—May 20, 2008

A.4—June 13, 2008

A.5—April 7, 2009

A.6—December 7, 2010

A.7—September 13, 2011

A.8—March 5, 2012

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APPENDIX A.1

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Defense Intelligence Agency

(b)(3)-10 USC 424

U-646-06

10 July 2006

Transnational: Guantanamo Bay Detainees Returning to Terrorism Update

This paper responds to a DoD GC request for an update on the status and activity of former Guantanamo Bay (GTMO) detainees known/suspected of returning to terrorism after release.

Key Points

- Most detainee transfers/releases from Guantanamo Bay, Cuba (GTMO), during 2002–2003 were sent back to Afghanistan or Pakistan. Since 2004, a higher percentage of detainees from Europe, North Africa, and the Middle East have been released. Available reporting indicates a corresponding increase in terrorist activity attributed to released GTMO detainees in those areas.
- As more GTMO detainees are released to even more diverse locations, there will likely be a corresponding geographic growth of post-release terrorist activity. Former detainees who return to terrorism will continue to gravitate to their roots, with those from Afghanistan/Pakistan returning to local anti-coalition activity, and those from Europe, the Middle East, and North Africa plugging back into the transnational terrorist networks they affiliated with prior to capture. Those returning to transnational networks are more likely to be involved in future major acts of terrorism.
- There is generally about a year between release and subsequent indications of post-transfer/release terrorist activity. Upon return, many detainees are held for varying lengths of time ranging from less than 24 hours up to several years. It is likely additional former detainees have been involved in terrorist activities undiscovered to date.
- Within the past year, former GTMO detainees have participated in terrorist activities ranging from small-scale attacks to transnational facilitation and attack planning. However, the former GTMO detainees known or suspected to have returned to terrorism represent a small proportion of the total transferred/released.

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- Of particular note are the following seven released detainees; each returned to terrorism focused on harming U.S. or allied interests.
 - Mohammed Ismail: Ismail was one of the “juveniles” released from GTMO in 2004. During a press interview after his release, he described the Americans saying, “They gave me a good time in Cuba. They were very nice to me, giving me English lessons.” He concluded his interview saying he would have to find work once he finished visiting all his relatives. He was recaptured four months later in May 2004, participating in an attack on U.S. forces near Kandahar. At the time of his recapture, Ismail carried a letter confirming his status as a Taliban member in good standing.
 - Said Mohammed Alim Shah AKA Abdullah Mahsud: Following his March 2004 transfer, this former detainee sought interviews with Pakistani media. In October 2004 he kidnapped two Chinese engineers and claimed responsibility for an Islamabad hotel bombing. As recently as May 2006, press reporting referred to Mahsud as the Taliban leader in Waziristan, but Pakistani officials have claimed he died during 2005 raids in South Waziristan.
 - Mohamed Yusif Yaqub AKA Mullah Shazada: After his release from GTMO on 8 May 03, Shazada assumed control of Taliban operations in southern Afghanistan. In this role, his activities reportedly included the organization and execution of a jailbreak in Kandahar, and a nearly successful capture of the border town of Spin Boldak. Shazada was killed on 7 May 2004 during fighting with U.S. forces. His memorial in Quetta, Pakistan drew many Taliban leaders wanted by U.S. forces. At the time of his release there was no indication he was a member of any terrorist organization or posed a risk to US or allied interests.
 - Maulavi Abdul Ghaffar: After being captured in early 2002 and held at GTMO for eight months, Ghaffar reportedly became the Taliban’s regional commander in Uruzgan and Helmand provinces, carrying out attacks on U.S. and Afghan forces. On 25 September 2004, while planning an attack against Afghan police, Ghaffar and two of his men were killed in a raid by Afghan security forces.
 - Mohammed Nayim Farouq: After his release from US custody in July 2003, Farouq quickly renewed his association with Taliban and al-Qaida members and has since become re-involved in anti-Coalition militant activity.
 - Ravil Shafeyavich Gumarov: Following his March 2004 transfer and subsequent release, this former detainee was arrested for involvement in a gas

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line bombing in Russia in January 2005. In May 2006, a Russian court found him guilty and sentenced him to 13 years in prison.

- Timur Ravilich Ishmurat: Following his March 2004 transfer and subsequent release, this former detainee was arrested with Ravil Gumarov for involvement in a gas line bombing in Russia in January 2005. In May 2006, a Russian court found him guilty and sentenced him to 11 years in prison.

Prepared By:

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APPENDIX A.2

The following is an exact reproduction of the Department of Defense news release of July 12, 2007, titled "Former Guantánamo Detainees Who Have Returned to the Fight." This press release was accessible as of November 26, 2007 at <http://defenselink.mil.news/d20070712formergtmo.pdf>, but has since been removed without comment.

Former Guantánamo Detainees who have returned to the fight:

Our reports indicate that at least 30 former GTMO detainees have taken part in anti-coalition militant activities after leaving U.S. detention. Some have subsequently been killed in combat in Afghanistan.

These former detainees successfully lied to U.S. officials, sometimes for over three years. Many detainees later identified as having returned to fight against the U.S. with terrorists falsely claimed to be farmers, truck drivers, cooks, small-scale merchants, or low-level combatants.

Other common cover stories include going to Afghanistan to buy medicines, to teach the Koran, or to find a wife. Many of these stories appear so often, and are subsequently proven false that we can only conclude they are part of their terrorist training.

Although the U.S. government does not generally track ex-GTMO detainees after repatriation or resettlement, we are aware of dozens of cases where they have returned to militant activities, participated in anti-U.S. propaganda or other activities through intelligence gathering and media reports. (Examples: Mehsud suicide bombing in Pakistan; Tipton Three and the Road to Guantánamo; Uighurs in Albania)

The following seven former detainees are a few examples of the 30; each returned to combat against the U.S. and its allies after being released from Guantánamo.

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Mohamed Yusif Yaqub AKA Mullah Shazada:

After his release from GTMO on May 8, 2003, Shazada assumed control of Taliban operations in Southern Afghanistan. In this role, his activities reportedly included the organization and execution of a jailbreak in Kandahar, and a nearly successful capture of the border town of Spin Boldak. Shazada was killed on May 7, 2004 while fighting against U.S. forces. At the time of his release, the U.S. had no indication that he was a member of any terrorist organization or posed a risk to U.S. or allied interests.

Abdullah Mehsud:

Mehsud was captured in northern Afghanistan in late 2001 and held until March of 2004. After his release he went back to the fight, becoming a militant leader within the Mehsud tribe in southern Waziristan. We have since discovered that he had been associated with the Taliban since his teen years and has been described as an al Qaida-linked facilitator. In mid-October 2004, Mehsud directed the kidnapping of two Chinese engineers in Pakistan. During rescue operations by Pakistani forces, a kidnapper shot one of the hostages. Five of the kidnappers were killed. Mehsud was not among them. In July 2007, Mehsud carried out a suicide bombing as Pakistani Police closed in on his position. Over 1,000 people are reported to have attended his funeral services.

Maulavi Abdul Ghaffar:

After being captured in early 2002 and held at GTMO for eight months, Ghaffar reportedly became the Taliban's regional commander in Uruzgan and Helmand provinces, carrying out attacks on U.S. and Afghan forces. On September 25, 2004, while planning an attack against Afghan police, Ghaffar and two of his men were killed in a raid by Afghan security forces.

Mohammed Ismail:

Ismail was released from GTMO in 2004. During a press interview after his release, he described the Americans saying, "they gave me a good time in Cuba. They were very nice to me, giving me English lessons." He concluded his interview saying he would have to find work once he finished visiting all his relatives. He was recaptured four months later in May 2004, participating in an attack on U.S. forces near Kandahar. At the time of his recapture, Ismail carried a letter confirming his status as a Taliban member

in good standing.

Abdul Rahman Noor:

Noor was released in July of 2003, and has since participated in fighting against U.S. forces near Kandahar. After his release, Noor was identified as the person in an October 7, 2001, video interview with al-Jazeera TV network, wherein he is identified as the “deputy defense minister of the Taliban.” In this interview, he described the defensive position of the mujahideen and claimed they had recently downed an airplane.

Mohammed Nayim Farouq:

After his release from U.S. custody in July 2003, Farouq quickly renewed his association with Taliban and al-Qaida members and has since become re-involved in anti-Coalition militant activity.

Ruslan Odizhev:

Killed by Russian forces June 2007, shot along with another man in Nalchik, the capital of the tiny North Caucasus republic of Kabardino-Balkaria. Odizhev, born in 1973, was included in a report earlier this year by the New York-based Human Rights Watch on the alleged abuse in Russia of seven former inmates of the Guantánamo Bay prison after Washington handed them back to Moscow in 2004.

As the facts surrounding the ex-GTMO detainees indicate, there is an implied future risk to U.S. and allied interests with every detainee who is released or transferred.

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APPENDIX A.3²⁰³

ISN	Name	On July 2007 Press Release	Disposition	Citizenship	Country of Act	Killed Americans
92	SHAH, SAID MOHAMMED ALIM	Yes	Killed	Afghanistan	Afghanistan	No
930	ISMAIL, MOHAMMED	Yes	Capture	Afghanistan	Afghanistan	No
363	GHAFOOR, SHAI JAHN	Yes	Killed	Afghanistan	Afghanistan	No
587	YAQUB, MOHAMMED YUSIF	Yes	Killed	Afghanistan	Afghanistan	No
633	FAROQU, MOHAMMED NAYIM	Yes	At Large	Afghanistan	Afghanistan	No
211	ODIJEV, RUSLAN ANATOLIVICH	Yes	Killed	Russia	Russia	No
203	GUMAROV, RAVIL SHAFEYAVICH	No	Arrest	Russia	Russia	No
674	ISHMURAT, TIMUR RAVILICH	No	Arrest	Russia	Russia	No
297	SEN, IBRAHIM SHAFIR	No	Arrest	Turkey	Turkey	No
587	SHAKARAN, IBRAHIM BIN	No	Arrest	Morocco	Morocco	No
294	MIZOUZ, MOHAMMED	No	Arrest	Morocco	Morocco	No
220	AL AJMI, ABDALLAH SALEH AII	No	Killed	Kuwait	Iraq	No

²⁰³ On May 20, 2008, the House of Representatives held a subcommittee hearing on the question of recidivism, among others, concerning Guantánamo. At that hearing, considerable skepticism was expressed about the reliability of the cited number of recidivists. *City on the Hill or Prison on the Bay? The Mistakes of Guantanamo and the Decline of America's Image, Part II: Hearing Before the Subcomm. on Int'l Orgs., Human Rights, & Oversight of the Comm. on Foreign Affairs*, 110th Cong. 93 (2008) (statement of Rep. William Delahunt, Member, H. Comm. on Foreign Affairs), available at <http://democrats.foreignaffairs.house.gov/110/42476.pdf>. The highpoint of the hearing, in this regard, was the production off-the-record by the Department of Defense of a document (on plain paper, without letterhead), sent by facsimile to Congressman Dana Rohrabacher (R. Cal.). The document, reproduced here, was provided to Professor Denbeaux after his testimony. See *infra* app. A.3 (on file with author).

APPENDIX A.4²⁰⁴

6/13/2008

FACT SHEET**Former GTMO Detainee Terrorism Trends**

A DIA report dated May 12, 2008 cites the figure of 36 ex-GTMO men "confirmed or suspected" of having returned to terrorism... with Kuwaiti ex-detainee Abdallah Salih Al-Ajmi's confirmation of suicide bombing in Iraq, the figure is 37.

The number of former Guantanamo Bay (GTMO) detainees confirmed or suspected of returning to terrorist activities is about 7 percent of those transferred from U.S. custody. The identified rate of reengagement over three years of tracking has remained relatively constant between 5 and 8 percent.

General Trends

Of former detainees known or suspected of returning to terrorist activities, those transferred to Afghanistan and Pakistan generally have reengaged in local, tactical-level, anti-coalition activity. Alternately, those former detainees known or suspected of reengaging in terrorism who were transferred to Europe, the Middle East, and North Africa have more often reconnected with terrorist networks associated with transnational terrorist activity, usually the same networks they were associated with prior to capture. Those returning to the transnational networks are assessed as more likely to be involved in future major transnational acts of terrorism.

In most cases, the time lapse between release and subsequent indications of post-transfer terrorist activity is approximately a year and a half, with reporting of such activity often lagging actual events by months or even years. Upon return, many detainees are held for varying lengths of time ranging from less than 24 hours up to several years. Due to the reporting delay and a general lack of information regarding former detainees, additional former GTMO detainees are likely to have been involved in subsequent terrorist activities.

Former detainees have participated in terrorist activities ranging from small-scale attacks to transnational facilitation and attack planning. However, the former GTMO detainees known or suspected to have returned to terrorism represent a small proportion of the total transferred/released.

Open-Source Reporting Identifies Detainees Reengaging in Terrorism

Ibrahim Shafir Sen was transferred to Turkey in November 2003. In January 2008, Sen was arrested in Van, Turkey, and charged as the leader of an active al-Qaida cell.

Ibrahim Bin Shakaran and *Mohammed Bin Ahmad Mizouz* were transferred to Morocco in July 2004. In September 2007, they were convicted for their post-release involvement in a terrorist network recruiting Moroccans to fight for Abu-Musab al-Zarqawi's al-Qaida in Iraq (AQI). Recruits were to receive weapons and explosives training in Algeria from the Salafist Group for Preaching and Combat, which has since become al-Qaida in the Lands of the

²⁰⁴ DEP'T OF DEF., FACT SHEET: FORMER GTMO DETAINEE TERRORISM TRENDS (2008), available at <http://www.defense.gov/news/d20080613Returntothefightfactsheet.pdf>.

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Maghreb, before going to fight in Iraq or returning to Morocco as sleeper cells. The organizers of the group reportedly intended to create an al-Qaida-affiliated network in the Maghreb similar to AQI. According to testimony presented at the trial, Bin Shakaran had already recruited other jihadists when Moroccan authorities broke up the plot in November 2005. Bin Shakaran received a 10-year sentence for his role in the plot, while Mizouz received a two-year sentence.

Abdullah Mahsud blew himself up to avoid capture by Pakistani forces in July 2007. According to a Pakistani government official, Mahsud directed a suicide attack in April 2007 that killed 31 people. After being transferred to Afghanistan in March 2004, Mahsud sought several media interviews and became well known for his attacks in Pakistan. In October 2004, he kidnapped two Chinese engineers and claimed responsibility for an Islamabad hotel bombing.

Ruslan Anatolovich Odishev, transferred to Russia in March 2004, was killed in a June 2007 gun battle with Russia's Federal Security Service. Russian authorities stated that Odishev had taken part in several terrorist acts including an October 2005 attack in the Caucasus region that killed and injured several police officers. Odishev was found with pistols, a grenade, and homemade explosive devices on his body.

Ravil Shafeyavich Gumarov and **Timur Ravilich Ishmurat** were transferred to Russia in March 2004 and quickly released. Russian authorities arrested them in January 2005 for involvement in a gas line bombing. In May 2006 a Russian court convicted both, sentencing Gumarov to 13 years in prison and Ishmurat to 11 years.

Mohammed Ismail was one of the "juveniles" released from GTMO in 2004. During a press interview after his release, he described the Americans saying, "They gave me a good time in Cuba. They were very nice to me, giving me English lessons." He concluded his interview saying he would have to find work once he finished visiting all his relatives. He was recaptured four months later in May 2004, participating in an attack on U.S. forces near Kandahar. At the time of his recapture, Ismail carried a letter confirming his status as a Taliban member in good standing.

Maulvi Abdul Ghaffar was captured in early 2002 and held at GTMO for eight months. After his release, Ghaffar reportedly became the Taliban's regional commander in Uruzgan and Helmand provinces, carrying out attacks on U.S. and Afghan forces. On 25 September 2004, while planning an attack against Afghan police, Ghaffar and two of his men were killed in a raid by Afghan security forces.

Yusef Muhammed Yaaqoub, better known as Mullah Shazada, was released from GTMO in May 2003. Shazada quickly rejoined the Taliban as a commander in southern Afghanistan. In this role, his activities reportedly included the organization and execution of a jailbreak in Kandahar, and a nearly successful capture of the border town of Spin Boldak. Shazada was killed on 7 May 2004 fighting U.S. forces. His memorial in Quetta, Pakistan, drew many Taliban leaders wanted by U.S. forces. At the time of his release, there was no indication he was a member of any terrorist organization or posed a risk to U.S. or Allied interests.

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Mohammed Nayim Farouq: After his release from U.S. custody in July 2003, Farouq quickly renewed his association with Taliban and al-Qaida members and has since become re-involved in anti-coalition militant activity.

Abdul Rahman Noor: Noor was released in July of 2003, and has since participated in fighting against US forces near Kandahar. After his release, Noor was identified as the person in an October 7, 2001, video interview with al-Jazeera TV network, wherein he is identified as the "deputy defense minister of the Taliban." In this interview, he described the defensive position of the mujahideen and claimed they had recently downed an airplane.

Abdallah Salih al-Ajmi: Was transferred to Kuwait in 2005 and subsequently conducted a suicide bombing attack in Mosul, Iraq in April 2008. Three suicide bombers struck in Mosul on April 26, 2008, killing 7 people. Al-Ajmi had returned to Kuwait following his release from Guantanamo Bay and traveled to Iraq via Syria. He was apparently living a productive life in Kuwait prior to his traveling to Iraq to be a suicide bomber. It is unknown what motivated him to leave Kuwait and go to Iraq. His family members were reportedly shocked to hear he had conducted a suicide bombing.

Definitions for Confirmed and Suspected Cases

Definition of "Confirmed" — A preponderance of evidence—fingerprints, DNA, conclusive photographic match, or reliable, verified, or well-corroborated intelligence reporting—identifies a specific former Defense Department detainee as directly involved in terrorist activities.

Definition of "Suspected" — Significant reporting indicates a former Defense Department detainee is involved in terrorist activities, and analysis indicates the detainee most likely is associated with a specific former detainee *or* unverified or single-source, but plausible, reporting indicates a specific former detainee is involved in terrorist activities.

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APPENDIX A.5²⁰⁵

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FACT SHEET**Former Guantanamo Detainee Terrorism Trends**

Based on a comprehensive review of available information as of mid-March 2009, the Defense Intelligence Agency reported 14 percent as the overall rate of former Guantanamo detainees confirmed or suspected of reengaging in terrorist activities. Of the more than 530 Guantanamo detainees transferred from Department of Defense custody at Guantanamo Bay, 27 were confirmed and 47 were suspected of reengaging in terrorist activity. Between December 2008 and March 2009, nine detainees were added to the confirmed list, six of whom were previously on the suspected list.

Various former Guantanamo detainees are known to have reengaged in terrorist activity associated with the al-Qaida network, and have been arrested for reengaging in terrorist activities including facilitating the travel of terrorists into war zones, providing funds to al-Qaida, and supporting and associating with known terrorists.

The following summary, based on DIA assessments and analysis, is as comprehensive as possible given national security concerns; much of the information regarding specific former GTMO detainees' involvement in terrorist activities remains classified.

Definitions for Confirmed and Suspected Cases

Definition of "Confirmed" — A preponderance of evidence—fingerprints, DNA, conclusive photographic match, or reliable, verified, or well-corroborated intelligence reporting—identifies a specific former Guantanamo detainee as directly involved in terrorist activities. For the purposes of this definition, engagement in anti-U.S. propaganda alone does not qualify as terrorist activity.

Definition of "Suspected" — Significant reporting indicates an individual is involved in terrorist activities and analysis of that reporting indicates the individual's identity matches that of a specific former Guantanamo detainee. Or, unverified or single-source, but plausible, reporting indicates a specific former detainee is involved in terrorist activities. For the purposes of this definition, engagement in anti-U.S. propaganda alone does not qualify as terrorist activity.

Review of Specific Cases Identified in May 2008**Confirmed Reengagement:**

Abdullah Saleh Ali al-Ajmi — repatriated to Kuwait in 2005. In April 2008 he conducted a suicide bombing in the city of Mosul in northern Iraq. The attack resulted in the deaths of numerous Iraqi citizens.

²⁰⁵ DEP'T OF DEF., FACT SHEET: FORMER GUANTANAMO DETAINEE TERRORISM TRENDS (2009), available at <http://www.defense.gov/news/returntothefightfactsheet2.pdf>.

Abu Sufyan al-Azdi al-Shihri – repatriated to Saudi Arabia in November 2007, and Mazin Salih Musaid al-Alawi al-Awfi – repatriated to Saudi Arabia in July 2007. On 24 January, a 19-minute video was released wherein al-Shihri and al-Awfi announced their leadership within the newly established al-Qaida in Arabian Peninsula.

Ibrahim Bin Shakaran and Mohammed Bin Ahmad Mizouz – repatriated to Morocco in July 2004. In September 2007, they were convicted for their post-release involvement in a terrorist network recruiting Moroccans to fight for Abu Masab al-Zarqawi's al-Qaida in Iraq (AQI). Recruits were to receive weapons and explosives training in Algeria from the Salafist Group for Preaching and Combat, which has since become al-Qaida in the Lands of the Islamic Maghreb, before going to fight in Iraq or returning to Morocco as sleeper cells. The organizers of the group reportedly intended to create an al-Qaida-affiliated network in the Maghreb similar to AQI. According to testimony presented at the trial, Bin Shakaran had already recruited other jihadists when Moroccan authorities broke up the plot in November 2005. For their roles in this plot, Bin Shakaran received a 10-year sentence and Mizouz received a two-year sentence.

Ibrahim Shair Sen – repatriated to Turkey in November 2003. In January 2008, Sen was arrested in Van, Turkey, and indicted in June 2008 as the leader of al-Qaida cells in Van. In addition, Sen also recruited and trained new members, provided illegal weapons to the group, and facilitated the movement of jihadists.

Ravil Shafeyavich Gumarov and Timur Ravilich Ishmurat – repatriated to Russia in March 2004. Russian authorities arrested them in January 2005 for involvement in a gas line bombing. A Russian court convicted both in May 2006, sentencing Gumarov to 13 years in prison and Ishmurat to 11 years.

Said Mohammed Alim Shah, also known as Abdullah Mahsud – repatriated to Afghanistan in March 2004. Alim Shah blew himself up to avoid capture by Pakistani forces in July 2007. According to a Pakistani government official, Mahsud directed a suicide attack in April 2007 that killed 31 people. After his transfer out of Guantanamo, Mahsud sought several media interviews and became well-known for his attacks in Pakistan. In October 2004, he kidnapped two Chinese engineers, and claimed responsibility for an Islamabad hotel bombing.

Mohammed Ismail – repatriated to Afghanistan in 2004, reengagement confirmed. During a press interview after his release, he described the Americans saying, "They gave me a good time in Cuba. They were very nice to me, giving me English lessons." He was recaptured four months later in May 2004, participating in an attack against U.S. forces near Kandahar. At the time of his recapture, Ismail carried a letter confirming his status as a Taliban member in good standing.

Yousef Muhammed Yaaqoub, better known as Mullah Shazada – repatriated to Afghanistan in May 2003. Shazada quickly rejoined the Taliban as a commander in southern Afghanistan. His activities reportedly included the organization and execution of a jailbreak in Kandahar, and a nearly successful capture of the border town of Spin

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Boldak. Shazada was killed on 7 May 2004 fighting U.S. forces. His memorial in Quetta, Pakistan, drew many Taliban leaders wanted by U.S. forces.

Suspected Reengagement:

Ruslan Anatolievich Odijev, repatriated to Russia in March 2004. Odijev was killed in a June 2007 in battle with Russia's Federal Security Service. Russian authorities stated Odijev participated in several terrorist acts including an October 2005 attack in the Caucasus region that killed and injured several police officers. Odijev was found with pistols, a grenade, and homemade explosive devices on his body.

Sabi Jahn Abdul Ghafour, also known as Maulvi Abdul Ghaffar – repatriated to Afghanistan in March 2003. After his repatriation, Ghaffar reportedly became the Taliban's regional commander in Uruzgan and Helmand provinces, carrying out attacks against U.S. and Afghan forces. On 25 September 2004, while planning an attack against Afghan police, Ghaffar and two of his men were killed in a mid by Afghan security forces.

Mohammed Nayim Farouq – repatriated to Afghanistan in July 2003. Farouq quickly renewed his association with Taliban and al-Qaida members and has since become re-involved in anti-coalition militant activity.

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Appendix A: Partial Listing of Former GTMO Detainees Who Have Reengaged in Terrorism

Name	Nationality	Repatriated	Activity	Status
Sabi Isha Abdul Ghafour <i>also known as</i> Maliki Abdul Ghaffar	Afghanistan	March 2003	Died fighting Afghan forces	Suspected
Shah Mohammed	Pakistan	May 2003	Killed fighting U.S. forces in Afghanistan	Confirmed
Yousef Mohammed Yasaqoub <i>also known as</i> Mullah Shazada	Afghanistan	May 2003	Taliban commander in Afghanistan. Organized jailbreak in Kandahar, killed on 7 May 2004 fighting U.S. forces	Confirmed
Mohammed Nayim Farooq	Afghanistan	July 2003	Association with Taliban and al-Qaida; involved in anti-coalition activity	Suspected
Ibrahim Sha'n Sen	Turkey	November 2003	Leader of al-Qaida cells in Van; recruited and trained members, provided illegal weapons, and facilitation	Confirmed
Muhammad Ismail	Afghanistan	January 2004	Participated in an attack against U.S. forces; Taliban member	Confirmed
Abdullah D. Kafkas	Russia	March 2004	Suspected involvement in an attack against a traffic police checkpoint in Nalchik in October 2005	Suspected
Almazan Ruzilavich Sharipov	Russia	March 2004	Association with terrorist group Hezb-e-Tahrir	Suspected
Timur Ravilovich Ishmuratov	Russia	March 2004	Involved in a gas line bombing	Confirmed
Russian Anatolievich Odjjev	Russia	March 2004	Participated in several terrorist acts including an October 2005 attack in the Caucasus region that killed and injured several police officers	Suspected
Saib Mohammed Afira Shah <i>also known as</i> Abdullah Mahasud	Afghanistan	March 2004	Kidnapped two Chinese engineers. Claimed responsibility for an Islamabad hotel bombing; directed a suicide attack in April 2007 killing 31 people	Confirmed
Ravil	Russia	March 2004	Involved in a gas line	Confirmed

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Shafiqovich Gumarov			bombing	
Abdullah Ghefner	Afghanistan	March 2004	Taliban commander; planning attacks on U.S. and Afghan forces; killed in a raid by Afghan security forces	Suspected
Mohammed Bin Ahmed Mizou	Morocco	July 2004	Recruiter for al-Qaida in Iraq	Confirmed
Ibrahim Bin Shekorn	Morocco	July 2004	Recruiter for al-Qaida in Iraq	Confirmed
Isa Khan	Pakistan	September 2004	Association with Tahir-i-Taliban	Suspected
Mahmudullah	Afghanistan	July 2005	Association with the Taliban	Suspected
Abdullah Saleh Ali al-Ajmi	Kuwait	November 2005	Conducted a suicide attack in Iraq	Confirmed
Abdullah Majid al-Naimi	Bahrain	November 2005	Arrested in October 2008; involved in terrorist facilitation; has known associations with al-Qaida	Confirmed
Sami Mubdi Sami Hameed al-Azmi	Kuwait	November 2005	Association with al-Qaida	Suspected
Majid Abdullah Lahiq al-Joudi	Saudi Arabia	February 2007	Terrorist facilitator	Confirmed
Hamed Dakhl Hamed Saif al-Jadani	Saudi Arabia	July 2007	Association with known terrorists	Suspected
Mazin Salih Musa al-Alawi al-Awfi also known as Abu al-Hareth Muhammad al-Awfi	Saudi Arabia	July 2007	Leadership figure in al-Qaida in Arabian Peninsula	Confirmed
Abd al Razaq Abdullah Ibrahim al-Sharikh	Saudi Arabia	September 2007	Arrested in September 2008 for supporting terrorism	Suspected
Abd al Hadi Abdullah Ibrahim al-Sharikh	Saudi Arabia	September 2007	Arrested in September 2008 for association with terrorist members; supporting terrorism	Suspected
Zahir Shah	Afghanistan	November 2007	Participation in terrorist training	Confirmed
Abu Sofyan al-Azidi al-Shihri	Saudi Arabia	November 2007	Leadership figure in al-Qaida in Arabian Peninsula	Confirmed

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Abjullah Gulam Rasoul	Afghanistan	December 2007	Taliban military commander for Afghanistan; Organized an assault on U.S. military aircraft in Afghanistan	Suspected
Haji Sahib Rohullah Waki	Afghanistan	April 2008	Association with terrorist groups	Suspected

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APPENDIX A.6²⁰⁶

DNI SUMMARY OF THE REENGAGEMENT OF DETAINEES FORMERLY HELD AT
GUANTANAMO BAY, CUBA
DECEMBER 7, 2010

**SUMMARY OF THE REENGAGEMENT OF DETAINEES
FORMERLY HELD AT GUANTANAMO BAY, CUBA**

The Director of National Intelligence submits this summary consistent with direction in the Fiscal Year 2010 Intelligence Authorization Act, P.L. 111-259, Section 334, which states:

“The Director of National Intelligence, in consultation with the Director of the Central Intelligence Agency and the Director of the Defense Intelligence Agency, shall make publicly available an unclassified summary of -

- (1) intelligence relating to recidivism of detainees currently or formerly held at the Naval Detention Facility at Guantanamo Bay, Cuba, by the Department of Defense; and
- (2) an assessment of the likelihood that such detainees will engage in terrorism or communicate with persons in terrorist organizations.”

(1) Intelligence relating to recidivism of detainees currently or formerly held at the Naval Detention Facility at Guantanamo Bay, Cuba, by the Department of Defense

As of 1 October 2010, 598 detainees have been transferred out of Department of Defense (DoD) custody at the U.S. Naval Base, Guantanamo Bay, Cuba (GTMO) detention facility. The Intelligence Community assesses that 81 (13.5 percent) are confirmed and 69 (11.5 percent) are suspected of reengaging in terrorist or insurgent activities after transfer. Of the 150 former GTMO detainees assessed as confirmed or suspected of reengaging in terrorist or insurgent activities, the Intelligence Community assesses that 13 are dead, 54 are in custody, and 83 remain at large.

On 22 January 2009, the President signed Executive Order 13492, calling for a comprehensive interagency review of the status of all individuals currently detained at Guantanamo Bay. Every decision to transfer a detainee to a

²⁰⁶ JAMES R. CLAPPER, DIR. NAT'L INTELLIGENCE, SUMMARY OF THE REENGAGEMENT OF DETAINEES FORMERLY HELD AT GUANTANAMO BAY, CUBA 1 (2010), *available at* http://www.dni.gov/files/documents/Newsroom/Reports%20and%20Pubs/120710_Summary_of_the_Reengagement_of_Detainees_Formerly_Held_at_Guantanamo_Bay_Cuba.pdf.

foreign country under this review was made after a full assessment of intelligence and threat information. Since the implementation of Executive Order 13492 and under the enhanced interagency review process, 66 of the 598 detainees noted above have been transferred. Of those 66 individuals transferred since January 2009, 2 are confirmed and 3 are suspected of reengaging in terrorist or insurgent activities.

(2a) An assessment of the likelihood that such detainees will engage in terrorism

The Intelligence Community assesses that the number of former detainees identified as reengaged in terrorist or insurgent activity will increase. A February 2010 review of GTMO detainees' release dates compared to first reporting of confirmed or suspected reengagement shows about 2.5 years between leaving GTMO and the first identified reengagement reports. Based on trends identified during the past 6 years, the Intelligence Community further assesses that if additional detainees are transferred from GTMO, some of them will reengage in terrorist or insurgent activities.

(2b) An assessment of the likelihood that such detainees will communicate with persons in terrorist organizations

It is not unusual for former GTMO detainees to communicate with persons in terrorist organizations. The reasons for communication span from the mundane (reminiscing about shared experiences) to the nefarious (planning future terrorist operations). Correspondingly, the Intelligence Community assesses that additional former GTMO detainees will communicate with persons in terrorist organizations. Based on trends identified during the past 6 years, the Intelligence Community further assesses that if additional detainees are transferred from GTMO, some of them will communicate with persons in terrorist organizations.

Definition of "Terrorist" or "Insurgent" Activities

For the purposes of this assessment, activities such as the following indicate involvement in terrorist or insurgent activities: planning terrorist operations, conducting a terrorist or insurgent attack against Coalition or host-nation forces or civilians, conducting a suicide bombing, financing terrorist operations, recruiting others for terrorist operations, arranging for movement of individuals involved in terrorist operations, etc. It does not include mere communications with individuals or organizations—including other former GTMO detainees—on issues not related to terrorist operations, such as reminiscing over shared experiences at GTMO, communicating with past terrorist associates about non-nefarious activities, writing anti-U.S. books or articles, or making anti-U.S. propaganda statements.

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Reporting Qualifications for “Confirmed”

A preponderance of information identifying a specific former GTMO detainee as directly involved in terrorist or insurgent activities. For the purposes of this definition, engagement in anti-U.S. statements or propaganda does not qualify as terrorist or insurgent activity.

Reporting Qualifications for “Suspected”

Plausible but unverified or single-source reporting indicating a specific former GTMO detainee is directly involved in terrorist or insurgent activities. For the purposes of this definition, engagement in anti-U.S. statements or propaganda does not qualify as terrorist or insurgent activity.

APPENDIX A.7²⁰⁷

The screenshot shows the website for the United States Senate Republican Policy Committee. The header includes navigation links for Home, About, Blog, Resources, and Issues, along with a search bar. The main content area is titled "Latest Posts" and features a post from September 20, 2011, titled "Guantanamo recidivism rate continues to rise". The article text discusses a joint hearing where Director of National Intelligence James Clapper reported that the recidivism rate for transferred Guantanamo detainees has risen to 27%. It also mentions a 2010 report showing a 25% rate and a 2009 assessment of 14%. The article concludes with a quote from Senator Chambliss expressing concern about the rising recidivism rate among former Guantanamo detainees.

United States Senate
REPUBLICAN POLICY COMMITTEE

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September 20, 2011
Guantanamo recidivism rate continues to rise

At a joint hearing of the House and Senate intelligence committees last Tuesday, September 13, Director of National Intelligence James Clapper told the panel the recidivism rate for transferred Guantanamo detainees continues to rise, now up to 27%. He said that of the 599 detainees who have been repatriated from Guantanamo, there are 161 either confirmed or suspected of reengaging in terrorist or insurgent activities.

The Director of National Intelligence published a **report** in December 2010 assessing the recidivism rate at that time to be 25%. In April 2009, the Department of Defense **assessed** the recidivism rate of Guantanamo detainees to be 14%.

In January 2010, the Attorney General **found** that over half of the Guantanamo detainees at the facility as of the date President Obama took office would be transferred out of the facility. Since that time, Congress, reflecting the will of the American people, has barred the transfer of Guantanamo detainees to the United States, and required numerous conditions to be met in cases where the President wishes to transfer a detainee out of Guantanamo. Reflecting his policy to close the Guantanamo facility both by emptying it of its current detainees and bringing to the United States instead of taking to Guantanamo senior al Qaeda terrorists recently **captured** overseas, President Obama has vowed to seek the **repeal** of these provisions.

Clipped below is the relevant excerpt from the testimony.

House and Senate Select Intelligence Committees Hold Joint Hearing on the Threats Against the United States Since September 11, 2001

CHAMBLISS:

Thank you very much. You both expressed concerns about the rising recidivism rate among former Gitmo -- Gitmo detainees,

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²⁰⁷ JAMES R. CLAPPER, DIR. NAT'L INTELLIGENCE, STATEMENT FOR THE RECORD, SENATE SELECT COMMITTEE ON INTELLIGENCE & HOUSE PERMANENT SELECT COMMITTEE FOR INTELLIGENCE JOINT HEARING TO MARK THE 10TH ANNIVERSARY OF 9/11 (2011), available at http://www.fas.org/irp/congress/2011_hr/091311clapper.pdf.

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which is now even higher than the last-released figure of 25 percent. Yet the administration is sticking with its policy to close Guantanamo and refuses to send newly captured terrorists there.

Does it really make sense to foreclose the option of bringing terrorists to Gitmo, when prohibitions on bringing Gitmo detainees to the United States and on transferring detainees to Yemen make it impossible to close Gitmo anytime in the near future? And what can the intelligence community be doing to stop the recidivism rate from going up?

CLAPPER:

Well, sir, the -- as you know, the administration policy expressed in the executive order that President Obama signed almost immediately after taking office was a commitment to close Guantanamo. Lots of reasons for that, not the least of which is the symbol which Guantanamo has -- has become.

So that's the administration policy. I think what we've tried to do, or the administration has tried to do is to treat each case on a case-by-case basis, depending on the circumstances of capture, the importance of it, is there sufficient evidence for prosecution, et cetera.

In the end, sir, this is really not an intelligence issue. I think our concern is the ability to interrogate and to glean information from these detainees regardless of where they're incarcerated and regardless of whether they're attended to through a military commission or through a civil court system.

So our interest -- my interest -- and whether they're mirandized or not, it's getting the intelligence from them, rather than where -- where they are incarcerated.

And you're quite right about the recidivism rate. It's on the order of 27 percent. There are, I think, some 161 -- there have been 599 detainees that have been repatriated from Guantanamo; some 161 of them either confirmed or suspected to be recidivists. I should point out, many of them have been taken off the battlefield through kinetic encounters, if you will. So that is a concern.

As to what the intelligence community can do to stem the recidivist rate since, you know, one is one too many, is to ensure that in the interagency deliberations that are conducted to make judgments about whether or not to repatriate someone and where, to ensure that we have provided the maximum accurate and current information on the potential threat posed by such repatriation.

APPENDIX A.8²⁰⁸**Summary of the Reengagement of Detainees
Formerly Held at Guantanamo Bay, Cuba**

The Director of National Intelligence submits this summary consistent with direction in the Fiscal Year 2012 Intelligence Authorization Act, Section 307, which states:

"The Director of National Intelligence, in consultation with the Director of the Central Intelligence Agency and the Director of the Defense Intelligence Agency, shall make publicly available an unclassified summary of,

- (1) intelligence relating to recidivism of detainees currently or formerly held at the Detention Facility at Guantanamo Bay, Cuba, by the Department of Defense; and
- (2) an assessment of the likelihood that such detainees will engage in terrorism or communicate with persons in terrorist organizations."

(1) Intelligence relating to recidivism of detainees currently or formerly held at the Detention Facility at Guantanamo Bay, Cuba, by the Department of Defense.

Reengagement of Former GTMO Detainees as of 29 December 2011			
	Total	Pre-22 January 2009 ¹	Post-22 January 2009
Detainees Transferred	599*	532	67
Confirmed of Reengaging	95 of 599 (15.9%)	92 of 532 (17.3%)	3 of 67 (4.5%)
Dead – 12 of 95		12	0
In custody – 28 of 95		28	0
Not in custody – 55 of 95		52	3
Suspected of Reengaging	72 of 599 (12.0%)	70 of 532 (13.2%)	2 of 67 (3%)
Dead – 2 of 72		2	0
In custody – 26 of 72		26	0
Not in custody – 44 of 72		42	2

*An additional eight detainees died while at GTMO, and one was transferred to New York for trial, was convicted, and is now imprisoned in Colorado.

¹ Executive Order 13491 was signed on January 22, 2009, to determine the disposition of the 240 detainees then remaining at the detention facility at Guantanamo Bay, Cuba.

²⁰⁸ JAMES R. CLAPPER, DIR. NAT'L INTELLIGENCE, SUMMARY OF THE REENGAGEMENT OF DETAINEES FORMERLY HELD AT GUANTANAMO BAY, CUBA 1 (2012), available at http://www.fas.org/irp/news/2012/03/recid_2012.pdf.

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(2) (a) An assessment of the likelihood that such detainees will engage in terrorism.

Based on trends identified during the past 9 years, we assess that if additional detainees are transferred without conditions from GTMO, some will reengage in terrorist or insurgent activities. Posing a particular problem are transfers to countries with ongoing conflicts and internal instability as well as active recruitment by insurgent and terrorist organizations.

(2) (b) An assessment of the likelihood that such detainees will communicate with persons in terrorist organizations.

Former GTMO detainees routinely communicate with each other, families of other former detainees, and previous associates who are members of terrorist organizations. The reasons for communication span from the mundane (reminiscing about shared experiences) to the nefarious (planning terrorist operations). We assess that some GTMO detainees transferred in the future also will communicate with other former GTMO detainees and persons in terrorist organizations. We do not consider mere communication with individuals or organizations – including other former GTMO detainees – an indicator of reengagement. Rather, the motives, intentions, and purposes of each communication are taken into account when assessing whether the individual has reengaged.

Definition of “Terrorist” or “Insurgent” Activities. Activities such as the following indicate involvement in terrorist or insurgent activities: planning terrorist operations, conducting a terrorist or insurgent attack against Coalition or host-nation forces or civilians, conducting a suicide bombing, financing terrorist operations, recruiting others for terrorist operations, and arranging for movement of individuals involved in terrorist operations. It does not include mere communications with individuals or organizations—including other former GTMO detainees—on issues not related to terrorist operations, such as reminiscing about shared experiences at GTMO, communicating with past terrorist associates about non-nefarious activities, writing anti-U.S. books or articles, or making anti-U.S. propaganda statements.

Definition of “Confirmed.” A preponderance of information which identifies a specific former GTMO detainee as directly involved in terrorist or insurgent activities. For the purposes of this definition, engagement in anti-U.S. statements or propaganda does not qualify as terrorist or insurgent activity.

Definition of “Suspected.” Plausible but unverified or single-source reporting indicating a specific former GTMO detainee is directly involved in terrorist or insurgent activities. For the purposes of this definition, engagement in anti-U.S. statements or propaganda does not qualify as terrorist or insurgent activity.

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APPENDIX B**GUANTÁNAMO BAY DETAINEES ALLEGEDLY RELEASED
AND SUBSEQUENTLY RE-CAPTURED OR KILLED
IN COMBAT AGAINST THE UNITED STATES****TIME LINE OF NUMBERS CITED PUBLICLY BY GOVERNMENT OFFICIALS:**

DATE:	# CITED:	GOVT. OFFICIAL:	QUOTE:
Sep. 13, 2011	161	James Clapper, Director of National Intelligence	“There are, I think, some 161—there have been 599 detainees that have been repatriated from Guantanamo; some 161 of them either confirmed or suspected to be recidivists. I should point out, many of them have been taken off the battlefield through kinetic encounters, if you will. So that is a concern.”
Dec. 2010	150	James Clapper, Director of National Intelligence	“As of 1 October 2010, 598 detainees have been transferred out of Department of Defense (DoD) custody at the U.S. Naval Base, Guantanamo Bay, Cuba (GTMO) detention facility. The Intelligence Community assesses that 81 (13.5 percent) are confirmed and 69 (11.5 percent) are suspected of reengaging in terrorist or insurgent activities after transfer. Of the 150 former GTMO detainees assessed as confirmed or suspected of reengaging in terrorist or insurgent activities, the Intelligence Community assesses that 13 are dead, 54 are in custody, and 83 remain at large.”
Feb. 2010	112	John Brennan, President Obama’s chief counter- terrorism adviser	According to the most recent report to Congress pursuant to section 319 of the Supplemental Appropriations Act of 2009, the Intelligence Community assesses that 20 percent of detainees transferred from Guantanamo are confirmed or suspected of recidivist activity. This figure includes 9.6 percent of detainees who are confirmed recidivists and 10.4 percent of detainees who the Intelligence Community suspects, but is not certain, may have engaged in recidivist activities.

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Apr. 7, 2009	74	Defense Department	<p>“Based on a comprehensive review of available information as of mid-March 2009, the Defense Intelligence Agency reported that 14 percent of the overall rate of former Guantanamo detainees confirmed or suspected of reengaging in terrorist activities. Of the more than 530 Guantanamo detainees transferred from Department of Defense custody at Guantanamo Bay, 27 were confirmed and 47 were suspected of reengaging in terrorist activity. Between December 2008 and March 2009, nine detainees were added to the confirmed list, six of whom were previously on the suspected list.”</p>
Jan. 13, 2009	61	Geoff Morrell , Pentagon spokesman	<p>“I can disclose with you the fact that we have a new—we have updated recidivism numbers of people who have been at Guantanamo, and these are the latest numbers we have as of the end of December. And it shows a pretty substantial increase in recidivism. I think prior to this report, I think the rate had been about 7 percent of those who had been held at Guantanamo and released who have been confirmed or suspected of returning to the fight. At that time we suspected that 30—confirmed or suspected that 37 former detainees had returned to the fight. We now believe that that number has increased and that the overall known terrorist reengagement rate has increased to 11 percent. The new numbers are, we believe, 18 confirmed and 43 suspected of returning to the fight. So 61 in all former Guantanamo detainees are confirmed or suspected of returning to the fight.”</p>
June 2008	37	Defense Department	<p>“A DIA report dated May 12, 2008 cites the figure of 36 ex-GTMO men “confirmed or suspected” of having returned to terrorism. . . with Kuwaiti ex-detainee Abdallah Salih Al-Ajmi’s confirmation of suicide bombing in Iraq, the figure is 37. The number of former Guantanamo Bay (GTMO) detainees confirmed or suspected of returning to terrorist activities is about 7 percent of those transferred from U.S. custody. The identified rate of</p>

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			reengagement over three years of tracking has remained relatively constant between 5 and 8 percent.”
May 09, 2007	*Approx. ²⁰⁹ 30	Rear Admiral Harry B. Harris Jr. (USN), Commander, Joint Task Force Guantanamo	“Of those detainees transferred or released, we believe approximately 30 have returned to the fight.”
Apr. 26, 2007	*Approx. 30	Daniel J. Dell’Orto , Principal Deputy General Counsel Dept. of Def.	“The General number is around—just short of 30, I think ” “It’s a combination of 30 we believe have either been captured or killed on the battlefield, so some of them have actually died on the battlefield.”
Apr. 17, 2007	24	Michael F. Scheuer , Former Chief, Bin Laden Unit, C.I.A.	“But the rub comes with the release, and that is where we are going to eventually have to come down and sit down and do some hard talking, as the Europeans said, because we have had already two dozen of these people come back from Guantanamo Bay and either be killed in action against us or recaptured.”
Mar. 29, 2007	**At Least ²¹⁰ 29	Patrick F. Philbin , Associate Deputy Attorney, U.S. Dept. of Justice	“The danger that these detainees potentially pose is quite real, as has been demonstrated by the fact that to date at least 29 detainees released from Guantanamo re-engaged in terrorist activities, some by rejoining hostilities in Afghanistan where they were either killed or captured on the battlefield.”
Mar. 08, 2007	12	Senator Lindsey Graham (SC)	“ Twelve of the people released have gone back to the fight, have gone back to trying to kill Americans and civilians.”
Mar. 06,	**At Least	Sr. Defense	“I can tell you that we have confirmed

²⁰⁹ * “Approx.” indicates the specific language used was an approximation; the specific number cited was used contextually with qualifying language. See “QUOTE” column for actual qualifying language used within the immediate textual area of the number cited.

²¹⁰ ** “At Least” indicates that the phrase “at least” was used in connection with the number provided; the number provided is therefore a baseline, or the lowest number possible.

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2007	12-24	Official	12 individuals have returned to the fight, and we have strong evidence that about another dozen have returned to the fight.”
Nov. 20, 2006	**At Least 12	Alberto R. Gonzales, U.S. Atty. Gen.	“As you may know, there have been over a dozen occasions where a detainee was released but then returned to fight against the United States and our allies again.”
Sept. 27, 2006	**At Least 10	Senator Jon Kyl (AZ)	“According to a October 22, 2004 story in the Washington Post, at least 10 detainees released from Guantanamo have been recaptured or killed fighting U.S. or coalition forces in Afghanistan or Pakistan.”
Sept. 06, 2006	**At Least 12	President George W. Bush	“Other countries have not provided adequate assurances that their nationals will not be mistreated or they will not return to the battlefield, as more than a dozen people released from Guantanamo already have.”
Aug. 02, 2006	*Approx. 25	Senator Arlen Specter (PA)	“[A]s you know, we have several hundred detainees in Guantanamo. A number estimated as high as 25 have been released and returned to the battlefield, so that’s not a desirable thing to happen.”
July 19, 2006	**At Least 10	Senator James M. Inhofe	“ At least 10 detainees we have documented that were released in Guantanamo, after U.S. officials concluded that they posed no real threat or no significant threat, have been recaptured or killed by the U.S. fighting and coalition forces, mostly in Afghanistan.”
June 20, 2006	15	Senator Jeff Sessions (AL)	“They have released several hundred already, and 15 of those have been rearrested on the battlefield where they are presumably attempting to fight the United States of America and our soldiers and our allies around the world.”
June 20, 2006	*Approx. 12	Senator Lindsey Graham (SC)	“ About a dozen of them have gone back to the fight, unfortunately. So there have been mistakes at Guantanamo Bay by putting people in prison that were not properly classified.”

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May 25, 2006	*Approx. 10% of "hundreds"	John B. Bellinger III , Snr. Legal Adviser, Sec. of St. Condoleezza Rice	" Roughly 10 percent of the hundreds of individuals who have been released from Guantanamo 'have returned to fighting us in Afghanistan,' Bellinger said."
May 21, 2006	"A couple"	Condoleezza Rice , U.S. Sec. of St.	"[B]ecause the day that we are facing them again on the battlefield— and, by the way, that has happened in a couple of cases that people were released from Guantanamo."
Mar. 28, 2006	*Approx. 12	U.S. Dept. of Def.	" Approximately a dozen of the more than 230 detainees who have been released or transferred since detainee operations started at Guantanamo are known to have returned to the battlefield."
Mar. 07, 2006	**At Least 15	Alberto R. Gonzales, U.S. Atty. Gen.	"Unfortunately, despite assurances from those released, the Department of Defense reports that at least 15 have returned to the fight and been recaptured or killed on the battlefield."
Feb.14, 2006	*Approx. 15	U.S. Embassy in Tirana - Albania	"Unfortunately, of those already released from Guantanamo Bay, approximately fifteen have returned to acts of terror and been recaptured."
Jan. 10, 2006	12	Donald H. Rumsfeld , Defense Secretary	Twelve detainees who'd been released from Guantanamo had returned to the battlefield and had been re-captured by U.S. forces
July 21, 2005	*Approx. 12	Matthew Waxman , Dep. Ass. Sec. of Def. for detainee affairs	About a dozen individuals who were released previously, he said, returned to the battlefield "and tried to harm us again."
July 13, 2005	*Approx. 12	Gen. Bantz Craddock , Commander, U.S. Southern Command	"We believe the number's 12 right now—confirmed 12 either recaptured or killed on the battlefield."
July 08, 2005	*Approx. 12	Rear Adm. James McGarrah	"About a dozen of the 234 that have been released since detainee operations started in Gitmo we know have returned to the battlefield—about a dozen."
July 06, 2005	"A few"	Scott McClellan ,	"I mean, the President talked about how these are dangerous individuals;

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		White House Press Sec.	they are at Guantanamo Bay for a reason—they were picked up on the battlefield. And we've returned a number of those, some 200-plus, we've returned a number of those enemy combatants to their country of origin. Some of—a few of them have actually been picked up again fighting us on the battlefield in the war on terrorism."
July 06, 2005	**At Least 5	Anonymous Defense Official	"At least five detainees released from Guantanamo have returned to the (Afghan) battlefield," said the defense official, who requested anonymity."
June 27, 2005	12	Senator Jim Bunning (KY)	"I could describe many individuals held at Guantanamo and give reasons they need to remain in our custody, but I only will mention a few more_12, to be exact. That is the number of those we know who have been released from Guantanamo and returned to fight against the coalition troops."
June 20, 2005	*Approx. 12	Scott McClellan, White House Press Sec.	"I think that our belief is that about a dozen or so detainees that have been released from Guantanamo Bay have actually returned to the battlefield, and we've either recaptured them or otherwise dealt with them, namely killing them on the battlefield when they were again attacking our forces."
June 20, 2005	"Some"	President George W. Bush	The president was quick to point out that many of the detainees being held "are dangerous people" who pose a threat to U.S. security. Some of those who have been released have already returned to the battlefield to fight U.S. and coalition troops, he said.
June 17, 2005	*Approx. 10	Vice President Dick Cheney	"In some cases, about 10 cases, some of them have then gone back into the battle against our guys. We've had two or three that I know of specifically by name that ended up back on the battlefield in Afghanistan where they were killed by U.S. or Afghan forces."
June 16, 2005	12	Congressman Bill Shuster (PA)	"In fact, about two-hundred of these detainees have been released and it's been proven that twelve have already returned to the fight."
June 14, 2005	**At Least 10	Vice President Dick Cheney	He provided new details about what he said had been at least 10 released

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			detainees who later turned up on battlefields to try to kill American troops.
June 13, 2005	**At Least 12	Scott McClellan, White House Press Sec.	“There have been—and Secretary Rumsfeld talked about this recently—at least a dozen or so individuals that were released from Guantanamo Bay, and they have since been caught and picked up on the battlefield seeking to kidnap or kill Americans.”
June 06, 2005	“Some”	Air Force Gen. Richard B. Myers	“We’ve released 248 detainees, some of whom have come back to the battlefield, some of whom have killed Americans after they have been released.”
June 01, 2005	**At Least 12	Donald H. Rumsfeld, Defense Secretary	“At least a dozen of the 200 already released from GITMO have already been caught back on the battlefield, involved in efforts to kidnap and kill Americans.”
Dec. 20, 2004	**At Least 12	Gordon England, Secretary of The Navy	“And as you are aware, there’s been at least 12 of the more than 200 detainees that have been previously released or transferred from Guantanamo that have indeed returned to terrorism.”
Nov. 03, 2004	**At Least 10	Charles Douglas “Cully” Stimson, Dep. Ass. Sec. of Def. for Detainee Affairs	Of the roughly 200 detainees the United States has released from its Guantanamo Bay, Cuba, detention facility, intelligence claims that at least 10 returned to terrorist activity, the deputy assistant secretary of defense for detainee affairs said here Nov. 2.
Oct. 19, 2004	“A couple”	Vice President Dick Cheney	“And we have had a couple of instances where people that were released, that were believed not to be dangerous have, in fact, found their way back onto the battlefield in the Middle East.”
Oct. 17, 2004	**At Least 7	U.S. Military Officials (as reported by the Assoc. Press)	“[A]t least seven former prisoners of the United States at Guantanamo Bay, Cuba, have returned to terrorism, at times with deadly consequences.”
Mar. 25, 2004	1	Donald H. Rumsfeld, Defense Secretary	“Now, have we made a mistake? Yeah. I’ve mentioned earlier that I do believe we made a mistake in one case and that one of the people

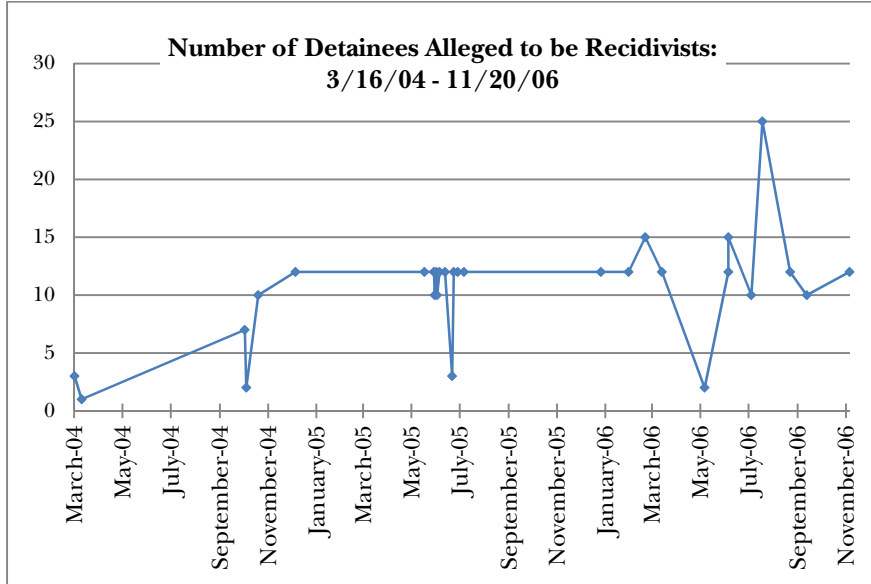
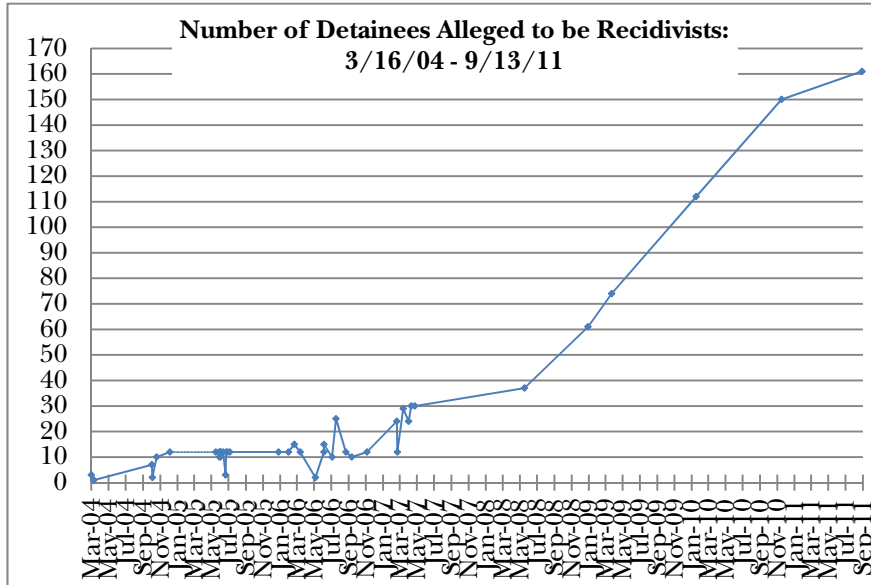
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			that was released earlier may very well have gone back to being a terrorist.”
Mar. 16, 2004	“Several”	U.S. Dept. of Def.	“Releases are not without risk. Even though the threat assessment process is careful and thorough, the U.S. now believes that several detainees released from Guantanamo have returned to the fight against U.S. and coalition forces.”

APPENDIX C

DOD Reports by DATE							
	2006	2007	2008a	2008b	2009	2012	
1	930	930	930	930	930	Appearing on all but 2012	5 (16%)
2	92	92	92	92	92		
3	367	367	367	367	367	Appearing prior to 2009	13 (42%)
4	363	363	363	363	363		
5	633	633	633	633	633	New in 2009	16 (52%)
6	203		203	203	203		
7	674		674	674	674	New in 2012	2 (6%)
8		351		351			
9		211	211	211	211	Dropped in 2009	2 (6%)
10			297	297	297		
11			587	587			
12			294	294	294		
13			220	220	220		
14					82		
15					23		
16					209		
17					571		
18					25		
19					154		
20					67		
21					231		
22					1010		
23					372		
24					8		
25					798		
26					159		
27					230		
28					546		
29					19		
30						166	
31						184	

APPENDIX D: Government Figures for Recidivist Detainees



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