The State's Collective Punishment of Yemeni Prisoners

APPENDIX 16

List of Yemeni Guantanamo Bay Detainee-Petitioners Approved For Transfer* (Sept. 21, 2012)

ISN	Detainee's Name	Civil Action Number
34	Al Khadr Abdallah Muhammad Al-Yafi	05-CV-2386
35	Idris Ahmad Abdu Qadir Idris	09-CV-0745
152	Asim Thabit Abdullah Al-Khalaqi	05-CV-0999
153	Fayiz Ahmad Yahia Suleiman	10-CV-1411
163	Khalid Abd Elgabar Mohammed Othman	05-CV-2088
170	Sharif Al-Sanani	05-CV-2386
224	Mahmoud Al-Shubati	07-CV-2338
249	Mohammed Abdullah Mohammed Ba Odah	06-CV-1668
254	Muhammed Ali Husayn Khunaina	05-CV-2223
255	Said Muhammad Salih Hatim	05-CV-1429
259	Fadhel Hussein Saleh Hentif	06-CV-1766
511	Suleiman Awadh Bin Aqil Al-Nahdi	05-CV-0280
553	Abdulkhaliq Ahmed Al-Baidhani	04-CV-1194
554	Fahmi Salem Al-Assani	05-CV-0280
564	Jalal Bin Amer Awad	04-CV-1194
570	Sabry Mohammed	05-CV-2385
572	Saleh Mohammad Seleh Al-Thabbi	05-CV-2104
574	Hamood Abdullah Hamood	06-CV-1767
575	Saad Nasir Mukbl Al-Azani	08-CV-2019
680	Emad Abdallah Hassan	04-CV-1194
686	Abdel Ghaib Ahmad Hakim	05-CV-2199
689	Mohammed Ahmed Salam Al-Khateeb	09-CV-0745
690	Abdul Qader Ahmed Hussein	05-CV-2104
691	Mohammed Al-Zarnouqi	06-CV-1767
1015	Hussain Salem Mohammad Almerfedi	05-CV-1645

* Counsel from the Center for Constitutional Rights prepared this list on the basis of the Department of Justice's public filing on September 21, 2012 (attached) regarding the cleared prisoners and publicly available sources identifying the Guantanamo prisoners by nationality. This chart does not include any current Guantanamo Bay detainees approved for transfer whose transfer status is protected by sealed orders issued by the Court of Appeals.

Current Guantanamo Bay Detainee-Petitioners Approved For Transfer (Sept. 21, 2012)*

ISN	Detainee's Name	Civil Action Number
34	Al Khadr Abdallah Muhammad Al-Yafi	05-CV-2386
35	Idris Ahmad Abdu Qadir Idris	09-CV-0745
36	Ibrahim Othman Ibrahim Idris	05-CV-1555
38	Ridah Bin Saleh Al-Yazidi	07-CV-2337
152	Asim Thabit Abdullah Al-Khalaqi	05-CV-0999
153	Fayiz Ahmad Yahia Suleiman	10-CV-1411
163	Khalid Abd Elgabar Mohammed Othman	05-CV-2088
168	Adel Al-Hakeemy	05-CV-0429
170	Sharif Al-Sanani	05-CV-2386
174	Hisham Sliti	05-CV-0429
189	Falen Gherebi	04-CV-1164
197	Younous Chekkouri	05-CV-0329
200	Saad Al-Qahtani	05-CV-2384
224	Mahmoud Al-Shubati	07-CV-2338
238	Nabil Said Hadjarab	05-CV-1504
239	Shaker Aamer	04-CV-2215
249	Mohammed Abdullah Mohammed Ba Odah	06-CV-1668
254	Muhammed Ali Husayn Khunaina	05-CV-2223
255	Said Muhammad Salih Hatim	05-CV-1429
257	Omar Hamzayavich Abdulayev	05-CV-2386
259	Fadhel Hussein Saleh Hentif	06-CV-1766
275	Abdul Sabour	05-CV-1509
280	Khalid Ali	05-CV-1509
282	Sabir Osman	05-CV-1509
288	Motai Saib	05-CV-1353
290	Ahmed Bin Saleh Bel Bacha	05-CV-2349
309	Muieen Adeen Al-Sattar	08-CV-1236
326	Ahmed Adnan Ahjam	09-CV-0745
327	Ali Al Shaaban	05-CV-0892
329	Abdul Hadi Omar Mahmoud Faraj	05-CV-1490
502	Abdul Bin Mohammed Ourgy	05-CV-1497
511	Suleiman Awadh Bin Aqil Al-Nahdi	05-CV-0280
553	Abdulkhaliq Ahmed Al-Baidhani	04-CV-1194
554	Fahmi Salem Al-Assani	05-CV-0280
564	Jalal Bin Amer Awad	04-CV-1194
566	Mansour Mohamed Mutaya Ali	08-CV-1233
570	Sabry Mohammed	05-CV-2385
572	Saleh Mohammad Seleh Al-Thabbi	05-CV-2104
574	Hamood Abdullah Hamood	06-CV-1767
575	Saad Nasir Mukbl Al-Azani	08-CV-2019
680	Emad Abdallah Hassan	04-CV-1194
684	Mohammed Abdullah Taha Mattan	09-CV-0745

*The chart does not include any current Guantanamo Bay detainees approved for transfer whose transfer status is protected by sealed orders issued by the Court of Appeals.

Current Guantanamo Bay Detainee-Petitioners Approved For Transfer (Sept. 21, 2012)*

ISN	Detainee's Name	Civil Action Number
686	Abdel Ghaib Ahmad Hakim	05-CV-2199
689	Mohammed Ahmed Salam Al-Khateeb	09-CV-0745
690	Abdul Qader Ahmed Hussein	05-CV-2104
691	Mohammed Al-Zarnouqi	06-CV-1767
722	Jihad Dhiab	05-CV-1457
757	Ahmed Abdel Aziz	05-CV-0492
894	Mohammed Abdul Rahman	05-CV-0359
899	Shawali Khan	08-CV-1101
928	Khiali Gul	05-CV-0877
934	Abdul Ghani	09-CV-0904
1015	Hussain Salem Mohammad Almerfedi	05-CV-1645
1103	Mohammad Zahir	05-CV-2367
10001	Belkacem Bensayah	04-CV-1166

*The chart does not include any current Guantanamo Bay detainees approved for transfer whose transfer status is protected by sealed orders issued by the Court of Appeals.

APPENDIX 17

New York, June 13, 2012

Via E-Mail (allawo2009@gmail.com)

The Committee to Review the Cases of Yemeni Nationals Imprisoned Abroad
c/o Mr. Mohammed Naji Allawo, President
National Organization for Defending Rights & Freedoms (HOOD)
Sana'a, Yemen

Re: Yemeni Prisoners Detained at the Guantánamo Bay Military Base

Dear Mr. Allawo,

The Center for Constitutional Rights (CCR) is a non-profit legal organization dedicated to advancing human rights. CCR brought the first case challenging a detention at Guantánamo and has been at the forefront of the struggle to close the prison ever since. CCR and the Committee to Review the Cases of Yemeni Nationals Imprisoned Abroad (Committee) have a common, pressing interest in seeing Yemen's Guantánamo prisoners released. Our work is urgent: Most Yemenis have been imprisoned at Guantánamo for more than a decade without ever having been charged with a crime or receiving a fair trial. Further, more than any other group, the ongoing detention of Yemenis at Guantánamo is based on citizenship. As Minister Houriah Mashour declared on April 26, this is indeed a "humanitarian" crisis.

In advance of the Committee's next meeting, CCR respectfully submits this advisory letter. It provides information relating to the Yemeni prison population, addresses the legal and policy regime governing their detention, and suggests steps the Committee can take to break the impasse that keeps Yemeni prisoners trapped at Guantánamo. As we explain further below, persistent diplomatic pressure from the Yemeni Government is critical; it will likely prove the most important component of any effort to achieve the release of Yemen's Guantánamo prisoners, particularly the 58 Yemeni men whom the U.S. Government has already approved for transfer. CCR therefore appreciates the opportunity to address the Committee and would welcome the opportunity to assist the Committee further in the future.

I. Background: Current Conditions for Prisoners at Guantánamo

The U.S. Government's Guantánamo policy is predicated on secrecy. The prison was always intended to be beyond the reach of the law and public scrutiny. That regime persists today. Information going into and coming out of the prison is tightly controlled. Any statement a prisoner makes, no matter how innocuous, is automatically classified. As a result, it is difficult to accurately assess the conditions Guantánamo prisoners currently endure.

a. Conditions at Guantánamo Have Improved for Some Prisoners

Conditions of confinement for the majority of detainees, however, appear to have improved. Most detainees are no longer routinely held in isolation or subjected to arbitrary physical abuse. Most (though not all) live in communal camps which offer limited recreational and educational opportunities. Prisoners can also communicate periodically with their families through the International Committee of the Red Cross. Though these overdue improvements came only as the result of litigation, embarrassing media coverage, and diplomatic pressure (rather than U.S. benevolence), they are a welcome departure from prior abusive detention practices.

Nonetheless, the conditions for Guantánamo prisoners are still unlawful and out of compliance with the Geneva Conventions. Some detainees remain in near complete isolation. Others are painfully force-fed when on hunger strike to peacefully protest their indefinite detention. This is to say nothing of the severe adverse psychological effects of indefinite detention.

b. Harmful Effects of Indefinite Detention

Superficial improvements in prison conditions cannot ameliorate the adverse psychological effects of indefinite detention. Physicians for Human Rights, a respected medical human rights organization, explains that "the profound uncertainty and lack of control characteristic of an indeterminate, indefinite, detention causes severe physical and psychological harm, regardless of the purported legal justification or conditions of a particular detention."[1] No amount of communal recreation time, phone calls, or other distractions is sufficient to alleviate the anguish caused by Guantánamo prisoners' legitimate fear that they might never be released. Because the U.S. Government has now fully embraced indefinite detention, both in its laws and practice, the Committee must act to spare Yemen's Guantánamo detainees from this cruel fate.

II. Yemeni Population at Guantánamo

Roughly 88 men from Yemen remain at Guantánamo. No other country in the world has so many of its citizens imprisoned there. Most Yemenis were not "captured on the battlefield."[2] Neither were they

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[1] See *Punishment Before Justice: Indefinite Detention in the US, Physicians for Human Rights* (June 2011), p.3, available at: http://physiciansforhumanrights.org/library/reports/indefinte-detention-june2011.html.

[2] Records created by the U.S. Department of Defense for the Combatant Status Review Tribunals (CSRT) – the unconstitutional review system established by former President Bush to determine which detainees were "enemy combatants" – reveal that only 4% of detainees for whom CSRTs were convened were alleged to have been on a battlefield. Only 5% were alleged to have been detained by the U.S. military itself (as opposed to local police forces). And exactly one prisoner is alleged to have been captured on a battlefield by U.S. forces. See *The Meaning of "Battlefield": An Analysis of the Government's Representations of "Battlefield" Capture and*

members of Al Qaeda. Many were arrested after the U.S. invaded Afghanistan by local Pakistani police on mere suspicion or for infractions such as not having proper travel documents. Others were handed over in exchange for handsome bounties offered by the U.S. military for Arab men. Though the vast majority will never be charged with a crime, without the intervention of the Committee, Yemeni Guantánamo prisoners are also the least likely to be released.

a. 58 Prisoners from Yemen Have Been Approved for Transfer from Guantánamo, but Remain Imprisoned

The prevailing view in the Obama administration is that the security situation in Yemen increases the potential for recidivism and makes repatriating Yemeni prisoners unacceptably risky.[3] But that reasoning ignores the individual circumstances of each prisoner and the often compelling justifications for their release. For cleared prisoners, it also ignores the reality that the U.S. Government itself puts little faith in its incriminating evidence.

The central feature of President Obama's 2009 order to close Guantánamo was the creation of a Guantánamo Review Task Force. The Task Force's role was to conduct a careful review of available evidence and to determine for each prisoner whether transfer out of Guantánamo would be consistent with U.S. national security interests. Under the Task Force's procedures, a prisoner needed unanimous consent from the U.S. Departments of Justice, State, Defense, Homeland Security, the Office of the Director of National Intelligence, and the Joint Chiefs of Staff to be designated for transfer. 66 men from Yemen were cleared under this exacting standard. 58 are still being held today.[4] Their continued imprisonment is wrong and cannot be justified by the U.S. Government's unilateral pronouncement that Yemen is too unstable to welcome back any of its own citizens.

III. Judicial and Legislative Regime Governing Detainees

Together, the U.S. legislature and judiciary have made it nearly impossible for Guantánamo prisoners to gain their freedom.

"Recidivism" of Guantanamo Detainees, Mark Denbeaux (2007), p. 2, available at: http://law.shu.edu/publications/guantanamoReports/meaning_of_battlefield_final_121007.pdf

[3] Independent studies have systematically debunked the myth that released Guantánamo detainees commonly "reengage" in militant activity. In fact, U.S. Government statistics on recidivism are grossly overstated and internally inconsistent. See, e.g., *National Security Deserves Better: "Odd" Recidivism Numbers Undermine the Guantanamo Policy Debate, Mark Denbeaux (2012)*, available at: http://law.shu.edu/ProgramsCenters/PublicIntGovServ/policyresearch/loader.cfm?csModule=security/getfile&pageid=285565

[4] This figure includes 30 Yemenis approved for what is termed "conditional detention." The U.S. Government intends to transfer these detainees after all other cleared Yemeni prisoners have been released and after certain other preconditions have been met.

a. U.S. Courts are Openly Hostile to Guantánamo Detainees

U.S. courts have, in recent years, failed Guantánamo detainees. In June 2008, the United States Supreme Court ruled in *Boumediene v. Bush* that Guantánamo prisoners have the constitutional right to challenge the legality of their detention through an evidentiary hearing in a U.S. federal court. As a result, lower courts in Washington, D.C. ruled on numerous habeas petitions. They were often persuaded by claims that prisoners were innocent and that the evidence against them was based on torture and unreliable hearsay statements. In the months after the *Boumediene* decision, the prisoners enjoyed a nearly 75% victory rate over the U.S. Government.

Since 2010, however, judges on the appellate court in Washington, D.C. have made it almost impossible for any Guantánamo detainee to win a habeas case. For example, under appellate court rulings, lower courts must now *presume* that U.S. Government evidence is accurate. In practical terms, this means the U.S. Government wins its Guantánamo cases before it even enters the courtroom. The appellate court's record tells the whole story; it has reversed *every* detainee victory appealed to it by the U.S. Government. And it is no mystery why this is happening: Judges on the appellate court have made public, sometimes out-of-court statements which suggest that they would never grant the release of a Guantánamo prisoner, no matter the circumstances. Worse still, on June 11, 2012, the Supreme Court of the United States – the highest court in the land – refused to hear the final appeals of seven prisoners, five of whom are Yemeni. This forecloses – possibly once and for all – any judicial avenue for release for the remaining Guantánamo prisoners.

As a result, the Committee must not make the mistake of deferring to U.S. courts. Expecting the U.S. judicial process to solve the problem of the Yemeni prisoners held at Guantánamo is folly. The courts are now merely a rubber stamp for detention decisions made by the Obama administration.

b. U.S. Laws are Equally Hostile to Guantánamo Detainees

The U.S. Congress expressed similar hostility to Guantánamo detainees by passing the National Defense Authorization Act for FY2011 (2011 NDAA), which severely restricted the use of funds for transfers. Indeed, not a single detainee has left Guantánamo Bay alive[5] pursuant to the NDAA since that law was enacted.[6] Regrettably, on December 31, 2011, President Obama signed into law the 2012 NDAA. Like its predecessor, the law prohibits transfers unless the Secretary of Defense determines that the receiving country meets certain rigid certification criteria. The restrictions include: i) the receiving government must agree to take action "to ensure" that the detainee will not threaten the United States

[5] Two detainees have died at Guantánamo since January 2011, one reportedly of natural causes (heart attack) and the other from suicide.

[6] Two Uighurs were transferred to El Salvador in April 2012, but that was in accordance with a judicial order, not an exercise of the authorities granted under the NDAA.

or its allies in the future, and ii) the receiving government must take action that the Secretary of Defense adjudges to be necessary "to ensure" that the detainee will not participate in future terrorist activity.[7]

Requiring the Secretary of Defense to certify that a transferee country has taken actions "to ensure" that former detainees cannot participate in future terrorist activity or "threaten the United States" – whatever that may include – are virtually impossible to meet. No state can guarantee that any future action will or will not occur. Sadly, that is the point. The law was drafted to discourage transfers and to keep the prison at Guantánamo open. This is why putting diplomatic pressure on the U.S. Government is so important. It is the only way to bypass legislative obstacles that have been purposefully erected to prevent the release of Guantánamo prisoners.

IV. Demands the Committee Must Make of the U.S. Government

To break the current impasse, CCR suggests the Committee make the following three policy demands.

a. Demand an Immediate end to President Obama's Moratorium on Transfers to Yemen:

Legislative restrictions are only part of the story. Transferring Yemeni detainees has also been frustrated by President Obama's self-imposed moratorium on transfers to Yemen. This prohibition was a political maneuver to mollify President Obama's opponents in the wake of the attempted bombing of a Detroit-bound airliner on Christmas Day 2010. Under the moratorium, all transfers to Yemen are indefinitely suspended, even for prisoners who are already cleared. Indisputably, the moratorium is a crude form of collective punishment directed at Yemeni prisoners. The Committee ought to find that unacceptable. Accordingly, the Committee should make an urgent demand that the moratorium be rescinded. President Obama can do so at will.

b. Demand the U.S. Government Invoke Laws Which Permit Transfers to Yemen:

As discussed above, the 2012 NDAA prohibits the U.S. from releasing or transferring detainees unless the Secretary of Defense certifies in writing that specific criteria have been met. But because the criteria are so difficult to satisfy, no detainee has ever been certified for transfer. The 2012 NDAA leaves a window open, however. Subsection 1028(d) allows the Secretary of Defense to waive the certification requirements. It can also be used to get around the prohibition on transfers to countries like Yemen where there have been reports of recidivism. Therefore, the Committee should press the U.S. Government to certify transfers or, alternatively, use the waiver provision to sidestep the legal barriers which have thus far precluded the release of Yemeni prisoners.

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[7] See National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, § 1028(b), 125 Stat. 1298 (2011).

c. Demand the Repatriation or Resettlement of all Cleared Yemeni Prisoners:

The Committee must also make a blunt demand for the urgent repatriation or resettlement of those Yemeni prisoners whom the U.S. Government has already approved for transfer. To reiterate, each agency with direct responsibility for U.S. national security has rigorously scrutinized the evidence regarding each detainee's conduct. They evaluated all allegations of terrorism and wrongdoing. And after this review, 66 Yemeni men were unanimously approved for transfer. 58 remain locked up at Guantánamo primarily because of their citizenship. Securing their release would be a crowning achievement for the Committee. Because cleared Yemeni prisoners constitute more than one-third of the current Guantánamo population, it would also hasten the closure of the prison itself.

The Committee should also demand the names of the cleared Yemeni prisoners. Concealing their identities only serves U.S. interest in muting public outcry for their release. It also prevents the Committee from discussing prospects for transfer in concrete terms.

V. Other Steps the Committee Should Take

The Committee should take the following additional steps to restart diplomatic engagement between the U.S. and Yemen on Guantánamo detainee issues:

1. Summon U.S. Ambassador to Yemen, Gerald Feierstein, to brief the Committee on current U.S. efforts to repatriate the Yemeni prisoners.

2. Ambassador Daniel Fried is the Special Envoy for the Closure of Guantánamo Bay in Washington, D.C. His address is:

   Ambassador Daniel Fried
   U.S. Department of State
   2201 C Street, NW
   Room 6317
   Washington, D.C. 20520

   Members of the Committee should contact him directly and ask the following:

   a. Will the U.S. reaffirm its intention to close Guantánamo and repatriate or resettle Yemeni prisoners currently held there?
   b. Will the President rescind his self-imposed ban on transfers to Yemen? If so, when?
   c. When will the U.S. Secretary of Defense certify Yemeni prisoners for transfer? And, if necessary, when will he use the waiver provision that permits transfers without certification?

3. Further, the Committee should ask Ambassador Fried to facilitate the immediate transfer of a limited number of detainees. This will demonstrate U.S. willingness to cooperate with Yemen on Guantánamo detainee affairs. (CCR will assist the Committee in identifying candidates for immediate transfer in subsequent letters.)

4. The Committee should be prepared to help implement a resettlement plan which is typically required by the U.S. as a precondition to transfers. Such a plan might include, for example, monitoring released prisoners' travel and employment activity and periodically requiring released prisoners to check-in with local authorities. (CCR will also provide more detailed information regarding this point in subsequent letters to the Committee.)

5. The Committee should also pledge to support detainees upon their arrival with employment, educational, and social opportunities, including assistance with marriage.

VI. Conclusion

Release from Guantánamo has almost always come as the result of diplomatic pressure and deal-making. Remember that the vast majority of detainees were freed from Guantánamo before the U.S. Supreme Court even granted prisoners the right to challenge their detentions in court. Tellingly, political imperatives in Afghanistan have compelled the U.S. to negotiate the possible release of high-level Taliban prisoners, even as most Yemenis are locked up at Guantánamo for their alleged ties to that very same organization. Politics is everything when it comes to who does and who does not leave Guantánamo. CCR therefore urges the Committee to use its diplomatic influence to press for the urgent transfer of Yemeni prisoners.

Respectfully submitted,

Omar A. Farah
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New York, New York 10012
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Email: ofarah@ccrjustice.org

APPENDIX 18

الجمهورية اليمنية
رئاسة مجلس الوزراء

بسم الله الرحمن الرحيم

الرقم :
التاريخ :
الموافق :

قرار رئيس الوزراء رقم (١٣) لسنة 2012م
بشأن تشكيل لجنة لدراسة قضايا المسجونين
من المواطنين اليمنيين في الخارج

رئيس مجلس الوزراء :-

- بعد الإطلاع على دستور الجمهورية اليمنية .
- وعلى القانون رقم (3) لسنة 2004 بشأن مجلس الوزراء .
- وعلى القرار الجمهوري رقم (184) لسنة 2007م بشأن تشكيل الحكومة وتسمية أعضائها .

((قـــــــــــــــرر))

مادة (1) :تشكل لجنة برئاسة الأخت/ وزير حقوق الإنسان وعضوية ممثلي الجهات التالية:-

1- وزارة الخارجيـــة .
2- وزارة الداخليـــــة .
3- وزارة العـدل .
4- وزارة حقوق الإنسان .
5- جهاز الامن القومي .
6- اللجنة الوطنية للدفاع عن الحقوق والحريات (هود) .
7- نبيل علي الحيلة - ممثل عن أسر المسجونين.

مادة (2) : تتولى اللجنة القيام بالمهام التالية :-

أ- دراسة قضايا المسجونين في جوانتنامو والولايات المتحدة الأمريكية وجمهورية العراق وجمهورية باكستان وجمهورية أفغانستان والعمل على إعادة من صدر بحقهم أحكام البراءة كمعتقلي جوانتنامو ومتابعة الحالات المعلقة والمسجونين بدون أحكام قضائية .

الجمهورية اليمنية
رئاسة مجلس الوزراء

بسم الله الرحمن الرحيم

الرقم :
التاريخ :
الموافق :

ب-العمل على إعادة المسجونين بإحكام قضائية والسعي للحصول على عفو عن بقية فترة العقوبة كمعتقلي العراق وإذا تعذر ذلك العمل على إعادتهم لتنفيذ بقية مدد العقوبة في اليمن تنفيذاً لإتفاقية الرياض العربية للتعاون القضائي والموقع عليها من قبل 16عربية .

ج- العمل على متابعة حالات المعتقلين خارج القانون في البلدان الأخرى .

د- مخاطبة الجهات الأجنبية عبر الوزارات المختصة وفقاً لكل مستوى حسب البروتوكول بين الدول .

مادة (3) :على رؤوساء الجهات المحددة أعلاه سرعة موافاة رئيس اللجنة بأسماء ممثليهم في اللجنة خلال فترة أقصاها ثلاثة أيام من تاريخ صدور هذا القرار و على أن لايقل مستوى التمثيل عن درجة وكيل وزارة .

مادة (4) :تقدم اللجنة تقاريرها للوزراء المعنيين في الوزارات المحددة أعلاه كل شهر ولرئيس الحكومة كل شهرين .

مادة (5) :تضع اللجنة خطة لعملها وفقاً لما يحقق الهدف من إنشائها.

مادة (6) :يُعمل بهذا القرار من تاريخ صدوره .

صدر برئاسة الوزراء :
بتاريخ : ١٠/ جمادى الأولى 1433هـ
الموافق : ٢/٤/ 2012م

محمد سالم باسندوه
رئيس مجلس الوزراء

Unofficial Translation

In the Name of God the Beneficent the Merciful
\ *logo*\

The Republic of Yemen
Cabinet of Ministers

Number :……..
Date : ……
Corresponding to :.....

Prime Minister's Decree Number 13 for the Year 2012
In Reference to Forming a Committee for Review the Case of Yemeni Nationals Imprisoned Abroad

Prime Minister:
Upon reviewing the Constitution of the Republic of Yemen,
and the 2004 Law Number (3) concerning the Cabinet of Ministers,
and the Presidential Decree Number 184 for the year 2007 regarding the formation of the Cabinet and the appointment of its members:

The Following Decree was Issued

Article (1): The formation of a Committee presided over by Sister/ The Minister of Human Rights and Representatives of the following entities, as members:

1- Ministry of Foreign Affairs
2- Ministry of Interior
3- Ministry of Justice
4- Ministry of Human Rights
5- The National Security Bureau
6- The National Organization for Defending Rights and Freedoms (HOOD)
7- Nabil Ali Al-Hayla, Representative of the Prisoners' Families

Article (2): The Committee shall perform the following tasks:

A- Reviewing the cases of the prisoners held in Guantanamo, in the United States of America, in The Republic of Iraq, in The Republic of Pakistan, and in The Republic of Afghanistan; and working on repatriating those who were found innocent, such as the Guantanamo Detainees; following up on pending cases; and cases of prisoners held without charge.
B- Working on repatriating prisoners who were convicted and seeking to obtain pardon for the rest of their sentences, as in the case of the prisoners in Iraq**i** prisoners. Should this not be possible, working on repatriating them so they could serve the rest of their sentences in Yemen pursuant to the Arab Riyadh Agreement for Judicial Cooperation signed by 16 Arab countries.
C- Working on following up with the cases of detainees unlawfully held in other countries.
D- Addressing foreign authorities through their competent ministries according to each level pursuant to the protocols put in place with these countries.

Article (3): The heads of the above determined authorities ought to swiftly report to the Head of the Committee the names of their representatives in the Committee within a period of time not to exceed three days following the date of issuance of this Decision and the representation level shall not be lower than the level of Vice-Minister.

Article (4): The Committee shall submit monthly reports to the concerned ministers appointed in the above-mentioned ministries and every two months to the Prime Minister.

Article (5): The Committee shall set a work plan in accordance with the original objectives of the formation of this Committee.

Article (6): The Decree will be effective from the date of issue.

Issued by the Prime Minister:
On the 1st. of Jamad Al-Awwal 1433 Hegire Calendar
Corresponding to: 4/2/2012 Gregorian Calendar

seal: Republic of Yemen \illegible\\

Mohamad Salem Basendwah
signature\
Prime Minister

APPENDIX 19

U.S. Department of Defense
Office of the Assistant Secretary of Defense (Public Affairs)
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IMMEDIATE RELEASE

No. 611-10
July 13, 2010

Detainee Transfer Announced

The Department of Defense announced today the transfer of one detainee from the detention facility at Guantanamo Bay to the Government of Yemen.

On May 26, 2010, a U.S. District Court ordered the release of Mohammed Odaini from custody at Guantanamo Bay. As a result, the Department of Defense has transferred him to his native country. In accordance with Congressionally-mandated reporting requirements, the administration informed Congress of its intent to transfer Odaini at least 15 days before his transfer.

The suspension of Yemeni repatriations from Guantanamo remains in effect due to the security situation that exists there. However, the Administration respects the decisions of U.S. federal courts, which ordered the release of Odaini. As with all transfers, the U.S. Government will work with the Yemeni Government to the fullest extent possible to implement appropriate security measures.

Since 2002, more than 595 detainees have departed Guantanamo Bay for other destinations, including Albania, Algeria, Afghanistan, Australia, Bangladesh, Bahrain, Belgium, Bermuda, Chad, Denmark, Egypt, Georgia, France, Hungary, Iran, Iraq, Ireland, Italy, Jordan, Kuwait, Libya, Maldives, Mauritania, Morocco, Pakistan, Palau, Portugal, Russia, Saudi Arabia, Slovakia, Somalia, Spain, Sweden, Switzerland, Sudan, Tajikistan, Turkey, Uganda, United Kingdom and Yemen.

Today, 180 detainees remain at Guantanamo Bay.

APPENDIX 20

The Washington Post

U.S. to repatriate Guantanamo detainee to Yemen after judge orders him to be released

By Peter Finn
Washington Post Staff Writer
Saturday, June 26, 2010; A08

The Obama administration has decided to repatriate to Yemen a detainee held at Guantanamo Bay, Cuba, after he was ordered released by a federal judge who cited overwhelming evidence that the detainee had been held illegally for more than eight years by the United States, administration officials said.

In January, President Obama suspended the transfer of any detainees to Yemen because of concerns about the security situation in that country. But the case of Mohammed Odaini, who was 17 when he was picked up in Pakistan in 2002, has forced the administration to partially lift its suspension.

Odaini was a student at a religious institution in Faisalabad, Pakistan, when he visited a nearby guesthouse for the first time. The house was raided that night, and Odaini has been in custody since.

U.S. District Judge Henry H. Kennedy Jr. "emphatically" ordered Odaini's release after concluding there was no evidence he had any connection to al-Qaeda. Odaini was recommended or approved for transfer out of Guantanamo Bay by various military or government officials in 2002, 2004, 2007 and 2009, according to Kennedy's judgment.

Administration officials said that Obama's ban on transfers to Yemen remains in place.

"The general suspension is still intact, but this is a court-ordered release," said one official, who spoke on the condition of anonymity to discuss the case. "People were comfortable with this . . . because of the guy's background, his family and where he comes from in Yemen."

Odaini's father is a retired security officer, and one of his sisters appealed to Obama in a letter. "I wish you could see the tears that easily come running from our eyes even in happy occasions when we are all gathered except our beloved brother Mohammed who is far away," wrote Samira Odaini.

Congress has been informed of the plans to send Odaini home, and a second official noted that in a letter in January, Republican Sens. John McCain (R-Ariz.) and Lindsey O. Graham (R-S.C.) did not object to court-ordered releases of Yemeni detainees.

"This should not be viewed as a reflection of a broader policy for other Yemeni detainees," said the second administration official.

David Remes, Odaini's attorney, declined to comment.

An interagency task force Obama created had cleared 29 Yemenis for transfer out of Guantanamo and conditionally cleared 30 more if security conditions in Yemen improve. The administration may come under further pressure to release Yemenis besides Odaini.

As many as 20 more Yemenis could be ordered released by the courts for lack of evidence to justify their continued detention, an administration official estimated.

About 90 Yemenis remain at Guantanamo, the largest single group by nationality.

View all comments that have been posted about this article.

APPENDIX 21

Bowing to Pressure, Obama Halts Transfer of Guantanamo Detainees to Yemen

Tuesday 05 January 2010

by: t r u t h o u t | Report

Bowing to pressure from Republican and Democratic lawmakers, the Obama administration announced Tuesday that it would suspend the transfer of Guantanamo detainees to Yemen following a failed attempt to blow up a plane on Christmas by a Nigerian who was reportedly trained by al-Qaeda in Yemen.

"One of the very first things that al-Qaeda in the Arabian Peninsula used as a recruiting tool was the existence of Guantanamo Bay," White House press secretary Robert Gibbs told reporters Tuesday. "We are not going to make decisions about transfers that, to a country like Yemen that would, that they're not capable of handling. And I think that, while we remain committed to closing the facility, the determination has been made that right now any additional transfers to Yemen is not a good idea."

The administration has been inconsistent in recent days with regard to transferring Guantanamo detainees who have already been cleared for relase back to Yemen.

Last weekend, counterterrorism and homeland security adviser John Brennan said during an appearance on CNN's "State of the Union" that "some of these individuals are going to be transferred back to Yemen at the right time and the right pace and in the right way."

Gibbs said, however, it's now likely that the Yemeni prisoners would instead be transferred to a near-vacant maximum security prison in Thomson, Illinois that the federal government is trying to purchase.

However, Congress has so far refused to provide the administration with the necessary funding it needs to move forward with acquiring the prison and Democratic lawmakers have already indicated they are unlikely to revist the politically charged issue during an election year.

About half of the 198 prisoners currently detained at Guantanamo are Yemenis and about 35 have been cleared for release to Yemen by a Justice Department task force that spent months reviewing their cases.

But lawmakers now fear that repatriating the prisoners to their home country could lead to their radicalization by al-Qaeda in the Arabian Peninsula, despite the fact that many of the detainees currently imprisoned were never involved in terrorist activity to begin with when they were captured.

As a result, the prisoners who were scheduled to be released will continue to languish at Guantanamo indefinitely.

Obama has announced that Guantanamo, which he had hoped to close by the end of the month, won't likely be shuttered for at least another year.

In a televised briefing Tuesday afternoon where he discussed details of the Christmas day bomb plot, Obama said he is still committed to seeing Guantanamo closed.

"We will close Guantanamo prison, which has damaged our national security interests and become a tremendous recruiting tool for al Qaeda," Obama said. "In fact, that was an explicit rationale for the formation of al Qaeda in the Arabian Peninsula."

Obama added that he consulted with Attorney General Eric Holder, and, "given the unsettled situation...we've agreed that we will not be transferring additional detainees back to Yemen at this time."

In a radio address last weekend, President Obama said since the Christmas day bombing plot, the US has stepped up its "partnership" with Yemen, "training and equipping their security forces, sharing intelligence and working with them to strike al Qaeda terrorists."

Indeed, on Tuesday, the Yemeni government announced that it launched a major offensive against al-Qaeda, sending thousands of troops into the terrorist group's strongholds in the eastern and southern parts of the country.

According to a report in the Telegraph:

> Tuesday's decision to deploy troops into al-Qaeda heartland seemed partly designed to deflect growing international concerns that the Yemeni government was too frail, corrupt and inept to counter the growing

terrorist presence in the country.

The US and Britain closed its embassies in Britain last weekend due to threats against the facilities by al-Qaeda, US officials said.

The embassy was reopened Tuesday, hours before Obama met with his top national security team to discuss intelligence failures that lead to the terrorist plot on Christmas.

Because the declining security situation in Yemen has made the country fertile ground for terrorist organization to train new recruits, according to lawmakers, detainees should not be transferred there.

Last month, Sen. Dianne Feinstein, (D-California), the chairwoman of the Senate Intelligence Committee, said, "Guantanamo detainees should not be released to Yemen at this time. It is too unstable."

But as Truthout contributor Andy Worthington noted in a report last week:

> "...Only at Guantánamo can fear trump justice to such an alarming degree" that, "if [the officials'] rationale for not releasing any of the Yemenis from Guantánamo was extended to the US prison system, it would mean that no prisoner would ever be released at the end of their sentence, because prison 'might have radicalized' them, and also, of course, that it would lead to no prisoner ever being released from Guantánamo."

President Obama transferred six detainees to Yemen last month, five days before the Christmas day bombing plot on a Northwest Airlines flight bound for Detroit.

But after 23 year-old Nigerian Umar Farouq Abdulmuttalab's failed attempt to detonate the chemical explosives in his underwear while onboard the Northwest jet, Senators Lindsey Graham, (R-South Carolina), John McCain, (R-Arizona), and Joe Lieberman, (I-Connecticut), sent Obama a letter urging him to stop the transfer of the six detainees to Yemen.

The Justice Department said, however, it conducted a "comprehensive review" of their cases and took into account "a

number of factors, including potential threat, mitigation measures and the likelihood of success in habeas litigation, the detainees were approved for transfer."

In a statement, the Center for Constitutional Rights, a human rights organization that represents some Guantnanmo prisoners, denounced the administration's decision to indefinitely halt the transfer of Yemeni prisoners.

"Dozens of men from Yemen who have been cleared for release after extensive scrutiny by the government's Guantànamo Review Task Force are about to be left in limbo once more due to politics, not facts," CCR said. "Many are about to begin their ninth year in indefinite detention.

"Halting the repatriation of Yemeni men cleared by the Task Force after months of careful review is unconscionable. It will also effectively prevent any meaningful progress towards closing Guantánamo, which President Obama has repeatedly argued will make our nation safer."

APPENDIX 22

U.S. suspends Guantanamo prisoner transfer to Yemen

Tue, Jan 5 2010

By Steve Holland

WASHINGTON (Reuters) - The Obama administration on Tuesday suspended the transfer of detainees from the U.S. military prison at Guantanamo Bay to Yemen as a result of the deteriorating security situation there.

President Barack Obama bowed to political pressure from Democratic and Republican lawmakers not to send any more prisoners to Yemen as a result of revelations that a would-be bomber on a Detroit-bound plane had received al Qaeda training in Yemen.

"It was always our intent to transfer detainees to other countries only under conditions that provide assurances that our security is being protected," Obama said.

"Given the unsettled situation, I've spoken to the attorney general (Eric Holder) and we've agreed that we will not be transferring additional detainees back to Yemen at this time," Obama said.

Several of the roughly 91 Yemeni detainees at Guantanamo Bay had been cleared to be sent home, as the Obama administration struggles to close the prison.

White House officials made clear that the suspension was considered a temporary one.

"We will close Guantanamo prison, which has damaged our national security interests and become a tremendous recruiting tool for al Qaeda," Obama said.

His decision came after The Times newspaper of London reported that at least a dozen former Guantanamo Bay prisoners had rejoined al Qaeda to fight in Yemen.

White House counterterrorism adviser John Brennan had left the door open to more transfers to Yemen as recently as Sunday in a round of television interviews. He stressed that no decisions would be made that would put Americans at risk.

Some leading Democrats from Obama's own party had called for a halt to the transfers, including Representative Jane Harman, a member of the House of Representatives' Homeland Security Committee.

Senate Republican leader Mitch McConnell welcomed the move and said Obama should revisit his decision to close the facility.

"Given the determined nature of the threat from al Qaeda, it made little sense to transfer detainees from the secure facility at Guantanamo back to Yemen, where previously transferred detainees have escaped from prison and returned to al Qaeda," he said.

PROTESTS

The Center for Constitutional Rights, however, denounced the decision, saying many of the Yemenis are about to begin their ninth year of indefinite detention and to continue holding them is unconscionable.

"We know from the military's own records that most of the detainees at Guantanamo have no link to terrorism," the group said.

Attorney David Remes, an American who represents 15 Yemeni captives at Guantanamo, said politics had trumped justice in the decision.

"These men are going to continue to be held at Guantanamo solely because they had the misfortune of being Yemenis," he said. "..."Guilt and innocence make no difference in this equation."

Obama has encountered various complications in trying to close the Guantanamo facility and has acknowledged he will not be able to meet a self-imposed one-year deadline to close it that he promised when he took office last January.

Just last month his aides announced the U.S. government would proceed with buying an Illinois prison and bolstering

security there so a limited number of Guantanamo detainees can be transferred to it.

(Additional reporting by Caren Bohan, editing by Cynthia Osterman)

2013 National Defense Authorization Act

APPENDIX 23

The New York Times

January 3, 2013

Obama Disputes Limits on Detainee Transfers Imposed in Defense Bill

By CHARLIE SAVAGE

WASHINGTON — President Obama set aside his veto threat and late Wednesday signed a defense bill that imposes restrictions on transferring detainees out of military prisons in Afghanistan and Guantánamo Bay, Cuba. But he attached a signing statement claiming that he has the constitutional power to override the limits in the law.

The move awakened a dormant issue from Mr. Obama's first term: his broken promise to close the Guantánamo prison. Lawmakers intervened by imposing statutory restrictions on transfers of prisoners to other countries or into the United States, either for continued detention or for prosecution.

Now, as Mr. Obama prepares to begin his second term, Congress has tried to further restrict his ability to wind down the detention of terrorists worldwide, adding new limits in the National Defense Authorization Act of 2013, which lawmakers approved in late December.

The bill extended and strengthened limits on transfers out of Guantánamo to troubled nations like Yemen, the home country of the bulk of the remaining low-level detainees who have been cleared for repatriation. It also, for the first time, limited the Pentagon's ability to transfer the roughly 50 non-Afghan citizens being held at the Parwan prison at Bagram Air Base in Afghanistan at a time when the future of American detention operations there is murky.

Despite his objections, Mr. Obama signed the bill, saying its other provisions on military programs were too important to jeopardize. Early Thursday, shortly after midnight, the White House released the signing statement in which the president challenged several of its provisions.

For example, in addressing the new limits on the transfers from Parwan, Mr. Obama wrote that the provision "could interfere with my ability as commander in chief to make time-sensitive determinations about the appropriate disposition of detainees in an active area

He added that if he decided that the statute was operating "in a manner that v constitutional separation of powers principles, my administration will impleme constitutional conflict" — legalistic language that means interpreting the statut

unwritten exception a president may invoke at his discretion.

Saying that he continued to believe that closing the Guantánamo prison was in the country's fiscal and national security interests, Mr. Obama made a similar challenge to three sections that limit his ability to transfer detainees from Guantánamo, either into the United States for prosecution before a civilian court or for continued detention at another prison, or to the custody of another nation.

It was not clear, however, whether Mr. Obama intended to follow through, or whether he was just saber-rattling as a matter of principle. He made a similar challenge a year ago to the Guantánamo transfer restrictions in the 2012 version of the National Defense Authorization Act, but — against the backdrop of the presidential election campaign — he did not invoke the authority he claimed.

Several officials said that it was not certain, even from inside the government, what Mr. Obama's intentions were. While the signing statement fell short of a veto, they said its language appeared intended to preserve some flexibility for the president to make a decision later about whether to make a new push to close the Guantánamo prison amid competing policy priorities.

Andrea Prasow, senior counterterrorism counsel at Human Rights Watch, which advocates closing Guantánamo, criticized Mr. Obama for not vetoing the legislation despite his threat to do so.

"The administration blames Congress for making it harder to close Guantánamo, yet for a second year President Obama has signed damaging Congressional restrictions into law," she said. "The burden is on Obama to show he is serious about closing the prison."

About 166 men remain at the prison.

Signing statements are official documents issued by a president when he signs bills into law that instruct subordinates in the executive branch about how to carry out the new statutes. In recent decades, starting with the Reagan administration, presidents have used the device with far greater frequency than in earlier eras to claim a constitutional right to bypass or override new laws.

The practice peaked under President George W. Bush, who used signing statements to advance sweeping theories of presidential power and challenged nearly 1,200 provisions over eight years — more than twice as many as all previous presidents combined.

The American Bar Association has called upon presidents to stop using signing statements, calling the practice "contrary to the rule of law and our constitutional system of separation of

powers." A year ago, the group sent a letter to Mr. Obama restating its objection to the practice and urging him to instead veto bills if he thinks sections are unconstitutional.

As a presidential candidate, Mr. Obama sharply criticized Mr. Bush's use of the device as an overreach. Once in office, however, he said that he would use it only to invoke mainstream and widely accepted theories of the constitutional power of the president.

In his latest signing statement, Mr. Obama also objected to five provisions in which Congress required consultations and set out criteria over matters involving diplomatic negotiations about such matters as a security agreement with Afghanistan, saying that he would interpret the provisions so as not to inhibit "my constitutional authority to conduct the foreign relations of the United States."

Mr. Obama raised concerns about several whistle-blower provisions to protect people who provide certain executive branch information to Congress — including employees of contractors who uncover waste or fraud, and officials raising concerns about the safety and reliability of nuclear stockpiles.

He also took particular objection to a provision that directs the commander of the military's nuclear weapons to submit a report to Congress "without change" detailing whether any reduction in nuclear weapons proposed by Mr. Obama would "create a strategic imbalance or degrade deterrence" relative to Russian stockpiles.

The provision, Mr. Obama said, "would require a subordinate to submit materials directly to Congress without change, and thereby obstructs the traditional chain of command."

APPENDIX 24

The White House

Office of the Press Secretary

For Immediate Release January 03, 2013

Statement by the the President on H.R. 4310

STATEMENT BY THE PRESIDENT

Today I have signed into law H.R. 4310, the "National Defense Authorization Act for Fiscal Year 2013." I have approved this annual defense authorization legislation, as I have in previous years, because it authorizes essential support for service members and their families, renews vital national security programs, and helps ensure that the United States will continue to have the strongest military in the world.

Even though I support the vast majority of the provisions contained in this Act, which is comprised of hundreds of sections spanning more than 680 pages of text, I do not agree with them all. Our Constitution does not afford the President the opportunity to approve or reject statutory sections one by one. I am empowered either to sign the bill, or reject it, as a whole. In this case, though I continue to oppose certain sections of the Act, the need to renew critical defense authorities and funding was too great to ignore.

In a time when all public servants recognize the need to eliminate wasteful or duplicative spending, various sections in the Act limit the Defense Department's ability to direct scarce resources towards the highest priorities for our national security. For example, restrictions on the Defense Department's ability to retire unneeded ships and aircraft will divert scarce resources needed for readiness and result in future unfunded liabilities. Additionally, the Department has endeavored to constrain manpower costs by recommending prudent cost sharing reforms in its health care programs. By failing to allow some of these cost savings measures, the Congress may force reductions in the overall size of our military forces.

Section 533 is an unnecessary and ill-advised provision, as the military already appropriately protects the freedom of conscience of chaplains and service members. The Secretary of Defense will ensure that the implementing regulations do not permit or condone discriminatory actions that compromise good order and discipline or otherwise violate military codes of conduct. My Administration remains fully committed to continuing the successful implementation of the repeal of Don't Ask, Don't Tell, and to protecting the rights of gay and lesbian service members; Section 533 will not alter that.

Several provisions in the bill also raise constitutional concerns. Section 1025 places limits on the military's authority to transfer third country nationals currently held at the detention facility in Parwan, Afghanistan. That facility is located within the territory of a foreign sovereign in the midst of an armed conflict. Decisions regarding the disposition of detainees captured on foreign battlefields have traditionally been based upon the judgment of experienced military commanders and national security professionals without unwarranted interference by Members of Congress. Section 1025 threatens to upend that tradition, and could interfere with my ability as Commander in Chief to make time-sensitive determinations about the appropriate disposition of detainees in an active area of hostilities. Under certain circumstances, the section could violate constitutional separation of powers principles. If section 1025 operates in a manner that violates constitutional separation of powers principles, my Administration will implement it to avoid the constitutional conflict.

Sections 1022, 1027 and 1028 continue unwise funding restrictions that curtail options available to the executive branch. Section 1027 renews the bar against using appropriated funds for fiscal year 2012 to transfer Guantanamo detainees into the United States for any purpose. I continue to oppose this provision, which substitutes the Congress's blanket political determination for careful and fact-based determinations, made by counterterrorism and law enforcement professionals, of when and where to prosecute Guantanamo detainees. For decades, Republican and Democratic administrations have successfully prosecuted hundreds of terrorists in Federal court. Those prosecutions are a legitimate, effective, and powerful tool in our efforts to protect the Nation, and in certain cases may be the only legally available process for trying detainees. Removing that tool from the executive branch undermines our national security. Moreover, this provision would, under certain circumstances, violate constitutional separation of powers principles.

Section 1028 fundamentally maintains the unwarranted restrictions on the executive branch's authority to transfer detainees to a foreign country. This provision hinders the Executive's ability to carry out its military, national

BLOG POSTS ON THIS ISSUE

February 27, 2013 10:16 PM EST

Let's Move Tour Day 1: Cafeteria Cook-off

First Lady Michelle Obama was joined by Rachael Ray and 400 Mississippi elementary school kids to celebrate the changes that state has made that are helping kids get healthy.

February 27, 2013 3:23 PM EST

Rosa Parks has a Permanent Place in the U.S. Capitol

President Obama is on hand for the unveiling of the new Rosa Parks statue in the U.S. Capitol

February 27, 2013 12:00 PM EST

Catching Up with the Curator: Watch Meeting--Dec. 31st 1862--Waiting for the Hour

To mark African American History Month, as well as the 150th anniversary of the year the Emancipation Proclamation, we talked with White House Curator Bill Allman about a painting called Watch Meeting--Dec. 31st 1862--Waiting for the Hour that hangs near the Oval Office in the West Wing.

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security, and foreign relations activities and would, under certain circumstances, violate constitutional separation of powers principles. The executive branch must have the flexibility to act swiftly in conducting negotiations with foreign countries regarding the circumstances of detainee transfers. The Congress designed these sections, and has here renewed them once more, in order to foreclose my ability to shut down the Guantanamo Bay detention facility. I continue to believe that operating the facility weakens our national security by wasting resources, damaging our relationships with key allies, and strengthening our enemies. My Administration will interpret these provisions as consistent with existing and future determinations by the agencies of the Executive responsible for detainee transfers. And, in the event that these statutory restrictions operate in a manner that violates constitutional separation of powers principles, my Administration will implement them in a manner that avoids the constitutional conflict.

As my Administration previously informed the Congress, certain provisions in this bill, including sections 1225, 913, 1531, and 3122, could interfere with my constitutional authority to conduct the foreign relations of the United States. In these instances, my Administration will interpret and implement these provisions in a manner that does not interfere with my constitutional authority to conduct diplomacy. Section 1035, which adds a new section 495(c) to title 10, is deeply problematic, as it would impede the fulfillment of future U.S. obligations agreed to in the New START Treaty, which the Senate provided its advice and consent to in 2010, and hinder the Executive's ability to determine an appropriate nuclear force structure. I am therefore pleased that the Congress has included a provision to adequately amend this provision in H.R. 8, the American Taxpayer Relief Act of 2012, which I will be signing into law today.

Certain provisions in the Act threaten to interfere with my constitutional duty to supervise the executive branch. Specifically, sections 827, 828, and 3164 could be interpreted in a manner that would interfere with my authority to manage and direct executive branch officials. As my Administration previously informed the Congress, I will interpret those sections consistent with my authority to direct the heads of executive departments to supervise, control, and correct employees' communications with the Congress in cases where such communications would be unlawful or would reveal information that is properly privileged or otherwise confidential. Additionally, section 1034 would require a subordinate to submit materials directly to the Congress without change, and thereby obstructs the traditional chain of command. I will implement this provision in a manner consistent with my authority as the Commander in Chief of the Armed Forces and the head of the executive branch.

A number of provisions in the bill -- including sections 534(b)(6), 674, 675, 735, 737, 1033(b), 1068, and 1803 -- could intrude upon my constitutional authority to recommend such measures to the Congress as I "judge necessary and expedient." My Administration will interpret and implement these provisions in a manner that does not interfere with my constitutional authority.

BARACK OBAMA

APPENDIX 25

H. R. 4310

One Hundred Twelfth Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Tuesday, the third day of January, two thousand and twelve

An Act

To authorize appropriations for fiscal year 2013 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "National Defense Authorization Act for Fiscal Year 2013".

SEC. 2. ORGANIZATION OF ACT INTO DIVISIONS; TABLE OF CONTENTS.

(a) DIVISIONS.—This Act is organized into four divisions as follows:

(1) Division A—Department of Defense Authorizations.

(2) Division B—Military Construction Authorizations.

(3) Division C—Department of Energy National Security Authorizations and Other Authorizations.

(4) Division D—Funding Tables.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

"(d)(1) The Secretary of the Navy may not announce or implement any proposal to name a vessel of the Navy until 30 days after the date on which the Secretary submits to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth such proposal.

"(2) Each report under this subsection shall describe the justification for the proposal covered by such report in accordance with the standards referred to in section 1024(a) of the National Defense Authorization Act for Fiscal Year 2013.".

(c) EFFECTIVE DATE.—This section and the amendment made by this section shall go into effect on the date that is 30 days after the date of the enactment of this Act.

Subtitle D—Counterterrorism

SEC. 1021. EXTENSION OF AUTHORITY TO MAKE REWARDS FOR COMBATING TERRORISM.

(a) EXTENSION.—Section 127b(c)(3)(C) of title 10, United States Code, is amended by striking "September 30, 2013" and inserting "September 30, 2014".

(b) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees a report that outlines the future requirements and authorities to make rewards for combating terrorism. The report shall include—

(1) an analysis of future requirements under section 127b of title 10, United States Code;

(2) a detailed description of requirements for rewards in support of operations with allied forces; and

(3) an overview of geographic combatant commander requirements through September 30, 2014.

SEC. 1022. PROHIBITION ON USE OF FUNDS TO CONSTRUCT OR MODIFY FACILITIES IN THE UNITED STATES TO HOUSE DETAINEES TRANSFERRED FROM UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.

(a) IN GENERAL.—No amounts authorized to be appropriated or otherwise made available to the Department of Defense for fiscal year 2013 may be used to construct or modify any facility in the United States, its territories, or possessions to house any individual detained at Guantanamo for the purposes of detention or imprisonment in the custody or under the control of the Department of Defense unless authorized by Congress.

(b) EXCEPTION.—The prohibition in subsection (a) shall not apply to any modification of facilities at United States Naval Station, Guantanamo Bay, Cuba.

(c) INDIVIDUAL DETAINED AT GUANTANAMO DEFINED.—In this section, the term "individual detained at Guantanamo" has the meaning given that term in section 1028(f)(2).

SEC. 1023. REPORT ON RECIDIVISM OF INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA, WHO HAVE BEEN TRANSFERRED TO FOREIGN COUNTRIES.

(a) REPORT REQUIRED.—Not later than 60 days after the date of the enactment of this Act, and annually thereafter for five years, the Director of the Defense Intelligence Agency, in consultation

with the head of each element of the intelligence community that the Director considers appropriate, shall submit to the covered congressional committees a report assessing the factors that cause or contribute to the recidivism of individuals detained at Guantanamo who are transferred or released to a foreign country. Such report shall include—

(1) a discussion of trends, by country and region, where recidivism has occurred; and

(2) an assessment of the implementation by foreign countries of the international arrangements relating to the transfer or release of individuals detained at Guantanamo reached between the United States and each foreign country to which an individual detained at Guantanamo has been transferred or released.

(b) FORM.—The report required under subsection (a) may be submitted in classified form.

(c) DEFINITIONS.—In this section:

(1) The term "covered congressional committees" means—

(A) the Committee on Armed Services, the Committee on Foreign Affairs, and the Permanent Select Committee on Intelligence of the House of Representatives; and

(B) the Committee on Armed Services, the Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate.

(2) The term "individual detained at Guantanamo" means any individual who is or was located at United States Naval Station, Guantanamo Bay, Cuba, who—

(A) is not a citizen of the United States or a member of the Armed Forces of the United States; and

(B) on or after January 1, 2002, was—

(i) in the custody or under the control of the Department of Defense; or

(ii) otherwise under detention at United States Naval Station, Guantanamo Bay, Cuba.

SEC. 1024. NOTICE AND REPORT ON USE OF NAVAL VESSELS FOR DETENTION OF INDIVIDUALS CAPTURED OUTSIDE AFGHANISTAN PURSUANT TO THE AUTHORIZATION FOR USE OF MILITARY FORCE.

(a) NOTICE TO CONGRESS.—Not later than 30 days after first detaining an individual pursuant to the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note) on a naval vessel outside the United States, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives notice of the detention. In the case of such an individual who is transferred or released before the submittal of the notice of the individual's detention, the Secretary shall also submit to such Committees notice of the transfer or release.

(b) REPORT.—

(1) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the use of naval vessels for the detention outside the United States of any individual who is detained pursuant to the Authorization for

Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note). Such report shall include—

(A) procedures and any limitations on detaining such individuals at sea on board United States naval vessels;

(B) an assessment of any force protection issues associated with detaining such individuals on such vessels;

(C) an assessment of the likely effect of such detentions on the original mission of such naval vessels; and

(D) any restrictions on long-term detention of individuals on United States naval vessels.

(2) FORM OF REPORT.—The report required under paragraph (1) may be submitted in classified form.

SEC. 1025. NOTICE REQUIRED PRIOR TO TRANSFER OF CERTAIN INDIVIDUALS DETAINED AT THE DETENTION FACILITY AT PARWAN, AFGHANISTAN.

(a) NOTICE REQUIRED.—The Secretary of Defense shall submit to the appropriate congressional committees notice in writing of the proposed transfer of any individual detained pursuant to the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note) who is a national of a country other than the United States or Afghanistan from detention at the Detention Facility at Parwan, Afghanistan, to the custody of the Government of Afghanistan or of any other country. Such notice shall be provided not later than 10 days before such a transfer may take place.

(b) ASSESSMENTS REQUIRED.—Prior to any transfer referred to under subsection (a), the Secretary shall ensure that an assessment is conducted as follows:

(1) In the case of the proposed transfer of such an individual by reason of the individual being released, an assessment of the threat posed by the individual and the security environment of the country to which the individual is to be transferred.

(2) In the case of the proposed transfer of such an individual to a country other than Afghanistan for the purpose of the prosecution of the individual, an assessment regarding the capacity, willingness, and historical track record of the country with respect to prosecuting similar cases, including a review of the primary evidence against the individual to be transferred and any significant admissibility issues regarding such evidence that are expected to arise in connection with the prosecution of the individual.

(3) In the case of the proposed transfer of such an individual for reintegration or rehabilitation in a country other than Afghanistan, an assessment regarding the capacity, willingness, and historical track records of the country for reintegrating or rehabilitating similar individuals.

(4) In the case of the proposed transfer of such an individual to the custody of the Government of Afghanistan for prosecution or detention, an assessment regarding the capacity, willingness, and historical track record of Afghanistan to prosecute or detain long-term such individuals.

(c) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term "appropriate congressional committees" means the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives and the Committee on Armed Services and the Committee on Foreign Relations of the Senate.

SEC. 1026. REPORT ON RECIDIVISM OF INDIVIDUALS FORMERLY DETAINED AT THE DETENTION FACILITY AT PARWAN, AFGHANISTAN.

(a) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the relevant congressional committees a report on the estimated recidivism rates and the factors that appear to contribute to the recidivism of individuals formerly detained at the Detention Facility at Parwan, Afghanistan, who were transferred or released, including the estimated total number of individuals who have been recaptured on one or more occasion.

(b) FORM.—The report required under subsection (a) may be submitted in classified form.

(c) RELEVANT CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term "relevant congressional committees" means—

(1) the Committee on Armed Services and the Committee on Foreign Relations of the Senate; and

(2) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives.

SEC. 1027. PROHIBITION ON THE USE OF FUNDS FOR THE TRANSFER OR RELEASE OF INDIVIDUALS DETAINED AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA.

None of the funds authorized to be appropriated by this Act for fiscal year 2013 may be used to transfer, release, or assist in the transfer or release to or within the United States, its territories, or possessions of Khalid Sheikh Mohammed or any other detainee who—

(1) is not a United States citizen or a member of the Armed Forces of the United States; and

(2) is or was held on or after January 20, 2009, at United States Naval Station, Guantanamo Bay, Cuba, by the Department of Defense.

SEC. 1028. REQUIREMENTS FOR CERTIFICATIONS RELATING TO THE TRANSFER OF DETAINEES AT UNITED STATES NAVAL STATION, GUANTANAMO BAY, CUBA, TO FOREIGN COUNTRIES AND OTHER FOREIGN ENTITIES.

(a) CERTIFICATION REQUIRED PRIOR TO TRANSFER.—

(1) IN GENERAL.—Except as provided in paragraph (2) and subsection (d), the Secretary of Defense may not use any amounts authorized to be appropriated or otherwise available to the Department of Defense for fiscal year 2013 to transfer any individual detained at Guantanamo to the custody or control of the individual's country of origin, any other foreign country, or any other foreign entity unless the Secretary submits to Congress the certification described in subsection (b) not later than 30 days before the transfer of the individual.

(2) EXCEPTION.—Paragraph (1) shall not apply to any action taken by the Secretary to transfer any individual detained at Guantanamo to effectuate an order affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction (which the Secretary shall notify Congress of promptly after issuance).

(b) CERTIFICATION.—A certification described in this subsection is a written certification made by the Secretary of Defense, with

the concurrence of the Secretary of State and in consultation with the Director of National Intelligence, that—

(1) the government of the foreign country or the recognized leadership of the foreign entity to which the individual detained at Guantanamo is to be transferred—

(A) is not a designated state sponsor of terrorism or a designated foreign terrorist organization;

(B) maintains control over each detention facility in which the individual is to be detained if the individual is to be housed in a detention facility;

(C) is not, as of the date of the certification, facing a threat that is likely to substantially affect its ability to exercise control over the individual;

(D) has taken or agreed to take effective actions to ensure that the individual cannot take action to threaten the United States, its citizens, or its allies in the future;

(E) has taken or agreed to take such actions as the Secretary of Defense determines are necessary to ensure that the individual cannot engage or reengage in any terrorist activity; and

(F) has agreed to share with the United States any information that—

(i) is related to the individual or any associates of the individual; and

(ii) could affect the security of the United States, its citizens, or its allies; and

(2) includes an assessment, in classified or unclassified form, of the capacity, willingness, and past practices (if applicable) of the foreign country or entity in relation to the Secretary's certifications.

(c) PROHIBITION IN CASES OF PRIOR CONFIRMED RECIDIVISM.—

(1) PROHIBITION.—Except as provided in paragraph (2) and subsection (d), the Secretary of Defense may not use any amounts authorized to be appropriated or otherwise made available to the Department of Defense to transfer any individual detained at Guantanamo to the custody or control of the individual's country of origin, any other foreign country, or any other foreign entity if there is a confirmed case of any individual who was detained at United States Naval Station, Guantanamo Bay, Cuba, at any time after September 11, 2001, who was transferred to such foreign country or entity and subsequently engaged in any terrorist activity.

(2) EXCEPTION.—Paragraph (1) shall not apply to any action taken by the Secretary to transfer any individual detained at Guantanamo to effectuate an order affecting the disposition of the individual that is issued by a court or competent tribunal of the United States having lawful jurisdiction (which the Secretary shall notify Congress of promptly after issuance).

(d) NATIONAL SECURITY WAIVER.—

(1) IN GENERAL.—The Secretary of Defense may waive the applicability to a detainee transfer of a certification requirement specified in subparagraph (D) or (E) of subsection (b)(1) or the prohibition in subsection (c), if the Secretary certifies the rest of the criteria required by subsection (b) for transfers prohibited by (c) and, with the concurrence of the Secretary of State and in consultation with the Director of National Intelligence, determines that—

(A) alternative actions will be taken to address the underlying purpose of the requirement or requirements to be waived;

(B) in the case of a waiver of subparagraph (D) or (E) of subsection (b)(1), it is not possible to certify that the risks addressed in the paragraph to be waived have been completely eliminated, but the actions to be taken under subparagraph (A) will substantially mitigate such risks with regard to the individual to be transferred;

(C) in the case of a waiver of subsection (c), the Secretary has considered any confirmed case in which an individual who was transferred to the country subsequently engaged in terrorist activity, and the actions to be taken under subparagraph (A) will substantially mitigate the risk of recidivism with regard to the individual to be transferred; and

(D) the transfer is in the national security interests of the United States.

(2) REPORTS.—Whenever the Secretary makes a determination under paragraph (1), the Secretary shall submit to the appropriate committees of Congress, not later than 30 days before the transfer of the individual concerned, the following:

(A) A copy of the determination and the waiver concerned.

(B) A statement of the basis for the determination, including—

(i) an explanation why the transfer is in the national security interests of the United States;

(ii) in the case of a waiver of paragraph (D) or (E) of subsection (b)(1), an explanation why it is not possible to certify that the risks addressed in the paragraph to be waived have been completely eliminated; and

(iii) a classified summary of—

(I) the individual's record of cooperation while in the custody of or under the effective control of the Department of Defense; and

(II) the agreements and mechanisms in place to provide for continuing cooperation.

(C) A summary of the alternative actions to be taken to address the underlying purpose of, and to mitigate the risks addressed in, the paragraph or subsection to be waived.

(D) The assessment required by subsection (b)(2).

(e) RECORD OF COOPERATION.—In assessing the risk that an individual detained at Guantanamo will engage in terrorist activity or other actions that could affect the security of the United States if released for the purpose of making a certification under subsection (b) or a waiver under subsection (d), the Secretary of Defense may give favorable consideration to any such individual—

(1) who has substantially cooperated with United States intelligence and law enforcement authorities, pursuant to a pre-trial agreement, while in the custody of or under the effective control of the Department of Defense; and

(2) for whom agreements and effective mechanisms are in place, to the extent relevant and necessary, to provide for

continued cooperation with United States intelligence and law enforcement authorities.

(f) DEFINITIONS.—In this section:

(1) The term "appropriate committees of Congress" means—

(A) the Committee on Armed Services, the Committee on Appropriations, and the Select Committee on Intelligence of the Senate; and

(B) the Committee on Armed Services, the Committee on Appropriations, and the Permanent Select Committee on Intelligence of the House of Representatives.

(2) The term "individual detained at Guantanamo" means any individual located at United States Naval Station, Guantanamo Bay, Cuba, as of October 1, 2009, who—

(A) is not a citizen of the United States or a member of the Armed Forces of the United States; and

(B) is—

(i) in the custody or under the control of the Department of Defense; or

(ii) otherwise under detention at United States Naval Station, Guantanamo Bay, Cuba.

(3) The term "foreign terrorist organization" means any organization so designated by the Secretary of State under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189).

SEC. 1029. RIGHTS UNAFFECTED.

Nothing in the Authorization for Use of Military Force (Public Law 107–40; 50 U.S.C. 1541 note) or the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112–81) shall be construed to deny the availability of the writ of habeas corpus or to deny any Constitutional rights in a court ordained or established by or under Article III of the Constitution to any person inside the United States who would be entitled to the availability of such writ or to such rights in the absence of such laws.

Subtitle E—Nuclear Forces

SEC. 1031. NUCLEAR WEAPONS EMPLOYMENT STRATEGY OF THE UNITED STATES.

(a) REPORTS ON STRATEGY.—Section 491 of title 10, United States Code, is—

(1) transferred to chapter 24 of such title, as added by subsection (b)(1); and

(2) amended—

(A) in the heading, by inserting "**weapons**" after "**Nuclear**";

(B) by striking "nuclear employment strategy" each place it appears and inserting "nuclear weapons employment strategy";

(C) in paragraph (1)—

(i) by inserting "the" after "modifications to"; and

(ii) by inserting ", plans, and options" after "employment strategy";

(D) by inserting after paragraph (3) the following new paragraph:

APPENDIX 26

The National Defense Authorization Act for FY2012: Detainee Matters

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CRS Report for Congress
Prepared for Members and Committees of Congress

Summary

The National Defense Authorization Act for FY2012 (2012 NDAA; P.L. 112-81) contains a subtitle addressing issues related to detainees at the U.S. Naval Station at Guantanamo Bay, Cuba, and more broadly, the disposition of persons captured in the course of hostilities against Al Qaeda and associated forces. Much of the debate surrounding passage of the act centered on what appears to be an effort to confirm or, as some observers view it, expand the detention authority that Congress implicitly granted the President via the Authorization for Use of Military Force (AUMF; P.L. 107-40) in the aftermath of the terrorist attacks of September 11, 2001.

The 2012 NDAA authorizes the detention of certain categories of persons and requires the military detention of a subset of them (subject to waiver by the President); regulates status determinations for persons held pursuant to the AUMF, regardless of location; regulates periodic review proceedings concerning the continued detention of Guantanamo detainees; and continues current funding restrictions that relate to Guantanamo detainee transfers to foreign countries. The act continues to bar military funds from being used to transfer detainees from Guantanamo into the United States for trial or other purposes, although it does not directly bar criminal trials for terrorism suspects (similar transfer restrictions are found in appropriations enactments in effect for FY2012).

During floor debate on S. 1867, significant attention centered on the extent to which the bill and existing law permit the military detention of U.S. citizens believed to be enemy belligerents, especially if arrested within the United States. A single amendment was made to the detainee provisions (ultimately included in the final version of the act) to clarify that the bill's affirmation of detention authority under the AUMF is not intended to affect any existing authorities relating to the detention of U.S. citizens or lawful resident aliens, or any other persons captured or arrested in the United States. When signing the 2012 NDAA into law, President Obama stated that he would "not authorize the indefinite military detention without trial of American citizens."

While Congress deliberated over the competing House and Senate bills, the White House expressed strong criticism of both bills' detainee provisions, and threatened to veto any legislation "that challenges or constrains the President's critical authorities to collect intelligence, incapacitate dangerous terrorists, and protect the Nation." A few modifications were made during conference to assuage some of the Administration's concerns. President Obama ultimately lifted the veto threat and signed the 2012 NDAA into law, though he issued a statement criticizing many of the bill's detainee provisions. Among other things, he declared that the mandatory military detention provision would be implemented in a manner that would preserve a maximum degree of flexibility, and that the Administration would not "adhere to a rigid across-the-board requirement for military detention." In February 2012, President Obama issued a directive to implement this policy, including by exercising waiver authority to prevent the mandatory military detention provision's application in a broad range of circumstances.

This report offers a brief background of the salient issues raised by the detainee provisions of the FY2012 NDAA, provides a section-by-section analysis, and discusses executive interpretation and implementation of the act's mandatory military detention provision. It also addresses detainee provisions in the FY2013 national defense authorization bills, H.R. 4310 and S. 3254.

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observers have questioned whether all of the waivers issued or authorized under the directive are consistent with this statutory requirement.[153] In any event, significant procedural barriers—including standing and political question concerns—may impede a legal suit challenging the propriety of a waiver, making judicial settlement of the matter appear unlikely. If Members of Congress disagree with the President's implementation of Section 1022, further legislative action may be considered.

The directive also provides that it is not intended to create any right or benefit enforceable by any party against the United States. The directive also asserts that a determination that clear and convincing evidence is lacking to subject a person to mandatory military detention is "without prejudice to the question of whether the individual may be subject to detention under the 2001 AUMF, as informed by the laws of war, and affirmed by Section 1021 of the NDAA."[154] Presumably, this is in part because the evidentiary standard employed by the Executive for assessing whether a person is subject to mandatory military detention under Section 1022 is heavier than the standard used by the executive when determining whether someone may be held as an enemy belligerent under the AUMF.[155]

FY2013 NDAA Bills: Detainee Provisions

Despite presidential assurances that no U.S. citizens will be detained indefinitely, concern that Section 1021 of the 2012 NDAA authorizes the detention of U.S. citizens has continued to arise. The House and Senate versions address these concerns in a different manner. Both bills also continue some of the restrictions on detainee transfers as well as other provisions. The House bill, H.R. 4310, was passed in May 2012. The Senate passed its version, S. 3254, as a substitute for the House bill on December 4, 2012. The Obama Administration has threatened to veto both bills due to the restrictions on detainee transfers from Guantanamo, among other provisions.[156]

H.R. 4310

Recognition of habeas rights for detainees in United States: H.R. 4310, the National Defense Authorization Act for FY2013, as passed by the House, contains a section setting forth congressional findings with respect to detention authority under the AUMF and 2012 NDAA (§1031) and a section setting forth findings with respect to habeas corpus (§1032). Section 1033,

[153] *See, e.g.*, Jeremy Pelofsky and Laura MacInnis, *Obama Lays out Detention Rules for al Qaeda Suspects*, Reuters (February 28, 2012)(quoting joint statement by Senators Ayotte, McCain, and Graham that some aspects of the directive "may contradict the intent" of the 2012 NDAA); Greg McNeal, *How President Obama Plans to Implement the NDAA's Military Custody Provisions*, Forbes Online (February 29, 2012) (expressing skepticism that some of the waivers, including those applying to persons arrested by state or local authorities, implicate U.S. national security interests), *available at* http://www.forbes.com/sites/gregorymcneal/2012/02/29/how-president-obama-plans-to-implement-the-ndaas-military-custody-provisions/.

[154] Presidential Policy Directive on Section 1022, *supra* footnote 5, at 10.

[155] See text accompanying footnote 149, *supra*. Section 1022 detainees are also a limited subset of those detainable under section 1021. Unlike those whose military detention is required, non-mandatory detainees need not have participated in an attack or attempted attack.

[156] *See* Statement of Administration Policy on H.R. 4310 – National Defense Authorization Act for FY 2013, May 15, 2012, *available online at* http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/112/saphr4310r_20120515.pdf; Statement of Administration Policy on S. 3254 – National Defense Authorization Act for FY 2013, Nov. 29, 2012, *available online at* http://www.whitehouse.gov/sites/default/files/omb/legislative/sap/112/saps3254s_20121129.pdf.

as amended prior to passage,[157] provides that nothing in the AUMF or 2012 NDAA is to be construed as denying "the availability of the writ of habeas corpus" or denying "any Constitutional rights in a court ordained or established by or under Article III of the Constitution," but only with respect to persons who are "lawfully in the United States when detained [pursuant to the AUMF]" and who are "otherwise entitled to the availability of such writ or such rights." It would also require the President to notify Congress within 48 hours of the detention of such a person, and establish a requirement that such persons be permitted to file for habeas corpus "not later than 30 days after the person is placed in military custody." The bill does not contain substantive clarification of which U.S. persons are lawfully subject to detention under the AUMF. Although the findings reiterate that the 2012 NDAA did not change the law in this regard, the new language could be interpreted to recognize or establish that persons arrested in the United States who meet the definition of "covered person" under Section 1021 of the 2012 NDAA are indeed subject to detention.

It is not clear what class of persons is meant to be excluded from Section 1033 as falling outside the scope of persons who are "lawfully in the United States when detained" under AUMF authority. The language may apply to noncitizens who enter the United States without a valid visa or to those who later become deportable by violating visa conditions or whose visas otherwise become subject to revocation. It could perhaps apply to permanent resident aliens or even naturalized citizens who are later found to have procured their respective status or citizenship through fraud.

The 30-day access provision in Section 1033(c) may raise some interpretive difficulties in the case of persons whose lawful presence in the United States is undisputed. The language "not later than 30 days" is typically employed to set a deadline for a required action rather than a beginning point for permitting activity. Read literally, the provision could be interpreted to permit a custodian to prevent a detainee from filing a habeas petition for up to 30 days. On the other hand, the language "shall be allowed ... not later than" suggests that a detainee would no longer be allowed to file a habeas petition after 30 days from the time custody began.

The House rejected an amendment that would have barred indefinite military detention pursuant to the AUMF within the United States.[158]

Military trials for foreign terrorist suspects: During floor deliberation on H.R. 4310, an amendment[159] was adopted requiring that, in the event that a foreign terrorist attacks a U.S. target and may be subject to trial for the offense before a military commission, the accused must be charged before a military commission rather than in federal court. An identical provision was found in the version of the 2012 NDAA originally passed by the House, but it was excised from the enacted version.[160]

[157] H.Amdt. 1126.

[158] H.Amdt. 1127, an amendment to remove detention without trial as an optional disposition for covered persons under Section 1021 of the 2012 NDAA, was not adopted.

[159] H.Amdt. 1105 to H.R. 4310 (§1088 of the engrossed bill).

[160] See H.R. 1540 §1046 (as passed by the House of Representatives, 112th Cong.). For an analysis of the provision, see CRS Report R41920, *Detainee Provisions in the National Defense Authorization Bills*, by Jennifer K. Elsea and Michael John Garcia.

Detainee Transfers from Guantanamo: Many provisions in the 2012 NDAA affecting detainees at Guantanamo are scheduled to expire at the end of the fiscal year. H.R. 4310 would effectively extend several of these provisions through FY2013, including the blanket funding bar on the transfer of Guantanamo detainees into the country (§1027); the prohibition on using funds to construct facilities to house these detainees in the United States (§1026); and (with minor changes)[161] certification requirements and restrictions on the transfer of Guantanamo detainees to foreign countries. The bill also contains a provision that was part of the House version of the 2012 NDAA, but which was not included in the final act, that bars any Guantanamo detainee who is "repatriated" to the former U.S. territories of Palau, Micronesia, or the Marshall Islands from traveling to the United States.[162] The bill would also establish additional reporting requirements[163] relating to recidivism by former Guantanamo detainees.

Detainees held elsewhere abroad: Although legislative activity on detainee matters has primarily involved persons held at Guantanamo or within the United States, the vast majority of detainees are held by U.S. forces in Afghanistan. H.R. 4310 would establish certification and congressional notification requirements relating to the transfer or release of non-U.S. or non-Afghan nationals held at the detention facility in Parwan, Afghanistan, and require the Secretary of Defense to submit a report on the recidivism of former Parwan detainees. The bill would also require the Secretary of Defense to submit a report regarding the use of naval vessels to detain persons pursuant to the AUMF, and require congressional notification whenever such detention occurs. This provision is presumably a response to the situation last year when a Somali national was reportedly detained on a U.S. vessel for two months and interrogated by military and intelligence personnel before being brought into the United States to face criminal trial.[164]

S. 3254

Transfer restrictions: Section 1031 of S. 3254, as reported out of the Armed Services Committee, extends two provisions of the 2012 NDAA. The first is Section 1026, a provision prohibiting the use of any funds made available to the Department of Defense for FY2012 to construct or modify any facility in the United States, its territories, or possessions to house an individual detained at Guantanamo for "detention or imprisonment in the custody or under the control of the Department of Defense." The second provision to be extended is Section 1028 of the 2012 NDAA, which prohibits expenditures for detainee transfers to foreign countries or

[161] Section 1043 of the bill changes the deadline for certifications or waivers of requirements from 30 to 90 days prior to the transfer, and adds new requirements for an "assessment of the likelihood that the individual to be transferred will engage in terrorist activity after the transfer takes place" and a "detailed summary... of the individual's history of associations with foreign terrorist organizations and the individual's record of cooperation while in the custody of or under the effective control of the Department of Defense."

[162] Section 1035 of H.R. 4310 (engrossed) is substantially similar to H.R. 1540 Section 1043 (as passed by the House of Representatives, 112th Cong.). For an analysis of the provision, see CRS Report R41920, *Detainee Provisions in the National Defense Authorization Bills.* H.R. 4310 differs from the previous version in that it would deprive individuals only of rights named in Section 141 of the applicable Compact of Free Association.

[163] Section 1042 of the bill requires an assessment of "recidivism rates and the factors that cause or contribute to the recidivism of individuals formerly detained at the Detention Facility at Parwan, Afghanistan, who are transferred or released, with particular emphasis on individuals transferred or released in connection with reconciliation efforts or peace negotiations"; and "a general rationale of the Commander, International Security Assistance Force, as to why such individuals were released."

[164] *See supra* footnote 17 and accompanying text.

entities unless the Department of Defense first makes certain certifications with respect to the destination country or entity.[165]

One floor amendment related to Guantanamo was adopted by the Senate during floor consideration of the bill. S.Amdt. 3245 would essentially extend Section 1027 of the 2012 NDAA to 2013, while expanding it to cover all 2013 appropriations. Section 1027 prohibits the expenditure of DOD funds for FY2012 from being used to transfer or assist in the transfer of any detainee from Guantanamo into the United States.

Detention of U.S. persons in the United States: S.Amdt. 3018 addresses concerns about the application of detention authority from Section 1021 of the 2012 NDAA within the United States. It would provide that wartime detention authority under an authorization of force or declaration of war does not extend to U.S. citizens or lawful permanent resident aliens (LPRs). The amendment, introduced by Senator Feinstein, would not directly alter the language of either the AUMF or Section 1021 of the 2012 NDAA. It is similar to S. 2003 and a companion bill, H.R. 3702, entitled the Due Process Guarantee Act of 2011, and would amend the Non-Detention Act.[166] If enacted, the provision would mandate that an authorization to use military force or similar measure is not to be construed as an act of Congress authorizing the detention of U.S. citizens who are arrested in the United States, unless express authority for such detention is given. The amendment also covers lawful permanent resident aliens in the United States. It would add new sections to 18 U.S.C. Section 4001:

> (b)(1) An authorization to use military force, a declaration of war, or any similar authority shall not authorize the detention without charge or trial of a citizen or lawful permanent resident of the United States apprehended in the United States, unless an Act of Congress expressly authorizes such detention.
>
> (2) Paragraph (1) applies to an authorization to use military force, a declaration of war, or any similar authority enacted before, on, or after the date of the enactment of the National Defense Authorization Act For Fiscal Year 2013.
>
> (3) Paragraph (1) shall not be construed to authorize the detention of a citizen of the United States, a lawful permanent resident of the United States, or any other person who is apprehended in the United States.

The amendment appears intended to affirm the *Hamdi* decision[167] with respect to U.S. citizens captured overseas, but to prevent the extension of that decision to cover U.S. citizens and permanent resident aliens arrested in the United States. Paragraph three of the amended language may be read to preserve existing ambiguity with respect to U.S. citizens and permanent resident aliens apprehended abroad, as well as aliens apprehended in the United States who do not have permanent resident status, possibly in order to avoid a construction whereby detention of such persons is deemed authorized by implication by any authorization to use military force (in the same way as similar language is employed in paragraph (e) of Section 1021 of the 2012 NDAA).

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[165] *See supra* "Transfer or Release of Guantanamo Detainees to Foreign Countries."

[166] 18 U.S.C. § 4001(a). For background of the Non-Detention Act, see CRS Report R42337, *Detention of U.S. Persons as Enemy Belligerents*, by Jennifer K. Elsea.

[167] Hamdi v. Rumsfeld, 542 U.S. 507, 518 (2004). For a description of the holding, see *supra* "Scope of Detention Authority Conferred by the AUMF."

The amendment does not extend protection to lawful aliens without permanent resident (green card) status, including foreigners in the United States with valid tourist or student visas, and would not include aliens without legal status. Such persons would nevertheless be covered by the Constitution's due process provisions, and would be entitled to seek habeas corpus review of their detention. It appears that the Alien Enemy Act[168] would remain available as an express authorization for the President to order the internment of "natives, citizens, denizens or subjects" of a foreign country or government in the event of an armed invasion or declared war.

During floor debate on the amendment, several Senators expressed the view that its enactment would have no effect on the government's ability to detain U.S. citizens under the law of war, whether the arrest were to take place within the United States or abroad.[169] Because the Supreme Court has already interpreted the AUMF as "explicitly authorizing" such detention in satisfaction of the Non-Detention Act's requirement for "an act of Congress" authorizing the detention of a U.S. citizen without trial, Senator Levin argued that under the Non-Detention Act as proposed to be amended, the AUMF would likewise be interpreted to provide the requisite "express" congressional authorization. On the other hand, the amendment could be read as a congressional disapproval of the *Hamdi* plurality's interpretation of the AUMF, to the extent it could be extended to permit detention of covered persons apprehended in the United States, in favor of a rule of construction that would require a clear statement of congressional authorization.

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[168] 50 U.S.C. §21.

[169] 158 CONG REC. S7183-88 (Daily ed. November 30, 2012) (Statements of Senators Levin, Graham, and Ayotte).

APPENDIX 27

SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

DEC 1 1 2012

The Honorable Howard P. "Buck" McKeon
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

As you conference the National Defense Authorization Act for FY 2013 (NDAA), I would like to call several provisions to your attention that affect the Department's ability to operate efficiently and effectively. These provisions are outlined in detail in the enclosed paper.

Like you, I am committed to providing unwavering support for military personnel as they carry out their missions, strengthening the capabilities of the armed forces to defend America and American interests around the globe, and improving the quality of life for the members of our military and their families. In making a recommendation to the President on whether to sign the bill, I will consider its cumulative effects. Unfortunately, the House and Senate bills include provisions that would divert $8 billion in FY 2013 and $74 billion over the next decade to unnecessary programs and activities, undermining our ability to execute the new defense strategy, and threatening our military readiness. If a conferenced bill is enrolled in the current form of either version of the NDAA without the modifications that we are requesting, I will join with the President's other Senior Advisors in recommending that he veto the legislation.

Despite our concerns with both bills, there are many provisions that will benefit the men and women of this Department. The Department appreciates your consideration of the attached views and looks forward to working with you to resolve these concerns.

Sincerely,

Enclosure:
As stated

cc:
The Honorable Adam Smith
Ranking Member

DEPARTMENT OF DEFENSE CONCERNS WITH H.R. 4310 AND S. 3254

The Department urges the conferees to carefully review the Statements of Administration Policy (SAP) on H.R. 4310 and S. 3254 which lay out many issues of concern that remain for the Department. The Department must be allowed to eliminate unnecessary spending and redirect the savings to higher priority areas that will help achieve the President's defense strategy. If the Department is not allowed to make sound, responsible reductions to spending in certain areas, we would over time be forced to reduce spending on readiness and scale back investments in our defense strategy.

The Department strongly objects to provisions that would limit the Department's ability to implement the new defense strategy and ensure that scarce resources are directed to the highest priorities for the national security. The Department therefore objects to the provisions in the House bill that would restrict retirements of C-27J, C-23, C-130, other aircraft, and the RQ-4 Global Hawk Block 30. These provisions would force DoD to operate, sustain, and maintain aircraft that are in excess of national requirements and are not affordable in an austere budget environment. Delaying the divestment of the C-23 aircraft into FY 2016 and beyond, for example, would cost $343.5 million for modernization and service life extension on the aircraft. By contrast, termination of the C-27J would result in $2 billion in savings through FY 2018, termination of 31 Global Hawk Block 30 program aircraft would save $3.8 billion through FY 2017, and retirement of C-5As would save $2.5 billion through FY 2018.

Similarly, the Department strongly objects to Title XVII of the Senate bill, which would place limitations on funding to be used to divest, retire, or transfer units of the Air National Guard or Air Force Reserve, in addition to creating a commission to study the appropriate makeup of the Air Force. In light of the strong congressional opposition to the Air Force's original force structure changes, the Department would recommend adoption of the new plan designed by the Air Force. This plan would return 70 percent of the personnel and 30 percent of the aircraft, but still provide needed savings ($7.8 billion of $8.7 billion).

The Department also objects to provisions that would restrict retirements of nuclear-powered ballistic missile submarines and certain Ticonderoga Class Cruisers (CGs) and Dock Landing Ships (LSDs). The requirement to maintain a minimum of 12 ballistic missile submarines in the fleet – which is neither operationally required nor feasible during the transition between the current and future ballistic missile submarine classes – would limit the Secretary of the Navy's ability to manage Naval strategic forces to balance risk across the total Naval battle force, and to ensure scarce resources are directed to the highest priorities of the Combatant Commanders. The proposed retirement of 7 CGs at a savings of $2.3 billion through FY 2018 and 2 LSDs at a savings of at least $0.5 billion through FY 2018 would enable the Department of Defense to carry out its new strategy while realizing significant savings.

Provisions in the House and Senate bills that would limit the Secretary's discretion in determining and executing force management efficiencies are also of significant concern. For example, Senate section 2705 would severely constrain the Department's ability to properly

align the military's infrastructure with the needs of our evolving force structure. The Department strongly objects to section 403 of the House bill, which would limit active duty end-strength reductions for the Army and Marine Corps in FYs 2014-2017 to 15,000 and 5,000 per year, respectively, and would require DoD to fund all Army and Marine Corps active duty end strength in the base budget and not through emergency, supplemental, or overseas contingency operations (OCO) funds. The timing and pace of the planned reductions to the Army and Marine Corps are tied to anticipated changes in operational demand based on the Nation's current commitments as well as the new defense strategy, which emphasizes a smaller and leaner force. Limiting the Army's budgeted end-strength reductions to 15,000 per year is estimated to increase military personnel and health care costs by over $0.5 billion in FY 2014 and $1.9 billion through FY 2017. At the same time, House section 1214 would require the Department to divert critical Army combat resources to perform routine security functions.

The Department continues in strong support of its requested TRICARE fee initiatives that seek to control the spiraling health care costs of the DoD while keeping retired beneficiaries' share of these costs well below the levels experienced when the TRICARE program was implemented in the mid-1990s. The Department is pleased that the bills do permit some increases in pharmaceutical co-pays, which are designed to help save money by providing incentives to use mail order and generic drugs. Especially because most of the savings come not from the pockets of the troops, but from reduced costs for mail order and generics, the Department strongly urges the conferees to accept the Administration's full proposal for pharmaceutical co-pays in order to maximize these incentives and associated savings. We also hope the conferees will reconsider and allow some further increases in TRICARE fees.

The Department appreciates the Senate's elimination of sections 313 and 2823 of the Committee bill, which would have limited DoD's ability to procure alternative fuels for military applications. Similarly, the Department urges the exclusion of sections 313 and 314 of the House bill from the final bill.

The Department continues to have strong objections to the detainee provisions in both the House and Senate bills. The SAPs articulate our concerns with the various provisions. In particular, the Department strongly objects to sections 1031 and 1032 of the Senate bill, which intrude upon the Executive branch's ability to transfer detainees from the detention facility at Guantanamo Bay to foreign countries and determine where to prosecute and detain such detainees. These sections would preclude moving even convicted war criminals serving life sentences to secure facilities in the United States that would also be economically efficient. Since these restrictions have been on the books, they have limited the Executive's ability to manage military operations in an ongoing armed conflict, harmed our diplomatic relations with allies and counterterrorism partners, and provided no benefit whatsoever to our national security.

The Department strongly objects to several provisions related to Syria. Senate section 1235 would impede DoD's ability to effectively plan for options related to Syria, force the Department to disregard long-standing guidance on sharing planning information with Congress, and infringe upon the Executive branch's policy-making prerogatives. The Department also strongly objects to Senate section 1050, which prohibits the funding of contracts or agreements with Rosoboronexport, and House section 802, which attempts to obtain the same result by

prohibiting the Department from contracting with entities that are controlled, directed or influenced by a country that has provided weapons to Syria since 2003 or is currently a state sponsor of terrorism. Senate section 1050 would amount to a congressional de facto debarment of a named entity without regard to the administrative suspension and debarment process, a result that would undermine the ability of industry to rely on a fair and non-politicized process for being found ineligible for awards of Government contracts. While the section contains a waiver provision, the waiver provision is limited only to instances involving the capacity of the Afghan National Security Forces, which would preclude the Department from awarding other awards to Rosonboronexport, even if it would be in the national security interests of the United States to do so. With respect to House section 802, there is no mechanism in place that allows a contracting officer to identify firms barred from defense contracts by this provision beyond those already subject to U.S. sanctions. Furthermore, the Department is concerned that the House provision would adversely affect U.S. foreign and defense relations in the Western Hemisphere. If enacted, House section 802 could also complicate U.S. competitiveness in hemispheric defense markets such as Brazil and Canada by prohibiting the U.S. from partnering with leading defense companies in these countries that also do business with Cuba.

While the Department appreciates the support for its air and missile defense programs, the Department strongly objects to provisions in both bills (Senate section 236 and House section 229) that would prohibit the use of funds for the Medium Extended Air Defense System (MEADS) program. This prohibition will likely trigger a dispute with our German and Italian partners over the final year of funding agreed under the 2004 Memorandum of Understanding. Coming on the heels of a successful intercept test, this prohibition will not only jeopardize recent NATO missile defense commitments made by Germany and Italy, and the U.S.'s ability to secure a return on our investments to date, but will call into question future cooperative efforts. House section 223, which would require a missile defense site on the East Coast of the United States, is premature because the Administration has not identified a requirement for a third U.S.-based missile defense site, nor assessed the feasibility or cost in a cost-constrained environment. This section also would mandate the inclusion of a plan to deploy an appropriate missile defense interceptor for such a site in the budget request for FY 2014, an unwarranted intrusion on Executive branch decision making.

The Department would call your attention to the strong objection to the limitations on the President's ability to implement the New START Treaty and to set U.S. nuclear weapons policy (House bill sections 1053-1059), which explain in detail why these provisions could lead the President to potentially veto this important bill – an outcome that none of us desires.

The Department strongly objects to provisions that would require construction of the Chemistry and Metallurgy Research Replacement (CMRR) facility to begin in 2013. The Departments of Defense and Energy agree that, in light of today's fiscal environment, CMRR can be deferred for at least five years, and funds can be reallocated to support higher priority nuclear weapons goals. The Administration intends to implement an interim strategy to provide adequate support to plutonium pit manufacturing and storage needs until a long-term solution can be implemented.

The Department strongly objects to the limitations imposed by Senate section 2208 on the obligation and expenditure of United States and Government of Japan funds to implement the realignment of the U.S. Marine Corps units from Okinawa, to which the United States remains steadfastly committed. The provision would unnecessarily restrict the ability and flexibility of the President to execute our foreign and defense policies with our ally, Japan. In April 2012, the United States and Japan announced a new plan to implement the realignment of U.S.forces from Okinawa to Guam. Prohibiting the use of funds could adversely impact the United States' ability to move forward on the new plan. Additionally, the Department has serious concerns over the lack of authorization of appropriations for public infrastructure projects, as well as two military construction projects; essential upgrades to the fuel pipeline from Apra Harbor to Andersen AB, and a parking apron at the North ramp that would provide theater-wide strategic capability. The reduction of $233 million would impede the implementation of our new defense strategy, which calls for an increased focus on the Asia-Pacific region.

The Department urges the conferees to fully fund the Office of Security Cooperation in Iraq (OSC-I) and authorize OSC-I to conduct critical training activities for Iraqi Ministry of Defense and Counter-terrorism Service (CTS) personnel. This authority is needed to continue supporting the Government of Iraq's efforts to address Iraqi Ministry of Defense and CTS capability gaps (which was authorized through the Iraqi Security Forces Fund).

Provisions in the House and Senate bills that would limit the Secretary's discretion in determining and executing force management efficiencies are also of significant concern. The Department strongly recommends removing Senate subsection 932(a) that would set an absolute limit on Defense Human Intelligence manpower.

The Department also urges the conferees to accept section 711 of the Senate bill, which includes the rape and incest exception to the general prohibition on using appropriated funds to perform abortions under section 1093(a) of Title 10. The inclusion would make this provision consistent with other major abortion funding restrictions in Federal law.

The Department objects to the provisions in section 544 of the Senate bill, which mandates a survey scheme and records retention requirement that could violate victim privacy and severely hamper existing Departmental data and survey methodologies. As written, these two provisions would threaten the Department's ability to preserve the integrity of the Restricted Reporting option and undermine future Service members' participation in sexual assault prevention and response.

APPENDIX 28

December 5, 2012

Re: <u>VETO the National Defense Authorization Act, If It Extends Restrictions on Transferring Detainees Out of the Guantanamo Prison</u>

Dear President Obama:

The undersigned human rights, religious, and civil liberties groups strongly urge you to veto the National Defense Authorization Act for Fiscal Year 2013—if it impedes your ability to close Guantanamo, by restricting the Executive Branch's authority to transfer detainees for repatriation or resettlement in foreign countries or for prosecution in federal criminal court. The House of Representatives passed a version of the NDAA that restricts all transfers out of Guantanamo for the full fiscal year, while the Senate version of the bill restricts transfers overseas and includes a permanent bans on transfers to the United

States, even for prosecution in federal criminal court. We urge you to veto the NDAA if any of these restrictions are included in the final bill sent to you by Congress. [1]

Your commitment to close the Guantanamo prison was a hallmark of your 2008 campaign and a signal to everyone, both across America and around the globe, of a renewed commitment to the rule of law. Your executive order, on your second full day as president, directing the government to close the prison should have heralded the end of the prison, but instead triggered a long series of failures and obstacles to its closure. There are still 166 detainees left at Guantanamo, and the promise of closing the prison remains unfulfilled.

We appreciate that you publicly renewed your commitment to closing Guantanamo in public comments last month, and we strongly believe that you can accomplish this objective during your second term. You can still make the successful closing of the Guantanamo prison an important part of your historic legacy.

However, if the NDAA is signed with any transfer restrictions in it, the prospects for Guantanamo being closed during your presidency will be severely diminished, if not gone altogether. The current statutory restrictions on transfer expire on March 27, 2013. Those restrictions—which have been in place for nearly two years with zero detainees being certified for transfer overseas and zero detainees transferred to the United States for prosecution—are functionally similar to the restrictions in the NDAA bills pending in Congress. If extended for the entire fiscal year, then nearly a year of your second term could be lost, and the political capital required to start closing it later in your next term will be even greater.

Now is the time to end the statutory restrictions on closing Guantanamo, by vetoing the NDAA if it extends them. When signing earlier versions of these restrictions into law, you stated, "my Administration will work with the Congress to seek repeal of these restrictions, will seek to mitigate their effects, and will oppose any attempt to extend or expand them in the future." The restrictions have proven unworkable, and should not be extended for yet another year.

There is broad support among national security and foreign policy leaders for closing Guantanamo. Your own national security and foreign policy leadership team shares your commitment to closing Guantanamo. The list of leaders who support closing the Guantanamo prison is long, and crosses party lines, including: former President George W. Bush, former Secretary of State Condoleezza Rice, former Secretary of State Colin Powell, former Secretary of Defense Robert Gates, former National Security Advisor James Jones, General Charles C. Krulak (ret.) former Commandant of the Marine Corps, General Joseph P.

[1] There also are a range of other detention-related provisions in either the House or Senate bill, which would cause harm, such as sending all foreign terrorism suspects to military commissions, causing confusion among the public on the scope and availability of habeas corpus protections, and leaving many persons in the United States out of protections against indefinite detention without charge or trial. We urge you to veto the NDAA if any of these provisions are included in the final conference bill.

Hoar (ret.), former CETCOM commander, and Brigadier General Michael Lehnert (ret.), who set up the Guantanamo prison, and 25 retired admirals and generals. Closing Guantanamo is good human rights policy and good national security policy.

We realize that there is a long tradition of the NDAA being enacted annually. However, an annual NDAA is not required for the Department of Defense to carry out its functions. The NDAA does not fund the Department of Defense, and all of its provisions can be either implemented by agency action or enacted as part of other legislation. Four of your five immediate predecessors--Presidents Carter, Reagan, Clinton, and George W. Bush--each vetoed an NDAA. Restrictions impeding the closing of the Guantanamo prison clearly warrant a veto by you.

We believe that you will be far more likely to succeed in fulfilling your commitment to closing the Guantanamo prison if the transfer restrictions are allowed to expire on March 27. We strongly urge you to veto the NDAA, if it includes any extension of the restrictions on transferring detainees out of Guantanamo for either repatriation or resettlement overseas or prosecution in the United States. Thank you for your attention to this request.

Sincerely,

American Civil Liberties Union
American Friends Service Committee
Amnesty International USA
Appeal for Justice
Bill of Rights Defense Committee
Brennan Center for Justice
Center for Constitutional Rights
Center for International Policy
Center for Victims of Torture
Commission on Social Action of Reform Judaism
Council on American-Islamic Relations
Defending Dissent Foundation
Disciples Justice Action Network
Friends Committee on National Legislation
Human Rights Watch
International Justice Network
Japanese American Citizens League
Maryknoll Office for Global Concerns
National Association of Criminal Defense Lawyers
National Religious Campaign Against Torture
Peace Action
Presbyterian Church (USA) Office of Public Witness
Physicians for Human Rights
Psychologists for Social Responsibility
Rabbis for Human Rights – North America
United Church of Christ Justice and Witness Ministries

United Methodist Church, General Board of Church and Society
Unitarian Universalist Association
Win Without War