



UNITED STATES SENATE

July 14, 2010

The Honorable Eric H. Holder, Jr.
Attorney General
United States Department of Justice
950 Constitution Avenue, NW
Washington, DC 20510

Dear Attorney General Holder:

I understand the great difficulty in dealing with the detainees currently held at Guantanamo Bay, Cuba, but the difficult choices facing you should not impede our nation's efforts to bring to justice those responsible for the attacks of September 11, 2001.

I agree with your comment this past weekend that "justice has been denied too long." However, I would like to remind you that the decision of when and where to try the September 11 co-conspirators currently rests with you.

On November 13, 2009, you announced the Department of Justice's intention to try Khalid Sheikh Mohammed and his co-conspirators in civilian court in New York City. That decision was met with overwhelming opposition not only from New Yorkers but from Americans across the country. Shortly after your announcement, the White House indicated your decision would undergo further review.

In your testimony before the Senate Judiciary Committee on April 14, 2010, you stated that "New York is not off the table" as a potential trial venue, and that you expected to have a decision "in a number of weeks." However, months have gone by, and the Department of Justice has failed to reach a decision on where the perpetrators of the September 11 attacks will be tried.

As part of the enemy force that attacked our nation, these individuals should be tried for war crimes by the recently reformed military commissions system signed into law by President Obama. They should be held accountable for their actions now.

Mr. Attorney General, if Khalid Sheikh Mohammed is not worthy of trial by military commission, exactly who would be?

I believe that civilian trials have a place in the war on terror and in some specific instances may be preferable to military tribunals. However, when it comes to those who planned the vicious September 11 attack on our nation, the use of civilian trials seriously undermines the war effort. I believe I speak for the majority of Americans and the Congress on this point.

As we have discussed in the past, the law of war allows this country to detain members and supporters of al Qaeda until the end of hostilities. The Obama Administration has identified at least 48 law of war detainees who are too dangerous to release but not subject to trial by either military commission or civilian court. Each detainee in this category has the opportunity to appear before a federal judge in a habeas proceeding. Trying the September 11 co-conspirators in civilian court would not only be a logistical nightmare and an enormous expense for taxpayers, but would harm our national security by criminalizing the war.

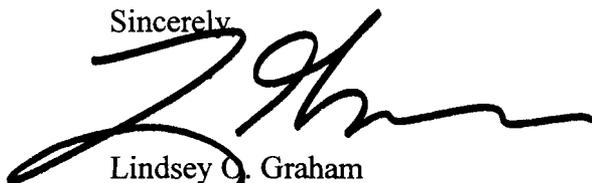
I am proud of the work we have done together to reform the Military Commissions Act, and I appreciate your acknowledgement of the professionalism of our military legal community and the value of military tribunals. They can and should be used to prosecute the September 11 co-conspirators fairly and quickly.

The failure of the Department of Justice to make a decision on where the September 11 conspirators will stand trial is unacceptable. As you know, I introduced legislation to prohibit the use of Department of Justice funds for the prosecution of these individuals in federal district court. This legislation is modeled after an amendment I offered in November 2009. While the amendment failed to receive sufficient support then, the measure has garnered new support.

Please advise me of the progress in the review of your prosecution decision. The American people deserve certainty as to the Obama Administration's venue preference for the trial of the September 11 co-conspirators.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'L. Graham', written over a large, stylized number '29'.

Lindsey O. Graham
United States Senator