



STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

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Honorable Pat Roberts
109 Hart Senate O.B.
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Honorable Jerry Moran
361A Russell Senate O.B.
Washington, D.C. 20510

Honorable Lynn Jenkins
1526 Longworth House O.B.
Washington, DC 20515

Honorable Kevin Yoder
215 Cannon House O.B.
Washington, D.C. 20515

Honorable Mike Pompeo
436 Cannon House O.B.
Washington, D.C. 20515

Honorable Tim Huelskamp
1110 Longworth House O.B.
Washington, DC 20515

Dear Members of the Kansas Congressional Delegation:

As you know, President Obama long has pledged to close the detention facility at Guantanamo Bay, and his administration has from time to time suggested the possibility of transferring some number of detainees to facilities on the U.S. mainland. Facilities at Fort Leavenworth have been considered by the administration as one possible site. In response, Congress for several years has enacted funding restrictions that prohibit the expenditure of federal money to “assist” in such a transfer. *See, e.g.*, 2014 NDAA, Pub. L. 113-66, § 1034, 127 Stat. 672, 851 (2013); 2015 NDAA, Pub. L. 113-291, § 1033, 128 Stat. 3292, 3492 (2014).

Although even U.S. Attorney General Loretta Lynch has acknowledged that such a transfer of detainees would violate the funding prohibitions, the State of Kansas has remained concerned that in the final months or weeks of the President’s administration such a transfer could nonetheless occur. To aid in assessing whether the administration might be willing in the future to violate the funding restrictions, our office has attempted to learn whether the administration has respected the restrictions in the past.

Last December, I submitted Freedom of Information Act (FOIA) requests with various entities associated with the Department of Defense, the Armed Services, and the Department of Justice seeking such information. One of those entities was the Department of Defense itself. When information was not forthcoming, I filed in July a federal lawsuit in the United States District

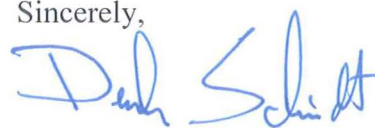
Court for the District of Kansas seeking judicial enforcement of our FOIA request. On August 26, the DoD answered the lawsuit and asserted neither an explanation for the lengthy delay nor a legal basis for withholding the requested information. Therefore, on September 15, I filed with the Court a motion seeking partial judgment on the pleadings in the State's favor and an order immediately compelling production of one of the requested documents.

Only five days later, on September 20, the DoD provided a single document in response to one portion of our request, implausibly asserting that our litigation had not influenced the agency's timeline for releasing the document. The single document is a table labeled "Department of Defense Costs Site Surveys of US Locations for Possible Guantanamo Detainee Relocation." To our knowledge, this is the first time the DoD has acknowledged it expended funds for a purpose that can only be described as serving to "assist" in "Possible Guantanamo Detainee Relocation." Because we know from public reports the site surveys for Fort Leavenworth, Kansas, Charleston, South Carolina, and Florence, Colorado, occurred during 2015, it is clear these expenditures for the site surveys occurred during a period of time when congressional funding restrictions were in effect. While the amount of money is relatively small – a total of \$25,909.53, of which \$7,687.20 was spent on the site survey for Fort Leavenworth – the admission raises the concern that the Department of Defense violated the law by knowingly expending these funds while federal law enacted by Congress expressly prohibited the agency from doing so.

Knowing of your strong interest in both preventing a transfer of Guantanamo detainees to Fort Leavenworth and protecting the congressional power of the purse, I am bringing this matter to your attention. A copy of the single-page document produced to us by the DoD is enclosed. The remainder of our lawsuit, which seeks more-detailed information from the federal agencies, remains pending, and we intend to press ahead.

I encourage you to use this information to insist on an explanation from the Department of Defense as to how it justifies these expenditures in light of the prohibitions enacted by Congress. If I may be of further assistance, please let me know.

Sincerely,



Derek Schmidt
Kansas Attorney General

Enclosure

cc: Governor Sam Brownback
Speaker Paul Ryan
Majority Leader Mitch McConnell

**Department of Defense Costs
Site Surveys of US Locations
for Possible Guantanamo Detainee Relocation**

LOCATION	Air Fare	Per Diem	Incidentals	Total
Ft Leavenworth, KS	\$3160.85	\$1281.00	\$3245.35	\$7687.20
Charleston, SC	\$2430.80	\$1405.00	\$3322.20	\$7158.00
Florence, CO	\$4943.50	\$2480.56	\$3640.27	\$11064.33
TOTAL	\$10535.15	\$5166.56	\$10207.82	\$25909.53