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Rumsfeld Knew:

DoD's "Worst of the Worst" and Recidivism Claims Refuted by Recently Declassified Memo

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"**[T]he worst of the worst**"
Donald Rumsfeld, 2002[1]

"I wanted transfers of detainees to Guantanamo to be kept to a minimum—**to only individuals of high interest for interrogation who posed a threat to our nation's security.**"
Donald Rumsfeld, 2011[2]

"We need to stop **populating Guantanamo Bay ("GTMO") with low-level enemy combatants.** GTMO needs to serve as an [REDACTED] not a **prison for Afghanistan."**[3]
Donald Rumsfeld April 2003

[1] Katharine Q. Sleeyle, "Threats and Responses: The Detainees," NY TIMES (Oct. 23, 2002) *available at* http://www.nytimes.com/2002/10/23/world/threats-responses-detainees-some-guantanamo-prisoners-will-be-freed-rumsfeld.html.
[2] Donald Rumsfeld, *Known and Unknown* (2011).
[3] Memorandum from Donald Rumsfeld to Chairman, Joint Chiefs of Staff and Commander, U.S. Central Command (Apr. 21, 2003) (declassified in part Jul. 9, 2010, attached as App'x A).

Abstract

The U.S. Government has maintained that detainees incarcerated at Guantanamo Bay are dangerous, "high-value detainees," the "worst of the worst." The Government has also claimed that upon release from GTMO, many of these detainees have "reengaged" in their dangerous activities. A recently declassified Memorandum from Secretary of Defense Donald Rumsfeld undermines both of these claims, revealing that GTMO was not populated with "high-value" enemy combatants, but rather with "low-value" detainees. Not only does this contradict Government assertions that the prison at GTMO holds the worst of the worst, but it also calls into question the Government's assertions that the released detainees are dangerous men who have and likely will reengage. Sparked by the revelation that the Government knew at least as early as spring of 2003 that GTMO was populated with low-level detainees, the Center for Policy & Research reexamined all government claims as to detainee recidivism. This Report is consistent with the Center's past findings on alleged recidivism. **The Center has found yet again that the Government has not supported their claims; claims that rest on even weaker ground now that it is clear that the men released from GTMO were never the worst of the worst in the first place.**

Executive Summary

Government officials at the highest levels have consistently justified the creation of the Guantanamo Bay detention facility by citing the supposed extraordinary dangerousness of the detainees. The same claims have been made in support of GTMO's procedures and to explain the difficulty in repatriating inmates. In the government's narrative, the detainees are "the worst of the worst," a claim that originated with then-Secretary of Defense Donald Rumsfeld in 2002 and was essentially repeated in his 2011 book with the unintendedly ironic title of *Known and Unknown*. Critical to this story is what the Center for Policy and Research has labeled the government's "recidivism" claims—continuing efforts to cast released detainees as likely to have "returned to the battlefield" against the United States. Fear has driven the characterization of the detainees as they arrived and fear has driven the characterization of the detainees after they have left.

The Center's previous Reports called into question both the original Rumsfeld characterization of the worst of the worst[4] and the continuing government claims of detainee recidivism.[5] This Report uncovers new evidence in the form of a newly- unclassified document that reveals, contrary to Mr. Rumsfeld's repeated statements, he was aware no later than April 2003 that Guantanamo was being used for relatively low-level detainees who posed little threat to the United States and had little intelligence value. This casts a new light on the Department of Defense's continuing dissemination of misinformation about rising rates of recidivism among released detainees. It also raises questions as to why most of the mainstream media have not

[4] *See, e.g.*, Mark Denbeaux, The Guantánamo Detainees During Detention: Data from Department of Defense Records (July 10, 2006), *available at* http://law.shu.edu/ProgramsCenters/PublicIntGovServ/policyresearch/Guantanamo-Reports.cfm.

[5] *See, e.g.*, Mark Denbeaux, Revisionist Recidivism: An Analysis of the Government's Representations of Alleged "Recidivism" of the Guantánamo Detainee (June 5, 2009), *available at* http://law.shu.edu/ProgramsCenters/PublicIntGovServ/policyresearch/Guantanamo-Reports.cfm.

been more vigilant in informing the public of the reality underlying the frequent government statements on the subject.

In April 2003, despite having described the detainees at Guantanamo as the "worst of the worst" the previous year, Secretary of Defense Donald Rumsfeld wrote a Memorandum to the Chairman of the Joint Chiefs of Staff and the Commander of U.S. Central Command. In it, Rumsfeld expressed his frustration that the U.S. was "populating Guantanamo Bay ("GTMO") with low-level enemy combatants" to the extent that it was serving as a "prison for Afghanistan."[6] This undermines the credibility of his prior statements indicating that GTMO was intended for the most dangerous prisoners from the war on terror.[7] Had the April Memorandum led to more high-value individuals being brought to the base, Rumsfeld's frustrations might have been addressed and his description of Guantanamo's role in the "war on terror" retroactively justified. No such thing happened. Despite Rumsfeld's order to detain fewer low-level and more high-level detainees in GTMO, the profiles of detainees transferred in after the order took effect suggest they were even less dangerous and less likely to have information about al Qaeda than those of whom Rumsfeld complained.

The false characterization of the detainees in Guantanamo as dangerous when they arrived is mirrored by the false characterization of the detainees as dangerous after their release. The mischaracterization of the original detainees continues in a new form to the present in the mischaracterizations of supposed detainee recidivism. The Director of National Intelligence ("DNI") released a "Summary of the Reengagement of Detainees Formerly Held at Guantanamo Bay, Cuba" on December 7, 2010. This release is the latest in a long sequence of government statements on the alleged recidivism of former GTMO detainees that again fails to address the failures and ambiguities of its predecessors. This release claims that out of 598 detainees released from GTMO, 150, or 25%, are "confirmed or suspected of reengaging in terrorist or insurgent activities after transfer." The Summary lists no names, gives no details of pre-detainment or post-transfer activities, and does not address the many discrepancies and unanswered questions raised by the Center for Policy and Research in at least five previous reports. The Summary does not explain the sudden twofold increase in "reengagement" from the April 7, 2009 "Fact Sheet" released by the Department of Defense, which claimed that 74 of 530 released detainees were recidivists.[8] This increase allegedly occurred despite the fact, according to the Summary, that only 7% (5) of the 66 detainees released during the Obama administration have "reengaged,".

Specifically, the Center finds that: 1) the U.S. knew from 2003 that it was "populating Guantanamo Bay ("GTMO") with low-level enemy combatants" and 2) that the government's

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[6] Memorandum from Donald Rumsfeld to Chairman, Joint Chiefs of Staff and Commander, U.S. Central Command (Apr. 21, 2003) (declassified in part Jul. 9, 2010, attached as App'x A).

[7] William Fisher, "The Worst of the Worst," TRUTH OUT, Apr. 30, 2006, http://www.truth-out.org/docs_2006/043006Z.shtml.

[8] In January 2010, a Pentagon spokesperson claimed that the recidivism rate was then at 20%. This number was not accompanied by any written release as the information was said to be classified. The number was widely reported in the media despite the lack of any data explaining or supporting the 20% figure. *See, e.g.*, Luis Martinez, "Gitmo Recidivism Rate Rises to 20 Percent Confirmed to ABC," ABC NEWS, http://blogs.abcnews.com/politicalpunch/2010/01/gitmo-recidivism-rate-rises-to-20-percent-confirmed-to-abc.htmlhttp://blogs.abcnews.com/politicalpunch/2010/01/gitmo-recidivism-rate-rises-to-20-percent-confirmed-to-abc.html.

own records demonstrate that government reports of post released conduct was greatly exaggerated and in many cases unfounded. The government can only identify a dozen released detainees however defined who have engaged in recidivism,

- The government believed, as of April 2003, that the detainees at Guantanamo were, at least predominately, "low-level enemy combatants," prompting a change in DoD policy intended to bring higher value detainees to GTMO.
- The detainees brought to GTMO after the new policy took effect were, in fact, less dangerous and less likely to have information about al Qaeda.
- The DNI Summary continues the government's practice of claiming recidivism while withholding names of supposed recidivists, making independent confirmation of either alleged recidivism or of an individual's prior detention in GTMO impossible.
    - The government can still only name 15 alleged recidivists several of whom were never in Guantanamo.
- The DNI Summary again redefines recidivism, but does not address whether individuals included under earlier definitions are still included as recidivists.
    - For example, under the 2007 definition, anti-U.S. propaganda qualified as reengagement and several former detainees were included in the count on that basis. The definition now excludes those activities, but there is no indication that those individuals have been removed from the total. It remains unclear whether the government updates the total to account for changes in the status of individuals. For example, in past reports some individuals had been downgraded from confirmed to suspected, but there was no indication whether the totals for each category had been adjusted. It is also unclear how situations like that of Jaber al-Faifi are treated.[9]
- The Summary does not address whether past errors have been corrected, such as the inclusion of individuals who were never detained at GTMO.
- The Summary does not address whether activities carried out in other countries against non-U.S. and non-Coalition entities are still included in the count.

The DNI Summary raises many more questions than answers, and does not address any of the known problems in previous recidivism reports. Until names of alleged recidivists and details of alleged activities are provided, these numbers have little or no meaning in understanding the issue of recidivism among GTMO detainees.

I.
THE RUMSFELD MEMORANDUM AND THE DANGEROUSNESS OF DETAINEES

In a memo from Secretary of Defense Donald Rumsfeld to the Chairman of the Joint Chiefs of Staff and the Commander of U.S. Central Command, Rumsfeld stated, "We need to

[9] *See* II.G, *infra.*

stop populating Guantanamo Bay ("GTMO") with low-level enemy combatants."[10] Instead, the Secretary said that "GTMO needs to serve as an [REDACTED] not a prison for Afghanistan."[11] Rumsfeld then ordered a change in policy that would leave such low level "enemy combatants" in custody in Afghanistan, and only bring to GTMO "those detainees who meet the stated criteria and are of [REDACTED] value."[12]

Rumsfeld further stated that he was asking Secretary of State Colin Powell to work with the Afghan government to set up some sort of facility in Afghanistan to "keep" an undisclosed person or group of persons.[13]

Rumsfeld's acknowledgement that the detainees at GTMO were predominantly not "high-value" combatants confirms prior findings of the Center.[14] The Center has previously reported that government documents show that more than half of the detainees at GTMO had not been accused of having committed a hostile act against the U.S. or coalition forces, and of those who were, many of the allegations were not substantial.[15] The Rumsfeld Memorandum also demonstrates that the government has long known, at the very least, that many of those being held at GTMO were not the "worst of the worst," and possibly that very few of those at GTMO fit that description.

In the wake of the discovery of the Rumsfeld Memorandum, the Center re-examined the available data, including Combatant Status Review Tribunal data, to compare the profiles of detainees who arrived before and after the June 16, 2003 date set by Rumsfeld for the start of the new policy.[16] The Center found that indicators of "dangerousness," such as affiliation with al Qaeda or allegations of violent acts, actually *decreased* after June 16.[17] This suggests that, despite Secretary Rumsfeld's frustrations, GTMO took in even less dangerous detainees after he complained that the camp was already populated with low-value detainees. The data further suggests that the detainees would less likely be in a position to have information about al Qaeda.[18]

Despite these developments, many high ranking government officials, including Secretary Rumsfeld himself, continued to insist that GTMO housed the most dangerous, most "vicious" "terrorists, trainers, bomb makers, recruiters, financiers, [Osama bin Laden's] bodyguards, would-be suicide bombers" long after the April 2003 Memorandum revealed otherwise.[19]

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[10] Memorandum from Donald Rumsfeld to Chairman, Joint Chiefs of Staff and Commander, U.S. Central Command (Apr. 21, 2003) (declassified in part Jul. 9, 2010, attached as App'x A).
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *See, e.g.*, The 14 Myths of Guantánamo: Senate Armed Services Committee Statement of Mark P. Denbeaux (Apr. 26, 2007), *available at* http://law.shu.edu/ProgramsCenters/PublicIntGovServ/policyresearch/Guantanamo-Reports.cfm.
[15] *Id.* at 6 (detainee who participated in military operations by fleeing; detainee who was a conscripted cook's assistant).
[16] *See* App'x J.
[17] *Id.*
[18] *Id.*
[19] William Fisher, "The Worst of the Worst," TRUTH OUT, Apr. 30, 2006, http://www.truth-out.org/docs_2006/043006Z.shtml (Rumsfeld , June 2005: "If you think of the people down there, these are people, all of whom were captured on a battlefield. They're terrorists, trainers, bomb makers, recruiters, financiers, [Osama

Air Force Gen. Richard Myers, chairman of the Joint Chiefs of Staff to whom Rumsfeld sent the Memorandum, stated of the GTMO detainees in 2005, "They were so vicious, if given the chance they would gnaw through the hydraulic lines of a C-17 while they were being flown to Cuba."[20]

As recently as 2009, former Vice President Dick Cheney stated that the remaining prisoners in GTMO are the "worst of the worst" and that "[i]f you don't have a place where you can hold these people, the only other option is to kill them, and we don't operate that way."[21] Cheney made these assertions in contradiction of the Rumsfeld Memo, which acknowledged the overall low value of the detainees at GTMO and indicated that the U.S. had and would "continue to detain in Afghanistan screened enemy combatants."

Perhaps most startling, however, are statements in Mr. Rumsfeld's recent memoir, *Known and Unknown*. In that book, Rumsfeld essentially repeats the "worst of the worst" claim. He writes, "We were dealing with individuals capable of horrific acts of murder and destruction."[22] The unintentional irony of the title as applied to the dangerousness of the GTMO detainees is apparent: what Rumsfeld apparently knew in 2003 was unknown to him not only before that date when he made his "worst of the worst" representation but also, somehow, unknown to him when he provided the American public with an apologia for his performance as Secretary of Defense.

II.
CONTINUED CONFUSION ON RECIDIVISM

The Center has focused heavily on the accuracy of the government's evolving claims on recidivism. Section 1 provides the background by summarizing findings and questions raised by prior Reports and Section 2 then analyzes the government's most recent statement, the December 7, 2010 "Summary of the Reengagement of Detainees Formerly Held at Guantanamo Bay, Cuba."

1. The Prior Reports

The supposed dangerousness of the detainees obviously bears critically on ongoing concerns about recidivism. The Center published its first report dealing with the government's recidivism claims in December of 2007. As those Reports demonstrate, not only is the number

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bin Laden's] bodyguards, would-be suicide bombers, probably the 20th 9/11 hijacker."; Air Force Gen. Richard Myers, then chairman of the Joint Chiefs of Staff, 2005: "They were so vicious, if given the chance they would gnaw through the hydraulic lines of a C-17 while they were being flown to Cuba.")

[20] *Id.*

[21] "Cheney: Gitmo holds 'worst of the worst'," AP, June 1, 2009, *available at* http://www.msnbc.msn.com/id/31052241/ns/world_news-terrorism/.

[22] Donald Rumsfeld, *Known and Unknown* 555 (2011). Rumsfeld goes on to state: "Some of these captured detainees were terrorists and insurgents who had attacked—and, in many cases, killed—American and coalition forces. Inevitably, others would be in our custody by mistake, as is also the case in our domestic criminal justice system." *Id.* Rumsfeld does not attempt to square this admission with his earlier unequivocal statements, nor does he acknowledge what he stated in the 2003 Memo: that GTMO was populated by low-level detainees. Rumsfeld also ignores the availability of due process in the domestic criminal justice system, and that, as the Center has previously reported, the majority of GTMO detainees were never even accused of committing a violent act.

of claimed recidivists constantly changing but the government has continually failed to provide sufficient information to assess any given claim.

In the three years since the Center's first recidivism Report, and through further reporting on the evolving claims the government has made as to the recidivism rate, the Center has demonstrated glaring errors and urgent questions that undermine the government's claims. The questions remain unanswered; the errors have never been addressed. The most important lingering questions, raised repeatedly in the Center's reports but left unanswered by the government are as follows:

- Why does the government not identify all alleged recidivist detainees by name and ISN?
- The government can only name fifteen "confirmed" recidivists, some of whom were never in Guantanamo; and not all engaged in post-detention attacks against U.S. or coalition forces.
- For the nameless the government fails to identify their nationalities, the time, place or manner of the acts of recidivism.
- According to the information provided by the government of the nameless recidivists no attacks have ever been made against U.S forces or interests.
- The existing government records also contain many mistakes, inconsistencies and raise serious questions
- The questions include
    - Why were certain individuals downgraded from "confirmed" recidivists to "suspected" in a previous report? Have any more "confirmed" recidivists been downgraded? Have any "suspected" recidivists been "confirmed"?
    - The government has claimed that certain individuals who were never held at GTMO are suspected or confirmed recidivist detainees. Are they still counted in the total number?
    - The government at one time expressly counted individuals whose post-detention "reengagement" consisted of nothing more than anti-U.S. propaganda. Are these individuals still counted in the total number?
    - The government has considered activities not directed against the U.S. or Coalition forces and in countries other than Afghanistan and Iraq as reengagement, or returning to the battlefield, or returning to the fight. Are these activities still counted? If not, have the individuals who committed such acts been removed from the total? In particular, the newest definition of reengagement specifies that to be counted, attacks must be directed at Coalition or host-nation forces or civilians. Does this result in those individuals being removed from the total number, or are they still counted?
- The government admits that it does not generally keep track of former detainees.[23] Why is this so, if the government is so certain that many will recidivate? Also, if this is true, how does the government identify ex-detainees who commit terrorist or insurgent acts?

Many of these questions could be answered simply by releasing the names and ISNs of all alleged recidivists and describing the time, place and manner of post release acts.

[23] *See* App'x C.1. "Although the US 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-US propaganda or other activities through intelligence gathering and media reports. (Examples: Mehsud suicide bombing in Pakistan; Tipton Three and the Road to Guantanamo; Uighurs in Albania)"

The provision of inaccurate and incomplete information about a matter so critical to the nation's security is troubling in its own right. It is especially troubling given the fact that each time the government reports a new—sometimes higher and sometimes lower—recidivism rate among GTMO detainees, the American press typically reports the rate without alerting its readership to the unreliability of the data the government is disseminating to the American public.

2. The December 7, 2010 Summary

The December 7, 2010 Summary first states its methodology and then makes representations about the application of these principles to the set of ex-detainees.

A. Summary Methodology

The new Summary redefines once again what the government considers as a recidivist to include:

> *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.* (emphasis added to highlight changes from previous definitions)

To be considered a "confirmed" case of recidivism requires "A preponderance of information identifying a specific former GTMO detainee as directly involved[24] in terrorist or insurgent activities." 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."

[24] On its face, this would seem to be no different from "direct participation in hostilities" in non-international armed conflict. *See generally* "Direct Participation in Hostilities Under International Humanitarian Law," ICRC (2009). However, Harold Koh, Legal Adviser to the Secretary of State, has stated that the US is in compliance with the 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, Department of State, The Obama Administration and International Law, Keynote Address at the Annual Meeting of the American Soc'y of Int'l Law (25 Mar. 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" recidivists, as the DNI defines "directly involved" to include recruiters, trainers, and financiers.

The newest definition expands the recidivism definition to include "insurgent" activities. The definition also includes for the first time the assertion that such activities are 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, et al.) are also to have been conducted in 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 U.S., the Coalition, or Afghan forces. The evolvement of the standard by which recidivism is defined is discussed below in Section II.E.

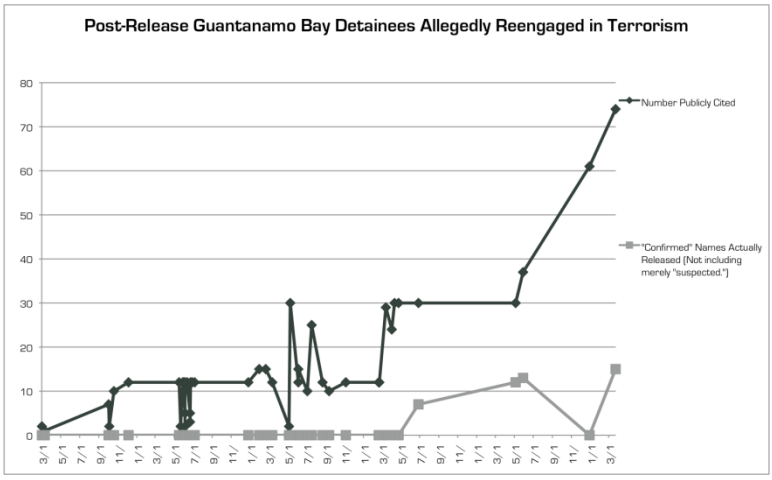
This Summary asserts, consistent with the government statement of April 2009, that the definition of recidivism does not consider "mere communications" or "writing anti-U.S. books or articles, or making anti-U.S. propaganda statements." This contradicts past reports on recidivism which expressly included anti-U.S. propaganda in the definition.[25] It still remains unclear whether the government has retroactively accounted for the change in definition and subtracted those who did not engage directly in terrorist attacks, but participated only in propaganda.

There have been several errors and discrepancies in past recidivism reports, including labeling individuals as recidivists when they were never at GTMO. Because this summary withholds all names of alleged recidivists, the Center cannot determine whether past errors have been corrected or whether additional errors have been made. There is no way to independently verify these numbers without names and/or ISNs.

[25] *See* II.F., App'x C.1.

B. The Summary's Claims of Recidivism

With respect to its previous numbers of claimed recidivist detainees, the Department of Defense has alleged variously: one, several, some, a couple, a few, 5, 7, 10, 12-24, 25, 29, and 30; not in that order.[26] More recently, the Department of Defense has claimed 61 former detainees as "returning to the fight."[27] The April 2009 claim was 74. The newest Summary states that 150 detainees have reengaged in terrorist or insurgent activities. Furthermore, a timeline of publicly cited numbers reveals sudden, unexplained spikes and decreases, as well as a large discrepancy between the number cited by public officials and actual names of those detainees "confirmed" as having committed post-release terrorist acts.[28]



C. 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 U.S. or Coalition Forces

The various DOD statements regarding the number of recidivist detainees consistently fail to identify the overwhelming majority of the alleged recidivists, and these statements have proven particularly unreliable in the past. For example, in the July 12, 2007 DOD press release, the "30" recidivist figure reported by the DOD in April 2007 was reduced to five.[29] Specifically, in that report the Department of Defense identified seven prisoners by name, but two of those seven were never in Guantánamo.[30]

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 27 former Guantánamo detainees had been confirmed as "reengaging in terrorist activities" and an additional 47 were

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[26] *See* Appendix A.
[27] *See* David Morgan, "Pentagon: 61 ex-Guantanamo inmates return to terrorism". Jan. 13, 2009. http://www.reuters.com/article/topNews/idUSTRE50C5JX20090113?feedType=RSS&feedName=topNews&rpc=22&sp=true (June 3, 2009). In this article, Reuters reported "Pentagon spokesman Geoff Morrell said 18 former detainees are confirmed as 'returning to the fight' and 43 are suspected of having done in a report issued late in December by the Defense Intelligence Agency."
[28] *See* Appendix C.
[29] *Released Guantánamo Detainees and the Department of Defense: Propaganda by the Numbers?* at 4.
[30] *Id*.

"suspected" of reengaging in terrorist activity.[31] However, of the 74 alleged recidivists, the DOD provided names for only 29 detainees. Of those 29 names, only 15 were "confirmed" as recidivists, at least according to the government. Of the 15 "confirmed," one does not appear on the list of detainees in Guantánamo[32] and two were Russian nationals whose post-detention activities occurred in Russia, with no ostensible connection the U.S.[33] Since that May 2008 data, the government has not identified by name or ISN any additional alleged recidivists.

D. **A Pattern of Errors**

Each of the four DOD 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 between 7 to 15, while the alleged total, mostly comprised of unnamed individuals, has grown disproportionately. Often, individual names are spelled inconsistently. Only five of the detainees appear on all four lists,[34] and of those five, two (Mohammed Nayim Farouq and Ruslan Anatolivich Odijev) are among the three detainees downgraded to "suspected" status in the April 2009 report. That leaves only three of the original seven from the July 2007 list as consistently "confirmed" recidivists, and reduces the totals of the May and June 2008 lists as well. 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."[35]

- **Ruslan Anatolivich 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 "confirmed" has been changed, without explanation, to "suspected reengagement."[36]

- **Sabi Jahn Abdul Ghafour (aka "Maulvi Abdul Ghaffar"):** Ghaffar was reportedly "killed in a raid by Afghan security forces" in September 2004. The

[31] On April 7, 2009, the DOD issued a press release, "Department of Defense Fact Sheet: Former Guantánamo Detainee Terrorism Trends." This press release was accessible as of June 2, 2009 at www.weeklystandard.com/weblogs/TWSFP/guantanamo_recidivism_list_090526.pdf. However, at the time of writing, the report has yet to be published on the DOD's webpage. *See* Appendix B.4.
[32] *See* List of Individuals Detained by the Department of Defense at Guantanamo Bay, Cuba from January 2002 through May 15, 2006, available at http://www.dod.mil/pubs/foi/detainees/detaineesFOIArelease15May2006.pdf, (hereinafter "List of Individuals Detained").
[33] *See* App'x C.4. The nationalities of named "confirmed" detainees who can be verified as former GTMO detainees is: Afghanistan, Saudi Arabia 3; Morocco, Russia 2; Kuwait, Turkey, Bahrain, Pakistan 1.
[34] *See* Appendix G.
[35] Press Release, *supra* note 6.
[36] Press Release, *supra* note 6.

DOD reports that Ghaffar became Taliban's regional commander in the Uruzgan and Helmand provinces and carried out attacks against U.S. and Afghan forces. However, as of the April 2009 DOD report Ghaffar's status has been changed from "confirmed" to "suspected."[37] In addition, as previously reported by the Center, his name does not appear on the list of detainees in Guantánamo. While there are two detainees with similar names, both were still imprisoned when Ghaffar was allegedly killed.[38]

- **Mohammed Nayim Farouq:** According to the Department of Defense, Farouq, who was released from Guantánamo before the Combatant Status Review Tribunals were convened, "has since become re-involved in anti-coalition militant activity," but has neither been recaptured nor killed.[39]

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 US and its allies after being released from Guantánamo."[40] Presumably, these individuals are included in the total of 74 reported in the April 2009 DOD report and in the December 2010 DNI 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: either these detainees were always merely "suspected" recidivists previously reported as "confirmed," or 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 of 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-Jazeerah television, wherein he was identified as the "deputy defense minister of the Taliban."[41]

As of the April 7, 2009 report Noor is no longer listed as a recidivist -- neither confirmed nor suspected. This may be a sign that the Department of Defense agrees with earlier assertions that Mr. Noor was "never officially detained at Guantánamo"[42]. However, without an explanation from the DOD, the basis for omitting Noor from the April 2009 report would only be conjecture.

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[37] Press Release, *supra* note 6.
[38] List of Individuals Detained
[39] Press Release, *supra* note 6.
[40] *See* Appendix B.1.
[41] On June 13, 2008, the DOD issued a press release, "Department of Defense Fact Sheet: Former Guantánamo Detainee Terrorism Trends." This press release was accessible as of June 2, 2009 at http://www.defenselink.mil/news/d20080613Returntothefightfactsheet.pdf.
[42] *See The Meaning of "Battlefield": An Analysis of the Government's Representations of "Battlefield" Capture and "Recidivism" of the Guantánamo Detainees* at 12.

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:

- **Mullah Shazada:** According to the Department of Defense, Mullah Shazada "[w]as killed on May 7, 2004 while fighting against U.S. forces."[43] However, the name Mullah Shazada does not appear on the official list of prisoners.

As discussed in *Propaganda by the Numbers*, it is not at all clear that Shazada is actually a former Guantánamo detainee.[44] After Shazada's death, the Government announced that he had been previously detained in Guantánamo under the name "Mohamed Yusif Yaqub."[45] No information is publicly available regarding an individual by that name, and Yaqub is one of seven Afghan detainees for whom date of birth is "unknown."[46]

Finally, on the May 20, 2008 list of recidivists,[47]the name **Shai Jahn Ghafoor**, ISN 363, appears. Ghafoor did not appear on the previous list, and his name disappears from all later lists. He is alleged to have been killed in Afghanistan. The May 2008 report also states that Ghafoor's name was included on the 2007 Press Release, which is incorrect. 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.

[43] Press Release, *Supra* note 6.
[44] *See Released Guantánamo Detainees and the Department of Defense: Propaganda by the Numbers?* at 4.
[45] Press Release, *Supra* note 6.
[46] *See* List of Individuals Detained by the Department of Defense at Guantanamo Bay, Cuba from January 2002 through May 15, 2006, available at http://www.dod.mil/pubs/foi/detainees/detaineesFOIArelease15May2006.pdf, (hereinafter "List of Individuals Detained").
[47] *Justice Scalia, the Department of Defense, and the Perpetuation of an Urban Legend: The Truth About the Alleged Recidivism of Released Guantánamo Detainees* at 8.

E. Return to the Fight v. Reengagement in Terrorism

The language used by the government and other officials in recent years framed alleged recidivists as "returning to the battlefield."[48] Alternatively, the issue had been framed as recidivists returning to fight against the United States. Beginning with the June 2008 report, the DOD started using the more general "reengaging in terrorism" in terms of allegations of recidivism.[49] The language of "reengagement" and "terrorism" retreats from the obvious earlier implication that a detainee had to have engaged in post-Guantánamo acts against the United States for the DOD to consider him a recidivist. This category shift also increases the number of recidivists. The current Summary now includes "insurgent" activities along with "terrorist" activities. This continues the trend of expanding the definition to be more inclusive of a greater number of individuals. Indeed, there is no way to determine from the latest Summary whether the increase in recidivism rate is simply the direct result of expanding the definition of recidivism.

Earlier reports from the Department of Justice painted terrorist activity with a broad brush, but they were always framed as acts against the United States. In fact, the scope of conduct that the Department of Defense included in "returning to the fight" once extended to those former detainees who had merely "spoken critically of the Government's detention policy."[50] The July 2007 press release issued by the Department of Defense repeated earlier claims that 30 former Guantánamo detainees "returned to the fight." However, the DOD included within that number not only those former detainees who could have in any sense been said to have engaged in combat against the United States or its allies but also those who returned "to militant activities, participat[ed] in anti-U.S. propaganda or other activities through intelligence gathering and media reports."[51] Furthermore, in that same DOD report the "Tipton Three" and their discussions of their experiences in Guantánamo Bay for Michael Winterbottom's commercial film, *The Road to Guantánamo*, were cited as examples of anti-American behavior.[52] If the newest DOD releases are accurate, it would appear that this policy has been revised since publication of the Center's previous report on the DOD's allegations of recidivism.[53] However, because the names of the alleged recidivists have been withheld, there is no way to confirm that these individuals are no longer counted in the recidivism totals.

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[48] *See* Boumediene v. Bush, 128 S. Ct. 2229, 2294-95 (U.S. 2008) (Scalia dissenting) (Scalia wrote that [a]t least 30 of those prisoners hitherto released from Guantánamo Bay have returned to the battlefield.")

[49] June 13 DOD report.

[50] *Justice Scalia, the Department of Defense, and the Perpetuation of an Urban Legend: The Truth About the Alleged Recidivism of Released Guantánamo Detainees* at 6.

[51] *Justice Scalia, the Department of Defense, and the Perpetuation of an Urban Legend: The Truth About the Alleged Recidivism of Released Guantánamo Detainees* at 5.

[52] *See* Appendix B.1.

[53] The definitions of "confirmed" and "suspected" in the April 7, 2009 DOD report are virtually identical other than the following sentence added to the end of each definition: "For the purposes of this definition, engagement in anti-U.S. propaganda alone does not qualify as terrorist activity." *See* Appendix B.4.

F. Nationality of Released Detainees and Scope of the "Fight":

The newest Summary seems to expressly narrow the definition of included attacks to those perpetrated against Coalition and host-nation forces. That suggests that these actions are limited to activities in Afghanistan theatre or perhaps Iraq. However, it seems clear from the language used by the DOD in prior recent reports and the names cited in these reports (when the DOD actually provides names), that the government has moved away from defining "return to the fight" in terms of Afghanistan. For instance, when Pentagon spokesman Geoff Morrell discussed with reporters detainees "returning to the fight" he stated, "This is [sic] acts of terrorism. It could be Iraq, Afghanistan, it could be acts of terrorism around the world."[54] Whatever the legitimacy of this classification system in the abstract, it does not map on to the public's concern that detainees released from Guantánamo might return to the battlefield against U.S. soldiers.

Many of the former Guantánamo Bay detainees who have been classified as recidivists were not accused of participating in anti-Coalition or even anti-U.S. activity. Instead, under the more generalized "terrorist activities" definition of earlier reports, individuals from Russia, Morocco and Turkey were listed in the April 2009 report. Proportional to the number of Guantánamo detainees released per nation, Turkey and Russia have the greatest number of named recidivists, with 50% and 42% respectively.[55] In contrast, those detainees originating from Afghanistan and Pakistan (arguably the front lines in the "War on Terror") have the lowest alleged recidivism rate – representing 9 % and 4% of the total number of detainees released to each of these nations, respectively.[56] These numbers cannot be reviewed under the newest Summary because of the lack of names.

G. Example: The Uighurs

In the July 2007 DOD news release, the five Uighurs relocated to Albania were listed as examples of recidivist activity.[57] No press release from the DOD since has retracted that earlier assertion.

Five Uighurs—ethnic Chinese who practice Islam—were sent in May 2006 from Guantánamo Bay to Albania, where they were taken in as refugees.[58] Since their release—following three years of incarceration at Guantánamo—the five men have lived at the same

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[54] *See* David Morgan, "Pentagon: 61 ex-Guantanamo inmates return to terrorism". Jan. 13, 2009. http://www.reuters.com/article/topNews/idUSTRE50C5JX20090113?feedType=RSS&feedName=topNews&rpc=22&sp=true (June 3, 2009).
[55] *See* Appendix D.
[56] Id.
[57] *See* Appendix B.1.
[58] Department of Defense Press Release. May 5, 2006. Retrieved November 26, 2007 at http://www.defenselink.mil/Releases/Release.aspx?ReleaseID=9527

refugee camp in Tirana, Albania. According to the camp director, Hidajet Cera, "They are the best guys in the place. They have never given us one minute's problem."[59]

The Department of Defense has never recanted its assertion that the Uighurs had been improperly classified as "enemy combatants," and has not accused the Uighurs of any wrongdoing since their rendition. Rather, by all accounts, the five Uighur men remain today at the Albanian refugee camp, where they have almost no contact with the outside world. They have been neither "re-captured" nor "killed."

However, one of the Uighur men did write an opinion piece, published in the New York Times, in which he urged American lawmakers to protect habeas corpus.[60] Perhaps this is an example of what the Department of Defense designated as "anti-coalition militant activity."

The United States has admitted in open court that none of the Uighurs detained in Guantánamo are threats to national security, and all but five have been released. If the Uighurs are still among the unnamed alleged recidivists, there remains no apparent basis for this classification on the part of the Department of Defense.

H. Example: Jaber al-Faifi

In November 2010 a former detainee, Jaber al-Faifi, reportedly tipped off Yemeni officials to a bomb plot involving devices planted in printer cartridges and sent via air cargo.[61] Al-Faifi was incarcerated at GTMO until 2007, when he was repatriated to Saudi Arabia. He reportedly rejoined Al-Qaida and made his way to Yemen, before turning himself in in November and reporting the bombing plot.

Under the definition of recidivism in the DNI Summary, al-Faifi was likely counted as reengaging in terrorist activities after he 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.

I. The Troubling Implications of Defense Department Data Deficiencies for Public Discourse

There can be no doubt that Guantánamo and the recidivist activities of former detainees is a matter of intense national interest and controversy. In this setting the government has at least a responsibility to provide accurate information if it chooses to engage in the public discourse. As is apparent from this Report, it has repeatedly failed to do so. But the American press has also

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[59] Jonathan Finer, "After Guantanamo, An Empty Freedom" Washington Post Foreign Service. October 17, 2007. Page A13. Retrieved November 26, 2007 at http://www.washingtonpost.com/wp-dyn/content/article/2007/10/16/AR2007101602078.html.

[60] Abu Bakker Qassim. "The View From Guantánamo" New York Times. September 17, 2006. Retrieved November 26, 2007 at http://www.nytimes.com/2006/09/17/opinion/17qassim.html.

[61] *See, e.g.*, "Yemen tip-off came from ex-Gitmo detainee, officials say," MSNBC (Nov. 1, 2010), http://www.msnbc.msn.com/cleanprint/CleanPrintProxy.aspx?1292445635000.

repeatedly failed in its watchdog role in regard to such statements. Although the nation's premier newspaper once took itself to task for its careless acceptance of government recidivism data,[62] the press as a whole has largely continued to report--without comment or criticism--the government's latest statements about detainee recidivism.[63] Although there are bright spots in the media, largely in the blogosphere, the overall willingness of the press to accept the government's statements at face value, despite repeated earlier debunking, raises serious questions about its role in shedding light on the public discourse on this topic.

III.
Conclusions

As of this writing, the Government has attempted to state the number of recidivists at least 47 times.[64] On 43 of these occasions, they gave no names to corroborate their numbers. On the other four occasions, the number of names has always fallen far below the total purported number, and the lists that were given contained glaring errors. Therefore, 92% of the times that the government has quoted a number of recidivists, it has not given names, and 100% of the instances in which it has provided a partial list, that list has been wrong in some respects.

Without a full accounting of who is suspected of "recidivism" and for what reasons, it remains irresponsible to use recidivism claims to justify continued denial of *habeas* to detainees who remain to this day jailed in Guantánamo. Of the alleged 81 "Confirmed" recidivist former detainees, the vast majority remain unnamed. Overall, with only 29 detainees named there is a greater than 5:1 ratio between unnamed and named recidivists. If one looks at the "Confirmed" recidivists[65] only, the ratio rises to nearly 6 to 1.[66] This lack of corroborating information, as well as the lack of any indication that past inconsistencies and errors have been corrected or their repetition avoided, casts serious doubt on the accuracy of the government's latest numbers.

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[62] Elisabeth Bumiller, "Later Terror Link Cited for 1 in 7 Freed Detainees," NY TIMES (May 20, 2009), *available at* http://www.nytimes.com/2009/05/21/us/politics/21gitmo.html.

[63] *See, e.g.*, Charlie Savage, "Some Ex-Detainees Still Tied to Terror," NY TIMES (Dec. 7, 2010), *available at* http://www.nytimes.com/2010/12/08/world/americas/08gitmo.html?_r=1&ref=todayspaper; Jake Tapper, "Director of National Intelligence: Gitmo Detainees Transferred Under Obama Administration Have Reengaged in Terrorism," ABC NEWS (Dec. 7, 2010), http://blogs.abcnews.com/politicalpunch/2010/12/director-of-national-intelligence-gitmo-detainees-transferred-under-obama-administration-have-reenga.html; "Document: Up to 25% of freed Gitmo detainees return to terrorism," CNN (Dec. 7, 2010), http://articles.cnn.com/2010-12-07/us/guantanamo.detainees_1_detainees-guantanamo-bay-gtmo?_s=PM:US; "Gitmo Repeat Offender Rate Continues to Rise," FOX NEWS (Dec. 7, 2010), http://www.foxnews.com/politics/2010/12/08/gitmo-recidivism-rate-continues-rise/.

[64] *See* Appendix E.

[65] "Confirmed" according to the DNI Summary.

[66] *See* Press Release, *Supra* note 6 Summary, App'x C.5. (81 total suspected recidivists versus only 14 named).

APPENDIX A

~~SECRET//NOFORN~~

APR 21 2003

FOR: CHAIRMAN, JOINT CHIEFS OF STAFF
COMMANDER, U.S. CENTRAL COMMAND

FROM: Donald Rumsfeld

SUBJECT: Low-Level Enemy Combatants OSD 1.4 (C)

- We need to stop populating Guantanamo Bay (GTMO) with low-level enemy combatants. GTMO needs to serve as an [redacted] not a prison for Afghanistan.

- Therefore, effective June 16, the January 7, 2002 Screening Criteria are amended to authorize you to transfer to Guantanamo only those detainees who meet the stated criteria and are of [redacted] value. OSD 1.4 (C)

  - As of June 16, you are directed to continue to detain in Afghanistan screened enemy combatants who pose a threat to U.S. forces but are of [redacted] value. OSD 1.4 (C)

- I am also asking Secretary Powell to have Ambassador Finn approach President Karzai on the need for the Afghan government to [redacted] where [redacted] can be kept. I want General Franks to have the same discussion with Karzai, and to consult with the Ambassador and Department of State representatives as the program is developed. OSD 1.4 (a),(c)

- Please work together to sketch out a plan to help the Afghans set up an adequate facility. By April 30, please tell me what is needed, and I will help get you the resources.

383.6

21 Apr 03

DECLASSIFIED In Part JUL 9 2010
Authority: EO 12958 as amended
Chief, Records & Declass Div, WHS

Classified by: SecDef Rumsfeld
Reason: 1.5(a)
Declassify on: 21 Apr 2013

X01365 /03
DEF CONTROL #

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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:	**NUMBER CITED:**	**GOV. OFFICIAL:**	**QUOTE:**	****CITE**
May 09, 2007	*Approx. **30**	**Joseph A. Benkert**, Principal Deputy Assistant Secretary of Def. for Global Affairs	"Reporting to us has led the department to believe that **somewhere on the order of 30** individuals whom we have released from Guantanamo have rejoined the fight against us"	1
May 09, 2007	*Approx. **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."	2
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."	3
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."	4
Mar. 29, 2007	**At Least **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	5

			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."	6
Mar. 06, 2007	**At Least **12-24**	**Sr. Defense Official**	"I can tell you that we have **confirmed 12** individuals have returned to the fight, and we have **strong evidence that about another dozen** have returned to the fight."	7
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."	8
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."	9
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."	10
Aug. 02, 2006	*Approx. **25**	**Senator Arlen Specter** (PA)	"as 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."	11
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	12

			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."	13
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."	14
May 25, 2006	*Approx. **10% of "hundreds"**	**John B. Bellinger III**, Senior Legal Adviser to 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."	15
May 21, 2006	**" a couple "**	**Condoleezza Rice**, U.S. Sec. of St.	"because 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."	16
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."	17

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."	18
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."	19
Jan. 10, 2006	**12**	**Donald H.**	**Twelve** detainees who'd been released	20

		Rumsfeld, Defense Secretary	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."	21
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."	22
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**."	23
July 06, 2005	**" a few "**	**Scott McClellan**, White House Press Sec.	"I mean, the President talked about how these are dangerous individuals; 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."	24
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."	25
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."	26
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	27

			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.	28
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."	29
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."	30
June 14, 2005	**At Least **10**	**Vice President Dick Cheney**	He provided new details about what he said had been **at least 10** released detainees who later turned up on battlefields to try to kill American troops.	31
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."	32
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."	33
June 01, 2005	**At Least **12**	**Donald H.**	"**At least a dozen** of the 200 already	34

		Rumsfeld, Defense Secretary	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."	35
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.	36
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."	37
Oct. 17, 2004	**At Least **7**	**U.S. Military Officials**	**at least seven** former prisoners of the United States at Guantanamo Bay, Cuba, have returned to terrorism, at times with deadly consequences.	38
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 that was released earlier may very well have gone back to being a terrorist."	39
Mar. 16, 2004	**" several "**	**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."	40

* "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.

** “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

APPENDIX C

The DOD has released four lists of allegedly recidivist detainees. Those four documents are reproduced in this Appendix as follows:

C.1 July 7, 2007

C.2 May 20, 2008

C.3 June 13, 2008

C.4 April 7, 2009

C.5 December 7, 2010

APPENDIX C.1

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 Guantanamo 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 US 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 US 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-US propaganda or other activities through intelligence gathering and media reports. (Examples: Mehsud suicide bombing in Pakistan; Tipton Three and the Road to Guantanamo; Uighurs in Albania)

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

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 US forces. At the time of his release, the US had no indication that he was a member of any terrorist organization or posed a risk to US 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 US 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 US 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 US forces near Kandahar. After his release, Noor was identified as the person in an October 7, 2001, video interview with al-Jazeerah 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 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.

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 Guantanamo 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 US and allied interests with every detainee who is released or transferred.

APPENDIX C.2[67]

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	FAROUQ, 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 All	No	Killed	Kuwait	Iraq	No

[67] On May 20, 2008, the Subcommittee on International Organizations, Human Rights and Oversight of the House Foreign Affairs Committee held a hearing on this question, among others concerning Guantánamo. At that hearing, considerable skepticism was expressed about the reliability of the cited number of recidivists. The highpoint of the hearing, in this regard, was the production 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 as Appendix B.2, was provided to Professor Denbeaux after his testimony.

APPENDIX C.3[68]

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

[68] Available as of June 4, 2009 at: http://www.defenselink.mil/news/d20080613Returntothefightfactsheet.pdf

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 Anatolivich 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 Odijev had taken part 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.

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.

Yousef 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.

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-Jazeerah 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.

APPENDIX C.4[69]

4/7/2009

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 Salch 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.

[69] This DOD report, dated 4/7/2009, has not been published by the DOD as of this writing. The report was posted online at www.weeklystandard.com/weblogs/TWSFP/guantanamo_recidivism_list_090526.pdf, and referenced in a New York Times article available at http://www.nytimes.com/2009/05/21/us/politics/21gitmo.html .

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 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 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

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 Anatolivich 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 raid 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.

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

Name	Nationality	Repatriated	Activity	Status
Sabi Jahn Abdul Ghafour *also known as* Maulvi Abdul Ghaffar	Afghanistan	March 2003	Died fighting Afghan forces	Suspected
Shah Mohammed	Pakistan	May 2003	Killed fighting U.S. forces in Afghanistan	Confirmed
Yousef Muhammed Yaaqoub *also known as* 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 Farouq	Afghanistan	July 2003	Association with Taliban and al-Qaida; involved in anti-coalition activity	Suspected
Ibrahim Shafir Sen	Turkey	November 2003	Leader of al-Qaida cells in Van; recruited and trained members, provided illegal weapons, and facilitation	Confirmed
Mohammed Ismail	Afghanistan	January 2004	Participated in an attack against U.S. forces; Taliban member	Confirmed
Abdullah D. Kufkus	Russia	March 2004	Suspected involvement in an attack against a traffic police checkpoint in Nalchik in October 2005	Suspected
Almasm Rabilavich Sharipov	Russia	March 2004	Association with terrorist group Hezb-e-Tahrir	Suspected
Timur Ravilich Ishmurat	Russia	March 2004	Involved in a gas line bombing	Confirmed
Ruslan Anatolivich Odijev	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
Said Mohammed Alim Shah *also known as* Abdullah Mahsud	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

Shafeyavich Gumarov			bombing	
Abdullah Ghofoor	Afghanistan	March 2004	Taliban commander; planning attacks on U.S. and Afghan forces; killed in a raid by Afghan security forces	Suspected
Mohammed Bin Ahmad Mizouz	Morocco	July 2004	Recruiter for al-Qaida in Iraq	Confirmed
Ibrahim Bin Shakaran	Morocco	July 2004	Recruiter for al-Qaida in Iraq	Confirmed
Isa Khan	Pakistan	September 2004	Association with Tehrik-i-Taliban	Suspected
Muhibullah	Afghanistan	July 2005	Association with the Taliban	Suspected
Abdallah 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
Suad Mudhi Suad Hawash al Azmi	Kuwait	November 2005	Association with al-Qaida	Suspected
Majid Abdullah Lahiq al Joudi	Saudi Arabia	February 2007	Terrorist facilitation	Confirmed
Humud Dakhil Humud Said al-Jadan	Saudi Arabia	July 2007	Association with known terrorists	Suspected
Mazin Salih Musaid 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 Razzaq Abdallah Ibrahim al-Sharikh	Saudi Arabia	September 2007	Arrested in September 2008 for supporting terrorism	Suspected
Abd al Hadi Abdallah 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 Sufyan al-Azdi al-Shihri	Saudi Arabia	November 2007	Leadership figure in al-Qaida in Arabian Peninsula	Confirmed

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

APPENDIX C.5[70]

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

DECEMBER 7, 2010

[70] *Available at* http://www.dni.gov/electronic_reading_room/electronic_reading_room/120710_Summary_of_the_Reengagement_of_Detainees_Formerly_Held_at_Guantanamo_Bay_Cuba.pdf

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 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.

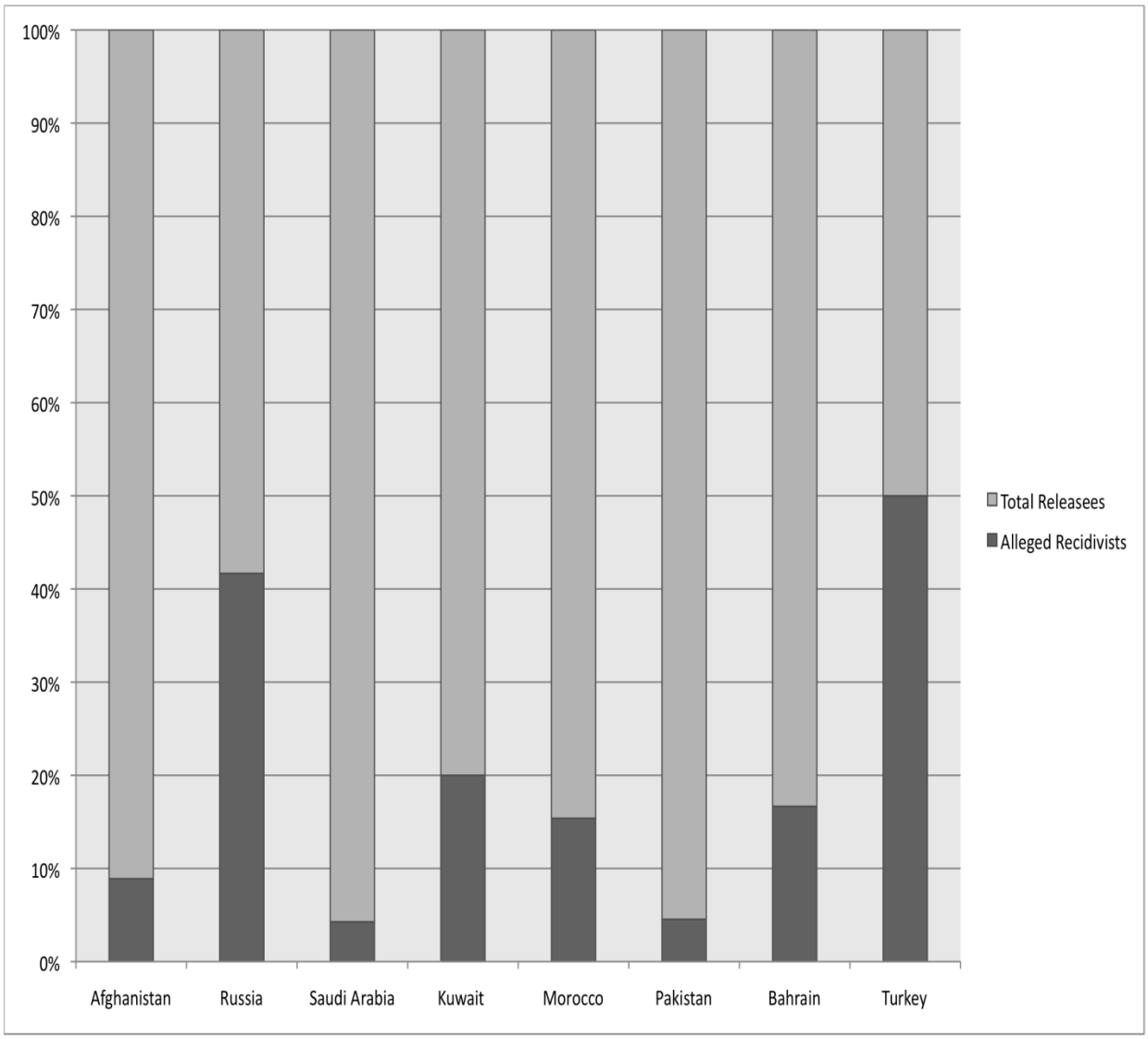
Reporting Qualifications for "Confirmed"

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.

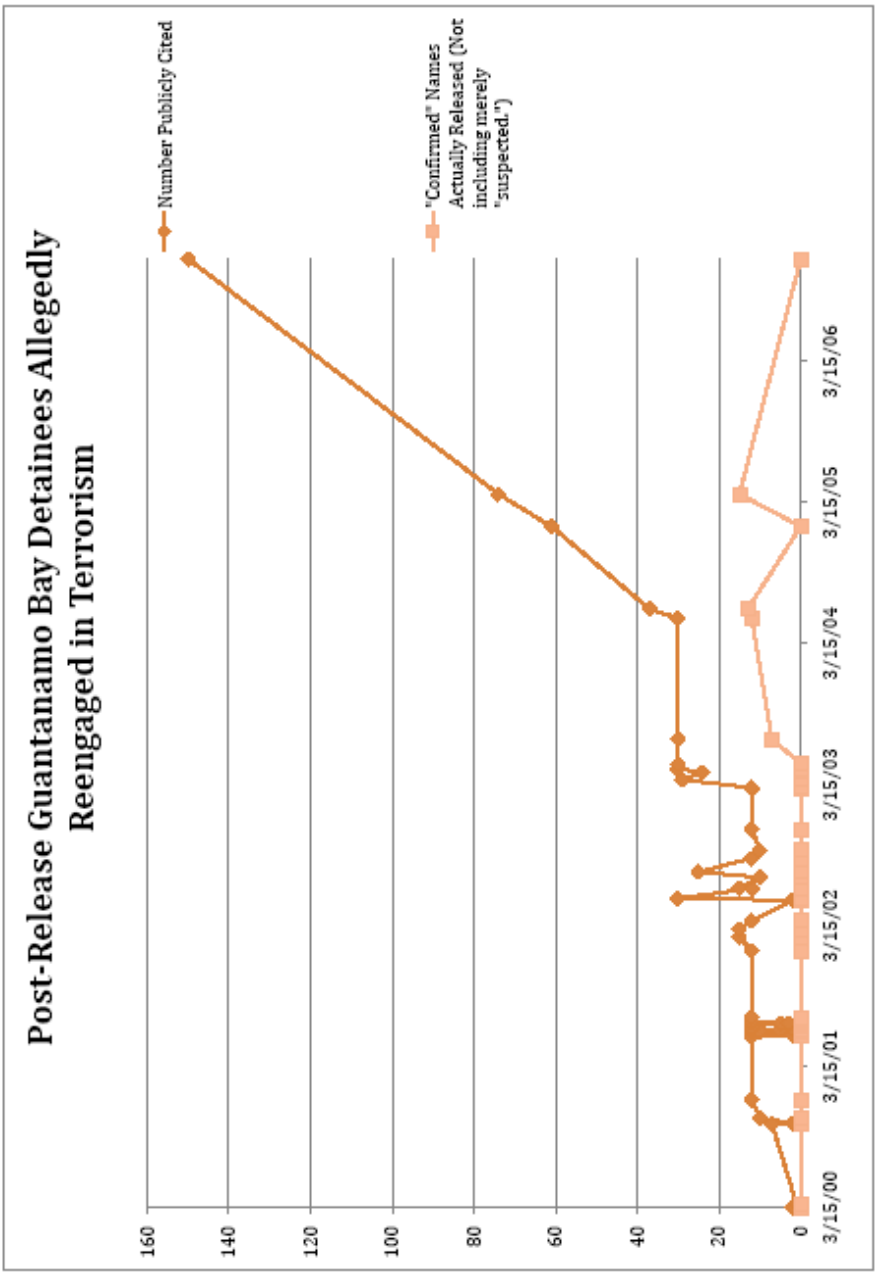
Reporting Qualifications for "Suspected"

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 D


100%
90%
80%
70%
60%
50%
40%
30%
20%
10%
0%
Afghanistan
Russia
Saudi Arabia
Kuwait
Morocco
Pakistan
Bahrain
Turkey
Total Releasees
Alleged Recidivists

APPENDIX E


Post-Release Guantanamo Bay Detainees Allegedly Reengaged in Terrorism
Number Publicly Cited
"Confirmed" Names Actually Released (Not including merely "suspected.")
160
140
120
100
80
60
40
20
0
3/15/00
3/15/01
3/15/02
3/15/03
3/15/04
3/15/05
3/15/06

APPENDIX F

Post-Release Guantanamo Bay Detainees Allegedly Reengaged in Terrorism

Date	Number Publicly Cited	"Confirmed" Names Actually Released	Total Names Released
3/16/04	2	0	0
3/25/04	1	0	0
10/17/04	7	0	0
10/19/04	2	0	0
11/3/04	10	0	0
12/20/04	12	0	0
6/1/05	12	0	0
6/6/05	2	0	0
6/13/05	12	0	0
6/14/05	10	0	0
6/16/05	12	0	0
6/17/05	10	0	0
6/20/05	5	0	0
6/20/05	2	0	0
6/20/05	12	0	0
6/27/05	12	0	0
7/6/05	5	0	0
7/6/05	3	0	0
7/8/05	12	0	0
7/13/05	12	0	0
7/21/05	12	0	0
1/10/06	12	0	0
2/14/06	15	0	0
3/7/06	15	0	0
3/28/06	12	0	0
5/21/06	2	0	0
5/25/06	30	0	0
6/20/06	12	0	0
6/20/06	15	0	0
7/19/06	10	0	0
8/2/06	25	0	0
9/6/06	12	0	0
9/27/06	10	0	0
11/20/06	12	0	0
3/6/07	12	0	0
3/8/07	12	0	0
3/29/07	29	0	0
4/17/07	24	0	0
4/26/07	30	0	0

5/9/07	30	0	0
5/9/07	30	0	0
7/12/07	30	7	7
5/20/08	30	12	12
6/13/08	37	13	13
1/13/09	61	0	0
4/7/09	74	15	29
12/7/10	150	0	0

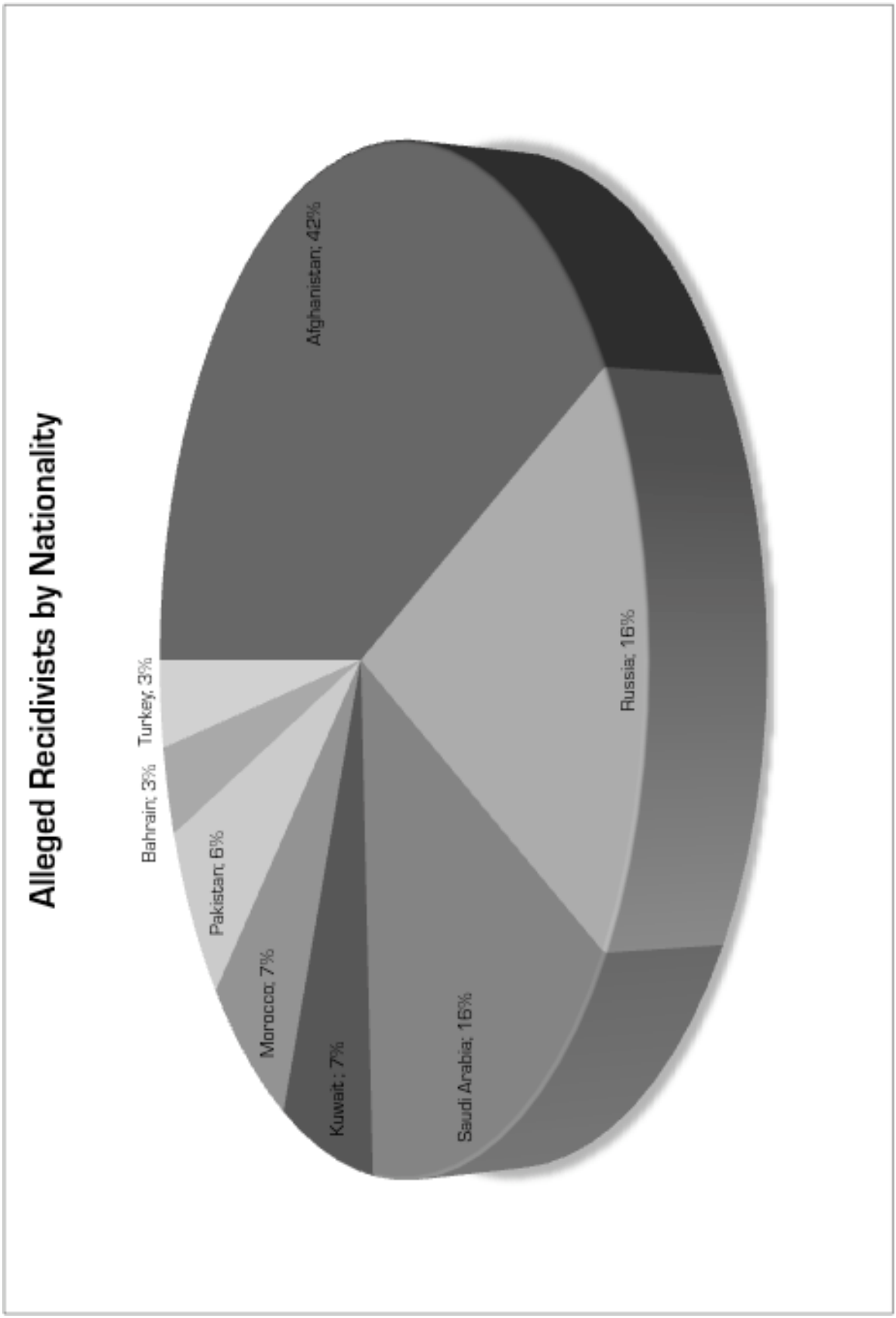
APPENDIX G

Named Detainees in 4 Previous Recidivism Reports, By ISNs

DOD Reports by DATE			
7/12/07	5/20/08	6/13/08	4/7/09
			8
			19
			23
			25
			82
92	92	92	92
			154
			159
	203	203	203
			209
211	211	211	211
	220	220	220
			230
			231
	294	294	294
	297	297	297
			351
	363		
367	367	367	367
			546
			571
582		582	
	587	587	587
633	633	633	633
	674	674	674
			798
			923
930	930	930	930
954		954	954
			UN#-X
			UN#-Y

Detainees by ISN	
Appearing on ALL 4	5
Appearing on Most Recent 3	6
NEW to 4/7 Report	17
Appears ONLY on 5/20	1
Appears ONLY on 7/12 & 6/13	1
Appears on ALL BUT 5/20	1

APPENDIX H


Alleged Recidivists by Nationality
Afghanistan; 42%
Russia; 16%
Saudi Arabia; 16%
Kuwait ; 7%
Morocco; 7%
Pakistan; 6%
Bahrain; 3%
Turkey; 3%

APPENDIX I

Journalistic Recidivism

Examples of the press's repeated failure to objectively report on detainee recidivism.

DoD Dodge: Press Briefing Without Answers

During a January 13, 2009 DOD news briefing[71], Pentagon Press Secretary Geoff Morrell answered numerous questions regarding a government report pertaining to recidivism rates of Guantanamo Bay detainees. Many questions were asked relating to:

- The identity of the detainees identified in the government report,
- The countries to which they were released and what acts they had committed to be considered a recidivist. In answering one reporter's question regarding this, Mr. Morrell answered by saying,

  > "I don't -- no, this is acts of terrorism. It could be Iraq, Afghanistan; it could be acts of terrorism around the world. I don't think we're prepared to identify where each and every one of these people was released to and where they've since either went on to commit an act of terrorism or are suspected of going on to commit an act of terrorism. Just that we have, you know, intelligence, in some cases evidence to prove that they have indeed gone on to return to violence, and that's a real concern."

- Jim Miklaszewski, chief Pentagon correspondent for NBC News, followed up suggesting that specific data would be helpful. Mr. Morrell responded by saying:

  "I'm sure -- we don't make these figures up. They're not done willy-nilly."

  The reporter respectfully requested that the figures be made available and Mr. Morrell told him that he would see what he could do. The figures have yet to be made public.

Other questions included whether or not the government was willing to acknowledge that some former detainees included in the numbers weren't recidivists because the "individuals may have turned to terrorist activities as a result of the treatment or their detention at Guantanamo," as opposed to having engaged in terroristic acts prior to detention. It was also asked why the detainees had been released in the first place. These questions were also not substantively answered, and no follow-up reporting about the government's failure to answer these questions were published.

231 Words: The New York Times

[71] Dep't of Defense News Briefing With Geoff Morrell from the Pentagon. *available at* http://www.defense.gov/transcripts/transcript.aspx?transcriptid=4340

In May 2009, the New York Times ran a piece titled, "Later Terror Link Cited for 1 in 7 Freed Detainees[72]." Less than a month later on June 5, an editor at the Times attached a note[73] to the article which pointed out a number of problems.

1. First, phrases used in the article accepted a premise that all former detainees counted in the report had been engaged in terrorism *before* their detention.
2. Second, the article conflated two categories of former prisoners, those confirmed of returning to the battlefield and those suspected. The editor stated that the *percentage of each category* found in the report should have been presented.

The article that the New York Times editor was evaluating included reports from others alleging that the division between suspected and confirmed missed the point that the opposing view was that the DoD's evidence for either category was *unfounded* because it was actually false and/or misleading. The next day the Times published an article[74] by Clark Hoyt, their public editor entitled, "What Happened to Skepticism?" That article, which cited the Center's prior report, expounded upon the editor's note from a day before, and explored the Times' failing on its coverage of the issue.

Not much has changed. On Dec. 7, 2010, the New York Times ran an article called "Some Ex-Detainees Still Tied to Terror[75]," an example of "journalistic recidivism" at its most egregious.

The article, a whopping 231 words, is merely a regurgitation, in parts verbatim and in parts summation, of the "Summary of the Reengagement of Detainees Formerly Held at Guantanamo Bay, Cuba" issued by the Director of National Intelligence (DNI).

Once again the article accepted without skepticism the substance of the report that roughly one in four former detainees who have been transferred out of the Guantánamo Bay military prison were recidivists. This time, following one of the public editors earlier criticisms, the piece noted that the number included those confirmed or suspected of having engaged in terrorist activities after their release. Other than recognizing the existence of two categories, however, the Times did not separate the numbers for the two categories; confirmed vs. suspected. By *conflating* the numbers of the two groups, the Times again fails to distinguish the categories to the extent the editor described in June 2009.

Significantly, the previous article, which was criticized by the editor, already included both sides and recognized that there were serious questions about any of the DOD numbers. This time, the 231 words did not suggest that there was any doubt about the previous reports, and contained nothing but the words taken from or paraphrased from the DNI article. This time the New York Times did not indicate that there was any disagreement about the numbers conflated or otherwise. This time the Times not only accepted without question the truth of the numbers in

[72] Elisabeth Bumiller, "Later Terror Link Cited for 1 in 7 Freed Detainees," NY TIMES (May 20, 2009), *available at* http://www.nytimes.com/2009/05/21/us/politics/21gitmo.html.
[73] *Available at* http://www.nytimes.com/2009/05/21/us/politics/21gitmo.html.
[74] Clark Hoyt, "What Happened to Skepticism?" NY TIMES (June 6, 2009), *available at* http://www.nytimes.com/2009/06/07/opinion/07pubed.htm.
[75] Charlie Savage, "Some Ex-Detainees Still Tied to Terror," NY TIMES (Dec. 7, 2010), *available at* http://www.nytimes.com/2010/12/08/world/americas/08gitmo.html?src=twrhp.

each category, it also did not even represent that there was a well established basis on which to doubt the entire report and the sources previously cited.

The New York Times did not mention any of the statements and responses by DOD on these issues 23 months earlier at the DoD briefing. Nor did it mention DOD's silence on these issues. It seems fair to ask why the press cared to ask these important questions but did not care to get an answer. In addition, it is remarkable that the New York Times and the press in general continue to accept and report on the same information that they showed skepticism of in 2009. Why would DoD or anyone else address the questions if the press continues to publish without question the press releases? It appears that the more the DOD ignores press skepticism, the more the press publishes without question the same press releases with the same information as if new, true, and unchallenged.

The New York Times is not the only news source guilty of merely accepting the government's position without acknowledging another side to the argument.

The Wall Street Journal[76], CNN[77], Fox News[78], and the Washington Post[79] are also guilty of "journalistic recidivism" to varying degrees. In addition to regurgitating the DNI summary, these sources included quotes from sources beyond the press release of DNI. Missing from all of these stories is any reference to any disagreement about the numbers and equally significant is the exclusion of any person cited or quoted who disputed the press release. In fact, since the public editor criticized the New York Times coverage, no news story has included any source that raises questions about the information reported from the government.

CNN made the mistake of conflating the categories both by name and by numbers.

The Washington Post was the only source not to conflate either the category names or numbers, and presented numbers relating to those detainees confirmed by the government as well as the number of those suspected by the government.

The Washington Post and the Wall Street Journal are also the only two news sources to point out that no names of detainees appeared in the summary.

Two years after the press conference and one and a half years after the New York Times Public editor's criticism there has been no recognition of any possible errors in the government numbers, and the 2009 press briefing questions have remained unaddressed despite promises to the contrary.

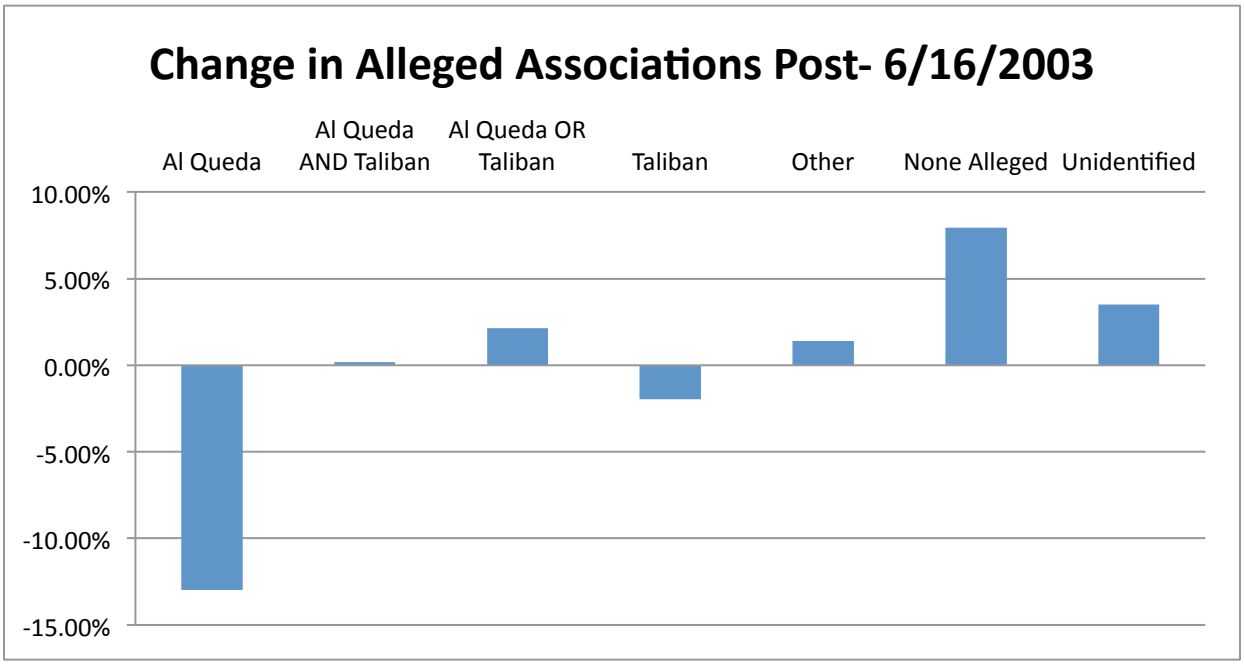
APPENDIX J

Profile of the New Arrivals

[76] Evan Perez, "Recidivism Stokes Gitmo Debate," WALL STREET JOURNAL (Dec. 7, 2010), *available at* http://online.wsj.com/article/SB10001424052748703963704576006122926680958.html.
[77] CNN Wire Staff, "Document: Up to 25% of freed Gitmo detainees return to terrorism," CNN (Dec. 7, 2010), *available at* http://www.cnn.com/2010/US/12/07/guantanamo.detainees/.
[78] Catherine Herridge & Mike Levine, "Gitmo Repeat Offender Rate Continues to Rise," FOXNEWS (Dec. 7, 2010), *available at* http://www.foxnews.com/politics/2010/12/08/gitmo-recidivism-rate-continues-rise/
[79] Peter Finn, "2 released from Guantanamo Bay by Obama administration return to terrorism, report says," THE WASHINGTON POST (Dec. 7, 2010), *available at* http://www.washingtonpost.com/wp-dyn/content/article/2010/12/07/AR2010120706240.html

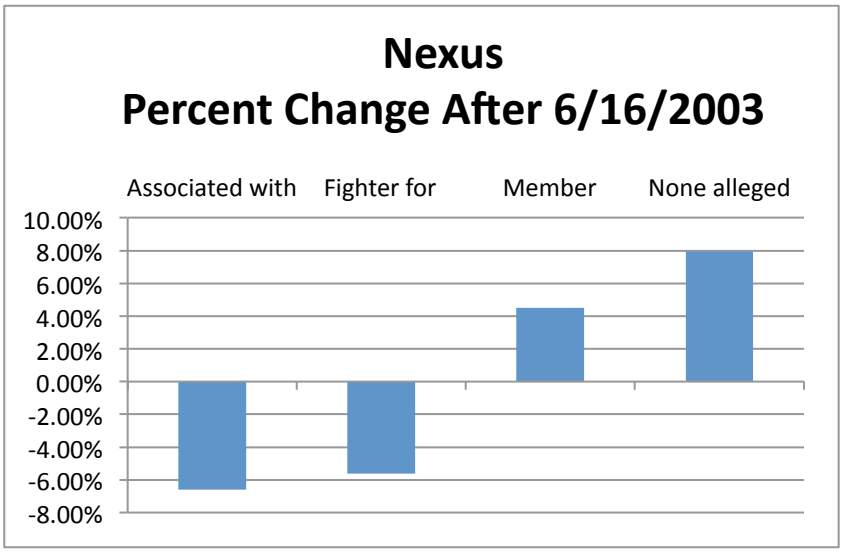
CSRT data is available on 558 detainees.[80] Of these, 500 can be shown to have arrived at Guantanamo before June 16, 2003, and 56 can be shown to have arrived thereafter. This group of 556 detainees provides the basis of calculations arising from CSRT information. In addition, the Combating Terrorism Center at West Point (CTC), in a report commissioned by the Pentagon, provides a second, overlapping data set of "dangerousness" estimates for 516 detainees, 461 of whom can be shown to have arrived at before June 16, 2003, and 54 thereafter.

Comparing those detained before June 16 to those arriving later shows a few marked differences. First, the number of detainees alleged to be affiliated with al Qaeda dropped by almost 13% after June 16 (possible associations dropped 10.66%), while the number of those with no alleged affiliation increased from 1% to almost 9%. Indeed, the percentage of those with no alleged affiliation to a specific organization more than doubled, reaching almost 20%.



[80] For an explanation of the creation of the data set, see PROFILE OF RELEASED GUANTÁNAMO DETAINEES: THE GOVERNMENT'S STORY THEN AND NOW, p. 6-10 http://law.shu.edu/publications/guantanamoReports/detainees_then_and_now_final.pdf

Second, the alleged nexus of the detainee to the organization changed across the two groups. The largest increase was among those with no alleged role in or association with any organization. More "members" were brought in, and fewer "fighters" and "associates." While the particular allegations in support of accusations of involvement in armed combat or other hostile acts became more detailed for those in the group in-processed after June 16, the total number of those accused of hostile acts plummeted by 14.5%. The decreased dangerousness of the later detainees is corroborated by the fact that all of the CTC dangerousness measures decreased in the later group.



Among nationality data, changes of note are a major increase in Afghanis (an increase of 43.6%), and a marked decrease in Saudis (a decrease of 9.4%). Thus, Afghanis constituted almost 70% of new arrivals after June 16, 2003, while no other nationality comprises more than 8%.