

June 18, 2014

Dear Senator:

As the Senate considers an appropriations bill that includes funding for the Department of Justice, the undersigned human rights, civil liberties, and religious organizations strongly urge you to oppose any additional restrictions on the authority of the Secretary of Defense to order the overseas transfer of detainees from Guantanamo to foreign countries. The current transfer restrictions were enacted just six months ago as part of the National Defense Authorization Act for Fiscal Year 2014 (NDAA). The Senate should not reverse course when the overseas transfer provisions have only recently taken effect and the Departments of Defense and State are working towards carrying out transfers.

The NDAA that Congress passed at the end of last year clarified and modified the Secretary of Defense's authority to transfer detainees to foreign countries and provided important additional flexibility to close Guantanamo. Specifically, the provisions in the NDAA replaced a cumbersome certification and waiver regime with a more sensible, factor-based standard designed to mitigate any risks related to transfer. The provisions require the Secretary of Defense to consider a host of security-related factors in determining whether a transfer is in the national security interests of the United States.

The current NDAA overseas transfer restrictions reflect the will of a bipartisan majority in the Senate, which by a vote last fall of 43-55, rejected an amendment that would have replaced the Senate provisions with more restrictive language. The House-Senate conference committee on the NDAA accepted the restrictions, and President Obama signed the NDAA. The provisions help protect American values and human rights and facilitate an end to indefinite detention without charge or trial at Guantanamo Bay.

Congress passed the NDAA with these more flexible provisions in place to address the harm caused by unwarranted hurdles to overseas transfers of detainees who were never charged with a crime. In fact, more than half of the current 149 Guantanamo detainees were cleared for transfer by national security and intelligence agencies in 2010. Of the total 779 men detained there over the course of the last twelve years, only 15 have been charged or convicted of a criminal offense. Over the past year, 17 have been transferred from the facility to foreign countries.

The NDAA overseas transfer provisions were written to address an unacceptable delay, particularly for men the government cleared for transfer more than four years ago in a comprehensive interagency process. Lt. General John F. Kelly, who as head of U.S. Southern Command ultimately oversees the prison, testified to Congress last year on the effect this delay has had on the detainees. According to his testimony, the massive hunger strike at the facility – which continues today, albeit in reduced numbers – was driven by detainees' "devastation" at the government's failure to execute plans to shutter the detention facility.

In his May 2013 speech at the National Defense University, President Obama recommitted his administration to closing Guantanamo. Since that time, the administration has appointed envoys at the Departments of Defense and State tasked with achieving closure of Guantanamo, and significantly stepped up its work to effect transfers. Congress did its part to facilitate this process, by passing more reasonable overseas transfer provisions, even if Congress left in place a ban on trying any of the detainees in federal court. The President reiterated his commitment to closing the Guantanamo facility this year, during his commencement address at West Point.

Regardless of your position on the ultimate closure of Guantanamo, encumbering transfers of detainees is counterproductive to U.S. national security. National security leaders on both sides of the aisle agree that detentions at Guantanamo serve as a powerful propaganda weapon against the United States. Former President George W. Bush; former Secretaries of State Hillary Clinton, Condoleezza Rice, and Colin Powell; former Secretaries of Defense Robert Gates and Leon Panetta; former National Security Advisor James Jones; General Charles C. Krulak (ret.), former Commandant of the Marine Corps; General Joseph P. Hoar (ret.), former CENTCOM commander; former CJCS Admiral Mike Mullen; and Brigadier General Michael Lehnert (ret.), who set up the prison, all support closing the detention facility.

Closing Guantanamo is good human rights policy and, according to military and intelligence experts, good national security policy. The Guantanamo provisions in the current NDAA provided additional and necessary flexibility to execute that policy. We urge you to support preservation of the bipartisan Guantanamo overseas transfer provisions in the NDAA that were enacted in December, and oppose any amendments that would place additional restrictions on those provisions.

Sincerely,

American Civil Liberties Union
Amnesty International USA
Center for National Security Studies
Center for Victims of Torture
Commission on Social Action of Reform Judaism
The Constitution Project
Council on American-Islamic Relations
Defending Dissent Foundation
Friends Committee on National Legislation
Human Rights First
Human Rights Watch
National Association of Criminal Defense Lawyers
National Religious Campaign Against Torture
National Security Network
Physicians for Human Rights
Win Without War