

December 6, 2013

Dear Members of the House and Senate Armed Services Committees,

As members of the House and Senate Armed Services Committees negotiate a final version of the National Defense Authorization Act (NDAA), the undersigned human rights, civil liberties, and religious organizations strongly urge you to support the Guantanamo Bay detainee transfer provisions reported out of the Senate Armed Services Committee earlier this year. These provisions reflect the will of a bipartisan majority in the Senate, which by a vote of 43-55 rejected an amendment that would have replaced the Senate provisions with more restrictive language. More importantly, these provisions will help protect American values and human rights and will facilitate a responsible end to indefinite detention without charge or trial at Guantanamo Bay.

More than half of the 162 Guantanamo detainees were cleared for transfer by national security and intelligence agencies in 2010, but current law needlessly complicates efforts to transfer them. Only four of the 86 detainees then slated for transfer from Guantanamo Bay have been 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 an unnecessarily slow 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 for the bipartisan Guantanamo provisions in the Senate NDAA.

Sincerely,

American Civil Liberties Union
Amnesty International USA
Appeal for Justice
Arab American Institute
Center for Constitutional Rights
Center for International Policy
Center for National Security Studies
Center for Victims of Torture
The Constitution Project
Council on American-Islamic Relations
Defending Dissent Foundation
Friends Committee on National Legislation
Human Rights First
Human Rights Watch
The International Justice Network
National Association of Criminal Defense Lawyers
National Religious Campaign Against Torture
Open Society Policy Center
Win Without War