



JUL 25 2011

The Honorable Richard G. Lugar  
United States Senate  
Washington, DC 20510

Dear Senator Lugar:

We write collectively in response to your July 6, 2011 letter to the Attorney General about the case of Ahmed Abdulkadir Warsame. An identical letter is being sent to each of the Senators who joined in that letter.

The decision to prosecute Warsame in federal court, made only after conducting a comprehensive intelligence interrogation to the satisfaction of the Intelligence Community and only after careful consideration of all the available options, is in the best interests of national security. During these discussions, each of us addressed the aspects of the situation within our areas of responsibility, and the final decision has our unanimous support, and the support of all other members of the President's national security team.

As you know, Warsame was indicted by a grand jury in the Southern District of New York for a range of alleged terrorist-related acts. The decision to prosecute Warsame there was based on the specific facts of the case.

In your letter, you raise the alternate possibility of military commissions. To be sure, as a result of bipartisan reforms we worked with the Congress to bring about in the Military Commissions Act of 2009, that system has renewed credibility and provides all of the core rights and protections that are necessary to ensure a fair trial. However, in this case there were unique legal issues associated with military commission jurisdiction that posed significant litigation risks. Specifically, establishing that Warsame fits squarely within the definition in the 2009 Act of those individuals eligible for prosecution by military commission would raise novel legal questions and could require the use of classified evidence that would not be necessary in federal court. By comparison, Title 18 does not contain those restraints, and we were fully satisfied that prosecuting Warsame, based on the available evidence and offenses, was the best option in this case. If convicted of certain charges after trial in federal court, Warsame faces a mandatory life sentence.

In your letter, you also state that the decision to prosecute Warsame "reverses U.S. policy and legal precedent." In fact, there is a long track record of bringing terrorists, regardless of where they are captured, to justice in our federal court system, dating back through several previous Administrations. Congress itself recognized the importance of prosecuting accused terrorists in federal court by incorporating into Title 18 offenses such as material support to terrorism, and, indeed, many of you helped strengthen our federal criminal laws in the wake of 9/11, to better enable the Department of Justice to investigate, prosecute, convict and incapacitate terrorists. The prior Administration utilized the federal courts to prosecute terrorists hundreds of times, with great success.

Next, you state that this prosecution "will trigger more Jihadist attention to the city and court where the prosecution will take place." We have seen no intelligence to support that claim. While intelligence reporting continues to confirm that al-Qaeda and its affiliates are planning attacks on the Homeland, we see no indication that al-Qaeda's plans are driven by a decision to bring an individual such as Warsame to federal court.

Finally, your letter references increased costs associated with trying terrorist suspects in federal courts and asserts that it will lead to "considerable expense and time diverted from U.S. criminal cases." To the contrary, the Department of Defense spends approximately \$150 million per year on detention operations at Guantanamo, currently at a rate of more than \$800,000 per detainee. Meanwhile, our federal prisons spend a little over \$25,000 per year, per prisoner, and federal courts and prosecutors routinely handle numerous terrorist cases a year well within operating budgets. While cost alone does not and should not dictate an important decision such as this, it is worth noting that federal criminal prosecutions are by no means more expensive than detention or military commissions prosecution at Guantanamo.

When it comes to the capture, detention, interrogation, and prosecution of suspected terrorists, we are convinced that our warfighters and counterterrorism professionals need all the legally available tools of national power, and the flexibility to make well-informed decisions about how to handle terrorist suspects, based on the unique circumstances of each case. We look forward to working with each of you to strengthen our efforts against those who threaten our national security.

Sincerely,



Eric H. Holder, Jr.  
Attorney General



Leon E. Panetta  
Secretary of Defense



James R. Clapper  
Director of  
National Intelligence



Janet A. Napolitano  
Secretary of  
Homeland Security





The Honorable John McCain  
United States Senate  
Washington, DC 20510

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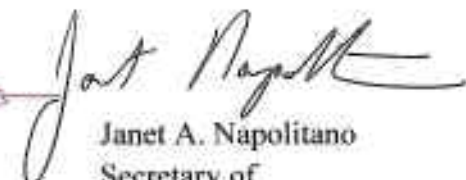
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Attorney General



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JUL 25 2011

The Honorable Mitch McConnell  
United States Senate  
Washington, DC 20510

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