

Six Reasons al Qaeda Terrorists Should Not be Brought to the United States for Trial

1. **Provides Constitutional protections to terrorists:** Administration officials have admitted that detainees present in the United States likely have more protections—including constitutional rights—than those held outside the country.¹
 - The Supreme Court has held that “[i]t is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders.”²
2. **Intelligence:** Past public criminal trials of terrorists have compromised U.S. intelligence information on al Qaeda, namely the Blind Sheikh and Ramzi Yousef trials.³
3. **Increased possibility of release:** Once the Administration voluntarily brings al Qaeda terrorists to the United States, even for detention and trial, it increases the chance they could be released into the country.
 - Where detainees have sought a court order of release into the country, the main case denying that order turned on the fact that the detainees were outside the country.⁴
4. **Prisoner radicalization:** Importing the 9/11 conspirators into domestic U.S. prison facilities would provide them access to a prisoner population FBI Director Mueller has identified as particularly vulnerable to extremist recruitment.⁵
 - Even though Special Administrative Measures (SAMs) could be used to limit the communications and interactions of terrorists in U.S. prison, it is noteworthy that this Administration has let the SAMs applicable to attempted shoe-bomber Richard Reid in Supermax expire.⁶
5. **Logistics:** The logistics of the Zacarias Moussaoui criminal trial do not seem like something local officials wish to repeat. Media reports described the city of Alexandria, VA, as a “virtual encampment” during his trial.⁷
6. **Propaganda platform:** Delay and abuse of the criminal process would likely attend the criminal trial of the 9/11 conspirators, such as Khalid Sheikh Mohammed.
 - By comparison, Moussaoui’s guilty plea was almost four years after his indictment, and now, close to eight years after his indictment, his appeal remains pending in which he claims that his guilty plea should be withdrawn and a new trial ordered because he was confused about the charges against him.⁸
 - Moussaoui used the trial as a platform to mock the victims of the 9/11 attacks.⁹
 - Moussaoui abused the judicial process throughout the course of the trial, filing, among other things, motions “for a 1st Class Ticket on 747-400 Out of the United States Now”¹⁰ and to have a duel with “Chief Liar Ashcroft” in the judge’s courtyard.¹¹

¹ Jeh Johnson, Statement of the Department of Defense General Counsel at the Senate Armed Services Committee hearing on Military Commissions, July 7, 2009, available at <http://armed-services.senate.gov/Transcripts/2009/07%20July/09-57%20-%207-7-09.pdf>.

² *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001).

³ 9/11 Commission Final Report, p. 472 n.8; Michael B. Mukasey, “Jose Padilla Makes Bad Law—Terror trials hurt the nation even when they lead to convictions,” *Wall St. J.*, Aug. 22, 2007.

⁴ *Kiyemba v. Obama*, 555 F.3d 1022 (D.C. Cir. 2009).

⁵ Robert S. Mueller, III, Testimony of the FBI Director to Senate Select Committee on Intelligence, Feb. 16, 2005.

⁶ Debra Burlingame, *Revenge of the Shoe Bomber*, *Wall St. J.*, July 29, 2009.

⁷ Jerry Markon, *Terrorism Trials May Be at New Va. Court*, *Wash. Post*, Mar. 6, 2009.

⁸ *United States v. Zacarias Moussaoui*, No. 06-4494 (4th Cir., notice of appeal filed May 12, 2006).

⁹ Edward A. Adams, *Moussaoui v. United States*, 93-Sep A.B.A.J. 18, 71 (Sept. 2007).

¹⁰ <http://notablecases.vaed.uscourts.gov/1:01-cr-00455/docs/67010/0.pdf>

¹¹ <http://notablecases.vaed.uscourts.gov/1:01-cr-00455/docs/68933/1.pdf>