

November 4, 2009

RE: Vote “NO” on Graham Amendment (S.A.2669) Barring Prosecutions in Federal Criminal Courts

Dear Senator:

The undersigned organizations urge you to oppose Senate Amendment 2669, offered by Senator Graham, to H.R. 2847, the Commerce, Justice, Science, and Related Agencies Appropriations Act for Fiscal Year 2010. This amendment would prohibit the Department of Justice from using funds under the bill for the prosecution of any alleged planners or conspirators in the September 11, 2001 attacks in regular Article III federal courts, which are the same federal courts where the Department of Justice regularly tries and convicts defendants charged with international terrorism crimes. This amendment would needlessly tie the President’s hands in resolving the problem of Guantánamo and disposing of cases in ways that comport with human rights principles and the rule of law. The amendment would restrict the President’s ability to employ one of the most valuable counterterrorism tools available—criminal prosecutions in regular federal courts.

The Graham amendment is very different than the Guantánamo transfer restrictions that have passed the Senate and been signed into law four separate times over the past six months--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 prohibited most transfers to the United States of detainees held at Guantanamo, but have a specific exception that permits transfer of detainees for prosecution. By contrast, the Graham amendment would block the Department of Justice from access to 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 2669 would hinder efforts to put to rest a legacy of a failed detention policy. The detentions at Guantánamo 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 Guantánamo 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.

Senate Amendment 2669 would deny the President 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 Amendment 2669, by preventing 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 Amendment 2669.

Sincerely,

Alliance for Justice  
American Civil Liberties Union  
Amnesty International USA

Appeal for Justice  
Center for Constitutional Rights  
Government Accountability Project  
Human Rights First  
Human Rights Watch  
International Justice Network  
Japanese American Citizens League  
National Association of Criminal Defense Lawyers  
National Institute of Military Justice  
New Security Action  
Open Society Policy Center  
People For the American Way  
Rabbis for Human Rights – North America  
The Constitution Project