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Report to the Chairman, Select Committee on Intelligence, U.S. Senate

November 2012

# GUANTÁNAMO BAY DETAINEES

# Facilities and Factors for Consideration If Detainees Were Brought to the United States


GAO-13-31

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Highlights

Highlights of GAO-13-31, a report to the Chairman, Select Committee on Intelligence, U.S. Senate

### Why GAO Did This Study

Since 2002, the United States has operated military detention facilities at its Naval Station in Guantánamo Bay, Cuba, to hold individuals detained during overseas counterterrorism operations. In 2009 the President directed the closure of these facilities within 1 year. Since then, a number of statutes have prohibited the transfer of Guantánamo Bay detainees to the United States. GAO was asked to review existing U.S. facilities and identify factors to be considered in the event that restrictions were lifted and Guantánamo Bay detainees were transferred to the United States. This report describes the (1) current Guantánamo Bay detention facilities and infrastructure, (2) DOD corrections facilities and factors to be considered if these facilities were used to hold the detainees, and (3) DOJ facilities holding individuals charged with or convicted of terrorism-related crimes, and factors to be considered if these facilities were used to hold the detainees.

To conduct its work, GAO reviewed relevant laws and policies on detention operations; visited several facilities at Guantánamo Bay and DOD and DOJ sites in the United States selected for their range of housing configurations; and interviewed officials at both agencies. GAO's review is descriptive and did not include an evaluation of whether specific U.S. facilities would be suitable for holding Guantánamo Bay detainees, nor did GAO address legal factors that are still being adjudicated. GAO is not making any recommendations in this report. In commenting on this report, DOJ stated that it has no plans to transfer detainees to the United States. This report is an unclassified version of a classified report issued in November 2012.

View GAO-13-31. For more information, contact Brian J. Lepore at (202) 512-4523 or leporeb@gao.gov or David C. Maurer at (202) 512-9627 or maurerd@gao.gov.

### What GAO Found

As of November 2012, the Department of Defense (DOD) held 166 detainees in five separate facilities in conditions ranging from communal living to maximum-security segregated cells that limit detainee interaction. In addition, DOD maintains facilities and infrastructure dedicated to detention support operations. For example, DOD operates an extensive information-technology infrastructure, conducts operations to support the protection of military personnel, and performs other missions at Guantánamo Bay such as securing two courthouses used for military commissions.

Within the United States, DOD operates six corrections facilities that are equipped to confine servicemembers for more than 1 year. On average, as of August 2012, these facilities were operating at about 48 percent capacity, but this varies across different facilities and housing units. GAO identified from interviews with DOD officials and analysis of detention operations documents several factors that would need to be considered in the event that the Guantánamo Bay detainees were transferred to one of DOD's U.S. facilities. The following four factors, among others such as legal and cost considerations, would have to be considered: (1) ensuring compliance with international law and U.S. laws and policies; (2) ensuring the continued safety and security of DOD personnel and the detainees, as well as the general public; (3) collecting intelligence information from the detainees; and (4) maintaining current missions and services provided by the corrections facilities and associated installations. For example, DOD's current ability to minimize risks to the public is attributable to Guantánamo Bay's remote location and limited access, whereas DOD corrections facilities in the United States are generally located on active military installations in close proximity to the general public. Additionally, DOD officials indicated that locating detention operations on an active military installation could present risk to the installation's core operations such as administrative and training operations.

The Department of Justice (DOJ), through its Bureau of Prisons and Marshals Service, uses over 2,000 facilities to hold about 280,000 individuals charged with or convicted of federal crimes. Facilities range from low to high security and provide various conditions of confinement. GAO identified from interviews with DOJ officials and analysis of detention operations documents several factors that would need to be considered in the event that the Guantánamo Bay detainees were transferred to one of DOJ's U.S. facilities. The following three factors, among others such as legal and cost considerations, would have to be considered: (1) formulation of policies and practices for housing the detainees; (2) ensuring the safety of facility personnel, the detainees, and the general public; and (3) identifying adequate space for housing the detainees and maintaining separation of detainees from the current inmate population. For example, according to DOJ officials, existing facilities would need to be modified or current inmates relocated because the Bureau of Prisons and Marshals Service would segregate Guantánamo Bay detainees from the inmate population for security purposes. Also, as of August 2012, system-wide Bureau of Prisons facilities were about 38 percent overcrowded, and holding Guantánamo Bay detainees could require triple bunking of inmates or expansion of facility capacity in order to maintain security for personnel, inmates, and detainees.

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Figures



**Abbreviations**

| | |
|---|---|
| ADX | U.S. Penitentiary Florence Administrative-Maximum |
| AUMF | Authorization for Use of Military Force |
| BOP | Bureau of Prisons |
| DOD | Department of Defense |
| DOJ | Department of Justice |
| Marshals Service | U.S. Marshals Service |
| UCMJ | Uniform Code of Military Justice |

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**United States Government Accountability Office**
**Washington, DC 20548**

November 14, 2012

The Honorable Dianne Feinstein
Chairman
Select Committee on Intelligence
United States Senate

Dear Madam Chairman,

Since January 2002 the United States has operated military detention facilities at its Naval Station in Guantánamo Bay, Cuba, to detain individuals captured during overseas counterterrorism operations. In January 2009, the President issued an Executive Order directing the closure of the Guantánamo Bay detention facilities within one year.[1] Subsequently, in June 2009 the first in a series of appropriations and authorization measures limiting or prohibiting the use of appropriated funds to transfer Guantánamo Bay detainees to the United States was enacted.[2] You requested that we review existing U.S. federal facilities and identify factors to be considered in the event that Guantánamo Bay detention facilities were closed and legal restrictions on transfer did not continue, and the 166 detainees currently held in these detention facilities were transferred to the United States.[3] Accordingly, this report describes (1) current Guantánamo Bay detention facilities and infrastructure; (2) Department of Defense (DOD) corrections facilities in the United States, and factors to be considered if they were used to hold Guantánamo Bay detainees; and (3) Department of Justice (DOJ) corrections facilities in the United States that hold individuals charged with or convicted of terrorism-related crimes, and factors to be considered if they were used to hold Guantánamo Bay detainees.[4] We are also issuing a classified version of

[1]Exec. Order No. 13492, *Review and Disposition of Individuals Detained At the Guantánamo Bay Naval Base and Closure of Detention Facilities*, 74 Fed. Reg. 4897 (Jan. 22, 2009).

[2]Pub. L. No. 111-32, § 14103 (2009). See app. II for descriptions of subsequent statutes.

[3]For purposes of this report, we use the word “detainees” to collectively refer to the individuals currently housed at Guantánamo Bay. As discussed later in the report, the status of these individuals varies.

[4]In providing information addressing these objectives, DOJ and DOD officials stated that the two agencies do not have plans to transfer any Guantánamo Bay detainees to their facilities in the United States and that such transfer is currently prohibited by law.

this report in November 2012. That version includes an additional appendix, which provides a discussion of Guantánamo Bay facilities used for classified operations that would need to be considered if the detainees were transferred to facilities in the United States.

The scope of our work was to provide a descriptive review of the detention facilities and infrastructure at Guantánamo Bay as well as existing corrections facilities in the United States. Hence, our review did not include an evaluation of whether specific U.S. facilities would be suitable for holding Guantánamo Bay detainees, nor did we address legal factors that are still being adjudicated such as detainee habeas corpus rights,[5] and right to counsel.[6] In addition we are not making recommendations in this report.

To describe the current Guantánamo Bay detention facilities and infrastructure, we visited the detention and support facilities at the U.S. Naval Station Guantánamo Bay. We also reviewed laws and policies related to DOD's detention operations, an interagency report on detainees' status, and DOD reports on conditions of detention at Guantánamo Bay. In addition, we discussed previous and current detention operations with officials from the Office of the Secretary of Defense, Joint Staff, U.S. Southern Command, Joint Task Force-Guantánamo, American Correctional Association, and another related organization.

To describe DOD corrections facilities in the United States and factors to consider if they were to hold Guantánamo Bay detainees, we reviewed DOD corrections policies and manuals and facility capacity data. We also reviewed analyses conducted in 2009 by DOD as part of its efforts to determine whether its facilities were equipped to conduct detention operations. Because analyses previously conducted by DOD to identify facilities in the United States were based on the assumption that all detention operations—including intelligence operations and military commission support—would remain the same, we maintained this assumption in our description of factors that might be considered in the event that Guantánamo Bay detainees were moved to DOD facilities in

[5]The constitutional privilege to seek a writ of habeas corpus allows a detained person to challenge the legality of his or her detention. In *Boumediene v. Bush*, 553 U.S. 723 (2008), the Supreme Court found that the detainees at Guantánamo Bay have the habeas corpus privilege, and a number of habeas cases are ongoing in the federal courts.

[6]Litigation is ongoing regarding the extent of detainee access to counsel, and other issues.

the United States. We conducted site visits and interviewed officials at DOD corrections facilities, which are operated by the Army and the Navy. We selected three facilities that represent both services' operating procedures and reflect a range of housing configurations, including both segregated and general-population housing units. There are three different types of corrections facilities operated by DOD: (1) Level I facilities, which are used for short-term (under 1-year) and pretrial confinement; (2) Level II facilities—consisting of five joint regional corrections facilities (two operated under the Army, and three under the Navy)—which are used for pretrial confinement and for inmates with sentences of 5 years or fewer; and (3) one Level III facility, which holds inmates with sentences exceeding 5 years and inmates sentenced to death. Because Level I facilities are not intended for long-term confinement, we limited the scope of our review to the Level II and Level III long-term incarceration facilities. In addition, we interviewed officials responsible for management of DOD corrections facilities, including officials from the Office of the Secretary of Defense, Joint Staff, Army Corrections Command, and Bureau of Naval Personnel.

To describe corrections facilities in the United States that hold individuals charged with or convicted of terrorism-related crimes or activities, and factors for consideration if Guantánamo Bay detainees were transferred to DOJ facilities in the United States, we reviewed laws and policies related to Bureau of Prisons (BOP) corrections operations, facility capacity data, and information related to the number and location of inmates under BOP custody who had a history of or connection to terrorism, including those charged with or convicted of terrorism-related crimes.[7] In addition, we reviewed U.S. Marshals Service (Marshals Service) policies related to facility capacity data and information related to the number and locations of inmates charged with terrorism-related

[7]BOP identified these inmates by including offenders who have been charged with or convicted of either a terrorism offense, such as receiving terrorist training, or an offense with a documented connection to terrorism, such as using the proceeds of criminal activity to support a terrorist group. In addition, regardless of the nature of the offense, BOP included inmates who are engaged in, or are under investigation for engaging in, radicalization and recruitment activities. BOP referred to this entire category of inmates as inmates with a history of or nexus (connection) to terrorism.

crimes in the custody of the Marshals Service.[8] Also, we interviewed officials from BOP, the Marshals Service, the Office of the Deputy Attorney General, as well as other relevant DOJ component agencies, and we conducted site visits to four facilities selected to reflect diversity in types of housing units and security levels. While it is likely that conditions of confinement and related procedures for the detainees would change if they were moved into DOJ facilities, it is unclear what changes would occur. Thus, for the purposes of this report, when discussing factors for consideration if the detainees were moved to DOJ facilities, we assumed that most conditions and procedures would remain the same. Additionally, we interviewed officials from the Department of Homeland Security. According to Department of Homeland Security officials, its detention facilities are used to detain foreign nationals who are awaiting deportation from the United States, not detainees brought to the United States for law-of-war detention, pretrial detention, or postconviction incarceration; thus we subsequently removed the Department of Homeland Security from the scope of our work. For a full description of our scope and methodology, see appendix I.

We conducted this performance audit from January 2012 to November 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# Background

## Military Detention

In response to the September 11, 2001, terrorist attacks, Congress passed the Authorization for Use of Military Force (AUMF), which authorized the President to "use all necessary and appropriate force

[8]Among other missions, the Marshals Service is responsible for housing and transporting all federal prisoners from the time they enter federal custody until the time they are acquitted or convicted and delivered to their designated facility. While the Marshals Service does not classify individuals in their custody as having terrorism-related charges, they used other sources, including media reports and the nature of the pending charges, to identify individuals in their custody who might be considered to have such charges.

against those … [who] planned, authorized, committed, or aided the terrorist attacks" against the United States.[9] Subsequently, many individuals detained during military operations in Afghanistan and elsewhere were transferred to the U.S. Naval Station at Guantánamo Bay, Cuba—a site designated by the administration for long-term military detention operations under the authority of the AUMF and in accordance with international law. Approximately 1,800 servicemembers, civilian employees, and contractors support detention operations at Guantánamo Bay. An additional 4,200 individuals support other missions at Guantánamo Bay, including logistics and regional contingency operations, as it is the only U.S. naval station in the U.S. Southern Command area of responsibility.[10] The Naval Station encompasses 45 square miles on both sides of Guantánamo Bay, sharing a 17-mile border with Cuba. (See fig. 1.)

[9]Pub. L. No. 107-40 (2001).

[10]U.S. Southern Command operates in Central America, the Caribbean, and South America and is one of the six geographic combatant commands included within DOD.

**Figure 1: Location of U.S. Naval Station at Guantánamo Bay, Cuba**


Source: DOD; Map Resources (map).

According to DOD officials, the installation's remote location enables DOD to limit aircraft flights and control maritime access points, and consequently provides an additional layer of security for the detention operations. DOD considers most of the individuals held in custody at Guantánamo Bay to be "unprivileged enemy belligerents" under U.S. and international law.[11] Those detainees are afforded certain legal rights and protections under both international law and U.S. law. For example,

[11]Section 948a of title 10, U.S. Code, defines an "unprivileged enemy belligerent" as "an individual (other than a privileged belligerent) who (A) has engaged in hostilities against the United States or its coalition partners; (B) has purposefully and materially supported hostilities against the United States or its coalition partners; or (C) was a part of al Qaeda at the time of the alleged offense under this chapter."

Executive Order 13492 states that custody at Guantánamo Bay shall conform with Common Article 3 of the Geneva Conventions, which, among other things, prohibits "outrages upon personal dignity" and "the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples."[12] In addition, various U.S. laws, including the Detainee Treatment Act[13] and the Military Commissions Act,[14] govern aspects of detainee treatment and trial. The President's January 2009 order for the closure of Guantánamo Bay detention facilities directed the Secretary of Defense to undertake a review of the conditions of detention at Guantánamo Bay, and this review, known as the "Walsh Report," reported that the conditions of confinement at Guantánamo Bay conformed with Common Article 3 of the Geneva Conventions.[15] According to DOD, the purpose of military detention is to remove enemy armed forces from the battlefield, as opposed to criminal incarceration, which is a punitive measure for individuals convicted of violating domestic law.

Under the authority of the AUMF, DOD has since January 2002 detained a total of 779 detainees at Guantánamo Bay. The detainee population peaked at approximately 680 in June 2003, and the last detainee to arrive was transferred to Guantánamo Bay in March 2008. The U.S. government, through an interagency task force, has ongoing efforts to transfer detainees from Guantánamo Bay to other countries and, since January 2002, has transferred more than 600 detainees, either to their

[12]"Common Article 3" refers to Article 3 of each of the four Geneva Conventions of 1949 (including, for example, the Convention Relative to the Treatment of Prisoners of War, August 12, 1949, 6 U.S.T. 3316). In *Hamdan v. Rumsfeld*, 548 U.S. 557 (2006), the Supreme Court held that Common Article 3 applies to the armed conflict between the United States and al Qaeda.

[13]Two substantially similar versions of the Detainee Treatment Act of 2005 were enacted, as title X of Pub. L. No. 109-148 (2005) and title XIV of Pub. L. No. 109-163 (2006).

[14]The Military Commissions Act of 2006, Pub. L. No. 109-366, was later amended by the Military Commissions Act of 2009, enacted as part of the National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111-84, div. A, title XVIII (2009) (codified at 10 U.S.C. § 948a, et seq.).

[15]DOD, *Review of Department Compliance with President's Executive Order on Detainee Conditions of Confinement* (Washington, D.C.: February 2009).

home country or to a third country.[16] In addition, in 2009, one detainee was transferred to the United States for trial and, in 2010, was convicted in a U.S. civilian court. He is currently serving a life sentence in a BOP facility in Florence, Colorado.

As of November 2012, 166 detainees were being held in military detention at Guantánamo Bay. Also, as of November 2012, 3 of these detainees had been convicted of crimes by military commissions at Guantánamo Bay.[17] Additionally, 7 detainees—including the 5 individuals accused of planning the September 11 attacks—have charges pending and face potential trial by military commissions.[18] According to DOD officials, the U.S. government, through an interagency task force, is currently negotiating with other countries to transfer more than one-third of the remaining 156 detainees.[19] Table 1 reflects the current detention and prosecution status of all detainees held at Guantánamo Bay as of November 2012.

[16]One hundred twenty-one of the detainees who have left Guantánamo Bay have been sent to the Kingdom of Saudi Arabia to participate in programs to reeducate them and integrate them back into society. For additional information on Saudi Arabia's rehabilitation program, see GAO, *Combating Terrorism: U.S. Agencies Report Progress Countering Terrorism and Its Financing in Saudi Arabia, but Continued Focus on Counter Terrorism Financing Efforts Needed*, GAO-09-883 (Washington, D.C.: Sept. 24, 2009). For a video of GAO interviews with a former Guantánamo Bay detainee, see http://www.gao.gov/media/video/gao-09-883.

[17]As of November 2012, in addition to the three convicted detainees at Guantánamo Bay, four other detainees had been convicted by military commissions and subsequently transferred to other countries. In October 2012, one of the convicted detainees who had been transferred to another country had his conviction overturned by the U.S. Court of Appeals for the D.C. Circuit. Of the three remaining at Guantánamo Bay, one has an appeal pending with the D.C. Circuit.

[18]Six of those with charges pending have been referred to a commission for trial, while one has had charges sworn by prosecutors but has not yet been referred to a commission for trial.

[19]These potential transfers are subject to legal limitations, including potential certification requirements and prohibitions on transfers to certain countries. See, for example, section 1028 of the National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81 (2011).

**Table 1: Detainee Detention and Prosecution Status as of November 2012**

| Status | Description of status | Number of detainees |
|---|---|---|
| Currently in Transfer Negotiations | Detainees for whom the U.S. Department of State is in current or planned negotiations with the detainees' home or third country for transfer. These detainees are not currently facing prosecution. | 56 |
| Continued Detention under the AUMF | Detainees who have been determined to require continued detention to protect against a significant threat to the security of the United States. These detainees are not currently facing prosecution. | 46 |
| Conditional Detention | Detainees from Yemen who will not be transferred until one of the following is satisfied (1) the security situation improves in Yemen, (2) appropriate rehabilitation programs become available, or (3) appropriate third-country resettlement options become available.[a] These detainees are not currently facing prosecution. | 30 |
| Possible Prosecution Pending | Detainees whose cases are under review in accordance with a joint DOD-DOJ protocol to determine if a case is feasible for prosecution and, if so, the appropriate forum and venue for that prosecution.[b] | 24 |
| Currently Facing Prosecution | Detainees with military commission charges pending. | 7 |
| Convicted | Detainees convicted through a military commission process at Guantánamo Bay. | 3 |
| **Total** | | **166** |

Sources: DOD, DOJ, and Guantánamo Review Task Force.

[a]Not all detainees from Yemen are in Conditional Detention status. These conditions were specified in the final report of the Guantánamo Review Task Force, issued pursuant to Executive Order 13492. Guantánamo Review Task Force, *Final Report* (Jan. 22, 2010). They do not necessarily reflect subsequent legal restrictions on transfers, such as those described in footnote 19. Additionally, while all detainees facing conditional detention are from Yemen, they do not represent all detainees from Yemen currently held at Guantánamo Bay.

[b]DOD and DOJ, *Determination of Guantánamo Cases referred for Prosecution* (undated).

## Roles of the Federal Agencies in Detention and Incarceration

Executive Order 13492, signed by the President on January 22, 2009, directed the closure of the detention facilities at Guantánamo Bay within a year and stated that any individuals who remained in detention at Guantánamo Bay at the time of the closure of its facilities "shall be returned to their home country, released, transferred to a third country, or transferred to another United States detention facility in a manner consistent with law and the national security and foreign policy interests of the United States." Following the issuance of this Executive Order, an interagency working group including officials from DOD, DOJ, and the Department of Homeland Security began to identify existing facilities in the United States that could be used for continued military detention if the

decision was made to transfer detainees to the United States.[20] Each of these departments operates confinement facilities in the United States, consistent with its missions and legal authorities.

- DOD operates a system of corrections facilities in the United States that are used for pretrial detention and incarceration of members of the U.S. armed forces who are charged with or convicted of violations of the Uniform Code of Military Justice (UCMJ).[21]
- DOJ, through BOP, operates a system of corrections facilities in the United States that are used for pretrial detention and incarceration of individuals convicted of violating federal laws. BOP's mission is to confine federal inmates in the controlled, safe, secure, humane, and cost-efficient environments of prisons and community-based facilities, and to provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens. DOJ's Marshals Service is the enforcement arm of the federal court system and its mission includes responsibility for the custody of pretrial federal inmates until they are acquitted or convicted, and delivered to the designated BOP facility.
- The Department of Homeland Security operates a system of detention facilities to detain noncitizens who may be subject to removal from the United States under U.S. immigration laws.

According to DOD attorneys, DOD, under the AUMF, has legal authority to maintain custody of the detainees currently at Guantánamo Bay. A DOJ official from the Office of the Deputy Attorney General stated that DOJ would likely need additional authorities to detain law-of-war detainees for continued detention at BOP facilities, but indicated that he was unaware of any analysis of the issue because DOJ is not evaluating transferring detainees to the United States in light of transfer restrictions. With respect to the three detainees who have been convicted of crimes by military commissions, the Military Commissions Act provides that, "[u]nder such regulations as the Secretary of Defense may prescribe, a

[20]These efforts ceased after restrictions, beginning in June 2009, were imposed on the transfer of detainees to the United States.

[21]The UCMJ is a collection of statutes that govern the military justice system, and is codified in Title 10 of the United States Code. UCMJ includes punitive articles that define specific offenses similar to those found in civilian criminal law (e.g., murder, rape, wrongful use of controlled substances, larceny, and drunk driving) as well as other offenses that specifically affect good order and discipline in the military (e.g., absence without leave, disrespect toward superior commissioned officer, or dereliction of duty).

sentence of confinement adjudged by a military commission…may be carried into execution by confinement …in any penal or correctional institution under the control of the United States."[22] However, while this statute indicates that the three convicted detainees serving sentences at Guantánamo Bay could potentially be confined in DOJ or other U.S. controlled facilities, BOP officials said that BOP would need additional statutory authority in the federal criminal code to take custody of individuals convicted by military commission, like the authority it currently has to confine persons convicted by courts-martial.[23] In addition to the above-mentioned legal authorities, since the signing of Executive Order 13492 in January 2009, a number of statutes have limited or prohibited the use of federal funds to transfer or assist in the transfer of Guantánamo Bay detainees to U.S. facilities. See appendix II for a summary of key statutes. Prior to the enactment of these statutes, in June 2009, one Guantánamo Bay detainee was formally charged with crimes by DOJ and subsequently transferred to the United States. This detainee was transferred by DOD into the custody of the Marshals Service to stand trial in the United States. In November 2010 he was convicted by a federal court, and is currently serving a life sentence in a BOP facility in Colorado.

## History of Detention Facilities and Standards of Confinement at Guantánamo Bay

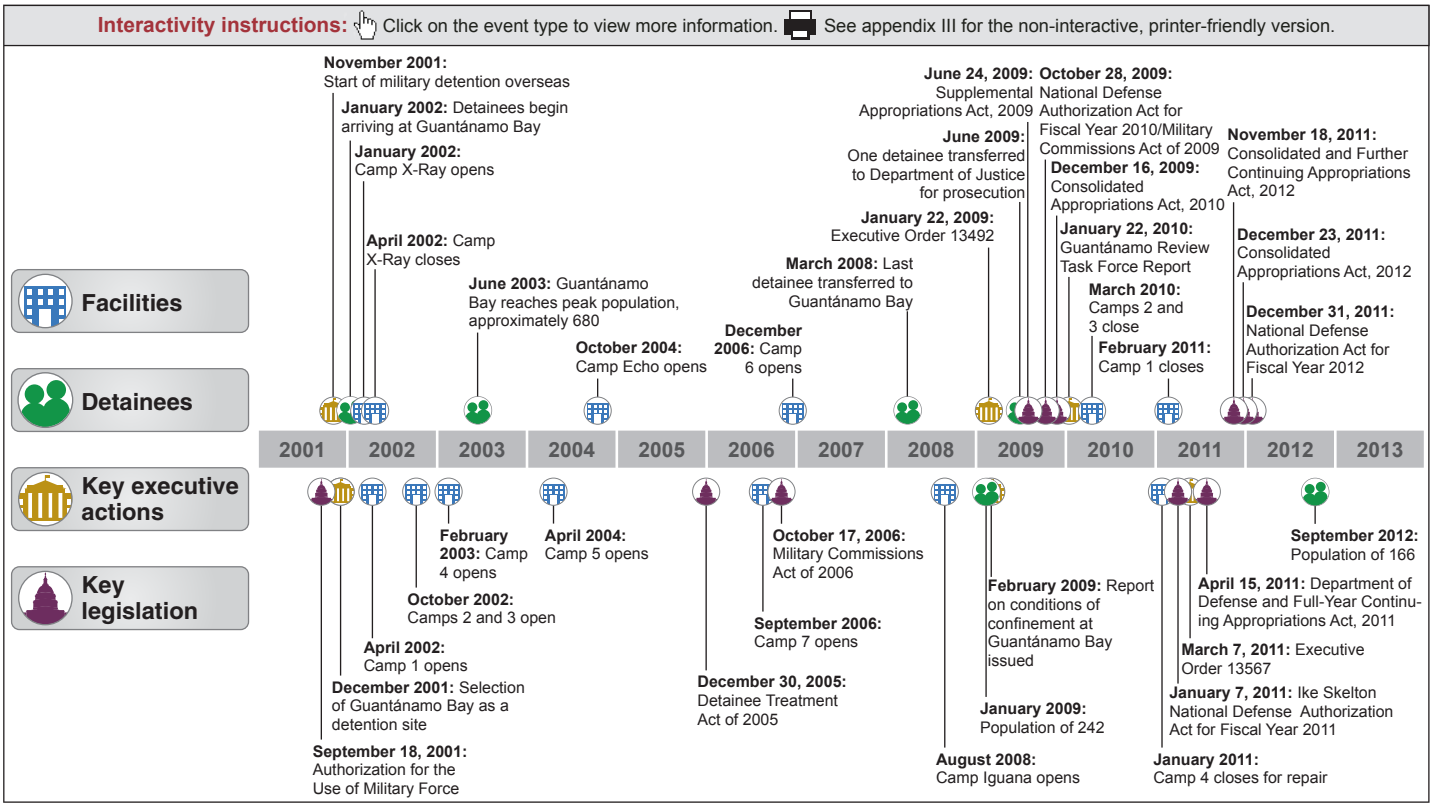
Over time, DOD's detention facilities at Guantánamo Bay have evolved as the department has constructed new facilities and closed older ones in response to changes in the size of the detainee population. The original facilities—known as Camp X-Ray—were open for 92 days (in 2002). They were preexisting migrant-detention facilities comprised of chain-link enclosures on concrete slabs. Subsequent facilities, called Camps 1, 2, 3, and 4, were built in response to increases in the detainee population and the need to segregate different groups of detainees; for example, individuals who were compliant with facility rules were separated from

[22] 10 U.S.C. § 949u.

[23] 18 U.S.C. § 4083 ("Persons convicted of offenses against the United States or by courts-martial punishable by imprisonment for more than one year may be confined in any United States penitentiary."). BOP officials noted that under this statute and article 58 of the UCMJ (10 U.S.C. § 858), which provides that "a sentence of confinement adjudged by a court-martial or other military tribunal … may be carried into execution by confinement … in any penal or correctional institution under the control of the United States … .", as well as a memorandum of understanding with DOD, BOP houses convicted military uniformed service personnel, who have been formally discharged from their respective service.

those who were noncompliant. These early facilities were generally covered, open-air, single-cell structures with steel mesh walls. DOD subsequently constructed the indoor, climate-controlled facilities that are currently in use. As shown under the Facilities tab in figure 2, a total of 10 different detention facilities have been used to hold Guantánamo Bay detainees (see app. III for the noninteractive version of this figure). Of these, 5 are currently in use: Camp Echo, Camp Iguana, and Camps 5, 6, and 7.

## Figure 2: Timeline of Guantánamo Bay Detention Operations




Source: DOD, DOJ, and GAO analysis of select executive and legislative actions.

In September 2006, DOD revised DOD Directive 2310.01E, its policy regarding standards for detainee treatment.[24] The standards outlined in the directive ensure that military detainees are treated humanely and in conformity with "the laws of the United States, the law[s] of war, including the Geneva Conventions of 1949, and all applicable policies, directives, or other issuances …." According to DOD officials, as long as Guantánamo Bay detainees maintain their legal status as military detainees held under the authority of AUMF and remain in DOD custody, DOD's detention directive and all related laws and standards would continue to be applicable to the Guantánamo Bay detainees if they were transferred to the United States.

## Characteristics of the Current Guantánamo Bay Detention Facilities and Infrastructure

DOD currently conducts extensive detention operations at Guantánamo Bay, operating multiple facilities that hold detainees and support other detainee-related missions, such as medical services. In addition, DOD maintains facilities and infrastructure dedicated to detention support operations.[25] For example, DOD operates an extensive information-technology infrastructure to support force protection and other missions, and maintains and secures legal facilities.

### Overview of Current Detention Facilities at Guantánamo Bay

As of November 2012, DOD held 166 detainees in five detention facilities on its Naval Station in Guantánamo Bay, Cuba. According to DOD officials, all facilities currently in use were designed on the basis of facilities in the United States that meet American Correctional Association

[24]Department of Defense Directive 2310.01E, *Department of Defense Detainee Program* (Sept. 5, 2006). This directive states that all detainees, regardless of status, will at a minimum receive treatment consistent with Common Article 3 to the Geneva Conventions of 1949. This includes prohibitions on violence, taking of hostages, humiliating or degrading treatment, and the sentencing and carrying out of executions without a court judgment; provision of care for the wounded and sick; and provision of services by an impartial humanitarian organization, such as the International Committee of the Red Cross.

[25]A discussion of facilities used for classified operations can be found in the classified version of this report.

standards.[26] The facilities differ in configuration and detainee population, and DOD generally places detainees in facilities according to a detainee's compliance with facility rules.[27] See table 2 for a description of each detention facility. DOD also provides medical, dental, and behavioral health services in some of the detention facilities and in separate dedicated facilities.

**Table 2: Guantánamo Bay Detention Facilities as of November 2012**

| Facility name | Description of facility | Nonsegregated population | Segregated population |
|---|---|---|---|
| Camp 5 | Four housing units containing single-occupancy cells for noncompliant detainees and prisoners.<br>One shared housing unit. | 1-20 | 10-30 |
| Camp 6 | Eight shared housing units. | 110-130 | 0 |
| Camp 7 | Segregated single-cell facility, used for high-value detainees. | 0 | 10-20 |
| Camp Echo | Single-occupant structures, with shared recreation area. | 5-10 | 0 |
| Camp Iguana | Communal structures shared by detainees who have been designated for release. | 1-5 | 0 |

Source: GAO representation of DOD data.

Note: Populations of Camps 5, 6, Echo, and Iguana are presented as ranges because specific numbers of detainees in these camps can change over time as detainees are released or moved between facilities. The specific number of detainees in Camp 7 can be found in the classified version of this report.

[26]The American Correctional Association's Commission on Accreditation provides all accreditations for BOP institutions. The American Correctional Association's standards provide guidance to all correctional organizations on correctional issues such as programming, officer staffing, and officer safety, as well as physical standards such as inmate housing, environmental conditions, and exercise and recreation areas. However, the Guantánamo Bay detention facilities themselves have not been evaluated or accredited by the American Correctional Association.

[27]An exception to this practice is the small group of detainees deemed to be "high-value," who are housed separately from each other and from the other facilities at Guantánamo Bay regardless of compliance with facility rules.

## Camp 5

Camp 5 is the second-most populous detention facility at Guantánamo Bay—approximately one-fourth of detainees reside there at any given time. It is a maximum-security facility consisting of 100 indoor climate-controlled cells divided among four individual cell blocks, each with two tiers, and 24 open-air cells. Most of the cell blocks in Camp 5 are operated as segregated housing. One block currently serves as shared housing. DOD holds three types of detainees in Camp 5:

(1) Most of the detainees in Camp 5 are held in segregated cells on a temporary basis to encourage compliance with facility rules. Once these detainees have begun complying with facility rules, they are transferred to one of the other camps having more shared living spaces.

(2) One cell block of Camp 5 houses compliant detainees with similar lifestyle habits in shared housing. DOD finished converting this block to shared housing in May 2012 in order to decrease the number of detainees in another facility. Detainees in the shared housing block can access each other's cells and recreate together, but are separated from the other groups of detainees in Camp 5.

(3) Detainees who have been convicted by military commission at Guantánamo Bay and are serving their sentences there are also held in Camp 5. These convicted individuals are confined to a cell block tier segregated from all other detainees.

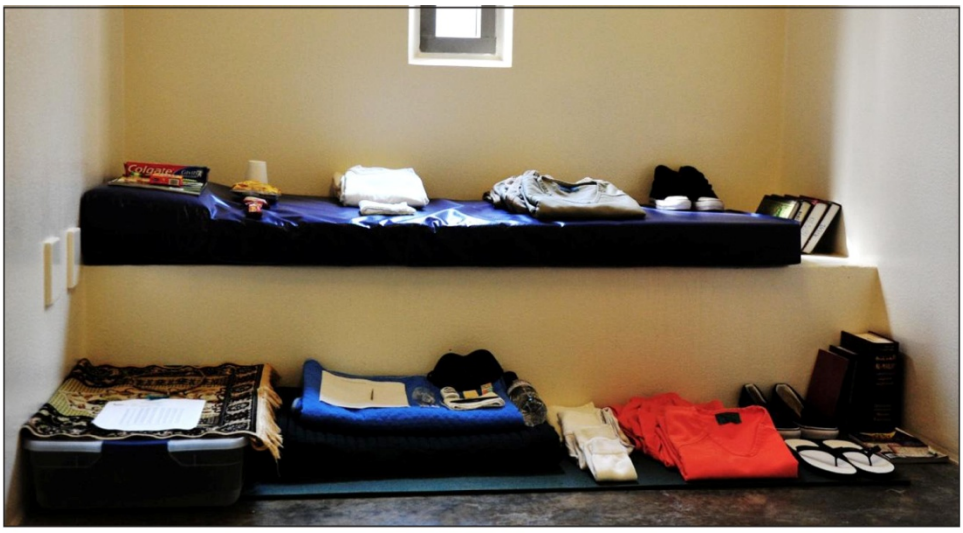
**Figure 3: A Segregated Housing Unit in Camp 5**

Source: DOD.

In addition to housing units, Camp 5 contains one media room on each tier—consisting of a television for use by one detainee at a time—and three outdoor recreation areas. These secured outdoor recreation areas have exercise equipment but are not large enough for detainees to play games such as soccer. They are designed such that no more than two detainees can be present in the same area at a given time, though detainees may speak with those in adjacent recreation areas. All detainees assigned to segregated housing units in Camp 5 have access

to at least 2 hours of recreation per day with one other detainee; those who have begun complying with facility rules have access to at least 4 hours of recreation per day. All detainees in Camp 5 also have access to books and magazines, and compliant detainees may obtain a greater number of books as well as additional clothing choices. Detainees in the shared housing unit are provided other privileges as well, such as the ability to move freely within the tier. Camp 5 also contains a medical treatment room and a dental chair.

**Figure 4: Example of a Camp 5 Cell and Detainee Comfort Items**



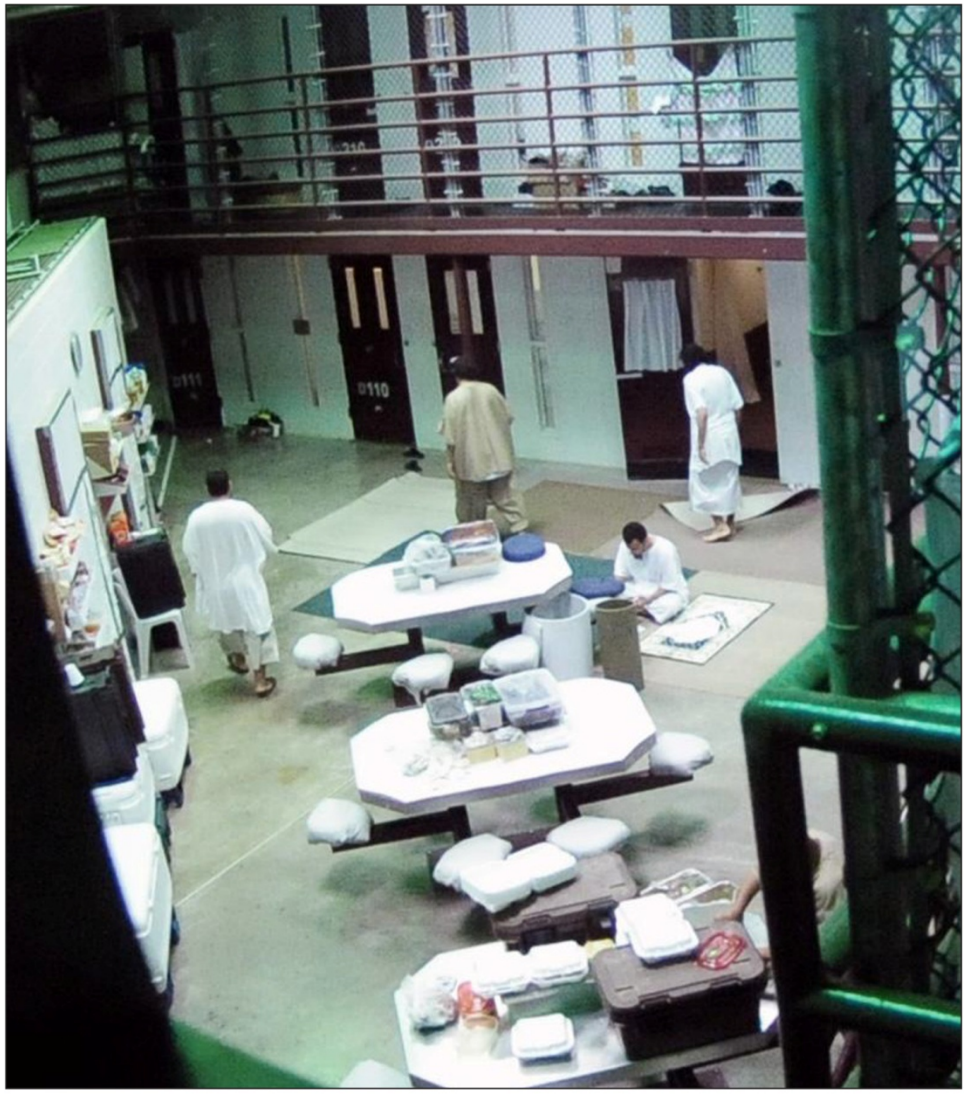
Source: DOD.

Note: All detainees receive basic comfort supplies, such as soap, toothpaste, clothing, and religious items. Compliant detainees receive additional clothing and footwear choices and other incentives.

## Camp 6

Camp 6 is the most-populous detention facility at Guantánamo Bay—about two-thirds of detainees are held there. It is a medium-security detention camp designed after the layout of a U.S. county jail, and it consists of eight indoor climate-controlled, two-story housing units that each contain 22 individual cells and one large common area. Within each housing unit, two cells are reserved for use as a shared pantry and library. DOD generally assigns detainees to specific housing units according to cultural and lifestyle preferences. For example, detainees of the same nationality or detainees who have similar television-viewing preferences may share a housing unit.

**Figure 5: Example of a Housing Unit in Camp 6**




Source: DOD.

Detainees in Camp 6 are allowed access to one adjacent housing unit as well as their own unit. Adjacent housing units are connected by a secured, shared outdoor recreation yard with exercise equipment and an area for the detainees to play sports such as basketball or soccer. Except for DOD inspection times, during which detainees are confined to their cells, detainees can move freely for 20 hours per day in the recreation yard and the adjacent housing unit; they are confined to their assigned housing unit the remaining 4 hours per day. Camp 6 also includes

medical and dental treatment rooms and staff to provide routine medical care and medication dispensation.

### Camp 7, Camp Echo, and Camp Iguana

DOD operates three additional facilities to house certain small groups of detainees: Camp 7, Camp Echo, and Camp Iguana. Camp 7 holds "high-value" detainees, such as those accused of planning the September 11 attacks. These individuals are held in climate-controlled segregated housing units that limit their ability to communicate with each other. Detainees in Camp 7 have access to up to 4 hours of recreation per day in secured recreation areas containing exercise equipment; two detainees may have outdoor recreation at the same time in separate but adjacent recreation areas. In addition, Camp 7 contains a medical treatment room and a dental chair. The other two facilities—Camp Echo and Camp Iguana—house compliant detainees in shared settings. Detainees whose personal security would be at risk if they were housed in Camp 6 are assigned to Camp Echo, and detainees who have been designated for release from Guantánamo Bay are assigned to Camp Iguana.[28] These camps are isolated from each other and from the other camps. Camp Echo consists of 10 wooden hut-like structures, with each detainee's housing unit containing a sleeping cell and a personal living area. Detainees assigned to Camp Echo may recreate together up to 20 hours per day. DOD uses unoccupied structures at the Camp Echo facility to support other detention-related operations, such as detainee-attorney meetings. Camp Iguana is a communal space that consists of multiple wooden hut-like structures within a secured fenced area. The detainees can move freely within the fenced area at all times, and they use the structures for a variety of purposes, including sleeping, cooking, laundry, and recreation. Although detainees in Camps Echo and Iguana are afforded more privileges than other detainees, they must continue to comply with facility rules or they may be temporarily placed in Camp 5 to encourage compliance.

### Medical, Dental, and Behavioral Health Facilities

In addition to detention facilities, DOD operates several facilities that provide medical, dental, and behavioral health care to detainees. In addition to medical treatment rooms at Camps 5, 6, and 7, DOD operates a hospital dedicated to detainee care. The detainee hospital is primarily an in-patient facility with secured cells, but it does provide some outpatient care such as radiology, surgery, dental, and other medical

[28]As of November 2012, DOD has designated three detainees for release, but the detainees have so far refused offers from third countries willing to receive them.

services. If necessary, the detainee hospital can leverage the resources of the Naval Station hospital, which is located elsewhere on the base. For example, medical staff can perform minor surgery at the detainee hospital, but major surgery is performed at the Naval Station hospital. In addition, DOD will bring specialists to Guantánamo Bay to treat detainees if required. Camps 6 and 7 also have dental facilities. Furthermore, DOD operates a 12-bed behavioral health unit in a separate facility, which provides care to detainees with mental health issues. Overall, there are about 100 people who provide medical, dental, or behavioral health care to the detainees, including specialized medical linguists.

## Detention Support Operations

In addition to the facilities it uses to house and provide services to detainees, DOD maintains facilities and infrastructure dedicated to detention support operations. These operations include (1) physical security and protection for detainees and U.S. military personnel, (2) intelligence collection and analysis, (3) maintenance and security of military commission courtrooms and other legal support. In addition, DOD provides administrative offices, housing, dining, medical, and other necessary support facilities for the approximately 1,800 detention-operations staff members at Guantánamo Bay. On average, the cost to operate Guantánamo Bay detention facilities and support operations is about $114 million per year, not including the cost of military personnel or approximately 120 contract linguist staff.[29] Some of this funding is dedicated to fixed costs, such as the information-technology infrastructure, and would not change proportionately to changes in detainee population.

### Maintaining Physical Security and Protection of Detainees and U.S. Military Personnel

Several facilities at Guantánamo Bay are used to support DOD's operations to maintain physical security and protection of the detainees and U.S. military personnel. For example, in one facility, DOD screens and translates—in up to 13 languages—approximately 400 pieces of incoming and outgoing detainee mail each month; according to officials, this figure can increase to more than 1,000 when officials from the International Committee of the Red Cross visit. All operations at Guantánamo Bay utilize an extensive information-technology infrastructure, comprising several networks, over 2,000 computers, and 190 servers. For example, electronic records of all detention camp activities are stored in a computer database.

[29]This figure reflects the fiscal years 2008 through 2012 budget data for operation of the five detention facilities currently in use; intelligence and security programs; and the support provided to Naval Station Guantánamo Bay for hosting detention operations.

Moreover, DOD policy requires the preservation of all evidence, documents, and recorded information of every detainee now or ever held at Guantánamo Bay.[30] Therefore, DOD maintains facilities to store and preserve a variety of information including (1) all electronic data collected, (2) physical evidence obtained at the time of a detainee's capture, and (3) records of contraband or makeshift weapons seized over the course of detention operations.

### Intelligence Collection and Analysis

DOD also operates some facilities at Guantánamo Bay exclusively for the collection of intelligence—through voluntary interviews of detainees—and analysis of this information by linguistic and technical support staff.[31] According to DOD, it collects this intelligence to provide support to military commissions, Periodic Review Boards,[32] the intelligence community, and law-enforcement agencies. According to a 2009 DOD report, given the length of time that most detainees have spent at Guantánamo Bay, the primary focus of the voluntary detainee interviews is to gather information to help ensure the safety and security of the detention facilities and personnel.

### Military Commissions and Other Legal Support

DOD maintains and secures two courthouses and several office facilities used in the military-commission process at Guantánamo Bay. In 2008, DOD completed construction of a courtroom complex designed specifically to hold commissions for the five detainees accused of organizing the September 11 attacks. It includes five detainee holding cells and nine areas, including the courtroom and office spaces, in which highly classified information may be discussed. Because the facility was

[30]Chairman of the Joint Chiefs of Staff Notice 5761, *Preservation of Detainee Records* (Feb. 29, 2008).

[31]DOD is required by law to record all detainee interviews. National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111-84, § 1080, 123 Stat. 2190, 2479-81 (2009).

[32]In March 2011, the President directed DOD to coordinate a process of periodic review of continued law-of-war detention for detainees. Exec. Order 13567, *Periodic Review of Individuals Detained at Guantánamo Bay Naval Station Pursuant to the Authorization for Use of Military Force*, 76 Fed. Reg. 13277 (Mar. 7, 2011). Section 1023 of the National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81 (2011), directed DOD to issue procedures for the review boards, and DOD did so in May 2012. Directive-Type Memorandum 12-005, *Implementing Guidelines for Periodic Review of Detainees Held at Guantánamo Bay per Executive Order 13567* (May 9, 2012). According to DOD officials, an interagency task force has begun reviewing detainee files. Review boards will ultimately conduct hearings—at which detainees may participate—and make determinations about whether DOD should continue to detain that individual.

designed to allow the discussion of highly classified information, DOD must secure it 24 hours per day. In addition, DOD operates a separate facility that it converted into a courtroom in 2005. This facility utilizes some of the same technology as the other courtroom but is smaller and is cleared for discussion of classified information at a lower level. The facility includes a holding cell for detainees and rooms for detainees to meet with legal counsel. DOD utilizes advanced videoconferencing and court-reporting technology in both courtrooms and it can broadcast proceedings to an observation area adjacent to the larger courtroom, the media facility at Guantánamo Bay, and remote viewing locations in the United States.

In addition to the courtrooms, there are several administrative facilities dedicated to legal services and upcoming detainee Periodic Review Boards. One facility will enable the use of secure video teleconferencing during upcoming detainee reviews, and the intelligence collection and analysis staff will provide support to assessments of the potential threat posed by each detainee. In addition, DOD maintains a legal office staffed with approximately 10 attorneys to facilitate detainee-attorney meetings, of which there were 132 between November 2011 and April 2012. This office also contributes support to the military commission process.

## DOD Corrections Facilities in the United States and Factors to Consider If They Were to Hold Detainees

DOD operates six facilities in the continental United States for confining servicemembers for more than 1 year. Each facility utilizes both general-population and segregated housing units and is equipped to manage inmates at all security levels. On average, as of August 2012, these six facilities were 48 percent occupied. In the event that the Guantánamo Bay detainees were transferred to one of these facilities, and all detention operations were to remain the same as they were at Guantánamo Bay, we identified from interviews with DOD officials and analysis of detention operations documents several factors that would need to be considered, such as ensuring compliance with international law and U.S. laws and policies, and ensuring the safety and security of detainees, DOD personnel, as well as the general public, before the facilities could be used for this purpose.[33]

[33]A discussion of Guantánamo Bay facilities used for classified operations and related factors that would need to be considered if the detainees were transferred to facilities in the United States can be found in the classified version of this report.

## DOD Corrections Facilities in the United States

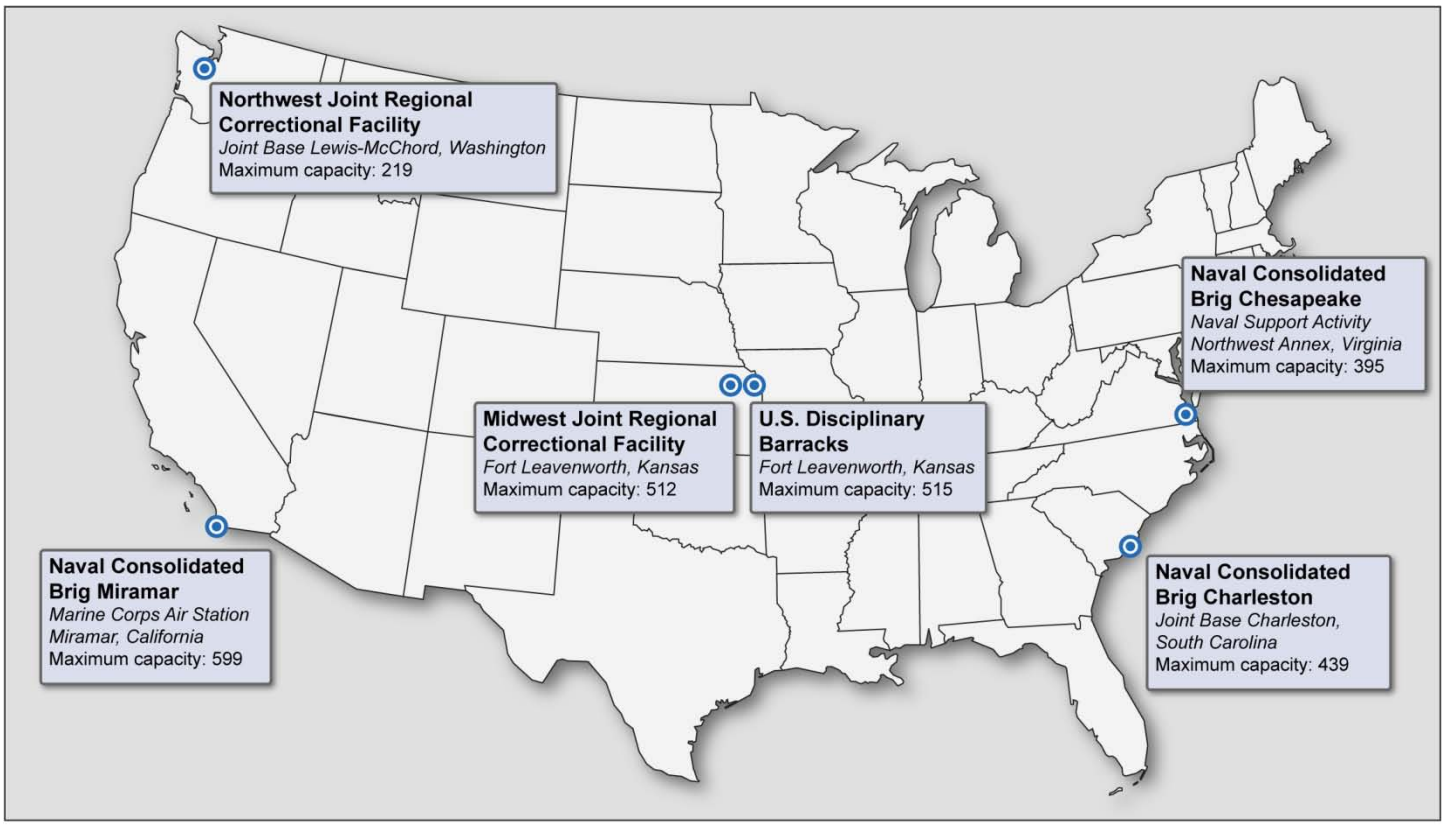
DOD operates a system of corrections facilities in the continental United States that it uses to confine members of the uniformed services charged with or convicted of violations of the Uniform Code of Military Justice (UCMJ). Six of these facilities, operated by the Army and the Navy, are equipped to confine individuals for more than 1 year.[34] Five of the six are joint regional correctional facilities—two Army-operated regional correctional facilities and three Naval consolidated brigs—that are used for pre- and posttrial confinement for inmates with sentences of 5 years or fewer. The sixth is the U.S. Disciplinary Barracks at Fort Leavenworth, Kansas, a facility operated by the Army, which holds inmates with sentences exceeding 5 years as well as inmates sentenced to death. Five of these six DOD corrections facilities are accredited by the American Correctional Association, which reaccredits facilities every 3 years to ensure they meet specific national standards related to facility administration and management, physical plant and institutional operations, institutional services, and inmate programs.[35] In fiscal year 2011, the cost to operate these facilities ranged from approximately $1.6 million to $14 million.[36] See figure 6 for the names and locations of the six facilities.

[34]The facilities are operated by the Army and the Navy, but individuals from any branch of the military can be confined in any facility. DOD also operates facilities that it uses primarily for inmates with sentences of less than 1 year. For the purposes of our review, we did not consider these facilities in our scope.

[35]At the time of our review, the Naval Consolidated Brig in Chesapeake, Virginia, which opened in August 2011 and had not yet been accredited, was in the accreditation process.

[36]This figure includes facility operations and civilian personnel costs for fiscal year 2011 for the Northwest Joint Regional Correctional Facility, Naval Consolidated Brig Miramar, Naval Consolidated Brig Charleston, the Midwest Joint Regional Correctional Facility, and U.S. Disciplinary Barracks. Because Naval Consolidated Brig Chesapeake was opened in 2011, historic cost data were not available at the time of this review.

**Figure 6: DOD Regional Corrections Facilities and U.S. Disciplinary Barracks**




Source: DOD; Map Resources (map).

Each of these facilities comprises both general-population and segregated housing units. Most inmates are housed in general-population housing units. These units are similar in design to the shared housing units in Camp 6 at Guantánamo Bay; they generally include an open space with shared tables, chairs, televisions, telephones, and showers, as well as individual cells containing single or double bunked beds, a toilet, and a sink. Each DOD facility has multiple general-population housing units, and while capacity of these units varies, typically general-population units can be configured to hold up to 80 inmates; Navy officials indicated that when possible they prefer to maintain capacity at 40 inmates. Depending on the facilities' operating procedures and individual inmates' compliance with facility rules, the amount of time inmates in general-population housing units are required to spend in their cells varies, as does their access to the shared living space. See figure 7 for a photographic example of a general-population housing unit.

**Figure 7: Sample General-Population Housing Unit, Naval Consolidated Brig Chesapeake, Virginia**

Source: DOD.

Unlike general-population housing units, segregated housing units prevent inmate interaction, and they do not have a shared living space. Inmates in segregated units are individually bunked and confined to their cells for the majority of their time. Similar to the segregated housing units in Camp 5 at Guantánamo Bay, these cells are used primarily as a temporary administrative or disciplinary measure for inmates who are noncompliant with facility rules, who may be a danger to themselves or others, or who may be at risk of harm from other inmates. Segregated housing units can also be used as long-term housing for inmates who have been classified as needing maximum security.

These six DOD facilities are required to manage inmates at all security levels. When sentenced to a facility, inmates are assessed and assigned

a security custody classification.[37] These classifications range from individuals who require limited supervision and maintain jobs outside of the facility to the most-maximum-security inmates who present the highest risk of violence. An inmate's security classification is the basis upon which he or she is assigned to a housing unit—for example, medium-custody inmates are housed with other medium-custody inmates. DOD policy allows for an inmate classification to be reviewed and for inmates to be reclassified, if appropriate; thus housing-unit security designations can change over time. An inmate's classification can also change as needed based on compliance with facility rules. These six facilities have the ability to secure inmates requiring additional controls such as protective custody or restricted communications; for example, the Midwest Joint Regional Correctional Facility at Ft. Leavenworth has eight specialized soundproof cells within its segregated housing unit that can be used for individuals charged with high-profile crimes in order to limit their communications with other inmates.

These six facilities also have space and infrastructure dedicated to facility support operations and inmate programs, including administrative offices and staff rooms; rooms used to facilitate legal and general visits; and on-site medical, dental, and behavioral health facilities, although inmates requiring advanced care are transported to separate military or civilian medical facilities. In addition, these facilities include classrooms for educational, treatment, and other group programs; space for religious services; dining areas; shops for work programs (for example, wood and textile shops); and indoor and outdoor recreation spaces. An inmate's freedom of movement around a facility is also based on his or her security custody classification; for example, inmates requiring minimum security may move throughout the facility unescorted on an as-needed basis, whereas inmates classified as needing maximum security require restraints and two escorts when moving throughout a facility.

[37]Army standards require that this classification be based on several factors including, at a minimum, the individual prisoner's offense, attitude, aptitude, intelligence, personality, adaptation to incarceration, record of performance prior to incarceration, and potential for further military service.

## Factors to Consider If the Guantánamo Bay Detainees Were to Be Held in DOD Corrections Facilities in the United States

On the basis of our interviews with DOD officials and analyses of detention operation documents, we identified several factors that would have to be considered in the event that the Guantánamo Bay detainees were transferred to existing DOD facilities within the United States. According to DOD's 2009 plan and DOD officials we interviewed, if detainees were transferred to DOD facilities in the United States, DOD would plan on providing all of the same detention and support operations in U.S. facilities that are currently maintained at Guantánamo Bay. While there is available capacity to house the 166 Guantánamo Bay detainees across the six DOD facilities included in our scope if detention operations remained the same (see table 3), the following four factors, among others such as legal and cost considerations, would also have to be considered: (1) ensuring compliance with international law and U.S. laws and policies; (2) ensuring the continued safety and security of DOD personnel and the detainees, as well as the general public; (3) conducting intelligence operations; and (4) maintaining current missions and services provided by the corrections facilities and associated installations.

**Table 3: Capacity of DOD Level II and III Corrections Facilities as of August 2012**

| | Maximum capacity | Current inmates | Available capacity | Percent occupied |
|---|---|---|---|---|
| Naval Consolidated Brig Chesapeake, VA[a] | 395 | 78 | 317 | 20% |
| Naval Consolidated Brig Charleston, SC | 439 | 102 | 337 | 23 |
| Naval Consolidated Brig Miramar, CA | 599 | 310 | 289 | 52 |
| Midwest Joint Regional Correctional Facility, Ft. Leavenworth, KS | 512 | 215 | 297 | 42 |
| Northwest Joint Regional Correctional Facility, Joint Base Lewis-McChord, WA | 219 | 123 | 96 | 56 |
| United States Disciplinary Barracks, Ft. Leavenworth, KS[b] | 515 | 449 | 66 | 87 |
| **Total** | **2,679** | **1,277** | **1,402** | **48%** |

Source: GAO analysis of DOD data.

[a]The Naval Consolidated Brig in Chesapeake, Virginia, opened in July 2011 as a result of the Defense Base Closure and Realignment Commission process. While it was built as a Level II facility, at the time of our review it was being used as a Level I facility. Level I facilities are for inmates serving sentences up to 1 year, while Level II facilities are for inmates serving sentences of 5 years or fewer.

[b]In 1994, the Army entered into a memorandum of agreement with the BOP to provide space in BOP facilities for 500 UCMJ inmates. According to DOD officials, as of April 2012 there were about 300 UCMJ inmates being held in BOP facilities.

First, U.S. law prohibits the confinement of members of the armed forces in "immediate association" with foreign nationals.[38] To comply with this law, DOD would need to relocate UCMJ inmates if detainees were to be moved to existing facilities. Since this provision in the law does not define "immediate association," UCMJ inmates could potentially be relocated among multiple facilities, or within a specific facility, according to DOD officials. Additionally, according to DOD officials, for operational and policy reasons DOD prohibits the commingling of unprivileged enemy belligerents with those convicted of crimes, as seen in its holding of three detainees under AUMF authority in the United States. For example, DOD held one former Guantánamo Bay detainee at the former Naval Brig Norfolk—which is now closed—and subsequently transferred him to Naval Consolidated Brig Charleston. DOD officials told us that although this individual was a U.S. citizen, because he was taken into custody under AUMF authority he was therefore segregated from all UCMJ inmates until his transfer to another country.[39] According to officials, DOD did not relocate inmates to another facility, but instead segregated this detainee from all UCMJ inmates at all times. DOD would also have to ensure that it maintained separation of detainees and UCMJ inmates while still conforming to international and U.S. standards for access to medical care and recreation. According to DOD officials, provision of on-site medical care for detainees might present a challenge. All DOD corrections facilities provide medical services on site, although, they are limited in what they are equipped to provide. As a result, UCMJ inmates requiring more-complex medical treatments are transported to clinics or hospitals, but that might be challenging were Guantánamo Bay detainees to be treated in this way in the United States.

While UCMJ inmates have in the past been colocated in the same facilities with a few AUMF detainees, the current configuration of these six facilities may not easily accommodate the 166 currently held at

[38]10 U.S.C. § 812. "No member of the armed forces may be placed in confinement in immediate association with enemy prisoners or other foreign nationals not members of the armed forces." All of the Guantánamo Bay detainees are foreign nationals.

[39]This individual was born in the United States, and subsequent to his detention he gave up his citizenship and was transferred to Saudi Arabia. In addition to the former Guantánamo Bay detainee, DOD held two other individuals in its U.S. facilities under AUMF authority. Neither of these individuals was ever detained at Guantánamo Bay, and according to DOD officials, in both cases they were fully segregated from UCMJ inmates until they were charged with federal crimes and transferred to DOJ custody.

Guantánamo Bay. In particular this is because DOD's policies for separating different categories of inmates and detainees may present capacity limitations. DOD policies require that within the same facility UCMJ inmates of different gender and security custody classifications maintain separate hygiene and sleeping areas, including additional segregation for those inmates requiring additional controls.[40] DOD's Guantánamo Bay standard operating procedures also call for segregating different categories of detainees from each other. According to DOD, the practice of segregating different categories of Guantánamo Bay detainees from each other would also be maintained if detainees were transferred to DOD facilities in the United States. Currently at Guantánamo Bay the following three categories of detainees are confined separately from one another, and from all other detainees: (1) detainees designated for release, (2) "high-value" detainees, and (3) detainees who have been convicted by military commissions.

Second, according to DOD officials, if detainees were moved to its U.S. facilities, DOD would need to continue to ensure the safety and security of DOD personnel and the detainees, as well as ensure the safety and security of the general public located in close proximity to these facilities. According to DOD, maintaining the safety and security of its personnel and the detainees is a key mission area at Guantánamo Bay. For example, as we observed during our visit to Guantánamo Bay, DOD takes several precautions to safeguard its personnel's identities from the detainees in an effort to prevent any harm from coming to personnel or their families, and to minimize any attempt by the detainees to compromise DOD's detention operations. In DOD corrections facilities, however, personnel and inmates typically interact regularly throughout the course of the day. Additionally, in order to conform with international law and DOD policies, detainees are to be treated humanely and protected from public curiosity (for example, pictures of detainees' faces are not disseminated publicly). According to DOD's 2009 analysis, four of the six facilities in our review—the two Ft. Leavenworth facilities and the Miramar and Charleston brigs—are in public view and this could present a disadvantage. For example, the general public might be able to view detainees utilizing the outdoor recreation areas, or detainee privacy and

[40]Housing for all female inmates in the DOD prison system is located in the Naval Consolidated Brig in Chesapeake, Virginia—which houses females with sentences not exceeding 5 years—and the Naval Consolidated Brig in Miramar, California—which houses females with sentences over 5 years.

personnel anonymity may be compromised when transporting detainees off-site for medical care.

Moving the detainees to DOD's U.S. facilities would also necessitate the development of operations to ensure the safety of the general public. According to DOD officials, the physical location of the detainees could become a target for individuals and groups intent on harming the detainees, or harming the U.S. military personnel involved in detention operations—which could result in unintended harm to the general public. DOD's current ability to minimize risks to the public is attributable to Guantánamo Bay's remote location and limited access, whereas DOD's corrections facilities in the United States are generally located on active military installations in close proximity to the general public. Further, because the only access to Naval Station Guantánamo Bay is by military approved flights (including both military flights and commercial flights contracted by DOD) or ships, all visitors are cleared in advance of their arrival. If detainees were colocated with UCMJ inmates, according to DOD corrections officials, DOD may not be able to maintain similar control over facility access, specifically because UCMJ inmates are permitted visits from family and friends, and access to U.S. military installations is not as restricted as access to the installation at Guantánamo Bay. DOD may also need to consider increased risk when transporting detainees outside of the facility.

Third, if DOD were to continue to conduct intelligence operations similar to those conducted at Guantánamo Bay, according to DOD officials, this could require facilities and infrastructure that may not be readily available at existing U.S. DOD facilities. For example, DOD would require secure facilities equipped with recording equipment for conducting detainee interviews, as well as secure workspaces for intelligence personnel, documents, and equipment. According to DOD officials, its intelligence costs might increase if the detainees were moved from Guantánamo Bay to the United States. That is because most intelligence information collected at Guantánamo Bay from the detainees is used to ensure the protection of U.S. military personnel, and relocating the detainees to a U.S. facility, with more exposure than Guantánamo Bay, may increase the need for greater protective measures resulting in additional costs to implement such measures.

Fourth, inmates at U.S. DOD facilities provide services to DOD, and these and other operations performed on the installation would be affected by moving Guantánamo Bay detainees to an existing DOD facility. According to DOD, if DOD were to move all UCMJ inmates from a facility it might

also have to relocate work programs such as graphic arts, woodworking, as well as textile repair and embroidery for all Army uniforms and related gear. According to DOD, in fiscal year 2011 provision of these services by inmates at the U.S. Disciplinary Barracks resulted in almost $15 million in offset savings. Additionally, according to DOD, locating detention operations on an active military installation could present risk to the installation's enduring base operations such as administrative and training operations. For example, Ft. Leavenworth is home to the Joint Center for International Security Force Assistance, and it hosts international officials. According to DOD officials, the objection of several foreign nations to the Guantánamo Bay detention operations could affect these international exchanges.

## DOJ Corrections Facilities in the United States and Factors to Consider If They Were to Hold Detainees

DOJ, through BOP and the Marshals Service, uses over 2,000 federal, state, local, and private facilities to hold about 280,000 individuals charged with or convicted of violating federal laws.[41] Under current U.S. law, DOJ does not consider itself to have authority to maintain custody of DOD detainees under the AUMF. According to DOJ officials, DOJ does not have plans to transfer any Guantánamo Bay detainees to its facilities in the United States, and such transfer is prohibited by law. BOP and Marshals Service officials also stated that, although no active consideration has been given to the unique issues that would arise in connection with transferring Guantánamo Bay detainees to the United States, on the basis of their experience they could safely and securely house and transport the detainees if requested to do so and if given the necessary resources, planning lead time, and authorities. However, several factors would need to be considered, such as maintaining separation of detainees from the current inmate population; ensuring the safety and security of facility personnel and the detainees; and

[41]In fiscal year 2012, BOP had a budget of about $6.6 billion for salaries and expenses and a staff of about 36,700, which includes administrative, program, and support staff responsible for all of BOP's activities nationwide. In fiscal year 2012, the Marshals Service had a budget of $1.2 billion and a staff of about 5,500 employees, including U.S. marshals, deputy U.S. marshals, criminal investigators, detention enforcement officers, and administrative staff.

formulating new policies and practices for housing the detainees in DOJ facilities in the United States.[42]

## DOJ Corrections Facilities in the United States

BOP has 117 corrections facilities in the United States, where as of July 2012 it held over 177,000 federal inmates.[43] Many of these facilities consist of both general-population and segregated housing units. BOP confines inmates at all security levels—including those inmates convicted of federal crimes related to terrorism or who otherwise have a history of or connection to terrorism.[44] BOP holds inmates in facilities that range from minimum to high security, some of which are called administrative facilities and have special purposes (e.g., the detention of pretrial offenders, or the treatment of inmates with serious or chronic medical problems).[45] Currently, BOP has only one high-security maximum-custody facility—its Administrative-Maximum (ADX) facility in Florence, Colorado—to contain the most dangerous, violent, or escape-prone inmates. BOP facility security levels are based on the extent of physical security and supervision provided in the facility. BOP reports that, in fiscal year 2011, system-wide on average, the per inmate costs to house inmates ranges from $73.57 per day in a low-security prison to $94.87 per day at a high-security prison. The Marshals Service is responsible for the custody of about 63,000 individuals, who are held across 22 BOP

[42]A discussion of facilities used for classified operations and related factors that would need to be considered if the detainees were transferred to facilities in the United States can be found in the classified version of this report.

[43]One of these facilities is located in Puerto Rico. As of July 2012, BOP also held about 40,800, or about 19 percent, of federal prisoners, in 15 privately managed low- and minimum-security level prisons, in 185 residential reentry centers (also known as halfway houses), and in home detention. According to DOJ, inmates with a history of or connection to terrorism have been referred to residential reentry centers. However, as of July 2012, BOP did not hold inmates with a history of or connection to terrorism in minimum security facilities.

[44]There are a range of federal statutes that DOJ uses to prosecute terrorism-related offenses, some of which specifically address terrorist activities, such as terrorist attacks against mass transportation systems or receiving military-type training from a foreign terrorist organization, and others that address general criminal activities that could be in support of either a terrorist organization or other criminal networks, such as money laundering, immigration fraud, or drug trafficking.

[45]BOP also has seven stand-alone minimum-security facilities. However, BOP does not hold individuals charged with or convicted of terrorist-related crimes or activities in minimum-security facilities.

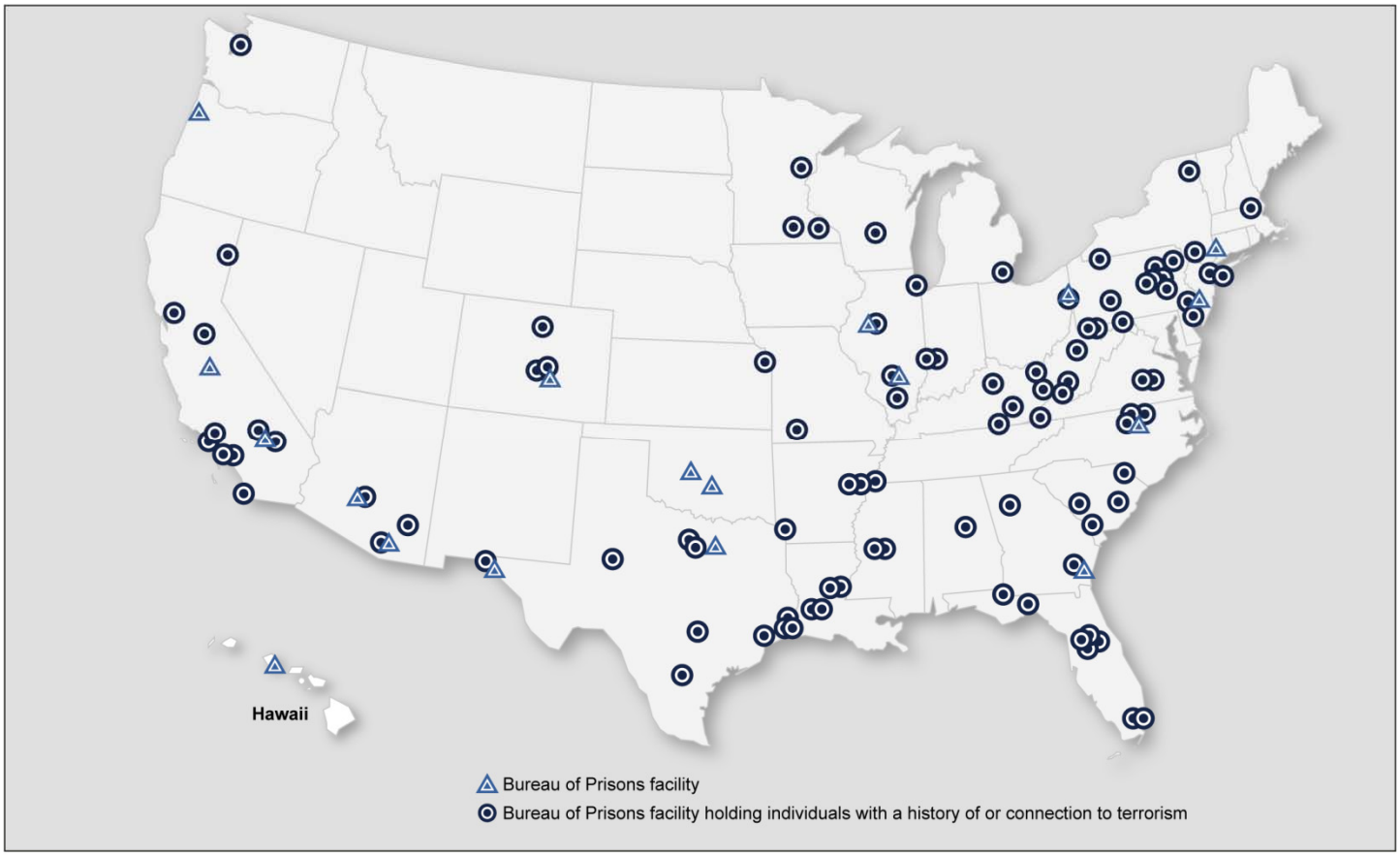
facilities, and in about 1,800 state, local, and private facilities.[46] According to Marshals Service officials, the security levels of the BOP, state, local, and private facilities it uses vary from low security to high security and administrative facilities. In addition, a facility's age, configuration, and capacity may determine the housing units the facility is able to provide. For example, some facilities provide dormitory-style housing while others may provide segregated housing units.

As of August 2012, BOP and the Marshals Service had custody of at least 377 inmates charged with or convicted of crimes related to terrorism, or who otherwise had a history of or connection to terrorism. BOP had 373 of these inmates housed in 98 of its facilities, and the Marshals Service had the remaining 4 inmates housed in 3 different facilities—2 inmates were in a BOP facility, 1 was in a privately contracted detention facility, and 1 was in a county facility.[47] See figure 8 for the locations of all BOP facilities, including the 98 facilities holding individuals with a history of or connection to terrorism; and see table 4 for the number of BOP inmates with a history of or connection to terrorism by facility security level.

[46]Generally, the Marshals Service holds more than 80 percent of its inmates in state, local, and private facilities. The remaining 20 percent are held in 22 BOP facilities that have allocated bed space for the Marshals Service. Through Intergovernmental Service Agreements, the Marshals Service contracts with approximately 1,800 state and local governments for the provision of suitable quarters and the safekeeping, care, and subsistence of the prisoners in Marshals Service custody.

[47]BOP identified these inmates by including offenders who have been charged with or convicted of either a terrorism offense, such as receiving terrorist training, or an offense with a documented connection to terrorism, such as using the proceeds of criminal activity to support a terrorist group. In addition, regardless of the nature of the offense, BOP included inmates who are engaged in, or are under investigation for engaging in, radicalization and recruitment activities. The Marshals Service does not classify individuals in their custody as having terrorism-related charges. Instead, they used other sources, including media reports and the nature of the pending charges, to identify individuals in their custody who might be considered to have such charges.

**Figure 8: Location of BOP Facilities in the United States**




Source: BOP, GAO, and Map Resources (map).

Note: This map excludes BOP minimum-security facilities.

**Table 4: BOP Inmates with a History of or Connection to Terrorism by Facility Security Level as of August 2012**

| BOP facility security level | Number of individuals with a history of or connection to terrorism[a] | Number of facilities that hold individuals with a history of or connection to terrorism |
|---|---|---|
| Minimum | 0 | 0 |
| Low | 70 | 28 |
| Medium | 123 | 38 |
| High | 42 | 16 |
| Administrative[b] | 138 | 16 |
| **Total** | **373** | **98** |

Source: GAO analysis of BOP data.

[a]BOP identified these inmates by including offenders who have been charged with or convicted of either a terrorism offense, such as receiving terrorist training, or an offense with a documented connection to terrorism, such as using the proceeds of criminal activity to support a terrorist group. In addition, regardless of the nature of the offense, BOP included inmates who are engaged in, or are under investigation for engaging in, radicalization and recruitment activities.

[b]Administrative facilities are institutions with different security levels, including maximum security. They also have special purposes, such as the detention of pretrial offenders, or the treatment of inmates with serious or chronic medical problems.

According to DOJ officials, although BOP and the Marshals Service have the correctional expertise to safely and securely house detainees with a history of or nexus to terrorism, DOJ has not made preparations for housing Guantánamo Bay detainees, nor does it have plans to do so.

## DOJ Security Classification Policies

BOP has security policies that govern where inmates, including those with a history of or connection to terrorism, are sent for their terms of incarceration. While the Marshals Service does not assign specific security levels to individual inmates, Marshals Service officials told us they consider all inmates under their custody as “high-risk” for the

purposes of prisoner handling and transportation.[48] According to BOP, the first step to determine which security level is appropriate for the inmate is "scoring" the inmate. This is done by taking into consideration information about the inmate from several sources, including the sentencing court, the Marshals Service, and other federal agencies. BOP also considers other factors such as the inmate's membership in a specific disruptive group, the inmate's history of violence, and inmate programming. On the basis of this information, BOP assigns a score to each inmate. Generally, an inmate who receives a higher classification score will be placed in a higher-security facility. In addition to scoring, BOP also considers other factors such as the inmate's medical needs, the level of overcrowding at a facility, and whether an inmate may need to be separated from others, before assigning the inmate to a facility.

The Marshals Service generally defers to the facility holding the inmate to conduct a risk assessment on the basis of information provided to facility officials by the Marshals Service and other law-enforcement agencies, the U.S. Attorney's Office, and courts to determine the inmate's appropriate custody classification level. The Marshals Service can also recommend that high-profile inmates, such as some recognized as terrorists, be held in isolation. While in Marshals Service custody, the one Guantánamo Bay detainee who was transferred to the United States in 2009 was placed in a segregated housing unit in a BOP facility in New York City. In another case, involving a terrorist suspect associated with the September 11 attacks, the Marshals Service made a special agreement with the local facility where the suspect was being held to provide increased security. For example, Marshals Service officials stated that they arranged for 24/7 monitoring of this individual, a private cell, and an additional cell for use by his legal team to conduct meetings.[49]

[48]According to Marshals Service officials, the Marshals Service assigns inmates under its custody to a facility on a case-by-case basis, primarily based on the facility's proximity to where the individual is indicted, the security measures the facility can provide, the quality of facility management, the availability of in-facility medical care, and available capacity. When possible, the Marshals Service prefers to use BOP facilities because they do not charge for bed space and, because the facilities are DOJ facilities, the Marshals Service has greater control over the detention of the inmate as compared with state or local facilities.

[49]According to Marshals Service officials, the Marshals Service must pay for these and other supplemental security measures such as additional car escorts and staff to and from the trial location for high-profile inmates in its custody.

DOJ may also apply additional security procedures for an individual on the basis of security concerns that are not reflected in the classification process; these exceptions are called special administrative measures. Special administrative measures, which must be authorized by the Attorney General, primarily limit an inmate's communications with other inmates and the outside world (e.g., separation from other inmates, limited telephone privileges, and visitation rights).[50] These measures may affect the BOP facility or housing unit where the inmate is placed. The Attorney General may authorize special administrative measures when there is the presence of substantial risk that an inmate's communications or contact with others could result in death or serious bodily injury to persons, or substantial damage to property. Generally, pretrial inmates subject to the provisions for special administrative measures would be held at facilities that are located within the Judicial District in which they have proceedings. Postconviction inmates subject to the provisions for special administrative measures would generally be held at ADX due to the requirements of the order that dictates specific controls on their housing and communications.

## DOJ Conditions of Confinement

Conditions of confinement for inmates in BOP facilities can vary on the basis of the facility's security level, inmate behavior, and other factors. BOP policies state that all facilities, security level notwithstanding, must provide the same basic conditions of confinement, such as clean housing units; nutritionally adequate meals that meet dietary requirements (such as vegetarian or religious diet); access to educational, occupational, and leisure time programming; access to work opportunities; and basic medical and mental health care.[51] All BOP facilities are to provide inmates with access to a chaplain and basic religious items according to their religious beliefs. Most inmates in general-population housing units, regardless of security level, are allowed outside of their cells approximately 16 to 17 hours per day. Generally during this time, inmates may move freely within the housing unit and may move to other areas of

[50]28 C.F.R. § 501.3. Special administrative measures may be imposed for a period of up to 120 days, or, with the approval of the Attorney General, up to 1 year and may be renewed. The BOP Director may renew special restrictions within the special administrative measures if the Attorney General or a federal law-enforcement or intelligence agency provides written notification of continued substantial risk related to the inmate's communications or contacts with other persons.

[51]BOP detention centers and metropolitan corrections centers are not required to offer the full range of programming activities to inmates.

the facility (such as the dining or work areas) through controlled or supervised movements throughout the day. In low-security facilities, inmates live in dormitories and are not confined to a cell. Typically, general-population inmates at all security levels consume their meals in a common dining area, such as a dining hall. Inmates in general-population units also have mail, visitation, and telephone privileges that are subject to monitoring.[52] In addition, BOP requires all its facilities to be accredited by the American Correctional Association.

BOP also operates specialized housing units that allow it to separate inmates from the general population. This specialized housing includes its ADX facility, its Communications Management Units, as well as other units.[53] For example, BOP's most-dangerous inmates are placed in ADX because they are perceived as a risk to the institutional security of other corrections facilities. Some of the 373 terrorism-related individuals in BOP facilities are confined in cells alone approximately 23 hours a day at ADX. According to BOP officials, as of February 2012, ADX held 41 of the 373 BOP inmates charged with or convicted of federal crimes related to terrorism. ADX has multiple housing units that provide a range of conditions of confinement on the basis of the inmate's security needs, including the following:

- *Control Unit:* The control unit is ADX's most-restrictive unit and houses BOP's most-disruptive inmates, who are allowed 7 hours of out-of-cell recreation in individual recreation areas per week. Control unit inmates are also allowed one 15-minute phone call and up to five noncontact visits per month.
- *Special Security Unit:* Generally inmates that have special administrative measures are held in the Special Security Unit. These inmates are subject to restrictive conditions specific to their special administrative measures that can include limited physical contact with other inmates; as well as limited communications, visitation, and phone calls. In addition, all inmate telephone calls and visits are contemporaneously recorded and monitored by the Federal Bureau of

[52]According to BOP, all inmate telephone calls are recorded and randomly monitored, except for attorney-inmate telephone calls. Inmates may have limited physical contact with visitors, which may be restricted by facility staff to prevent the introduction of contraband and ensure the orderly operation of the facility.

[53]For the purposes of this report, we limited our scope to the ADX facility and Communications Management Units.

Investigation, and written social correspondence is monitored by the Federal Bureau of Investigation as well. Special Security Unit inmates are allowed a minimum of two 15-minute phone calls and up to five visits per month.

- *General-Population and Step-Down Units*: According to BOP officials, the majority of inmates at ADX are held either in general-population units or in the step-down unit. The step-down unit is a four-phase program in which inmates may progress from more-restrictive to less-restrictive phases over a minimum of 36 months on the basis of good conduct. For example, inmates in the step-down unit may interact with other inmates during their recreation hours and receive more telephone time as they progress through the phases. Both general-population and step-down unit inmates are allowed a minimum of two 15-minute phone calls and up to five visits per month.

According to BOP officials, all inmates at ADX are generally kept segregated from each other; they consume all their meals inside their cells, except for those in phases three and four of the step-down unit, in which inmates may share their meals with a small group of other inmates. Like all BOP facilities, ADX can provide a religiously observant diet. A full-time chaplain provides for inmates' religious needs, but BOP officials explained that group prayers are not allowed at ADX. BOP provides most educational, religious, and recreational programs to ADX inmates in their cells through staff visits or by closed circuit television or radios located inside the inmates' cells. See figures 9 and 10 for examples of a segregated housing unit and recreation areas.

**Figure 9: Step-Down Housing Unit, "Supermax," U.S. Administrative Maximum Facility, Florence, Colorado**


Source: BOP.

**Figure 10: Outdoor Recreation Area, "Supermax," U.S. Administrative Maximum Facility, Florence, Colorado**

Source: BOP.

In addition to ADX, some individuals with a history of or connection to terrorism are held in Communications Management Units, which are administrative units located within two medium-security BOP facilities, where they are allowed to interact with the other inmates in the unit for up to 15 hours a day.[54] As of February 2012, of the 373 inmates with a history of or connection to terrorism, 44 were held in these units. In 2006 and 2008, BOP established these units to confine inmates who require increased monitoring of all communications between inmates and with persons outside the prison.[55] Communications Management Units require 100 percent live monitoring of inmates' telephone calls and social visits,

[54]According to BOP policy, inmates in the Communications Management Unit at the Terre Haute Federal Correctional Institution (Terre Haute, Indiana) are ordinarily housed in double-bunk cells. Inmates in the Communications Management Unit at Marion U.S. Penitentiary (Marion, Illinois) are ordinarily housed in single-bunk cells.

[55]In 2006, BOP established the Terre Haute Communications Management Unit, and in 2008, the Marion Communications Management Unit.

and review of all incoming and outgoing social mail.[56] Inmates are allowed two 15-minute telephone calls per week and 8 hours of visiting time per month, although no physical contact is allowed during visits. All telephone calls and social visits are live monitored and recorded, and they must occur in English only, unless the call is previously scheduled for and conducted through simultaneous translation monitoring. Other than increased communications monitoring, BOP officials stated that conditions of confinement in these units are the same as conditions of confinement for inmates in other medium-security general-population housing units, including access to medical and mental health services; meals meeting inmate dietary requirements served in a common dining area; access to recreation in a common area daily up to 15 hours per day; religious service opportunities; and access to leisure and law library services, table games, television in the common areas, and some aerobic exercise equipment. See figure 11 for a photographic example of a Communications Management Unit cell.

[56]Legal and special mail (e.g., attorney, federal courts) can be sealed and delivered to unit management.

**Figure 11: Communications Management Unit Cell, Terre Haute, Indiana**

Source: BOP.

Marshals Service policy requires that the facilities it uses to detain inmates meet minimum conditions of confinement, including 24-hour staff supervision; three adequate meals per day; availability of adequate emergency medical coverage 24 hours a day; adequate security,

sanitation, and hygiene services; and access to prescription drugs. In addition, Marshals Service policy states Marshals should seek to develop intergovernmental agreements with facilities that can provide special prisoner services, such as mental health care.

## Factors to Consider If the Guantánamo Bay Detainees Were to Be Held in DOJ Corrections Facilities in the United States

As previously stated, DOJ does not consider itself to have authority to maintain custody of DOD detainees under the AUMF and has no plans to house Guantánamo Bay detainees at its U.S. facilities; and BOP and the Marshals Service would need additional statutory authority to take custody of Guantánamo Bay detainees. If prohibitions against transferring the Guantánamo Bay detainees to the United States were eliminated, and BOP and the Marshals Service were authorized to conduct military detention under the AUMF in U.S. facilities, our interviews with DOJ officials and analysis of detention-operation documentation identified several factors—among others such as funding, personnel resources, and planning time—that would need to be considered. These factors include (1) formulation of policies and practices for housing the detainees; (2) ensuring the safety of facility personnel, the detainees, and the general public; (3) identifying adequate space for housing the detainees and maintaining separation of detainees from the current inmate population.

First, according to DOJ officials, new operational policies and practices would need to be formulated for housing the detainees in BOP facilities in the United States or in other types of facilities used by the Marshals Service for detention purposes. BOP and the Marshals Service established existing policies and practices pursuant to federal criminal statutes specifically authorizing them to take custody of individuals charged with or convicted of violating a federal law.[57] In addition, BOP follows American Correctional Association standards for care and treatment of inmates convicted or charged under U.S. law. According to DOJ officials, these existing policies and practices would not be sufficient if DOJ received new authority to conduct law-of-war detention. New policies and practices that would be needed include standards governing

[57]See 18 U.S.C. §§ 3142(i), 3621(a)-(b), 4001, 4042(a)(2), 4068. Pursuant to statute, DOJ also has authority to take custody of certain persons convicted by courts-martial, offenders in the District of Columbia, and state offenders pursuant to a contract for reimbursement. See 18 U.S.C. §§ 4083, 5003; Balanced Budget Act of 1997, Pub. L. No. 105-33, § 11201(a)-(b), 111 Stat. 251, 734.

(1) the holding of detainees who have not been charged with or convicted of violating U.S. law, (2) where and how each category of detainee would be housed, (3) religious and cultural accommodations, (4) visitation by the International Committee of the Red Cross, and (5) intelligence gathering and use.

Second, according to BOP and Marshals Service officials, additional procedures and infrastructure would be required governing where and how each category of detainee would be held, including their accommodations. According to Marshals Service officials, they may have to adopt additional measures to transport detainees to and from BOP facilities, which could have implications on detainee and public safety. For example, Marshals Service officials explained that when it had a high-profile prisoner associated with the September 11 attacks in its custody, it used extra security vehicles and additional staff to help ensure safety and security during transport.

Third, according to BOP officials, given its current facility capacity rates, finding capacity in its facilities for the Guantánamo Bay detainee population may present challenges. Overall, according to BOP, as of August 2012, its facilities system wide were 38 percent overcrowded, and crowding is a relatively higher concern at facilities with higher security levels, where, according to BOP officials, Guantánamo Bay detainees would likely be held. Despite current overcrowding, BOP officials said that if they had custody of the detainees, with adequate resources, they could accommodate the detainees.[58]

Finally, BOP officials we interviewed said that if they were to add 166 detainees to their facilities, keeping them completely separated from the existing inmate population would have an effect on BOP's operations in the facility or facilities where the detainees were placed. For example, if BOP needed to confine detainees to single cells, existing inmates would have to be moved to create space for the detainees, which could require that BOP triple bunk some of the current inmate population. According to

[58]BOP expects to activate four newly constructed prisons by 2014, adding about 5,568 beds. In addition, BOP is budgeting for additional contracted bed space—1,000 beds in 2013 and 1,500 the next year, but the addition of these contracted beds is subject to future appropriations. For additional information on BOP capacity, see: GAO, *Bureau of Prisons: Growing Inmate Crowding Negatively Affects Inmates, Staff, and Infrastructure*, GAO-12-743 (Washington, D.C.: Sept. 12, 2012).

BOP officials, increasing the number of inmates per cell can affect BOP's ability to ensure the safety and security of its personnel, inmates, and institutions. Another challenge BOP would face in maintaining separation of detainees and inmates would be in the provision of inmate-provided services including food preparation, commissary operations, and laundry, educational, and religious services. According to BOP officials, if detainees were to have access to these services, BOP would require additional personnel to ensure separation between the detainees and the inmates. For example, while most general–population inmates go to a shared dining hall for their meals—which can be served and prepared by other inmates—to avoid interaction with inmates, detainees would likely not be able to eat meals in shared dining halls, or in dining facilities where other inmates work.

## Agency Comments and Our Evaluation

We provided a draft of this report to DOD, DOJ, and the Department of Homeland Security for comment. The Department of Homeland Security declined to provide comments, and DOD provided technical comments that were incorporated as appropriate. DOJ provided technical comments as well as a letter making additional written comments, which are reproduced in appendix IV and were incorporated as appropriate.

In its letter, DOJ stated that, generally speaking, BOP and the Marshals Service have the correctional expertise to safely and securely house detainees with a nexus to terrorism. However, DOJ reiterated that current law prohibits the transfer of detainees to the United States; DOJ has not made preparations for housing Guantánamo Bay detainees, and does not have plans to do so. DOJ also stated that, given these factors, any discussion of housing detainees in the United States is hypothetical and raises legal, policy, and resource issues that descriptions of current policies and practices contained in this report cannot fully address. We agree that given the legal restrictions on transferring detainees to the United States and DOJ's stated policy that it does not plan to transfer detainees to the United States, our assessment of factors to be considered if DOD or DOJ facilities were used to hold detainees is hypothetical. Our report provides a descriptive discussion of several factors that would need to be considered should the current legal restrictions be discontinued and detainees were transferred to the United States, but does not purport to provide a comprehensive list of all factors. Our report also clearly states the current legal restrictions and policy decisions against transferring detainees to the United States, and makes no recommendations on the legal and policy issues surrounding

Guantánamo Bay detainees and whether they should be transferred to the United States.

DOJ also recommended that we delete Table 4 showing the number of BOP inmates with a history of or connection to terrorism by facility security level. We believe the table accurately demonstrates a point DOJ makes in its comment letter; namely that BOP and the Marshals Service have the correctional expertise to safely and securely house detainees with a history of or connection to terrorism. In response to DOJ's comment, we added language clarifying that, while DOJ has this expertise, DOJ has not made preparations or plans to house Guantánamo detainees.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. we will send copies to appropriate congressional committees, the Secretary of Defense, the Attorney General, and the Secretary of Homeland Security. In addition, the report will be available at no charge on the GAO website at http://www.gao.gov.

If you or your staff have any questions about this report, please contact Brian J. Lepore at (202) 512-4523 or LeporeB@gao.gov, or David C. Maurer at (202) 512-9627 or MaurerD@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.

Sincerely yours,

Brian J. Lepore
Director
Defense Capabilities and Management Team

David C. Maurer
Director
Homeland Security and Justice Team

# Appendix I: Scope and Methodology

The scope of our work was to provide a descriptive review of the detention facilities and infrastructure at Guantánamo Bay, existing military and civilian corrections facilities in the United States, and an overview of factors that might need to be considered if Guantánamo Bay detainees were moved to facilities in the United States. Hence, our review did not include an evaluation of whether specific U.S. facilities would be suitable for holding Guantánamo Bay detainees. Our description of what factors would need to be considered does not include legal issues related to the Guantánamo Bay detainees that are currently being adjudicated, such as habeas corpus, and right to counsel. We limited our review to corrections facilities in the United States operated by the Department of Defense (DOD) and the Bureau of Prisons (BOP) and federal, state, local, and private facilities used by the U.S. Marshals Service (Marshals Service). Additionally, we interviewed officials from the Department of Homeland Security who told us that its detention facilities are used to detain foreign nationals who are awaiting deportation from the United States, not detainees brought to the United States for law-of-war detention, pretrial detention, or postconviction incarceration. Thus we subsequently removed the Department of Homeland Security from the scope of our work.

To describe the history and current status of Guantánamo Bay detention operations, facilities, and infrastructure, we reviewed relevant international law and U.S. laws and policies relating to DOD's detention operations, including Common Article 3 of the Geneva Conventions of 1949 and relevant sections of Title 10 of the U.S. Code. We also reviewed executive orders pertaining to Guantánamo Bay detention operations, an interagency report on detainees' status, and DOD reports on conditions of detention at Guantánamo Bay. We conducted a site visit to the detention and support facilities at the U.S. Naval Station Guantánamo Bay, where we interviewed officials and observed operations at Camps 5, 6, Echo, and Iguana, and toured former camps. Members of the team also received a detailed briefing on Camp 7 and reviewed photographs of the facility. We met with officials and toured the detention-support facilities including the courtroom complex, media-support facility, detainee hospital, behavioral health center, kitchen facility, intelligence operations–support facilities, information-technology facilities, visitor lodging, and staff housing. We also met with officials responsible for providing legal and International Committee of the Red Cross support. In addition, we interviewed officials from the Office of the Secretary of Defense, Joint Staff, U.S. Southern Command, Joint Task Force-Guantánamo, Congressional Research Service, and American Correctional Association. In order to determine the average cost to operate Guantánamo Bay detention facilities and support operations, we

obtained data from U.S. Southern Command on funding that the U.S. Army and U.S. Southern Command provide for detention operations at Guantánamo Bay. We met with officials to clarify funding sources and totals, as well as the cost categories not included in these data, and analyzed the data to determine average funding among fiscal years 2008 through 2012. We conducted a data-reliability analysis of these data by asking detailed questions of U.S. Southern Command regarding the origins and means of collection of these data, and determined that the data were sufficiently reliable for our purposes.

To describe DOD corrections facilities in the United States and factors to consider in the event that they were to hold Guantánamo Bay detainees, we focused the scope of our review on DOD's Level II and Level III facilities. DOD has two Level II regional corrections facilities and three Level II consolidated brigs used for pretrial confinement and for inmates with sentences ranging from 1 to 5 years, and one Level III facility used for inmates with sentences from 5 years to life, and inmates sentenced to death. We excluded DOD's Level I facilities, because they are not intended for confinement of individuals for more than 1 year. We reviewed relevant laws such as the Detainee Treatment Act, the Military Commissions Act, and the Uniform Code of Military Justice; and DOD documents that govern its corrections operations and facilities, such as DOD directives on the administration of military corrections facilities and Army and Navy corrections manuals and regulations. In order to determine overall capacity levels in DOD Level II and Level III corrections facilities, we obtained and analyzed facility capacity data from the Army and the Navy. We conducted a data-reliability analysis of these data by obtaining information from DOD officials on how the data are collected and used, and what internal controls the data are subject to. We determined that they were sufficiently reliable for our purposes. In addition, we conducted site visits to the Naval Consolidated Brig Chesapeake, Virginia (Level II); the Midwest Joint Regional Correctional Facility, Ft. Leavenworth, Kansas (Level II); and the United States Disciplinary Barracks, Ft. Leavenworth, Kansas (Level III). We interviewed officials and observed operations at these facilities. We selected these facilities because they represent both Level II and Level III facility operations; both Army and Navy operating procedures; and because they reflect a range of housing configurations—including both segregated and general-population housing units. In addition, we interviewed officials responsible for the management of DOD corrections facilities, including officials from the Office of the Secretary of Defense, Joint Staff, Army Corrections Command, and Bureau of Naval Personnel.

To identify factors for consideration if the Guantánamo Bay detainees were transferred to DOD facilities in the United States, we reviewed analyses from 2009 conducted by DOD to determine whether its facilities were equipped to conduct Guantánamo Bay detainee operations. We also interviewed an official that worked on these analyses to identify what factors and facilities may have changed since 2009. Because these analyses were based on the assumption that all detention operations—including intelligence operations and military commission support—would remain the same, we maintained this assumption in our description of factors requiring consideration in the event that Guantánamo Bay detainees were moved to DOD facilities in the United States. Therefore, using this assumption as our framework, we identified challenges DOD might face in conforming to all relevant U.S. laws and policies, international laws, as well as DOD corrections policies and operating procedures if Guantánamo Bay detainees were transferred to DOD facilities. We also identified operational challenges that DOD might face in moving its detention operations as they currently exist to the United States. Factors we describe in this section provide a summary of several key issues DOD may need to consider, and is not intended to be an all-inclusive list. Additionally, we are issuing a classified version of this report. That version includes an additional appendix that provides a discussion of Guantánamo Bay facilities used for classified operations that would need to be considered if the detainees were transferred to facilities in the United States.

To describe Department of Justice (DOJ) corrections facilities in the United States we reviewed relevant laws and policies, such as federal laws and regulations governing detention pending trial in federal court, imprisonment of federal offenders, and BOP management and operations; BOP and Marshals Service policies, such as the BOP policies on inmate classification and management and a Marshals Service directive on prisoner detention and housing. We also interviewed officials from BOP, the Marshals Service, and the Office of the Deputy Attorney General. We conducted site visits to and interviewed officials at four BOP facilities including: U.S. Penitentiary, Leavenworth, Kansas; U.S. Penitentiary, Lewisburg, Pennsylvania; Federal Correctional Complex, Florence, Colorado; and Federal Correctional Complex, Allenwood, Pennsylvania. We selected these facilities because they provide examples of various types of housing units and security levels, including segregated and general-population housing units. In order to determine overall capacity levels in DOJ facilities, we obtained and analyzed facility capacity data from BOP and the Marshals Service. To assess the reliability of the BOP and Marshals Service data on facility capacity, we

reviewed agency documentation, received a demonstration of BOP's facility database, and interviewed BOP and Marshals Service officials. We determined that the data were sufficiently reliable for our purposes.

To describe the number and locations of inmates in BOP and Marshals Service custody charged with or convicted of terrorism-related crimes, we obtained inmate data from both agencies. Both BOP and the Marshals Service determined the criteria for inmates identified as charged with or convicted of terrorism-related crimes. BOP identified these inmates by including offenders who have been charged with or convicted of either a terrorism offense, such as receiving terrorist training, or an offense with a documented connection to terrorism, such as using the proceeds of criminal activity to support a terrorist group. In addition, regardless of the nature of the offense, BOP included inmates who are engaged in, or are under investigation for engaging in, radicalization and recruitment activities. BOP described the group of inmates for which they provided data as inmates with a history of or nexus (connection) to terrorism. While the Marshals Service does not classify individuals in its custody as having terrorism-related charges, it used other sources, including media reports and the nature of the pending charges, to identify individuals in its custody who might be considered to have such charges. To describe factors that would need to be considered if Guantánamo Bay detainees were transferred to DOJ facilities in the United States, we assumed that operations or conditions of confinement at facilities used by BOP or the Marshals Service may be the same as those as currently at Guantánamo Bay. While it is likely that conditions of confinement and related procedures for the detainees would change if they were moved into DOJ facilities, it is unclear what changes would occur. Thus, for the purposes of this report, when discussing factors for consideration if the detainees were moved to DOJ facilities, we assumed that most conditions and procedures would remain the same. Therefore, using this assumption as our framework, we identified challenges DOJ might face in conforming to relevant U.S. laws and policies, as well as DOJ corrections policies and operating procedures if Guantánamo Bay detainees were transferred to DOJ facilities. We also identified operational challenges that DOJ might face in providing the same scope and level of detention operations at its facilities in the United States as DOD provides at Guantánamo Bay. Factors we describe in this section provide a summary of several key issues DOJ may need to consider, and is not intended to be an all-inclusive list.

We conducted this performance audit from January 2012 to November 2012 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

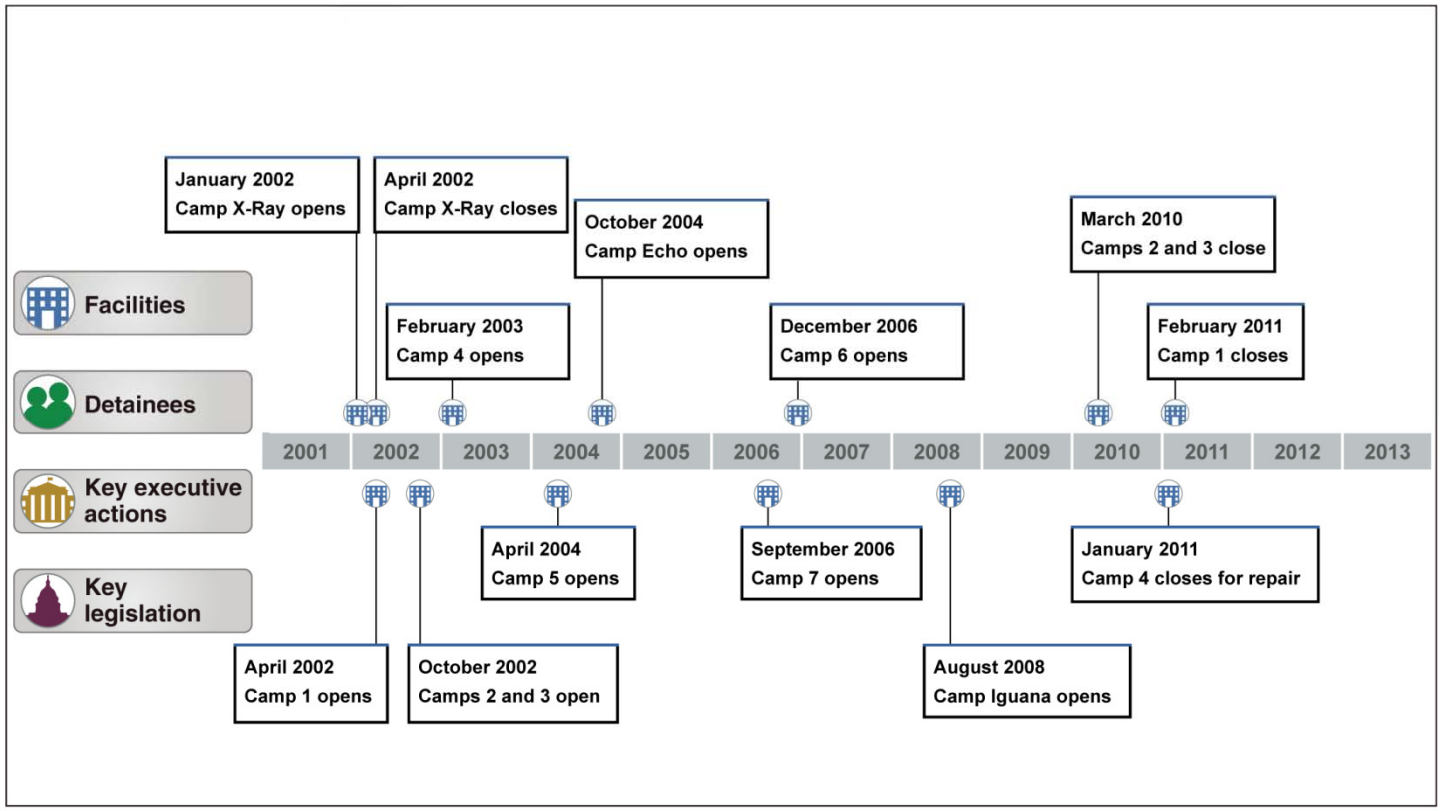
# Appendix II: Summary of Key Legislation Affecting the Potential to Transfer Guantánamo Bay Detainees to the United States

In addition to legal issues pertaining to the authority of civilian agencies to conduct military detention operations, since Executive Order 13492 was signed in January 2009, a number of statutes have limited or prohibited the transfer of Guantánamo Bay detainees to U.S. facilities.

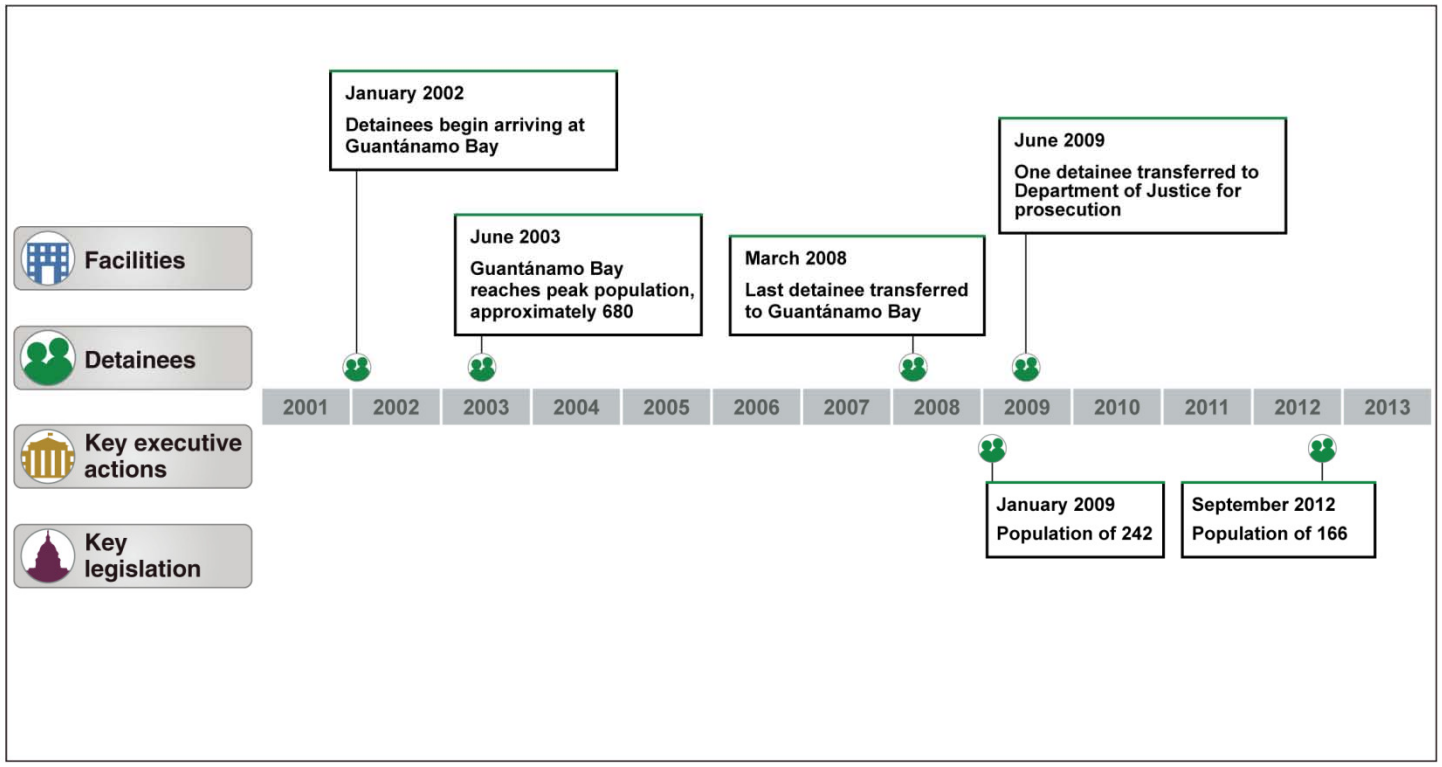
| Legislation | Date enacted | Effect on transfer of detainees |
|---|---|---|
| *Supplemental Appropriations Act, 2009* Pub. L. No. 111-32 (2009) | June 24, 2009 | Prohibits the use of federal funds to transfer Guantánamo Bay detainees into the United States, except for prosecution or detention during legal proceedings, and requires the President to report this transfer to Congress 45 days in advance and provide detailed plans regarding potential risks and mitigation strategies. |
| *National Defense Authorization Act for Fiscal Year 2010* Pub. L. No. 111-84 (2009) | October 28, 2009 | During the specified period, prohibits the use of funds made available to Department of Defense (DOD) to release detainees into the United States, and limits the authority of DOD to transfer detainees to the United States until after the President submits a comprehensive plan including, for example, potential risks, costs, and mitigation strategies for each detainee to be transferred. |
| *Consolidated Appropriations Act, 2010* Pub. L. No. 111-117(2009) | December 16, 2009 | Prohibits the use of federal funds to transfer Guantánamo Bay detainees into the United States, except for prosecution or detention during legal proceedings, and requires the President to report this transfer to Congress 45 days in advance and provide detailed plans regarding potential risks and mitigation strategies. |
| *Ike Skelton National Defense Authorization Act for Fiscal Year 2011* Pub. L. No. 111-383 (2011) | January 7, 2011 | Prohibits the use of funds authorized for fiscal year 2011 to transfer Guantánamo Bay detainees to the United States. Prohibits the use of funds to construct or modify facilities in the United States for the purpose of detaining or imprisoning detainees under DOD control. |
| *Department of Defense and Full-Year Continuing Appropriations Act, 2011* Pub. L. No. 112-10 (2011) | April 15, 2011 | Prohibits the use of federal funds to transfer or assist in the transfer of Guantánamo Bay detainees into the United States, unless the detainee is a U.S. citizen or a member of the U.S. Armed Forces. |
| *Consolidated and Further Continuing Appropriations Act, 2012* and *Consolidated Appropriations Act, 2012* Pub. L. No. 112-55 (2011) and Pub. L. No. 112-74 (2011). | November 18, 2011 and December 23, 2011 | Both laws prohibit the use of federal funds to transfer or assist in the transfer of Guantánamo Bay detainees into the United States, unless the detainee is a U.S. citizen or a member of the U.S. Armed Forces. |
| *National Defense Authorization Act for Fiscal Year 2012* Pub. L. No. 112-81(2011) | December 31, 2011 | Prohibits the use of funds authorized for fiscal year 2012 to transfer Guantánamo Bay detainees to the United States. Prohibits the use of funds to construct or modify facilities in the United States for the purpose of detaining or imprisoning detainees under DOD control. |

Source: GAO analysis of relevant laws.

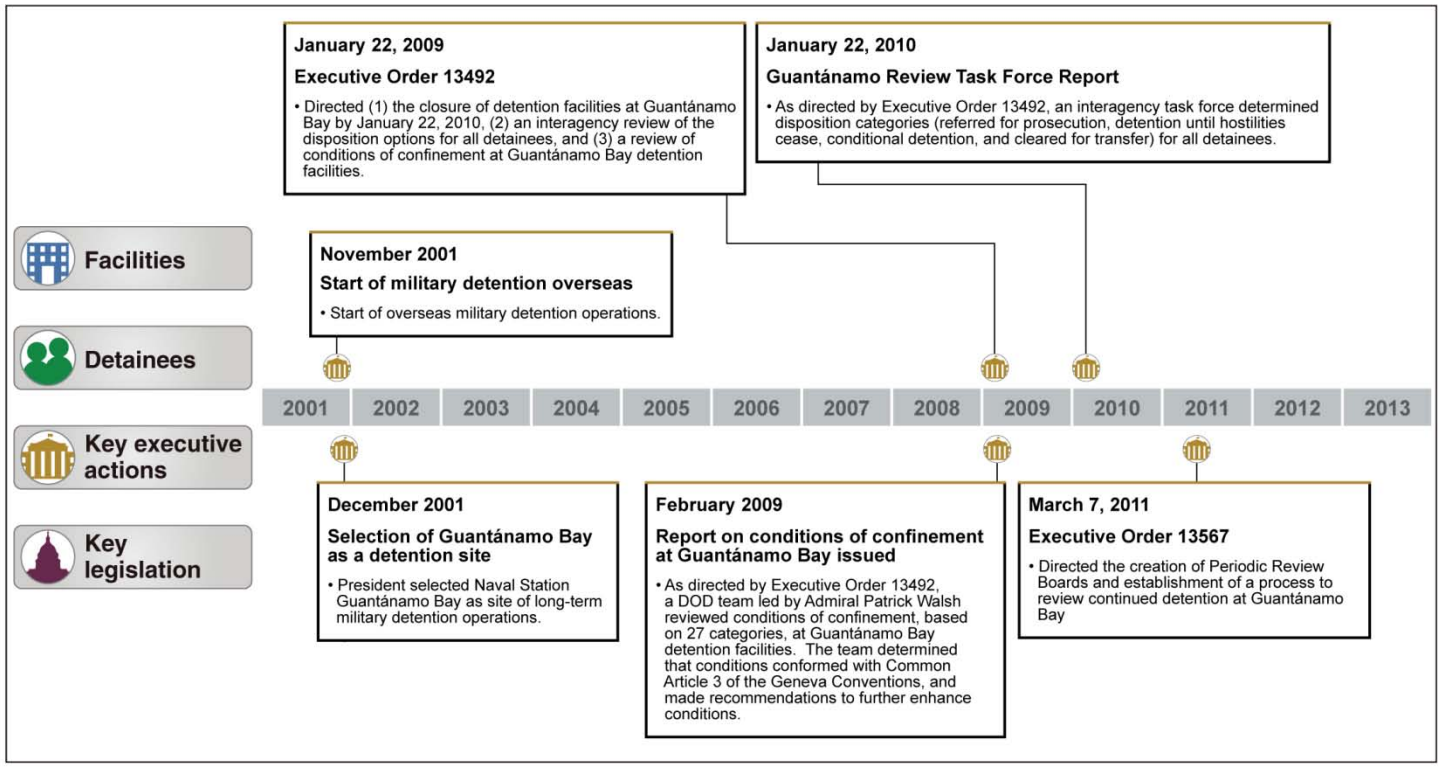
# Appendix III: Noninteractive Timeline of Guantánamo Bay Detention Operations



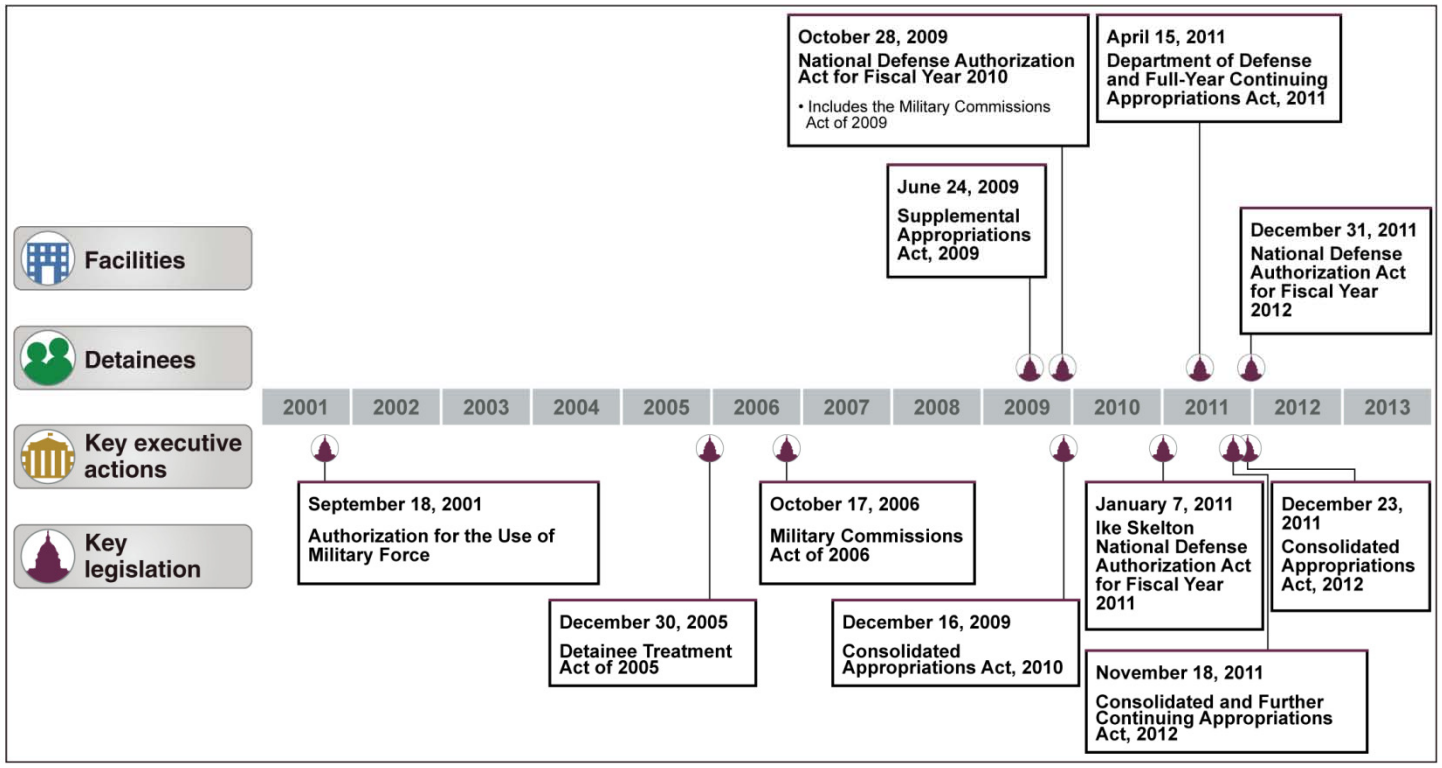

Source: DOD, DOJ, and GAO analysis of select executive and legislative actions.




Source: DOD, DOJ, and GAO analysis of select executive and legislative actions.



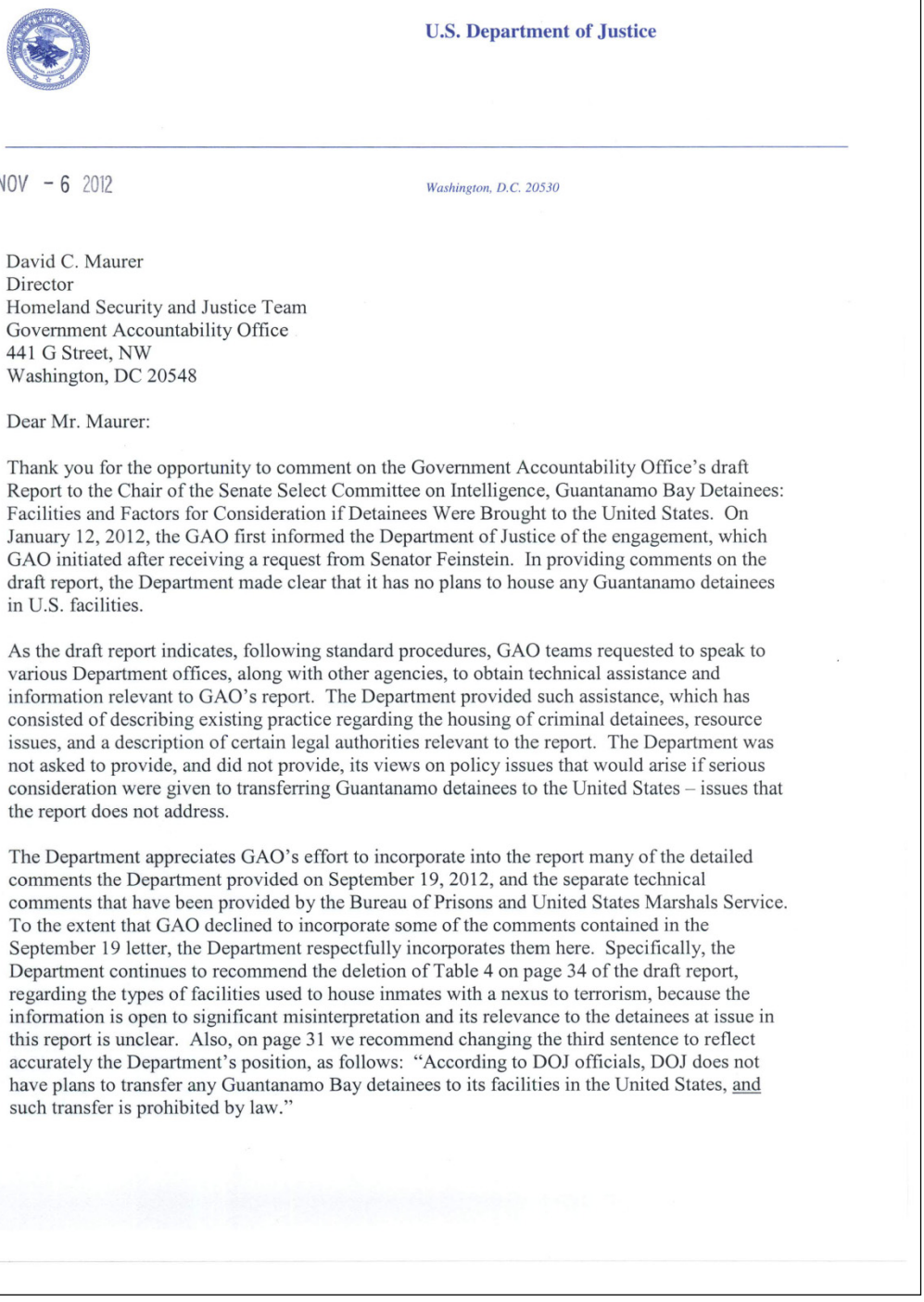

Source: DOD, DOJ, and GAO analysis of select executive and legislative actions.




Source: DOD, DOJ, and GAO analysis of select executive and legislative actions.

# Appendix IV: Comments from the Department of Justice

Note: Page numbers in the draft may differ from those in this report.



U.S. Department of Justice

NOV - 6 2012

*Washington, D.C. 20530*

David C. Maurer
Director
Homeland Security and Justice Team
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Maurer:

Thank you for the opportunity to comment on the Government Accountability Office's draft Report to the Chair of the Senate Select Committee on Intelligence, Guantanamo Bay Detainees: Facilities and Factors for Consideration if Detainees Were Brought to the United States. On January 12, 2012, the GAO first informed the Department of Justice of the engagement, which GAO initiated after receiving a request from Senator Feinstein. In providing comments on the draft report, the Department made clear that it has no plans to house any Guantanamo detainees in U.S. facilities.

As the draft report indicates, following standard procedures, GAO teams requested to speak to various Department offices, along with other agencies, to obtain technical assistance and information relevant to GAO's report. The Department provided such assistance, which has consisted of describing existing practice regarding the housing of criminal detainees, resource issues, and a description of certain legal authorities relevant to the report. The Department was not asked to provide, and did not provide, its views on policy issues that would arise if serious consideration were given to transferring Guantanamo detainees to the United States – issues that the report does not address.

The Department appreciates GAO's effort to incorporate into the report many of the detailed comments the Department provided on September 19, 2012, and the separate technical comments that have been provided by the Bureau of Prisons and United States Marshals Service. To the extent that GAO declined to incorporate some of the comments contained in the September 19 letter, the Department respectfully incorporates them here. Specifically, the Department continues to recommend the deletion of Table 4 on page 34 of the draft report, regarding the types of facilities used to house inmates with a nexus to terrorism, because the information is open to significant misinterpretation and its relevance to the detainees at issue in this report is unclear. Also, on page 31 we recommend changing the third sentence to reflect accurately the Department's position, as follows: "According to DOJ officials, DOJ does not have plans to transfer any Guantanamo Bay detainees to its facilities in the United States, and such transfer is prohibited by law."

In addition, the Department reiterates the broader points made in the September 19 comments. As the draft report states, current law prohibits the transfer of Guantanamo detainees to the United States. Importantly, because current law bars the transfer of the detainees to the United States, and such transfers are not being considered, the Department's comments in response to GAO's hypothetical questions about housing such detainees in the United States did not address all of the issues that the Department would likely identify if such transfers were seriously considered. Accordingly, although the Bureau of Prisons and United States Marshals Service assisted GAO in obtaining an accurate account of current policies relating to U.S. facilities, procedures, and the prison population, any decision by Congress and the Executive Branch to transfer Guantanamo detainees to the United States would raise legal, policy, and resource issues that descriptions of current policies and practices cannot fully address. Any information provided by the Department bearing on how such a decision would implicate Department resources or authorities is necessarily tentative because the Department has not had occasion to evaluate those issues in detail.

The only conclusion supportable by the information provided by the Department is that, generally speaking, the Bureau of Prisons and Marshals Service have the correctional expertise to safely and securely house detainees with a nexus to terrorism. However, the Department has not made preparations for housing Guantanamo detainees, does not have plans for doing so, has not recently explored the issues that would need to be considered, and would require adequate lead time and considerable resources to house Guantanamo detainees.

Sincerely,

Lee J. Lofthus
Assistant Attorney General
for Administration

# Appendix V: GAO Contacts and Staff Acknowledgments

## GAO Contacts

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## Staff Acknowledgments

In addition to the contacts named above, Alissa Czyz (Assistant Director), Edward J. George, Jr. (Assistant Director), Carla Brown, Jennifer Bryant, Frances Cook, Michele Fejfar, Gregory Marchand, Tida Reveley, Kelly Rubin, Jennifer Spence, Amie Steele, Cheryl Weissman, and Yee Wong made significant contributions to this report.