



November 15, 2013

Dear Senator:

The undersigned human rights and civil liberties groups strongly urge you to support the Guantanamo Bay detainee transfer provisions included in the National Defense Authorization Act (NDAA) for Fiscal Year 2014 as reported out of the Senate Armed Services Committee (SASC). We also urge you to oppose all amendments that restrict transfers beyond provisions in the current bill. The Guantanamo provisions in the SASC version of the NDAA (Senate NDAA) will help protect American values and human rights and will facilitate the end of indefinite detention without charge or trial at Guantanamo Bay.

More than half of the 164 Guantanamo detainees were cleared for transfer by national security and intelligence agencies in 2010, but current law needlessly complicates efforts to transfer them. Only two of the 86 detainees then slated for transfer from Guantanamo Bay have been successfully transferred from the facility under the current transfer protocol.

This is 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 earlier this 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 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. But Congress must also do its part to facilitate this process.

Now is the time to act. The Guantanamo provisions in the Senate NDAA clarify and modify the executive’s existing authority to transfer detainees to foreign countries and provide important additional flexibility to close Guantanamo responsibly. Specifically, the provisions in the Senate NDAA replace a cumbersome certification and waiver regime with a more sensible, factor-based standard designed to mitigate any risks related to transfer.

The Guantanamo provisions in the Senate NDAA also make additional improvements to current law. For example, they facilitate transferring detainees who, through the recently-launched periodic review process, are found not to pose a threat to U.S. security, and they lift the ban on transfers to the United States for criminal prosecution. The latter improvement is critical given that federal criminal courts offer a more experienced and less costly venue relative to the fundamentally flawed military commissions system at Guantanamo Bay. The military commissions are moving at a glacial pace amidst a sea of controversy and have cost the United States \$600 million since 2007 while convicting only seven detainees. Transferring any remaining detainees who will be charged to federal court will work to put an end to the delay of justice and the extreme cost of the experimental justice system at Guantanamo Bay.

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

Senate NDAA provide the necessary flexibility to execute that policy responsibly. We urge your support of the Guantanamo provisions in the Senate NDAA and urge you to vote “no” on any amendments that would further restrict transfers.

Sincerely,

American Civil Liberties Union  
Amnesty International USA  
Arab American Institute  
Center for Constitutional Rights  
Center for International Policy  
Center for National Security Studies  
Center for Victims of Torture  
The Constitution Project  
Human Rights First  
Human Rights Watch  
International Justice Network  
Just Foreign Policy  
National Association of Criminal Defense Lawyers  
National Religious Campaign Against Torture  
Open Society Policy Center  
Physicians for Human Rights  
September 11th Families for Peaceful Tomorrows  
Win Without War