

December 14, 2010

**RE: Oppose Draft Senate Omnibus Blanket Ban on Transfers of Guantánamo Detainees to the US, Even for Prosecution**

Dear Senator:

The undersigned organizations strongly urge you to oppose Section 12 of the draft Senate omnibus legislation, which would—for the first time ever—impose a statutory ban on the transfer of Guantánamo detainees to the U.S., even for prosecution. The White House is also strongly opposed to the inclusion of this section in the stating, “We strongly oppose this provision. Congress should not limit the tools available to the executive branch in bringing terrorists to justice and advancing our national security interests.”

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 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.

A blanket ban on transfers would be a sharp break from the Guantánamo transfer restrictions that were signed into law in 2009. The four statutes enacted by Congress last year prohibit 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. Even those who voted for the previous transfer restrictions can and should oppose any blanket ban on transfers.

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 administration 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 convicted last month without incident in 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.

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 Section 12 of the draft Senate omnibus legislation and its blanket ban on transfer of Guantánamo detainees to the United States.

Sincerely,

Alliance for Justice

American Civil Liberties Union

Amnesty International USA

Appeal for Justice

The Constitution Project

Friends Committee on National Legislation

Human Rights First

Human Rights Watch

International Justice Network

Japanese American Citizens League

Justice at Stake

National Association of Criminal Defense Lawyers

New Security Action

Open Society Policy Center

United Methodist Church, General Board of Church and Society