

November 17, 2009

RE: Vote “NO” on Inhofe Amendment (S.A. 2774) and DeMint Amendment (S.A.2779) Impeding the Ability of the Attorney General to Prosecute Guantanamo Detainees in Regular Federal Criminal Courts

Dear Senator:

The undersigned organizations urge you to oppose Senate Amendment 2774, offered by Senator Inhofe and others and Senate Amendment 2779, offered by Senator DeMint, to H.R. 3082, the Military Construction, Veterans’ Affairs, and Related Agencies Appropriations Act for Fiscal Year 2010. The Inhofe amendment would prohibit the Department of Defense from using funds under the bill to modify or construct any facilities in the United States to hold any of the Guantanamo detainees, including those charged, tried, or convicted in Article III courts. The DeMint amendment would prohibit the use of any funds under the bill for transferring the detainees to or detaining them in the United States unless unrelated veterans’ services are fully funded. These amendments set a dangerous precedent in restricting the ability of the United States to prosecute suspected terrorists in federal courts.

Last week, Attorney General Holder announced his intention to transfer prosecutions of the alleged planners of the September 11, 2001 attacks from military commissions to the federal courts, which have a long track record of successfully trying terrorism suspects. This announcement came shortly after the Senate voted 54-45, to defeat an amendment to another appropriations bill that would have blocked the prosecution of these defendants in federal courts.

These two new amendments, like the amendment that the Senate rejected earlier this month, would restrict the President’s ability to employ one of the most valuable counterterrorism tools available—criminal prosecutions—and would needlessly tie the President’s hands in resolving the problem of Guantánamo by disposing of cases in a manner that comports with human rights standards and the rule of law.

Although the Inhofe amendment is arguably narrower than the DeMint amendment, it could have a very significant--and perhaps unintended--effect on the ability of the Justice Department to prosecute detainees in regular federal criminal courts. Under the Inhofe amendment, funds under the bill could not be used to enhance security or communications at facilities holding detainees during trial.

The Inhofe and DeMint amendments differ substantially from the Guantanamo transfer restrictions that were enacted in the war supplemental, the first continuing resolution, and the separate appropriations bills for the Department of the Interior and the Department of Homeland Security. Those restrictions had a specific exception permitting transfer of detainees for prosecution. By contrast, the Inhofe and DeMint amendments would inhibit the use of the most effective courts for criminal prosecution. Even if you voted for the restrictions in the earlier legislation, you can and should vote no on this very different proposal.

Senate Amendment 2774 and 2779 would hinder efforts to put to rest a legacy of a failed detention policy. The detentions at Guantanamo Bay are a blot on the reputation of the United States that harms U.S. national security and foreign policy interests. There

is widespread agreement among national security and foreign policy experts—including General David Petraeus, Secretary of Defense Robert Gates, and five former Secretaries of State from both parties—that closing the Guantanamo Bay detention facility is essential to U.S. counterterrorism efforts and to repairing the standing of the United States as a country committed to human rights and the rule of law.

There is no reason to hinder the Attorney General from making use of a highly effective prosecution tool—trial before regular federal courts, which have handled over a hundred complex international terrorism cases since 2001 without compromising national security. The Federal Bureau of Prisons has also proven fully capable of securely detaining individuals convicted of the most serious crimes of terrorism, such as co-conspiracy in the 9/11 attacks, the 1993 World Trade Center bombing, and the 1998 East Africa embassy bombings, without harm to the surrounding communities—and, of course, without escape. The passage of Senate Amendments 2774 and 2779, by making more difficult the prosecution of accused terrorists in regular federal criminal courts, would amount to abdication of Congress' obligation to protect America.

We urge you to vote against Senate Amendments 2774 and 2779.

Sincerely,

Alliance for Justice
American Civil Liberties Union
Amnesty International USA
Appeal for Justice
Government Accountability Project
Human Rights First
Human Rights Watch
National Association of Criminal Defense Lawyers
Open Society Policy Center
People For the American Way
Psychologists for Social Responsibility, Psychology and Human Rights Program