

July 23, 2013

The Honorable Chuck Hagel
Secretary
United States Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

The Honorable John F. Kerry
Secretary of State
US Department of State
2201 C Street NW
Washington, DC 20520

Dear Secretary Hagel and Secretary Kerry:

The undersigned civil liberties and human rights organizations write regarding the Periodic Review Boards (PRBs) for detainees held at Guantanamo Bay, Cuba that the Department of Defense has announced will commence shortly.

We continue to oppose indefinite detention without charge or trial and urge the immediate release or civilian trial of the remaining detainees. Mechanisms are currently in place to affect swift transfers of detainees and we encourage the administration to use the tools that are already at its disposal to close Guantanamo. However, should the administration proceed with PRBs, we encourage you to take appropriate steps to ensure the PRBs, as established by Presidential Executive Order 13567, have the required processes in place for meaningful review of a detainee's detention status at Guantanamo.

The PRBs are supposed to determine whether an individual detainee poses a significant threat to the security of the United States. In order to do so, the PRBs must offer an open and transparent process, affording all necessary due process protections to the detainees who are subject to them. These include the right not to be detained on the basis of classified evidence to which the detainee does not have access, the right to be present throughout the proceeding, and meaningful access to counsel. The current draft guidelines, as outlined in the Department of Defense Memorandum of May 9th, 2012 for the implementation of the Periodic Review of detainees, do not establish these basic safeguards.

We understand that new guidelines are currently being drafted and we hope they will reflect the concerns outlined in this letter. At a minimum, the procedures must permit the detainee to effectively participate in making a case against his continued detention. This requires government-provided access to qualified and security-cleared counsel (not just a non-lawyer personal representative) of the detainee's choice, who will have equal access to information as provided the personal representative. The personal representative and lawyer, as well as the detainee, must be able to view all of the evidence the government presents to the PRB, to ensure effective counsel and to give the detainee the opportunity to rebut the evidence used in support of his continued detention. Likewise, the personal representative and counsel must be able to obtain information from the government he or she deems

reasonable and necessary to rebut the evidence presented in favor of continued detention, as well as obtain exculpatory information in the government's possession.

To ensure transparency and allow the public to make an informed decision about the fairness of the PRBs, the procedures should also provide that the criteria and factual basis for the PRB determinations, as well as unclassified summaries of the evidence presented to the Board, will be made public. Additionally, because the PRB proceedings are likely to take place in Guantanamo Bay, or other remote locations, it is imperative that non-government organizations and media be granted access to observe the proceedings, much like the current practice for the Guantanamo military commissions. The PRBs must not take place in secret, they must not use secret evidence, and the Board's reasoning must not be kept from the public. The 2012 guidelines do not provide any of these essential safeguards.

Additionally, any review process will be rendered meaningless if detainees who are found to no longer present a continued significant security threat to the United States are not swiftly transferred out of Guantanamo. We urge you to commit to transferring detainees who are recommended for transfer by the PRB process as soon as practicable using whatever tools you have available. The Senate Armed Services Committee's version of the 2014 National Defense Authorization Act includes a provision that would exempt detainees recommended for transfer by the PRB from the certification requirement that is otherwise applicable to transfers out of Guantanamo. We urge you to support its inclusion in the bill.

The United States must not deprive people of their liberty without according them due process. If the PRBs are truly designed to aid in the release of more men from indefinite detention at Guantanamo they are a step forward, but they must be designed to provide fair process in order to have any hope of achieving that goal.

The PRBs were supposed to begin reviewing cases one year from the date of the Executive Order. Now, more than two years have passed and little has been done to commence reviews. The president's renewed commitment to closing Guantanamo makes this process more important than ever. While our organizations believe that the men subject to the PRBs should not continue to be held, an administrative review with sufficient due process protections is better than no review at all. We hope that the PRBs will commence shortly, and we urge you to ensure that their procedures will provide for a fair process for all parties, as well as path towards ultimate closure of Guantanamo.

We appreciate your attention to this matter.

Sincerely,

American Civil Liberties Union
Center for Constitutional Rights
The Center for Victims of Torture
Council on American-Islamic Relations
Defending Dissent Foundation
Human Rights First

Human Rights Watch
International Justice Network
National Association of Criminal Defense Lawyers
National Religious Campaign Against Torture

cc: Deputy Assistant Secretary of Defense for Detainee Policy, William Lietzau
Special Envoy for Guantanamo Closure, Department of State, Cliff Sloan