

June 22, 2011

Dear Representative:

The undersigned organizations strongly urge you to oppose Sections 8123 and 8124 of H.R. 2219, the Department of Defense Appropriations Act for Fiscal Year 2012. Sections 8123 and 8124 of the DoD Appropriations bill would impose a complete prohibition on the transfer of Guantanamo detainees to the U.S., even for purposes of prosecution in federal criminal court, and effectively end the resettlement or repatriation of detainees cleared by the United States for transfer to foreign countries. When similar language came before the House of Representatives last month as part of the National Defense Authorization Act, the White House strongly opposed it and included the provision in its veto threat, stating:

**The Administration strongly objects to the provisions... that limit the use of funds to transfer detainees and otherwise restrict detainee transfers. Although the Administration opposes the release of detainees within the United States, [this section] is a dangerous and extraordinary challenge to critical Executive branch authority to determine when and where to prosecute detainees, based on the facts and the circumstances of each case and our national security interests. It unnecessarily constrains the Nation's counterterrorism efforts and would undermine national security, particularly where Federal courts are the best – or even the only – option for incapacitating dangerous terrorists... The prosecution of terrorists in Federal court is an essential element of our counterterrorism efforts – a powerful tool that must remain an available option. The certification requirement, restricting transfers to foreign countries, interferes with the authority of the Executive branch to make important foreign policy and national security determinations regarding whether and under what circumstances such transfers should occur. The Administration must have the ability to act swiftly and to have broad flexibility in conducting its negotiations with foreign countries.**

Such a ban would block transfers for *any* purpose, including for purposes of prosecution. Such highly-restrictive measures would needlessly tie the President's hands in resolving the problem of Guantánamo and trying terrorism suspects in a manner that protects national security and comports with human rights principles and the rule of law. A blanket ban on transfers would restrict the Obama administration's ability to employ what has been one of the most valuable and effective counterterrorism tools available – criminal prosecutions in regular federal courts. It also would make nearly impossible the ability of the United States to transfer to foreign countries those detainees who have been cleared for transfer. The government does not make its transfer decisions lightly. A decision that a detainee can be transferred to another country reflects the unanimous judgment of the Departments of Defense, State, Justice, and Homeland Security, as well as the Joint Chiefs of Staff and the Director of National Intelligence.

A blanket ban on transfers to the United States, even for purposes of prosecution, would be a sharp break from the Guantánamo transfer restrictions that were signed into law in 2009 and 2010. The four statutes enacted by Congress in 2009 prohibited transfers of detainees held at Guantánamo to the United States, except for purposes of prosecution. By contrast, a blanket ban

on all transfers for any purpose would block the Department of Justice from criminally prosecuting terrorism cases in regular federal court.

If a blanket ban on transfers were to become law, it would obstruct the Obama administration from bringing terrorism suspects to justice in the most experienced and proven forum. These are the very same federal courts that have been used by the Justice Department during the Bush and Obama administrations to convict more than 400 individuals of terrorism-related crimes since 9/11. 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 African embassy bombings, without harm to the surrounding communities – and, of course, without escape. Moreover, former Guantánamo detainee Ahmed Ghailani was recently convicted and given a life sentence without the possibility of parole for terrorism crimes following a trial that took place without incident in the United States District Court for the Southern District of New York. Prosecution of terrorism suspects in time-tested federal courts has been and remains a vital part of the effort to combat terrorism.

Moreover, by making the transfer of cleared detainees to foreign countries nearly impossible, the legislation would undermine the rule of law. Forcing the continued imprisonment of detainees who the United States has cleared for transfer means that the Congress would be requiring the government to keep in prison persons who the government has determined have no reason to be in prison. It would be hard to find a greater wrong—or a greater deviation from the rule of law—than for the Congress to decide on its own that all of these 171 men should stay in prison, even when the government decides that it has no reason to imprison some of them.

If Congress imposes a blanket transfer ban, it would greatly hinder efforts to put to rest a legacy of failed detention policy. There is widespread agreement among our country's leading national security and foreign policy experts – including General David Petraeus, General Colin Powell, 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.

Adhering to the rule of law both protects human rights and enhances our national security. For these reasons, we strongly urge you to oppose Sections 8123 and 8124 of H.R. 2219, and any other blanket ban on transfer of Guantánamo detainees to foreign countries or to the United States, even for purposes of prosecution.

Sincerely,

Alliance for Justice  
American Civil Liberties Union (ACLU)  
Amnesty International USA  
Appeal for Justice  
Center for Victims of Torture  
Constitution Project

Human Rights First  
Human Rights Watch  
International Justice Network  
Japanese American Citizens League  
National Association of Criminal Defense Lawyers  
New Security Action  
Open Society Policy Center  
Physicians for Human Rights  
United Methodist Church, General Board of Church and Society