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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

August 14, 2024

The Honorable Lloyd J. Austin III
Secretary of Defense
Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301

Dear Secretary Austin:

I will never forget the horrific attack against our country on September 11, 2001. My heart goes out to all of the families who lost loved ones that day. The victims and those who continue to mourn them deserve justice. The husbands and wives who lost their spouses, the children who never knew their parents, and the siblings, partners, friends, colleagues, and so many others who still carry the grief from that day with them deserve justice for this heinous crime. As Americans, we all want and deserve justice as well.

For some, justice means closure and finality; the chance to tell one's story; or the opportunity to learn the truth about what happened to one's loved ones. For others, justice means a fair penalty, whether that is a life sentence or the death penalty.

The best path to achieving justice would have been a fair trial in our federal courts, where hundreds of terrorism cases have been prosecuted successfully. The Bush Administration, however, made the ill-fated decision to divert from the rule of law and the values that set this nation apart from those who attacked us on 9/11. They tortured detainees, held them incommunicado in black sites, and set up the notorious prison and military tribunals at Guantánamo Bay. The decision to torture prisoners and then prosecute them in makeshift, untested military commissions denied the victims of 9/11 the trial and justice they should have received years ago.

Instead, the victims and their loved ones have been waiting for more than two decades for justice, and the trial has not even started. After years of endless pretrial proceedings, it has become painfully clear that these cases are on a road to nowhere. One brave woman who lost her brother on 9/11 testified at a hearing I chaired in the Senate Judiciary Committee about the pain of watching many other 9/11 family members pass away without justice or closure as the military commissions continued to flounder for years on end. Children who lost a parent in the attacks have grown into adults, all without the finality of a guilty verdict.

Those watching the commissions closely know all too well that even if the 9/11 case reaches trial, there will be many more years of appeals and an uncertain outcome, given that key evidence is tainted by torture, and the commissions themselves have been rife with irregularities.

We have a legal and moral obligation to deliver justice for these family members, rather than false promises that these commissions will ever deliver more. That's why I am troubled by your decision to revoke the guilty pleas that, in the reasoned judgment of the prosecutors of the case, were the best path forward to finality and justice. Though I recognize not all families agree, my office has heard from a number of family members who have been devastated by your decision to take away these guilty pleas and the important measure of closure that they brought.

In addition to closure, this agreement would have given families the opportunity to access information and have their questions answered in ways that a trial, if it ever happens, is unlikely to provide. Moreover, these guilty pleas would almost certainly have resulted in life sentences for the defendants—the harshest sentences they are likely to receive after years of litigation and appeals.

Given this long and painful history, I urge you to hear from the prosecutors who determined that securing guilty pleas was the best available path to justice. I also urge you to hear from a variety of victim family members with differing views and to assess whether proceeding with the failed and broken commissions can realistically provide the families with a better outcome than pleas. I would appreciate an update on this assessment in the coming weeks.

Sincerely,



Richard J. Durbin
Chair