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February 4, 2010

The Honorable Eric H. Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Holder:

The President and his Administration have determined that criminal proceedings in civilian courts on American soil are the best option for the United States to seek and obtain justice for foreign-born terrorists currently held at the detention facility in Guantanamo Bay. I wholeheartedly disagree with the decision to treat our nation's enemies as if they are common criminals with the rights and privileges of American citizenship – particularly during a time of war. The American people should not be forced to bear again the fiscal expense and emotional toll of show trials and media spectacles that marked the government's prosecution of the Blind Sheikh, Zacarias Moussaoui, and other terrorists. Taxpayers deserve the advantage of knowing the full legal and policy rationale behind the Administration's decision to grant full constitutional rights to foreign-born terrorist detainees. I write to request information necessary to assess this decision, and other decisions related to the legal classification, transfer, imprisonment, and prosecution of these detainees.

On January 22, 2009, President Obama issued three executive orders related to the detention, interrogation, and disposition of terrorists in the custody of the United States. In addition to ordering the closure of the Guantanamo Bay detention facility, the President directed members of his Administration to thoroughly examine how and where to successfully prosecute terrorist detainees in U.S. custody at Guantanamo Bay. Furthermore, while I welcome the reevaluation of New York City as the "best" trial location, I am increasingly concerned about the inconsistent approach and uncertain commitments of the Administration when it comes to handling all matters related to terrorist detainees.

Executive Order 13492 required a “prompt and thorough review of the individuals currently held at Guantanamo.”¹ Specifically, President Obama ordered that it was “in the interests of the United States to review whether and how any such individuals can and should be prosecuted.”² Moreover, this order required an analysis of “whether it is feasible to prosecute such individuals before a court established pursuant to Article III of the United States Constitution, and [that] the Review participants shall in turn take the necessary and appropriate steps based on such determinations.”³

E.O. 13492 identifies the Review participants as “The Attorney General, who shall conduct the review; the Secretary of Defense; the Secretary of State, the Secretary of Homeland Security; the Director of National Intelligence; the Chairman of the Joint Chiefs of Staff; and other officers or full-time or permanent part-time employees of the United States . . . as determined by the Attorney General, with the concurrence of the head of the department or agency concerned.”⁴ Under your direction, the Review participants are required to “identify and consider legal, logistical, and security issues relating to the potential transfer of individuals currently detained at Guantanamo to facilities within the United States, and . . . work with the Congress on any legislation that may be appropriate.”⁵

On November 11, 2009, you announced the Administration’s decision to pursue criminal prosecution of five Guantanamo detainees in the New York federal court system, including 9/11 mastermind Khalid Sheik Mohammed. These cases were assigned to prosecutors from the Southern District of New York, requiring the transfer of dangerous terrorist detainees from the facility at Guantanamo Bay to Manhattan. This decision was made, according to your public statement, after a personal review of each case in consultation with the Secretary of Defense and with the cooperation of prosecutors at both the Department of Justice and the Pentagon’s Office of Military Commissions.⁶

On November 18, 2009, you testified before the Senate Judiciary Committee about this decision. In your prepared statement, you told Congress that in selecting the New York venue you had “weighed every alternative.”⁷ Furthermore, you stated that your “top priority was simply to select the venue where the government will have the greatest opportunity to present the strongest case in the best forum.”⁸ I presume that your review of “every alternative” and determination that New York was the “best forum” were critical components of fulfilling your responsibilities as enumerated in E.O. 13492.

¹ *Executive Order 13492*, “Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities,” 22 Jan 2009.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ See “Departments of Justice and Defense Announce Forum Decisions for Ten Guantanamo Detainees,” 13 Nov 2009, available at <http://www.justice.gov/opa/pr/2009/November/09-ag-1224.html>.

⁷ “Attorney General Eric Holder Testifies Before the Senate Judiciary Committee,” 18 Nov 2009, available at <http://www.justice.gov/ag/testimony/2009/ag-testimony-091118.html>.

⁸ *Ibid.*

Republican and Democratic Members of Congress, Governor David Paterson, and Mayor Michael Bloomberg have announced opposition to the Administration's plan to prosecute Khalid Sheik Mohammed and his fellow 9/11 conspirators in federal court in downtown Manhattan. Serious questions have arisen about the cost and the potential threat to our national security of holding these trials in this venue. Meanwhile, recent press reports indicate that the Administration is now reconsidering its choice of New York City in response to mounting public pressure and bipartisan political opposition.

It now appears that decisions made by the Administration in response to the thorough review ordered on January 22, 2009, are proving to be ill conceived and hastily announced. If, in fact, you and the other Review participants conducted a "thorough review" and considered "every alternative," it is difficult to understand why a decision you already acknowledge was "controversial" would now be subject to reassessment. The decision you announced on November 11, 2009, appears not to have been based upon a "thorough review" that "weighed every option," including "legal, logistical, and security issues." Rather, the decision appears to have been based upon an inadequate analysis that failed to consider the full consequence of holding criminal trials for terrorist detainees in a New York federal court.

I welcome the President's desire for Congressional participation in order to efficiently and effectively discharge his obligation to protect the American people. Thus far, however, I am unable to conclude with any confidence that the Administration is pursuing appropriate channels of justice for those responsible for the 9/11 attacks. To facilitate this Committee's review of the legal and policy analyses surrounding this matter, I request the following:

1. All records referring or relating to legal and policy assessments, evaluations, and analyses that resulted in the Administration's decision to transfer terrorist detainees from the Guantanamo Bay detention facility to American soil;
2. All records referring or relating to legal and policy assessments, evaluations, and analyses that resulted in the Administration's decision to prosecute terrorist detainees in the federal court system;
3. The names and titles of officials who participated in the Review mandated by Executive Order 13492;
4. A list of the dates, times, and locations that the Review members or their designees met via teleconference, videoconference, or in person, to discuss topics relating to the Review;
5. All records referring or relating to legal and policy assessments, evaluations, or characterizations of possible trial locations, including any records that

reflect on the logistical and security aspects of various venues considered by the Review participants;

6. All records referring or relating to communications between Attorney General Holder and Review participants concerning the trial of Khalid Sheik Mohammed and four other 9/11 terrorists;
7. All records referring or relating to communications between Attorney General Holder and Review participants regarding the Administration's decision to review its choice to try Khalid Sheik Mohammed and any other 9/11 terrorists in a New York federal court; and
8. All records referring or relating to the Administration's decision to request, in its FY2011 Budget Proposal, a \$200 million allocation for state and local entities that will bear the burden of hosting the trials of terrorist detainees.

Please note that, for purposes of responding to this request, the terms "records," "communications," and "referring or relating" should be interpreted consistently with the attached Definitions of Terms.

I respectfully request that you provide this information **no later than February 12, 2010**. The Committee has the facilities, procedures, and staff necessary to receive classified information, if necessary.

The Committee on Oversight and Government Reform is the main investigative committee in the U.S. House of Representatives. Pursuant to House Rule X, it has authority to investigate the subjects within the Committee's legislative jurisdiction as well as "any matter" within the jurisdiction of the other standing House Committees. This broad jurisdiction includes the oversight of Executive Branch management, operations, and administrative functions.

Thank you for your prompt attention to this matter. I look forward to resolving serious questions about the review process that led to the controversial decision to select New York City as the "best forum" in which to try Khalid Sheik Mohammed and other 9/11 terrorists. Questions on this request can be directed to Thomas Alexander, Senior Counsel, at (202) 225-5074.

Sincerely,



Darrell Issa
Ranking Member

cc: The Honorable Edolphus Towns, Chairman

Definitions of Terms

1. The term "record" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A record bearing any notation not a part of the original text is to be considered a separate record. A draft or non-identical copy is a separate record within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
3. The terms "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to that subject.